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

Poland, 2014

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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

The reported research was carried out between 1 October 2013 and 10 February 2014. It comprised 40 individual interviews and two focus group interviews, as well as the preparation of 19 case studies. The individual interviews were divided according to the required target groups in the following way:

- 7 – representatives of monitoring institutions (M)
- 6 – representatives of law enforcement agencies (P)
- 8 – professionals working in the victim support area (S)
- 7 – four prosecutors and three judges (J)
- 5 – lawyers (L)
- 2 – representatives of recruitment and employment agencies (R)
- 1 – representative of a trade union (W)
- 2 – representatives of employer organisations (E)
- 2 – representatives of the governmental administration (N)

In total, 22 interviewees were from Warsaw and 18 were from various cities in northern, southern, western and eastern parts of Poland. Twenty-four were male, and 16 were female. Those who perform coordinating functions for human trafficking issues within law enforcement agencies, prosecution, and governmental bodies had been working on these issues for more or less seven years, that is, since the coordination structures were set up. Interviewed NGO activists who support migrants, either as lawyers or in another capacity, had between one and 15 years of experience working on issues related to labour exploitation, depending on the individual. Employment agents have come across cases of migrants' labour exploitation since they started working in this profession, five years ago in one case, and eight years ago in the other.

However, the majority of M group participants had trouble identifying with the notion of 'labour exploitation', as many had focused mostly on inspections related to labour law infringements, including those affecting migrants. Similarly, two Border Guard officers interviewed as part of the P group were not able to point to any form of labour exploitation, while one interviewed police officer, focused on human trafficking for sex services during the interview, because that was what the respondent had mainly worked on in their professional life. Furthermore, the experience of prosecutors and judges of migrants' labour exploitation did not go beyond a single case that they had personally dealt with. One criminal court judge, although experienced in cases related to human trafficking for sex services, had little to say about human trafficking for forced labour. Another judge, of the civil court, although experienced in issuing verdicts related to labour law, did not come across any case involving migrant workers. Similarly, an employee of the Ombudsman for Children's Rights office (included in the M group of respondents), the representative of the W group, as well as representatives of employer organisations had almost no experience in issues raised during the research.

Focus group interviews were conducted in Warsaw and Krakow. The Warsaw focus group comprised five participants [M(1); P(2); L(1); S(1)]. All of them had previously taken part in the research as respondents within individual interviews. The discussed contentious issue was the reason why so few cases reach the final stages of criminal proceedings. However, within the focus group, the issue did not appear especially controversial (cf. Chapter 4.3.2), and there were no other significant disagreements between the participants. Although the interviewees put emphasis on different aspects of labour exploitation while drawing on their professional experience, they did not directly confront each other.

The Krakow focus group comprised six participants [M(1); P(1); J(1); S(1); R(1); W(1)]. They represented organisations and institutions from various cities. Four focus group participants had previously taken part in the research as respondents within individual interviews, while two were respondents solely within the focus group interview. The discussed contentious issue was the same as at the Warsaw interview: the reason why so few cases reach the final stages of criminal proceedings. Apart from that, the questionnaire for the group discussion was broadened to embrace issues related to: the exact methodology and scope of inspections conducted by labour inspectors, the cooperation between various institutions with particular emphasis on cooperation between trade unions, recruitment agencies and organisations of employers, cases of labour exploitation which are tried by labour divisions of civil courts. Similarly to what was at work during the Warsaw focus group interview, the interview within the Krakow group lacked significant controversies.

The majority of individual interviews, as many as 27, lasted more than 75 minutes, some for well over two hours. Nine interviews lasted between 60 and 75 minutes, three – between 45 and 60 minutes, and one – less than 45 minutes. The length of the Warsaw focus group interview was 1 hour 51 minutes and the Krakow focus group interview – 2 hours and 20 minutes. The level of trust during the interviews was high, and the level of interviews' interruptions was low. All except two interviews were conducted face-to-face. One interview was conducted by phone due to a random incident which did not allow the interviewer to get to the city where the appointment was arranged, and the other interview – because of a long distance to the interviewee and the approaching date of the fieldwork's conclusion. Three respondents refused tape-recording. In these cases, the interviewers took notes.

Four interviewers, including the expert in social fieldwork research, that is the author of this report, were engaged in conducting the interviews. All are experienced researchers, sociologists, anthropologists or both. Two have a doctoral degree in social sciences and two are PhD students. Three are female and one male.

Nineteen **case studies** were prepared within the research. The majority were provided by respondents of individual interviews [P(5); S/L(6); J(2); L(1); L/W(1)]. The remaining four case studies were prepared for the purpose of the research by an academic of the Human Trafficking Studies Centre of Warsaw University.

The cases covered the following economic sectors: agriculture (three cases), manufacture of food products (two cases), manufacture of textiles (two cases), other manufactures – tobacco manufacture (one case), construction of buildings (three cases), civil engineering (one case), other construction – shipyard (two cases), retail trade, except for motor vehicles and motorcycles (two cases), other service activities – leaflets distribution (one case), households as employers of domestic personnel (two cases).

Seven cases involved victims from neighbouring countries: Ukraine and Belarus; two – victims from other countries of the former CIS territory: Uzbekistan, Kazakhstan, Azerbaijan; eight – from other Asian countries: Vietnam, Philippines, Thailand, Bangladesh, China, North Korea. One case involved an African victim, from Cameroon, and one – victims from the EU, namely Romania.

Out of the 19 cases, seven ended up in court, including one in a civil court. Four are still pending. In three cases, verdicts were issued. In none of these, victims received back payments or compensation.

Before the research started, at the end of August 2013, the interviewers had taken part in the training on issues related to migrants' labour exploitation conducted by the expert of the Association for Legal Intervention. In September 2013, the expert in social fieldwork research conducted training in specific issues related to the envisaged fieldwork. All participants of the research team drafted reporting templates (RTs) and case studies successively, after they conducted particular interviews. First two RTs prepared by each of the interviewers were thoroughly discussed face-to-face with the social fieldwork expert. Within the course of the fieldwork, two meetings of the team were organised. Their purpose was mainly to discuss the findings, share observations, identify contentious issues and answer specific questions emerging from the expert's ongoing analysis of RTs.

The main problems or challenges encountered during the research concerned the interviewees' recruitment. They can be loosely divided into two main categories – problems of an organisational and of substantive nature.

Among organisational challenges, there were certain difficulties in accessing potential respondents, with some respondents difficult to reach or unavailable due to their lack of time and tight schedules. This was especially the case among public officials and representatives of NGOs, but it was not exclusive of those two groups. The two major factors which contributed to the respondents' lack of time were the end of the year reporting, which takes place either in December or January, and the winter break when many of the potential respondents were out of office due to bank holidays or simply on leave.

As major reasons for refusals, representatives from other organisations and institutions (including from employers' organisations and victim support organisations) quoted a lack of knowledge or experience in the subject matter.

When it comes to difficulties of a substantive nature, the greatest challenge rested in such distribution of the sample that the respondents represented experiences and knowledge encompassing diverse cases of labour exploitation and at different stages of proceedings. Throughout the research process, many interviews proved narrower in scope than the scope of the study, as a relatively big group of interviewees concentrated on human trafficking for forced labour. Understandably, this referred primarily to Border Guard and police officers, but also prosecutors and judges. However, the researchers endeavoured to, to the extent possible, ensure a balance between discussions of human trafficking and other forms of labour exploitation.

Equally challenging was the recruitment of respondents experienced in issues related to migrants' labour exploitation. Since 'labour exploitation,' as a separate concept and subject of political measures, practically does not exist in Poland, potential interviewees expressed strong caution in giving consent to their participation in the research. To avoid a significant number of refusals, the researchers presented the scope of the interview to recruited respondents in terms that the respondents were familiar with, such as 'human trafficking for forced labour' or 'workers' rights infringements' in reference to migrants. Still, it was extremely difficult to reach those who had dealt with these issues more often than accidentally, although strong efforts were made to achieve this, for instance, by questioning each interviewee about other professionals who could be of value for the research. Fortunately, the interviewees, even if not particularly experienced in studied subject matters, were able to highlight specific issues useful for the study, such as general problems with taking care of unaccompanied migrant children, or shortages of labour inspection methodology. The experienced respondents provided very rich and valuable comments.

In reference to particular respondent groups, it can generally be stated that the Border Guard, the National Labour Inspectorate and legal professionals – prosecutors and judges – were the most cooperative. Similarly, the cooperation with support organisations and recruitment agencies can, as a whole, be judged positively. There were certain difficulties while arranging interviews with police officers and representatives of worker organisations. Altogether, even though small, the group of employer organisations proved the most challenging to gather and yielded the greatest number of refusals. It should also be noted that researchers had no possibility to reach organisations representing migrant workers, as such organisations do not exist in Poland.

2. Legal framework

The Criminal Code and the Act on the consequences of entrusting the performance of work to foreigners with irregular residency status at the territory of the Republic of Poland, although do not use the term 'labour exploitation', list related crimes. Labour law, in particular, the Labour Code and the Act on promotion of employment and labour market institutions, refers to workers' rights infringements.

While in its general part, the Criminal Code defines slavery as the "state of dependence in which a person is treated as property" (Article 115 § 23), in its specific part, the Code does not separately grasp this act.[1] Slavery is penalised by the Provisions introducing the Criminal Code which say that whoever makes a person subject to slavery, or maintains him or her in slavery, or commits trafficking in slaves, shall be subject to the deprivation of liberty for a minimum of 3 years (Article 8).[2] Within the Criminal Code, slavery appears as part of the definition of human trafficking and in this form, as part of human trafficking, it is subject to penalisation.

In the Criminal Code, forced labour is yet another notion included in the definition of human trafficking. The Code does not define forced labour, and neither the Code nor any other legal act functionalise the notion in such a way that any specific punishment is envisaged for those who engage in 'forced labour'. Forced labour is penalised solely in the context of human trafficking.

The articles of the Criminal Code which refer to slavery and human trafficking were introduced in 2010. The definition of human trafficking draws on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Article 115 § 22 of the Criminal Code reads:

> *"Human trafficking is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of:*
>
> *1) violence or threats,*
> *2) abduction,*
> *3) deception,*
> *4) misleading, taking advantage of a mistake or an inability to properly understand actions that are being undertaken,*
> *5) abuse of dependence, the use of a critical situation or state of helplessness,*
> *6) the award or acceptance or personal financial benefit or the promise of a person who has the care or supervision of another person,*
>
> *in order to use her or him, even with their consent, in particular for the purpose of prostitution, pornography and other forms of sexual exploitation, forced labour, begging, slavery or other forms of treatment that degrade the human dignity, obtaining the cells, tissues or organs in violation of the law. If such a conduct applies to a juvenile, it is perceived as human trafficking, even if measures referred to in paragraphs 1-6 are not applied."*

[1] Poland, Criminal Code (*Kodeks karny*), 6 June 1997.
[2] Poland, Provisions introducing the Criminal Code (*Przepisy wprowadzające Kodeks karny*), 6 June 1997.

Article 189a § 1 of the Criminal Code stipulates that whoever commits human trafficking shall be subject to the penalty of deprivation of liberty for a minimum of 3 years. Furthermore, Article 189a § 2 of the Code states that whoever makes preparations to commit human trafficking shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

Furthermore, the Criminal Code lists acts referring to the situation of employment. These are: malicious or persistent worker's rights infringements (Article 218), infringements of regulations related to worker's social insurance (Article 219), and endangering the worker's health and safety (Article 220; related issues are also covered by Article 221 which concerns the failure to report an accident at work or a case of occupational disease to relevant authorities).

> *"Article 218. § 1a. Whoever, when performing activities in the field of labour law and social insurance, maliciously or persistently infringes the rights of the employee resulting from a work-contract relationship or social insurance, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.*
>
> *§ 2. The person specified in § 1a, who refuses to reinstate in work although ordered to do so by an appropriate authority shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.*
>
> *§ 3. The person specified in § 1a who when obliged by a court ruling to pay remuneration for work or other benefit related to employment fails to fulfil this obligation, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 3 years."*
>
> *"Article 219. Whoever violates provisions on social insurance by not reporting, even with the consent of the person concerned, the required data or provides false data affecting the right to benefits or the amount thereof shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years."*
>
> *"Article 220. § 1. Whoever, being responsible for occupational health and safety, does not fulfil the duties involved and by this, exposes an employee to an immediate danger of loss of life or a serious detriment to health, shall be subject to the penalty of deprivation of liberty for up to 3 years.*
>
> *§ 2. If the perpetrator acts unintentionally, he/she shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.*
>
> *§ 3. The perpetrator who has voluntarily averted the impending danger shall not be subject to the penalty."*

Additionally, the Criminal Code penalises acts which may go together with the situation of labour exploitation, such as the deprivation of liberty (Article 189; penalties of imprisonment between 3 months and 10 years), violence against a person or unlawful threats to compel the person to a particular action (Article 191 § 1; the penalty of imprisonment for up to 3 years), and hiding documents (Article 276; the penalty of fine, the restriction of liberty, or imprisonment for up to 2 years).

The definition of particularly exploitative working conditions is included in the Act on the consequences of entrusting the performance of work to foreigners with irregular residency status at the territory of the Republic of Poland which implements the Employer Sanctions Directive (2009/52/EC).[3] According to Article 10.3 of this Act,

> *"particularly exploitative working conditions refer to the labour conditions of a person or persons who were charged with work in violation of the law, offending the human dignity, in circumstances which are significantly different, in particular with regard to gender, in comparison to the working conditions of persons charged with work in accordance with the law, affecting particularly workers' health or safety."*

As further stipulated, whoever charges a foreigner without valid documents authorising him or her to stay on Polish territory and work in particularly exploitative working conditions shall be punished with imprisonment for up to 3 years (Article 10.1). The same penalty applies to a person who charges a foreigner victim of human trafficking with work, without valid documents authorising the foreigner to stay on Polish territory (Article 10.2). The Act also stipulates that whoever charges with work, at the same time, many foreigners without valid documents authorising them to stay on Polish territory, is subject to a fine or imprisonment (Article 9.1). The same penalty is envisaged for a person who charges with work a foreign juvenile without valid documents authorising him or her to stay on Polish territory (Article 9.2.) and a person who, in connection to the economic activity, persistently charges with work a foreigner without valid documents authorising him or her to stay on Polish territory (Article 9.3.). Furthermore, according to the Act, a person who persistently charges with work, not in connection to his or her economic activity, a foreigner without valid documents authorising him or her to stay on Polish territory, is punished with a fine in the amount up to 10,000 PLN (Article 11.1.). Aiding and abetting such acts are also punishable (Article 11.2.).

The Labour Code lists a number of acts related to the situation of exploitation.[4] All are subject to a fine in the amount between 1,000 and 30,000 PLN which is imposed on the employer. These are, in particular: unlawful completion of civil law contracts instead of employment contracts,[5] completion of unwritten contracts, imposing on employees punishment other than set forth in the labour law provisions, violating provisions on working time (Article 281), failure to pay wages or benefits on agreed time or their groundless lowering, refusing annual leave or groundless lowering of its scope, refusing to issue a certificate of employment (Article 282 § 1).The same penalty applies to a person responsible for health and safety conditions or a person who manages a group of employees who do not comply with health and safety provisions (Article 283).

The Labour Code also refers to work performed by juveniles. A juvenile is a person between the age of 16 and 18 (Article 190 § 1). It is prohibited to employ persons under the age of 16 (Article 190 § 2), except for cultural, artistic, sport, or marketing activities, provided that the

[3] Poland, Act on the consequences of entrusting the performance of work to foreigners with irregular residency status at the territory of the Republic of Poland (*Ustawa o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczpospolitej Polskiej*), 15 June 2012.

[4] Poland, Labour Code (*Kodeks pracy*), 26 June 1974.

[5] Civil law contracts allow for employing a person based on provisions of the Civil Code. They are not formally considered employment contracts and they do not fall under Labour Code regulations. They are used when a contract's party requires the performance of certain activities (contracts for services regulated by Articles 734-751 of the Civil Code) or for some specified work to be completed (contracts for a specific task regulated by Articles 627-646 of the Civil Code). What differentiates civil law contracts from employment contracts is that, among other things, it is not necessary for them to specify the place and time of work, since the completion of the job counts more than the details of its performance, and they do not oblige the employer to pay all social security contributions and grant leave to the worker. At the same time, under civil law contracts, the refusal to carry out orders from the employer is not considered as a breach of contractual obligations. Civil law contracts cannot be concluded for the employment relationship as defined by the Labour Code, that embraces, among other things, the worker's subordination to the employer.

employment is preceded by the consent of the child's legal representative or custodian, as well as the permission from a relevant labour inspector (Article 304^5). Only a juvenile who graduated from the secondary school [*gimnazjum*] and submits a medical certificate stating that the type of work does not endanger their health can be employed full-time (Article 191 § 1). A juvenile without professional qualifications can be employed only for the purpose of vocational training (Article 191 § 2). According to Article 281 of the Labour Code, the violation of provisions on the employment of young people is punishable by a fine in the amount between 1,000 and 30,000 PLN.

Article 190 of the Labour Code is subject to legislative amendments. From 1 September 2018, a juvenile will be defined as a person between the age of 15 and 18. It will be prohibited to employ persons under the age of 15, with exceptions applying to children in the current act.[6] The change stems from the fact that on 1 September 2018, first secondary school graduates who started compulsory education in the school year of 2009/2010 as six-year olds will enter the labour market.

Finally, the Act on promotion of employment and labour market institutions refers, among others, to work performed by foreigners.[7] It imposes penalties on both the employer (the fine in the minimum amount of 3,000 PLN; Article 120.1.) and the foreign employee (the fine in the minimum amount of 1,000 PLN; Article 120.2.) for illegal employment. Furthermore, the Act provides that whoever drives a foreigner to perform work by misleading the foreigner, taking advantage of a mistake, professional dependence or an inability to properly understand actions that are being undertaken (Article 120.3) shall be punished with a fine in the amount up to 10,000 PLN. In addition, the Act envisages a fine in the minimum amount of 3,000 PLN for whoever requires material benefits from a foreigner in exchange for taking steps to obtain a work permit or another document authorising the foreigner to work (Article 120.4.).

[6] Poland, Act on amendment of the Act on Educational System and on some other Acts (*Ustawa o zmianie ustawy o systemie oświaty oraz o zmianie niektórych innych ustaw*), 19 March 2009.
[7] Poland, Act on promotion of employment and labour market institutions (*Ustawa o promocji zatrudnienia i instytucjach rynku pracy*), 20 April 2004.

3. Labour exploitation and the institutional setting

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

The institutional setting for preventing and fighting migrants' labour exploitation comprises one monitoring institution, law enforcement agencies and human rights or victim support organisations. The chapter does not discuss institutions or organisations whose tasks refer specifically to the issue of sexual exploitation, since they fell beyond the scope of the fieldwork.

3.1.1. National Labour Inspectorate

The National Labour Inspectorate (NLI) [*Państwowa Inspekcja Pracy (PIP)*] is a monitoring institution subordinated to the Polish Parliament. It acts on the basis of the Act on the National Labour Inspectorate.[8] NLI's tasks embrace: supervision and inspection of labour law observance by enterprises, in particular occupational health and safety rules and regulations, provisions concerning an employment relationship, remuneration and other benefits resulting from an employment relationship, working time, holidays, employee rights connected with parenthood, employment of juveniles and persons with disabilities; taking prevention measures to ensure labour law observance; inspection of compliance with the legal obligation to run employment agencies in accordance with relevant regulations; inspection of the legality of employment, other paid work and work performed by foreigners; pursuing offences against workers' rights as defined in the Labour Code and other legal acts, as well as other offences related to paid work if so stipulated in legal provisions, and participation in proceedings as a public prosecutor.

The NLI is authorised to inspect all employers, that is, those who employ persons on the basis of employment contracts, and – in the scope of health and safety at work as well as legality of employment – entrepreneurs and organisational units other than employers – for whom work is performed by natural persons, including persons performing economic activity on their own account, regardless of the basis of such work. The NLI is not entitled to inspect private households. As explained by one M group interviewee, this is firstly, because their owners or inhabitants are usually neither employers nor entrepreneurs, and secondly, private households are protected by the right to privacy guaranteed by both the international law and the Polish Constitution. Moreover, the NLI has no powers to inspect private agriculture which is the most widespread form of agriculture in Poland, since farmers have special status: they are not employers nor entrepreneurs in the terms of the Act on freedom of economic activity,[9] even if they employ persons on the basis of civil law contracts.

The NLI's structure comprises the Chief Labour Inspectorate in Warsaw, 16 voivodeship (provincial) labour inspectorates with 43 operating offices, as well as the NLI's Training Centre in Wroclaw. In 2013, 1,619 NLI employees were responsible for performing and supervising inspections.[10]

On issues related to foreigners, the NLI cooperates mainly with the Border Guard and the police. Labour inspectors, as well as Border Guard and police officers carry out joint inspections and participate in joint training. The cooperation between the NLI and the Border

[8] Poland, Act on National Labour Inspectorate (*Ustawa o Państwowej Inspekcji Pracy*), 13 April 2007.
[9] Poland, Act on freedom of economic activity (*Ustawa o swobodzie działalności gospodarczej*), 2 July 2004.
[10] As of 6 May 2013. Letter of the National Labour Inspectorate of 7 May 2013, ref. no. GOO-355-004-85/13.

Guard is particularly tight due the fact that both the NLI and the Border Guard are endowed with the task to investigate the legality of foreigners' employment, and it is formalised due to the agreement of 2008 between the Chief Labour Inspector and the Border Guard Commander in Chief.[11] Apart from joint inspections and training, the agreement embraces, in particular, the organisation of annual evaluation meetings and the mutual exchange of experience and information. As explained by a monitoring-body expert, this makes one of the ways in which the NLI learns about cases of labour law infringements involving migrants, since these are the infringements that the Border Guard is not entitled to deal with:

> *"They [the Border Guard] can handle a case when foreigners work illegally, without a permit, or when a foreigner stays illegally. It's the same what we do, our powers are parallel. However, when [an employer] fails to pay for the work or when working time regulations are violated, they can't do anything about it. They have no powers with regard to the Labour Code."* [M(1)]

> *"Oni [tj. Straż Graniczna] np. mogą załatwić sprawę, kiedy jest powierzona nielegalnie praca cudzoziemcom, bez zezwolenia, albo gdy cudzoziemiec przebywa nielegalnie. To jest tak samo jak i my, to są równoległe uprawnienia. Natomiast jak już dochodzi do braku wypłaty wynagrodzenia czy naruszenia przepisów o czasie pracy, to tego już nie mogą. Ten Kodeks pracy, to oni nie mają takich uprawnień w ogóle."* [M(1)]

The NLI does not use the term 'labour exploitation'. Since the NLI's mandate refers to labour law, it focuses on 'labour law infringements'. Correspondingly, labour inspectors are not obliged to use a checklist or guidelines for assessing 'labour exploitation' or identifying 'victims of labour exploitation'. However, they have a checklist for identifying human trafficking for forced labour prepared by the Border Guard, and they draw on the guidelines prepared by the International Labour Organization and published in an ILO manual which addresses these issues.[12] As one expert stated, if labour inspectors suspect human trafficking for forced labour, they should use the guidelines [M(1)].

3.1.2. Polish Border Guard

The Border Guard [*Straż Graniczna*] acts according to the Act on the Border Guard, and its main activities refer to the prevention of illegal border crossing, as well as detection of related crimes and offences and prosecution of their perpetrators.[13] The Border Guard's mandate also comprises investigations of the legality of foreigners' employment,[14] however, it does not entail investigations of the foreigners' working conditions.

There are three main divisions within this law enforcement agency. The Border Division handles border traffic. The Division for Foreigners deals with administrative law infringements

[11] Poland, Agreement between the Chief Labour Inspector and the Border Guard Commander in Chief of 18 April 2008 on rules of cooperation between the National Labour Inspectorate and the Boarder Guard (*Porozumienie Głównego Inspektora Pracy i Komendanta Głównego Straży Granicznej z 18 kwietnia 2008 r. w sprawie zasad współdziałania Państwowej Inspekcji Pracy i Straży Granicznej*).

[12] Andrees B. (2010) *Praca przymusowa i handel ludźmi: podręcznik dla inspektorów pracy*, Wrocław: Międzynarodowe Biuro Pracy, Ośrodek Szkolenia Państwowej Inspekcji Pracy im. Prof. Jana Rosnera. Available at: http://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_144461.pdf. The manual's Polish version was prepared within the project *FREED: International Action of Social Partners for Combating Human Trafficking for Forced Labour – Victims' Identification and Protection*. The project also embraced training for 29 labour inspectors on issues related to human trafficking for forced labour.

[13] Poland, Act on the Border Guard (*Ustawa o Straży Granicznej*), 12 October 1990.

[14] Art. 1.2 point 13a of the Act on the Border Guard. Poland, Act on the Border Guard (*Ustawa o Straży Granicznej*), 12 October 1990.

committed by foreigners. Officers of this division investigate the legality of foreigners' stay and work on Polish territory. On issues related to foreigners' employment, they closely cooperate with labour inspectors (see 3.1.1. above). The Operational and Investigative Division detects and prosecutes crimes related to the crossing of borders. Although the Act on the Border Guard does not explicitly mention labour exploitation or forced labour, they also fall under this Division's interest. This is in the context of human trafficking which is penalised by the Criminal Code and has a cross-border character. Work is currently on-going to introduce the articles of the Criminal Code which refer to human trafficking into the Act on the Border Guard. This would be to strengthen the Border Guard's mandate to deal with related issues [P(1)].

Within the Operational and Investigative Division, there are structures for dealing with issues related to human trafficking, including for forced labour. In 2008, the Chief of the Border Guard set up the Team for the Constant Monitoring and Coordination of Border Guards' Actions Related to the Prevention and Combating of Human Trafficking.[15] The Team is composed of nine officers. It coordinates Border Guard's undertakings related to human trafficking, monitors and analyses human trafficking cases disclosed by the Border Guard and cooperates with institutions designed to detect and investigate human trafficking, as well as institutions who provide support to the victims (see Chapter 3.1.6.). The cooperation is exercised mainly within the Interdepartmental Committee for Combating and Preventing Trafficking in Human Beings (see Chapter 3.1.6.) and within the referral system (Chapter 4.3.1.).

Furthermore, within the Operational and Investigative Managing Board of the Border Guard's Headquarters, there is a Section on Illegal Migration and Human Trafficking and the Central Coordinator for Human Trafficking Issues. The Central Coordinator coordinates the work of local coordinators for human trafficking issues and their deputies who operate within the Operational and Investigative Division in each of the ten Border Guard's territorial units and the Border Guard training centre in Koszalin. The coordinators coordinate actions related to human trafficking undertaken within their units, as well as in cooperation with the police and other institutions involved in dealing with human trafficking issues, including those providing support to the victims. Moreover, in the Border Guard's detention centres, within the framework of the so-called contact points on verifying the identity of foreigners, there are officers appointed to support actions in the realm of human trafficking.

3.1.3. Police

The policing of crimes by the police is regulated by the Act on the Police,[16] as well as the Code of Criminal Procedure.[17] The police deals specifically with crimes as defined by the Criminal Code. Since the Code refers to several forms of labour exploitation (see Chapter 2), the police investigates related cases. Different police divisions deal with different crimes. The scope of divisions' responsibilities is delineated by decrees of the Police Commander in Chief. The Economic Crimes Division polices crimes listed under the Criminal Code's chapter *Crimes Against the Rights of Persons Pursuing Paid Work* (Articles 218-221; for their wording see Chapter 2), and the Criminal Division polices human trafficking. Since the human trafficking definition embraces forced labour and the Criminal Code penalises forced labour solely in the context of human trafficking, it is the Criminal Division which deals with cases of forced labour, more specifically: human trafficking for forced labour. In 2007, the Deputy Chief of Police set up teams for combatting human trafficking in each voivodeship

[15] Poland, Decision of the Chief of the Border Guard of 18 June 2008, no. 139 (*Decyzja Komendanta Głównego Straży Granicznej z dnia 18 czerwca 2008 r. nr 139*).
[16] Poland, Act on the Police (*Ustawa o Policji*), 6 April 1990.
[17] Poland, Code of Criminal Procedure (*Ustawa Kodeks postępowania karnego*), 6 June 1997.

(provincial) police headquarters.[18] They are composed of between two and four officers employed full-time.

Furthermore, the Central Bureau of Investigation (CBI) [*Centralne Biuro Śledcze (CBŚ)*] which operates within police structures is specialised in combatting organised crime. It deals with human trafficking and other crimes which refer to the situation of employment if they have an organised character. The Central Team for Combatting Trafficking in Human Beings operates at the CBI's central level, within the National Polish Police Headquarters. It coordinates the activity of voivodeship teams for combatting human trafficking.[19] It also coordinates actions between the police and institutions designed to detect and investigate human trafficking in Poland and abroad, as well as between the police and institutions who provide support to the victims (see Chapter 3.1.6.), the latter mainly within the referral system (see Chapter 4.3.1.). Moreover, in each CBI local unit, that is in each of the 16 voivodeships, there are CBI coordinators for human trafficking issues, however, they are employed only on a part-time basis. They closely cooperate with voivodeship teams for combatting human trafficking [P(1)].

