

Social Fieldwork Research (FRANET)

Severe forms of Labour Exploitation Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States

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Categories of interviewees:

Nine categories of experts working in the context of labour exploitation took part in the interviews and focus groups:

M – Monitoring bodies (such as labour inspectorates, health and safety bodies)

P – Police and law enforcement bodies

S – Victim support organisations

J – Judges and prosecutors

L – Lawyers

R – Recruitment and employment agencies

W – Workers' organisations, trade unions

E – Employers' organisations

N – National policy experts at Member State level.

FG – Focus Group

Throughout this report, references to these groups as 'M', 'P' etc. are to be understood as referring to the above-named 9 categories.

Where [M(X)] appears, this denotes the group from which the referenced interviewee came, in addition to the number of interviewees from that group referenced (for example, if a statement is supported by references to three interviewees from the M group, two from the S group and one from the J group, the reference will read '[M(3); S(2); J(1)]'. Likewise, if a statement is supported by statements from interviewees who participated in focus groups (in the following example, a lawyer), the reference will read '[FG(L)]'.

For data protection reasons, no names of interviewees have been mentioned.

1. Introduction, including short description of fieldwork

A total of 30 individual interviews, one focus group, and 11 case studies were carried out.

Interview - breakdown of interviews by:

- **professional group:** [M(4); P(5); S(7); L(3); J(4); R(2); W(3); E(1); N(1)].
- **gender:** 19 males and 11 females
- **number of years of experience on labour exploitation:** seven years on average. Some interviewees, however, only answered how long they had been in their given position.
- **geographical area:** interviews were conducted especially in Prague and in Pilsen, as well as in other areas.
- **duration of the interview:** the average length of interviews was 63 minutes. The length depended on the target group and the number of questions asked – the longest interviews were always with target group S (e.g. 92 minutes) and the shortest was target group J (39 minutes).
- **method of conducting the interview:** interviews were carried out only face to face, in the majority of cases (26 of 30 interviews) recording the duration of the interview was allowed for most interviews, four were not allowed to be recorded.

Focus Group:

In this research project, one focus group was held. The focus group was attended by 8 participants, from which four were male and four were female; [P(1); L(1); M(1); S(4); W(1)]. Additional theme(s) proposed for discussion at the focus group were: (a) the practices of the courts in the area of the labour exploitation and possible legislative or conceptual changes, (b) term or concept of labour exploitation in the Czech Republic and the way it is perceived by various institutions.

Case studies:

Case studies were put together mainly with target group S, as it is this group (NGOs) that works directly with victims (migrant workers) most often. Eleven case studies were processed, six of which were completed by field workers (from the non-profit organisations Diakonie and La Strada), four case studies were created by group W (from the IOM¹ organisation), and the final case study was processed by an individual coordinating policy measures in the area of human trafficking and work-force exploitation at a state level (group N). These case studies mostly include economic activities that can be defined as unskilled or low-skill professions (work in warehousing, slaughterhouses, gardening, construction), and victims (migrant workers) here are most often citizens of Bulgaria, Romania and Eastern Europe in general. One case study maps the case of a Czech person in Great Britain, where labour exploitation took place in work in a recycling plant and a dairy plant.

Difficulties or specific situations encountered during the fieldwork

During the implementation of the research, we encountered a number of problems and difficulties. This was mainly in attempting to secure interviews for target group M, recruitment and employment agencies (target group R) and target group E (representatives of employer organisations). On the other hand, the level of cooperation on the part on non-profit

¹ International Organization for Migration.

organisations devoted to this issue of labour exploitation in the Czech Republic was exceptionally high and often exceeded the framework of required cooperation.

There was also a problem in addressing all target groups as they were defined by the European Union Agency for Fundamental Rights. It was found that, for example, target group M does not have a specific or tangible representation. In the Czech Republic, a body solely charged with the monitoring and controlling of labour exploitation does not exist (see also 4.2). There are: (a) Labour Inspectorate – control of illegal migration (we were refused by a number of regional inspectorates with the explanation that they do not encounter labour exploitation at all, although information from other authorities indicates that they in fact do encounter this), (b) Customs Authority of the Czech Republic– control of illegal migration and work permits (c) the Unit for Combating Organized Crime – Department of Human Trafficking and Illegal Migration, which primarily focuses on the detection of human trafficking. The final relevant body was (d) Ministry of the Interior. These authorities can communicate information to each other about labour exploitation in working groups or other platforms, but none of them is specifically in charge of monitoring the situation in terms of this given topic.

Some target groups in the Czech Republic have overlapping activities. We indicated that in the Czech Republic, NGOs mainly work with migrant workers and victims of labour exploitation – both in legal representation as well as support organisations. For this reason we also encountered the problem of target groups S, L and W intertwining. E.g.: case of employment of an NGO which represents labour migrants in legal matters while engaged as a representative defending the rights of migrants.

There were large difficulties in involving target group J (judges and prosecutors). In light of the fact that there have been only three verdicts passed in the Czech Republic (one of which dealt with the exploitation of a socially disadvantaged group of people), there is no group of judges that would have wide experience with labour exploitation.

2. Legal framework

Two provisions were defined that are relevant for labour exploitation in the Czech Republic. Specifically, these are Article 168 on Human Trafficking and Article 342 on the Illegal Employment of Foreigners (Act no. 40/2009 Coll.; Criminal Code).

Act no. 40/2009 Coll., Criminal Code; Article 168 Trafficking in Human Beings

“A person who makes, procures, hires, lures, entices, transports, conceals, detains or delivers a child or forces an adult to be used by another for a) sexual intercourse or other forms of sexual abuse or harassment or for the production of pornography; b) the collection of tissue, cell or organ of his body; c) service in the armed forces; d) slavery or servitude; e) forced labour or other forms of exploitation will be punished.”²

The crime of slavery/servitude or forced/compulsory labour may be prosecuted when related to the crime of Trafficking in Human Beings (Article 168 of Criminal Code) or to the crime of Illegal employment of foreigners (Article 342 of Criminal Code). There is no legal definition of forms of labour exploitation. In Article 168 Section 1 letter e) the Czech Criminal Code prohibits forced labour and other forms of exploitation³. Child labour is not explicitly criminalised within the Czech Criminal Code. Child labour may be prosecuted when related to the crime of Trafficking in Human Beings (Article 168 of Criminal Code).

One quote was supplied [P(1)]:

“This is covered by Subsection 1 of Section 168 that describes the situation regarding children. Generally, it can be said that different procedures are used in these cases, a more careful investigation etc. Trafficking in children and labour exploitation of children is punished more severely, and there are fewer criteria that must be met in order for the act to be considered a crime. It is easier to prosecute that. Children are more vulnerable because they don't have as much experience.”
[P(1)]

Dle zákona je to odstavec jedna pragrafu sto šedesát osm, kde je to o těch dětech popsané. Obecně lze říci, že jsou v takových případech jiné postupy, opatrnější vyšetřování a tak. Obchod u dětí a vykořisťování dětí je přísněji posuzováno a je zde méně znaků, které musí být naplněny, aby se jednalo o trestný čin. Je tedy lépe postižitelné. Děti jsou více náchylné, protože nemají tolik zkušeností.” [P(1)]

Article 168 is significant for law enforcement authorities, who follow this regulation. For example one interviewee [P(1)] commented:

“We are governed by the Criminal Code. Mainly if the facts of Section 168 of the Criminal Code have been met. The cases must contain the signs listed in that section (of the act).” [P(1)]

² Czech Republic, Criminal Code (Trestní zákoník), 40/2009, 1 January 2010. Available at: <http://business.center.cz/business/pravo/zakony/trestni-zakonik/> (08.03.2013).

³ Czech Republic, Criminal Code (Trestní zákoník), 40/2009, 1 January 2010. Available at: <http://business.center.cz/business/pravo/zakony/trestni-zakonik/> (08.03.2013).

“Řídíme se trestním zákoníkem. Zejména je-li naplněna skutková podstata paragrafu sto šedesát osm trestního zákoníku. Případy musí obsahovat znaky uvedené v paragrafu.”

During the focus group, mention was made of a new element in operation, which is the new body of laws concerning “especially vulnerable victims” under the Act on Assistance to Victims of Crimes (45/2013)⁴, where the category of especially vulnerable victims will include e.g. victims of sexually motivated acts and victims of human trafficking according to legal paragraph § 168 – the victim has the right to legal counselling, and accredited institutions function in the sense of the prevention of secondary victimization.

Act no. 40/2009 Coll., Criminal Code; Article 189 on Procurement⁵

Interviewees from target group J spoke about their experiences with the crime of procurement, mainly in border regions. The definition of procurement according to the Criminal Code is as follows: *“Whoever persuades, procures, hires, coerces or allures an individual into practicing prostitution, or exploits the prostitution of another, will be punished by incarceration for six months to four years, by a ban on their activity, or by forfeiture of other material assets.”*

Illegal employment of foreigners - Article 342 of Criminal Code

“Who consistently, repeatedly, in a particularly exploitative working environment or, to a greater extent, employs or arranges employment for a foreigner who is staying illegally in the territory of the Czech Republic or does not have a valid work permit, provided that the other legislation required such a permit, shall be punished by incarceration of up to six months, or forfeiture of other assets or a ban on their activity.”⁶

Organisations carrying out inspections – the State Labour Inspectorate – mainly inspects whether the Labour Code is being upheld (Labour Code 262/2006 Coll.⁷). Apart from the Labour Code, the Labour Inspectorate also follows the Employment Act (Employment Act 435/2004 Coll.) and the Inspection Code (Inspection Code 255/2012 Coll.).

Interviewees often mentioned the issue of proving human trafficking (as was also evident from case studies⁸) in the sense that the *actus reus* of the case relates only to the intent of the offender to exploit an individual, not to the actual process of exploitation itself. The Criminal Code contains the sentence “in order to be used by another”. This points to the fact that the individual criminally responsible for human trafficking can only be the trafficker and not the exploiter, who cannot fulfil this criterion.

One interviewee [M(1)] noted during the interview that the Criminal Code is an explicit legislative resource and spoke in detail on its amendments, for which the MI together with

⁴ Act on Victims of Crimes and the change of a number of laws (Act on Victims of Crimes) from January 30th, 2013. Available at: www.sagit.cz/pages/sbirkatxt.asp?zdroj=sb13045&cd=76&typ=r (11.02.2014).

⁵ Available at: www.beck-online.cz/bo/document-view.seam?documentId=onrf6mrqga4v6nbgfzygmmiyhewta (10.02.2014).

⁶ Czech Republic, Criminal Code (Trestní zákoník), 40/2009, 1 January 2010. Available at: <http://business.center.cz/business/pravo/zakony/trestni-zakonik/> (08.03.2013).

⁷ Available at: <http://business.center.cz/business/pravo/zakony/zakonik-prace/> (11.02.2014).

⁸ In the context of case studies shows that minimum cases end by indictment of the perpetrators and closing the case. Usually the cases are not investigated because the migrant returned to his country of origin or refused to cooperate in further investigations; oftentimes the cases were dismissed due to lack of evidence.

the Ministry of Justice are in charge. The new Criminal Code now looks at exploitation as a double-sided act.

“There is the criminal law aspect, the Criminal Code, facts of individual cases in human trafficking, and also the illegal employment of foreigners, and at present [interview was interrupted by someone leaving the room who was not a part of the interview] ... at present, in the Chamber of Deputies, there is an amendment to the Criminal Code that amends the basic actus reus, or the objective elements of cases of human trafficking. We initiated this amendment in cooperation with the Ministry of Justice, so this term ‘human trafficking’ will finally be adopted, and the term “other” for labour exploitation will also be adopted, along with the term “accept”, and by doing this, we can reach a state where courts and the justice system will understand human trafficking as a two-sided relationship, where it won’t be necessary to prove the element of trafficking itself, that an individual was transferred from one person to another. We’ve already seen one case like this, at least one case, but there are certainly more of them. During this process of authenticating evidence, using this term “other” has caused problems. So we hope that in the future this change could clear a path toward sentencing other cases that deal strictly with human trafficking.”

“Trestněprávní úroveň a tady je to trestní zákoník a skutková podstata obchodování s lidmi a dále ještě tam je ta neoprávněné zaměstnávání cizinců, tak a v součas (přerušeno odchodem někoho, kdo se neúčastnil rozhovoru, z místnosti), v současné době je teďka ve sněmovně vlastně novela trestního zákoníku, která tam jako upravuje tu základní skutkovou podstatu obchodování s lidmi a ta, tuto novelu jsme iniciovali právě ve spolupráci s ministerstvem spravedlnosti, takže tam to vypadne, to slovíčko jiným u toho pracovního vykořisťování a ještě tam přibude to slovíčko přijme, takže a tím bychom, tím by mohl být docílen stav, kdy soudy a justice budou chápat obchodování s lidmi jako ten dvojstranný vztah, kdy nebude zapotřebí dokazovat ten prvek obchodování, že ta osoba byla předána další osobě a což jsme už zaznamenali jeden případ, minimálně jeden případ, ale jich je určitě více, kdy tady právě to prokázání, to, slůvka jiným užito, způsobovalo jako problémy a takže si slibujeme do budoucna, že tato změna by mohla, tady uvolnit cestu pro odsouzení dalších, dalších případů, právě i čistě pro obchodování s lidmi.” [M(1)]

3. Labour exploitation and the institutional setting

3.1 Tasks of institutions involved in preventing labour exploitation and in enabling victims to access justice

Key themes and summary:

- The Ministry of the Interior is responsible for international migration and international protection in the Czech Republic, both at the level of legislation - conceptual, analytical, and implementation. Part of the Ministry's responsibility in this area includes the Department for Asylum and Migration Policy. The Ministry of the Interior also coordinates the Programme on the Support and Protection of Victims of Human Trafficking. Within the Programme, victims who cooperate in investigations obtain social, medical, legal and other support and are also ensured safe return to their country of origin. The programme is implemented by NGOs and other service providers and requires intensive cooperation with the police and other state agencies.
- The Czech Police is generally required to monitor any criminal offences or crimes arising from the conditions of labour exploitation. Within the Czech Republic, a special unit called Unit for Combating Organized Crime (UCOC) has one branch that focuses on human trafficking (HT) in terms of forced labour.
- The State Office of Labour Inspection's main task is to monitor the compliance of the public and private sectors with obligations arising from labour laws, including regulations on safety and health at work. The State Inspection does not hold any specific mandate to combat labour exploitation of migrants.
- Support services for migrants and victims are provided by non-profit organisations – e.g.: (a) La Strada Czech Republic, which provides social, psychological and legal assistance to victims of human trafficking and labour exploitation; (b) Caritas of the Archdiocese that provides social aid, counselling, crisis intervention and shelter to victims of HT for forced labour purposes; (c) The International Organisation for Migration provides training for members of the state administration abroad and brings experience and models of migrant issues to the Czech Republic from other countries. They take part in processing support materials and strategic manuals on migrant issues in the Czech Republic in cooperation with the Ministry of the Interior. They are in close cooperation with the Ministry of the Interior in return programs. IOM provides counselling to migrants. In the Czech Republic there are other NGOs that mainly provide their clients with social and legal counselling and implement field-work program that focuses on direct work with clients, for example: Diakonie, Association for Integration and Migration, Organization for Aid to Refugees, InBáze, etc.

