

Protecting Asian Trafficking Victims in Europe

In Focus: The Czech Republic, Poland, and Romania

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1. Introduction

This research project focussed on Asian trafficking victims in Europe, especially in The Czech Republic, Poland, and Romania. Increasingly, Asian migrants are recruited to work in Europe. Among them are many people from the Philippines and Vietnam. There are more and more signs that this recruitment often leads to employment in non-decent working conditions, in some cases even forced labour or human trafficking. However, few Asian third country nationals (TCNs) are identified as victims of human trafficking and these crimes are only very scarcely reflected in case law, meaning that the perpetrators of these exploitative practices go unpunished.

There is a huge demand for workers in several labour sectors in Europe. This is in part due to migration flows within the European Union (EU) and the departure of many highly skilled workers from lower income EU countries, including our focus countries: the Czech Republic, Poland, and Romania. Further causes include the aging of the population and the mismatch between supply and demand. A recent trend has seen recruitment agencies being set up to recruit workers from abroad. Also in Asia, recruitment agencies make a lucrative business of recruiting workers for 'employment' abroad. This process can be fraught with risks, including exploitative conditions and the weight of debt from the fees they paid to recruiters during the recruitment and migration process.¹

Many Asian TCN migrant workers end up in low-paid jobs in Europe, where they are not well protected against serious forms of exploitation. Having limited access to lawful employment and decent working conditions, many risk falling prey to human trafficking or forced labour practices. Exploitation takes place through debt-based coercion or exploitation of other vulnerabilities. This is witnessed both in formal and informal labour sectors. In the Czech Republic, Poland and Romania, trafficking for labour exploitation typically takes place in the following labour sectors: construction, manufacturing, food processing, agriculture, forestry, garments, hospitality, and service sectors (including domestic work). The COVID-19 pandemic and the related restrictions, as well as the weakened economic situation globally, have only further increased the vulnerability of (TCN) migrant workers in Europe.

This report provides a summary of the current legal framework on the protection of Asian trafficking victims in the Czech Republic, Poland, and Romania. It aims to shed light on the difficulties in the application of the legal definition of human trafficking, as well as the practical difficulties faced when addressing human trafficking and forced labour of Asian migrant workers in Europe and the three focus countries in particular. The report is based on the research conducted within the project "Cross Continent Collaboration to Protect Asian Trafficking Victims in Europe", coordinated by La Strada International with its members: La Strada Czech Republic, La Strada Poland and ADPARE (Romania) in their respective countries. Within the framework of this project, three desk research reports, 14 case reviews, 17 interviews and four focus group meetings were conducted in the period 2021-2022. The findings of this report will be used to raise awareness with respect to these issues among relevant stakeholders², risk groups and victims in order to improve access to rights and access to justice for Asian TCN migrant workers in Europe.

¹ Verité, 'Assessing Labor Risk for Workers Migrating from the Philippines to Europe', March 2021.

² Relevant stakeholders include: law enforcement officials (police, border police), lawyers, prosecutors, judges, labour inspectors, tax inspectors, social workers, child welfare staff, health-care staff, immigration officials, asylum case workers, staff of immigration detention centres, and consular officials.

The report is divided into two main parts, covering the legal framework and the practical aspects of the protection of Asian trafficking victims in the three focus countries, aiming to provide a comprehensive picture of the domestic laws both on paper and in practice. The first part (chapter 2) outlines the relevant legal instruments at national, European and international level. These instruments define and criminalise the offences of human trafficking and forced labour, and regulate (labour) migration as well as mutual legal assistance and judicial cooperation in cross-border human trafficking cases (section 2.1). Moreover, these instruments protect and support migrant workers (section 2.2) and victims of human trafficking (section 2.3). Chapter 2 also identifies the difficulties in applying the legal definition of human trafficking as codified in the domestic legal instruments of the three focus countries. These difficulties affect the investigation and prosecution of these offences. Therefore, this part includes the examination of existing jurisprudence in the three focus countries (section 2.4).

The second part (chapter 3) focusses on the protection of Asian trafficking victims in practice. This part explores the difficulties that arise when bringing a case of human trafficking or forced labour (section 3.1) and the procedural and practical challenges to the investigation and prosecution of such cases (sections 3.2 and 3.3). Subsequently, chapter 3 examines the capacity and resources of the stakeholders in the field, in particular of law enforcement officials and legal professionals responsible for the investigation and prosecution of the offences of human trafficking and forced labour (section 3.4). This chapter also examines the protection and support to victims by analysing the significance of criminal justice outcomes (section 3.5), the accessibility to legal advice and assistance (section 3.6) and the availability of non-judicial procedures (section 3.7). The final part of this report lays out the conclusion (chapter 4) and the recommendations (chapter 5) based on the main findings of this research project.

2. The Protection of Asian Trafficking Victims in Europe: The Legal Framework

2.1 Legal Frameworks on Human Trafficking and Trafficking-Related Offences

2.1.1 National legal instruments

Human trafficking

In the three focus countries – all EU Member States – the offence of human trafficking is criminalised under the respective criminal codes in accordance with international and European instruments. While the list of different types of exploitation is not exhaustive, all three criminal codes explicitly mention exploitation of prostitution, other forms of sexual exploitation or exploitation in pornography, slavery or servitude, and forced labour or services. Following the EU Trafficking Directive³, the Czech and Romanian criminal codes also refer to the forced removal of organs, and the Polish and Romanian criminal codes also refer to forced begging. Furthermore, the Czech criminal code makes explicit reference to the exploitation of service in the armed forces.