3.1.4. Prosecution

The prosecution system functions on the basis of the Act on Prosecution[20] and the Code of Criminal Procedure.[21] Within the prosecution, there is a system of coordination of prosecutorial proceedings involving human trafficking, including for forced labour. It was established by the General Prosecutor (then, the National Prosecutor) in 2007.[22] It is to ensure that the prosecutions are carried out properly and to report on the situation in that regard.

The system involves 22 prosecutors who coordinate preliminary proceedings in the area of human trafficking. The coordinators function in each of the 11 appellate prosecutor's offices and in selected regional prosecutor's offices. The main coordinator for human trafficking issues operates in the General Prosecutor's office, in the Department for Organised Crime and Corruption. The coordinators at the level of appellate prosecutions are obliged to carefully investigate the files involving human trafficking and to react if, in their view, the prosecution has not been carried out properly. The coordinator in the General Prosecutor's office analyses the information obtained from appellate prosecutors and reacts if found to be necessary. The coordinator analyses prosecutors' decisions on the prolongation of proceedings beyond one year with particular carefulness, since such decisions should be approved by the General Prosecutor [J(1)].

3.1.5. National human rights institutions

- **Human Rights Defender**

The Human Rights Defender (HRD) [*Rzecznik Praw Obywatelskich (RPO)*] acts on the basis of the Act on the Human Rights Defender,[23] and its role is to safeguard the rights and freedoms of citizens as set forth in the Constitution and other legal acts. The HRD

[18] Poland, Order of the Deputy Chief of Police of 5 July 2007, no. Akr-THB – 69/2007 (*Polecenie Zastępcy Komendanta Głównego Policji z dnia 5 lipca 2007 r., pismo nr l.dz. Akr-THB – 69/2007*).
[19] Poland, Organizational order of the Chief of Police No 43/07 of 14 June 2007 (*Polecenie Komendanta Głównego Policji nr 43/07 z dnia 14 lipca 2007 r.*).
[20] Poland, Act on Prosecution (*Ustawa o prokuraturze*), 20 June 1985.
[21] Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997.
[22] The system was formalised by the Order of the Deputy General Prosecutor of 19 July 2011, no. PG III PZ 404/21/11 (*Polecenie Zastępcy Prokuratora Generalnego z dnia 19 lipca 2011 r. sygn. PG III PZ 404/21/11*).
[23] Poland, Act on the Human Rights Defender (*Ustawa o Rzeczniku Praw Obywatelskich*), 15 July 1987.

investigates whether, due to any action or abstention on the part of state organs, organisations or institutions responsible for the observance and implementation of those rights and freedoms, the law and principles of community life and social justice have been infringed.

In 2011, the HRD set up the Commission of Experts for Migrant Issues composed of 10-20 experts. The experts voluntarily meet 3-4 times a year to discuss issues related to migrants' rights and formulate recommendations to the Defender. As a representative of the Commission stated, the Commission is interested in the situation of migrants in the Polish labour market, including in cases of labour law violation. The insight into related issues is one of the Commission's priorities for the years 2013-2014 [M(1)].

- **Ombudsman for Children's Rights**

The Ombudsman for Children's Rights [*Rzecznik Praw Dziecka (RPD)*] acts according to the Act on the Ombudsman for Children's Rights.[24] Its role is to ensure complete and harmonious development of children with due respect for their dignity and empowerment, and to protect children's rights, in particular, with regard to life and health, family life, proper social conditions and education. The Ombudsman takes measures based on information obtained from citizens or their organisations on cases of children's rights violations. It may apply to public authority agencies, organisations or institutions for the provision of necessary information as well as for disclosure for inspection of their documents, demanding that they undertake actions for the benefit of children.

Within this institution, no structures for dealing specifically with migrant children have been established. As emphasised by its representative, the Ombudsman has never dealt with any case involving migrant children's labour exploitation, except for a related issue of combating street begging of Romanian Roma children, following which it applied to the Ministry of the Interior to take appropriate steps [M(1)].

3.1.6. Victim support

- **National Consultation and Intervention Centre for Victims of Human Trafficking**

The National Consultation and Intervention Centre for Victims of Human Trafficking was established by the La Strada Foundation against Human Trafficking and Slavery in 2009, as a result of a public tender announced by the Ministry of the Interior for the accomplishment of the public task of appointing and operating the Centre. The Ministry has cyclically reopened the tender for running the Centre, and since 2013, two NGOs – the La Strada Foundation and the Po-MOC Association for Women and Children of Mary Immaculate – have operated the Centre. Both Polish nationals and foreigners may use its services.

The main activities of the National Centre are the following: identification of victims of human trafficking, intervention, maintenance of shelters for victims, providing care to foreigners embraced by the *Programme for Support and Protection of Victims/Witnesses of Human Trafficking* (including medical, psychological, and legal aid, assistance to the victims during meetings with the police and prosecutors), preventive counselling, consultations for various institutions and organisations, and running a 24h helpline for victims or witnesses of human trafficking.

In 2009-2011, 619 people received direct support from the Centre: 328 Polish citizens and 251 foreign nationals. In the same period, the *Programme for Support and Protection of*

[24] Poland, Act on the Ombudsman for Children's Rights (*Ustawa o Rzeczniku Praw Dziecka*), 6 January 2000.

Victims/Witnesses of Human Trafficking helped 90 foreigners (83 adults and 7 minors, including 2 children), of which 24 were victims of trafficking for forced labour.[25]

- **Interdepartmental Committee for Combating and Preventing Trafficking in Human Beings**

The Interdepartmental Committee for Combating and Preventing Trafficking in Human Beings was set up under the Prime Minister's ordinance in 2004.[26] It is a consultative and advisory body to the Prime Minister and it is responsible for day-to-day monitoring of implementation of the National Action Plan Against Trafficking in Human Beings. The Committee is headed by the Secretary of State in the Ministry of the Interior and it comprises representatives of government entities (ministers competent in the areas of: education, social security, justice, foreign affairs, health care, internal affairs; the Head of the Office for Foreigners, the Police Commander-in-Chief, the Border Guard Commander-in-Chief), as well as of invited institutions (the NLI, the National School of Judiciary and Public Prosecution, the HRD, the Ombudsman for Children's Rights, the Chancellery of the Prime Minister and the General Prosecutor) and NGOs dealing with trafficking in human beings (La Strada Foundation Against Trafficking in Persons and Slavery, Po-MOC Association for Women and Children of Mary Immaculate, Caritas Poland, Nobody's Children Foundation, ITAKA Foundation – Centre For Missing Persons, and Halina Niec Legal Aid Centre).

The working group for human trafficking issues and the working group for victim support services operate within the Committee. The working group for human trafficking issues meets four times a year, while the working group for victim support services meets every month [N(1)]. They are composed of representatives of institutions directly engaged in investigating and prosecuting human trafficking cases and providing support to the victims (the Department for Migration Policy at the Ministry of the Interior, the police, the Border Guard, the General Prosecutor's office, the National Consultation and Intervention Centre for Victims of Human Trafficking). They deal, among other things, with daily issues related to support for victims and its institutional context. They also identify structural problems related to providing support and search for remedies. Some participants of the reported research perceive the working groups as the main platform for communication between entities involved in issues related to human trafficking for forced labour [N(1); P(2)].

- **Other organisations and institutions**

Apart from the La Strada Foundation and the Po-MOC Association, who run the National Consultation and Intervention Centre for Victims of Human Trafficking and specialise in issues related to human trafficking, there are NGOs whose statutory goals embrace providing support to migrants. Although none of them focuses specifically on issues related to migrants' labour exploitation, they encounter related cases within their daily activities.

The Helsinki Foundation for Human Rights, the Association for Legal Intervention, the Rule of Law Institute, the Halina Niec Legal Aid Centre, as well as local branches of Caritas in Bialystok and Lublin provide legal aid to migrants. They deliver legal counselling mainly to third country nationals, including undocumented migrants and asylum seekers. Apart from that, they conduct research on the migrants' situation and publish information materials. The Free Speech Association provides support to the Vietnamese, in particular, by collecting evidence of instances of human trafficking among members of the Vietnamese community and referring victims to other NGOs, mainly the La Strada Foundation.

[25] Poland, *National Action Plan Against Trafficking in Human Beings for 2013-2015*, p. 2.
[26] Poland, Ordinance No 23 of the Prime Minister of 5 March 2004 (*Rozporządzenie Premiera RP nr 23 z dnia 5 marca 2004 r.*), recently amended through Ordinance No. 32 of the Prime Minister of 20 April 2012 (*Rozporządzenie Premiera RP nr 32 z dnia 20 kwietnia 2012 r.*).

Additionally, the International Organization for Migration (IOM) implements the Assisted Voluntary Return Programme and the *Migrants' Rights in Practice* project aimed at preventing migrants' labour exploitation (see Chapter 4.2.).

3.1.7. Comments on the institutional setting

Interviews conducted as part of this research provide insight into how the above-mentioned institutions operate and cooperate with each other in specific situations involving migrants' labour exploitation. Labour inspectors and law enforcement officers, in particular, from the Border Guard, highly value joint actions:

> *"When something is happening, when there are cases reported, there is information about some more serious violations, then we can quickly arrange a joint inspection."*[M(1)]

> *"The engagement of three institutions makes it possible to, on the one hand, help the victims – foreigners, migrants – in a more thorough manner, and [on the other hand] to capture, detain and, in a somewhat longer perspective, sentence and judge the perpetrator of the crime."* [P(1)]

> *"Jak coś się dzieje, są jakieś zgłoszone przypadki, pojawiają się informacje na temat takich poważniejszych naruszeń, to jesteśmy w stanie szybko zorganizować taką kontrolę wspólną."* [M(1)]

> *"Zaangażowanie trzech instytucji sprawia, że z jednej strony i ofiarom, cudzoziemcom, migrantom, można pomóc w sposób bardziej rzetelny, a też [z drugiej strony] doprowadzić do ujęcia, zatrzymania, no i gdzieś tam w dalszej perspektywie skazania i osądzenia sprawcy przestępstwa."* [P(1)]

The rest of the interviewees' comments on cooperation mainly concerned the referral system, investigations and prosecution, as well as victim support, thus they are discussed in sections 4.3. and 5 of this report, respectively. Here, it is worth noting that independently of the formal assignment of tasks to particular institutions, the interviews reveal an informal division of responsibilities between institutions involved in detecting cases of labour exploitation; mainly between the Border Guard and the police. Such a division results from the institutional practice and refers to human trafficking cases.

A representative of the police expanded on this issue: it is primarily the Border Guard who deals with human trafficking for forced labour, while the police deals mainly with human trafficking for sexual exploitation. The interviewee explained this as an outcome of the tight cooperation between the Border Guard and the NLI in connection with both institutions' powers to investigate the legality of foreigners' employment. As a result the Border Guard, compared with the police, offers better recognition of issues related to the presence of migrants on the Polish labour market. Furthermore, as he stated, the Border Guard deals mainly with human trafficking which involves migrant victims in Poland, while the police focuses on human trafficking which involves Polish victims abroad. This is the case for two main reasons. Firstly, the Border Guard officers are trained better than police officers in foreign languages and issues related to the cultural difference:

> *"The Border Guard, because of their presence at the borders, have more contact with foreigners which is connected with the specialisation of structures, the knowledge of languages for once, or the ability to culturally*

approach foreigners, training (…) If we stumble upon a case of forced labour of foreigners from an exotic country, we are dealing with, say, house slavery, and it's a case of, let's say, a female Indian national, then the capacities deriving from cultural competence and the contact [with foreigners] are far greater in the Border Guard. And it's possible that this Hindu woman who escaped from home where she had been exploited for years will end up at the police station and the first thing the police officer will do will be to contact the Border Guard. And not only to check the legality of her stay in the country, but most of all to help to communicate, contact and obtain reliable evidentiary material to establish that she is the victim" [P(1)]

"Straż Graniczna z racji ich obecności na granicach ma zdecydowanie większy kontakt z cudzoziemcami, co się wiąże oczywiście z wyspecjalizowaniem struktur, chociażby znajomością języka czy umiejętnością postępowania kulturowego z cudzoziemcami, przeszkolenia. (…) Jeśli trafia się przypadek pracy przymusowej cudzoziemców z bardzo egzotycznego kraju, mamy do czynienia, powiedzmy, z niewolnictwem domowym, i jest to przypadek obywatelki, dajmy na to, z Indii, to możliwości wynikające z wiedzy kulturowej, obcowania, są w dużej mierze większe w Straży Granicznej. I możliwe, że ta Hinduska, która ucieknie z tego domu, gdzie była eksploatowana przez lata, i trafi do policji, to policjant pierwsze, co zrobi, to skontaktuje się ze Strażą Graniczną. I nie tylko ze względu [na to], żeby sprawdzić jej legalność pobytu na terenie kraju, ale przede wszystkim, żeby pomóc w komunikacji, w kontakcie i w uzyskaniu wiarygodnego materiału dowodowego na to, że jest ona osobą pokrzywdzoną." [P(1)]

Secondly, as a rule, victims of human trafficking prefer to report harm done to them to institutions in their country of origin. Thus, it is the police, and not the Border Guard, who receives complaints from Poles exploited abroad, and it follows the cases in cooperation with the police from countries where the Poles' exploitation took place [P(1)].

Furthermore, the institutional setting presented in the above subchapters discloses that although specialised structures for dealing with human trafficking for labour exploitation are quite firmly established, with coordinators functioning within the Border Guard, the police and the prosecution, NGOs performing the role of the National Consultation and Intervention Centre, and the Interdepartmental Committee for Combating and Preventing Trafficking in Human Beings which provides a platform for communication between all entities involved in combatting human trafficking and supporting victims, this is not the case for dealing with issues related to migrants' labour exploitation which occurs independently of human trafficking. This brings consequences for the effectiveness of the referral system and support offered to migrant victims of labour exploitation who are not victims of trafficking (see Chapters 4.3. and 5).

As noticed by a few interviewees, in particular [N(1); J(1)], the development of structures for human trafficking issues has been facilitated by international agreements, chiefly the Council of Europe Convention on Action against Trafficking in Human Beings, and related obligations of Poland, for instance, reporting on the phenomenon. The development of similar structures for dealing specifically with migrants' labour exploitation is lacking such a stimulus. One interviewee pointed to two interrelated factors which hinder progress in this area. First, it is the lack of recognition of migrants' labour exploitation as an important subject for dedicated policies:

> *"The main problem is the awareness of this phenomenon. I think that this issue is still barely recognised by the society and institutions, which would be or are, in principle, responsible for fighting such phenomena."* [N(1)]
>
> *"Problem polega na świadomości zjawiska przede wszystkim. Myślę, że ono jest ciągle jeszcze w niewielkim stopniu przedmiotem świadomości czy społecznej, czy tych instytucji, które byłyby, czy z założenia są, odpowiedzialne za zwalczanie tego typu zjawisk"* [N(1)].

Second, it is the lack of leadership in this area:

> *"There is no leader. It could be assumed that this role should be taken by institutions responsible for the labour market; that is, the Ministry of Labour and Social Policy or the NLI. But the NLI is positioned differently, outside of government administration, which is a long tradition in Poland, but is it useful? It seems that truly there is no place or unit in the government administration which could be identified as responsible for addressing these issues in a systematic way."* [N(1)]
>
> *"Nie ma lidera. Można by było założyć, że to będą te instytucje, które odpowiadają za rynek pracy, czyli Ministerstwo Pracy i Polityki Społecznej, bądź PIP. Ale PIP jest inaczej usytuowany, poza administracją rządową, co jest długą polską tradycją, ale pytanie, czy użyteczną. Tak to wygląda, że rzeczywiście nie ma w administracji rządowej takiego miejsca, że można by powiedzieć, że ktoś tą problematyką w sposób zorganizowany się zajmuje"* [N(1)].

This is even more so since according to several interviewees, the problem of labour exploitation in Poland in general, not only with the reference to migrants, is lacking a developed institutional response and political commitment [P(1), S(1), N(1)]. The lack of a defined policy in the realm of migrants' labour exploitation translates into the lack of relevant studies on the issue, and the lack of any monitoring to recognise specifically such exploitation. Considering the nonexistence of any statistical evidence, a labour inspector expressed strong caution in determining whether the migrants' labour exploitation really occurs in Poland:

> *"I actually don't know where I would go to get statistical data where this problem is the greatest or whether it exists at all. There is no leading institution to monitor it. (…) I don't know it [the scale of the problem], in reality. The only thing we succeed in here is inspection results, and that is a small percentage or even per thousandth of this problem. We learn about the rest from the media, from those types of channels."* [M(1)]
>
> *"Tak naprawdę nie wiem, gdzie bym się miał udać po takie dane statystyczne, gdzie ten problem jest największy i czy w ogóle występuje. Brak instytucji wiodącej, która by to monitorowała. (…) Ja nie wiem tego w rzeczywistości [jaka jest skala problemu]. To, co u nas się udaje, to jest tylko wynik kontroli, a to jest mały procent czy nawet promil tego problemu. A o reszcie dowiadujemy się z mediów, tego typu nośników."* [M(1)]

Finally, what is lacking within the institutional layout presented above are trade unions and employers' organisations. They do not conduct special activities for the benefit of migrants, which is related, on the one hand, to the meagre share of migrants in the Polish society and

the Polish labour market, and on the other hand, to the relatively low level of both employees' and employers' self-organisation in Poland.

As emphasised by interviewees, especially [N(1)] during the individual interview, and [W(1)] during the focus group interview, migrants are not trade unions' members, nor do they have access to any organisation of this kind, especially since they typically work in small companies or the agriculture sector where trade unions do not function. Apart from that, as an employment agent suggested [R(1)] and a trade union representative did not deny [FG(W)], migrants are not warmly welcomed among trade unions' members who perceive them as a threat to the Polish labour market. Still, the respondents did not see any significant link between migrants' absence from trade unions' structures and their vulnerability to labour exploitation (see Chapter 4.1.1.). Trade unions' and employers organisations' inactivity in the field of support for migrants translates into the lack of cooperation between them and the institutions described in the above subchapters. One respondent [N(1)] mentioned a training session on migrants' labour exploitation that a ministerial department delivered to trade unions' representatives. Apparently because of the lack of initiative from the unions, the training has not lead to any more developed joint actions. In the opinion of the same interviewee, the most important Polish employers' organisations are also difficult to cooperate with due to their focus rather on large-scale lobbying activities than on projects addressing the situation of migrants:

> *"Employers' organisations often seen in the public sphere are not the same organisations we could talk to about migrant workers. They are often focused on lobbying – unlike organisations in other EU countries which bring together entrepreneurs, nearly compulsorily – and we meet the same people all the time, as they move from 'Lewiatan' [i.e. the Polish Confederation of Private Employers; one of the main employers' organisations in Poland] to another organisation and are ready to comment on any issue, but their words are of no consequence."* [N(1)]

> *"Te organizacje pracodawców, które są widoczne w opinii publicznej to nie są te, z którymi moglibyśmy rozmawiać na temat pracowników cudzoziemskich, bo one też mają charakter raczej lobbystyczny niż organizacji takich, z jakimi mamy do czynienia w innych krajach Unii Europejskiej, gdzie drobni przedsiębiorcy są zrzeszeni prawie na zasadzie obowiązkowej, a my mamy do czynienia ciągle z tymi samymi osobami, które z Lewiatana [tj. jednej z największych organizacji pracodawców w Polsce] przechodzą gdzieś indziej i są gotowe wypowiedzieć się na każdy temat, z czego nic w moim przekonaniu nie wynika."*[N(1)]

Interviews conducted among the representatives of trade unions and employers' organisations confirm their lack of significant experience in dealing with issues relating to the labour exploitation of migrants.

3.1.8. Detection of migrants' labour exploitation

The methodology of gaining knowledge of particular cases of labour exploitation, combined with the specificity of the mandate of involved institutions, mainly the NLI, reveal gaps already at the stage of detecting exploitation. As mentioned in Chapter 3.1.1., the NLI is not entitled to conduct inspections in private homes and private agriculture. Only law enforcement agencies can freely enter private premises, but only under the condition that there is a well-grounded suspicion that someone's life or health is endangered [P(1)]. As one M group representative explained, in practice, the working conditions of those who perform work for individual farmers are beyond any control:

"The Act on the National Labour Inspectorate, in a way, restricts the range of entities inspected. Employers and entrepreneurs that hire individuals (natural persons) are subject to inspections. This does not apply to, for example, individual farmers who are not employers, if nobody works for them under an employment contract, and they can hire people under a civil law contract or illegally. They are not entrepreneurs so, according to the law, such farmers are not subject to inspections. The Border Guard possibly has some say in this respect, but the thing is that checking the observance of workers' rights is not within their remit, so we are back to square one." [M(1)]

"Ustawa dotycząca Państwowej Inspekcji Pracy w pewnym sensie ogranicza krąg podmiotów kontrolowanych. Kontroli podlegają pracodawcy i przedsiębiorcy, na których rzecz wykonują pracę osoby fizyczne. W tym zakresie nie mieszczą się już np. rolnicy indywidualni, którzy nie są pracodawcami, jeżeli nikt tam na podstawie umowy o pracę nie pracuje, a może być, że zatrudnia kogoś na umowę cywilnoprawną albo na czarno. Nie są przedsiębiorcami, więc ustawa mówi, że się takich rolników indywidualnych nie kontroluje. Takie kompetencje ma ewentualnie Straż Graniczna, tylko tu jest taki kłopot, że oni nie mają z kolei w swoim zakresie działania pod kątem kontroli przestrzegania praw pracowniczych, więc tu kółko jest takie zamknięte." [M(1)]

The detection of cases of labour exploitation in other sectors of economy is not entirely effective either. The police and the Border Guard are entitled to conduct operational activities when there is a suspicion of a crime, such as human trafficking for forced labour. However, as one interviewee mentioned [N(1)], it only very rarely happens that cases of this kind are detected due to such actions. It appears that none of the cases submitted for the purpose of this study by the Border Guard was detected solely as a result of Border Guard's operational activities (Case studies show that even instances of the most severe forms of labour exploitation came to the relevant institution's attention as a result of victims' or witnesses' complaints (see five of the case studies), or by accident, for instance, due to a random ID control by the Border Guard (as occurred in two case studies), or a scheduled inspection of an employment agency (one case study). In turn, in a case of Azerbaijani workers in illegally functioning tobacco manufactories, which was detected due to law enforcement agencies' actions, it appears that migrants were taken for perpetrators, although there were evident traits suggesting that they were victims of human trafficking for forced labour.

Both the police and the Border Guard receive notifications of crimes from any individuals or institutions. As mentioned by a representative of the police, Border Guard officers are better trained than police officers in dealing with language and cultural differences, thus it is likely that if a migrant reports labour exploitation to the police, the case will be referred to the Border Guard (Chapter 3.1.7.). Although the interviewee claimed that regular police officers would know what to do – they would inform the Border Guard about the complaint or they would contact a coordinator for human trafficking issues at the voivodeship level [P(1)] – the case of a Ukrainian woman exploited by a farmer suggests that it does not happen as a rule. In this case, police officers reacted only after the woman had strongly insisted on needing help. The lack of sufficient training for police officers on issues referring to labour exploitation as a problem which negatively influences the reception of related complaints was also put forward by several NGO activists who were interviewed [S(3)].

The NLI is entitled to inspect both the legality of foreigners' employment and the compliance of working conditions with labour law. With respect to the latter, the NLI's mandate is limited to inspecting employers who employ workers on the basis of employment contracts. It does not embrace inspections of relationships between employers and employees which are

based on civil law contracts, since civil law contracts do not fall under labour law regulations related to working conditions (as seen in three case studies). This significantly lowers the scope of NLI's inspections. Meanwhile, civil law contracts are what employers commonly offer to migrant workers [R(1); P(1); J(1)]. The exploitation is particularly likely to occur when workers agree to work partly illegally in order to increase their incomes. As an employment agent explained, it very often happens that a civil law contract stipulates that the migrant will obtain an extremely small amount of money, but the migrant still wants to work for the employer, because he or she is promised a bigger amount of unregistered wages. If the employer is unfair, the migrant will not be paid the agreed sum and will not have any tools to enforce the payments from the employer. In such circumstances, even if the NLI inspects the employer, for instance, to check if the completion of the civil law contract complies with labour law regulations, because this is what the NLI is entitled to inspect, the inspection will prove ineffective:

> *"All workers checked by the NLI have signed civil law temporary contracts but they amount to 200 zloty. An NLI official is not going to stay there for a full month and try to prove that the 200 zloty is not really what [the workers] get. The employer pays them 200 zloty, or transfers [the money] to their account, and gives them the remaining 1,000 or 2,000 zloty in an envelope, and sometimes they don't pay anything, or they pay 500 instead of 1,000 or 2,000 zloty. (…) But when the NLI inspects a company that operates this way, [the inspector] can't do anything about it. (…) An individual is employed, both parties have agreed to it and that's all."* [R(1)]

> *"Pracownicy, których kontroluje PIP, mają wszyscy podpisaną umowę zlecenie, tylko podpisaną na 200 zł. Taki urzędnik z PIP-u nie będzie tam siedział cały miesiąc i potem udowadniał, że te 200 zł to nie jest tak naprawdę tyle, co on [migrant] dostaje. Ten pracodawca daje mu 200 zł, czy tam przelewa na konto, a resztę 1000 zł czy 2000 zł daje mu w kopercie, a czasami mu nie daje, albo zamiast tych 1000 zł czy 2000 zł daje mu 500 zł. (…) W takiej sytuacji, gdy PIP przychodzi i kontroluje firmę, która tak po prostu robi, to nic nie może z tym zrobić. (…) Gość jest zatrudniony, obie strony się zgodziły, tyle."* [R(1)]

Furthermore, as noted by interviewees, the insufficient number of NLI staff limits the number of entities that the NLI is able to inspect and negatively influences the thoroughness of inspections [N(1); FG(M)]. The labour inspector provided data from the Mazowieckie Voivodeship where about 40,000 migrants are granted work permits and the local inspectorate receives around 8,000 letters of complaint concerning instances of rights' violations from both migrant and Polish workers each year. Meanwhile, there are only 150 inspectors in the local NLI unit. This is too low a number for the needs [M(1)].

During the inspection, labour inspectors are obliged to check documents related to the workers' employment. Whether they go beyond this obligation, for instance, by speaking with the employees, or not, depends solely on the methodology of inspection employed by individual inspectors:

> *"An inspector decides how he or she is going to proceed. They can ask the employer for clarifications, they can inspect the entire facility, the way the work is done, so they walk around the workplace, watch what's going on there."* [M(1)]

> *"To inspektor decyduje o tym, w jaki sposób to będzie prowadził. Bo to mogą być wyjaśnienia pracodawców, mogą to być oględziny całego*

zakładu, sposobu wykonywania pracy, czyli przejście po zakładzie, oglądanie tego, co tam się dzieje." [M(1)]

A few interviewees pointed out that the only thing that the inspectors do is look through employment contracts and the related documentation:

"The legality of employment is assessed mostly through examination of documents, not talking to people. And this is the difference between the proceeding by the NLI and the Border Guard, I mean the foreigners divisions in particular here, (…) and the actions by the police in the operational sense and the actions of operational and investigative divisions in the Border Guard." [P(1)]

"Legalność zatrudnienia bada się, przeglądając dokumenty przede wszystkim, a nie rozmawiając z ludźmi. I to jest ta różnica między procedowaniem inspekcji pracy i Straży Granicznej, tutaj mówię szczególnie o pionie cudzoziemskim (…), a działaniami policji w sensie operacyjnym i działaniami pionów operacyjno-śledczych w Straży Granicznej." [P(1)]

In companies which employ foreign workers, such course of proceedings is all the more likely, since inspectors have limited possibilities to communicate with workers for the lack of access to translators and lack of training in foreign languages: *"it may turn out that we can't communicate with them" ["może się okazać, że nie umiemy się z nimi porozumieć"]* [M(1)]. As a result, labour exploitation of migrants may easily go unnoticed. This happened in the case of Bangladeshi migrants who worked in a shipyard. Although the inspectors noticed irregularities related to the fact that the migrants did not perform the kind of work as defined in their work permits, they did not detect the severe exploitation that they were subject to from the owner of the agency which provided workers to the shipyard.

Moreover, the NLI is not entitled to inspect workers' accommodation conditions, since these do not fall under labour law regulations. According to the employment agent, this is a significant weakness, because the accommodation conditions often do not meet standards of decent living [R(1)]. The inspectors cannot impose any penalty on the employer who offers such standards, and the only thing that they can do is to bring the case to the attention of other institutions, for instance, the sanitary inspectorate or fire brigades:

"When we get complaints or deal with some spectacular cases of exploitation, sometimes we also visit the living quarters if there are complaints about inadequate conditions there. The thing is, though, that we may not do it ourselves, so we submit our findings to the State Sanitary Inspection and the Fire Service, if a fire hazard occurs." [M(1)]

"Jak są jakieś skargi czy spektakularne przypadki takiego wykorzystywania, to też czasami wizytujemy takie miejsca zakwaterowań, jeżeli są skargi na to, że są tam warunki nieodpowiednie. Z tym że tutaj tego sami też nie możemy załatwić, więc wysyłamy takie już ustalenia do sanepidu i do straży pożarnej, jeżeli jest zagrożenie pożarowe." [M(1)]

Furthermore, the NLI is not entitled to inspect the working conditions of workers posted to work in Poland by a company registered in a third country. Meanwhile, it happens that these conditions are very poor [P(1)], and there is nothing that any institution can do about it. The case of North Korean workers employed in a shipyard exemplifies the situation of this kind.