The Unit for Combating Organized Crime, or UCOC (*Czech – Útvar pro odhalování organizovaného zločinu*)⁹ is a significant authority in the fight against labour exploitation,

⁹ The Unit for Combating Organized Crime of the Criminal Police and Investigation Service (UCOC CPIS) is a nation-wide unit of the Czech Police that work in the detection, documentation and investigation of organized crime, i.e. in the fight against organized crime in the Czech Republic.

which was also identified as a police unit. This special unit works in the detection, investigation and monitoring of human trafficking and labour exploitation as these terms are defined in the Criminal Code¹⁰, in compliance with the Criminal Procedure Code¹¹ and the Police Act¹². As far as the issue of human trafficking and labour exploitation are concerned, they are an executive body, which means that the activity that they undertake is closely linked with the fulfilment of the facts of the crime of human trafficking and labour exploitation. UCOC follows by the national strategy for combating trafficking of human beings¹³, which is in force from 2012 to 2015.

The **Department of the Foreign Police** (*Czech – Služba cizinecké policie*), which also works across various Czech regions, as well as the Department for Asylum and Migration Policy within the Ministry of the Interior¹⁴ were also identified as monitoring bodies. Interviewees from target group P often mentioned the bodies' monitoring the adherence to law:

“Our organisation focuses on monitoring whether the law is being upheld, criminal law, rules of criminal procedures, prosecuting people who break the law and, I don't think there's anything more to add [to this question]”

“Naše organizace se zaměřuje na kontrolu dodržování zákona, trestní zákon, trestní řád, stíhání lidí, kteří porušují zákony, tam asi nic jiného odpovědět ani nemůžeme.”

“ (...) we rely on the Criminal Code and nothing else, (...) we just use legal regulations and we have to stick to those.” [P(1)]

“(...) vycházíme jenom z trestního zákoníku, nic jiného v podstatě, (...) naše zákonné předpisy a podle těch se musíme řídit.” [P(1)]

The Ministry of Interior (*Czech – Ministerstvo vnitra*) was also identified, which coordinates the Programme on Support and Protection of Victims of Human Trafficking. Within this programme, victims who cooperate in investigations obtain social, medical, legal and other support and also safe return to their country of origin. The Programme is implemented by NGOs and other service providers and requires intensive cooperation with the police and other state agencies. Service providers within the programme are La Strada and Caritas.

Labour Inspectorates were identified as a monitoring body, i.e. **The State Office of Labour Inspection** (*Czech - Státní úřad inspekce práce*), whose main task is to monitor the compliance of the public and private sectors with obligations arising from labour laws, including regulations on safety and health at work. Functions and action of Labour inspectorate were explained during focus group in detail. One interviewee [FG(M)] explained that checks or inspections are carried out by regional Labour Inspectorates, which are always on the level of the Czech region. There are eight inspectorates in total in the Czech Republic (according to its 8 regions). Inspections take place according to set plans or based

¹⁰ 40/2009 Coll. Criminal Code.

¹¹ Act no. 141/1961 Coll., on criminal procedure

¹² Act no. 273/2008 Coll., on the Police of the Czech Republic

¹³ See www.mvcr.cz/clanek/vlada-schvalila-narodni-strategii-boje-proti-obchodovani-s-lidmi.aspx.

¹⁴ Department for Asylum and Migration Policy within the Ministry (OAMP) of the Interior is partly responsible for policy development, partly for monitoring and partly for actual administrative immigration control (issuing decisions on stay and expulsion). It is not part of the Police of the Czech Republic and does not have any law enforcement powers.

on suggestions (either from citizens, employers or other institutions such as the Labour Office, etc.). Inspections are aimed at various areas, one of which are “traditional” areas such as legal-labour relations (whether contracts are in order). In relation to migrant workers, for two years the Inspectorate has been carrying out checks on illegal employment, which are carried out with the special cooperation of the Department of Foreign Police and the other competent Departments of the Czech Police, the Czech Customs Authority and the Social Security Administration. An interviewee here stated that there is good cooperation between these bodies. Inspections are carried out unannounced and the participation of the police is important, as they can identify individuals and help augment the small numbers of inspectors. An interviewee mentioned that, during an inspection, they check whether individuals have work contracts, they check their documents and papers, and then finally make an evaluation of the situation. A part of the inspection may include inspecting the safety and protection of well-being in the workplace. At least two inspectors at once carry out inspections, sometimes more, according to the size of the locale. Inspections in the interviewee’s words are very time-consuming, and it is important to keep them in secrecy. Inspectors are under an oath of silence. Many times they carry out inspections together with the police forces (Foreign Police, Police of the Czech Republic, Municipal Police).

The Labour Inspectorates, which are charged with the monitoring of legal labour conditions at workplaces, etc., voiced criticisms in the sense of their own powers, specifically:

“We do the best we can, sometimes it goes above standard, too, and we never reject a person that comes. Unfortunately, we are limited as for money. That is our biggest problem. As well as our competencies. The fact that we don’t have the same competencies like for instance the Police, who are armed and have more powers, is also restricting us.”

“Děláme co můžeme, někdy i nadstandard, když někdo přijde, neodmítáme ho. Bohužel existuje zde limitace ze strany financí. To je největší problém. Stejně jako otázka našich kompetencí. To že nejsme orgánem, jako třeba policie, která je ozbrojená a má větší pravomoce, nás také limituje.” [M(1)]

Health and safety officers/health inspectorates were defined, which are not actually responsible for preventing labour exploitation, monitoring or victim protection. In light of the fact that these organisations do not take part in the battle/prevention/monitoring of labour exploitation of migrants, they were not included in the target group of interviewees.

Social Legal Child Protection Agencies (*Czech – Orgán sociálně-právní ochrany dětí - OSPOD*) was mentioned, which is an organisation devoted to youth welfare (in particular with regard to child labour). Interviews attempted to probe and reveal whether there is some authority, entity or department in the Czech Republic that has any experience with migrant child labour. During research, no individual had any experience or encounters with cases of migrant child labour.

The Public Defender of Rights (*Czech - Veřejný ochránce práv*) was identified as a monitoring body. Other related organisations were also identified.

The International Organisation for Migration (*Czech – Mezinárodní organizace pro migraci - IOM*) provides training for members of the state administration abroad, and brings experience and models of migrant issues to the Czech Republic from other countries. They

take part in processing support materials and method manuals on migrant issues in the Czech Republic in cooperation with the Ministry of the Interior. The Pre-departure Minimum pilot program was provided (instructional video, brochure and CD) by IOM. They are in close cooperation with the Ministry of the Interior in return programs. IOM provides counselling to migrants. They do not offer legal counselling, and therefore often refer referrals to additional non-profit organisations – the Organization for Aid to Refugees, InBáze and the Counselling Centre for Citizenship.

The Czech-Moravian Confederation of Trade Unions (*Czech – Českomoravská konfederace odborových svazů*) also took part, and was defined as “labour unions or other representative bodies” (representing workers and their rights). The Czech-Moravian Confederation of Trade Unions do not specialise in the labour exploitation of migrants, even with regard to the fact that the migrants often have illegal status, stand outside of the basic legal framework and thus are not covered by systems of social protection. The Czech-Moravian Confederation of Trade Unions tries to fight mainly against the illegal nature of foreign employees – as it is due to their illegal nature that employees from abroad fall out of the scope of the systems of social protection. In order for a migrant to be able to be represented in labour law issues or to use the services of the legal counselling office, s/he must be a member of trade unions¹⁵. Interviewees from (a) representative target group E and (b) representatives of recruitment, employment or temporary work agencies (target group R) were included in the research.

Two non-profit organisations were identified as victim support organisations – **La Strada Czech Republic**, which provides social, psychological and legal assistance to victims of the trafficking of human beings (THB) and labour exploitation¹⁶, and **Caritas of the Archdiocese** (*Czech - Arcidiecézní Charita*) that provides social aid, counselling, crisis intervention and shelter to victims of THB for forced labour purposes. **The Multicultural Centre Prague, Diakonie, Association for Integration and Migration, Organization for Aid to Refugees and InBáze** non-profit organisations were also interviewed.

The Multicultural Center Prague (a civic association) does not work directly with migrants, does not have social workers, and employs lawyers only in exceptional cases. The centre is really focused more on specific cases e.g. in relation to spreading information and awareness, lobbying, and even activism. The main principle of the Multicultural Center Prague civic association is human rights - part of the organisation’s goals is to enforce the rights of workers in general and the rights of migrant workers in particular.

The **Association for Integration and Migration** provides its clients primarily with social and legal counselling regardless of their residency status, which is based on valid legal regulations. The NGO **Diakonie** primarily implements a field-work program that focuses on direct work with clients directly in the places where exploitation occurs. Diakonie provides victims with legal counselling; they school them on what rights and obligations they have in terms of work relationships and on proper work contracts, residency obligations, etc. The NGO **Organization for Aid to Refugees** provides social and legal counselling. Legal

¹⁵ According to an interviewee, the ČMKOS (on the first level) promotes the interests of its own members, on the second level, it promotes the interests of the inhabitants of the Czech Republic and of Czech employees, and on the next level also the interests of migrant workers. It is the interest of the trade unions to provide principles and norms for the job market; however, foreigners are not a priority focus of interest in this respect.

¹⁶ La Strada also runs a community outreach programme within the community of labour workers.

counselling is provided free of charge for issues relating to asylum and migration laws, labour laws and in other legal fields. Social counselling helps solve the current situation of migrants living in the Czech Republic mainly in areas concerning accommodation, employment, health care, education and changes in family situation.

The non-profit organisation **InBáze** mainly provides legal counselling to foreigners in the Czech Republic. An interviewee said:

“Well, as for our activities, we focus mainly on legal consultancy. It means that at the moment we have no comprehensive project concentrated systematically at this topic. But we do deal with it in the form of legal consultancies. Together with being a part of non-profit organisations Consortium that defends rights of migrants. The way it works is that the moment we see a kind of more conceptual violation, like for instance in the bakery, we make effort to address it, to unify all of the organisations and deal with it via the Consortium. There was this kind of effort. I am afraid it was not very successful. Because it is not easy in present days.”

„Tak co se týče naší činnosti, tak my jsme zaměřeni hlavně na právní poradenství. To znamená, že nemáme v současné době žádný ucelený projekt, kde bysme systematicky uchopovali toto téma. Ale vlastně řešíme to formou právního poradenství. S tím, že jsme součástí konsorcia nevládních organizací hájících práva migrantů. Takže to funguje tak, že v okamžiku kdy třeba vidíme nějaké koncepčnější porušování, jako třeba v té jedné pekárně, tak potom naší snahou je nějakým způsobem to adresovat, spojit všechny organizace a řešit to přes to konsorcium. Někáká taková ta snaha tam byla. Bohužel to nebylo příliš úspěšné. Protože to není jednoduchá věc.”[S(1)]

3.2 Forms and frequency of incidents of labour exploitation encountered by experts in their work; economic areas affected

Key themes and summary:

- Interviewees perceived the individual categories in a problematic manner - there was a significant problem with the definition and complex perception of categories of forms of labour exploitation. The concept and term labour exploitation and its characteristics are understood differently.
- In the course of their professional life, interviewees have come across the following forms of labour exploitation involving migrant workers: forced labour including bonded labour, trafficking for labour exploitation and exploitation of a migrant worker under particularly exploitative working conditions.
- Conclusively the most often mentioned category of occupation by interviewees and unskilled workers (for example work in construction and workers in manufacturing, mainly in assembly line manufacturing) and the other most commonly chosen occupations was the category of semi-skilled worker.
- The sector of the economy that interviewees most often encountered labour exploitation in was construction, the second most common encountered sector of the economy was agriculture, forestry and fishing, especially animal production and

silviculture. The third most common sector of the economy was manufacturing, especially manufacture of food products, manufactures of textiles and other manufacture (the electronics industry and the automobile industry).

Forms of labour exploitation encountered by professional group:

	M	P	S	J	L	R	W	E	N	Total
Slavery	1		3						1	5
Forced labour, including bonded labour (e.g. debt bondage)	1	1	5	1	2	1	2	1		14
Child labour			1							1
Trafficking for labour exploitation	2	2	6	4	2				1	17
Exploitation of a migrant worker under particularly exploitative working conditions (in the terms of the ESD)	3	3	4				2	1	1	14

Interviewees almost in unison labelled categories 2 (14 interviewees in the course of their professional life have experienced forced labour, including bonded labour), 4 (17 interviewees in the course of their professional life encountered trafficking for labour exploitation) and 5 (14 interviewees in the course of their professional life encountered exploitation of a migrant worker under particularly exploitative working conditions). However, it is necessary to point out that interviewees perceived the individual categories in a problematic manner, and their responses were often not unified. There was a significant problem with the definition and complex perception of these categories. The concept and term labour exploitation and its characteristics are understood differently not only in terms of various professional groups, but also individually. Interviewees often pointed out that, in their opinions, the forms of labour exploitation of migrant workers are difficult to define, as the listed forms overlap and occur side by side. An interviewee [P(1)] commented on this with the following:

“This is a problem of the context in which the interview guide was drawn up – once it is compiled within one (e.g. legal, social, cultural) context and then transferred within the EU to other countries, it can never be defined properly.”

“Toto je problém kontextu v jakém byla osnova rozhovoru vytvářena, ve chvíli kdy je vymyšlena v jednom (např. právním, sociálním, kulturním) kontextu a poté v rámci EU přenáší se do ostatních zemí, nelze to nikdy dobře vymezit.” [P(1)]

This indicates that the forms of labour exploitation need to be understood in the context of who is the arbiter of the definition, as definitions may differ depending on whether the respondent is an expert or a body active in criminal proceedings or in what has been adjudicated. Other understandings of the term labour exploitation often led interviewees to answer number 1.1 by saying that they had never encountered any of the given forms of labour exploitation; however, when asked further questions in the interview, it became evident that they had actually encountered exploitation as it is defined by FRA.

Often these terms were understood in various ways, while the borders of these definitions can vary from interviewee to interviewee. One interviewee stated they had encountered forced labour, but it was never qualified as such by the courts, i.e. it was always considered to be “only” labour exploitation. The problem of the narrow definition of “human trafficking” in

terms of the paragraph that contains it in the Criminal Code is usually mentioned by interviewees from target group S. In the group discussion, the issue of the concept of labour exploitation was brought up in the section “Contentious issues from interviews”. In the focus group, participants in the discussion agree that the concept of labour exploitation can be perceived in various ways. One interviewee [M(1)] commented, for example, that the Labour Code and the Employment Act do not contain the term labour exploitation, but do contain terms such as discrimination and unequal treatment. One interviewee [FG(S)] added that the concept of labour exploitation can vary even among individual victims, and the threshold of what labour exploitation is or is not can actually be different even from person to person. It was almost a rule that law enforcement authorities perceived the term strictly according to the legal paragraphs of the Criminal Code. Evidently during the interviews, there was no more room for a wider definition, e.g. as it is defined by FRA for the purposes of this questionnaire. The activities of the NGO are based on the legal system of the Czech Republic, but they also often rely on directives and European legislation.

“(...) we understand the term human trafficking in a slightly broader context than for example law enforcement authorities, and sometimes we’re criticised for that.”