In the **Czech Republic**, the offence of human trafficking of adults and minors carries a maximum prison sentence of 2-10 years, depending on the severity of the offence and whether it was committed by a member of an organised group.⁴ Under the Czech and Polish criminal codes there is no link between the offence of human trafficking and the separate offence of participation in an ‘organised criminal group’, as these are two different criminal offences.⁵ Furthermore, the offences of human trafficking, forced labour and child labour do not qualify as money laundering predicate offences⁶ under the Czech money laundering laws. In **Romania**, the offence of human trafficking of adults and minors carries a maximum prison sentence of 3-10 years and a ban on the exercise of certain rights. Participation in an organised criminal group is provided as a separate offense in the Romanian criminal code, but if there is a connection between this organised criminal group and the trafficking, then it will be charged as such. In **Poland** the offence of human trafficking carries a minimum prison sentence of 3 years and a maximum of 15 years. This is regardless of whether the victim is an adult or a minor. The offence of preparation of human trafficking carries a prison sentence of 3 months to 5 years. It must be noted that the Special Act of the 12th of March 2022 on assistance to citizens of Ukraine in the context of the armed conflict on the territory of Ukraine, increased the prison sentences for human trafficking, forced prostitution and other related crimes for the period of war in Ukraine.⁷ The offence of human trafficking does not have extraterritorial effect⁸ in the **Czech Republic, Poland and Romania**.

³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

⁴ Sec. 168 Czech criminal code, see Sec. 168(3) for the aggravating factors of severity and acting as a member of an organised group. The Czech criminal code translated into English can be found here: <https://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf>.

⁵ For example, the offence of participation in an ‘organised criminal group’ is encoded in Sec. 361 of the Czech criminal code.

⁶ In cases of money laundering, a predicate offence is the underlying criminal activity which generates the criminal proceeds.

⁷ Prison sentences for human trafficking, forced prostitution and other related crimes have been increased for the period of war in Ukraine. Under Article 72 of this Act the offence of human trafficking carries a prison sentence of 10-15 years or 25 years. Preparation of the offence of human trafficking carries a prison sentence of 5-7,5 years. See: Special Act of 12 March 2022 on assistance to citizens of Ukraine in the context of the armed conflict on the territory of Ukraine (available at: <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000583>).

⁸ ‘Extraterritorial effect’ (or ‘extraterritorial jurisdiction’) refers to the exercise of jurisdiction, or legal power, outside territorial border of a specific country.

In the **Czech Republic**, the Criminal Police and the National Centre against Organized Crime are responsible for the investigation of human trafficking cases and the State Attorney is in charge with the prosecution of such cases at the regional level. In **Poland**, the police and border guards are responsible for the investigation of trafficking cases and the Prosecutor's Office deals with the prosecution of such cases. In **Romania**, the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT) is a structure within the Prosecutor's Office attached to the High Court of Cassation and Justice of Romania and is in charge of the investigation and prosecution of trafficking cases.

Forced labour

The offence of forced labour is only criminalised in the criminal codes of all three countries as a form of human trafficking, namely: human trafficking for the purpose of labour exploitation. Forced labour is thus not criminalised as a separate criminal offence in the Czech, Polish and Romanian criminal codes. This means that forced labour – as such – can only be criminally prosecuted in these countries when the high bar of human trafficking for the purpose of labour exploitation is met. In **Romania**, human trafficking for the purpose of labour exploitation is prohibited under its Constitution and criminalised under Law No. 678/2001 on Preventing and Combating Trafficking in Human Beings⁹ and the Romanian criminal code. Similarly, in the **Czech Republic** human trafficking for the purpose of labour exploitation is prohibited under Article 9(1) of the Czech Charter of Fundamental Rights and Freedoms.¹⁰ In **Poland**, in 2019 the working group¹¹ appointed by the Polish Ministry of Investment and Development proposed to codify a definition of forced labour in the criminal code. This proposed definition would include *any work or service provided under exploitative conditions that is coerced through violence, threat, deprivation of liberty, demand for payment of debt or retention of personal documents, non-payment of the salary or in gross violation of the employees' working rights*.¹² At the time of writing this report there is no further information about the possible adoption of this definition.

Servitude

The offence of servitude is also criminalised in the criminal codes of all three countries as a form of human trafficking. In Romania, servitude is additionally criminalised in the Law No. 678/2001 on Preventing and Combating Trafficking in Human Beings, even though in judicial practice this specific provision is never applied.

Slavery

The criminalisation of slavery is a longstanding provision contained in the criminal codes of all three countries. This crime carries a sentence of imprisonment of minimum 3 years in Poland,¹³ of maximum 3-10 years and a ban on the exercise of certain rights in Romania, and of maximum 12-20 years in the Czech Republic.¹⁴ Moreover, the offence of slavery is also listed as a form of exploitation under the human trafficking definition in these three countries, in accordance with international law. The separate slavery provisions have not been applied in judicial practice in

⁹ Law 678/2001 on Preventing and Combating Trafficking in Human Beings amended and supplemented by GEO no. 143/2002, Law 39/2003, GEO no. 79/2005 (Romania).

¹⁰ In the Czech Republic, labour protection is also laid down in the Charter of Fundamental Rights and Basic Freedoms – not to be confused with the EU Charter of Fundamental Rights.

¹¹ This working group consists of NGOs, academics, border guards, state officials and other stakeholders.

¹² See: <https://www.gov.pl/attachment/e6e702e5-d4db-4697-a06e-73c52d63399b>.