Another problem arises on the grounds of the Act on freedom of economic activity which provides that inspectors are obliged to notify employers about the planned inspection between 7 and 30 days in advance (Article 79). [27] This does not refer to industrial and commercial workplaces which, according to the ILO's Labour Inspection Convention of 1947, can be inspected with no limits, at any time during a day or at night.[28] The provision does not refer to inspections conducted in order to counteract offences or crimes either. Therefore if migrants' labour exploitation is suspected, the inspection is carried out without prior notice [M(1); FG(M)]. However, the problem remains that, as one M group interviewee stated, the NLI is not entitled to conduct operational activities, hence chances for migrant labour exploitation to be suspected are low. Although the NLI closely cooperates with the Border Guard which is authorised to conduct operational activities, the effectiveness of the Border Guard is not particularly high in that regard (see above). Thus, interviewed labour inspectors spoke about announcing inspections. In such circumstances, the unfair employer has enough time to erase all traces of his or her illegal activity:

> *"Irregularities are detected in some way, and they exist because if there's anything wrong in the documentation, it's impossible to hide everything. But let's not fool ourselves: if I notify a workplace that I will be checking the residence status, individuals without a work permit and without a visa will not be physically there. If [an employer] keeps someone locked up, he won't show them to me."* [P(1)]

> *"Nieprawidłowości się stwierdza w jakiś sposób i one są, bo nie wszystko może człowiek w swojej dokumentacji wyprostować, jeżeli coś ma nie tak. Ale nie czarujmy się, że jeżeli ja zawiadomię dany zakład pracy, że będę sprawdzał legalność pobytu, że te osoby, które nie mają legalności pracy, bez wizy, że one tam będą się fizycznie znajdowały. Albo że jeżeli ma kogoś w zamknięciu, to że on mi go pokaże."* [P(1)]

Finally, the NLI conducts regular inspections scheduled in advance and intervention inspections upon a media report or a complaint from a worker. However, as emphasised by a representative of the NLI, it very rarely happens that migrant workers notify the NLI about workers' rights infringements that they face as victims. As one respondent explained, this is because of the NLI's ambiguous mandate. On the one hand, the NLI's role is to protect migrant workers' rights, but on the other hand, it is to inspect the legality of the foreigners' employment:

> *"Our powers are quite contradictory. On the one hand, there is this [issue of] employment legality where we can also punish foreigners and eventually make them leave the country but on the other – we are there to protect their rights, so these are conflicting things."* [M(1)]

> *"My mamy te uprawnienia trochę sprzeczne. Z jednej strony jest ta legalność zatrudnienia, gdzie możemy karać też cudzoziemców i doprowadzać nawet w ostateczności do ich wydalenia, ale z drugiej strony mamy chronić ich prawa, więc to się ze sobą kłóci."* [M(1)]

NGO representatives also spoke about this problem and recalled cases when the ambiguity of the NLI's mandate resulted in migrants' resignation from asserting their rights (for further reasons for underreporting see: Chapter 6.2.).

[27] Poland, Act on freedom of economic activity (*Ustawa o swobodzie działalności gospodarczej*), 2 July 2004.
[28] International Labour Organization, *Labour Inspection Convention, 1947 (no. 81): Convention concerning Labour Inspection in Industry and Commerce*.

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

In line with the interviewee questionnaire which, in its first part, referred to the interviewees' professional experience, respondents' answers to questions on forms of migrant labour exploitation, as well as occupations and economic sectors most prone to the exploitation should be regarded as conveying the character of the interviewees' work rather than as reflecting the situation in Poland. The vast majority of the respondents were not able to support their views on these issues with any data gathered in a systematic manner. When presenting them, they usually referred to isolated cases that they had personally dealt with or they had heard of. For at least a half of interviewees, the indicated occupations and economic sectors for migrants' labour exploitation were not the 'most frequent' but rather the only ones that they had encountered. Still, the interviewees' answers reveal quite a strong consensus as far as the occupations and economic sectors are concerned.

When responding to the first question, ten interviewees, including seven from law enforcement agencies and state institutions, were not able to indicate any form of migrants' labour exploitation that they had come across in the course of their professional life. Given the fact that strong efforts were made to recruit interviewees experienced in the field of migrant labour exploitation (Chapter 1), it may be concluded that state institutions expected to deal with the issue identify related cases relatively rarely. Activists of all civil society organisations who provide support to migrants pointed to at least one encountered form of migrant labour exploitation and they reported slightly more frequent instances of learning of a case of exploitation than representatives of monitoring, law enforcement and justice system institutions. This resonates with the activists' comments on migrant victims' tendency to resign from notifying state bodies about their problems, in particular with executing wages, and from asserting their rights with the help from these bodies (Chapter 6.2.).

Not surprisingly, trafficking for labour exploitation was a form of migrant labour exploitation indicated mainly by coordinators for human trafficking issues who function within the Border Guard, the police and the prosecution. N and S group representatives also pointed to this item. Another interviewees who chose it were for the most part those who had come across only isolated cases of human trafficking in the course of their professional life. The vast majority of those who indicated human trafficking for labour exploitation as an encountered form of migrant exploitation also indicated forced labour, and almost all who pointed to forced labour also pointed to human trafficking for labour exploitation. This is related to the fact that forced labour is not defined, nor penalised, by Polish law independently of human trafficking (Chapter 2).

Table 1: Forms of encountered labour exploitation: breakdown by professional group

	M	P	S	J	L	R	W	E	N	Total
Slavery		1	2		1				1	**5**
Forced labour, including bonded labour (e.g. debt bondage)	1	4	4	2	3				2	**16**
Child labour			1	2						**3**
Trafficking for labour exploitation		4	7	5	3				2	**21**
Exploitation of a migrant worker under particularly exploitative working conditions (in the terms of the ESD)	4	1	7	3	4	2			2	**23**

The interviewees most commonly indicated exploitation of a migrant worker under particularly exploitative working conditions in terms of the Employer Sanctions Directive as a form of migrant labour exploitation that they had come across in the course of their professional life (23 indications). In turn, very few pointed to child labour (see Chapter 5.3. for more details).

Table 2: Frequently observed conducts contributing to labour exploitation: breakdown by professional group[29]

	M	P	S	J	L	W	E	Total
Migrant workers do not have a contract written in a language they understand, or do not have a contract at all	6	6	6	3	3	1	1	**26**
Migrant workers are not properly informed about their entitlements as concerns wages, working conditions, annual leave etc.	5	2	4	6	3	1		**21**
Employers withhold wages or pay considerably less than what they are obliged to pay	4	5	7	6	4	1	1	**28**
Parts of what is paid flows back to employers, e.g. for fees which the employer owes to recruiters or for food or services provided by the employer		3	4	2	1			**10**
The migrant worker depends on the employer beyond the employment contract, e.g. as concerns accommodation or employment of family members	2	3	5	4	3		1	**18**
Employer does not pay social security contributions	4	3	4	2	2	1	1	**17**
Migrant workers are not allowed to go on annual leave		2	3	2		1	2	**10**
Migrant workers are restricted in their movement, either by physical barriers or by practical means, such as withholding travel documents		3	3	4	1			**11**
The employer adds to the migrant worker's isolation by impeding communication e.g. communication to representatives of labour unions or to labour inspectors		2	1		2			**5**
The migrant worker is subjected to physical violence or to threats of such violence		2	2	2	1			**7**
The worker's health conditions are impaired, e.g. through labour-intensive work or long hours		1	2	1				**4**
Other		1	1					**2**

The conduct contributing to labour exploitation most frequently observed by interviewees is that when employers withhold wages or pay considerably less than they are obliged to pay (28 indications). All interviewees from the victim support (S) group, as well as the majority of interviewees from monitoring institutions (M) and law enforcement (P) groups chose the related item. The fact that slightly lower share of professionals from M and P groups comparing to all professionals from the S group pointed to this practice is related to what was signalised above: as revealed by NGO representatives, after the migrants report their situation to them, they tend to resign from asserting their rights to the help of state institutions.

[29] Representatives of N group and employment agents (the R group) were not asked the related question. Two interviewees refused to provide an answer and explained their refusal with the lack of relevant experience [M(1); L(1)]. Thus, the total number of those who provided an answer was 34. Although interviewees were asked to choose up to five items from the list, some were not able to limit their answer to five: one pointed to as many as ten items, one pointed to eight items, two pointed to seven items, and one pointed to six items.

Many interviewees also observe that migrant workers are not properly informed about their entitlements concerning wages, working conditions, annual leave etc. (21 indications). In other parts of the interview, they linked it to the lack of contracts or the lack of contracts written in a language that migrant workers understand, or to the employers' practice of lowering wages motivated by the provision of food and/or accommodation. Within the respondents' answers to the question on the most frequent conducts contributing to labour exploitation, the latter linkage is reflected by the fact that the majority of those who pointed to the item 'parts of what is paid flows back to employers' as one of the most common practices (7 out of 10 respondents) also chose the item referring to the lack of proper information for migrants on their entitlements when it comes to wages. The rest who pointed to payments flowing back to employers, in other parts of the interview, linked it to the activity of recruitment and employment agencies who lend money to migrants for services related to bringing them to Poland.

Furthermore, over two-thirds of the interviewees, almost all from monitoring institutions (M), law enforcement (P) and victim support (S) groups, frequently observe the lack of contracts or the lack of contracts written in a language that migrant workers understand (26 records). As already noted, the fact that migrants do not comprehend their contracts may result in wages lower than those expected. Respondents exemplified this with contracts saying that the migrant earns in PLN while the migrant thinks it is in euro [S(1); FG(P)]. A representative of a victim support organisation also referred to 'tricky contracts' which guarantee only that the migrant is paid for what he or she does. Thus, for instance, mushroom pickers are paid for the picked mushrooms, but the contract does not guarantee that the mushrooms will be available for them to pick all the time [S(1)].

What differentiates the lack of contracts from the practice of withholding wages or paying less is that, according to the interviewees, it should not be considered a form of exploitation that the migrant is passively subject to in each case, since it happens that the illegal work is agreed upon by both parties: the employer benefits from lower employment costs and the migrant – from higher wages [M(1); R(1)]. Thus, most probably not all interviewees who pointed to the lack of contracts considered this a purely exploitative practice. Similarly, the lack of social security contributions and annual leave might not have been recognised as exploitative by interviewees. For this reason, probably some resigned from pointing to related items, although they did observe the practice. This was explained by one respondent:

> *"In most cases foreigners, especially from neighbouring countries, arrive in Poland to find seasonal employment, they want to earn as much as possible and accept terms [of employment] without leave, provided they are paid per hour, for instance."* [L(1)]

> *"W większości przypadków cudzoziemcy, zwłaszcza z krajów ościennych, przyjeżdżają tutaj do pracy sezonowej, chcą jak najwięcej zarobić i zgadzają się na takie warunki bezurlopowe, byle by była opłata za godzinę na przykład."* [L(1)]

When referring to the lack of contracts, the interviewees spoke about the specific situation of migrants from several countries. Namely, according to the decree of the Minister of Labour and Social Policy, citizens of Ukraine, Russia, Belarus, Moldova and Georgia, and since 2014 – also Armenia, are partly exempt from work permits – they can work in Poland for up to six months in a year based only on the employer's statement registered at the labour office, regarding the intention to employ the person.[30] The employer's statement is the basis

[30] Poland, Decree of the Minister of Labour and Social Policy of 20 July 2011 on cases when entrusting work to foreigners in the territory of the Republic of Poland is allowed without the need to obtain a work permit [*Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 20 lipca 2011 r. w sprawie przypadków, w których*

for the foreigner to obtain a Polish visa. As the interviewees commonly pointed out, mainly in reference to Ukrainians, it often happens that migrants receive the visa based on the statement, but they are not interested in working for the employer who issued the statement and, after coming to Poland, they go directly to another employer who employs them illegally. As mentioned above, illegal employment is profitable for both parties. However, it also exposes migrants to exploitative practices from employers. The practice of getting into the illegal employment relationship in such a way is all the more common, since there is no institution effectively monitoring the issuing and flow of statements. The statements are therefore subject to illicit trafficking, although the employer cannot charge the migrant for the statement, and falsification (Chapter 4.1.1.).

Employers' conducts which surpass pure employment relationship ('the migrant worker depends on the employer beyond the employment contract, e.g. as concerns accommodation or employment of family members') and, even to a greater extent, the conducts which involve coercion exerted on migrants ('migrant workers are restricted in their movement', 'the employer adds to the migrant worker's isolation by impeding communication' and 'the migrant worker is subjected to physical violence or to threats of such violence') are frequently observed mostly by those who encountered the most severe forms of labour exploitation, such as the trafficking for labour exploitation and slavery, in the course of their professional life. Typically, these were not representatives of the M group or workers' and employers' organisations (groups W and E). Thus, the fact that these conducts were considered particularly frequent by only a portion of interviewees points not so much to their actual frequency, but rather to the character of the interviewees' work as coordinators for human trafficking issues within law enforcement agencies and prosecution, NGO activists specialising in human trafficking issues, and participants of legal proceedings (mainly prosecutors and judges) whose experience in labour exploitation of migrants usually did not go beyond a single case related to human trafficking that they had personally dealt with.

There was a consensus among the interviewees that the exploited migrants are usually unskilled workers. As many as 16 respondents spoke about unskilled construction workers in this context, and 13 interviewees referred to unskilled factory workers. Some specified the occupation by recalling particular cases that they had encountered, for instance, a butcher, a worker in a shipyard, a worker in furniture production. Additionally, 23 respondents pointed to farm labourers, that is, to those who perform works which do not demand any special skills either. Eleven interviewees spoke about service occupations, mainly domestic workers, eight – about sales occupations, mainly shop assistants, and nine – about semi-skilled workers, working mainly in construction. None of the respondents mentioned skilled workers, clerical occupations, or professional and technical occupations.

According to the interviewees, the gender composition of exploited migrants depends on the sector of economy: as a rule, women are exploited as domestic workers and men are exploited as construction workers. In agriculture and manufacturing, both female and male migrants are exploited. In the course of the interviews, the respondents referred to the victims' country of origin. Many noticed that it is primarily Ukraine, some added other neighbouring countries (Belarus, Russia) and/or Caucasus and central-Asian countries of former CIS territory. Interviewees also referred to south-eastern Asian countries, mainly Vietnam, but also Thailand, Philippines, Nepal and Bangladesh. A representative of the police expanded on this issue and explained that migrants from former CIS territory perform mainly simple works (farm labourer, unskilled worker), while migrants from south-eastern Asia work in occupations which demand some basic skills, e.g. sewers, and in these occupations they are subject to exploitation [P(1)]. None of the interviewees presented a contradicting viewpoint. A few added, however, that the Vietnamese tend to be exploited by

powierzenie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę].

other Vietnamese migrants in performing unskilled occupations related to trade and food services (in particular S(1), see also the relevant case study).

Interviewees most commonly pointed to the agriculture (22 records) and construction (21 records) sectors as the ones most prone to migrants' labour exploitation. The majority of those who pointed to agriculture specified growing or picking fruits and vegetables. Ten respondents referred to manufacturing, including seven – to the manufacture of food products. Seven spoke about activities of households as employers, six about restaurants and food service, three about other service activities, and seven about retail trade. As mentioned in Chapter 3.1.7., some interviewees emphasised that labour exploitation of migrants occurs in small rather than large companies. While not denying such an observation, a representative of the police noticed that the exploitation is likely to take place at huge construction sites, for instance, during the construction of roads and railways, and in large factories, where the employment structure is complicated and difficult to inspect for involving many subcontractors:

> *"Exploitation at the level of subsubsubcontractors can be perfectly hidden. (…) Hidden in the formal sense, so that before the NLI inspection gets to it or – in the context of migrants – a joint inspection by the Border Guard and labour inspectorate, sometimes assisted by the police, the exploitation manages to end. (…) On construction sites, where there are more people or in factories – say, such a shipyard where there is a lot of people – here, we are aware that nowadays work is not performed in such a way that one company employs 300 people. The company employs five subcontractors, another company employs another five or ten subcontractors under its control and we have a pyramid."* [P(1)]

> *"Wyzysk na poziomie podpodpodwykonawców może być znakomicie schowany. (…) Schowany w sensie formalnym, że zanim dotrze do niego chociażby kontrola inspekcji pracy, czy w kontekście migrantów wspólna kontrola Straży Granicznej i inspekcji pracy, czasem też w obecności policji, to ten wyzysk zdąży się skończyć. (…) Na budowach, gdzie jest więcej osób, czy w fabrykach, powiedzmy, taka stocznia, gdzie jest mnóstwo ludzi, to mamy świadomość, że dzisiaj praca nie jest wykonywana na zasadzie, że jedna firma zatrudnia 300 osób. Firma zatrudnia pięciu podwykonawców, kolejna firma zatrudnia kolejnych pięciu albo dziesięciu podwykonawców pod sobą i mamy piramidkę."* [P(1)]

It is worth noting that although many interviewees considered the agriculture sector as the one most prone to migrants' labour exploitation, few referred to particular cases of such exploitation in this sector, which corresponds to the lack of any institution entitled to monitor the labour exploitation by individual farmers. If such exploitation is detected, it is only by accident, as shown by the case of a Ukrainian woman, which was described for the purpose of this report by a researcher who interviewed the victim after the case had received wide media coverage. Most probably for the same reason, that is, the lack of monitoring in this area, only one interviewee exemplified the exploitation of a domestic worker with a particular case. This case, involving a Cameroonian female victim, came to the attention of an NGO providing legal aid to migrants. It is complex and ambiguous for the fact that it refers not so much to the employment relationship, but rather to a kind of domestic violence [L(1)] (please also see the relevant case study for another case) involving the exploitation of a domestic worker.

4. Risks and risk management

4.1. Identification of common risk factors for labour exploitation

4.1.1. Answers to questions about risk factors

When spontaneously responding to the question about risk factors for migrants' labour exploitation, the majority of interviewees referred to the personal situation of the worker. They listed the language and cultural barrier, lack of education, the situation of poverty from which migrants come, migrants' lack of awareness of their rights and their irregular stay in Poland. In reference to children, one interviewee spoke about unaccompanied migrants' vulnerability to labour exploitation linked to these children's exposition to various forms of abuse [M(1)].

The interviewees had some difficulties in responding to the close-ended question about risk factors for migrants' labour exploitation linked to the legal and institutional setting. Many did not consider the proposed items adequate, hence the significant share of 'don't know' records in the layout of answers.[31]

Table 3: Risk factors: legal and institutional setting (frequencies of answers)

	M	P	S	J	L	R	W	E	N	Total
Low risk to offenders of being prosecuted and punished	5	2	7	1	4	2	1	2	2	**26**
Low risk to offenders of having to compensate exploited migrant workers	3	3	6	2	4	1	1	1	2	**23**
Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs	2	4	7	5	3	2	1	1	2	**27**
Corruption in the police			1	1						**2**
Corruption in other parts of administration										**0**
Other	2	3	4	1	3					**13**
Don't know	9	6		11	2	1		2		**31**

The majority of the interviewees perceive low risk to offenders of being prosecuted and punished and having to compensate exploited migrant workers, as well as the lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs, as significant factors contributing to labour exploitation. Those who chose the latter factor spoke in particular about the ineffectiveness of monitoring in the agriculture and the domestic work sectors (Chapter 3.1.8.). Almost the only ones who did not point to the low risk of offenders' prosecution and punishment were representatives of law enforcement agencies, prosecutors and judges. This suggests that they tended to relieve themselves of the responsibility for the ineffectiveness of combatting migrants' labour exploitation. Still, two respondents representing law enforcement agencies did choose this

[31] The item 'don't' know' was usually chosen by those who after pointing to one or two factors, were not able to indicate any additional factor. If an interviewee chose only one factor, his or her answer 'don't know' has been coded twice, because the interviewees were asked to choose three items. If an interviewee chose two factors, his or her answer 'don't know' has been coded once. Two interviewees refused to choose any item: one did not consider them adequate [J(1)], and the other explained the refusal with the lack of sufficient knowledge on the issue [M(1)]. For these two interviewees, 'don't know' answers has been coded triple. Two interviewees pointed to four items instead of three.

item [P(2)]. They situated the problem at the level of prosecution and courts, and specifically pointed to prosecutors' and judges' low awareness of issues related to labour exploitation in general, and human trafficking for labour exploitation in particular. As explicitly stated by one respondent, as a rule, prosecutors do not charge perpetrators with acts penalised by Criminal Code articles which refer to human trafficking and they have a tendency to unduly prolong proceedings. Judges, in turn, apply the extraordinary mitigation of punishment and pass mild judgments [P(1)]. Another respondent presented similar views [N(1)]. The problem of ineffective prosecution emerged as a contentious issue within the research, since prosecutors justified their actions with insufficient evidence (see in particular: J(1) and the related case study). Participants of focus groups discussed this issue and agreed that labour exploitation of migrants is extremely difficult to prosecute due to the nature of evidence which involves mainly testimonies (Chapter 4.3.2.). Furthermore, the interviewees linked the low risk to offenders of being prosecuted and punished to underreporting related to victims' unwillingness to notify state institutions about their problems (see Chapter 6.2.), and to the general ineffectiveness of monitoring. With respect to the latter, they pointed, in particular, to the NLI's insufficient number of staff [M(1)], the NLI's lack of efficiency in dealing with the employment relationship based on civil law contracts [R(1)], as well as the NLI's lack of mandate to inspect working conditions of posted workers employed by foreign companies [P(1)] (Chapter 3.1.8.).

The low risk to offenders of having to compensate exploited migrant workers came up as an uncontroversial factor within the research, and the vast majority of the respondents, when pointing to it, left the issue uncommented. None of the interviewees was familiar with any case of compensation granted to a migrant victim of labour exploitation (Chapter 5.2.).

Only two respondents pointed to the corruption, namely in the police. One of them did not expand on the issue nor referred to it in other parts of the interview [J(1)]. The other one, in turn, spoke about extremely drastic working conditions of the Vietnamese who have irregular residency status in Poland and work for debt. The interviewee referred to a case that was covered by the Polish media [S(1)].[32]

Under the 'other' category, the interviewees placed a variety of factors. They mentioned gaps in legislation related to the vagueness of the definition of human trafficking (cf. Chapter 4.3.2.) and the notion of 'persistent' infringements of employee rights in the Criminal Code [P(1)], as well as the lack of protection for migrants whose stay is regulated, but whose work appears illegal due to the employer's failure to fulfil all conditions of legal employment, for instance, the obligation to pay social security contributions. Although it is the duty of the employer, and not the employee, to fulfil the obligation, a greater burden for a failure to do so rests on the employee [L(1)].

The lack of social security contributions means that the work is performed illegally. When any institution detects it, migrant workers lose their stay permit and are obliged to leave Poland. In such circumstances, the employer is too strong a party within the illegal employment relationship: from a purely financial point of view, it is much more profitable for the employer to notify the NLI or the Border Guard about illegal employment and pay the fine than to pay wages to the workers. After the migrants are deported chances for them to execute back payments from the employer are low (Chapter 5.1.). According to what one interviewee heard, it happens that unfair employers use their power in such a way [FG(M)]. A stronger position of the employer also exposes migrants to work in exploitative conditions, obeying the exploitative employer for fear of deportation [L(1)].

[32] The case gained media coverage. Authors of the article which discusses the situation in Wolka Kosowska were granted the Amnesty International's award *The Pen of Hope 2013*. The article was: Majewski M., Reszka P. (2012), 'Niewolnicy znad Wisły', *Wprost,* 24 September 2012.

Some interviewees, when pointing to the 'other' item, expanded on the issue of ineffective monitoring, specifically with the reference to the regulation on employing migrants on the basis of an employer's statement on the wish to employ a foreigner (see Chapter 3.2.).[33] The main gap that they identified was the lack of a monitoring system for the statements, which would allow to check if the migrant who comes to Poland on the basis of such a statement, undertakes the job for the employer who issued the statement:

> *"This is one huge loophole in the regulations. This system hits the workers because it creates opportunities for abuses. The employer can issue as many of those statements as he/she wants, collect money from migrants for those statements and then not give them work. These loopholes are used by the employers as well, because they can simply trade in those statements."* [N(1)]

> *"To jest jedna wielka luka w przepisach. Ten system godzi w pracowników, gdyż stwarza okazję do nadużyć. Pracodawca może wystawić tych oświadczeń ile chce, wziąć od migrantów pieniądze za te oświadczenia, a potem nie dać im pracy. Te luki są też wykorzystywane przez pracodawców, gdyż oni mogą tymi oświadczeniami po prostu handlować."* [N(1)]

Furthermore, there are severe difficulties with prosecuting those who falsify the statements. This false statement enables the migrant to come to Poland and undertake an illegal job, which by its nature involves high-risk of exploitation. A P group interviewee expanded on the issue:

> *"We classified it as a document, [so making false statements] as forgery, alteration of this document, while a prosecutor's office took a stance that it is not a document at all, so no criminal offence has been committed. Generally, it is a bizarre standpoint, but every country has its own customs, and each prosecutor's office has its own law. Some of them treat it as a document, and courts convict and sentence perpetrators, but for the majority of them there is no offence. And we can't do a thing about it."* [FG(P)]

> *"Myśmy to klasyfikowali jako dokument, jako podrobienie, przerobienie tego dokumentu, natomiast prokuratura doszła do takiego stanowiska, że to nie jest w ogóle dokument i tutaj nie ma żadnego przestępstwa na gruncie prawa karnego. Co też jest w zasadzie kuriozalne stanowisko, bo co kraj to obyczaj, a co prokuratura to prawo. Są takie prokuratury, które to klasyfikują jako dokument, a sądy skazują sprawców, natomiast w większości tutaj się przestępstwa nie widzi. I tutaj nic nie możemy w tym względzie zrobić."* [FG(P)]

The interviewees also pointed to deficiencies at the institutional level: the lack of an institution tasked with providing complex information to migrant workers about their rights [J(1)] (Chapter 4.2.), the NLI's ambiguous mandate which embraces both the protection of migrant workers' rights and inspection of the legality of migrants' employment, which results in underreporting [S(1)] (Chapter 3.1.8.), as well as a perceived lack of commitment from the governmental administration to deal with migrants' labour exploitation [P(1)] (Chapter 3.1.7.).

[33] Poland, Decree of the Minister of Labour and Social Policy of 20 July 2011 on cases when entrusting work to foreigners in the territory of the Republic of Poland is allowed without the need to obtain a work permit [*Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 20 lipca 2011 r. w sprawie przypadków, w których powierzenie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę*].

Table 4: Risk factors: personal characteristics (frequencies of answers)[34]

	M	P	S	J	L	R	W	E	N	Total
Migrant worker has a low level of education	4	4	5	5	2	2	1	2	2	**27**
Migrant worker does not know the language of the country of workplace	7	4	5	7	5	2	1	2	2	**35**
Migrant is not allowed to enter into employment		2	5	2	4	2				**15**
Worker comes from a country the nationals of which are often exploited in the destination country	1		2		2		1			**6**
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							**3**
Worker is prone to discrimination on behalf of their sex			1							**1**
Worker has experienced extreme poverty at home	4	5	4	7	2	1		2	2	**27**
Other	1		2		1					**4**
Don't know	3	3								**6**

The choice of risk factors for migrants' labour exploitation linked to the personal characteristics and the initial situation of the migrant worker did not present significant problems for the interviewees. In line with what they spontaneously spoke about in reference to risk factors, they most commonly indicated the migrant's lack of knowledge of the Polish language (35 indications), the migrant's low level of education (27 indications), and the poverty that the migrant experienced at home (27 indications). Few commented on their choice considering these factors obvious. Those who did, linked the inability to understand and speak Polish as well as the low level of education to: the migrants' vulnerability to manipulation from an unfair employer [P(1)], the lack of knowledge of their rights and the lack of comprehension of their contracts which also make them exposed to exploitation [E(1)], and the incapability to recognise their exploitative situation [J(1)].

In reference to poverty, they talked about the migrants' tendency to accept as natural the labour conditions which are considered exploitative in Poland [M(1); N(1)] and mentioned the migrants' determination to work, even for low wages and despite harsh working conditions [P(1)]. The interviewees also suggested migrants' helplessness and naivety linked to their low level of education; in order to support their view, one provided a contrasting case example of an Ukrainian architect for whom it took only one week to quit the difficult employment situation: due to his high level of education combined with the lack of experience of poverty in his country of origin, he was able to immediately identify his situation as exploitation and seek a way out [S(1)]. The helplessness and naivety create the workers' vulnerability to exploitation already at the stage of recruitment. Migrants' use of services from untrustworthy agents and intermediaries plunge them into further exploitation in the workplace, especially when they have to work for debt that they owe to such service providers, this situation being again linked to migrants' poverty (Chapter 4.1.2.). The interviewees' observation related to Vietnamese nationals who usually work for Vietnamese employers whom they owe money drove a few to point to the item 'worker comes from a country the nationals of which are often exploited in the destination country'.

[34] The interviewees were asked to choose three items from the list. However, four respondents were not able to limit their answers to this number, and they chose four instead of three. Four interviewees pointed to two items, thus their third choice has been coded as 'don't know'. One interviewee chose only one item, therefore their 'don't know' answer has been coded twice.