“(...) my pojem obchodování s lidmi vnímáme trošičku šířeji než třeba orgány činné v trestním řízení, někdy jsme za to kritizováni.”[S(1)]

Five interviewees met with category (01), **slavery** (mainly interviewees from group S and also members of group M and one member of group N). In terms of a case of slavery one individual [N(1)] personally encountered, the respondent added:

“However from my own practice I can tell you what we’ve encountered, there might be one case of slavery that was dealt with at one public prosecutor’s office in Moravia, although the offender died, so the case wasn’t actually prosecuted. So, we could include slavery here, although this wasn’t confirmed by law enforcement authorities. So, in terms of bonded labour or slavery, we could say a more heightened level of dependence, where women were working for a man who was exploiting them, they were really almost slaves.”

“Nicméně v praxi můžu říct, co jsme se setkali s případy otroctví by mohl být jeden případ, co se řešil na jednom moravském státním zastupitelství, nicméně pachatel umřel, takže nebyl vlastně ten případ postižen, takže otroctví by se tam teoreticky dalo nicméně nebylo potvrzeno orgány činnými v trestním řízení, takže takové to otroctví nevolnictví, byl to takový vyšší stupeň závislosti kdy v podstatě ty ženy, které pracovaly pro toho muže, který je vykořisťoval byly opravdu skoro nevolnice.”[N(1)]

Only one interviewee [S(1)] mentioned experience with category (03), **child labour**, in the interview:

“I encountered child labour, but it is just one case...I know a thirteen year old boy who is working.”

“S dětskou prací jsem se setkávala, ale to je ojedinělý...znám třináctiletýho kluka, který dělá, no.”[S(1)]

In the focus group only one interviewee [S(1)] had experience with Bulgarian children that were forced to beg¹⁷.

Occupations of exploited migrant workers:

Conclusively the most often mentioned category of occupation was **unskilled workers (03)**. Interviewees often mentioned work in construction and workers in manufacturing, mainly in assembly line manufacturing. This is mainly (a) the electro-technology industry, where both men and women appear, for example in the manufacture of screens and displays.

“Then there’s the electro-technical industry, which are assembly shops ... assembly lines”

“No potom, elektrotechnický průmysl, a což jsou takový ty montovny...No, pásová výroba”. [S(1)]

Also (b), the textile industry:

“I already mentioned the textile industry, which is a very big topic, which to a certain degree, it’s a very common woman’s job.”

“... a to už jsem teda nemluvil o textilním průmyslu, což je taky velký téma, který do určitý míry, tak to je hodně ženská práce.” [S(1)]

Also, (c) warehousing work was mentioned.

“If we think about the cases that have occurred and that have been sentenced according to the Criminal Code¹⁸, it always involved less qualified jobs.”

“Vycházíme-li z kauz, které se odehrály a byly dle trestního zákoníku odsouzeny,¹⁹ byly to vždy méně kvalifikovaná zaměstnání.” [P(1)]

The other most commonly chosen occupation was the category of **semi-skilled worker (02)**. Interviewees had experience mainly with workers in construction (bricklayers), and to a smaller degree workers in bakeries or domestic workers.

The category of **farm workers, e.g. farm labourer, tractor driver, fisherman, etc. (04)** was also mentioned often. Option 4 was often chosen by interviewees based on the well-known case of exploited loggers that appeared in the Czech media²⁰. This well-known and publicized case was not the only reason for choosing option 04. For example interviewees from target group E, P and J mentioned this category based on their experience with cases concerning: fruit picking, radish picking or work on poultry farms:

¹⁷ This case was investigated by the Organized Crime Detection Unit. The social and legal protection of children was provided by PERMON and Blue School – both organizations are no longer in existence.

¹⁸ 40/2009 Coll. Criminal Code.

¹⁹ 40/2009 Coll. Criminal Code.

²⁰ In March 2009, in the Sapa Vietnamese outdoor market in Prague 4, recruitment was carried out by the Affumicata Company for tree planting jobs in Czech forests. Work was offered to hundreds of Vietnamese workers who had been laid off from industry jobs as a result of the economic crisis. They only received partial pay for their work or only received small cash advances, which were not enough to even buy food. These practices continued on in a similar manner until 2010, when workers from Romania and Slovakia began to work for the same company or a company with a different name. The works took place on a public project, the tender for which was won by the forestry giant Less & Forest s.r.o.

"I mentioned this ... but there is also, for example, radish picking done by Ukrainian teachers over the summer holidays, where the radishes have to be picked terribly early in the morning. And no one really wants to do that. So, basically, this takes place on some farm that is relatively far from civilization, they are accommodated there in an inadequate environment and they are isolated just in terms of the character of the work they're doing."

"To jsem tady nezmínil, ale je to taky příklad sběru ředkviček ukrajinskými učiteli o prázdninách, ty ředkvičky se musejí trhat nějak strašně brzo ráno. A to skutečně jako moc tady nikdo dělat nechce. Tak to v podstatě probíhá dost takovým způsobem, že je to na nějaký farmě, která je relativně odlehlá, jsou tam ubytovaný někde ne úplně v prostředí asi adekvátním a jsou izolovaný už jenom z hlediska charakteru té činnosti." [E(1)]

"Recently, this has concerned in particular seasonal workers in agriculture. For instance, the harvesting of fruit in the summer – for instance strawberries – and in the autumn apples and other things. These are jobs for which a large number of people are necessary. This would also include forestry for instance."

"Poslední dobou zejména sezonní pracovníci v zemědělství. Například sběr ovoce v létě, třeba jahody a na podzim jablka a ty další věci. Jsou to práce na něž je potřeba mnoho lidí. Dále lesnictví například." [P(1)]

Only one interviewee labelled the category of **skilled worker (01)**. The interviewee [S(1)] has experienced exploitation of welders. Interviewees' experience with labour exploitation in higher position was probed by the moderator of the focus group. When asked whether participants encountered exploitation with more highly qualified positions, e.g. managerial, etc., the interviewee [P(1)] stated yes, but only formally:

"Those managing positions, only just formally ... or, for example, applications for long-term residency for business purposes against a legal entity, it's formally written down on paper, they take the position of an agent or business associate, these higher positions, but in reality these are just normal manual labourers who are avoiding the grey-area system. It's the easiest way for them to legalise their residency, in this way, so formally, let's say, even these positions are exploited, but in reality we're still dealing with classic, manual jobs."

"Ty manažerské pozice, pouze formálně nebo třeba u žádostí o dlouhodobý pobyt za účelem třeba podnikání vůči právnické osobě to v podstatě formálně na papíře oni plní pozici jednatele, společníka, vyšší pozice, ale prakticky ve skutečnosti jsou to normální dělníci, kteří se vyhnou švarc systému a podobně, ale je to nejsnazší svůj pobyt legalizovat touhleto formou, takže formálně dejme tomu, že jsou zneužívány i tyto pozice, ale ve skutečnosti se jedná o klasické nebo manuální práce. (...) Hlavně potom když jsme třeba prováděli výslechy, tak drtivá většina z nich řekne, že uklízí popřípadě nemá přehled o tom, co ta společnost vykonává, jaký jsou určitý účetní uzávěrky a podobné jako odborné věci, které by měli patřit k té dané pozici." [FG(P)]

None of the interviewees selected the category of **sales occupations (06)**, **clerical occupations (07)** and **professional and technical occupations (08)**. In the event that the interviewees selected the category **other (09)**, they specified that this mainly concerns the sex industry (procurement and prostitution) and highly unskilled positions [P(1)].

"These were only women. I dealt with a case of a man on the hotline. It was not even related to prostitution, it was the porn business."

"To byly pouze ženy. I když jeden případ muže jsem měla na lince. To nebyla ani prostituce, to byl sex byznys pornografický." [S(1)]

In cases of construction especially, men are exploitation according to interviewees generally. In other economic sectors and occupations interviewees said that as for the division of work between men and women, it depends on physical requirements and kind of work. However, in their view there is no great difference between exploitation of men and women. It happens to both sexes.

Economic sectors:

The sector of the economy that interviewees most often encountered labour exploitation was **construction (43)**, which was further confirmed by the focus group.

"Construction. Human trafficking and labour exploitation does occur at construction sites too. Mostly at large construction sites."

"Stavebnictví. Na stavbách se obchod s lidmi a vykořisťování take objevuje. Převážně velké stavby." [P(1)]

The second most common sector of the economy is **agriculture, forestry and fishing (01)**, especially animal production and silviculture. Agriculture was often chosen by interviewees based on the well-known case of exploited loggers that appeared in the Czech media – see above.

The third most common sector of the economy is **manufacturing (19)**, especially manufacture of food products, manufactures of textiles and other manufacture (the electronics industry and the automobile industry).

Interviewees, to a smaller degree, also marked options (58) warehousing and storing (3 interviewees), (86) cleaning activities (3 interviewees) and (111) social escorts, club hosts and dancing partners (3 interviewees).

Summary 3.2	
3 most frequent occupations:	3 most frequent economic sectors:
1. Unskilled worker e.g. labourer, porter, unskilled factory worker	1. Construction
2. Semi-skilled worker e.g. bricklayer, bus driver, cannery worker, carpenter, baker	2. Agriculture, forestry and fishing
3. Farm worker e.g. farm labourer, tractor driver, fisherman	3. Manufacturing

4. Risks and risk management

4.1 Identification of common risk factors for labour exploitation

Key themes and summary:

- The respondents view the factors that most render workers vulnerable to labour exploitation to be the following: language barrier, general lack of knowledge of the environment (rights and Czech legislation), dependence on a work mediator or on the individual who brought them to the Czech Republic, country of origin (with also location/living standard of the state the migrant comes from), qualifications and illegal residency, etc.
- Interviewees from target group J made identical comments concerning the fact that latent criminal behaviour is concerned; no one (meaning victims) has the courage or wants to speak out about it. Migrants are afraid to talk about this topic, so latency in this area is massive.
- In terms of the question concerning the legal and institutional setting, the important factors adding to the risk of migrant workers being exploited were defined: (a) low risk to offenders of being prosecuted and punished, (b) lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs and (c) low risk to offenders of having to compensate exploited migrant workers.
- In response to the question focusing on the personal characteristics and the initial situation of the migrant worker, the most important factors adding to the risk that migrant workers may be exploited were noted were: (a) migrant worker does not know the language of the country of workplace, (b) migrant worker has a low level of education and (c) i.e. worker has experienced extreme poverty at home. None of the interviewees chose the option that the worker is prone to discrimination on behalf of their sex.
- For the question focusing on the situation of migrant workers at their workplace, interviewees most often chose identical options (in terms of “yes” answers), and namely the following options: (a) the migrant works in relative isolation with few contacts to clients or to people outside the firm, (b) the migrant worker is not directly employed by the business/organisation for which they work, e.g. agency workers, or employees of cleaning or security companies, (c) the migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed and (d) the migrant works in a sector of the economy that is particularly prone to exploitation.
- The role of recruitment agencies was often viewed negatively by interviewees, especially by target group S (with the opinion that placement and recruitment agencies create situations of exploitation at work). According to the interviewees, the role and priorities of employment agencies contribute to a higher level of risk for employees. Interviewees, however, pointed to their positive influence in cases where reliable, high-quality agencies are concerned. Bad agencies, which are usually limited liability companies, and agents create conditions for labour exploitation. For

example, the issue of European employment agencies (Ukrainian, Bulgarian, etc.), which are not easily monitored in the Czech Republic and were diagnosed as problematic by the interviewees.

Description of the views of the respondents on risk factors:

According to interviewees, the following risk factors were described consistently across target groups most often (a) language barrier, (b) generally lack of knowledge of the environment (rights and Czech legislation), (c) dependence on a work mediator or on the individual who brought them to the Czech Republic, (d) country of origin (with also location/living standard of the state the migrant comes from), (e) qualifications, (f) illegal residency and, rarely, the following factors: financial situation, sex, worsened labour conditions since the onset of the economic crisis, distance from family or home or a lack of family ties, unwillingness to fight for one's rights, dubbed by the interviewee as "loyalty" (the migrant tries not to complain and not to be seen) and migrants' lack of knowledge (see also comments below).

"(...) the lack of knowledge of the system and the environment in which the person finds himself in (...)"

"(...) neznalost toho systému a prostředí, v kterém se ten člověk objeví (...)" [S(1)]

The interviewees often also speak about the agents (option c) who contract with these migrants already in their country of origin, who then become crucial individuals for these migrants, who gradually become dependent on them. Thus, they find themselves in a "dead-end", because they unconditionally trust this individual and often end up signing things that are presented to them as something else, etc. Interviewees from target groups P, M and W see illegal residency (f) as a risk factor. For example one interviewee [M(1)] comments:

"I am afraid that in their situation, they become victims of exploitation easily. They represent up to 90 per cent of the cases we encounter and it is not only illegal residence but also illegal work we deal with."

"Ti jsou bohužel v takové situaci, že se snadno stanou obětí vykořisťování. Je to až devadesát procent případů se kterými se setkáváme, přičemž nejde jen o legalitu pobytu, ale i o nelegální práci." [M(1)]

Interviewees from target group J made identical comments that as far as latent criminal behaviour is concerned, no one (victim) has the courage to speak about it, and no one wants to speak about it, they are afraid to talk about this topic, so latency in this area is massive. One interviewee [J(1)] stated that a significant factor could be lack of knowledge and an inability to react to life situations in general. In terms of foreigners, the interviewee also noted: foreign environment; ignorance or local conditions either in terms of approaching state authorities or any other institutions; and lack of awareness of who to turn to. Two interviewees [L(2)] listed that risk factors include the fact that the migrant is not seen as having been victimized, but on the contrary is seen as having committed a crime and is subsequently deported from the country.

"The efforts in merging checks means that foreigners have actually no chance to seek assistance without being in danger of some sanctions, either for being illegally"

employed or for illegal residency, and illegal employment is a reason for legal deportation.”

“Snaha o slučování kontrol, to znamená, že cizinci nemají vlastně žádnou možnost se na někoho obrátit, aniž by jim nehrozila sankce, buď za nelegální práci nebo za nelegální pobyt a pak to, že nelegální práce je důvodem pro správní vyhoštění.”
[L(1)]

In terms of the question on the legal and institutional framework), the most common answer was defined as option 1, i.e. low risk to offenders of being prosecuted and punished (22 yes out of 28 answers). The following most common answers were option 3, i.e. lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs (16 yes out of 28 answers) and option 2, i.e. low risk to offenders of having to compensate exploited migrant workers (12 yes out of 28 answers).