¹³ For Poland, see article 8 of the Act Introducing the Criminal Code.

¹⁴ In the Czech Republic it is also possible that an exceptional sentence of imprisonment is imposed (20-30 years or imprisonment for life).

recent years because in most cases the offence of slavery constitutes a form of exploitation under the offence of human trafficking, and does not warrant prosecution as a separate offence of slavery.

Child labour

The offence of child labour is regulated differently in the three countries. In the **Czech Republic**, the offence is not criminalised under the criminal code but regulated under the civil code, which prohibits the labour of minors under the age of 15 years or who have not completed compulsory education. However, minors may perform artistic, cultural, advertising or sporting activities with a permit, which stipulates specific conditions. Labour inspectors inspect whether labour by minors is performed in accordance with the law. A violation of the conditions stipulated in the permit can incur a fine of up to CZK 2 million (approximately EUR 78.500).

In **Poland**, child labour is prohibited under the labour code. Employment of persons between the ages 15 and 18 is subjected to special regulations such as reduced working hours and performing light work. The Polish labour code prohibits the permanent employment of minors under the age of 15 years unless one of the carefully listed exceptions apply, such as the completion of compulsory education or the presentation of a medical certificate that the minor is fit to perform the respective labour. In Poland the Children's Rights Commissioner is responsible for monitoring compliance with the different statutes on the protection of minors. Enforcement of labour laws to this end fall under the mandate of the Labour Inspectorate. In **Romania**, the offence is criminalised by the Law on the Protection and Promotion of Children's Rights.¹⁵ In addition, the Romanian constitution prohibits the exploitation and employment of minors under the age of 15 years in paid labour concerning activities that may be physically or morally unhealthy or put their lives or normal development at risk. The labour code sets the minimum age of employment at 16 years, demands non-hazardous workplaces, and prohibits night-time work as well as work for more than 6 hours per day or 30 hours per week. The offence of child labour carries a sentence of imprisonment of 1-3 years. The Ministry of Labour and Social Protection, the Ministry of Health, the Ministry of Education and Research, and the National Authority for the Protection of the Rights of the Child and Adoption are responsible for monitoring compliance with the different statutes on the protection of minors in Romania. The enforcement of labour laws for those who reached the minimum age of employment falls under the mandate of the Labour Inspectorate of the Ministry of Labour and Social Protection.

Migrant smuggling

Migrant smuggling – legally a different crime, but in practice often closely related to the crime of human trafficking – is criminalised as the organisation and facilitation of unauthorised crossing of a state border in all three countries under their criminal codes. The UN Protocol definition of migrant smuggling requires the aim to obtain “*a financial or other material benefit*” as a constituent element of this crime.¹⁶ However, the EU currently uses a broader definition in which financial gain

¹⁵ Law no. 272/2004 on the Protection and Promotion of Children's Rights, with its subsequent amendments (Romania).

¹⁶ Art. 3(a) UN SOM Protocol: “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

is not a constituent component of the offence of facilitation of irregular entry or transit.¹⁷ This broadened definition used by the EU is dangerous, as this increases the risk of criminalisation of individuals and civil society for humanitarian activities.¹⁸

The **Czech Republic**,¹⁹ **Poland**²⁰ and **Romania**²¹ all implemented this broadened definition of migrant smuggling in their criminal codes: not requiring financial gain or other material benefit as a constituent component of the offence of facilitation of irregular entry or transit. In the Czech Republic and Romania, financial gain is included as an aggravating circumstance.²² As noted above, this broadened definition poses risks for those active in defending migrants' rights and offering humanitarian help.

In the **Czech Republic**, the offence of migrant smuggling carries a maximum prison sentence of 2 years or a prohibition of activity – higher maximum sentences of 5 or 8 years apply when there are aggravating circumstances. In **Poland** the offence of migrant smuggling carries a prison sentence of 6 months to 8 years. In **Romania**, the offence carries a maximum prison sentence of 2 to 7 years, or up to 10 years in case of aggravating circumstances.

As with the offence of human trafficking, in the **Czech Republic** the Criminal Police and the National Centre against Organized Crime are jointly responsible for the investigation of migrant smuggling cases, and the State Attorney is in charge of the prosecution of such cases on a regional level. In **Romania**, the prosecutor's office attached to the Tribunal is responsible for the investigation of migrant smuggling cases. However, if the offence of migrant smuggling is linked to an organised criminal group, the competence lies with the DIICOT within the prosecutor's office attached to the High Court of Cassation and Justice of Romania. In **Poland**, the police and border guards oversee the investigation of migrant smuggling cases.

The offence of migrant smuggling does not have extraterritorial effect in the **Czech Republic**, **Poland**, and **Romania**.²³

¹⁷ Art. 1(1)(a) Facilitation Directive (2002/90/EC): "any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens". For more information, see: EU, 'Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence' (2020), https://ec.europa.eu/info/sites/default/files/commission-guidance-implementation-facilitation-unauthorised-entry_en.pdf.

¹⁸ For more information, see: PICUM, 'Help is No Crime: Are EU Policies Moving in the Right Direction? Criminalisation of solidarity under the EU Pact on Migration and Asylum', (2021), <https://picum.org/wp-content/uploads/2021/10/Help-is-no-crime.pdf>; PICUM, 'Migrant Smuggling: Why We Need a Paradigm Shift', (2022), <https://picum.org/migrant-smuggling-why-we-need-a-paradigm-shift/>.

¹⁹ Sec. 340(1) Czech criminal code.