Almost one-third of the interviewees considered the fact that a migrant is not allowed to enter into employment as an important risk factor for exploitation: *"who does not have the right to work is not protected by law. This is the truth" ["kto nie ma prawa do pracy, ten nie jest chroniony przez prawo, taka jest prawda"]* [J(1)]. When referring to this issue, the respondents pointed out the specific situation of undocumented migrants who do not win anything if they report exploitation, on the contrary – they would only be fined, in line with the Act on the promotion of employment and labour law institutions (Chapter 2), or deported [S(2)]. The irregular migrants' stay in Poland makes them also exposed to lower wages [P(1)], and other forms of exploitation related to the fact that the scope of their possible employers is limited to those who do not comply with the law:

> *"[The lack of access to the legal employment] basically forces them [migrants] to be taken on by employers who break the law by default because they employ people in breach of the Labour Code. And in all likelihood, they are going to break the law again [and exploit the migrants]."* [R(1)]

> *"[Brak dostępu do legalnego zatrudnienia] skazuje go [migranta] tak naprawdę na zatrudnienie u pracodawców, którzy łamią prawo z założenia, bo zatrudniają, łamiąc prawo pracy. Jest małe prawdopodobieństwo, że nie złamią prawa ponownie [wyzyskując pracownika]."* [R(1)]

A very low number of interviewees' answers referring to the migrants' vulnerability to discrimination on the grounds of race/national origin or gender means that either the interviewees find other risk factors for labour exploitation much more important, or their level of awareness of discrimination issues is not particularly high. The latter is quite probable given that first, as other reports prepared for FRA show, the level of awareness of issues related to discrimination is low both within the whole Polish society and among public officials,[35] and second, very few respondents referred to any discrimination-related issues during the whole interview. Still, one S group interviewee emphasised that the negative attitude of Poles towards migrants translates into their indifference to migrants' exploitation, which becomes particularly visible in reference to undocumented migrants whose illegal economic activity is perceived as conducted at their own risk. The same interviewee suggested that the authorities share the discriminatory views, hence their lack of commitment to actively counteracting and preventing migrants' labour exploitation [S(1)]. It is striking that only one respondent explicitly referred to gender-based discrimination on the labour market within her comments.

The respondent mentioned multiple discrimination faced by female migrants of the age over 50 who treat every job as a blessing and agree to be exploited [S(1)]. Meanwhile, at least two case studies prepared for the purpose of this report, the case of a Ukrainian woman exploited in agriculture, and the case of a Cameroonian woman exploited at home, point to the fact that migrant women are exposed to labour exploitation combined with strong personal dependence on the perpetrator. Such dependence is based on the relationship which involves not so much, or not only, physical violence or threats, but also women's expected compliance with their gender roles confined to domestic work (as in the case of the Cameroonian woman), as well as their specific situation as perpetrators' sexual partners (both the Cameroonian and the Ukrainian) and mothers of perpetrators' children (the Ukrainian).

[35] E.g. Hall D. (2013) *Surveying LGBT People and Authorities – Final Summary Report: Poland*, Warsaw: Helsinki Foundation for Human Rights, report submitted to FRA.

The interviewees' answers to the question about the most important risk factors related to the situation of migrant workers at their workplace are somewhat more evenly distributed across the set of answers than in the case of risk factors related to the legal and institutional setting and the migrants' personal situation.

Table 5: Risk factors at the workplace (frequencies of answers)[36]

	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	1	6	5	6	4	2		1	1	**26**
The migrant works in relative isolation with few contacts to clients or to people outside the firm	2	3	8	4	5	2		2	1	**27**
The migrant worker is not a member of a trade union		1					1	1		**3**
The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed	5	2	3	3	4		1		1	**19**
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	4	2	4	1		1	1		2	**15**
The migrant worker is employed as a posted worker by a foreign company		1	1			1				**3**
The migrant is a seasonal worker	4	4	5	6	2	2		1	1	**25**
Other										**0**
Don't know	5	1		1				1		**8**

The respondents who consider the migrants' work in a sector of the economy which is particularly prone to exploitation as a risk factor usually spoke about the agriculture and domestic work sector, both falling beyond the NLI's scope of inspection, as well as about the construction sector. They referred to the same sectors to support their view that the migrants' work in relative isolation, with few contacts with clients or people outside the firm, makes them particularly prone to exploitation. When pointing to the migrants' work in a precarious or insecure situation of employment, they mentioned the work based on civil law contracts which is not regulated by labour law and does not fall under the NLI's inspection of working conditions (Chapter 3.1.8.):

> *"There are issues with civil law contracts, contracts for services or contracts for a specific task. They put the person at risk of abuse. When a regular employment contract is in place, the employer follows the Labour Code and has to put in place appropriate working conditions and an entire social security package for the employee. The above-mentioned contracts are silent on this. And there are no monitoring mechanisms for work undertaken on the basis of such contracts. And these are very popular in Poland."* [J(1)]

[36] The interviewees were asked to choose three items from the list. However, four of them were not able to limit their answers to this number: three chose five items instead of three, and one chose four items. Three interviewees pointed to two items, thus their third choice has been coded as 'don't know'. One interviewee chose only one item, therefore their 'don't know' answer has been coded twice. Yet another interviewee refused to choose any item and explained this with the lack of sufficient knowledge of the issue [M(1)]. This respondent's 'don't know' answer has been coded triple.

> *"To jest problem z tymi umowami cywilno-prawnymi, zleceniami czy umowami o dzieło. One dają podstawy do nadużyć. Jak jest zwykła umowa o pracę, to pracodawca działa zgodnie Kodeksem pracy, musi zapewnić pracownikowi godziwe warunki pracy i cały pakiet socjalny. A w tych umowach tego nie ma. I nie ma żadnej instytucji, która by monitorowała wykonywanie pracy na podstawie tych umów. A one są bardzo popularne w Polsce."*[J(1)]

Those who chose the risk factor related to the migrant workers' indirect employment by the business/organisation for which they work spoke about an important role of employment agencies in creating situations of migrants' vulnerability to labour exploitation (Chapter 4.1.2.).

The interviewees also provided quite extensive comments in reference to the seasonal character of the migrants' work. First, the short-term work creates the risk that migrants finish working before any state institution detects the case of labour exploitation [P(1); FG(R)]. Second, this kind of work makes unfair employers feel safe with their exploitative practices: there is low probability that the workers notify any institution about the exploitation, since they are about to go back to their country and after they go, they will have a limited possibility to follow the proceedings [S(1); J(1)]. Indeed, as pointed out by one expert, it often happens that workers, whose visa is just about to expire, do not receive their last salary [S(1)]. Third, seasonal work is usually based on civil law contracts which alone is a risk factor for labour exploitation [R(1)]. Fourth, this kind of work is a work in economic sectors most prone to labour exploitation of migrants, namely agriculture and construction [R(1)]. Fifth, seasonal work is usually performed by migrants who come to Poland on the basis of employer's statements on the wish to employ a foreigner (Chapter 3.2.). It is quite common that employers issue a higher number of statements than the number of employees whom they are ready to hire to protect themselves against the risk that some foreigners will not show up. Those who find, after coming to Poland, that there is no job left for them, are likely to undertake illegal job which makes them particularly vulnerable to exploitation [P(1)]. Apart from that, since there is no monitoring of the flow of employer's statements, their falsification and illicit trafficking, various unfair employers and middlemen are involved in the dealings. Their clients are severely endangered by exploitation [R(1); N(1)].

Few interviewees pointed to the migrants' status as a posted worker employed by a foreign company as an important risk factor. This may be explained by the interviewees' lack of experience in dealing with related cases, or the fact that they simply recognise other factors as more important. In turn, the fact that few respondents pointed to the lack of migrant's affiliation with a trade union is linked to their recognition of this factor as irrelevant for labour exploitation (in particular: P(1)). Trade unions do not take any special measures to improve the migrant workers' situation, and generally, the level of membership in trade unions is low in Poland (Chapter 3.1.7.). On the other hand, migrants are not interested in trade unions' activities. According to interviewees, it is not in their interest to work according to labour law regulations, for instance, on working time, since they prefer to work more and earn more; that is why they choose to work under civil law contracts instead of employment contracts [FG(R)].

4.1.2. The role of recruitment and employment agencies

The interviewees spoke about the importance of recruitment and employment agencies in both creating and preventing migrants' vulnerability to labour exploitation. When highlighting agencies' wrongdoing, they spoke about the indifference to the workers' situation:

> *"These are commercially-oriented corporations. An individual is rather not important, it is the business that matters."*[M(1)]

> *"To są takie kombinaty, nastawione na komercję. Człowiek tam raczej nie jest na pierwszym planie, tylko względy biznesowe."* [M(1)]

Furthermore, in the respondents' view, agencies do not provide clear information as to the amount of earnings, the expected number of working hours per day/week, or accommodation conditions [J(1); L(2); P(1)] (see also five of the case studies). This applies in particular to recruitment agencies who operate in migrants' home countries. As one of the interviewees put it, they have a character of organised criminal groups [J(1)]. The situation is all the more difficult, since the structure of interdependence between recruitment agencies abroad, employment agencies in Poland, as well as Polish employers is complicated. As a result, no party feels responsible for exploitation if it occurs [W(1); L(1)], and in the case of prosecution, it is very difficult to determine whether the agency acted in good faith, or it was in collusion with the exploitative employer:

> *"It's then easy to say: 'We have been informed by the employer that you would have such and such conditions, we have been paid our commission, we checked the working environment by viewing photographs or personally inspecting the site and nothing raised our suspicions'. So it's quite a difficult situation."* [J(1)]

> *"Łatwo jest wtedy powiedzieć: 'Myśmy mieli informacje od pracodawcy, że będą takie a takie warunki, otrzymaliśmy swoją prowizję, sprawdziliśmy jakieś tam możliwości pracy, bo nam dostarczył zdjęcia', czy: 'sami się udaliśmy na miejsce przyszłej pracy i nic nie wzbudziło naszych podejrzeń'. Więc to jest dość trudna sprawa."* [J(1)]

Moreover, it often happens that recruitment agencies lend money for their services to migrants, and as a consequence, the migrants have to work hard to repay the debt after they come to Poland [J(1)]. This applies mainly to agencies and various middlemen recruiting workers in distant countries, such as Vietnam, and the case studies are rich in instances of such exploitation. However, a representative of the employers' association pointed out that Ukrainians are also vulnerable to this form of exploitation, especially those who cannot afford the trip to the nearest Polish consulate or embassy to arrange official matters, nor the trip to Poland [E(1)]. Even without offering the loan, recruiters and middlemen take advantage of the helplessness and naivety of some Ukrainians. An employment agent expanded on this issue:

> *"These are primarily people who come to [work in] the agricultural sector. They come in minibuses, somebody picks them up in their village and drops them off at the farm, in a field, in the middle of nowhere. A person who has been 'transported door to door', so to speak, hasn't got the faintest idea what's going on, they often don't know where they are, they have no contact with the language, the culture and the people living here. (…) If a guy is dropped off in a village, if they rip him off and say, 'You'll soon get an advance from your new boss,' and the bus driver charges him 100 dollars for transport, so what is such a guy to do?"* [R(1)]

> *"To są przede wszystkim ci ludzie, którzy przyjeżdżają do tego sektora rolnego. Oni przyjeżdżają takimi busikami i ktoś przyjeżdża po nich do tej ich wsi, potem wysadza ich bezpośrednio u tego [polskiego] gospodarza, w jakimś polu, gdzie nic nie ma. Taki człowiek raz, że przywieźli go od płota do płota, kompletnie nie wie co jest grane, nie wie często gdzie jest, też nie ma żadnego kontaktu z językiem, z kulturą, z ludźmi, którzy tutaj żyją i funkcjonują. (…) Taki gość, którego wyrzucą gdzieś na środku wsi, jeszcze go skasują, powiedzą, że 'Zaraz tu dostaniesz zaliczkę u swojego nowego szefa', ten gość, który go przywozi busem, zabierze mu ze 100$ za transport, to taki ktoś co ma zrobić?"* [R(1)]

To strengthen his argument about Ukrainians' vulnerability to exploitation from middlemen, which results in further exploitation from employers, the interviewee contrasted such a situation with the situation of a migrant who uses the services of a reliable recruitment or employment agency, such as the one that he manages:

> *"[It's a different matter] if they [migrants] are supposed to arrive on their own at Warsaw West [a railway station and bus terminal], for example. We tell them to show up at our office at a given time so they travel by bus and train in someone's company, they talk to people, go to a kiosk, buy a Polish phone so they can stay in touch with someone, they meet people on the way. If we tell them: 'You're going to work for five zloty, not ten, buddy,' he will say, 'No thanks, bye.'"* [R(1)]

> *"[Migrant] przyjedzie np. na Dworzec Zachodni [w Warszawie], sam ma przyjechać. My mu mówimy, że ma się stawić w biurze o tej i o tej godzinie, więc on jedzie z kimś autobusem, pociągiem, z kimś tam pogada, pójdzie do kiosku, kupi sobie telefon polski, żeby mieć kontakt z kimś, kogoś pozna po drodze. Jak my mu powiemy: 'Stary, pracujesz nie za dziesięć złotych tylko za pięć złotych', to on powie: 'Dzięki, do zobaczenia'."* [R(1)]

The same respondent explained that a reliable employment agency develops procedures to prevent migrants' labour exploitation. As the respondent emphasised, the procedures are developed not, or not only, for human rights reasons, but because of purely business approach which involves caring about proper positioning of the agency on the market of services. Drawing on professional experience, the respondent listed the following: first, the agency comprehensively informs migrants about working conditions before they arrive and/or before they sign a contract. Second, each project consisting in sending a group of foreigners to a given employer has its own coordinator who works as a contact person for migrant workers and gets involved in situations which demand an intervention. Third, the agency chooses to cooperate with large and stable companies and avoids cooperation with small businesses in order to minimise the risk that the employer goes bankrupt and is not able to pay for the work done. Fourth, before starting to cooperate with a company, an agency representative comes to the workplace and checks working conditions and related infrastructure, e.g. accommodation conditions. Also, he or she searches for opinions about the company on the Internet. Fifth, the agency translates the health and safety training for the migrant workers [R(2)]. A few other interviewees, in similar vein, argued that it is in the agency's own economic interest to take care of migrant workers [e.g. M(1)]. One interviewee provided an example of a case where an agent successfully mediated between workers and the employer, after the migrants had asked the agent to renegotiate the payment conditions:

> *"Workers were in touch with an agent. Through her, they were able to achieve changes in terms of conditions of pay. She was able to help, she was Ukrainian but she has learnt the language living in Poland. She was*

able to communicate with the employer and, at the same time, she knew what the workers' needs were." [J(1)]

"Pracownicy byli w kontakcie z agentką. I za jej pośrednictwem wpływali na zmianę warunków płacy. Ona mogła pomóc, bo była Ukrainką, ale mieszkała w Polsce, znała język. Mogła się komunikować z pracodawcą, a z drugiej strony, znała potrzeby pracowników." [J(1)]

Another interviewee provided a similar example of an agency which, upon the request from workers, forced the farmers to pay correct wages under the threat of breaking collaboration with them next year. The interviewee also suggested that from the migrants' perspective, the agency that they use is much more trustworthy than any state institution to which they could report the employer's unfairness, especially the police [E(1)] (see also Chapter 6.2.).

The activity of agencies is monitored by the NLI. However, labour inspectors apply the same procedures to the inspection of agencies as to the inspection of any other economic entity [M(4)], and one interviewee suggested in this context that the monitoring is not particularly effective [M(1)]. An employment agent provided an example of their former collaborator who got fired, because he had unlawfully sold statements on the wish to employ a foreigner to Ukrainians. The man has started his own agency and continues recruiting Ukrainian workers. The same interviewee noticed that the agencies are usually run by Russians, Belarusians or Ukrainians and are fly-by-night businesses. They are officially registered, however, if the business gets in trouble, for instance, the inspection reveals that the firm does not pay social security contributions, the owner just escapes from Poland [R(1)].

Apart from the NLI, the voivodeship marshal [*marszałek województwa*], that is the head of the province at the self-governing level, is responsible for keeping the register of agencies.[37] One respondent, while stipulating to not be competent enough to reliably assess the issue, supposed that the related monitoring is far from being effective:

"If the phenomenon is new in itself, then the very response of competent supervisory institutions may be inadequate for the situation, possible threats. For a province marshal this is certainly not a priority or the key issue." [N(1)]

"Skoro samo zjawisko jest nowe, to pewnie sama reakcja właściwych instytucji kontrolujących nie jest adekwatna do sytuacji, do możliwych zagrożeń. To nie jest taki priorytet na pewno, dla marszałka województwa, to nie jest sprawa najważniejsza." [N(1)]

An R-group interviewee confirmed this observation, saying that monitoring is conducted on the basis of sketchy reports that the agencies are obliged to deliver, every third year or so, to relevant institutions that the interviewee was not able to name, concluding:

"This monitoring is pure formality. It has nothing to do with the entire activity of an agency. A licensed firm that employs workers illegally is [viewed as] an excellent client after this inspection." [R(1)]

"Ta kontrola to jest taka czysta formalność. Nie ma to żadnego związku z całym działaniem agencji. (…) Firma, która (…) ma tą licencję i zatrudnia 'na czarno', to po tej kontroli jest świetnym klientem." [R(1)]

[37] Poland, Act on promotion of employment and labour market institutions (*Ustawa o promocji zatrudnienia i instytucjach rynku pracy*), 20 April 2004, Article 18d.

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

The majority of interviewees provided scarce comments on prevention measures to reduce the risks of labour exploitation. Although it is the responsibility of the NLI to take such measures, labour inspectors provided no examples of long-term programmes addressing specifically migrants. They believed that inspections in companies where foreigners work and publication of results from inspections are part of prevention [M(3)]. In addition, they listed the NLI's cooperation with embassies of Thailand and Philippines and training on workers' rights that labour inspectors delivered to migrants from these countries, the publication of a guide for employers who wish to employ foreign workers, and the publication of guides and leaflets on workers' rights and possible assistance to victims of labour law violations in various languages [M(1); FG(M)].[38] Representatives of other professional groups, for instance, an employment agent [R(1)], or Border Guard officers from a border unit [M(1)], mentioned their engagement in NLI leaflets' distribution.

Preventive counselling in issues related to human trafficking is the task of the National Consultation and Intervention Centre for Victims of Human Trafficking. With a view to protect migrant workers from exploitation, La Strada provides counselling to partner organisations abroad. For instance, it helps Ukrainian organisations to assess risks related to particular job offers in Poland. It offers the same kind of assistance to individual migrants who contact the organisation. Furthermore, in the past, in cooperation with the Ministry of Foreign Affairs, La Strada organised training on human trafficking issues for Polish consulates abroad. The organisation also prepared information posters and leaflets for distribution by consulates in countries of the former CIS territory; consuls attached a leaflet to each visa [S(1)]. Until now, the other organisation involved in running the National Centre, the Po-MOC Association, has taken prevention measures targeting only Poles. For example, in partnership with a recruitment agency, it has published a guide for Poles wishing to work abroad.[39]

Several interviewees mentioned the Ministry of the Interior's participation in the IOM's project *Migrants' Rights in Practice* (see below) and the distribution of information leaflets via Polish consulates in the former CIS territory. No other pre-departure initiatives involving Polish governmental institutions were mentioned by interviewees. One interviewee pointed to deficiencies of taking prevention measures within short-time projects which by their nature address migrants' labour exploitation only partially. In this interviewee's view, the measures should be implemented in the long run and in close correspondence to the state's migration policy. It was explained, though, that this is difficult to achieve, until the state migration policy is better defined, which is not likely to happen in the near future:

> *"The right approach is that applied to human trafficking – if we have a problem, it can't be tackled only on a project basis, it needs a systemic action instead. So I think this should be approached purposively but this is connected with state policies concerning economic migrants in Poland. If somebody takes a decision on this matter, and I doubt someone will, then*

[38] One of such publications, titled *Terms of employment of employees conducting work on the territory of the Republic of Poland posted to work for fixed period of time by an employer having a seat within the territory of a European Union Member State*, is available on the NLI's website in Polish, English, German, French and Russian: www.pip.gov.pl/html/pl/html/08000000.htm.

[39] The guide, titled *Bezpieczna praca za granicą* [*Safe work abroad*] is available at the association's website: www.po-moc.pl/materialy/_upload/file/Poradnik_Bezpieczna_Praca_za_granica_WERSJA_OK.pdf.

such a decision must be supported by tools like those we use in projects." [N(1)]

"Powinno się spojrzeć tak, jak to było przy handlu ludźmi – jak jest problem, to nie można go rozwiązywać do końca przy użyciu projektów, tylko powinny być działania systemowe prowadzone. Więc myślę, że tak, że trzeba by było myśleć o tym jakoś docelowo, ale to się wiąże z kierunkiem polityki państwa, jeżeli chodzi o migrantów zarobkowych w Polsce. Jeśli ktoś podejmie kiedykolwiek jakąś decyzję w tej sprawie, w co bardzo wątpię, to wtedy należałoby taką decyzję obudować tego typu oprzyrządowaniem, jakie my stosujemy w przypadkach projektu." [N(1)]

Preventive activities of NGOs consist mainly in providing counsel to migrants within legal aid programmes offered by organisations. An NGO representative mentioned migrants seeking their assistance in comprehending terms and conditions of work contracts proposed to them [S(1)]. Another one noticed, however, that migrants who contact them have already been exploited, and it is too late for them to obtain any preventive counselling [S(1)]. S-group experts mentioned guides, brochures and leaflets prepared within particular projects in various languages, which contain information on migrant workers' rights and organisations where migrants can seek aid in case these rights are violated. However, an R-group interviewee damagingly evaluated the effectiveness of such leaflets, and in response to the question about migrant victims' knowledge of supporting NGOs, the interviewee said:

"They know nothing about it. Nothing at all. From our experience, these people are more likely to come to us because we have a fairly good reputation in Ukraine and also in Poland. (…) they don't go to any non-governmental organisation which would help them, because, honestly, I don't even know if any such organisation operates. I don't have any knowledge of this, none at all. Is there an institution like this? [R(1)]

"Jest żadna. Żadna. Z naszego doświadczenia. Ci ludzie się bardziej zgłaszają do nas, bo akurat my naprawdę mamy dość dobrą renomę na Ukrainie i też w Polsce. (…) Oni się nie zgłaszają do żadnej instytucji pozarządowej, która by im pomogła, bo przyznam szczerze, że nawet nie mam wiedzy, czy jakakolwiek taka instytucja funkcjonuje. Ja nie mam wiedzy na ten temat, w ogóle żadnej. Jest taka instytucja?" [R(1)]

None of the activists-group interviewees referred to any community project addressing specifically the issue of migrants' labour exploitation. Instead, a few highlighted preventive aspects of public consultations for draft legal acts concerning migrants, as well as research projects [S(2)]. For instance, the Association for Legal Intervention, as a leader of the project *For Undocumented Migrants' Rights in Central Europe* carried out in Poland, Czech Republic, Slovakia, Romania and Hungary, analyses the relevance of the Employer Sanctions Directive for the migrants' situation in these countries. By publishing results of the research, the organisation hopes to influence policymaking for the benefit of migrants taking a job in Central Europe [S(1)].

IOM's project *Migrants' Rights in Practice* (2011-2014), in partnership with the Ministry of the Interior and the NLI, was the most complex prevention initiative that the interviewees spoke about [S(1)]. It is financed by the European Fund for the Integration of Third-Country Nationals and it is parallel to the ADSTRINGO transnational project that focuses on trafficking for labour exploitation in countries of the Baltic Sea region, coordinated by the European Institute for Crime Prevention and Control. The goal of *Migrants' rights in practice* is to facilitate integration of third country nationals through raising their awareness regarding their rights and obligations in Poland and preventing discrimination and exploitation of

migrants in the Polish labour market. The project addresses both migrants of various nationalities who stay in Poland and would-be migrants from Ukraine, Belarus and Armenia who are allowed to work in Poland on the basis of the employer's statement on the wish to employ a foreigner. Activities conducted within the project embrace: (1) maintaining the website www.migrant.info.pl which contains information on workers' rights and gives hints for how to work legally. The website is in Polish, Ukrainian, Russian, Armenian, English, French and Vietnamese; (2) operating helplines in Poland, as well as Ukraine, Belarus and Armenia. In Poland, the information is offered in Polish, English, French, Russian, Ukrainian, Vietnamese and Chinese; (3) providing legal advice to migrants who feel that their workers' rights have been violated; (4) disseminating information leaflets at the Polish-Ukrainian Border; (5) organising information meetings for migrants in Poland and would-be migrants abroad. One expert (R) mentioned their agency's involvement in a two-day training delivered to recruitment agencies in Armenia, which informed the trainees about the recruitment procedure and Polish employers' needs ; (6) organising a conference about migrants' situation on the Polish labour market with participation of experts from various EU countries; (7) developing and implementing a training programme for labour inspectors, trade union representatives, human rights advocates, job counsellors, law enforcement officers and NGO activists.

Interviewees from recruitment and employment agencies quite extensively spoke about their market strategies aimed at reducing the risks of migrants' labour exploitation (Chapter 4.1.2.). One referred to a business project: the respondent's agency's cooperation with a company that offers cheap telecommunication services to Ukrainian migrants and runs a helpline where the migrants can call for free and learn about their rights, including workers' rights, in Poland. Together with the company, the respondent's agency has prepared promotional leaflets which talk about services offered by both businesses, as well as about the possibility to legally receive employment in Poland. The leaflets are distributed at the Polish-Ukrainian border and near Polish consulates in Ukraine [R(1)].

Representatives of employers' organisations, in turn, referred to awareness-raising activities that they conduct among employers. One of them mentioned the dissemination of information about conditions for legal employment of migrant workers and the consequences of the lack of compliance with related obligations [E(1)]. The other spoke about training for small and medium-size construction companies on how to avoid financial bottlenecks. The interviewee considered this an important measure which prevents migrants' labour exploitation: these are mainly small and medium-size companies subcontracted to large firms who employ migrants; if large companies are in arrears with payments to subcontractors, the latter are forced to withhold payments to their employees; from the employees' perspective, this turns into exploitation [E(1)].

None of the interviewees provided information on mechanisms of standard-setting and accreditation in the context of prevention. In their answers to the related question they more or less explicitly suggested that they have never heard of any measures of this kind and they do not know how they would work. Both representatives of recruitment and employment agencies suggested that standard-setting mechanisms are superficial and do not fit the specificity of agencies, small businesses for the most part, which draw migrant workers to Poland. One of them supposed that they apply to large internationally operating agencies, such as Manpower, who focus on providing work to highly skilled migrants. The respondent did not see any value in related initiatives:

> *"They [the agencies] are awarded some prizes for which they've probably paid out of their own pockets as they funded the event [the prize-giving ceremony]."* [R(1)]

"[Agencje] dostają jakąś tam nagrodę, za którą pewnie płacą, bo sfinansowały cały ten event." [R(1)]

One interviewee summed up the issue: *"I think there's a lot to be done" ["myślę, że tu jest dużo do zrobienia przed nami"]* [N(1)].

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

4.3.1. The referral system

When responding to questions about investigations and protection against victimisation, the majority of interviewees referred to actions taken rather by the Border Guard than the police, since they recognised the Border Guard as more likely to deal with cases of migrants' labour exploitation. They presented divergent views on whether, during a raid, law enforcement officers would mainly see migrant workers as potential victims of crime, or as illegally staying in Poland. Typically, those who referred to the most severe forms of labour exploitation suggesting human trafficking, supposed that the officers would mainly see migrant workers as victims, while those who referred to less drastic forms of worker rights' violations, and in particular, to labour law infringements, tended to claim that the officers would see migrants as illegally staying in Poland.

The divergence has its institutional representation, that is, two different Border Guard divisions who deal with different issues: one of them – with criminal activities comprising human trafficking cases, and the other, the one cooperating with the NLI – with the legality of foreigners' employment (Chapter 3.1.2.). One S-group interviewee was clear about actions taken by each of those: the Operational and Investigative Division would activate procedures aimed at protecting the victims, while the Division for Foreigners would demand migrants to leave Poland, most probably, by deportation [S(1)]. An M-group interviewee, in a similar vein, commented on the dominant approach by the latter division:

"When they [the Border Guard] took the competences to verify the legality of foreigners' employment [in 2007], we have employment legality departments while the Border Guard – I am not sure if they still have it – that was the responsibility of the so-called "return departments". (…) Or "return arrangement" [departments], something like that. Anyway, the name immediately indicates the purpose of the entire procedure. (…) Perhaps the name changes but they still have the same competences and think in the same way." [M(1)]

"Jak oni [Straż Graniczna] przejęli obok nas te uprawnienia z zakresu kontroli legalności zatrudnienia cudzoziemców [w 2007 roku], to u nas są sekcje legalności zatrudnienia, natomiast w Straży Granicznej – ale nie wiem, czy dalej tak jest, ale tak było – należało to do takich sekcji powrotów. (…) Albo organizacji powrotów, jakoś tak. W każdym razie nazwa wskazuje od razu, jaki jest cel tego całego postępowania. (…) Może nazwa się zmieniła, ale dalej te same uprawnienia i sposób myślenia." [M(1)]

A few other interviewees particularly strongly emphasised the Border Guard's deportation-oriented actions [L(1); S(1)]. In cases when human trafficking is not suspected, the Border

Guard has no other choice but to implement procedures which result in making the migrants with irregular residency status leave the country. However, the procedures may take two different forms. First, the Border Guard can issue the decision on the obligation to leave Poland within 7 to 30 days, if circumstances indicate that the foreigner will voluntarily comply with this obligation. The police is also entitled to issue such a decision. Second, the Border Guard can take the migrants to a guarded centre for foreigners or a deportation centre and initiate the deportation procedure; the decision is then issued by a voivode. The two measures bring two different consequences to the migrants, and it is up to the individual officers to decide which of them they will start to implement. Within the first procedure, migrants have a possibility to request the prolongation of the deadline to leave Poland, already during the proceedings and after the decision has been issued. Their stay period may be extended once for up to one year. Within the second procedure, the only thing that migrants can do is to appeal against the deportation decision to the Head of the Office for Foreigners. According to a representative of the police, it is not a routine practice that police officers refer migrants to the Border Guard for deportation. It happens that they issue the decision on the obligation to leave Poland, especially when the encountered migrant comes from a neighbouring country, such as Ukraine, and it is only when police officers find that the migrant has not complied with the obligation when they refer him or her to the Border Guard and a deportation centre [P(1)].