	M	P	S	J	L	R	W	E	N	Total
Low risk to offenders of being prosecuted and punished;	3	4	5	2	3	1	2	1	1	22
Low risk to offenders of having to compensate exploited migrant workers;	2		5		2		2	1		12
Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs;	3		3	2	2	2	3		1	16
Corruption in the police;			1			1			1	3
Corruption in other parts of administration;						1				1
Other (please specify)				5		2		1		8
Don't know	1	1								2

In the event that interviewees chose option **6 (Other)**, they specified reasons such as ineffective checks (or on the part of state institutions that carry out inspections) and exercising of rights [S(1)], the need to connect monitoring activity with the elimination of victimization of the migrant as an illegal worker (i.e. work permit and residency permit) [L(1)]. For example, one interviewee [S(1)] only listed option 6, where in the interviewee's opinion, the main contributing factors are other than those presented, particularly: demand for cheap labour, xenophobia, general ignorance and the fact that it is advantageous for all parties. It can even be the migrant's choice. Interviewees from target group E added Other (6) as the lack of existing sanctions and punishment for companies (including the loss of reputation and public condemnation) who commit labour exploitation:

“From time to time I asked myself why a relatively well-known company decides to turn to a problematic agency ... But, I think [it would help] if the companies knew more about this, that if it comes out it will mean a huge loss of reputation that they'll have trouble coming back from. Public condemnation, and, I don't know, maybe on the part of the state as well ... This is connected, for example, with these sanctions, right, like a fine, nowadays there are criminal prosecutions of legal entities, but sanctions are used quite sparsely. That's why, if such a company got a ban for so and so number of years to work with public procurements, then for a construction company, for example, this could economically ruin them, or at least cause some serious complications. And, if other companies really knew of a few cases like this,

then they would of course behave differently. I think that in this country, society has an inconsistent view of this.”

“Já třeba jsem si někdy kladl otázku, proč třeba relativně velká renomovaná firma sáhne k tomu, že nebo že si pustí do toho závodu třeba tu problematickou agenturu... Ale myslím si, že kdyby ta firma jako víc věděla, že když se to provalí, tak to pro ní bude znamenat takovou ztrátu jména, s kterou se těžko vyrovná, odsudek od společnosti a já nevím i zase ze strany státu třeba i kdyby tam byli... To souvisí i třeba s těma sankcema, že jo jako pokuta, dneska máme i trestní stíhání právnických osob, ale jako dost málo se používaj sankce. Protože takováto firma kdyby potom měla zákaz na x-let k veřejnejm zakázkám, tak třeba pro stavební firmu, to pak ekonomicky může být likvidační nebo velice jí to způsobí veliký komplikace a pokud by to firmy opravdu věděly a pár takových případů by tady bylo, tak by samozřejmě se k tomu chovaly nebo by se k tomu stavěly jinak a je to myslím si že u nás, je to i společností vnímaný rozporuplně.” [E(1)]

Only one interviewee [R(1)] listed option 5 (Corruption in other parts of administration).

In reactions to **Question 21**, the most common answer was option 2, i.e. migrant worker does not know the language of the country of workplace (25 yes out of 30 answers). The second most common answer was option 1, i.e. migrant worker has a low level of education (18 yes out of 30 answers), and the third most common was option 7, i.e. worker has experienced extreme poverty at home (14 yes out of 30 answers). None of the interviewees chose option 6 - worker is prone to discrimination on behalf of their sex or option 99 - don't know.

	M	P	S	J	L	R	W	E	N	Total
Migrant worker has a low level of education;	2	4	6	1		1	3		1	18
Migrant worker does not know the language of the country of workplace;	4	3	5	4	2	2	3	1	1	25
Migrant is not allowed to enter into employment;			1		3	2	2			8
Worker comes from a country the nationals of which are often exploited in the destination country;	3	2	3		2					10
Worker is prone to discrimination on behalf of their race or through their identification as belonging to a national minority (such as Roma, Dalit or sub-Saharan African)			2		1	1		1		5
Worker is prone to discrimination on behalf of their sex										0
Worker has experienced extreme poverty at home;	3	3	2	4	1			1		14
Other (please specify)				2					1	3
Don't know										0

If interviewees (three interviewees) selected **variant 8 (Other)** they said: the mistrust of authority (N) and general unawareness of conditions or dependence on mediators (J):

“I would say that they are scared of a revenge. Really, I asked at the office how it works and I was told that those people simply cry there, and when they leave the office they see that it is bad for them again. They do confess, but they don't want

anything to be done, or to be reported. It is a mediated piece of information... but I believe it.”

“Já bych řekl, že se bojí tí odvety. Opravdu, já jsem se ptal třeba na úřadě jak to funguje a oni říkají - oni si tady prostě popláčou, že když vyjdou za dveře tak, že je to pro ně zase už špatný a takže oni se svěřují, řeknou ať to nedělají, ať to nehlásí, jo, takový informace, který máme zprostředkovaný... věřím tomu, že to tak je jako.” [J(1)]

One interviewee [J(1)] commented:

“Mainly they’re not aware of the conditions here. They don’t necessarily have to realize that the position they’re in is disproportionate to the position that a local would hold. Over the course of time, they realize, if they have any contact outside their work, that they aren’t being paid enough and, on the contrary, they are being asked to do more than others working in the same position.”

“Hlavně neznají poměry. Oni třeba si nemusí uvědomovat, to že v té pozici ve které jsou, že ta je naprosto nepoměrná s tou pozicí, do které by nastupoval člověk z místa. Oni až postupem doby zjistí, při kontaktu, pokud by ho měli s tím okolím, že jsou málo placení a naopak je po nich chtěno daleko víc než po ostatních, co pracují na stejné pozici.” [J(1)]

For the question on risks associated with the workplace, interviewees most often chose identical options (in terms of “yes” answers). Most common was option 2 - The migrant works in relative isolation with few contacts to clients or to people outside the firm (19 yes out of 30 answers) and option 5 - the migrant worker is not directly employed by the business/organisation for which they work, e.g. agency workers, or employees of cleaning or security companies (19 yes out of 30 answers). Also, option 4 was mentioned often (with 18 yes out of 30 answers) - the migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed and option 1 - the migrant works in a sector of the economy that is particularly prone to exploitation (with 17 yes out of 30 answers).

	M	P	S	J	L	R	W	E	N	Total
The migrant works in a sector of the economy that is particularly prone to exploitation;	4	3	4	1	3		1	1		17
The migrant works in relative isolation with few contacts to clients or to people outside the firm;	3	2	3	4	2	1	2	1	1	19
The migrant worker is not a member of a trade union;	1									1
The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed;	1	1	7	2	2	2	2	1		18
The migrant worker is not directly employed by the business/organisation for which they work, e.g. agency workers, or employees of cleaning or security companies;	2	3	5	2	2	2	2		1	19
The migrant worker is employed as a posted worker by a foreign company;		1		1						2
The migrant is a seasonal worker;	1	3	1	2					1	8

Other (please specify)										0
Don't know										0

Option 3 (The migrant worker is not a member of a trade union)²¹ was chosen only once [M(1)] and option 6 (The migrant worker is employed as a posted worker by a foreign company) was chosen only twice [P(1); J(1)]. Regardless of target group, interviewees often chose option 4 with regard to the existence of the “Švarc system”²². The basis of the Švarc system²³ in the Czech Republic is the use of services of those working off a trade license²⁴ instead of hiring normal employees. The Švarc system is less binding for employers (users of services) – the contractual relationship can be easily ended at any time (no explanation for terminating the contract is needed and there is no requirement to pay severance). Employees (service providers), functioning much like sole proprietors of a business, have no claim to paid leave, various salary bonuses or e.g. overtime, etc. The total overall costs are lower for employers (users of services), as they do not pay relevant insurance payments. The employees (service providers), as sole proprietors, then claim a certain cost tariff for their “trade” or “business”, thus lowering their taxation brackets and bringing them higher net wages. According to law, however, if an individual (not a company) carries out work activities for an employer that bear all signs of a regular and dependent work contract, it must be done under a valid work contract or another equivalent contract of services. When work activity is carried out based on a trade license but the individual (physical entity) physically works in the workplace of the employer and his/her activity otherwise has all signs of contractual work, it is considered to be a veiled employment contract and is thus considered to be illegal under Czech law. The practice, however, still persists.

None of the interviewees listed option 8 (Other).

Role of recruitment agencies

The role of recruitment agencies was often viewed negatively by interviewees, especially by target group S. For example one interviewee [S(1)] thinks that placement and recruitment agencies create situations of exploitation at work. According to the interviewees, the role and priorities of employment agencies contribute to a higher level of risk for employees. Interviewees, however, pointed to their positive influence in cases where reliable, high-quality agencies are concerned. Agencies thus can have both positive and negative functions according to interviewees. Bad agencies, which are usually limited liability companies²⁵, and agents create conditions for labour exploitation. For example the issue of

²¹This option, however, was often considered by interviewees to be impossible. Interviewees spoke about the fact that foreign workers are not members of a trade union.

²²The „Švarc system“ is designation for a manner of economic activity in which the persons who carry out ordinary activities for the employer are not his employees, but they formally act as independent entrepreneurs. Under the Employment Act, the Švarc system falls under the category of illegal employment.

²³ The Švarc system, specific to the Czech Republic, was originally named after Miroslav Švarc, an entrepreneur who shortly after the Velvet Revolution established a construction company on a system of employing workers solely on their trade licenses by using loopholes in the new Czech law and thus avoiding paying any benefits such as paid leave, overtime, etc. Use of this system was banned in the year 1994 by the Czech Employment Act.

²⁴ Trade licenses in the Czech Republic are relatively cheap and easy to obtain for a vast array of professions, especially for EU citizens and third-country citizens who have legal residency status in the Czech Republic.

²⁵*“I ran into some Ukrainian syndicates, and it surprised me when I entered their tax identification number on the Ministry of Labour’s server that they have a permit as an agency. I just asked myself ‘how is this possible?’ It’s evidently easy to get, so there are four Ukrainian agents who are evidently continuing in what they were up till the year 2011, before restrictions on the labour market were instated (...)” “(...) vyložene jsem třeba i narazila na*

European employment agencies (Ukrainian²⁶, Bulgarian, etc.), which are not easily monitored in the Czech Republic, are diagnosed as a problematic by the interviewees. In the event of some disputes in the area labor exploitation, the owner of the agency in question can simply open an unlimited number of other agencies (see also chapter 5.2).

“The moment the agency is seen to have some troubles and their license is taken away from them, the agency goes bankrupt and this person simply goes and opens a new agency the very next day, where he continues to use the same exact methods. So, I think that these checks need to be improved in terms of sanctions for this agency and to eliminate the possibility of repeating this activity and doing it over and over again.”

“Ve chvíli, kdy ta agentura je shledaná jako jsou tam nějaké závady, odeberou jim to oprávnění teda, tak agentura zkrachuje a ten člověk si prostě druhý den otevře novou agenturu, kde postupuje úplně stejně, takže myslím si, že tam je nedořešená kontrola z hlediska sankce pro tu agenturu a toho, aby teda nebylo možné opakovat to stejné pořád dokola.” [L(1)]

On the other hand, good agencies can fulfil preventive functions and can provide a certain level of security for migrants. The interviewees [J(1); R(1)] stated that the role of work agencies is very important; however, these agencies must be official and not established only for means of abusing workers and committing criminal acts (or taking part in them). Real, “unobjectionable” agencies can recognise easily whether some individuals are being exploited, as they would otherwise lose profit. Also, law enforcement authorities should also call attention to exploited individuals.

In this context, interviewees mentioned the important role of inspections, which help to monitor employment agencies. Often, however, interviewees had no further information and did not know which institutions should carry out the monitoring of employment agencies. They only had ideas as to whether the Ministry of Labour and Social Affairs was in charge of the matter or not.

“Well, there is Ministry of Labour, which should monitor agencies or it monitors them, it issues licences but it...pushed through the act under which agencies cannot employ foreigners from third countries. So then it is rather up to Alien Police or Labour Inspectorate to reveal misconducts of agencies.”

“Tak existuje Ministerstvo práce, které má agentury monitorovat, nebo monitoruje, vydává licence. Prosadilo se do zákona, že už ti cizinci ze třetích zemí nebudou ty agentury zaměstnávat, teď už je to spíše na policii cizinecké nebo na inspektorátu práce pokud odhalí nějaká pochybení agentur.” [W(1)]

ukrajinský družstva, který mě překvapilo, když jsem je zadala...jejich IČO na serveru MPSV, že mají povolení jako agentura, čili tam jsem si znova říkala, jak je možný prostě....evidentně lehký ho získat, kde prostě čtyři ukrajinští jednatelé jako samozřejmě pokračují dál v tom, v čem jeli do roku 2011, než přišli restrikce na truhu práce. (...)] [L(1)].

²⁶ In one of the case studies collected as part of the research, the man (victim) involved had no work contract, although he requested one repeatedly. He received 60 Czech crowns an hour, but knew that the Ukrainian woman who was the owner or executive of the agency was receiving 120 an hour for each employee. This woman, however, cut salaries by reducing the number of hours that the worker actually put in. For example, 240 hours were cut to 170, which she justified by saying that the worker did not fulfill these hours properly, which was refuted by the actual foreman of the company.

Also in the focus group the problem of the existence of these problematic agencies are debated – here an interviewee [M(1)] sees that the problem lies in the fact that it is simple for job-mediating agencies to gain a permit to operate, but taking away that permit is a complicated matter, which is done by the Board of Management of the Labor Office.

Some interviewees answered identically that in the past, i.e. roughly 4 to 8 years ago (10 in some cases), problems with employment agencies in terms of the exploitation of migrants were more serious. They stated that today, this problem is now rather marginal. In one interviewee's [W(1)] words, the situation and monitoring of employment agencies has improved over the last ten years:

"I mean, years ago this was a huge problem, because these people really are in a more precarious situation, because they're assigned to someone somewhere ... but legislation changed, and I think that nowadays the problem of these agency employers isn't as serious as it used to be ... I also think that the conditions for the operation of these agencies was made more strict. A whole number of these unreliable agencies disappeared, and I think, in terms of large corporations, they provide relatively reliable services for foreigners."

"Jakoby před lety byl obrovský problém, protože tam skutečně to postavení těch osob skutečně je ještě překárnější, tím, že oni jsou jenom někam přidělení, ale ono došlo pak ke změně právní úpravy a já si myslím, že dneska už ten problém agenturních zaměstnavatelů není tak závažný, jo... a navíc já si myslím, že tam došlo i ke zpřísnění podmínek fungování těch agentur, že celá řada opravdu těch neseřízných agentur odpadla, a myslím si, že naopak třeba ve vztahu k těm velkým korporacím, velkým společnostem, že poskytují opravdu celkem solidní služby i pro cizince." [W(1)]

In addition, interviewees [W(1); L(1)] repeatedly pointed out the fact that foreigners from third countries may no longer be employed through employment agencies. On the contrary, the situation of foreigners in Europe from the European Union has worsened (specifically Romania and Bulgaria are mentioned). One interviewee [R(1)] also pointed to the concept in the Czech Republic that employment agencies could take the role of labour offices.

"(...) they (employment agencies – ed.) could carry out counselling, offer work positions that would be connected with the labour office (...), nothing has really happened yet, but I think that would be a good idea."

"(...) že by agentury mohly provádět určitá poradenství, mohly by nabízet pracovní pozice v rámci toho, že by byly třeba nasměrovaný na úřad práce, (...) zatím se k tomu vlastně nic neděje, ale myslím si, že by to byla dobrá volba." [R(1)]

The respondent also thinks that some counselling centres could exist for foreigners, which would fall under the aegis of the state.

"(...) foreigners could come there and receive various information on what they can do here in this country, what possibilities they have, et cetera. (...)."

"(...) cizinci by tam mohli docházet a čerpat různé informace, jak by se měli chovat v našem státě, jaké mají možnosti, atd. (...)." [R(1)]

In these centres, foreigners should primarily be provided with this information and could be taught Czech.