²⁰ Art. 264(3) Polish criminal code.

²¹ Art. 263 Romanian criminal code.

²² Sec. 340(2)(c) Czech criminal code; Art. 263(2)(a) Romanian criminal code.

²³ 'Extraterritorial effect' (or 'extraterritorial jurisdiction') refers to the exercise of jurisdiction, or legal power, outside territorial border of a specific country.

2.1.2 International legal instruments

At international level, a number of legal instruments regulate the offences of human trafficking and forced labour. This report reviews the ratification or transposition of the key legal instruments by the three focus countries. These key instruments include the UN Trafficking Protocol, the Council of Europe (CoE) Trafficking Convention, the EU Trafficking Directive, the Migrant Workers Convention, the Global Compact for Migration, as well as seventeen key ILO conventions concerning labour rights. The three focus countries have a monist system; this means that international instruments form part of the national legal order, take primacy over domestic law and can be invoked before domestic courts. An example is the Czech incorporation clause, which declares that international law becomes part of the domestic system upon its entry into force.²⁴

The **Czech Republic**, **Poland**, and **Romania** all signed and ratified the UN Trafficking Protocol and the Council of Europe Trafficking Convention and transposed the EU Trafficking Directive. The dates of signature, ratification and transposition are as follows:

	UN Trafficking Protocol		CoE Trafficking Convention		EU Trafficking Directive
	Signature	Ratification	Signature	Ratification	Transposition
Czech Republic	10 Dec 2002	17 Dec 2014	02 May 2016	29 Mar 2017	03 Dec 2015
Poland	04 Oct 2001	26 Sep 2003	29 Aug 2006	30 May 2012	12 Jun 2015
Romania	14 Dec 2000	04 Dec 2002	16 May 2005	21 Aug 2006	07 May 2015

The three countries made no reservations to the provisions of the UN Trafficking Protocol. However, both the Czech Republic and Poland made reservations to the provisions on jurisdiction under the Council of Europe Trafficking Convention.²⁵

²⁴ The incorporation clause under the Czech Constitution (art. 10) states that "Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply." The Czech Constitution is available (in English) at: <https://public.psp.cz/en/docs/laws/constitution.html>.

²⁵ The Czech Republic limits jurisdiction over trafficking offences committed *against one of its nationals* to those committed "in the territory of the Czech Republic or ... abroad if an offence is punishable in the place of its commission or if the place where such an offence was committed is not subject to any criminal jurisdiction." Poland limits jurisdiction over trafficking offences committed *by a stateless person who has his or her habitual residence in the territory of Poland* to "any offence punishable by penalty exceeding two years of deprivation of liberty in accordance with the Polish penal law, when the offender is present on the territory of Poland and when no decision on his or her extradition has been taken." See: Reservations and Declarations for Treaty No.197 - Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=197&codeNature=0>.

This report reviews seventeen key ILO conventions and protocols concerning labour rights, the UN Migrant Workers Convention and the UN Global Compact for Migration. The table below reveals the ratification or the absence of ratification of these instruments by the three focus countries.

Key international legal instruments	Ratification by CZ, PL, and RO
ILO Forced Labour Convention, 1930 (No. 29)	✓
ILO Labour Inspection Convention, 1947 (No. 81)	✓
ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	✓
ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	✓
ILO Equal Remuneration Convention, 1951 (No. 100)	✓
ILO Abolition of Forced Labour Convention, 1957 (No. 105)	✓
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	✓
ILO Minimum Age Convention, 1973 (No. 138)	✓
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	✓
ILO Migration for Employment Convention, 1949 (No. 97)	✗
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	✗
ILO Domestic Workers Convention, 2011 (No. 189)	✗
ILO Violence and Harassment Convention, 2019 (No. 190)	✗
ILO Occupational Safety and Health Convention, 1981 (No. 155) ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)	Only CZ
ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)	Only CZ and PL
ILO Hours of Work (Industry) Convention, 1919 (No. 1)	Only CZ and RO
UN Migrant Workers Convention, 1090 (A/RES/45/158)	✗
UN Global Compact for Safe, Orderly and Regular Migration, 2018 (A/RES/73/195)	CZ, PL, and RO did not vote in favour ²⁶

²⁶ The Global Compact for Safe, Orderly and Regular Migration, formally adopted by 164 UN Member States in December 2018. The Czech Republic and Poland voted against the Global Compact for Migration, Romania abstained, see: <https://www.un.org/press/en/2018/ga12113.doc.htm>.

2.1.3 Bilateral agreements

Bilateral agreements can also be of importance with regard to the protection of Asian victims of human trafficking in Europe. The bilateral agreements reviewed in this paragraph are implemented by the three focus countries as international treaties and have a special status under their respective domestic laws. The list of bilateral agreements includes specific employment programmes with Asian countries to encourage safe migration. The three focus countries have all signed bilateral agreements with Vietnam on employment, social security, readmission of citizens, and cooperation in combating organised crime. Several of these agreements were signed quite some time ago.