A Border Guard officer talked about a different sequence of actions: if the Border Guard determines that the migrant took an illegal job without ill will, for instance, as a result of being cheated by the employer, it initiates the deportation procedure by submitting a relevant application to the voivode. However, at the same time, Border Guard officers describe the migrant's situation in detail in the application's attachment, suggesting that the decision should be negative, that is, the migrant should not be deported. Simultaneously, they recommend the victim to apply to the voivode for a residence permit for a defined period of time, based on provisions which authorise the voivode to issue such a permit if the unique personal situation of the foreigner demands his or her presence in Poland.[40] However, none of the remaining interviewees mentioned similar practice. All in all, the issue of measures taken in reference to migrants with irregular residency status in Poland reveals that their fate to a significant extent depends on the sensitivity to their situation of individual officers.

When human trafficking is suspected, migrants are offered to enter the *Programme for Support and Protection of Victims/Witnesses of Human Trafficking* (Chapter 5.1.). Two interviewees [P(2)], both involved in the coordination of human trafficking issues, stated that the officers suggest to victims to enter the *Programme* even if circumstances do not clearly point to a human trafficking case. At least this is what the officers should do according to how they are trained:

> *"Support is provided completely independently of the investigation, so if we really want to help somebody who is a victim of workers' rights violation, but not human trafficking, then after all the police officer can for completely different reasons, for instance he/she is aware that substantiation of the evidence in the form of other [material] gathered in the course of operational work or from other testimonies will allow the investigation towards human trafficking, that such a police officer may enter the victim to the Programme, even though from his/her testimony it follows that he/she is a victim solely of workers' rights infringements. And this is done. (…) This is always – and I repeat it to police officers – the decision of the police officer whether he/she will enter the victim into the Programme, whether he/she sees or does not see the needs which La Strada, for the Ministry's money, can secure."* [P(1)]

[40] Poland, Act of Foreigners (*Ustawa o cudzoziemcach*), 13 June 2003, Article 53a.2.

"Pomoc jest zupełnie niezależnie prowadzona od śledztwa, czyli jeśli chcemy pomóc komuś, kto jest ofiarą przestępstwa naruszenia praw pracowniczych, nie jest ofiarą handlu ludźmi, to mimo wszystko policjant może z racji zupełnie innych przesłanek, czy np. ma świadomość, że uwiarygodnienie materiału dowodowego w postaci innych [materiałów] zebranych jeszcze w pracy operacyjnej czy z innych zeznań sprawi, że to będzie jednak śledztwo w kierunku handlu ludźmi, to może sprawić, że obejmie tę ofiarę [programem], mimo że z jej przesłuchania wynika, że jest ofiarą tylko i wyłącznie naruszenia praw pracowniczych. I tak się robi. (…) To jest zawsze – i ja powtarzam to policjantom – decyzja policjanta, czy on obejmie tą ofiarę programem, czy widzi jakieś potrzeby, które La Strada za pieniądze MSW może tej ofierze zapewnić, czy nie." [P(1)]

In practice, the decision on whether to offer entry into the *Programme* in cases which do not clearly indicate human trafficking is taken by individual officers. The quoted interviewee spoke about the recommendation to offer the entrance into the *Programme* that the officers hear in the training. However, the interviewee admitted that these would rather be 'officers specialising in human trafficking issues', and not regular officers, who would offer the *Programme* to the victims in cases which do not openly suggest human trafficking [FG(P)]. This is in line with what NGO staff highlight: the law enforcement officers' practice to take deportation measures, except in isolated cases classified as human trafficking. The case of Azerbaijani workers in illegally functioning tobacco manufactories shows that even in situations which strikingly point to human trafficking it may happen that the victims remain unrecognised as victims of this crime.

To avoid such situations, the officers have a checklist for identifying victims of human trafficking prepared by the Ministry of the Interior, and they are recommended to use it during a raid on the companies' premises and in each contact with a potential victim. Currently, within the Interdepartmental Committee for Combating and Preventing Trafficking in Human Beings, a new checklist is elaborated. According to one interviewee, the list will be more detailed and it will include issues related to labour exploitation. The interviewee hopes that it will function as an internal legal document within the police and the Border Guard, enacted by a decree of the Police Commander in Chief and the Chief of the Border Guard. When this happens, the police and Border Guard officers will be formally obliged to use it [P(1)]. Still, a second P group interviewee (police) does not see the need for making the list a mandatory tool, especially since police officers rarely come across cases of migrants' labour exploitation [P(1)]. Other interviewees suggested, however, that the police officers' infrequent encounters with the phenomenon result, among others, from the officers' lack of adequate recognition of cases of human trafficking for forced labour [N(1); S(1)].

In cases of human trafficking for forced labour, there is a chance that if the Border Guard takes victims to the deportation centre, they may still be identified as potential victims of human trafficking and offered the entrance into the *Programme* at the centre. There, the officers specialising in human trafficking or NGO activists may recognise them as potential victims. Nevertheless, some victims of human trafficking may go unnoticed, especially since there are barriers to access them: firstly, it is only up to the migrants whether they speak to the lawyer or not, and they may neither wish it, nor become informed about such a possibility [L(1)], and secondly, NGO lawyers do not speak all necessary languages, for instance, Vietnamese [S(1)].

According to the interviewees, in cases of severe forms of labour exploitation, the police and the Border Guard take measures to put an end to the situation of exploitation and to protect victims. Two interviewees [P(2)]presented the model sequence of actions. The officers separate victims from the perpetrator. At the same time, if there is enough evidence in place, they arrest the perpetrator (however, neither of the interviewees clarified what the 'enough'

entails). If an organised criminal group is involved, officers enact measures to neutralise it. In parallel, they offer support to the victims. They identify victims' needs by speaking to them and they inform victims about the possibility to go to the shelter and obtain another kind of support, for instance, clothes. If victims agree to enter the *Programme*, the officers fill out the application form and send it to the Ministry of the Interior which formally approves the entrance. The Ministry does it routinely. Without waiting for the response from the Ministry, the officers refer victims to the organisation which runs the National Consultation and Intervention Centre for Victims of Human Trafficking:

> *„Practically, this is all arranged by phone, from the beginning. Documents can be sent on the next day (…). From my experience, incidents involving human trafficking can happen, let's say at 11 p.m. on Friday. No one will include the person in a programme at 11.05 p.m., will they? So all activities are arranged by phone. The formal application is completed and as of the next day this person is covered by the programme. But this person is placed in a location indicated by La Strada. (…) They are immediately transported."* [P(1)]

> *"Praktycznie to się robi wszystko na telefon, od samego początku. Kwity można wysłać dzień później (…). Te zdarzenia z handlem ludźmi, z mojego praktycznego punktu widzenia, są zdarzeniami, które mogą się wydarzyć w piątek o 23:00. Nikt tego kogoś nie obejmie programem o godzinie 23:05, prawda? Tak więc to są już czynności stricte na telefon. Wypełnia się ten wniosek formalnie, no i z dniem następnym zostanie on objęty programem. Natomiast osoba jest umieszczana w danym miejscu, wskazanym przez La Stradę. (…) Od razu jest tam przetransportowywana."* [P(1)]

If victims do not agree to enter the *Programme*, or they are clearly not victims of human trafficking, and their residency status in Poland is regular, the officers still inform them about the assistance that they can acquire from the National Centre, NGOs providing help to migrants, and a local social welfare centre. They also inform victims about their right to sue the employer.

In reference to cases involving human trafficking, or most probably involving such a crime, the interviewees assessed the referral system as effective. Representatives of all institutions involved – the Border Guard, the police and the La Strada Foundation – claimed that the cooperation between them goes smoothly [P(2); S(1)]. It happens that the La Strada representative comes to the place with a translator, immediately after the officers inform the NGO about the case. Then, the La Strada activist and the translator comprehensively explain the advantages of getting into the *Programme* to the victims [N(1); P(1)]. In the opinion of one interviewee, victims with irregular residency status in Poland usually agree to enter the *Programme*, since it gives them the possibility to regularise they stay and find another job. They are taken to the National Centre or a local shelter – it is up to La Strada to find accommodation for the victims [N(1)].

However, the system does have gaps. They come to light when a large group of victims is identified. According to one interviewee, this is what tends to happen in cases of labour exploitation [N(1)], and case studies prepared for the purpose of this report suggest indeed that instances of labour exploitation which come to the attention of law enforcement agencies and state institutions usually involve multiple victims – out of 19 cases described within case studies, eight involved single victims, however, only three of them were dealt with by law enforcement bodies. The group of victims may appear too big for a local shelter. Men and women should be placed separately, and it is particularly difficult to find a place for men, since both shelters offered by NGOs who run the National Centre, in Warsaw and Katowice,

are for women only [N(1); S(1); FG(P)]. Still, the La Strada Foundation makes a lot of effort to find other shelters, and it eventually achieves this goal [N(1)]. The case of a Ukrainian couple who escaped the workplace and entered the *Programme* shows that sometimes the rules are slightly bent for the victims' benefit: both the woman and the man were allowed to stay in the women's shelter. In turn, within the case involving Romanian victims, the intervention had to be suspended for one week because otherwise the victims would have had nowhere to stay. Moreover, in the opinion of the prosecutor familiar with the case, before La Strada was contacted, the support had been prepared in a chaotic way because at the local level, nobody knew how the shelter should be organised. Female victims were eventually placed in a centre for single mothers, and male victims – in a shelter for homeless people [J(1)].

Furthermore, there are problems with reimbursing costs of the victims' stay in the shelter to local crisis intervention centres, since the procedures for how their stay should be financed are complicated. Theoretically, the centre should apply to the local self-governing administration for the reimbursement, and the self-government should apply to the Ministry of Labour and Social Policy for the subsidy. In practice, it is usually the organisation running the National Consultation and Intervention Centre who pays for the victims' accommodation, however, it is problematic, since funds for that are limited. Moreover, the funds should be spent for those who enter the *Programme*, and not for those who resign from the *Programme*, but decide to stay in the shelter for a few nights. Such victims are still not charged for the accommodation, however, the problem with how their stay in the shelter should be financed engenders severe difficulties to those who organise the support [N(1)].

Another issue highlighted by a few interviewees is the language and the cultural barrier. At the referral stage, both barriers are possible to overcome, however, they make the referring difficult. When the migrant speaks a particularly rare language, but the circumstances suggest that human trafficking took place, the officers take the victim from the workplace and refer him or her to the National Centre, still, it is not easy to fully address victim's needs [P(3)]. The cultural barrier may appear even more problematic:

> *"When (…) a Muslim who performed small plumbing works starts talking to a female police officer who deals with human trafficking…Because indeed in this field, because of sexual offence, there are a lot of women, policewomen and female Border Guard officers. So, when this happens, then of course the man, say from Saudi Arabia or Qatar, will tell her nothing. She will not be a partner for conversation for him."* [P(1)]

> *"W momencie jak (…) z muzułmaninem, który wykonywał drobne prace hydrauliczne powiedzmy, zacznie rozmawiać funkcjonariuszka, która zajmuje się handlem ludźmi… Bo akurat w tej materii, z uwagi na przestępstwa seksualne jest dużo kobiet, policjantek czy strażniczek granicznych. Wiec jeśli do czegoś takiego dojdzie, to oczywiście mężczyzna, powiedzmy, z Arabii Saudyjskiej czy z Kataru, nic jej nie powie. Nie będzie to dla niego partner do rozmowy."* [P(1)]

Finally, a few interviewees pointed to financial problems with taking care of victims of human trafficking during first hours after they are separated from the perpetrator and with their transport, if they are to be taken to La Strada's or Po-MOC's shelter. The officers have no funds to provide necessities, for instance, food or sanitary pads, to the victims. Thus they allegedly use money from their own pocket to respond to victims' basic needs [P(1)]. A police officer concluded on the issue:

> *„This is notorious and for the 11 years that I've worked in this, it's not fun when I have to sacrifice my own private money to secure basic needs."* [P(1)]

"Jest to nagminne i tak jak ja pracuję 11 lat w tym, to nie jest fajne, jak ja muszę swoje prywatne pieniądze poświęcać, żeby zapewnić pierwsze potrzeby." [P(1)]

Similarly, according to the police officer, there are no regulations as to which institution should be responsible for the victims' transport. One Border Guard officer claimed the same:

"E.g. the problem of transporting a victim from one end of Poland to the other: who should do it, who should pay for it, who should conduct it and actually stay with that person. We have difficulties, of course, but try to overcome them; sometimes we arrange for officers to go, sometimes we manage to arrange an ambulance to transport the victim. (…) One victim was seven or eight months pregnant and we were concerned about having her travel in [an ordinary] car for so many hours. And we managed to arrange an ambulance; actually it was our ambulance. In other cases, we hand over the victim who travels by train to a particular place because no-one in a given regional unit can make the decision to make a car and people available." [P(1)]

"Np. jest problem dowiezienia ofiary z jednego krańca Polski na drugi kraniec, z jednego miejsca na drugie – kto ma to zrobić, kto ma za to zapłacić, kto ma to zrealizować, kto ma fizycznie tam być przy tej osobie. Tutaj są problemy, oczywiście, ale staramy się je przezwyciężać – czasami zorganizujemy, że funkcjonariusze jadą, ale da się załatwić, że nawet karetką [pogotowia] jest wieziona ta ofiara. (…) Jak ujawniona ofiara była np. w 7 czy 8 miesiącu ciąży, no to baliśmy się, żeby ofiara jechała tyle godzin w samochodzie, była przewożona. Udało się załatwić karetkę, to była przewożona karetką, naszą akurat. Ale w innym przypadku przekazujemy ofiarę i ona sobie jedzie pociągiem do danego miejsca, bo nikt nie podejmie decyzji w danej jednostce terytorialnej, żeby dać samochód i ludzi." [P(1)]

4.3.2. Investigations and prosecution

After any institution, the police, the Border Guard, or the NLI, detects a crime related to migrants' labour exploitation, they refer the case to the prosecutor. The prosecutor initiates proceedings. Usually, the prosecutor commissions safeguarding the evidence to the police or the Border Guard. The prosecutor conducts hearings, often with the help from police or Border Guard officers [P(1); J(1)].

The interviewees presented divergent views as to the effectiveness of investigations and prosecution. A few interviewees (P, N) evaluated prosecutors' work harshly. Prosecutors, in turn, presented their own views on the matter. It needs to be noted that the interviewees' comments referred mainly to prosecutorial proceedings in cases of (supposed) human trafficking for forced labour, since no monitoring system exists for proceedings in cases involving broader issues related to migrants' labour exploitation and interviewees had very limited knowledge on them.

In the opinion of the respondents who negatively assessed prosecutors' contribution, there is a huge difference between what law enforcement agencies qualify as human trafficking for forced labour and what prosecutors consider to be such a crime. Even in cases which, in the opinion of the police or the Border Guard, strikingly point to human trafficking, prosecutors refuse to initiate proceedings, discontinue them, or bring charges which involve nothing more than petty offences:

"If we classify a case as human trafficking, it is later assessed by a prosecutor, in the context of labour exploitation, and that assessment can be different than ours. First of all, the prosecutor can initiate the proceedings, but he or she doesn't have to; he can refuse to initiate the proceedings or terminate them, depending which activities took place. [The perpetrator] can also be prosecuted for a less serious offence under a different provision of the Criminal Code. The Vietnamese case is a clear example (…). Things are as they are and we don't understand it either – for us this is the case of human trafficking, but the prosecutor says that it isn't. Somebody might have taken away people's documents, might have deprived people of liberty. And, as far as I know, no charges have been filed. For me this is a proof of ineffectiveness, because a person trusts us, gives testimony to us, we encourage him or her: 'Undergo all these proceedings', and it does not end with one hearing. [We say:] 'Go to court, tell about everything', and then as a result of the actions of state institutions the guy [perpetrator] walks free just as he did and [he thinks]: 'I will employ those fellows, different ones', and so on. For me this is totally ineffective." [P(1)]

"Jak my coś zakwalifikujemy jako handel ludźmi, to podlega później ocenie prokuratorskiej, w tym sensie wyzysku w pracy i ta ocena może być zupełnie inna od naszej. Po pierwsze może on wszcząć postępowanie, ale nie musi – może odmówić wszczęcia, umorzyć, w zależności od tego, jakie czynności miały miejsce. Może też być [sądzony] z niższego kalibru i innego przepisu Kodeksu karnego. W sprawie wietnamskiej to był taki dobitny przykład (…). Jest tak, a nie inaczej i my tego też nie rozumiemy – dla nas to handel, ale prokurator mówi, że to nie jest żaden handel. Może ktoś zabrał komuś dokumenty, może pozbawił wolności. I według mojej wiedzy nawet nikt o to nie postawił zarzutów. Dla mnie to świadczy o nieskuteczności, bo nam osoba zaufała, nam osoba zeznaje, my ją nakłaniamy: 'Poddaj się rygorowi tego całego postępowania', a to nie jest jedno przesłuchanie. 'Idź do sądu, powiedz to wszystko', a później organy państwa sobie zrobią z tym tak, że facet jak sobie chodził, tak sobie chodzi i nadal zatrudnia tych ludków innych itd. Uważam to za całkowity brak skuteczności." [P(1)]

Interviewees suggested, more or less explicitly, prosecutors' insufficient competence for dealing with human trafficking-related cases: *"there is a gap in the education of prosecutors" ["luka jest jeżeli chodzi o przygotowanie prokuratorów"]* [N(1)]. The respondent supposed that in cases of labour exploitation which do not involve human trafficking, the prosecution's shortages would also come forward:

"These cases are sent to district prosecutor's offices which may not be intellectually prepared to handle them, as they are a bit more complicated and require more commitment and expertise." [N(1)]

"Te sprawy trafiają do prokuratur rejonowych, które niekoniecznie są przygotowane intelektualnie do tego typu przypadków, które są nieco trudniejsze i wymagają więcej zaangażowania, większej wiedzy." [N(1)]

Respondents also pointed to the excessive length of prosecutorial proceedings, which brings significant consequences: it happens that victims are already back in their home country when the prosecutor still needs testimonies. It also happens that the prosecutor calls additional witnesses (see one of the case studies), which makes the prosecution even longer:

> *"There is an institution of a suspension of an on-going investigation for the provision of international legal aid which consists in a procedural act of hearing multiple witnesses in the territory of another country. The prosecution often strives to obtain evidence in the form hearing of witnesses who, at this stage of proceedings, have already gone abroad. Such proceedings are time-consuming."* [P(1)]

> *"Jest taka instytucja zawieszenia prowadzonego śledztwa na czas realizacji międzynarodowej pomocy prawnej polegającej na wykonaniu czynności procesowej w postaci przesłuchania wielu świadków na terenie danego państwa. Bardzo często prokurator dąży do tego, żeby mieć dowody osobowe, czyli przesłuchania świadków, którzy na tym etapie postępowania są już za granicą. Takie postępowania są mozolne."* [P(1)]

The victims' absence in Poland at the time when proceedings are still ongoing is a complex problem related not only to delays in prosecution, but also to additional factors. First, victims fear of reprisals from the perpetrator [S(2)]; J(1)], some also do not want to take part in painful hearings, especially since they do not feel that the perpetrator's conviction brings any advantage to them [S(1)], and they resign from their participation in criminal proceedings. Some do not want to testify against the perpetrator for psychological reasons – one of the interviewees referred to the Stockholm syndrome in this context and explained:

> *"Victims of human trafficking sooner or later withdraw, resign, don't want help from support organisations. I mean mostly the La Strada Foundation here. This is somehow ingrained in the victim's psyche that he/she either rejects support or comes back to the perpetrator."* [P(1)]

> *"Ofiary handlu ludźmi prędzej czy później wycofują się, rezygnują, nie chcą pomocy od organizacji wspierających – tu mam na myśli głównie Fundację La Strada. To jakoś tkwi w psychice tej ofiary, że ona albo odrzuca pomoc, albo wraca do przestępcy."* [P(1)]

For instance, one J group interviewee, talking about a still pending case of labour exploitation involving Romanians,, claimed that a few victims had gone back to their perpetrator and continued living with him [FG(J)].

Second, it can happen that independently of the above, victims promptly decide to enter the IOM's Assisted Voluntary Return programme, and neither the National Centre nor the IOM oppose the promptness. According to a representative of the police, this happens because of a different perspective that the institutions employ – the National Centre and the IOM on the one hand, and the police and the prosecutor, on the other – *"these are two different worlds – they have human rights, we have the Criminal Code" ["to są dwa różne światy: oni mają prawa człowieka, a my mamy Kodeks karny"]*, and because of related communication problems between them. All in all, such a situation makes the prosecution difficult:

> *"For example, when the prosecutor orders a repeated questioning with the view to a particular victim of labour exploitation, say a Romanian national, and this Romanian national at this very time is flying home as part of the programme of voluntary returns, well then this is a bit curious. (…) These situations have taken place and I'm sure they will happen. And not due to somebody's meanness or negligence, but maybe as a result of overlooking. Because every institution does its job, but the manner of proceeding of other institutions also has to be respected."* [P(1)]

"Gdy np. prokurator zleca czynności powtórnego przesłuchania pod jakimś kątem danej ofiary wyzysku, powiedzmy, obywatela Rumunii, a w tym momencie obywatel Rumunii w ramach programu dobrowolnych powrotów właśnie leci do Rumunii, no to trochę jest kuriozum. (…) Takie sytuacje zdarzały się i jestem przekonany, że też będą zdarzać się. I to nie przez czyjąś złośliwość czy zaniedbanie, ale rzeczywiście może bardziej niedopatrzenie. Bo każda instytucja robi swoje, ale też trzeba uszanować sposób procedowania tych pozostałych instytucji." [P(1)]

To avoid consequences of the victims' absence during the whole prosecutorial proceedings, and then, during court proceedings, there is a possibility for them to be heard by the court in the presence of the prosecutor, shortly after the crime is detected [J(2)]. This possibility was used, for instance, in the case of Ukrainians and Belarusians who worked in a greenhouse. However, it is neither a standard nor a particularly simple procedure, as one of the interviewees explained:

"This again requires submitting motions, a practice of applying this provision in various parts of the country differs depending on a court. Another problem may be short periods of time during which an interview must be conducted or setting time-limits which cannot be reconciled with securing the presence of a victim. There are three-month and longer time-limits. Of course, we fight that, but these procedures are totally inadequate for these types of cases." [FG(P)]

"To jest znowu wnioskowanie, praktyka stosowania tego przepisu w różnych częściach kraju jest tak różna jak ilość naszych sądów, których to dotyczy. Także mogą to być krótkie terminy przesłuchania, a [mogą być] wyznaczone przez sąd takie terminy, których nie sposób pogodzić z zabezpieczeniem ofiary. Są terminy czasami 3-miesięczne i dłuższe. Oczywiście my z tym walczymy, ale to są procedury, procedury i jeszcze raz procedury, które nie przystają w mojej ocenie do prowadzenia tego typu spraw." [FG(P)]

If there is good cooperation between relevant institutions in Poland and abroad, which usually happens within the EU, an example being the cooperation between Poland and Romania [P(1)], the victims who have already left Poland can still be heard due to technological solutions. This was the case of Romanian victims of labour exploitation heard by the Polish court via Skype.

When referring directly to the ineffectiveness of prosecution, the interviewees also pointed out that individual prosecutors are strongly independent in their verdicts, and it is only up to them whether they take into account recommendations related to the prosecution of human trafficking or not:

"In the past the prosecution service was a hierarchical institution (…). The General Prosecutor, or the national, or the appellate prosecutor, could order: 'Do this or that'. Today, prosecutors are independent, they can read a recommendation but they will act independently, they will assess the evidence, and so on. Therefore I think that the state is absolutely ineffective in this area." [P(1)]

"Kiedyś [prokuratura to] była hierarchicznie podporządkowana instytucja (…). Prokurator Generalny mógł sobie zażądać: 'Proszę zrobić to i to', czy to krajowy, czy apelacyjny. A dzisiaj prokurator jest niezależny, no i on z takich wytycznych może przeczytać rekomendację, ale robi sobie swoje,

ocenia materiał dowodowy itd. W związku z tym ja uważam, że to jest zupełna nieskuteczność państwa w tym zakresie." [P(1)]

A J-group interviewee expanded on this issue when explaining how the system of coordination of prosecutorial proceedings involving human trafficking functions (Chapter 3.1.4.). The respondent pointed to the fact that the coordinator for human trafficking cases at the General Prosecutor's office cannot tell prosecutors what they can or cannot do procedurally. Only direct superiors of prosecutors are entitled to command them. The coordinator for human trafficking cases can solely consult the case with the prosecutor who deals with it or ask the General Prosecutor to send a note to the chief of the local prosecution saying that in the General Prosecutor's view, the case should be dealt with differently. However, it is only up to the note's addressee whether the suggestion will be taken into account or not [J(1)].

According to the same J-group interviewee, the definition of human trafficking is part of the problem, since it leaves space for the prosecutors' own interpretation of what should be considered as degrading human dignity:

> *"If I offer you five Euro per hour but pay you five Euro a day after three months, it qualifies as misleading as to the conditions of work and pay. I recruit you, you arrive, so it may be a basis for human trafficking. But is it human trafficking? Does it degrade the dignity? Because this is a requisite element – the deed has to violate human dignity and constitutional rights of an individual [to be considered human trafficking]. So it's all very subjective. (…) One of us may consider the same factors to be human trafficking, whereas a different court will say it is an offence under arts. 218 or 219 [employee's rights' infringements] and resolve a case accordingly."* [J(1)]

> *"Jak ja Pani oferuję pracę 5 euro za godzinę, a dostaje Pani 5 euro na dobę, wypłacane po trzech miesiącach, to jest wprowadzenie w błąd co do warunków pracy i płacy. Ja Panią werbuję, Pani przyjeżdża, więc to jest jakby baza do handlu ludźmi. Ale czy to już jest handel ludźmi? Czy to poniża godność? Bo to jest ten element – to ma poniżyć godność człowieka i naruszyć jego konstytucyjne uprawnienia. Tak więc to wszystko jest takie ocenne bardzo. (…) Jeden z nas może te same faktory uznać za handel ludźmi, a drugi sąd stwierdzi, że to jest zwykły art. 218 czy 219 [tj. naruszenia praw pracowniczych] i na tym można zakończyć sprawę."* [J(1)]

Interviewed prosecutors, when putting off allegations of their ineffectiveness, emphasised that firstly, in contradiction to how law enforcement officers may see the case, they have more complex view of the situation due to the access to the whole evidence and the variety of materials, including testimonies of all parties involved. Secondly, prosecutors' knowledge of criminal law is more compound than the knowledge by law enforcement officers, and it may happen that what officers perceive as a crime cannot be qualified as such:

> *"Even when the police or the Border Guard come across a case, they know little about it. They pass it on to a prosecutor and are of the impression that labour exploitation did occur. However, they come to such conclusions on the basis of the initial signs, they do not see the overall picture or examine all of the testimonies. It is the prosecutor who can see all of the evidence, who can see how people worked and lived, and who is able to assess the case based on that. The prosecutor is also a lawyer, he or she has greater knowledge of such matters and is familiar with relevant*

legislation, case law and opinions. The Border Guard or the police are not necessarily familiar with this field. So they may have the impression, as one would, that exploitation occurred, while following the prosecutor's assessment, it later turns out that it did not." [J(1)]

"Policja czy Straż Graniczna nawet jak wykryje sprawę, to niewiele o niej wie. Przekazują ją prokuratorowi i im się wydaje, że był wyzysk w pracy, a tymczasem oni wyciągają wnioski na podstawie pierwszego sygnału, nie widzą całości, nie badają wszystkich zeznań. To prokurator ma ogląd całego materiału, widzi, jak ludzie pracowali, żyli, i na podstawie tego dokonuje oceny. Poza tym prokurator jest prawnikiem, ma większą wiedzę, zna przepisy, orzecznictwo, komentarze. A Straż Graniczna czy policja niekoniecznie się na tym zna. I tak po ludzku może im się wydawać, że był wyzysk, ale potem w ocenie prokuratora okazuje się, że go nie było." [J(1)]

To support their view, the quoted interviewee referred to proceedings that they had conducted: careful examination of the evidence did not allow the interviewee to bring any charges against the perpetrator. Another prosecutor pointed to difficulties in gaining substantial evidence related to the fact that prosecutorial proceedings in cases involving labour exploitation usually draw on testimonies, and these may appear contradictory. The interviewee gave an example of the exploitation in the domestic work sector which usually involves a one-to-one relation, that is, one migrant worker exploited by one employer, which makes it hardly possible to objectively conclude on the facts:

"Most often, there is a testimony of a victim and of an employer (…), and it is not possible to determine what has really happened. One party says one thing, the other party says something different. There are no external signs that would prove that a person has been exploited and we face a situation of insufficient evidence of guilt. (…) When I have two or more victims, two or more employees in a situation of exploitation and they give the same facts, refer to the same circumstances, more or less, then it's much easier to confront the two versions. Obviously, our alleged perpetrator may do certain things to be excluded from the suspect list, I mean he'll simply give a different version of events than that presented by victims. We have to decide which of them is true." [J(1)]

"Najczęściej jest zeznanie tej osoby ewentualnie pokrzywdzonej, zeznanie pracodawcy (…), jest niemożliwe ustalenie obiektywnego przebiegu zdarzeń. Jedna strona mówi swoje, druga strona – swoje. Nie ma jakichś śladów zewnętrznych, które świadczyłyby o nadmiernej eksploatacji człowieka i wtedy niestety spotykamy się z sytuacją braku dostatecznych dowodów winy. (…) Jeżeli mamy dwóch czy więcej pokrzywdzonych, dwóch czy więcej pracowników w sytuacji eksploatacji i oni mniej więcej podają te same fakty i okoliczności, to jest dużo prościej skonfrontować wersje. Wiadomo, że nasz potencjalny sprawca może podejmować jakieś działania, żeby siebie wykluczyć z kręgu osób podejrzanych, czyli po prostu będzie podawał wersję odmienną od wersji pokrzywdzonych. My musimy ustalić, która jest prawdziwa". [J(1)]

A representative of the police also highlighted the peculiarity of testimony-based evidence. The interviewee pointed to deficiencies of such evidence related to the language difference:

"These offences at the intersection of labour exploitation, violation of workers' rights, human trafficking and forced labour, they are complicated,

difficult to prove. Gathering reliable material coming from the victim, in addition a migrant, in other words this material which is by default burdened with a linguistic defect, not to mention the question of communication, understanding it the right way… it's so complex that it's impossible to easily and wholly eliminate all those [problems] at once. Sometimes it's possible, and other times not." [P(1)]

"Te przestępstwa z pogranicza wyzysku w pracy, naruszenia praw pracowniczych, handlu ludźmi, pracy przymusowej, one są skomplikowane, trudne do udowodnienia. Zebranie wiarygodnego materiału pochodzącego z zeznań pokrzywdzonych, w dodatku migrantów, [czyli] tego materiału obarczonego już co do zasady wadą językową, nie mówiąc już o dogadaniu się, zrozumieniu tego we właściwy sposób… To jest na tyle skomplikowane, że nie sposób w sposób prosty i całościowy wyeliminować wszystkich tych [problemów] jednocześnie. Czasem się da, czasem się nie da" [P(1)]

In the interviewee's view, certified translators do not solve all related problems, and in the case when a victim speaks a particularly rare language for which no certified translator is available, the proceedings may appear impossible to conduct [P(1)].