4.2 Prevention measures aimed to reduce the risks of labour exploitation and the obligations of specific organisations in this area

Key themes and summary:

- Preventive measures are carried out by the Ministry of the Interior in the Division of Crime Prevention (mainly the program of support and protection of victims of human trafficking, which is a tool of the Crime Prevention Unit).
- The Regional Labor Inspectorates provide information on web pages and informational printed fliers in eight languages (Romanian, Bulgarian, Ukrainian, Vietnamese, etc.), where foreign workers are notified on what to be careful of when signing a work contract in terms of payments, work period, and other basic rules.
- The International Organisation for Migration offers return projects to migrants.
- Non-profit organisations – especially La Strada and Diakonia (in cooperation) – do field work, where they deal with delivering information to people. The La Strada Organisation also provides information through an SOS hotline. In addition, cooperation with foreign organisations can serve as a form of prevention, e.g. conferences that non-profit organisations take part in.
- As an additional possibility of prevention, participants in the focus group mentioned the fact that international certifications (e.g. the PEFC) and thorough and long-term publicity of cases can also serve as an effective form of prevention.
- Information on pre-departure information programmes exist. They are divided up according to both the target group of the recipient and the type of information given there. Assistance to migrants is actually simpler in the case of “third-country” citizens, as they have contact with authorities already in their home country while applying for residency permits or visas. Paradoxically, this is more difficult with citizens of the EU (for example Romanians and Bulgarians), where these permits are not necessary.
- Interviewees generally did not have much information about mechanisms of standard setting and accreditation on a national and international level. Mechanisms of standardization according to the interviewee must exist in cooperation with the public sector of the given countries and also the adherence to e.g. ethical rules is debatable in some areas.

Organisations carry out prevention measures

Preventive measures are carried out by the **Ministry of the Interior** in the Division of Crime Prevention. An interviewee commented on prevention measures:

“...protection of victims, that is the most fundamental pillar, the program of support and protection of victims of human trafficking, which is a tool of the Crime Prevention Department, which basically finances non-profit organisations that provide services to this specific group, they provide the financing of selected prevention activities.”

“...ochrana obětí, tam je ten pilíř vůbec nejzákladnější, program podpory a ochrany obětí obchodování s lidmi, který je nástrojem odboru prevence kriminality, který zároveň v rámci toho financování v podstatě neziskových organizací, které poskytují služby této konkrétní skupině, tak zajišťují i financování vybraných preventivních aktivit.” [N(1)]

The **Regional Labor Inspectorates** provide the following measures of prevention: information on web pages and informational printed fliers in eight languages (Romanian, Bulgarian, Ukrainian, Vietnamese, etc.), where foreign workers are notified on what to be careful of when signing a work contract in terms of payments, work period, and other basic rules. One interviewee [M(1)], however, cited a problem and gap in prevention in that labour exploitation affects socially weaker groups (“from remote areas”), who have no access to the internet and can't access this information. Furthermore, the Labor Inspectorate cooperated with the Bulgarian embassy and the Romanian ambassador.

“They (labour migrants – ed.) just want to work, they need to make money, feed their families, so there it's a bit. We're trying, but I don't see much success there. If they were really interested in ... when some foreign workers want to work here ... today you can find just about everything on the internet, the Labor Code is written there in English and all that. But in light of the fact that the people who are exploited usually have a low level of education, they are unskilled, they don't have access to this information and they don't even have the opportunity to, and I would say that sometimes they're not even interested in this, they have the vision of a good job, someone promises them something and they underestimate the fact that someone can swindle them, putting it politely.”

“Oni (pracovní migranti – pozn.) prostě chtějí dělat, potřebovali by vydělat peníze, uživit rodiny (...) kdyby jako fakt se kdo se zajímá o to, když tady nějaký zahraniční pracovníci chtějí pracovat, tak si to dneska je možnost si všechno na tom internetu najít, je tam zákoník práce je tam v angličtině a všechno možný a vzhledem k tomu, že právě vykořisťování jsou tady tihle lidi s nízkým vzděláním, většinou nekvalifikovaní, kteří nepřijdou k těm informacím a ani nemají tu možnost, bych řekla někdy je to ani nezajímá, oni jdou za tou vidinou té práce, že jim to někdo slíbí a podcení to, že prostě někdo s nimi vytírá, když to tak řeknu slušně.” [FG(M)]

The **International Organisation for Migration** offers Re-Turn project²⁷ to migrants.

“(...) for these clients, when somebody comes and wants to return already or is here already illegally and is not included in the witness programme or does not use sanction provisions.”

“(...) u těchto klientů, pokud někdo přijde že by se chtěl vrátit nebo je v situaci, že tu je už nelegálně a není zařazen do programu svědků nebo nevyužívá sankční směrnice například.” [W(1)]

With these clients (i.e. foreigners), they also attempt to gain information before they are given reintegration support in terms of what ways they have been exploited. This information is then passed on to the Ministry of the Interior for means of further work. In cases where, for example, the foreigner claims not to have been paid.

²⁷ More information: <http://re-migrants.eu/Project.php>.

“(...) we do try, if possible, to help a person that comes and says he did not get paid or has other problems, to be more specific, for instance we call the employers or clients as a form of help.”

“(...) tak se mu snažíme pomoci, pokud to jde i konkrétně, že třeba voláme zaměstnavatelům nebo klientům, s tím, že teda se jim snažíme pomoci.” [W(1)]

Non-profit organisations – especially La Strada and Diakonia (in cooperation) - do field work, where they deal with delivering information to people. The La Strada Organization also provides information through an SOS hotline, which operates one day a week for free in a number of languages, which is also an important tool in contacting people. In addition, cooperation with foreign organisations can serve as a form of prevention, e.g. conferences that non-profit organisations take part in. An S group interviewee commented during the focus group:

“When we go out into the field, we tell these people the basic things they need to know and we refer them to, we don't actually have our own website, but there are a lot of Romanian sites that have this, so there's no need to create something that already exists but they don't even get to the information when they work sixteen hours a day here in [...]”²⁸, they don't go running off to some internet café to go find out if their labor relations are in order, that's just not realistic, so I think it would be more effective if they found out in their own country before they even leave.”

“My když jdeme do terénu, tak těm lidem taky říkáme ty základní věci a třeba je právě odkazujeme, my nemáme teda svoje takovýhle stránky, ale je spousta organizací jinejch, které je mají. Takže není potřeba vytvářet něco, co existuje a oni se k tomu ani nedostanou a oni když dělají šestnáct hodin denně někde támhle na [...], tak oni pak nepoběžíj někam do města do internetový kavárny, aby si zjistili, jestli mají teda v pořádku pracovní právní vztahy, to prostě není reálný, takže podle mě nejefektivnější by bylo, kdyby se to dozvěděli ještě v tý zemi než odjedou.” [FG(S)]

According to interviewee W and S there is still a problem with work recruitment directly in specific villages (e.g. in Romania and Bulgaria). Awareness in migrants' countries of origin is sufficient (including campaigns in airports, etc.). According to one interviewee [L(1)], migrants are pushed into precarious situations in their countries (or regions) of origin. One interviewee [S(1)] said:

“often don't really have much of a choice and, in terms of Romania, it's quite common that there's no work contract, so we can tell these people, for example, that the percentage of people in the Czech Republic working with a valid employment contract is higher than in Romania.”

“často nemají moc jako volbu vlastně a ještě i co se týče toho Rumunsku, tak tam je běžný, že pracovní smlouvy nejsou, tak jako my můžeme těm lidem říkat... To procento lidí kteří v ČR pracují přes pracovní smlouvu je vyšší než v Rumunsku.” [FG(S)]

²⁸ An enterprise where garlands and flower bouquets are arranged and flowers are grown. Every year, several hundred migrant workers work here.

In the area of prevention, the Association for Integration and Migration primarily implements information campaigns that explain to clients and potential clients their rights and obligations. Prevention will also focus on putting changes made to the new Civil Code into practice.

As an additional possibility of prevention, participants in the focus group mentioned international certifications (e.g. the PEFC²⁹ certification in forestry – in buying products such as paper notebooks, etc.). Participants in the focus group also agreed that thorough and long-term publicity of these cases can also serve as an effective form of prevention. In one interviewee's [W(1)] words, media publicity of fines being successfully given to employers can also have a fundamental preventive role. If there could be a case of a large company that is prosecuted and subsequently publicized, it could serve as one of the best preventive measures.

One interviewee [R(1)] thinks that in terms of the creation or prevention of situations of labour exploitation of migrants, the state should play the primary role and should establish clear laws and also effectively monitor and control the employment agencies. Also, the state should more strictly monitor the employers who employ migrants illegally or on a business license.

"(...) the role of the state should be more strict, more thorough (...)."

"(...) role státu by měla být přísnější, důslednější (...)." [R(1)]

Information on pre-departure information programmes

For this question, one interviewee [N(1)] confirmed that these programmes exist. They are divided up according to both the target group of the recipient and the type of information given there. Assistance to migrants is actually simpler in the case of "third-country" citizens, as they have contact with authorities already in their home country while applying for residency permits or visas. Paradoxically, this is more difficult with citizens of the EU, where these permits are not necessary. Romanians and Bulgarians are thus threatened group in this context. One interviewee (S(1)) stated that the Ministry of the Interior is attempting more to spread information:

"There are some fliers that should be sent out through consulates, otherwise I know that various information was spread for example in Romania, I don't know whether in Bulgaria as well, I don't know if the initiative was only in Romania, or whether the Czech Republic took part in this in some way."

"Jsou nějaké letáčky, které by se měly šířit přes konzuláty a jinak tak jako vím, že se různě šířily informace třeba i v Rumunsku, nevím jestli taky v Bulharsku, ale to nevím, jestli byla tedy jenom iniciativa Rumunska nebo se na tom podílela i nějak Česká republika." [S(1)]

The other interviewee from target group S thinks there used to be such a program but it did not fare well. The program, which attempted to substitute an employment agency, was run in Ukraine by Caritas (NGO) under the aegis of the Ministry of the Interior. However, the task of informing migrants before departure is looked after by the International Organization for

²⁹ The PEFC forest certification system is one of the processes in the forestry industry aimed at achieving a permanently sustainable economy in forests of the Czech Republic and at the same time strives toward improving all operations in forests in terms of the natural human environment.

Migration, which also strives to educate consulates abroad, which in turn can inform migrants about the situation.

One interviewee [S(1)] occasionally understood providing pre-departure information as giving information to Czech citizens in this country before them leaving abroad. From their experience, the other interviewees thought that this meant giving pre-departure information to migrants before they came to this country. The interviewee responded by saying they only know of programmes in the Czech Republic for Romas before they leave to England. These programmes provided information on who they can turn to in England if they need to do so. The interviewee did not know if this takes place somewhere else, for example in Romania.

Information on mechanisms of standard-setting and accreditation at national and international level

Interviewees from target group R and one interviewee from target group W did not have any information about mechanisms of standard setting and accreditation on a national and international level and were not able to respond to this question. In the interviewee's words [E(1)], mechanisms of standardized accreditation on a national and international level play a positive, but they must exist in cooperation with the public sector of the given countries.

One interviewee [W(1)] said that the positions of international institutions (e.g. ILO³⁰) are advantageous in that they can contribute to the pressure exerted on the government. However, the respondent believes that there are international organisations that act contrary to the logic and mechanisms of the ČMKOS (e.g. IMF³¹). The other interviewee from target group W never heard of these mechanisms and mentioned sanctions directives in this context.

“What I meant was that if there should be something binding on the international level and if there should be something really helpful, then it is the sanction directive. If it was correctly implemented. I don't really know the other mechanisms you spoke about. I don't know how binding they are and if they were signed on national level or on the level of ministries or if those are only some certificates binding only for regional organisations, I don't know and so I cannot assess their contribution.”

“Já jsem se na to díval v tom smyslu, že teda pokud by mělo být něco závazné na mezinárodní úrovni, z toho, co by pomohlo, tak ta sankční směrnice by mohla být, pokud by byla správně implementována. Ostatní mechanismy, zde uvedené neznám. Nevím na kolik jsou závazný a jestli jsou teda nějakým způsobem podepsány na státní úrovni nebo jestli je to na úrovni ministerstev anebo jsou to jenom nějaké ne-certifikáty, kterými se řídí krajské organizace, takže to nemůžu posoudit.” [W(1)]

According to one interviewee [N(1)], mechanisms play an important role in this area, but at the same time admits that everything depends on the type of mechanism and mainly on how enforceable and how binding they are. The interviewee admits that the adherence to e.g. ethical rules is debatable in some areas.

³⁰ International Labour Organization (ILO).

³¹ International Monetary Fund.

Best practice

Interviewees representing labour inspectorates noted the existence of the “electronic information exchange system”, or IMI (Internal Market Information³²) as a promising example of best practices. This system makes it possible for states to exchange information with one another, which helps break down language barriers and bureaucracy. The issue here is in the enforcement of sanctions and punishments. The IMI system contains sets of preformulated questions to be sent to workers that deal with information on the employer, the migrant employee and the payment system involved – this includes the set minimum wage of the country in question, what is included in it, how gross salary is counted, salary bonuses, travel compensation and information on work schedules. This also deals with weekly work schedules, work breaks, overtime, work during weekends and holidays, paid leave and additional extra payments and additional information. There is also space for the requesting party and the answering party to fill in additional and explanatory information. The requesting party can ask about anything in connection to employment (work and salary conditions), registering and paying social security and health insurance. Questions correspond with legal work contracts, which are also in the jurisdiction of the State Office of Labour Inspection. Labour exploitation of migrants may also appear in the form of migrant workers receiving lower wages than locally employed workers, and mainly in countries oriented toward the West. The migrant worker must receive work and salary conditions that are more advantageous for him/her than those conditions in his/her country of origin. In terms of information gained from the IMI, i.e. punishments, regulations, etc., remedial measures or fines may be instated in the Czech Republic when lower wages are paid than are due to the employee. There is, however, a legislative problem in the fact that the Czech Republic has no legislation sanctioning the violation of labour or salary conditions abroad, i.e. in comparison with migrant workers coming to the Czech Republic from abroad. In the Czech Labour Code, there is only one provision, § 319, that deals with ensuring the rights of employees that come to the Czech Republic from abroad, and not vice versa. In general, it is very difficult to fine a foreign employer who has no organised operation or address in the Czech Republic, and is therefore practically untouchable. When companies’ addresses and headquarters are located abroad, no administrative action can be taken against them. The European norm on the mutual enforcement of fines is only now beginning to be discussed.

4.3 Protection against (repeat) victimisation: actions undertaken by the police to protect victims against the risk of repeated victimisation, including how the police conduct investigations

Key themes and summary:

- A problem often repeated according to interviewees is the fact that migrant workers are primarily viewed as illegal workers rather than victims, and the subsequent administrative actions with them are influenced by this fact.
- In Czech Republic there is a lack of extremely important and valid legal practice of the courts.

³² See also -

http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/internal_market_information_system/index_en.htm.

- Another problem is that the migrants often have illegal status, stand outside of the basic legal framework and thus are not covered by systems of social protection.
- Criminal proceedings and criminal investigations fall under the jurisdiction of police investigation. In the interviewees' words, investigations often have a number of problematic aspects: (a) there are many hidden factors (the character of industrial relationships, agreements for work, illegal employment, reluctance of people to get involved in the investigation and testify against their employer, 'Švarc system', etc.) that prevent from successful proving that foreigners or workers in general are exploited; (b) the lack of use of civil legal tools and the overuse of criminal mechanisms and also the method of investigation and protection of victims is not unfortunately effective (also victims are afraid to give testimonies).