The **Czech Republic** has also entered into bilateral agreements with a number of other Asian countries, including China, India, Indonesia, Malaysia, Mongolia, North Korea, the Philippines and Thailand. These agreements also concern economic cooperation and a full or partial waiver of visa requirements. Cooperation between the Czech Republic and North Korea with regard to labour migration effectively ceased in 2006 owing to suspicion of labour exploitation of North Korean nationals in the Czech Republic and the recommendation of the Czech Foreign Police to stop issuing work visas to North Korean nationals.²⁷

Poland has signed a bilateral agreement with India on cooperation in international terrorism and other crimes. Poland has also signed an agreement with South Korea regarding a working holiday programme. Annually, Poland issues up to 200 multiple entry visas for a period of one year to South Korean nationals to reside in Poland in order to enhance their language skills and understanding of the Polish culture, as well as to undertake paid employment of an incidental nature.²⁸

According to available public information, **Romania** has not signed relevant bilateral agreements with Asian countries other than Vietnam. The memorandum signed between Romania and Vietnam in 2018 received negative media coverage in Romania, with headlines such as *The Vietnamese Are Coming to Steal Your Jobs*, despite the fact that the rationale behind the memorandum was to address a significant shortage of one million workers in the Romanian labour market. Moreover, the Romanian Law No. 247/2018 has simplified the procedure to attain a work permit and stipulates that those migrant workers should receive the same minimum gross wage as Romanian nationals.

The significance of bilateral agreements with regard to the protection and enforcement of labour rights and measures for victims of human trafficking and forced labour is different for the three focus countries. In **Poland**, bilateral agreements on international mutual assistance and cooperation in combating organised crime form the main ground for the cooperation with foreign countries, in particular as Poland is not a party to the European Convention on the Transfer of Proceedings in Criminal Matters. In contrast, in the **Czech Republic**, bilateral agreements on employment and social security, or readmission of citizens between the Czech Republic and for example Vietnam seem to be obsolete. While identifying relevant bilateral

²⁷ R.E. Breuker and I.B.L.H. van Gardingen (eds), 'People for Profit: North Korean Forced Labour on a Global Scale', Leiden Asia Center 2018, p. 111-114.

²⁸ For more information about this agreement concerning the working holiday programme, see: Ministry of Family and Social Policy, Working Holiday Programme Poland - Republic of Korea, available at: <https://www.gov.pl/web/family/working-holiday-programme-poland-republic-of-korea>.

agreements between the Czech Republic and Asian countries, La Strada Czech Republic noted that the bilateral agreements identified within this research had not been used by their NGO in the past 15 years and they were unaware of other NGOs or authorities that had used those agreements in relation to Asian trafficking victims. The existence of archaic bilateral agreements in the field therefore raises an important question about the significance of bilateral agreements in theory and, more importantly, in practice.

2.1.4 Mutual legal assistance and judicial cooperation in cross-border legal actions

International, regional, and bilateral instruments

All three focus countries are parties to international, regional, and bilateral legal instruments aiming to enhance mutual legal assistance and judicial cooperation in combatting human trafficking. The Palermo Protocol, the Council of Europe Convention and the EU Directive stipulate cross-border cooperation among law enforcement, immigration authorities and other relevant authorities through information exchange. At EU level, mutual legal assistance and judicial cooperation in criminal matters are also regulated by the European Convention on Mutual Assistance in Criminal Matters, the EU Convention on Legal Aid, and the Framework Decision on the European Arrest Warrant. The three focus countries of this report – all EU Member States – also cooperate with Europol and Eurojust to enhance the coordination of investigations and prosecutions to combat cross-border trafficking cases.

Cross-border cooperation with regard to Asian victims of human trafficking is further strengthened through bilateral agreements between the respective EU countries and Asian countries. The **Czech Republic** and **Poland** have entered into bilateral agreements with Vietnam on mutual legal assistance in civil and criminal matters. The Czech Republic has also signed two additional agreements with Vietnam to cooperate in combating crime and the transfer of sentenced persons. Similar agreements on mutual legal assistance in these areas have been signed in the past by the Czech Republic and Poland with Thailand, Mongolia, and North Korea. There are no relevant bilateral agreements on mutual legal assistance or judicial cooperation between Romania and South-East Asian countries. Like the **Czech Republic**, **Romania** too has entered into a bilateral agreement with China on mutual legal assistance in civil and criminal matters. The bilateral agreements on mutual legal assistance in criminal and civil matters entered into by the Czech Republic with Mongolia, North Korea, and Vietnam seem to be obsolete today.

National instruments

In the **Czech Republic**, the Act No. 104/2013 on Judicial Cooperation in Criminal Matters regulates mutual legal assistance and judicial cooperation in cross-border legal actions. This Act includes provisions on mutual legal assistance, extradition, the transfer of criminal proceedings and the enforcement of criminal judgments and decisions. In general, the International Police Cooperation Division of the Police Presidium of the Czech Republic is responsible for the execution of all incoming requests by other countries, and also works at regional level with Interpol, Europol and SIRENE.²⁹ The Czech Public Prosecutor's Office and courts can offer legal assistance at the pre-trial and trial stages of foreign investigations. The Act also stipulates cooperation with the International Criminal Court and international tribunals.

²⁹ SIRENE stands for Supplementary Information Request at the National Entries. Each EU country operating the Schengen Information System (SIS) has set up a national SIRENE Bureau, operational 24 hours a day, seven days a week, that is responsible for any supplementary information exchange and coordination of activities connected to SIS alerts.

The **Polish** codes of civil and criminal procedure regulate mutual legal assistance and judicial cooperation in cross-border legal actions. This includes receiving evidence from overseas, remote or video-link testimony from overseas witnesses, and the enforcement of foreign judgments within the jurisdiction. Under these codes of procedure, the courts, diplomatic missions and consular offices of Poland may offer assistance and cooperation in cross-border legal actions to foreign countries. The Polish codes of civil and criminal procedure lack any provisions on taking interim measures in support of foreign proceedings.