Thus, the interviewees representing various institutions, including law enforcement agencies and prosecutors, agreed that the issue of testimony-based evidence significantly lowers the effectiveness of prosecution, and participants of both focus groups, while not denying the existence of other factors, achieved consensus in pointing to exactly this issue in order to explain prosecution's shortages.

The majority of the interviewees did not have any opinion on the effectiveness of courts in punishing perpetrators, which corresponds to the fact that there is no monitoring of court cases involving migrants' labour exploitation and the number of convictions in cases involving human trafficking for forced labour is extremely low. The respondents who expressed their view on this issue emphasised that in cases related to human trafficking, judges apply the extraordinary mitigation of punishment and pass mild judgments:

"Sentences for human trafficking in Poland differ a lot from sentences in other European Union countries, or even in countries behind our Eastern border. In some cases, sentences are commuted due to extraordinary circumstances of the case. (…) Courts also tend to qualify cases as less serious crimes." [P(1)]

"Wyroki za handel ludźmi w Polsce odstają od wyroków w krajach Unii Europejskiej, czy nawet w krajach za naszą wschodnią granicą. To są wyroki, w których są stosowane nadzwyczajne łagodzenia kar. (…) Sądy też zmieniają kwalifikację [czynu] na łagodniejszą." [P(1)]

The respondents suggested the judges' lack of competence to deal with related cases – *"there is (…) a huge gap in the education of judges" [olbrzymia luka jest jeżeli chodzi o [przygotowanie] sędziów]* [N(1)] – and they emphasised the judges' lack of will to participate in relevant training [N(1)], especially the training which would bring together representatives of the police, the Border Guard and prosecutors [P(1)].

5. Victim support and access to justice

5.1. Victim support, including available support services

Victim support services are available free of charge to all victims of labour exploitation, independently of the migrants' status in Poland, however, only under condition that the victims are recognised as potential victims of human trafficking. In such a case they may enter the state-financed *Programme for Support and Protection of Victims/Witnesses of Human Trafficking* operated by the National Consultation and Intervention Centre for Victims of Human Trafficking. Within the *Programme*, their stay in Poland is regularised and they are provided shelter, as well as legal, medical and psychological aid. They have a three-month reflection period during which they can decide whether they want to cooperate with law enforcement institutions or not. If they decide to do so, and the prosecutorial proceedings still take account of human trafficking, their stay in Poland may be regularised for the next six months, and if needed, until the end of criminal proceedings. In this time-period, they are embraced by the *Programme*. If they decide to go back to their home country, they will be referred to the IOM and offered support within the Assisted Voluntary Return programme.

According to one interviewee (N), if victims have irregular residency status in Poland and are offered to enter the *Programme for Support and Protection of Victims/Witnesses of Human Trafficking*, they usually agree to enter it. If victims have regular residency status, they are not inclined to use the offered services. It is likely that they will stay in a shelter for a few nights, and afterwards, they will seek another job in Poland or the countries of Western Europe. They will not be charged for the shelter, although later, the Ministry of the Interior will have difficulties in reimbursing the cost to the local social welfare centre (Chapter 4.3.1.).

There are no state-financed support services for victims of labour exploitation who are not recognised as potential victims of human trafficking. If they are undocumented migrants and contact La Strada, they may use La Strada's shelter for a night or two and basic counselling for this time-period, however, they are not entitled to any systemic support embracing legal or psychological aid, unless La Strada's activists recognise them as potential victims of human trafficking and persuade them to take advantage of the *Programme* [S(1)]. The only thing that undocumented migrants can do is to search for cost-free aid provided by other NGOs. However, as pointed out by interviewees, none of the Polish NGOs offer psychological aid to migrants [S(1)]. Furthermore, access to legal aid is limited, since relevant NGOs function only in big cities [S(1); L(1)]. Another problem is that NGOs have limited possibilities to help exploited migrants with irregular residency status who do not want to be deported. They can only mediate with the employer, for instance, in the case when the employer has not paid wages to the migrants:

> *"We can take informal action: write letters, threaten someone, maybe someone gets scared, that is if they don't know that we can really do nothing to harm them. (…) Sometimes it works. Sometimes a consul will call [an employer] about the passports taken away from some Ukrainian women, and [the employer] will pay them. These are informal activities."* [S(1)]

> *"My podejmiemy interwencje nieformalnie, napiszemy list, pogrozimy, może się ktoś przestraszy, jak nie wie, że nic mu nie mogą zrobić (…). I to czasami działa. Czasem zadzwoni konsul o to, że zabrał paszporty Ukrainkom i wypłacą wynagrodzenie. To są takie działania nieformalne."* [S(1)]

The notification of any state institution, including the NLI, of the case would expose victims to the risk of deportation, which is why if the mediation fails, migrants would rather resign from any further action to protect themselves and/or their colleagues (as exemplified in two case studies). .

Thus, victims of labour exploitation whose stay in Poland is irregular may use NGO services only as long as law enforcement agencies do not recognise their unregulated residency status. If the agencies encounter them, they will be subject to deportation [L(1); S(1)], even if in parallel, criminal proceedings against the employer are initiated:

> "*Criminal proceedings in which [the foreigner] is a victim do not close the door to administrative proceedings when [he/she] violated the law of a given country, stays [there] illegally and may be deported. These are completely different procedures and, to visualize it better, two completely different divisions within the Border Guard which work independently of each other. And apart from clear cases of human trafficking, they don't have to take account of each other's actions."* [P(1)]

> "*Procedura karna, w której [cudzoziemiec] jest ofiarą, nie zamyka procedury administracyjnej, gdzie naruszył prawo danego państwa, przebywa nielegalnie, i może być wydalony. To są dwie zupełnie różne procedury, mówiąc obrazowo, dwa zupełnie oddzielne zarządy w Straży Granicznej, które pracują zupełnie niezależnie od siebie. I poza wyraźnymi przypadkami ofiar handlu ludźmi, nie muszą respektować swoich poczynań."* [P(1)]

If victims taken to the deportation centre still wish to stay in Poland, the last solution for them is to apply for the refugee status, if they have not done it before. In such a case, they enter the support system envisaged for asylum seekers [S(1)].

At this point, some interviewees strongly emphasised the injustice of the situation when migrants whose work appears illegal solely because of employer's exploitative practices and his or her failure in fulfilling all obligations related to the legal employment, lose their stay permit and are subject to deportation, thus in fact, they are punished more severely than the employer [M(1); L(1); S(1)] (Chapter 4.1.1.). Since support services for migrant victims of labour exploitation who are not recognised as potential victims of human trafficking are non-existent, the interviewees were not able to assess the services' effectiveness:

> *"If somebody is simply a victim of labour exploitation, but not a kind of exploitation which may be considered human trafficking, this person has no rights at all, no services, no access to assistance and support whatsoever. Apart from NGOs, who in fact cannot do much legally, either, because there are few legal options available. (…) There is no support, so it is difficult to assess something that doesn't exist."* [S(1)]

> *"Jeżeli ktoś jest ofiarą po prostu wyzysku pracowniczego, nie takiego, który by był uznany za handel ludźmi, to nie ma żadnych kompletnie praw, żadnych kompletnie usług, żadnego kompletnie dostępu do pomocy i wsparcia. Poza NGO-sami, które tak naprawdę też nie za wiele mogą zrobić prawnie, bo prawnie nie za bardzo są możliwości działania. (…) Po prostu nie ma żadnego wsparcia, więc trudno oceniać coś, czego nie ma."* [S(1)]

The quoted interviewee, added that due to the implementation of the Employer Sanctions Directive, there are still some possibilities for undocumented migrants to receive back

payments, although at the cost of deportation. The situation of migrants with regular residency status in Poland is even worse: they immediately fall under the deportation procedure with no practical possibility for pursuing their claims [S(1)]. As for the latter, an M-group expert referred to cases, when as a result of inspection, the employer was urged to make back payments and was ready to do so, however, the illegally employed migrants had already been deported and there was no possibility to deliver payments to them:

> *"There were cases where (…) the foreigners were already gone and the employer, upon our inspection, prepared payments and overdue remuneration. And they were unable to pay it out as they had no bank accounts. We requested the Embassy of Thailand to try and establish the accounts. We haven't received any response so far, and that was two years ago."* [M(1)]

> *"Były takie przypadki, że cudzoziemcy (…) wyjechali już, a pracodawca po naszej kontroli przygotował wypłaty i zaległe wynagrodzenia. No i nie mógł tego wypłacić, bo nie miał rachunków bankowych. Zwróciliśmy się do ambasady Tajlandii, żeby spróbowali to ustalić. No i do dzisiaj nie ma odpowiedzi, a to było dwa lata temu."* [M(1)]

Thus, the only support measure that the interviewees could refer to was the *Programme for Support and Protection of Victims/Witnesses of Human Trafficking*. Although overall, they found it important and helpful to potential victims of human trafficking, they did identify some gaps in the system. None of the interviewees brought any reservations as to how the La Strada Foundation and the Po-MOC Association perform their function as hosts of the National Consultation and Intervention Centre for Victims of Human Trafficking, on the contrary, the respondents praised the organisations' commitment. The gaps that they identified referred to institutional solutions. This was, firstly, the lack of assistance in finding a new job for the victims [N(1)], for instance, the lack of vocational counselling and training, as well as Polish language courses which would strengthen their position in the Polish labour market [S(1)]. Secondly, this was the lack of legal assistance in receiving back payments and compensation. Although legal aid is provided within the *Programme*, it refers mainly to administrative issues and accompaniment during criminal proceedings. Lawyers' assistance in civil proceedings is not financed by the state [N(1); S(1)].

Apart from that, the interviewees pointed to problems with finding a shelter for male victims of human trafficking (Chapter 4.3.1.). As they also suggested, it can happen that local shelters do not meet victims' expectations. For instance, within a case involving Romanian victims, accommodation conditions in the shelters to which the migrants had been referred, were very poor, which in one J interviewee's view, was one of the reasons why victims decided to resign from the support offered within the *Programme* and go back to Romania . The expert did not comment on the fact that male victims had been placed in a shelter for homeless people. However, another respondent, when speaking in general terms, not about this particular situation, did point to the problematic nature of such a solution:

> *"Let's be honest, if we place a single Romanian national in a night shelter for homeless people, considering the typical attitude [of homeless people] towards Romanians, namely that every Romanian is a thief, then it's enough that one of those homeless people loses a mug or any other trifle, say a razor, for this Romanian to be lynched in three minutes."* [P(1)]

> *"Powiedzmy sobie szczerze, jeśli umieścimy w noclegowni dla bezdomnych pojedynczego obywatela Rumunii, z nastawieniem stereotypowym [bezdomnych] do Rumunów, że każdy Rumun to złodziej,*

> *to wystarczy, że zginie któremuś z tych bezdomnych kubek czy jakaś drobnostka, żyletka, to jest lincz na tym człowieku w trzy minuty."* [P(1)]

The interviewee added, however, that La Strada activists who are responsible for finding a shelter take such circumstances into account. Indeed, in the case that the above J group respondent referred to, there were a dozen Romanian victims and not just a single Romanian. Still, the fact that there were severe difficulties with finding a place for Romanians (Chapter 4.3.1.) paradoxically suggests even more difficulties in similar cases involving a lower number of male victims vulnerable to violence on the grounds of their national or ethnic origin.

5.2. Access to Justice and other mechanisms to empower victims

None of the respondents was able to refer to any single court case resulting in a verdict on compensation or back payments to a migrant victim of labour exploitation. One M-group expert mentioned that at the time of interview, provisions related to back payments which result from the implementation of the Employer Sanctions Directive had not been exercised [M(1)]. Two other interviewees talked about the case of Tajikistani and Uzbekistani truck drivers tried by the civil court which had ended with a settlement (see below). According to the respondents, the Polish justice system is entirely ineffective: *"the system works too slowly, very badly and ineffectively" ["ten system działa źle, bardzo przewlekle i nieskutecznie"]* [S(1)]. Although relevant provisions do exist, they stay unused:

> *"Let's be clear about it: as far as any material compensation goes, the system doesn't work, there's nothing to expect for victims. (…) There is no system. There are legal rules (…), defunct ones."* [N(1)]

> *"Trzeba sobie jasno powiedzieć, że jeżeli chodzi o jakiekolwiek zadośćuczynienie materialne, to system jest do niczego – [ofiary] nie mają się czego spodziewać. (…) Nie ma systemu. Są zapisy prawne, które pozostają martwe."*[N(1)]

The interviewees linked the lack of practical possibilities to receive compensation to the ineffectiveness of prosecution in cases of migrants' labour exploitation: *"compensation can only be paid where there is a guilty verdict, and the proceedings are excessively lengthy" ["kompensata może być wypłacona tylko, gdy dojdzie do wyroku skazującego, a postepowania są przewlekłe"]* [N(1)] (see also Chapter 4.3.2.). They listed a number of further reasons for the ineffectiveness of the system.

First, it often happens that victims are not able to provide any support for their possible claims in the civil court, due to the lack of a contract or other evidence [L(1)]. It also happens that they are even not able to provide the name of the employer or the address under which they worked [S(1); L(1) and related case study].

Second, victims are unaware of their right to claim compensation or back pay of denied wages [S(1)]. Especially those in the detention centre who are about to be deported have a difficult access to lawyers who could provide relevant information to them. They may only use services of NGO lawyers, however, since as a rule, few read announcements on lawyers' assistance placed on the information board, few use this opportunity. Apart from that, NGO lawyers do not speak all necessary languages, for instance, Vietnamese, to communicate with victims [L(1)].

Third, since victims do not know the Polish justice system, nor the Polish language [L(1); S(1)], they are not willing to enter proceedings that they do not understand, especially if they have negative experience of the justice system in their home country [S(1)]. Fourth, the latter significantly contributes to victims' lack of determination in taking procedural steps in the court, which adds to the fact that many, after being abused, either fall under the deportation procedure, if their work has appeared to be illegal, or decide to go back to their country of origin or another EU country in search for a better place to live:

> *"How much the victim is determined to defend their interests and if they are still here, in Poland. My guess is that the answers to both questions are negative."* [J(1)]

> *"Na ile ten pokrzywdzony jest zdeterminowany i jest tutaj w Polsce, żeby pilnować tych interesów – przypuszczam, że w żaden sposób."* [J(1)]

This is all the more so, since civil court proceedings are excessively long, especially in large cities, where it usually takes at least six months before the first trial takes place:

> *"[To start the proceedings] means having to stay in Poland, in a given place and, considering how much time passes between the incident and the court hearing, it is unlikely to be expected. Polish citizens may be patient and wait for three years for the court hearing, but a foreigner comes here to earn money, and not to spend time waiting for the trial to begin."* [N(1)]

> *"[Rozpoczęcie postępowania] oznacza konieczność pozostania w kraju, w tym danym miejscu, a zważywszy na odległość wydarzenia do rozprawy sądowej, to bardzo trudno na to liczyć. Polacy mogą być cierpliwi i czekać 3 lata na rozprawę, ale taki cudzoziemiec jest tu po to, żeby zarobić pieniądze, a nie żeby czekać na rozprawę."* [N(1)]

Fifth, in the most severe cases of labour exploitation, victims fear reprisals from the perpetrator [S(2); J(1)]. In the aforementioned case involving Romanian victims of human trafficking for forced labour, all victims openly stated that they did not wish to receive compensation. According to a J-group interviewee, this was because the perpetrator, also a Romanian citizen, is a member of a well-situated family that informally 'rules' the villages from where the victims came. Although victims firstly expressed their wish to receive payments, they changed their mind after they came back to Romania [J(1)].

Sixth, some victims may consider the claim as a dishonour to them. An S-group expert mentioned the reluctant attitude of Vietnamese victims of human trafficking for forced labour to attach their claim to back payments and compensation to the criminal court files: *"in the Vietnamese culture it's a very dishonourable thing to do, to demand your payment" ["zgodnie z kulturą wietnamską jest to dla nich hańbiące, że oni się w ogóle czegoś domagają"]* [S(1)].

Seventh, victims have no money for civil proceedings and the attorney [N(1); S(1)], and they are not aware of their entitlement to ask for court-appointed legal aid:

> *"They don't have access to lawyers, they don't even know that they may ask for court-appointed legal aid and the law provides that they don't even need to do it in writing but may state it for the record, but still it must be done in Polish."* [L(1)]

> *"Nie mają dostępu do prawników, nie wiedzą nawet, że mogą się zgłosić do sądu o pomoc prawną z urzędu, a przepis przewiduje, że nawet nie*

muszą tego na piśmie zrobić, tylko do protokołu, ale i tak to musi być po polsku." [L(1)]

As already suggested by the above points, in Poland, there is a possibility for civil law claims to be dealt with by the criminal justice system, provided that the victim delivers a statement on the wish to claim the payments within the criminal proceeding:

> *"If they [prosecutors] take the statement and the prosecutor appends an ancillary claim to the indictment, then the thing is settled, so to say. Then it doesn't matter if the victim is in Poland or otherwise. Certain payment is awarded in the judgment."* [J(1)]

> *"Jeżeli [prokuratorzy] odbiorą [oświadczenie] i taki pozew adhezyjny zostanie dołączony przez prokuratora z aktem oskarżenia, to jakby załatwia sprawę. Wtedy nie ma znaczenia, czy pokrzywdzony jest w Polsce czy nie. Wyrokiem jest zasądzona określona kwota."* [J(1)]

According to a J group interviewee, this precludes a victim whose level of education is low and whose financial situation is bad from initiating civil proceedings. Furthermore, while it is obviously difficult for the victim to gather evidence necessary to win a civil case and prove the accurate amount of compensation, within criminal proceedings, the burden of proof is not on the victim, and the judge can rely to a further extent on the victim's own testimony [J(1)]. Still, this possibility is not used by prosecutors despite the fact that the General Prosecutor's office issued guidelines encouraging them to ask victims for their statement:

> *"We've never encountered a prosecutor who would include it [civil claims] in the proceedings. It is done at the victim's request, and the victim usually doesn't have the slightest idea, and besides, it would be difficult to explain to them they have such an option. For these people appearing in court is generally— [very difficult]."* [N(1)]

> *"Nie trafił nam się taki prokurator, który włączyłby to do postępowania. To się odbywa na wniosek ofiary, która najczęściej nie ma zielonego pojęcia, a poza tym trudno jej wytłumaczyć, że ona ma taką możliwość. Dla tych osób występowanie w sądzie w ogóle to jest… [bardzo trudne]."* [N(1)]

The victims' wish to limit to the minimum their participation in court proceedings and their lack of cooperation with the justice system were emphasised by a few interviewees [N(1); J(1)]. Another problem pointed out by the respondents was that criminal courts have difficulties in determining the amount of compensation to be paid to the victim:

> *"As for compensation, it is not easy to obtain the award of it. It must be meticulously calculated, and that's the problem as we don't know what the agreement between a victim and an offender was, when it comes to the provision of this forced labour, in general, and how much actually was paid, that's the thing."* [J(1)]

> *"Jeśli chodzi o odszkodowanie to jest kłopot, że żeby sąd je zasądził, to trzeba w taki sposób drobiazgowy wręcz wyliczyć, co jest kłopotem, bo tak do końca nie wiemy, na co się umówiła ofiara z przestępcą jeżeli chodzi o świadczenia tej pracy przymusowej, tak ogólnie, no i ile faktycznie wypłacono, bo z tym są kłopoty."* [J(1)]

That is why they refrain from adjudicating the compensation. This happened, for instance, within a case which involved human trafficking for sex services that an interviewee was

familiar with: the court decided on the penalty, but the judge said that he was not able to issue the decision on the compensation. Thus, the only possibility was to refer the claim to the civil court [J(1)].

Furthermore, the compensation is paid either by the perpetrator or the state, but the latter only under condition that the victim has lost health or life [J(2)]. In such circumstances, it is essential that the perpetrator is solvent:

> *"It's important for a victim that the prosecutor or the police – when the perpetrator is detained – take actions to secure the property of the perpetrator to enable the enforcement [of compensation]. Because a court's decision itself, when we can't enforce it, it isn't of much use. And enforcement can't be done without property. Of course, he [the perpetrator] has got assets but smartly hidden."* [J(1)]

> *"Też to jest istotne dla ofiary, że w momencie jak się zatrzymuje sprawcę, żeby prokurator czy policja podjęli działania do zabezpieczenia majątku sprawcy, żeby była możliwość egzekucji. Bo samo orzeczenie sądu, bez możliwości jego wyegzekwowania, ono wiele nie daje. A nie możemy egzekwować, kiedy nie ma majątku. Oczywiście on ma majątek, ale gdzieś ukryty sprytnie."* [J(1)]

Meanwhile, as reported by a representative of the police, relevant measures are taken extremely rarely. Even if the perpetrator escapes the workplace leaving the workers unpaid and abandoning his or her goods, it is very uncommon that the goods are confiscated and turned into cash which is paid to the victims. According to the interviewee, the main barrier for this to happen is at the level of prosecutors' and judges' awareness:

> *"It's not a standard in Poland that, say, we have a construction site, the employer flees, leaves somewhere (…) the machines, and the police, upon the prosecutor's motion, seizes the machines to later sell them in the market and, upon the court's order, pay [the money to] the victims. This is an abstraction. (…) We still have a lot to do here when it comes to changes in mentality among prosecutors and judges."* [P(1)]

> *"Nie jest w Polsce czymś standardowym, że powiedzmy, mamy budowę, ucieka z niej pracodawca, zostają gdzieś (…) maszyny i policja na wniosek prokuratora zatrzymuje te maszyny, żeby później je sprzedać na rynku i na wniosek sądu wypłacić ludziom pokrzywdzonym. To jest abstrakcja. (…) Tu mamy jeszcze dużo do zrobienia, jeśli chodzi o zmiany mentalnościowe po stronie prokuratorów i sędziów."* [P(1)]

The interviewees presented divergent views as to whether civil law complaints can be lodged through third parties, which corresponded to their lack of experience in dealing with related cases. According to the Code of Civil Procedure, NGOs can lodge complaints falling under labour law or join the proceedings upon a written consent from the worker (Article 462).[41] The interviewees were able to identify only one civil court case in which a victims' proxy participated [L(2)]. The case concerned Tajikistani and Uzbekistani truck drivers who had not been paid for their work. Their exploitation came to the attention of the La Strada Foundation and the OSCE, which resulted in appointing a proxy for court proceedings. The proceedings lasted for a long time, and according to one of the interviewees, it was only because of the determination from the organisations that the case had not been dismissed:

[41] Poland, Code of Civil Procedure (*Kodeks postępowania cywilnego*), 17 November 1964.

"This was dragging on to infinity. If it hadn't been for La Strada's engagement, it can't be excluded that the proceedings would have been discontinued on the grounds of the lack of contact with the claimants." [L(1)]

"To się po prostu toczyło w nieskończoność. Gdyby nie to, że La Strada się tym zajęła, to niewykluczone, że to postępowanie by zostało w ogóle umorzone z uwagi na brak kontaktu z samymi tutaj powodami." [L(1)]

Another interviewee mentioned burdensome procedures related to the change of a proxy in the meantime and communication problems between the victims concerned which made the proceedings even longer. Finally, the settlement was made between the victims and the employer, and the employer was urged to back pay denied wages. The interviewee commented:

"Perhaps this settlement, even if it was the worst possible, maybe was the best solution for everyone, because otherwise we would have had to do with long court proceedings which wouldn't have had to bring much better payment conditions. (…) It was treated by various entities as a success, since it was the first example when this labour exploitation was compensated and had a positive ending based on a court settlement. But from a juridical perspective, I think that this settlement was simply not particularly profitable for these people because they only received remuneration to the extent to which they were entitled." [L(1)]

"Chyba ta ugoda, chociaż byłaby najgorsza, może byłaby najlepszym rozwiązaniem dla nich wszystkich, ponieważ w przeciwnym wypadku może mielibyśmy do czynienia z długoletnim postępowaniem sądowym, które wcale nie musiałoby przynieść im dużo lepszych warunków płatnościowych. (…) Było to traktowane przez różne podmioty jako sukces, bo to był pierwszy przykład, kiedy ten wyzysk pracowniczy został wynagrodzony i skończył się pozytywnym rozstrzygnięciem na zasadzie ugody sądowej. Natomiast z perspektywy takiej jurydycznej, wydaje mi się, że to porozumienie po prostu było dla tych ludzi mało korzystne, bo oni tylko otrzymali zapłatę w tym zakresie, w którym ona im się należała." [L(1)]

As the case shows, the participation in civil proceedings demands strong commitment from both the supporting organisation and the pro-bono attorney:

"This requires a lot of engagement on the part of organisations and, I would say, lawyers friendly towards a particular organisation who are willing to enter such proceedings. It is evident that one has to do it because of one's sense of mission and not for some sort of benefits – even basic remuneration." [L(1)]

"To wymaga dużego zaangażowania po stronie organizacji i powiedziałbym prawników przyjaznych danej organizacji, którzy są skłonni wejść w takie postępowanie. Bo wiadomo, że trzeba to robić tak naprawdę z uwagi na własne poczucie misji, a nie z uwagi na jakieś tam korzyści – nawet podstawowe wynagrodzenie." [L(1)]

That is why, as stated by one interviewee from the S group, although their organisation did manage to convince some attorneys to represent victims free of charge, not only migrant

victims and not only in cases related to labour exploitation, it does not a have list of attorneys willing to offer their services for free as a rule [S(1)].