For system of investigations see also chapter 3.1: Tasks of institutions involved in preventing labour exploitation and in enabling victims to access justice. A problem often repeated by the interviewees is the fact that migrant workers are primarily viewed as illegal workers rather than victims, and the subsequent administrative actions with them are influenced by this fact. According to one interviewee [L(1)] this situation needs to be remedied, as it often leads to labour exploitation cases going unsolved. Finally, this leads to a lack of extremely important and valid legal practice of the courts. The usual practice according to one interviewee [S(1)] is to deport the migrant workers to prevent further exploitation. One interviewee [W(1)] adds that the problem is that the migrants often have illegal status, stand outside of the basic legal framework and thus are not covered by systems of social protection, because of it. For example, the Czech-Moravian Confederation of Trade Unions tries to fight mainly against the illegal nature of foreign employees (see above).

One interviewee [S(1)] made a suggestion on this issue that:

"the main priority is to track the legality or the illegality of their residency. That's a big problem that the labour inspection basically automatically sends this information to the police or they organise what's called coordinated checks, so I see this as a problem, that there's no priority of the protection of these labour conditions."

"ta priorita hlavně je sledovat tu legalitu nebo nelegalitu pobytu. A je to velký problém, že třeba inspekce práce jakože vlastně automaticky posílá tadyhle nency informace polici a nebo taky organizují ty tzv. koordinované kontroly, takže to vidím jako problém, že tam není tam ta priorita té ochrany pracovních podmínek." [S(1)]

Another interviewee [N(1)] also thinks that, in such a case, the migrant is held liable rather than the employer. Interviewees [L(1); N(1)] spoke about the Program for the Protection of Victims of Labour Exploitation, which is, however, only functional in the event that criminal proceedings take place. This programme works in cooperation with La Strada, Diakonia and the Archdiocese Caritas. This, however, happens very rarely, as often no proceedings take place due to deportation as listed above. According to one interviewee [N(1)], this programme, which exploited migrants are involved in, has specific terms and rules. Victims under this program have the opportunity to receive support for 60 days, be accommodated in a "safe house", etc.

"They basically report to this Crime Prevention Department, this department then confirms their inclusion in the program, then a non-profit takes care of them. They

have a “reflection peer” available for a period of two months, for them to make some decisions, to put themselves together, they’re given various assistance, from psychological support to legal counselling, health care, and so on. Then they can make a decision on whether they want to cooperate further with law enforcement, and then things can continue on. We have the instruments and information to get victims out of the exploitative conditions.”

“V podstatě oni nahlásí tady odbor prevence kriminality, ten schválí zařazení do programu, pak se o něj stará neziskovka, mají tam k dispozici reflection peer na dobu dvou měsíců se vůbec rozhodnout, nebo dát se dohromady, rozhodnout se, je jim poskytována asistence různá, od psychologické pomoci, právního poradenství, zdravotnická pomoc a tak, pak se teprve rozhodnou jestli budou spolupracovat s orgány činnými v trestním řízení i nadále pak to teda může pokračovat, ale ty instrumenty na to, pokud tady ty informace jsou, tak ty tady máme, abychom mohli tu oběť vyprostit z vykořisťujících podmínek.” [N(1)]

One interviewee [N(1)] sees cooperation as effective, but at the same time highlighted the fact that very much depends on the investigation phase. If the actual criminal act of human trafficking has not been acknowledged, the situation is more complicated. The victim support program is open to everyone regardless of status.

An interviewee [P(1)] explained that information to victims is usually passed on verbally and replied that they inform victims on which non-profit organisations can help them and who can help them in the government sector, e.g. the Regional Labour Inspectorate (RLI). Nevertheless, usually interviewees from target group S stated that the police refer the client to non-profit organisations, which then provide them with other services including contacts to boarding houses.

Criminal proceedings and criminal investigations fall under the jurisdiction of police investigation. In the interviewees’ words, investigations often have a number of problematic aspects, which are listed below:

According to one interviewee [M(1)], the investigation and establishing of proofs is not always easy by the Labour Inspectorate. There are many hidden factors that prevent them from successfully proving that foreigners or workers in general are exploited. Those factors are the character of industrial relationships, agreements for work, illegal employment, reluctance of people to get involved in the investigation and testify against their employer, ‘Švarc system’, etc.

The methods of investigation according to interviewees are not effective from the interviewee’s point of view. They listed problems such as the lack of use of civil legal tools and the overuse of criminal mechanisms. Cases often end in the phase of preparatory proceedings and valid court practice is also missing. The interviewees from target group J stated that the method of investigation and protection of victims is unfortunately not effective. Victims are afraid to give testimonies and therefore the investigations are often unsuccessful.

“Well, it could be, definitely. I personally did not witness anything, I just say that a judge told me so in a particular case, he said someone called him saying he is afraid to go to him, so I don’t know if the person had been threatened by someone or if he was simply

scared...but fear definitely plays a role in this, I saw it in their eyes. So as for effectiveness, this is a problem and it is caused by their status here, the long term situation, which is bad even if they have a job where they are not exploited."

"No může to bejt, určitě. Jako já nebyl jsem ničeho svědkem, já říkám, i soudce říkal, že v jedné konkrétní kauze upozornil na to, že mu volal někdo, že se bojí přijít, tak nevím jestli to bylo tak, že ten člověk říkal, že už mu někdo vyhrožoval, nebo že se bojí prostě... určitě to hraje roli jako, strach z očí jsem tam viděl. Takže já bych řekl, co se týče efektivity problematický a hraje právě roli, že to jejich postavení je svým způsobem dlouhodobě špatný, i když už mají tu práci, kde nejsou vykořisťováni, jo." [J(1)]

5. Victim support and access to justice

5.1 Victim support, including available support services

Key themes and summary:

- Support services are open to all victims (nevertheless depends on the actual act that was committed against the victim).
- Services under the Programme for the Support of Victims are provided free of charge or are provided outside the programme through non-profit organisations which are often subsidized by ministries and other government institutions.
- System of support services is ensured in general by organisations that list their clientele as victims of human trafficking based on Act on Provision of Social Services. These mainly include La Strada, Caritas (under their Magdala project), and the Diakonia of the Evangelical Church of Czech Brethren. IOM Prague mainly deals with voluntary return programmes, which provide all necessary support for the voluntary departure of victims back to their home country.
- The victim is provided with essential consulting and with information regarding their obligations and rights and s/he is referred to, or directly handed over to non-profit organisations, which will further take care of their social affairs. These non-profit organisations provide classified accommodation for men, as well as for women. Through these procedures, they prevent further victimization of the victims.

Support services are open to all victims; however, according to one interviewee [N(1)], this depends on the actual act that was committed against the victim. In this area, the definition of the term labour exploitation proved to be problematic, as it is not specifically defined in Czech law and is thus broken up into various types of objective legal elements or *actus reus*. This of course ranges from the mildest forms to the most severe, from which the continuum of provided services and their degree of openness stems. This is confirmed by one interviewee [S(1)], who commented that support services are not available to all victims of labour exploitation because it is always decided based on how severe the exploitation was. There is a chance that an alleged victim of human trafficking can enter into a specific program where his or her irregular migration status can be re-legalised.

Services under the Programme for the Support of Victims are provided free of charge or are provided outside the program through non-profit organisations which are often subsidized by ministries and other government institutions.

“(...) if someone becomes a victim, we cannot still consider the fact of whether they are here legally or illegally, but as far as the colour of their skin or their gender, for example, a victim is a victim, and we can't make differentiations in these matters.”

“(...) jestliže je někdo oběť, tak se samozřejmě nemůže hledět na to, jestli je tu legálně, nelegálně, na barvu pleti nebo na pohlaví, jestliže je to oběť, tak je to oběť, nemůžeme dělat v tomhle směru rozdíly.” [P(1)]

The victim is provided with essential consulting and with information regarding their obligations and rights and s/he is referred to, or directly handed over to non-profit organisations, which will further take care of their social affairs. These non-profit

organisations provide classified accommodation for men, as well as for women. Through these procedures, they prevent further victimization of the victims.

The system of support services is ensured in general by organisations that list their clientele as victims of human trafficking based on Act on Provision of Social Services. These mainly include La Strada, Caritas (under their Magdala project), and the Diakonia of the Evangelical Church of Czech Brethren. IOM Prague mainly deals with voluntary return programs, which provide all necessary support for the voluntary departure of victims back to their home country (see above). La Strada provide what it calls complex services to its clients, social services in the form of counselling, legal counselling, and also accommodation. They have a legal counselling office that is low-threshold and also offer services directly in the field. In addition, they have a hotline that functions on the basis of counselling in various languages – not only in Czech and English, but also in Romanian, Russian, or Bulgarian.

“(...) so, colleagues travel into the field, where they try to distribute our fliers, and it's about giving people information. We have brochures and other materials dealing with migrants' rights, they don't necessarily have to be our brochures; we distribute materials from other organisations as well, where you have written what so and so rights if so and so is happening to you, you can come for counselling and go here or here.”

“(...) terén, takže vyjíždí kolegové do terénu, kde se snaží distribuovat naše letáky, je to většinou o tom, dát lidem informace, máme brožurky a jiné materiály, týkající se toho, jaká mají migranti práva, nemusí to být naše brožurky jenom, distribuujeme i materiály z ostatních organizací. Kde je napsáno máte na toto a toto právo, pokud se vám děje toto či ono znamená to pro vás to a to, můžete se přijít poradit, můžete se obrátit tam a tam.” [S(1)]

The Association for Integration and Migration provides its clients primarily social and legal counselling regardless of their residency status, which is based on valid legal regulations.

For example from replies of interviewee from target group P, it was evident that the interviewee sees cooperation with non-profit organisations as a large source of support. At times, the interviewee almost excessively delegated responsibility for the support and protection of victims of labour exploitation to non-profit organisations.

Organisations usually do not have a checklist or guidelines for assessing labour exploitation and/or identifying victims of labour exploitation. Non-profit organisations use mapping/questions for assessing labour exploitation. No guidelines exist but there are certain signs that show or imply that a person could be exploited. An interviewee from target group S said that the organisation uses what it calls an “identification interview”. Employees of the organisation are prepared with the questions in advance, which are aimed at migrants and attempt to identify whether exploitation is occurring or not according to their answers. Another S group interviewee [S(1)] informed us that the organisation has guidelines for assessing labour exploitation. It is case dependent. There are documented procedures containing questions and topics that the social worker should inquire about. They also include the so-called situation indicators specifying when the social worker should interfere, but these are not indicators that define if a particular case entails labor exploitation or not, but rather where people prone to labour exploitation are likely to be found and where labour

exploitation is assumed to be occurring. Whether the person is a victim of human trafficking and exploitation or not is to be decided by the particular worker conducting the interview. If the worker is not sure, he or she should always act in the best interests of the client. We are talking about electronic file keeping.

"It is a certain methodology, meaning that the social worker holds it and the client can have a look if he or she wants. It doesn't mean that you fill in: yes, no, yes, no, yes, no. It's a kind of narrative. Migrants also approve the texts, so that misinterpretation does not occur. The text can be further used only with the consent of the migrant, for example, as an item that is handed to the police if the migrants are interested in working with the police in some way."

"Je to jakási metodika, to znamená, že jí má v ruce ten pracovník, klient do ní může nahlédnout, pokud by chtěl. Neznamená to, že vyplňujete: ano, ne, ano, ne, ano, ne. Je to spíše narativ. Migranti také autorizují ty texty, aby nedošlo k desinterpretaci. Text se dá použít dál se souhlasem migrantů jako například podklad, který se potom pošle policii pokud chtějí migranti nějakým způsobem s policií spolupracovat." [S(1)]

Interviewees from target group P said that they are governed by the Criminal Code. One interviewee [S(1)] did not express the need to have a checklist available, as work with clients takes place individually.

The Ministry of the Interior also possesses a checklist that contains a number of indicators in terms of this issue. The guidelines from the Ministry of Interior is available for the Labour Inspectorates, etc.

"So, for example, they [checklists] contain tools of coercion, or instructive forms of coercion, there's a list there that includes withholding an individual's documents, uh, failure to pay wages, withholding employment contracts, uh, then there are the violent forms coercion – duress, threats such as turning the migrant in to the police or to state authorities. There are definitely many indicators."

"Takže zahrnují například, ty prostředky donucení které můžeme, nebo které nazýváme instruktivními formami donucení, tak pokud tam určitě, tam je seznam, zadržení dokladu, eh, pak, nevyplácení mzdy, zadržování pracovní smlouvy, eh, no pak, pak tam jsou určitě ty násilné formy donucení, výhrůžky, vyhrožování jako udání na polici, na, ke státním orgánům, pokud se jedná třeba o migranta. Těch, těch indikátorů tam bude určitě více." [M(1)]

5.2 Access to Justice and other mechanisms to empower victims

Key themes and summary:

- Generally, the system for enabling the victim to claim compensation and back pay of denied wages is not effective. The problems concerning the inability to gain compensation and back pay according to interviewees are the following: (a) the lack of valid legal regulations, (b) an expensive court expenses and the insufficient

system of free legal support, (c) the lack of evidence and (d) the trial is a time-consuming processes.

- Non-profit organisations have no mandate in prosecuting the agencies that do not pay foreigners, also complaints are not lodged via trade unions. This practice does not exist in the Czech Republic.
- There is a high level of fear among victims to testify and the language barrier is also a problem. Victims also often have a low legal awareness and often do not know how to defend themselves.

The efficiency of the civil justice system in enabling the victim to claim compensation and back pay of denied wages.

In the interviewees' words in general, the system for enabling the victim to claim compensation and back pay of denied wages is not effective. Interviewees rather said that the civil justice system is not efficient in enabling the victims to claim compensation. Often, however, the opportunity to be compensated for back wages was criticised by interviewees from groups S and L.

All interviewees who rated the system as ineffective agreed uniformly on four problems concerning the inability to gain compensation and back pay:

- Generally the lack of valid legal regulations
- Expensive court expenses and the insufficient system of free legal support– e.g., according to two interviewee [N(1); S(1)], victims do not have the funds to pay for court costs, no less a migrant victim
- Lack of evidence – due to this fact, proceedings either often do not commence, or they end in failure³³. See also an example from the case studies³⁴.
- The trial is a time-consuming processes

The failure rate of civil suits is often due to the impossibility of prosecuting employment agencies or employment mediators, who should be forced to compensate back wages. Agencies often terminate their operations, change their scope of activities, and simply establish a new agency.

“The offenders are usually foreign legal entities, whenever a problem arises, they cease to exist.”

“Pachatelé bývají zahraniční právnické osoby, v případě problémů přestanou existovat.”[M(1)]

According to one interviewee [J(1)] you need to prove full guilt of that person and if you make it, it is hard to establish and quantify the damage.

³³ For example two interviewees [S(1); L(1)] see a problem in the method of inspection of agencies. Agencies which do not pay out salaries are first called upon to present evidence. They present this evidence e.g. in the form of employment contracts, payrolls, etc. of a number of migrants, but in reality these individuals never receive these documents. This evidence is taken into consideration and the inspection ends. The complaining party receives a notification and the whole case is closed.