The **Romanian** code of criminal procedure and Law no. 302/2004 on International Judicial Cooperation in Criminal Matters, govern mutual legal assistance and judicial cooperation in cross-border proceedings. The code of criminal procedure describes the procedure for international judicial cooperation and the implementation of international treaties in domestic criminal matters. Law no. 302/2004 transposes into domestic law EU legislation on arrest warrants and surrender procedures, joint investigation teams, orders to freeze goods or evidence, the application of the principle of mutual recognition of financial sanctions and confiscation orders, and the European Investigation Order in criminal matters. This law also regulates the enforcement of criminal judgments and judicial actions relating to foreign countries, including interim measures in support of foreign proceedings.

2.2 Legal Frameworks on Labour Protection

2.2.1 Domestic instruments

The **Czech** legal framework on labour and labour protection of migrant workers consists of the labour code, the Act on Employment (Act No. 435/2004 Coll.) and the Czech Charter of Fundamental Rights and Freedoms.³⁰ The latter instrument is the main Czech national human rights treaty that prohibits forced labour or services, and guarantees the right to freely choose a profession as well as the employees' right to fair remuneration and satisfactory work conditions. The labour code only applies to persons in regular employment situations and guarantees their labour rights protection, including the principle of equal treatment of employees, and prohibits discrimination. There are quotas on work permits for migrant workers from Asia – each embassy needs to adhere to a maximum number per year when granting employee card applications.³¹ Lastly, the Act on Employment (Act No. 435/2004 Coll.) has been amended in 2012 in order to implement the EU Employers' Sanctions Directive into the Czech legal system.

The **Polish** legal framework on labour and labour protection of migrant workers consists of the Law on Employment Promotion and Labour Market Institutions, the Law on Foreigners, the labour code, the Act on the sanctions for employment of foreigners unlawfully residing on the territory of the Republic of Poland, and the criminal code. The first instrument stipulates the conditions of access to the Polish labour market for foreign nationals, the obligations this gives to employers, as well as the prohibition of irregular work, which is subject to a fine for both the employer and worker in question. The second instrument – the Law on Foreigners – contains provisions on a single temporary residence and work permit. It also authorises relevant ministers to introduce quotas on these permits. However, again such quotas have not yet been introduced.

³⁰ In the Czech Republic, labour protection is also laid down in the Charter of Fundamental Rights and Basic Freedoms – not to be confused with the EU Charter of Fundamental Rights.

³¹ Examples of maximum number of employee card applications allowed per year (at Czech embassies in countries in Asia): Hanoi 200, Bangkok 280, Manila 2200, Ulaanbaatar (Mongolia) 1230.

The Polish labour code – the main source of labour rights – guarantees the principle of equal treatment of employees and prohibits discrimination. The protection of the Polish labour code only applies to persons employed under labour law contracts – therefore, as a principle, it does not apply to persons employed under civil law contracts. This is problematic, as in Poland employment is often provided on the basis of civil law contracts. The protection of the labour code should be applicable to migrant workers employed under labour law contracts – even if they have no valid work permit. The labour code prohibits the replacement of a labour law contract with a civil law contract, because the latter does not guarantee many of the labour rights under the labour code, including the right to holiday, to have sick leave and be given a notice period. Malicious or persistent violations of employee rights can be punished under the criminal code with a fine, a restriction of liberty or imprisonment of up to 2 years. Finally, the Act on the Sanctions of Employment of Foreigners Unlawfully Residing on the Territory of the Republic of Poland implements the EU Employers’ Sanctions Directive.³² This Act provides for penalties for those who employ foreigners staying irregularly in Poland. Moreover, the Act lays down principles as to how remuneration and related benefits can be claimed by an irregular foreigner.

The **Romanian** legal framework on labour and labour protection of migrant workers consists of four instruments: the labour code, the Law on the Unemployment Insurance System and Employment Stimulation, the government decision on the quota of newly admitted foreign workers into the labour market in 2021, and the emergency ordinance on the regime of foreigners in Romania. Like in the other two focus countries, the labour code is the main source of labour rights and guarantees the principle of equal treatment of employees and prohibits discrimination. The labour code also applies to migrant workers and stateless citizens³³ employed under general labour contracts by employers in Romania.³⁴ The second instrument (the Law on Unemployment Insurance and Employment Stimulation) outlines additional measures to ensure a high level of employment and workforce that meets the requirements of the labour market. The third instrument (the government quota decision) envisaged, in 2021, the issuances of 25,000 work permits to foreign nationals outside the EU, the European Economic Area and the Swiss Confederation, as well as foreign nationals whose free access to the Romanian labour market is established through treaties and agreements concluded by Romania. The yearly quota on work permits issued in the government quota decision reflects Romania’s economic development potential, as well as the need to ensure the labour force required in some sectors, which cannot be covered by Romanian workers.³⁵ The fourth instrument (the emergency ordinance on the regime of foreigners in Romania) governs the general regime of the entry, stay and exit of foreign nationals within the territory of Romania, as well as their rights and obligations on the Romanian labour market. Lastly, the EU Employers’ Sanctions Directive is implemented in Romania through the government ordinance regarding the employment and deployment of foreigners in Romania (No. 25/2014).

³² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

³³ Stateless citizens have the right to work in Romania under general labour contracts.

³⁴ The EU asylum *acquis* regulates access to employment and working conditions of asylum applicants and beneficiaries of international protection. Pursuant to the EU Qualification Directive, refugees and subsidiary protection status holders are authorised to engage in employment under the general rules for the profession or public service. When they work, the laws in force in the Member State apply with regard to remuneration, social security and working conditions. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2011] OJ L337/9 (EU Qualification Directive) art 26. See also FRA, *Protecting Migrant Workers from Exploitation in the EU: Workers’ Perspectives* (Publications Office of the European Union 2019) p. 29-30.