The interviewees' general suggestion on how to facilitate the lodging of complaints of migrant workers against employers was to improve the Polish justice system in such a way that the length of proceedings is shortened. Several respondents did not believe that this would happen in the near future [L(1); N(1)], and they provided more detailed recommendations which they found easier to implement. First, victims' awareness of their right to lodge a complaint should increase, which means that there is a necessity for conducting awareness raising activities among migrants and comprehensively inform victims about potential benefits from proceedings [J(2); S(1); L(2)]. Second, victims should have access to cost-free attorneys who would represent them in civil proceedings [N(1); J(2); S(2); L(1)]. Considering the language barrier that the migrants face and their low level of education, the attorneys should provide migrants with a ready petition form written in clear and simple language which would need only to be filled in by a victim with appropriate information [S(1)]. Third, the issue of evidence should be altered. At the moment, migrant workers must provide support for their claims, but it often happens that they do not have any job-related documents [S(1)]. That is why the law should always stipulate that a three-month work contract between the employee and the employer existed:

> *"It's an idea which has been developed in our Association, namely a presumption of three-month employment relationship that would apply to all foreigners, or both foreigners and Polish citizens, who work illegally. This is taken form the Directive [Employer Sanctions Directive], of course. Our concept is to extend it not only to persons who stay in Poland unlawfully, without any document of stay. The scale of this phenomenon is pretty substantial in Poland, no one knows how substantial it is, but because it is easy to obtain a Polish visa, specifically in neighbouring countries, it is not that overwhelming. More pressing are problems of people who, admittedly, stay in Poland legally but work illegally."* [L(1)]

> *"To jest w stosunku do wszystkich cudzoziemców, albo cudzoziemców i Polaków – [żeby] funkcjonowało domniemanie trzymiesięcznego stosunku pracy w przypadku albo wszystkich cudzoziemców, którzy wykonują pracę nielegalnie, albo wszystkich pracowników. To jest wzięte oczywiście z tej dyrektywy. Nasza idea jest taka, żeby ją rozszerzyć nie tylko na osoby przebywające w Polsce bez dokumentu, bez uprawnienia, bez dokumentu pobytowego. W Polsce jest to skala spora, nikt nie wie dokładnie jaka, ale w związku z tym, że polską wizę łatwo uzyskać, zwłaszcza w krajach ościennych, nie jest to dominujące. Dominujące są problemy z osobami, które są co prawda w Polsce legalnie, ale wykonują pracę niezgodnie z przepisami."* [L(1)]

Fourth, victims should have a possibility to regularise their residence status in Poland until both court proceedings, the criminal and the civil ones, end [L(1); S(2); J(1)]. Instead of becoming deported, they should be provided with assistance in finding new jobs [J(1); N(1)].

5.3. Child victims

The interviewees had significant difficulties in responding to the question concerning child exploitation and institutions tasked to monitor the problem and intervene. As mentioned before, only three interviewees have ever encountered a case of migrant minors' labour exploitation, of which two were dealing with the same case when the research was conducted. The case concerned a group of 28 Romanians forced to work in open-air

markets; four of them were minors at the age of between 16 and 18. The minors were not only hired to trade, but they also did cooking and cleaning for the perpetrator's house. Some of them were accompanied by their custodians, and some were not, but the perpetrator had a notarial deed confirming that the custodians agreed for the children to go to Poland. All victims went back to Romania after they had used support for two days. An employee of a Warsaw childcare facility in which migrant minors live brought other instances of minors' labour exploitation to light: her juvenile wards take part-time illegal jobs with Poles or their compatriots to earn additional money to wages that they obtain due to the legal employment relationship, but it happens that the employer who employs them illegally pays them less than promised or does not pay them at all. It also happens that the illegal job is exploitative, for instance, the juveniles work 14 hours per day [S(1)].

None of the respondents was able to decidedly point to any state body responsible for child labour's monitoring. A few suggested that this would be the NLI as an institution designed to monitor the labour market, at least in reference to children below 16 years of age employed for cultural, artistic, sport, or marketing activities, whose work is permitted, and juveniles between 16 and 18 years of age who can only be employed to perform works which involve their vocational training (Chapter 2) [M(2)]. However, the interviewed labour inspectors provided almost no comments on migrant children. Only one suggested that from what the interviewee had heard, Ukrainian children are seasonally engaged by individual farmers to work in Polish agriculture. Still, the problem remains unrecognised since no institution is entitled to inspect the farmers [FG(M)]. Additionally, what makes the situation even more difficult, children's work in agriculture is socially accepted in Poland, as an NGO activist noticed [S(1)]. A few other interviewees pointed to the police as an agency responsible for child labour monitoring, since it is prohibited to employ children below 16 years of age, except in the four economic sectors mentioned above, and legal possibilities to employ juveniles, that is, those aged between 16 and 18, are limited [e.g. M(1)]. However, the interviewed representatives of the police did not refer to any specific police actions aimed at monitoring migrant children's exploitation at workplace.

Those who slightly expanded on related issues drew from their experience in dealing with the referral system and support provided to unaccompanied migrant children in general, and not to child victims of labour exploitation. Still, from what they said, the system is full of gaps which would most probably come to the fore in cases involving such victims. As an NGO lawyer stated:

> *"a question of unaccompanied foreign minors is such a marginal issue for Polish authorities that this area is left on its own, in my view."* [FG(L)]

> *"temat małoletnich cudzoziemców bez opieki jest tak marginalnym problemem u władz Polski, że tu nic [żadnego systemu] nie ma, moim zdaniem."* [FG(L)]

The interviewees emphasised the lack of clear procedures for how to deal with an exploited migrant child when it is encountered. Taking into account the rarity of any related police actions, a police representative suggested improvisation in each particular case:

> *„When it comes to our actions, it's based on extinguishing fires rather than following procedures, because of how specific this subject is."* [P(1)]

> *"U nas to zawsze jest działanie jak gdyby raczej na bazie gaszenia pożarów niż względem procedur, bo tego typu specyficzna jest ta tematyka."* [P(1)]

Still, the respondents listed a few organisations and institutions most probably involved in the intervention: the La Strada Foundation who provides support to migrant victims of exploitation, the Nobody's Children Foundation who specialises in supporting unaccompanied children, the police and/or the Border Guard who identify the case and conduct the investigation, and the family court who refers the child to a childcare facility and decides on establishing a custodian and a guardian for the child.

The main problem that the interviewees pointed out refers to the child's accommodation. Before 2011 when the Act on family support and the system of substitute care was introduced,[42] there had been a Warsaw childcare facility contracted to provide care to unaccompanied migrant children [S(1); N(1); M(1); P(1)]. Currently, however, there are no provisions enabling such a contract and there are problems with where migrant children should be referred to. In practice, the system for support is not coordinated, and no institution feels responsible for providing care to migrant children without a parent or a custodian:

> *"We have problems with children who are involved in the refugee procedure. The most conspicuous problem is where to place them. We have a problem with child victims of human trafficking, because there is nowhere we can place them, as no one feels responsible for this area and there are no facilities ready to do it. And usually we just grab a phone and force district authorities which coordinate the system to find a place. I suppose that in the case of labour exploitation of a child, we would face the same problems."* [N(1)]

> *"Jest problem z dziećmi, które są w procedurze uchodźczej, to jest ten najbardziej widoczny problem, gdzie ich umieszczać. My mamy problem jeżeli chodzi o dzieci-ofiary handlu ludźmi, bo nie mamy ich gdzie umieszczać, bo nikt nie czuje się odpowiedzialny za to i nie ma placówek, które byłyby gotowe się tego podjąć. No i najczęściej się to odbywa na zasadzie chwytania za telefon, próbujemy wycisnąć z władz powiatowych, które koordynują ten system, jakieś miejsce. W przypadku, gdyby się trafił przypadek wyzysku do pracy takiego dziecka można się liczyć z tym, że byłyby te same problemy."* [N(1)]

It happens that unaccompanied migrant children, before reaching the educational care facility, stay in the emergency care for longer than three months, which is against legal regulations, because it is difficult to find a place to refer them to [FG(L)]. In the emergency care, the migrant children cannot feel safe, taking into account that a large part of minors who stay there have already violated the law [J(1)]. The migrant children are also vulnerable to social isolation: the staff of the emergency care is unprepared to deal with specific issues related to the language and the cultural difference, and the situation is all the more difficult since migrant children are dispersed across the whole Polish territory [M(1)]. An interviewed lawyer elaborated:

> *"We had a situation with two Afghan boys, one stayed in Krakow and the other one in Warsaw. Krakow wanted to send the kid to Warsaw, so that they were together at least and there was some communication between them, but Warsaw said no. So these boys stayed in two different cities and they were by the Polish majority… I can't say if they were discriminated against, but they were rejected."* [FG(L)]

[42] Poland, Act on family support and the system of substitute care (*Ustawa o wspieraniu rodziny i systemie pieczy zastępczej*), 9 June 2011.

"Mieliśmy taką sytuację, że było dwóch chłopców afgańskich, jeden był w Krakowie, drugi w Warszawie. Kraków chciał przekazać to dziecko do Warszawy, żeby przynajmniej byli razem i była jakaś możliwość komunikacji, ale Warszawa odmówiła. Więc ci chłopcy siedzieli sobie sami i byli przez tą większość polską… no nie wiem, czy dyskryminowani, ale też odrzucani." [FG(L)]

Independently of the above, it often happens that migrant children escape from the childcare facility, be it emergency care or a children's house, and no one knows where they go, because no institution monitors the problem [S(1)]. A P-group interviewee provided data on the issue:

"We calculated, only based on data on the award of refugee status, that over a period of three years some 300 children disappeared. What has happened to those kids, it's hard to say." [P(1)]

"Wyliczyliśmy, tylko z danych o nadaniu statusu uchodźcy, że w ciągu 3 lat mieliśmy około 300 dzieci, które nam wyparowały. Co z tymi dziećmi się stało, to nam trudno powiedzieć." [P(1)]

The interviewee added that the Border Guard, in cooperation with Warsaw University, is currently working on mechanisms to properly address this situation.

Another problem is at the level of family courts. It refers to judges' awareness on the one hand, and formal possibilities of establishing a custodian or a guardian, on the other. Judges do not know how to apply procedures for dealing with unaccompanied migrant children [N(1)]. Some refrain from issuing verdicts on referring the children to relevant facilities and appointing guardians, and they explain that such a verdict would fall beyond their jurisdiction. This happens despite the fact that other judges find a way to solve the problem:

"A family court can take a stance on that, but in general in practice it may also be that a family court declares its lack of jurisdiction in a matter of a foreigner without a permanent place of stay in Poland, and therefore refuses to issue any decision at all in the case. And that's it." [FG(P)]

"Sąd rodzinny może zająć stanowisko w tej kwestii, ale generalnie praktyka może sprowadzać się również do tego, że sąd rodzinny stwierdza, że nie jest właściwy w sprawach cudzoziemca nie mającego stałego miejsca pobytu w Polsce, w związku z czym w ogóle odmawia wydania jakiekolwiek decyzji w tej sprawie. I koniec." [FG(P)]

As a result, some migrant children become deprived of adequate support. One interviewee expanded on the issue of custodians and guardians. According to the respondent, before a custodian is established, it needs to be determined if the child has parents. It happens that the search for parents takes a long time. It is longer if the child comes from a different than an EU country. Then, the parents should be deprived of their powers. Foreign law applies to such a case and it might happen that the law makes it impossible to place the child in a foster family. As the interviewee further explained, there is a problem with establishing a permanent guardian to an unaccompanied migrant child, since the Code of Civil Procedure does not envisage such for a child without a parent or a custodian. The guardian may be appointed for one legal action only. Thus, it is necessary to establish a guardian for each legal action that should be taken. Meanwhile, the child's needs demand to be addressed in a complex way, preferably by one person with whom the child is in touch. Yet another problem is that it is difficult to find an appropriate guardian for the migrant child. Potential guardians, usually first persons from the list of available attorneys, are not trained in specific issues

related to dealing with children, and migrant children in particular. The problem is particularly severe if the child comes from a third country, since this demands many legal actions to be taken [M(1)].

The Ministry of the Interior has commissioned a legal expertise to an expert in family law [N(1)].[43] The expertise discusses court's powers related to referring migrant children to a childcare facility and establishing a custodian and a guardian, and offers specific suggestions on how to solve problems discussed by the interviewees. Still, as pointed out by one of the respondents, the suggestions are not widely used:

> *"Family courts do such terrible things that it defies any understanding. (…) [Judges] don't know the law, have no understanding of realities; those decisions they issue are so… certainly, sooner or later the Strasbourg court will become interested in what is going on here, as soon as someone bothers to take a closer look at it. I know it from my own experience, cases of human trafficking victims. They were not victims of labour exploitation, they were victims of human trafficking, so it seemed that it was a drastic form where the court should see the light of reason. However, though judges are equipped with guidelines on how to do it, they are independent and take decisions at their own discretion."* [N(1)]

> *"Sądy rodzinne robią takie straszne rzeczy, że nie da się tego zrozumieć. (…) [Sędziowie] nie znają prawa, nie mają pojęcia o realiach, podejmują decyzje takie, że kiedyś naprawdę się tym Strasburg zajmie, jak ktoś się temu dobrze przyjrzy. To jest widok z mojego doświadczenia, kiedy chodziło o ofiary handlu ludźmi. To nie były ofiary wyzysku, tylko handlu ludźmi, czyli wydawało się, że to już drastyczna forma, gdzie sąd powinien pójść po rozum do głowy. Ale mimo tego, że się podtyka sędziom pod nos instrukcje, jak to zrobić, to oni jako niezawiśli podejmują decyzje zgodnie ze swoim przekonaniem."* [N(1)]

[43] Skwara C. (2012), *Sytuacja prawno-rodzinna małoletnich cudzoziemców-ofiar handlu ludźmi*, in: Ministerstwo Spraw Wewnętrznych, *Zapobieganie handlowi ludźmi w Polsce: materiały do raportu za lata 2009-2011*, pp. 113-128, available at: www.handelludzmi.eu/hl/baza-wiedzy/polecane-publikacje/6380,Zapobieganie-handlowi-ludzmi-w-Polsce-Materialy-do-raportu-za-lata-2009-2011.html (10.02.2014).

6. Attitudes

6.1. Interventions into situations of labour exploitation

The belief that interventions into situations of labour exploitation serve the interests of migrant workers was expressed either by those not particularly experienced in dealing with cases of migrants' labour exploitation, or by those who referred mainly to the most severe instances of labour exploitation which involve human trafficking and migrants kept closed. The majority of interviewees, even if they noticed that interventions put an end to exploitation, highlighted disadvantages that they bring to the workers.

As a result of the intervention, migrants become "visible" to state administration. This limits their chances to change the job for a better paid one, for instance, no longer do they have the possibility to take a job illegally:

> *"He [the migrant] wants to stay in Poland as long as possible, having his residency status regulated or not, and work here without getting in contact with any authorities."* [N(1)]

> *"Jego [migranta] interes jest taki, żeby jak najdłużej tu funkcjonować, nieważne, czy legalnie czy nielegalnie, tylko jak najdłużej pracować, nie narazić się na żadne kontakty z administracją."* [N(1)]

If they are undocumented, they will be subject to deportation. If their work appears illegal, they will lose the permit to stay on Polish territory, and they will also be deported. Even if they are not deported immediately, they will not have enough time to find another employer before their residence permit expires [L(1)]. Furthermore, even if migrants are recognised as potential victims of human trafficking and enter the *Programme for Support and Protection of Victims/Witnesses of Human Trafficking*, their chances to start working legally are limited because the *Programme* does not embrace the assistance in finding a new job. Thus, eventually, they will have to go back to their home country [N(1)].

Meanwhile, the return to the country of origin definitely does not serve migrants' interest. According to the respondents, the migrants' main goal is to earn money which is impossible for them to earn in their country. Their determination is much bigger than any inconvenience related to the work in harsh conditions:

> *"A migrant can consent to tough terms and waive their rights if only they have some profit. For many Ukrainians, 100 or 200 zloty which they can send back home to the family is a lot of money."* [S(1)]

> *"Migrant może się zgodzić na trudne warunki i zrezygnować ze swoich praw, jeśli tylko będzie jakiś zysk. Dla wielu obywateli Ukrainy nawet 100 czy 200 złotych, które mogą wysłać do rodziny, to jest dużo."* [S(1)]

Apart from that, exploitative conditions in which migrants work may not be recognised by them as such, since they do not significantly differ from the work conditions that they would have in their country of origin [M(1); J(1)]. As a rule, those who are not seasonal workers and work in Poland legally, prefer to continue working until five years pass since they undertook the job. Then, they can apply for a permanent residence status which entitles them to work without the work permit:

"Foreigners know how difficult the situation in their country of origin is so they'd rather hold on to the employer who has been exploiting them for the last five years, get the resident status, then they have their freedom because they receive the resident status for an unspecified duration (…) and they can legally work without a work permit." [L(1)]

"Cudzoziemcy, widząc jaka trudna jest sytuacja w kraju pochodzenia, to już wytrzymują u pracodawcy, który ich wyzyskuje, te 5 lat, dostają rezydenta i wtedy są swobodniejsi w tym sensie, że rezydent jest na czas nieokreślony (…) i mogą wtedy pracować bez zezwolenia na pracę." [L(1)]

Finally, after the intervention, independently of whether migrants are deported or not, they will receive neither the back payments nor the compensation for labour exploitation, due to the ineffectiveness of the Polish justice system (Chapter 5.2.). The only thing they can count on, as far as their finances are concerned, is the Assisted Voluntary Return programme conducted by the IOM. Obviously, only those not subject to deportation may take advantage of the IOM's offer. They may go back to their home country and receive reintegration assistance. However, if they come from a distant country, they probably had to pay very much to come to Poland and get the job. No reintegration programme would cover their expenditures from before they decided to migrate [N(1)].

6.2. Reasons for underreporting

In the respondents' view, all negative consequences of the intervention (Chapter 6.1.) apply as an answer to the question on why victims do not come forward and seek a way out of their situation. The interviewees who referred to the most severe forms of labour exploitation added to that: victims' fear of the perpetrator and perpetrator's collaborators who may take revenge against them or their family members, victims' psychologically-motivated acceptance of their role as victims, victims' belief that they will not be reliable to any institution if they do not have passports which are kept by the employer, victims' trust in how the perpetrator explains their situation, for instance, that if they show up to any institution, they will immediately be deported. In the case involving Bangladeshi workers in the shipyard, the perpetrator told the victims that the Polish police is allowed to kill migrants whose stay status in Poland appears undocumented.

Apart from that, the interviewees spontaneously listed the language barrier and almost all factors provided in the close-ended question about the underreporting.

Table 6: Reasons for underreporting (frequencies of answers)[44]

	M	P	S	J	W	N	Total
Lack of effective monitoring of relevant areas of economy							**0**
Lack of targeted support service provision available to victims			1	1		1	**3**
Victims are not aware of their rights and of support available to them	5	4	5	6	1	1	**22**
Victims fear retaliation from the side of offenders against them or against family members	3	5	5	4	1		**18**

[44] The interviewees were asked to choose three items from the list. However, seven of them were not able to limit their answers to this number: three chose six items instead of three, one chose five items, and three chose four items. Two interviewees pointed to two items, thus their third choice has been coded as 'don't know'. Another interviewee chose only one item, therefore his/her 'don't know' answer has been coded twice. Lawyers, employment agents and representatives of employers' organisations were not asked the related question, thus the total number of those who provided an answer was 31.

Victims suffer from feelings of shame		1		2			**3**
Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings	2	3	4	2	1	2	**14**
Victims believe that proceedings are too bureaucratic and costly	1	3	1	2			**7**
Victims fear that if their situation became known to the authorities, they would have to leave the country	5	5	7	4		2	**23**
Victims do not trust that the police in particular would treat them in a sympathetic manner	1	1		1			**3**
Victims perceive being jobless as worse than working in exploitative conditions	2	3	2	2			**9**
Other-please specify	1						**1**
Don't know	4						**4**

The frequencies of answers to the close-ended question show that according to the interviewees, the fear of deportation, as well as the lack of awareness of rights and available support play the most important role for victims not seeking a way out of their situation (23 and 22 indications, respectively). The interviewees added that the migrants' fear of deportation was very reasonable (cf. Chapter 4.3.1.), except in cases where there are traits of human trafficking. In reference to the victims' lack of awareness of available support, they pointed to the actual lack of systemic support, except in cases of human trafficking, as well as the lack of access to legal advice for victims who live outside large cities where relevant NGOs operate. The third most significant factor, in the respondents' view, is the victims' fear of retaliation from offenders (18 indications). Almost a half of the respondents indicated the item which corresponds to the most commonly chosen ones and talks about the victims' lack of belief that speaking to authorities is worthwhile or that they would benefit from subsequent proceedings (14 indications). In particular, they pointed to the parallel confidence of victims that the exploitative situation will come to an end and, for instance, the employer will pay promised wages to them, which is not likely to happen if the workplace is closed as a result of their report. Some also emphasised the victims' lack of trust in institutions to which they report their situation, which comes forward if victims have already had negative experience of state institutions in their home country. Relatively few interviewees (only 3) pointed to the police in this context. Still, the representative of an employers' organisation provided quite convincing comment on this issue:

> *"There were also cases of Polish police ignoring reports by Ukrainians, for instance when they were robbed. This often happened at a local market where Ukrainians would often buy household goods. Unfortunately, it was met with passive responses from the Polish police. This used to be the case a few years ago but the opinion remains alive to this day."* [E(1)]

> *"Zdarzało się też, że polska policja ignorowała zgłoszenia Ukraińców, np. gdy zostali okradzeni. U nas działa giełda, na której często Ukraińcy kupowali sprzęty do domu i często bywali tam okradani. Niestety spotykali się z biernością polskiej policji. Tak było przed kilkoma laty, ale do dziś pokutuje taka opinia."* [E(1)]

Furthermore, those who pointed to victims' conviction that proceedings are too bureaucratic and costly (7 interviewees) referred in particular to civil law proceedings which come out as the only solution for victims working on the basis of civil law contracts, and indeed, are costly and burdensome (Chapter 5.2.).

Interviews show that if victims decide to report their exploitation to anyone, they report it not to state institutions, but rather to an NGO, if they have access to any and awareness of its legal aid services, or to the agency which has recruited/employed them. The only thing that

the NGO or the agency can do, if migrants do not want the information to be passed to any institution, is to mediate between the victims and the employers, which more or less often does bring expected results [S(2); E(1)] (see Chapters 4.1.2. and 5.1.). If the mediation fails, victims tend to resign from any further action: *"they just take their loss in stride and move forward" ["traktują to jak jakieś koszty utracone i idą dalej"]* [R(1)].

None of the interviewees pointed to the lack of effective monitoring of relevant areas of economy as the reason for underreporting. This does not mean, however, that the interviewees considered the monitoring effective, on the contrary, many saw significant deficiencies in how it is conducted. The deficiencies refer not only to the lack of coverage of relevant areas of economy, but also to the methodology of conducting inspections by the NLI (Chapter 3.1.8.). The lack of choices of the related item most probably results from how the question was formulated: "which are the three 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?". Thus, the stress was on victims and their activity or passivity in seeking a way out of their situation.

Meanwhile, the answer about monitoring assumes actions taken independently of the victims' agency. In other parts of the interview, respondents suggested not only ineffective monitoring, but also additional institutional factors which contribute to the fact that many cases of labour exploitation remain undetected by the state: the NLI's ambiguous mandate, which comprises not only the protection of worker rights, but also the inspection of the legality of foreigners' employment, as well as insufficient preparation of law enforcement officers, in particular, police officers, to recognise instances of labour exploitation (Chapters 3.1.8. and 4.3.1.). Furthermore, a few interviewees, mainly from state institutions [J(1); N(1); M(1)], pointed to the weakness of the civil society which does not react to the abuse of migrants occurring next door, while in their view, all society members, including owners of recruitment and employment agencies, should act in response to any signal of exploitation:

> *"Neighbours can as well [like police officers] identify a particular case. Say, there is a clothing factory in the basement next door and people are working there around the clock. (…) If we create a civic society for ourselves, a private entrepreneur [an employment agent] will respond to the threat [of exploitation] in the same way as a police officer or a border guard would, which means that he will simply report the case to authorities, notice that something is amiss with a certain business."* [J(1)]

> *"Sąsiedzi mają taką samą możliwość zidentyfikowania określonego przypadku [jak policjanci]. Na przykład w piwnicy domu obok jest szwalnia i tam jest praca 24 godziny na dobę. (…) Jak wykształcimy sobie społeczeństwo obywatelskie, to taki prywatny przedsiębiorca [prowadzący agencję] będzie tak samo reagował na sytuacje zagrożenia jak policjant i strażnik graniczny. Czyli po prostu powiadamia określone służby, że coś nie pasuje w określonej aktywności."* [J(1)]

Interestingly, from the perspective of one employment agency's representative, it is not the weakness of civic attitudes which constitutes a barrier, but the institutional setting which discourages any third party to come out with the information on migrants' labour exploitation. Within both individual and focus group interviews, this interviewee spoke about a multitude of reports that he/she had heard from Ukrainian migrants exploited by various agencies and companies who had not paid promised wages to them [R(1); FG(R)]. Due to the reports, the interviewee has extensive knowledge about unfair recruiters and employers. However, the interviewee does not know where to turn to with this knowledge: the interviewee does not know any NGO which could help them to make the offenders accountable (Chapter 4.2.), and since the interviewee is not a party within the situation, he/she is afraid of being laughed

at by the NLI. At the focus group interview, the J-group expert suggested that the interviewee brings the cases to the prosecutor. Still, even the judge did not seem to strongly believe in the effectiveness of the suggested action: *"it's always possible to notify the prosecutor. But what he/she will do with it is a separate matter…" ["zawsze można powiadomić prokuratora. Inna sprawa, co on z tym zrobi…"].* The agency representative's reaction to this piece of advice was not enthusiastic. He/she expressed the conviction that by reporting the cases to the prosecutor, they would get entangled in burdensome proceedings: *"if I inform the prosecutor, I will for the next half of the year be going there [and clarifying]" ["jeśli poinformuję prokuraturę, to potem przez pół roku będę tam chodził [i wyjaśniał sprawę]"].* They supported this view by the observation of the lack of coordinated actions between various state institutions and agencies, such as the voivodeship office and the Border Guard, which the interviewee often witnessed in their own office: the Border Guard came to check the information that they had already provided to the voivodeship office. Thus, the representative did not believe that the flow of information between the prosecutor and the state institutions involved would differ from what they observe on a daily basis.

6.3. Factors important to victims of labour exploitation

In their response to the close-ended question about the most important factors to migrant workers who are victims, the interviewees most commonly pointed to the items: to be able to stay and to make a living in an EU country (26 records), and to receive compensation and back pay from employers (19 records). Furthermore, a significant number of interviewees (13) indicated being in a position to economically support other family members as important to victims. The three factors concern the victims' economic situation and their focus on wages which are impossible for them to earn in their home country. The frequent choice of these three corresponds to the interviewees' explanation that the interventions into situations of labour exploitation do not serve the interests of migrant workers since they expose migrants to the risk of deportation and deprive them of the source of income (Chapter 6.1.). Likewise, the acknowledgment of these three factors as the most important to victims matches interviewees' negative assessment of the effectiveness of measures taken in Poland to fight labour exploitation, since the taken measures clearly do not respond to the victims' economic needs (Chapter 6.4.).

Table 7: Factors important to victims of labour exploitation (frequencies of answers)[45]

	M	P	S	J	L	W	N	Total
To be safe and to be protected against further victimisation	2	1	3	4	4	1		**15**
For their family to be safe	1	2	4	6	1		1	**15**
To be able to stay and to make a living in an EU country	4	3	7	5	5		2	**26**
To see that offenders are held accountable and that justice is done		1	2		1	1		**5**
To be respected and to see that their rights are taken seriously	2	2		1	2			**7**
To be in a position to economically support other family members	2	4	2	3			2	**13**
To receive compensation and back pay from employers	3	3	4	2	5	1	1	**19**

[45] The interviewees were asked to choose three items from the list. However, six of them were not able to limit their answers to this number: one chose six items instead of three, two chose five items, and three chose four items. Two labour inspectors refused to choose any item and explained the refusal with the lack of experience in dealing with victims. For these two interviewees, 'don't know' answers has been coded three times. Employment agents and representatives of employers' organisations were not asked the question, thus the total number of those who provided an answer was 36 (those who did not know included).

To be able to return home safely	1	4	2	2	2			**11**
Other	1							**1**
Don't know	6							**6**

The quite frequent choice of items related to the safety of victims and their families (15 records for each) is undoubtedly linked to the belief shared by over a half of the interviewees that one of the most important reasons for underreporting is victims' fear of retaliation from offenders directed against them or against their family members (Chapter 6.2.). Perhaps the fact that almost one-third of the respondents pointed to the ability to return home safely should also be seen in the context of the victims' need for safety rather than the need for going back home. That would be because in the interviewees' view, the related item does not contradict the one concerning the ability to stay in an EU country: seven out of eleven who pointed to the return pointed also to staying in the EU.