³⁴ The case was investigated – after a duration of six months, the case was dismissed by the Czech Police due to lack of evidence. Based on the given information, the police were not able to identify the offenders and the victim did not appear at additional hearings, as he had returned to his home country and ceased to communicate with the police.

"I think that we have absolutely failed in this field, because a person can claim compensation for denied wages only after the perpetrator is charged, which is very problematic. And it is also very problematic to establish the damage caused."

„Tam si myslím, že selháváme úplně definitivně, protože i když nějakou náhradu škody, za ušlou mzdu - mluvíme-li o ušlé mzdě, tak nějakou náhradu škody se můžou dobrat v okamžiku, kdy ten pachatel je odsouzen, což je problematické, problematické je i prokázání vůbec ta výše škody, jaká jim byla způsobena.“ [J(1)]

According to an interviewee from the J group it is, however, necessary to create a fixed set of court practices, at material damages have never before been expressed in numbers. This could take a number of years.

"Hmm, effective ... that's the problem I mentioned before. That means judicial fees and the risk of losing the case, and the migrants having to pay out even more costs. (...) I understand the other side of the coin, but I wouldn't say it's effective. If I'm cooperating in a low-threshold counselling office with people and 95 percent of the cases deal with unpaid wages and so on, and there are these kinds of requirements (the costs of proceedings, etc.), then the vast majority of people don't file a lawsuit, exactly for this reason, they're afraid of losing it, and there is a lack of evidence. In a civil case, there's no one to help them. If they can't prove it, they're finished. These rules are here for a reason, but in this sense they are a bit discriminatory and this doesn't concern just migrants. "

"Noo efektivní, to je ten problém, co jsem již zmiňovala. To znamená zpoplatněné soudnictví a riziko prohry, a placení ještě větších nákladů ze strany migrantů. (...) Já chápu i tu druhou stránku mince, nicméně já bych řekla, že efektivní to není. Když spolupracuju právě v rámci té nízkoprahové poradny s lidma a tam je devadesát pět procent zakázek opravdu týkajících se nevyplacené dlužné mzdy a podobně, a jsou tam tyto nároky (náklady za řízení, aj.), tak valná většina lidí tu žalobu nepodává, právě z toho důvodu, že se bojí prohry a taky je to o tom, že mají nedostatek důkazního materiálu a v tom občanskoprávním řízení jim v tom nikdo nepomůže. Pokud neprokážou, tak končí, takže jsou to pravidla, která mají své opodstatnění nicméně v tomhle bodě jsou trochu diskriminační a netýká se to jenom migrantů." [S(1)]

One interviewee [S(1)] also said:

"Court cases take such a long time, and in the end it's not even worth trying to do something for these people. There was one more specific situation with the loggers, the Czech legal system doesn't allow for collective action, which is a collective lawsuit for cases that are very similar in nature. So, there's a need to use evidence from all the people individually and everything in that case is much more complicated, when you're dealing with a few hundred people."

"Potom soudy trvají velmi dlouho, v podstatě se to potom už ani nevyplatí, těm lidem něco podnikat, a potom tam byl ještě taková specifická věc u těch stromkařů, že český právní řád neumožňuje podávat tzv. collective action, takovou jako kolektivní žalobu za ty případy, který jsou si podobný, takže tam je potřeba pracovat potom s

těma důkazama od těch jednotlivých lidí a je to všechno o hodně složitější, když se jedná o několik set lidí.” [S(1)]

The interviewee emphasized here that, for example, in terms of unpaid wages, non-profit organisations have no mandate in prosecuting the agencies that do not pay foreigners. The interviewee called for more effective work and responsibility of monitoring authorities.

To item (3) legal help free of charge: the migrant workers cannot be represented by Labor Inspectorates (it is not in their jurisdiction), and often cannot be represented even by non-profit organisations, who do often offer free legal counselling, but do not provide attorneys in trials.

“There simply exists no law on free legal aid, which means that in general the access of the poor to justice is non-existent.”

“Neexistuje prostě zákon o bezplatné právní pomoci, což znamená, že obecně přístup chudých lidí k justici je nulový.” [L(1)]

The extent to which civil law claims are dealt with by the criminal justice system

According to one interviewee [N(1)], the civil justice system allows for victims to be compensated for back wages under an “adhesion procedure”. A comment from one interviewee [J(1)]:

“The distaste of criminal judges in reaching verdicts on anything else than guilt and punishment is massive, right, to change ways of thinking in this that in terms of criminal proceedings we would arbitrate on some claims, these non-material ones, let’s say, that’s going to be very difficult, and I think it will take several years.”

“nechuť trestních soudců k tomu, rozhodovat o něčem jiném, než o vině a trestu, je obrovská, jo a změnit to myšlení, že tedy v rámci toho trestního řízení budeme rozhodovat i o nějakých nárocích, jo, těch nemateriálních dejme tomu, tak to bude asi tedy hodně pracné, a myslím si, že to bude trvat i několik let.” [J(1)]

Complaints lodged through third parties

In terms of the question of the possibility of complaints being lodged by third parties, interviewees were often unsure with their responses. Some were not able to respond at all, and in other cases responses did not coincide. However, the majority of interviewees from the L and J groups stated that the possibility exists by going through a legal attorney.

According to one interviewee [J(1)], the possibility of an attorney is often used. The respondent added:

„Attorney... but this of course can be the employee of any non-profit, it can, but that can be only in a civil suit, not in a criminal one. In a criminal case, the victim can have an attorney, that of course is possible, but I never encountered that, that someone would appear there in their place. But in a civil case, it’s more common, without a doubt.“

“Zmocněnec... může být tedy, může být zastoupen obecným zmocněncem, a to může být klidně zaměstnanec jakékoliv neziskovky, může to tak být, ale zase by to

bylo v tom řízení občansko-právním, nikoliv v řízení trestním. Tam by mohl mýt také jako poškozený zmocněnce, to samozřejmě jistě lze, ale s tím jsem se ještě nesetkal, že by někdo takový vůbec vystoupil. Ale v tom civilním řízení to nepochybně bude častější.” [J(1)]

One interviewee [S(1)] confirms that they have even had experience doing so, but they were successful only in gaining the court's apology.

Another interviewee [N(1)] spoke from their experience in other European countries, where complaints are lodged via trade unions. This practice does not exist in the Czech Republic. Even the representative [W(1)] confirmed the fact that migrant workers are not members of the union and for these reasons the trade union does not represent them.

“One more context comes to mind ... in terms of complaints ... and that would be through trade unions. That's another thing that is very trendy right now in the European Union, and it's opening up here. We actually took part in a seminar with La Strada, where we spoke about the role of trade unions, what they can and can't do, and what role they can play in all of this. A weak side of all of this is that the level or the various organisations where trade unions function is very established, and the most problematic cases usually happen outside this framework, where we can't really speak about the unions at all.”

“Napadá možná ještě další souvislost...jakoby stížnost...no...Prostřednictvím odborů. To je vlastně další záležitost, která je jako velmi, velmi trendy v Evropské unii, a otevírá se i tady....vlastně na jednom semináři jsme se taky podíleli, to zase jde za tou organizací La Strada, kdy v podstatě jsem řešili jakoby roli odborů a co oni můžou nebo nemůžou udělat a jakou roli v tom můžou mít. Slabou stránkou toho je, že v podstatě jakoby už ten level toho nebo ta organizace, kde fungují odbory, je svým způsobem už něco, co je velmi jakoby nějak ukotvený a ty nejproblematictější případy se dějou mimo tenhle rámec, kdy v podstatě o odborech asi ani nemůžeme mluvit.” [N(1)]

Mechanisms that facilitate the lodging of complaints of migrant workers against employers

These mechanisms, according to interviewees, exist. However, there is a high level of fear among victims to testify and the language barrier is also a problem. Victims also often have a low legal awareness and often do not know how to defend themselves. Mechanisms exist, and they function properly. One interviewee [S(1)] says that putting in a collective action suit would be the proper mechanism.

“I don't know if we should consider some sort of renewal of a court that would deal with legal matters, where a lawsuit like this would be free of charge. I think that would be interesting. And things could be dealt with in a quicker manner, those are things that I think the unions could be active in.”

“Potom nevím, jestli nezážit nějakou asi jako obnovu soudu, který by řešil pracovní právní věci, kde by to bylo to podání zdarma. To si myslím, že by mohlo být zajímavé

a kde by se to třeba i řešilo rychleji, tak to jsou věci, který mě napadaj nebo zase ty odbory by mohly být v tomhle aktivní.”[S(1)]

According to one interviewee [L(1)], potentially establishing cooperation between the Inspectorate and residency inspection could help:

“Someone is exploited or is working illegally, one of the two, and at that moment there is actually no mechanism to protect them, or for them to seek assistance from the state, and nothing to prevent them from being sanctioned for their illegal work. So, of course, with those individuals who are identified as victims of trafficking, with them it’s possible to cancel their legal deportation, but there have only been three cases of labour exploitation that have been prosecuted over this whole period.”

“Někdo vykořisťování nebo pracuje nelegálně nebo jedno z toho, a v tu chvíli vlastně nemá, neexistuje žádný mechanismus, který by ho ochránil, případně se obrátí na stát, proti tomu, aby byl zároveň sankcionován za tu nelegální práci, tam jako samozřejmě u těch osob, který jsou identifikovaný jako oběti obchodu, tak tam potom je možné potom to správní vyhoštění zrušit nebo mu není uděleno, ale to je tak, tady máme tři případy odsouzené za pracovní vykořisťování za celou dobu.”[L(1)]

One interviewee [S(1)] is appealing for labour inspectorates to begin to do better work and pointed out the fact that employers receive fines that are too small; they are sums that are laughable to some companies. For example, these are fines that are in the tens of thousands for a company that makes gains in the hundred thousands or millions.

“The mechanisms aren’t being used sufficiently, the mechanisms that are set in the law, that are set by European legislation, because there are sanctions (...)”

“Nevyužívají se dostatečně právě ty mechanismy, které jsou dány zákonem, které jsou dány třeba i evropskou legislativou, protože tam ty postihy jsou (...)”[S(1)]

6. Attitudes

Key themes and summary:

- Interviewees think in general that interventions into situations concerning severe forms of labour exploitation and pathological behaviour do serve the interests of migrant workers; however, they repeatedly added that at the same time this means as a rule that the migrant will suffer economically, while economic gain is the main goal of the migrant worker.
- According to experts, migrant workers who are victims of labour exploitation do not come forward and seek a way out of their situation, because of the economic motivation of migrant workers (the goal of which is to make money and increase financial gains). In connection to economic motivation, a connected fact is that foreign workers believe that their conditions will improve and they will receive their money. Another reason that migrants do not seek a way out of their position mentioned by interviewees included fear and a lack of knowledge of the system, which is also connected to clientelism and dependence on bosses.
- The most relevant factors that significantly account for the fact that not many migrant workers who have been exploited severely come forward, seek support or report to the police according to experts are: (a) Victims fear that if their situation became known to the authorities, they would have to leave the country, (b) Victims fear retaliation from the side of offenders against them or against family and (c) Victims are not aware of their rights and of the support available to them.
- The three most important factors to migrant workers who are victims according to interviewees are: (a) to be able to stay and to make a living in an EU country, (b) to be in a position to economically support other family members and (c) to receive compensation and back pay from employers.
- Interviewees in general stated that the situation is being dealt with, and mainly in terms of the last few years (this issue is at least being spoken about more, and awareness of these issues is growing). Interviewees made the point of hidden forms of exploitation, which have been happening more often than in previous years. They stated it is difficult to detect these cases, and even more so to prove and prosecute them. The efficient sanctions for employers, the possibility to cancel the business licence of some entities and to make large cases more evident in the media would help in the fight against labour exploitation of migrants.
- The three measures which would most improve the way labour exploitation is addressed in the Czech Republic were defined: (a) More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system, (b) Improve legislation against labour exploitation and its implementation and (c) More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation.

Do experts believe that interventions into situations of labour exploitation, generally speaking, serve the interests of the migrant workers concerned?

Interviewees think in general that interventions into situations concerning severe forms of labour exploitation and pathological behaviour do serve the interests of migrant workers; however, they repeatedly added that at the same time this means as a rule that the migrant will suffer economically, while economic gain is the main goal of the migrant worker. However, interviewees from target group S do not completely believe that interventions into situations of labour exploitation serve the interests of the migrant workers involved. For example, one interviewee [S(1)] also cited the problem of not compensating the exploited, e.g. when a workplace or company where exploitation is happening is closed and also stated that the foreigners are only used by the police in order to gain information, and are subsequently sent back to their country of origin without e.g. gaining compensation.

In regard to whether interventions serve the interests of migrant workers concerned, interviewees often mentioned the issue of how migrants themselves subjectively perceive exploitation. Regardless of their group, interviewees (from groups M,P, S, etc.) agreed on the fact that migrants who come from poor areas work for minimum money, in demeaning working conditions, but they still claim to be feeling better than if they were in their country of origin.

One interviewee [P(1)] said:

“There is the problem that the people often don’t admit to themselves they have been subjected to trafficking or exploitation. They don’t realize it. They consider it normal. Again, it depends on the particular person. What one may consider to be exploitation, another person may not regard as exploitation. Everyone has a certain limit and if it is exceeded, the person realizes s/he is in trouble, but this differs a lot between individuals.”

“Zde je problém, že lidé si mnohdy nepřipouští, že by byli obchodováni nebo vykořisťováni. Neuvědomují si to. Přejde jim to normální. Opět záleží na konkrétních jedincích. To co jeden může považovat za vykořisťování, druhý nepovažuje za vykořisťování. Vždy má každý určitou mez, za kterou když se zajde, tak si připustí, že se ocitl v problémech, ale to je hodně individuální.” [P(1)]

For this question, one interviewee [N(1)] pointed out:

“Basically the workers themselves wrote up a petition in favour of the offender, even despite the poor, exploitative, and undignified conditions that they were experiencing, because they were still better than the situation they had experienced in their country of origin.”

“V podstatě ti dělníci sami psali petici za pachatele kdy i ty špatné vykořisťující podmínky nedůstojné, které zažívali tady, byli stále lepší než ta situace, kterou v podstatě měli v zemi původu.” [N(1)]

According to experts, why do more migrant workers who are victims of labour exploitation not come forward and seek a way out of their situation?

Interviewees most often spoke about the economic motivation of migrant workers, the goal of which is to make money and increase financial gains. For example, one interviewee [N(1)] said:

“For them every day spent like that is a day they lose in terms of making money. This shows often with male victims of labour exploitation, they often don't stay in shelters for very long, so the tendency to make money or find other work can lead to further situations of dependence or other irregular positions in various networks of these recruiters that then abuse their situations.

“V podstatě každým tím dnem nebo týdnem ztrácí možnost ztrácí dny ve kterém si můžou vydělávat, zároveň, což se pak i profiluje na tom, jaké jsou ty mužské oběti v případě toho pracovního vykořisťování většinou, v podstatě v těch azylech většinou ani nezůstávají, takže ta tendence vydělat si a sehnat si další práci může v podstatě vyvolat další stavy závislosti nebo nějakého neregulárního postavení v dalších sítích těch rekrutérů, který toho pak využívají.” [N(1)]

In connection to economic motivation, a connected fact is that foreign workers believe that their conditions will improve and they will receive their money. One interviewee [R(1)] comments on this problem:

“I think this is because they are much worse off in their home country, that even when they are being exploited here, it's still more bearable for them, and they might still be making more money than in their home country, and if they're sending money to their families in their home countries, then they would still rather deal with this situation of exploitation.”