³⁵ According to the Evaluation Report of the General Inspectorate for Immigration in 2020, the number of ‘employment requests’ by Vietnamese and Philippine nationals almost doubled between 2018 and 2019.

2.2.2 Visa arrangements and immigration and employment policies

In the Czech Republic, the Department for Asylum and Migration Policy of the Ministry of the Interior is responsible for the implementation of immigration policies. Visa arrangements and immigration as well as employment policies for foreign nationals in the Czech Republic are governed by the Act on the Residence of Foreign Nationals (Act No. 326/1999 Coll.) and the Act on Employment (Act No. 435/2004 Coll.). There are four types of visa arrangements that apply to TCN migrants: short-term visa for employment of up to three months, including seasonal employment; long-term visa, including for seasonal employment between 3-6 months;³⁶ long-term residency permits for employment between three months and 2 years in a specific position (Employee Card) or for employment of more than three months in a job position that requires tertiary education (Blue Card); and permanent residency permits. The visa or work permit is usually tied to someone's employer, which means TCN migrants usually cannot switch to another employer. For people with Employee Cards – the most common form of work permits – there are some limited exceptions to this,³⁷ but unfortunately many workers are unaware of these exceptions and employers abuse this lack of knowledge. This means that in practice, in most cases TCNs working in the Czech Republic are not able to change their employer during the initial six months of employment. Asian migrants do not typically apply for short-term (seasonal) employment visas because of the stringent application process. They also do not have free access to the Czech labour market and must obtain a work permit, Employee Card or Blue Card to work in the Czech Republic. The Employee Card and Blue Card are general work permits under the Czech system and the bilateral agreements do not include any special visa arrangements for certain groups of workers or specific work sectors. Since 2019, there have been quotas on the number of applications granted for long-term residency permits from specific countries, and a number of employment programmes for (highly) qualified migrants were founded.³⁸

No specific visa arrangements or immigration and employment policies for Asian nationals were identified with regard to **Poland** and **Romania**. Polish law provides for the possibility of introducing quotas for work permits, however such quotas have not been introduced so far.

2.2.3 Mechanisms for the protection and enforcement of labour rights

In the **Czech Republic**, the act on the Labour Inspection establishes the State Labour Inspection Office and regional inspectorates to monitor compliance with labour laws through regular and unscheduled inspections, and to impose fines and other sanctions on employers and employees for violations of such laws. The Labour Inspectorate may also impose fines on workers performing irregular work, although the fines for employers enabling the performance of irregular work are higher than those for employees performing irregular work. Moreover, the Labour Inspectorate does not have the competence to resolve labour disputes or offer mediation services, as these are a matter for civil courts. Judicial settlements are therefore the most common form of dispute resolution in this field in the Czech Republic.

³⁶ Long-term visas are issued for a period over 90 days and no longer than 1 year. Long-term visas for the purpose of seasonal employment (only one type of long-term visa) can be issued for over 90 days and a maximum of 6 months.

³⁷ In the Czech Republic, Employee Card holders can change employer/ job positions under certain strict rules. Firstly, foreign nationals residing in the Czech Republic are obliged to notify such changes to the Department of Asylum and Migration Policy of the Ministry of the Interior. Secondly, Employee Card holders can only change employer if one of the following conditions applies: a notice of termination by the employer or a consensual agreement between the employer and the employee based on one of the few specific reasons allowed under the labour code (such as the closing down or the relocation of the employer's undertaking), a termination by the employer during the probationary period, or immediate termination of the employment relationship by the employee in certain specific cases (e.g. on the basis of a medical certificate finding serious health threats or non-payment of the salary by the employer for over 15 days).

³⁸ The quotas on the number of applications granted for long-term residency permits from the Philippines and Vietnam are 2200 and 200 respectively. The quotas on the number of applications granted under the employment programmes for highly qualified employees or key and scientific staff from the Philippines and Vietnam are 100 and 200 respectively; for qualified employees from the Philippines, the quota is 2000. There is no quota for qualified employees from Vietnam.

In **Poland**, the National Labour Inspectorate monitors compliance with labour law by employers and the legality of employment and other gainful work by foreign workers. To this end, the Inspectorate has the authority to examine any documents governing the work relationship between the employer and the employee and to request further written explanations of this relationship, as well as to suspend the performance of work or activity and the operation of machinery and equipment when this directly threatens the life or health of the employee. The Inspectorate also has a duty to inform the Police or Border Guard of serious violations of the employment provisions by migrant workers. In spite of the abovementioned competences and obligations, the problematic issue remains that the Polish law on the National Labour Inspectorate is limited; this restricts the mandate of the National Labour Inspectorate to the control of employment under labour law contracts and does problematically not extend to employment under civil law contracts – while employment under the civil law is very common.

In **Romania** there are multiple mechanisms for the protection and enforcement of labour rights. Criminal liability applies in case of a crime and civil liability ensures compensation for material and moral damages incurred by the employee. Judicial settlement of labour disputes can be used in relation to individual and collective labour contracts. Contravention liability applies to violations in the administrative and civil sphere.³⁹ Complaints before the competent authorities, such as the Territorial Labour Inspectorate and the National Council for Combating Discrimination, are assessed on a case-by-case basis. Conflict resolution through mediation is regulated by the law on mediation and organization of the mediator profession. Finally, the appeal against decisions of return is taken by the General Inspectorate for Immigration with regard to (irregular) migrant workers.