Finally, the low frequency of answers related to offenders' accountability (5 indications) goes perfectly together with a comment provided by an S-group expert:

> *"Victims of human trafficking are persons who came here to earn money and in 99 per cent of the cases their priority is not a revenge or justice only getting their money. (…) You can't tell a victim of human trafficking: 'You should testify because he or she harmed you so much'. The victim has a different priority: money, to take money home with them."* [S(1)]

> *"[Ofiary handlu ludźmi] przyjechały tutaj, żeby zarobić pieniądze i ich priorytetem w 99 procent przypadkach jest nie zemsta, nie sprawiedliwość, tylko zarobienie pieniędzy. (…) Jeśli posadzisz taką ofiarę handlu ludźmi i powiesz jej: on ci zrobił tyle krzywdy, czy ona ci zrobiła tyle krzywdy, to zeznawaj – nie jest to celem ofiary. Priorytet ofiary jest inny – pieniądze. Zawieźć do domu pieniądze."* [S(1)]

6.4. Overall assessment of measures addressing severe forms of labour exploitation and suggestions for improvement

Only a few interviewees, those not experienced in dealing with victims of labour exploitation, assessed measures taken in Poland to address severe forms of labour exploitation as effective. The rest of the respondents were much more cautious in their assessments. Those who tried to explain the scarcity of relevant initiatives highlighted the fact that the migration phenomenon is still new on the Polish ground, the share of migrants in the Polish labour market is still low and so is the level of detected cases of severe forms of labour exploitation [N(1); P(1)]. They also pointed to the lack of leadership and commitment from relevant governmental institutions and the lack of engagement from social partners, in particular, trade unions and employers' organisations (Chapter 3.1.7.). A representative of the police expressed his belief that no special measures to address the problem will be developed and implemented, until 'labour camp' cases sensitising the general public and the government to the issue are publicised:

> *"Maybe unless we have labour camps, such as it was with Poles in Italy or Spain a couple of years ago just after entering the EU, we will not start doing more."* [P(1)]

"Może dopóki nie będziemy mieli obozów pracy takich, jak to dotyczyło Polaków we Włoszech czy Hiszpanii kilka lat temu, zaraz po wejściu do Unii Europejskiej, to nie zaczniemy robić więcej." [P(1)]

When speaking about deficiencies, the respondents pointed, in particular, to the ineffective monitoring, low level of detection of instances of migrants' labour exploitation and ineffective prosecution. They also highlighted the lack of relevant support for victims, including in enabling them to obtain back payments and compensation. One interviewee summarised:

„The weakness of the Polish system lies in the fact that if we don't have to do with victims of human trafficking then there are no targeted support services. There is no support programme for victims of typical labour exploitation." [N(1)]

"Słabością polskiego systemu jest to, że jeśli nie mamy do czynienia z ofiarami handlu ludźmi, to brak jest ukierunkowanych usług wsparcia. Dla ofiar takiego typowego wyzysku pracowniczego nie ma żadnego programu pomocy." [N(1)]

In such circumstances, the interviewees widely presented suggestions for improvement. Some called for actions extensively covering all areas discussed during the interview:

"Because we have no system, everything must be designed from scratch. Starting from a diagnosis, then a change of legislation, building a system of support for victims, so that they could seek assistance somewhere, education of the society – all this needs to be done." [S(1)]

"Ponieważ nie mamy nic tak naprawdę, to wszystko jest do zbudowania od początku. Począwszy od diagnozy, potem kwestia zmiany prawa, budowy systemu wsparcia dla ofiar, żeby miały się do kogo zwrócić, żeby uzyskać pomoc w tym zakresie, edukacja społeczeństwa – wszystko jest do zrobienia."[S(1)]

Others focused on particular issues raised within the research while putting forward their recommendations. These varied according to how diverse the interviewees' experience was with dealing with migrants' labour exploitation. Some referred to necessary improvements in how human trafficking for forced labour is addressed, others talked about the need for changes in the realm of labour law infringements and management of economic migration.

Table 8: The most important measures (frequencies of answers)[46]

	M	P	S	J	L	R	W	E	N	Total
Improve legislation against labour exploitation and its implementation	1	2	1	1	1	2	1		2	**11**
Improve legislation to allow better access to justice and compensation	1	2	4		2	1		1	1	**12**
More effective monitoring of the situation of	2	2	4	5	4	1			2	**20**

[46] The interviewees were asked to choose three items from the list. However, 11 of them were not able to limit their answers to this number: two chose seven items instead of three, one chose six items, three chose five items, and five chose four items. The item 'don't' know' was usually chosen by those who, after pointing to one or two factors, were not able to indicate any additional factor. If an interviewee chose only one factor, his or her answer 'don't know' has been coded twice. If an interviewee chose two factors, his or her answer 'don't know' has been coded once. Two interviewees refused to choose any item and for these two interviewees, the 'don't know' answer has been coded three times. However, they provided their own suggestions for what measures should be taken.

workers in the areas of economy particular prone to labour exploitation										
Measures to ensure that all workers know their rights	3	4	4	2	2	1	1	2		**19**
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	1	2	2	4	3	2	1		1	**16**
Setting up of specialised police units to monitor and investigate labour exploitation	2	2		3		1				**8**
Regularising the situation of certain groups of migrant workers with an irregular status	1	2	4		2			1		**10**
Regularising the situation of migrant workers once they have become victims of severe labour exploitation	1		1	2	2	1		2		**9**
Measures addressing corruption in the administration										**0**
More training of police, labour inspectors and other authorities	2	2	4	2	2			1		**13**
Police and courts taking labour exploitation more seriously		2	2		3	1		1		**9**
Don't know	8		3	3						**14**

According to the importance, the suggested measures are as follows:

- **More effective monitoring of the situation of workers in the areas of economy particularly prone to labour exploitation**

Interviewees identified the urgent need to monitor private homes, as well as the activity of individual farmers, neither falling under the NLI's mandate. However, they identified obstacles to implement monitoring. As noticed by an M-group representative, private homes are under special protection linked to human rights standards referring to private life. Thus, more effective monitoring of private homes corresponds not so much to the suggestion to broaden the mandate of the NLI or any other institution so that they could freely enter homes, but rather to making operational activities more effective. Since the NLI does not have the powers to conduct such activities, law enforcement agencies should take more responsibility for conducting actions aimed at the elimination of migrants' labour exploitation at homes [M(1)].

Furthermore, as the interviewees noticed, the Act on freedom of economic activity does not embrace individual farmers [FG(M)], which is why the NLI does not conduct inspections of farmers' economic activity. Some broader amendments to law and policy are needed to change the farmers' status. To start with, as the respondents suggested, the NLI should have the right to inspect working conditions of those employed on the basis of civil law contracts, which would affect farmers as well [J(1)]. Again, legislative changes are necessary to link civil law contracts to labour law regulations.

When pointing to this item, some interviewees emphasised the need for conducting more effective monitoring of the labour market in general. In particular, they recommended to make the NLI entitled to conduct unannounced inspections and to inspect working conditions of posted workers. The implementation of both suggestions demands legislative

amendments. They also highlighted the importance of changing labour inspectors' work methodology: they should focus less on examining documents and more on speaking to workers; as one of the interviewees put it, *"someone should make them [labour inspectors] move from behind their desks into the field" ["trzeba by trochę ich [inspektorów pracy] pogonić zza tych biurek w teren"]* [L(1)]. Linked to that is the recommendation for raising the NLI's staff in numbers [N(1)]. Finally, the respondents pointed to the need for more careful recognition of the situation of the migrant communities relatively isolated from the rest of the society due to their language and cultural distance. This applies mainly to the Vietnamese and in terms of economic sectors, this demands more careful monitoring of trade, as well as restaurants and food services.

- **Measures to ensure that all workers know their rights**

According to the interviewees, the migrants' awareness of their rights as workers is a starting point for any actions to be taken with a view to fighting migrants' labour exploitation [M(1); P(1)]. They suggested information campaigns about both migrants' rights and institutions to which they can address their complaints, however, due to the low share of migrants in the Polish society, these do not need to be extensive actions such as TV spots. It is enough if migrants receive text messages in their language saying "if you have been exploited, call this number" [R(1)], or obtain relevant leaflets while applying for a visa [L(1)] and contacting the voivodeship office which deals with issues related to foreigners' stay and work in Poland [E(1)]. Furthermore, law enforcement officers should broadly inform migrants about their rights after they detect irregularities in migrants' employment [FG(L)].

- **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**

Interviewees suggested deficiencies in the flow of information, in particular between organisations and institutions involved in providing support to victims of human trafficking (Chapter 4.3.2.), as well as between various state institutions in general (Chapter 6.2.). In the respondents' view, the blockages translate into the ineffectiveness of prosecution and officials' overload with work which is unnecessarily multiplied. A better flow of information could remedy these problems. For instance, voivodeship offices could focus more on issues that they are designed to deal with, such as issuing work permits, which would prompt the process and make it easier for the migrants to change the employer for another one in case of exploitation [FG(R)]. Furthermore, there is a need for establishing a cooperation with a view to monitor employment conditions of those working under civil law contracts; the tax office should probably be involved in the monitoring [R(1)]. Finally, although the cooperation between the NLI and the Border Guard is quite firmly established, it should focus less on detecting cases of migrants' illegal employment and more on detecting cases of migrants' labour exploitation [L(1)].

- **More training of police, labour inspectors and other authorities**

Respondents recommended training on specific issues related to labour exploitation which would address representatives of all institutions involved in dealing with migrant workers, in particular, the NLI, the police, and the Border Guard, and within the Border Guard, in particular, the Foreigners Division which is less trained than the Operational and Investigative Division [P(1)]. Some noticed that although there are guidelines for how to deal with victims of human trafficking for forced labour, there are no procedures for dealing with migrant victims of labour exploitation. Thus, in reference to labour exploitation the training is all the more essential [P(1)]. A few interviewees when pointing to the training, considered it the next necessary step after relevant changes in law are implemented [e.g. L(1)]. Some respondents suggested specific issues to be raised at the training, such as the situation of a

migrant child [M(1)]. They also pointed to the need for carrying out training in foreign languages for law enforcement officers, and even more importantly, for labour inspectors [L(1); M(1)]. Furthermore, the interviewees emphasised the necessity of embracing judges with training on labour exploitation [N(1)], and encouraging them to participate in the training in which labour inspectors, law enforcement officers and prosecutors take part [P(1)]. When pointing to this item, a prosecutor noticed that the training on migrants' labour exploitation should target not only public officials, but also regular members of the society within the education system [J(1)].

- **Improve legislation to allow better access to justice and compensation**

Interviewees commonly noticed significant shortages of the justice system, in particular in enabling victims to obtain back payments and compensation. They put forward specific proposals: stipulation that a three-month work contract between an employee and an employer existed, regularisation of victims' residence status until both the criminal and the related civil court proceedings end, liberalisation of legal provisions referring to deportation (Chapter 5.2.). Furthermore, the interviewees suggested amendments to legislation which regulates the functioning of the NLI. According to them, the NLI should be deprived of the competence to investigate the legality of foreigners' employment and it should focus only on worker rights' protection [M(1)]. It should not be obliged to inform the Border Guard about unregulated stay status of encountered migrants [S(1)]. This would encourage victims to bring labour exploitation cases to the NLI, and claim compensation with assistance from this institution. Apart from that, when pointing to the item concerning better access to justice and compensation, the interviewees widely commented on the need to enable victims to access cost-free attorneys and extensively inform victims about their rights (Chapter 5.2.).

- **Improve legislation against labour exploitation and its implementation**

Interviewees referred to the need for legislative changes related to the scope of NLI's powers so that the monitoring is more effectively conducted and victims are encouraged to report instances of labour exploitation to this institution (see the above points). Also, the respondents suggested that there should be changes in proportions between, on the one hand, the severity of punishment for employers who illegally employ migrants and violate workers' rights and, on the other, the severity of punishment for migrants who work illegally and are punished by deportation. They suggested more burden on the employer [S(1); L(1); R(1)], because the current regulations make the employer too strong a party within the illegal employment relationship (Chapter 4.1.1.). Apart from that, one respondent recommended the introduction of provisions related to migrant workers' accommodation into the labour law, so that the NLI can inspect workers' accommodation premises and impose relevant penalties on those who do not offer decent standards of living [R(1)].

- **Regularising the situation of certain groups of migrant workers with an irregular status**

Interviewees did not extensively comment on the need to regularise the situation of certain groups of migrant workers with an irregular status. Some saw this recommendation as part of the next one, concerning the regularisation of the situation of migrant workers once they have become victims of severe labour exploitation [M(1)]. The respondents did not put it explicitly, but some interviews suggest that they primarily thought about the undocumented Vietnamese whose stay status should be regulated [S(2)].

- **Regularising the situation of migrant workers once they have become victims of severe labour exploitation**

Respondents suggested setting up a support system for migrant victims of labour exploitation similar to the system addressing victims of human trafficking [S(1)]. In particular, they pointed to the need to enable victims to stay and work in Poland until both the criminal and the civil proceedings against the employer end [L(1)]. This would be important especially to those who do not have enough money to go back home after the exploitation has occurred [E(1)]. Some public intervention works could be offered to them [J(1)].

- **Setting up of specialised police units to monitor and investigate labour exploitation**

Respondents suggested to set up specialised police and Border Guard units to monitor and investigate labour exploitation similar to those established for human trafficking issues. They believed that such units would make operational activities in the realm of detecting cases of labour exploitation more effective, which is particularly needed in the domestic work sector (see above). The establishment of specialised units within the Border Guard would also be needed if another suggestion was implemented: to deprive the NLI of the powers to investigate the legality of foreigners' employment and to make the Border Guard the only institution responsible for this task [M(1)]. Furthermore, the interviewees recommended to set up cross-border law enforcement units to carefully monitor the flow of employers' statements on the wish to employ a foreigner, their falsification and illicit trafficking [R(1); FG(R)].

- **Police and courts taking labour exploitation more seriously**

Some interviewees particularly strongly criticised prosecutors and judges for their lack of concern in how they assess cases related to labour exploitation (Chapter 4.3.2.), a few also pointed to the insensitivity of police officers to instances of labour exploitation reported to them (Chapter 3.1.8.). Respondents' choices of the item on more serious consideration of labour exploitation by police and courts corresponds to such comments. The respondents suggested more training to address the problem.

The respondents did not find it particularly important to implement measures to ensure that all workers have access to labour unions, or measures addressing corruption in the administration. This corresponds to the fact that they did not recognise the migrants' lack of access to trade unions or the corruption in the administration as particularly important risk factors for migrants' labour exploitation (Chapter 4.1.1.). The only interviewee who pointed to the trade unions item was a police officer who was not able to limit themselves to choosing three items from the list and indicated as many as five. Still, at the focus group interview, a trade union's representative mentioned trade unions' unenthusiastic reaction to the presence of migrants in the Polish labour market and suggested awareness raising activities to make them understand that the migrants are not wrongdoers who deprive Poles of their job, but they are valuable participants of the labour market who fill in the niches of the labour force supply [FG(W)].

Apart from suggestions closely related to the proposed list, the interviewees pointed to the need to take additional measures to ensure that: the issue of labour exploitation is sufficiently recognised, which should be achieved not only by monitoring, but also through in-depth studies [M(1); N(1); S(1)]; victims of human trafficking embraced by the *Programme for Support and Protection of Victims/Witnesses of Human Trafficking* receive a job [N(1); S(1)]; victims of human trafficking who have not been proposed the entrance into the *Programme* are recognised as potential victims and offered relevant support at the detention centre at least [S(1)]; the problem of where to place unaccompanied migrant children is addressed [N(1)]; the 'bad coalition' between the employers and workers in not concluding contracts and not paying social security contributions is broken [M(1)]. Linked to the latter was another suggestion to lower the costs of employing foreigners which would make legal employment more profitable to employers [N(1) and interviewees from recruitment/employment agencies

and employers' organisations]. Another recommendation was to enact measures aimed at the elimination of unfair recruitment and employment agencies. The specific suggestions were to closer monitor the activity of the agencies and to give the right to set up an agency only to those who can demonstrate the founding assets. According to the interviewee who put forward these suggestions, the closer monitoring of the agencies would have a positive impact on raising the number of detections of migrants' exploitation in the agriculture sector, since quite a significant share of those who work as farm labourers are formally employed not by farmers, but by agencies [FG(R)].

Furthermore, the experts raised the issue of employer's statements on the wish to employ a foreigner. While they noticed that the statements facilitate access to the Polish labour market for a defined groups of foreigners and they assessed this development positively, they also emphasised the lack of relevant regulations related to the statements' circulation. Apart from the need to closely monitor the illicit trafficking of these, they also saw an urgent need to more precisely regulate the issue by relevant legislation. If an employer issues a statement for a foreigner and does not employ him or her afterwards, this creates the situation when a migrant comes to Poland and undertakes an illegal job at another employer which makes him or her vulnerable to exploitation. Thus, two interviewees pointed to the need to impose penalties on the employer who issues a statement and does not employ the foreigner afterwards [N(1); P(1)]. One of the two respondents, however, pointed also to the fact that it is justifiable for the employer to issue a higher number of statements than the number of employers whom the employer is ready to hire, because it often happens that the foreigner does not show up at the employer's, and after coming to Poland, enters directly into an illegal employment relationship with another employer [P(1)]. Therefore, another proposal was to assign the right to issue the statement only to those who conduct economic activity, since currently,

> *"any entity, any natural person who is not a sole trader at all may issue a statement, hundreds of statements which are not verified by anyone."* [FG(P)]

> *"można wydać oświadczenie przez podmiot, osobę fizyczną, która w ogóle nie prowadzi działalności gospodarczej, a wydaje oświadczenia, których nikt nie weryfikuje, kilkaset."* [FG(P)]

There was also a suggestion to impose limits on the number of statements that one is entitled to product [FG(P)], and regulate by legislation the status of statements, so that they are considered a document under criminal law. This would make it possible to prosecute those who falsify the statements [FG(P)].

Finally, a few interviewees provided comments on the need to strengthen Poland's policy in the realm of migration on the one hand, and labour exploitation, on the other. The perceived lack of a clearly defined migration policy hinders the development of prevention measures (Chapter 4.2.). Similarly, the fact that labour exploitation in general does not fall within the scope of the government's main concerns, obstructs the development of adequate actions to address labour exploitation of migrants:

> *"In my opinion, the reality is that these are Polish citizens who are exploited on the Polish labour market on a greater scale than foreigners. And if we are not able to tackle this bigger problem than how to expect from us that we will solve the problem of foreigners, which requires even greater involvement and is much more difficult in terms of detecting, as it's pretty obvious that people don't want to lose their jobs, similarly to Polish citizens, but they [foreign workers] are more motivated. (…) Things which are important include the practical monitoring of the labour market related*

to violations of workers' rights, which should successfully work in the area of infringements against Polish citizens; then it should start working efficiently also in the case of foreigners on the [Polish] labour market." [N(1)]

"W moim przekonaniu rzeczywistość jest taka, że mamy do czynienia z wyzyskiem obywateli polskich na polskim rynku pracy w znacznie szerszej skali, niż to dotyczy cudzoziemców. I o ile nie radzimy sobie z tym pierwszym zjawiskiem, to tym bardziej trudno, żebyśmy sobie poradzili z tym drugim, bo to drugie wymaga jeszcze większego zaangażowania i jest znacznie trudniejsze, jeżeli chodzi o identyfikowanie, bo siłą rzeczy ci ludzie są zainteresowani tym, żeby pracy nie stracić, podobnie zresztą jak obywatele polscy, ale mają jeszcze silniejszą motywację. (…) To, co jest tak naprawdę potrzebne, to jest realny monitoring rynku pracy właśnie w tym wymiarze naruszania praw pracowniczych, żeby on działał skutecznie w wymiarze naruszeń dokonywanych wobec obywateli Polski; żeby on zaczął także skutecznie działać w przypadku cudzoziemców na rynku pracy." [N(1)]

The quoted respondent had a tendency to take a bird's-eye view of issues undertaken within the research during the whole interview, hence their comment on broader issues related to the exploitation on the Polish labour market. The majority of the remaining interviewees were usually more cautious in presenting such general views. The respondent's opinion about the more widespread character of labour exploitation with the reference to Poles than foreigners does not seem to be particularly controversial though, especially since issues related to labour exploitation discussed during the interview covered a variety of practices, from human trafficking to unpaid overtime work and the lack of annual leave. The other interviewees, in similar vein, while not denying that the situation of an exploited migrant is more difficult than the situation of a Polish worker exploited in the same way, suggested the variety of problems faced by Polish workers on a large scale. They did it more or less explicitly in various parts of the interview. For instance, a J-group interviewee pointed to the commonness of civil law contracts on the Polish labour market with all negative consequences that they bring to the Polish workers, such as the insecure employment situation and vulnerability to the exploitation related to the work under conditions which do not fall under labour law regulations.

A police representative, when considering the choice of most frequently observed conducts contributing to labour exploitation, commented the item 'migrant workers are not allowed to go on annual leave' with the observation that many of his Polish friends face the same problem [P(1)]. The trade union representative, in turn, pointed to difficulties in accessing justice and compensation for the exploitation: *"I think that Polish victims are not fully protected, either. Above all, they don't have compensation" ["myślę, że polskie ofiary też nie cieszą się pełną ochroną. Przede wszystkim rekompensaty nie mają"]* [W(1)]. In such circumstances, the suggestion by one interviewee that the problem of labour exploitation in general should be adequately tackled in order to effectively address migrants' labour exploitation comes as a well-grounded recommendation.

One interviewee provided a comment somehow related to the issue and worth of being quoted at this point. The interviewee drew on the number of cases of human trafficking for forced labour that Polish law enforcement agencies had investigated so far and suggested that Polish authorities and state institutions are more concerned with dealing with cases of human trafficking which involve Polish victims abroad than with those involving migrant victims in Poland. In this context, the interviewee referred to the Polish government's 'double standards' in tackling issues related to labour exploitation [S(1)]. In light of such a comment, it is perhaps important to emphasise that the recommendation by the N-group interviewee to

focus on combating labour exploitation in general was put forward as an important step to effectively counteract labour exploitation of migrants, a step which should be accompanied by parallel measures to address the problem, and definitely not as something to be implemented instead of more specific actions addressing migrants' exploitation.

Some recommendations that the interviewees provided are at least partly addressed by the new Act on Foreigners which was passed at the time when the research was conducted and entered into force on 1 May 2014.[47] The most significant change is that, according to the Act, the illegal employment relationship can be the basis for obliging the foreigner to leave Poland only in cases when the foreigner has not been driven to perform work by misrepresentation, taking advantage of his or her mistake, professional dependence or an inability to properly understand actions that are being undertaken (Article 302). This means that if labour inspectors or Border Guard officers detect the illegal employment relationship resulting from the employer's failures, such as the lack of payments of social security contributions, no longer will it be possible to deport the migrant worker. The migrants will have a month to find another employment, obtain new work permit and regularise their status. The practical application of the new regulation will show to what extent less evident cases of driving the migrant to perform work by misrepresentation will be taken into account to the migrant's benefit.

[47] Poland, Act on Foreigners (*Ustawa o cudzoziemcach*), 12 December 2013.

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

Labour exploitation of migrants is poorly recognised in Poland. The fragmentary nature of knowledge on related issues allowed one of the interviewees to formulate the following conclusion:

> *"It is a very difficult issue, all the time we rely on descriptions of cases but we don't have any deeper knowledge; we are lost in the fog all the time."* [N(1)]

> *"To jest bardzo trudne zjawisko, ciągle tak naprawdę mówimy w oparciu o jakieś opisy przypadków, a nie mamy głębszej wiedzy; ciągle tylko dotykamy mgły."* [N(1)]

The notion of labour exploitation is almost entirely absent within the awareness of those who deal with issues related to migrants and/or the labour market, and there is no clarity as to what exactly the labour exploitation is to mean. Hence the interviewees' tendency to discuss either human trafficking for forced labour, or labour law infringements. One of the interviewees quoted at the beginning of Chapter 6.4. perfectly conveyed the split between the two concepts. When speaking about support services, the interviewee emphasised that while the services for victims of human trafficking did exist, there was no support system for victims of the 'typical labour exploitation' [*typowy wyzysk pracowniczy*]. The 'typical labour exploitation' refers in practice to instances of labour law violations. In general, at the level of interviewees' awareness, there is almost nothing in between the forced labour linked to human trafficking and the 'typical labour exploitation', although the Criminal Code differentiates between human trafficking for forced labour and other acts related to the employment relationship, grasping the latter, for instance, under the notion of 'persistent infringements of employees' rights'.

The empty space at the level of awareness corresponds to the lack of specialised institutional setting for dealing with labour exploitation in general and migrants' labour exploitation in particular. This is not particularly surprising: what does not exist as a stable concept has no institutional representation, and the other way round, the lack of relevant institutional solutions hinders the formation of consistent concepts. Therefore, the questionnaire questions drove some interviewees to pose further questions:

> *"Who is a victim of labour exploitation? Is a person who hasn't been paid for their work a victim of labour exploitation or a victim of a dishonest employer? Because this definition is extremely problematic."* [S(1)]

> *"Kto to jest ofiara wyzysku w pracy? Czy jak ktoś nie zapłaci pensji to jest ofiara wyzysku czy ofiara nieuczciwego pracodawcy? Bo to jest straszny problem z definicją."* [S(1)]

Similarly, the monitoring body expert quoted in Chapter 3.1.7., confused by the lack of any legal definition and the lack of corresponding monitoring, revealed strong caution in determining whether 'labour exploitation' really exists. The problem with a definition does not strongly affect NGOs who focus on providing support to migrants, independently of what the migrants' status is and what kind of harm the migrants have experienced:

> *"What matters to us is that migrant workers' rights have been violated and it is enough to undertake an intervention, but we don't fit them into boxes, pigeonhole cases into levels of seriousness, we don't do that."* [S(1)]

> *"Dla nas jakby istotne jest to, że zostały złamane prawa pracownicze cudzoziemca przez pracodawcę, to jest wystarczające do podjęcia interwencji, natomiast nie odhaczamy nikogo w boksach, nie szufladkujemy, czy to są bardziej, czy mniej poważne przypadki, tego nie robimy."* [S(1)]

In turn, for representatives of the state administration the problem is crucial, since precise definitions control the scope of their institutions' mandate, and depending on how the migrant victim is classified, different procedures apply, or to put it differently, the support is available to the victim or not. Hence the interviewed public officials, including labour inspectors, law enforcement officers, prosecutors and judges, had a tendency to emphasise the definitional ground for their activities. This was particularly visible among labour inspectors who constantly referred to labour law provisions and stuck to them during the interviews. The M-group expert who directly commented on the notion of labour exploitation noticed that it alluded to the Marxist concept of exploitation. The interviewee found it old-fashioned, and for this reason, expressed their reserve towards it [M(1)].

In turn, interviewees from law enforcement agencies involved in the coordination of human trafficking issues, and the representative of the police in particular, made a lot of efforts to convincingly show that the officers offer the entrance into the *Programme for Support and Protection of Victims/Witnesses of Human Trafficking* not only to the most apparent victims of human trafficking, but also to migrant victims of severe forms of labour exploitation exercised disconnectedly from human trafficking. However, the interviewees' explanations of the officers' freedom in that regard, which aimed at showing that the definition of human trafficking is not universally binding for the officers, were rather vague. On the one hand, one respondent claimed that an experienced officer would classify the 'borderline cases' [*przypadki z pogranicza*] as falling under the *Programme*, but on the other hand, the same interviewee stipulated that *"it can't be stretched too far" ["też nie można tego naginać"]* [FG(P)]. Finally, it has appeared that it is mainly up to the sensitivity of individual officers whether they offer the entrance into the *Programme* to the victims or not. Thus, what was to show definitional flexibility, which would facilitate the expansion of the officer's mandate onto labour exploitation as a broader concept than human trafficking, pointed in fact to subjectivity in how the concepts are interpreted.

The interviewees presented similar views on particular subject matters, such as risk factors, prevention, referral system, access to justice, or reasons for underreporting. They pointed in concord, for instance, to the lack of systemic support for victims of labour exploitation who are not recognised as potential victims of human trafficking, or the entire ineffectiveness of the justice system in enabling victims to obtain back payments or compensation. The only issue which broke the consensus was the reason for the ineffectiveness of prosecution: while law enforcement officers had a tendency to situate the problem at the level of prosecutors' and judges' awareness of specific problems related to migrants' labour exploitation, and in particular, human trafficking for forced labour, the prosecutors pointed to objective factors, such as legal definitions and jurisprudence, to justify the low number of prosecuted cases. Still, the interviewees agreed that the testimony-based evidence engenders problems for the effective prosecution of offenders (Chapter 4.3.2.).

The divergence of views in reference to other issues raised within the research resulted mainly from the fact that the interviewees spoke about various aspects of labour exploitation. Hence, the difference in views pointed not to conflicting viewpoints, but rather to different perspectives that the interviewees employed drawing on their professional experience. It was

most probably due to the lack of precision inscribed in the term 'labour exploitation' that few contentious issues emerged within the research. Thus, for instance, when responding to the question on whether, during a raid, law enforcement officers would mainly see migrant workers as potential victims of crime, or as illegally staying in Poland, those who referred to the most severe forms of labour exploitation involving human trafficking, supposed that the officers would mainly see migrant workers as victims, while those who referred to less drastic forms of worker rights' violations, and in particular, to labour law infringements, tended to claim that the officers would see migrants as illegally staying in Poland. There was no significant contention, for instance, between representatives of law enforcement agencies and NGO activists in that regard, all depended rather on what kind of labour exploitation the interviewees discussed. Similar logic stood behind the divergence in interviewees' answers to the question on whether interventions into situations of labour exploitation serve the interests of the migrant workers or not.

It is not only because of the scarcity of studies on issues related to forced labour in Poland, but also because of how the problem of labour exploitation was grasped, that the reported research was a pioneering one on the Polish ground. Whether the raised issues translate on particular actions and political practice will obviously depend on a variety of factors. The relevant outline of international policies will undoubtedly play a significant role in this context, but academic considerations will be equally important. As one of the interviewees summed up:

> *"It's generally an issue of philosophy in a broader sense, a kind of national approach – which form of exploitation is accepted, when we consider it forced labour and when we treat it as some other crime. Can it be classified into different categories at all? This is the whole range of topics for a wider, deeper debate, a debate which we haven't had in Poland yet. Not even in academic circles."* [S(1)]

> *"To jest w ogóle kwestia filozofii trochę szerszej, jakby kraju – jaka forma wyzysku jest dopuszczalna, kiedy uznajemy, że to jest praca przymusowa, a kiedy uznajemy, że to jest inne przestępstwo. Czy to w ogóle można dzielić? To jest cała gama debaty szerszej, głębszej, która w Polsce póki co jeszcze nie zaistniała. Nawet w nauce nie zaistniała."* [S(1)]