“Myslím si, že protože v té své zemi jsou na tom možná hůře, že i ta situace pokud jsou vykořisťováni tady u nás, tak je pro ně možná snesitelnější a i přesto si možná vydělají víc peněz než ve své zemi a pokud posílají peníze své rodině do své rodné země, tak raději snesou tu situaci vykořisťování.” [R(1)]

Another reason that migrants do not seek a way out of their position mentioned by interviewees [P(1); J(1)] included fear and a lack of knowledge of the system, which is also connected to clientelism and dependence on bosses. This fear of brokers and bosses is also reflected in the case studies when the employees working for the agency exchanged stories of people being beaten, of broken arms, etc. Also a case came up in the media of a group of Bulgarians that had been attacked in Mariánské Lázně, who had come into conflict with their employer. It is not clear whether the stories being told were merely legends, but as a consequence all individuals in the company were afraid to do anything. The client never notified the police of his situation, and only came to the NGO (Diakonie) with it. The client was even afraid to cooperate with the NGO out of fear of the Ukrainian that mediated the work. One interviewee [W(1)] summarizes that the majority of migrant workers are not looking for a way out, as they are dependent on their income and their position is very insecure and they are afraid that if they bring attention to themselves they will pay and they will lose what they have. Further factors are in play according to the respondent such as the language barrier, immersion in certain ethnic structures and dependence on their bosses. These factors are detrimental to the position of migrant workers in general.

One interviewee [J(1)] included unawareness of the environment, and mistrust in state institutions:

“Because they don’t have any trust in state institutions, that’s clear, because many of them are here illegally, they don’t have any reason to call the police because they don’t have an identification card, they don’t have a residency permit. I don’t think they really know about some non-profit organisations that could, like, help them, so...”

“Protože oni nemají důvěru ve státní instituce, je jasné, protože spousta z nich je tady nelegálně, takže oni nemají důvod jít na policii, protože nemají prostě doklad k totožnosti, nemají doklad k pobytu, a o tom, že by existovali nějaké neziskovky, které by jim dokázali pomoci, to si myslím, že ani neví...” [J(1)]

One interviewee [L(1)] sporadically said that reasons include the non-existence of a program for migrants that could guarantee that cases are properly investigated and the migrant will not be labelled as a perpetrator. Some interviewees from group S disputed this question and stated other opinions. They said it is not problem of a migrant not seeking a way out of the situation; rather, migrants are not looking for outside interventions. In one interviewee’s opinion [S(1)], migrants are actually always trying to solve their situation. One of the solutions for these migrants can be to remain in the environment of exploitation and threats. Not defending oneself can sometimes be a useful strategy. The interviewee is of the opinion that migrants are looking for a way out but they may not necessarily be looking for support from external institutions.

The most relevant factors that significantly account for the fact that not many migrant workers who have been exploited severely come forward, seek support or report to the police:

Interviewees marked option **8** - Victims fear that if their situation became known to the authorities, they would have to leave the country (17 yes out of 24 answers) as the most important factor. The second most common option chosen was option **4** - Victims fear retaliation from the side of offenders against them or against family members (14 yes out of 24 answers). The third most common was option **3** – Victims are not aware of their rights and of the support available to them (11 yes out of 24 answers).

None of the interviewees chose option 1 (Lack of effective monitoring of relevant areas of economy), 5 (Victims suffer from feelings of shame). Option 9 (Victims do not trust that the police in particular would treat them in a sympathetic manner) was chosen by interviewees from target group S. Case studies³⁵ also reflected low interest of migrants cooperate with police.

	M	P	S	J	L	R	W	E	N	Total
Lack of effective monitoring of relevant areas of economy										0
Lack of targeted support service provision available to victims	1			1						2
Victims are not aware of their rights and of support available to them	1	2	3	3			2			11

³⁵ Such as the case where the migrant refused to give the police testimony and requested a voluntary return to his country of origin through a reintegration grant.

Victims fear retaliation from the side of offenders against them or against family members	2	3	3	3			2		1	14
Victims suffer from feelings of shame										0
Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings	1	2	4	2			1			10
Victims believe that proceedings are too bureaucratic and costly	1	1	2							4
Victims fear that if their situation became known to the authorities, they would have to leave the country	4	3	4	2			3		1	17
Victims do not trust that the police in particular would treat them in a sympathetic manner			2							2
Victims perceive being jobless as worse than working in exploitative conditions	1	3	3	1			1		1	10
Other-please specify		1								1
Don't know										0

The three most important factors to migrant workers who are victims:

Interviewees marked option 3 - to be able to stay and to make a living in an EU country (19 yes out of 27 answers) as the most important factor. The second most common option chosen was option 6 – to be in a position to economically support other family members (17 yes out of 27 answers). While the third most common was option 7 – to receive compensation and back pay from employers (14 yes out of 27 answers). None of the interviewees chose option 9 (Other).

	M	P	S	J	L	R	W	E	N	Total
To be safe and to be protected against further victimisation	2	2	2	4			1			11
For their family to be safe	1	3	2	1	1		1			9
To be able to stay and to make a living in an EU country	4	3	4	1	3		3		1	19
To see that offenders are held accountable and that justice is done			1	1	1					3
To be respected and to see that their rights are taken seriously			2	1						3
To be in a position to economically support other family members	2	4	4	2	2		2		1	17
To receive compensation and back pay from employers	2	1	5	2	2		1		1	14
To be able to return home safely		2	1				1			4
Other (please specify)										0
Don't know										0

Do experts believe that enough is being done in the country to address severe forms of labour exploitation?

Interviewees in general stated that the situation is being dealt with, and mainly in terms of the last few years. Interviewees stated that this issue is at least being spoken about more, and awareness of these issues is growing. Interviewees, however, did have certain reservations. Interviewees from group S, N, J, and P all made the point of hidden forms of

exploitation, which (they assume) have been happening more often than in previous years. They stated it is difficult to detect these cases, and even more so to prove and prosecute them.

“With this in comparison to forms where at first sight things aren’t actually so severe, that means we’re able to properly punish an offender when some violence is taking place and so on, but with more subtle forms of coercion, I think there’s still much to be done, although we are working on this.”

“V porovnání s těmi formami, kde třeba ta závažnost je třeba na první pohled menší, to znamená dejme tomu jsme schopni už dobře potrestat pachatele, kde dochází k nějakému tomu násilí, a tak podobně, ale u subtilnějších forem donucení si myslím, že tam určitě ještě máme co dělat, byť na tom pracujeme.” [N(1)]

One interviewee [P(1)] suggested that enough is being done; however, the interviewee pointed out that he/she has no information as to whether some hidden forms of exploitation exist. Interviewees from target group S and W are unanimous in their opinion that the approach to employee protection should improve in general. They pointed out that as the protection on the job market in general gets weaker, it has a stronger impact on groups exposed to risk, e.g. on immigrants. One interviewee [J(1)] stated that this is being dealt with sufficiently. The question is rather whether these cases reach the courts at all, as they often end up in preparatory phases and thus no verdicts exist. Also, a current set of court practices is not available.

One interviewee [S(1)] sees here a problem in the method of inspection of agencies. Agencies which do not pay out salaries are first called upon to present evidence. They present this evidence e.g. in the form of employment contracts, payrolls, etc. of a number of migrants, but in reality these individuals never receive these documents. This evidence is taken into consideration and the inspection ends. The complaining party receives a notification and the whole case is closed.

Again, the interviewee [M(1)] mentioned sanctions for employers that it could be more efficient if there was the possibility to cancel the business licence of some entities. The legal practice today only allows for sanctions in form of fines and withdrawal of the possibility to participate in state contracts.

“The sanctions we have at the moment are not a real threat to the exploiting companies.”

“Ze současných sankcí si vykořisťovatelské firmy příliš nedělají.” [M(1)]

One interviewee [W(1)] stated that it would be effective to make large cases more evident in the media, which would lead to a higher level of respect for these issues among employers. This would also help foreigners get rid of the fear that no one will help them.

The three measures which would most improve the way labour exploitation is addressed in the country:

Category 01 (Improve legislation against labour exploitation and its implementation) was chosen often (with 17 out of from 30 answers), which would connect investigations to further

levels, and option 06 (More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system), which according to interviewees could bring new knowledge and consequently increase the level of prevention. Also monitoring illegal workers could lead to preventing crimes in their initial phases, as criminal offenders can often be found among the ranks of illegal migrants. One interviewee [W(1)] commented on option 1:

"In terms of legislation, it's primarily about achieving a state where these people will be allowed to ... the people who decide to defend themselves and claim their rights won't face such a risk of being forced to return to their country of origin ... and they will be allowed to stay."

"Tam u těch právních předpisů je to prostě v tom, aby primárně se dosáhlo toho, že tady skutečně v těchto případech těm lidem bude umožněno...že ti, kteří se prostě budou bránit, budou se domáhat svých práv a oprávněně, tak že jim prostě bude...že nebudou čelit tomu riziku, že budou nuceni vrátit se do země původu, ale že jim prostě bude tady umožněno zůstat." [W(1)]

Comments to option 06 for example include:

"(...) we know that institutions do cooperate, however, it still isn't efficient enough. Cooperation with the justice in the field of criminal liability is also fundamental."

"(...) i když víme o tom, že tyto orgány spolupracují, stále to není úplně efektivní. Zásadní, je potom teda ještě spolupráce se soudnictvím s justicí v oblasti té trestní odpovědnosti a efektivity systému." [W(1)]

The third most common was option 03 (More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation) with 15 yes from 30 answers. Option 04 was also chosen quite often (Measures to ensure that all workers know their rights) with 12 yes out of 30 answers.

"(...) more effective monitoring, definitely, in order to uncover some potential hidden exploitation."

"(...)efektivnější monitorování, aby se odhalovala ta eventuální to skryté vykořisťování." [P(1)]

Occasionally, one interviewee [M(1)] chose option 07 (Setting up specialised police units) and said:

"A specialised armed unit with special authorisation would be useful. In many cases, we as officers feel the insufficient powers to enforce the permissions given by the laws of the Czech Republic."

"Chtělo by to speciální ozbrojenou složku, která by měla zvláštní oprávnění. My úředníci pocítujeme v mnoha případech nedostatečnou možnost vymoci oprávnění daná zákony ČR." [M(1)]

The other informers considered this option to be irrelevant, and added that the creation of a specialised unit would be ineffective.

	M	P	S	J	L	R	W	E	N	Total
Improve legislation against labour exploitation and its implementation	2	3	5		1	2	3		1	17
Improve legislation to allow better access to justice and compensation	1		3		3		1			8
More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation		4	2	3	1	2	2	1		15
Measures to ensure that all workers know their rights		5	3	3		1				12
Measures to ensure that all workers have access to labour unions			1							1
More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system	2	1	4	4		1	3	1	1	17
Setting up of specialised police units to monitor and investigate labour exploitation	1									1
Regularising the situation of certain groups of migrant workers with an irregular status	1		1	1	2					5
Regularising the situation of migrant workers once they have become victims of severe labour exploitation			1							1
Measures addressing corruption in the administration			1							1
More training of police, labour inspectors and other authorities	1							1	1	3
Police and courts taking labour exploitation more seriously				2						2
Don't know	1									1

7. Conclusion and any other observations, including contentious issues from interviews/focus groups

It can be said of interviewees in general that they were very obliging and answered questions openly. However, interviewees from the government administration (mainly target group P and M) often gave very general answers in spite of the fact that they may have had more detailed information available.

A number of times during interviews there was a problem only with a few of the questions, where there were arguments about the meaning of words (e.g. employer, effectiveness). Problems arose surrounding inaccurate or vaguely defined terms in various questions, e.g. 'severe forms of labour exploitation' or 'particularly exploitative labour conditions'. Some of the wording in terms of definitions used in the research was problematic, for example: The term 'labour exploitation' as meaning the exploitation of the work of a person conducted within an *employment situation*. This can be problematic in light of the fact that a part of the problem of labour exploitation is the fact that workers do not actually have valid employment contracts, i.e. they are not in a valid employment situation. There is also a problem with the Czech "švarc system", or "grey area system", in which individuals are employed on trade licenses (as sole proprietors) and therefore are not in an official employment situation, although they are in an employee situation.

Below a number of repeating key issues/opinions are listed:

- There was a significant problem with the definition and complex perception of categories and forms of labour exploitation. The concept and term labour exploitation and its characteristics are understood differently not only in terms of various professional groups, but also individually.
- Conclusively the most often mentioned category of occupation was unskilled workers. Interviewees often mentioned work in construction and workers in manufacturing, mainly in assembly line manufacturing. The sector of the economy that interviewees most often encountered labour exploitation was construction.
- According to interviewees, the following risk factors were described consistently across target groups most often (sorted by relevance): (a) language barrier, (b) generally lack of knowledge of the environment, (c) dependence on a work mediator, (d) country of origin, (e) qualifications, (f) illegal residency.
- Mainly, the interviewees often referred to the connection of exploited migrants to the client system, which places migrants in a dependent position. This also deals with the lack of knowledge and awareness of migrants in the area of law, residency, and employment. The person is dependent on employment mediation and is thus more susceptible to exploitation. The so-called political machine (clientelism) and employment through agencies create conditions for exploitation (especially by Ukrainian entrepreneurs). As a result of dependence, foreigners have little trust in state administration and are scared to report their situation or to testify at Court.
- Also, the interviewee often mentioned the problem of issuing work permits and the shift of migrants to the sphere of illegality and unskilled positions, thus leading to

exploitation. The migrants often have illegal status, stand outside of the basic legal framework, and thus are not covered by systems of social protection.

- The interviewees stated that awareness of foreigners is important, both before they arrive to the Czech Republic and once they are in the Czech environment, i.e. understanding work contracts, etc.
- The preventive role of the non-profit sector in the issue of labor exploitation is undeniable.
- According to interviewees, control mechanisms and inspections are important (in the economic areas prone to exploitation).
- The coordination between institutions mainly of the state administration, which deal with issues of labour exploitation of foreign nationals is important according to interviewees.
- The interviewees are aware of the low number of cases of labour exploitation that make it to court. The problem may be in the fact that cases are not detected, and also because migrants do not choose to suggest cases for investigation.
- The interviewees stated that awareness of foreigners is important, both before they arrive to the Czech Republic and once they are in the Czech environment, i.e. understanding work contracts, etc.
- Generally, the situation of labour exploitation could be improved by better inspections (on the side of inspectorates) and by preventing the situations leading to labour exploitation. The cooperation between individual entities should be improved, too.
- The interviewees often added economic substance of migration (and the desire to earn money in the EU) as factors why the migrants undergo the risk of getting exploited.
- Interviewees from group S, N, J, and P all made the point of hidden forms of exploitation, which (they assume) have been happening more often than in previous years - shift of exploitation out of physical violence towards psychological level of promises, dependency, etc.
- A problem often repeated according to interviewees is the fact that migrant workers are primarily viewed as illegal workers rather than victims, and the subsequent administrative actions with them are influenced by this fact.