In all three focus countries, a major reason for the low number of employment violations reported by workers who are undocumented or who are performing irregular work, is the fear for penalties as well as the possibility to be reported to the immigration services, especially since there are no safe reporting mechanisms in place.

2.3 Support and Protection Measures for Victims of Trafficking

2.3.1 National support and protection measures

In the **Czech Republic**, victims of human trafficking are afforded specific support and protection under the Program for Support and Protection of Victims of Trafficking in Human Beings, and as “particularly vulnerable victims of crime” under the Act on Victims of Crime. Both instruments apply to trafficking victims on the basis of the principle of equal treatment and the prohibition of discrimination. However, participation in the Program for Support and Protection of Victims of Trafficking is dependent on the victim’s cooperation with law enforcement. When adult victims ‘choose’ to withdraw from the Support Program – including situations where the victim is not able to cooperate with law enforcement or where law enforcement decides to cease investigating their trafficking case – the specific support and protection under the Program for Support and Protection of Victims of Trafficking is terminated.

³⁹ This form of liability is attracted when a contravention is committed. A contravention is a fact that presents a lower social danger than the crime, a fact that is explicitly provided by law or other normative act, and which is committed with guilt. Contravention liability applies in the administrative and civil sphere. For example, in the case of labour exploitation, the retention of the personal documents of the victim by the employer may be considered a violation attracting contravention liability.

These victims are still eligible for basic support services funded by the Ministry of Labour and Social Affairs. The Support Program does not apply to child victims of human trafficking. Child victims receive special support and protection from specialised centres under the Act on Childcare.

The support and protection measures afforded to victims of human trafficking in **Poland** are funded by the state and budgeted by local self-governments and NGOs under the law on social assistance. The National Consulting and Intervention Centre for Victims of Human Trafficking (KCIK) is the main public institution assisting national and foreign victims of human trafficking.⁴⁰ Currently, the provision of accommodation and meals, as well as legal, medical and psychological support and translation and interpretation services, are divided among two NGOs in Poland (La Strada Poland and PoMOC association). Local government centres also provide support services and financial aid to foreign trafficking victims. In practice, the support for TCN trafficking victims is not adequately covered by national measures. The support and protection of child victims of human trafficking falls within the competence of the family courts and juvenile protection institutions. However, there is a lack of specialised shelters for child victims in Poland.

In **Romania**, the support and protection measures for victims of human trafficking are set out in the Law on Preventing and Combating Trafficking in Human Beings, the Law on Measures to Ensure Information, Support and Protection of Victims of Crime, and the code of criminal procedure. The first instrument secures the privacy and identity protection of trafficking victims, and provides for their physical, psychological and social recovery through the provision of temporary accommodation in specialised centres, medical services and psychological support, as well as counselling and access to information services. Trafficked women and children are granted additional protection and assistance due to the high risk of re-victimisation. The second and third instrument afford additional support and protection measures to trafficking victims as victims of crime, including prompt identification as a victim of human trafficking and their referral to specialised centres. Solely for Romanian and EU citizens these instruments also lay down the right to obtain state compensation. The National Agency against Trafficking in Persons (ANITP) is the main public institution engaged in the protection and assistance of trafficking victims in Romania and is responsible for the Victims Witness Coordination Program that encourages and supports the participation of trafficking victims as witnesses or injured parties in criminal proceedings against traffickers.

The right to a reflection and recovery period and (temporary) residence

In all three focus countries, victims of human trafficking have the right to benefit from a reflection and recovery period. However, this right is not always respected by the authorities. In practice, the granting of the reflection and recovery period often depends on the supporting NGOs, who have to push for this right to be respected on a case-by-case basis.

In the Czech Republic the reflection and recovery period lasts up to 60 days, in Romania up to 90 days, and in Poland up to 3 months (4 months if the victim is a minor). During this period, the migrant victim may remain within the territory of the respective country and benefit from safe accommodation, material assistance and necessary medical treatment.

⁴⁰ For further information, see: www.kcik.pl/k2.

This should include psychological assistance and counselling, as well as information, and translation services. In **Romania**, upon expiry of the reflection and recovery period, migrant victims may be granted a temporary residence permit of 6 months to remain within the territory, with the possibility of an extension at the request of the prosecutor. In **Poland**, if the victim cooperates with law enforcement, they can be granted a temporary residence permit for a period of 6 months to 3 years. Permanent residence permits can be granted to victims who cooperated with law enforcement, remained in Poland for at least one year under a temporary residence permit for victims of trafficking and cannot return to their country of origin. In the **Czech Republic**, potential victims of human trafficking may be granted a long-term residence permit for the purpose of protection within the territory or a visa for a stay of more than 90 days. In all three focus countries the possible temporary residence permits are dependent on the victim's cooperation with law enforcement and do not apply beyond the duration of the criminal proceedings. This means that the residence permit ceases to apply or is not extended when the proceedings finish, or when they are discontinued (for example due to a lack of evidence).

Access to compensation

In the three focus countries, victims of human trafficking may claim compensation in the criminal proceedings against their traffickers or under separate civil proceedings. In order to claim compensation as part of the criminal proceedings, the compensation claim must be filed at the trial stage before the commencement of evidentiary proceedings (in Poland the compensation may also be awarded by the court *ex officio*). Through filing a compensation claim, the victim petitions the court to compensate in monetary terms the damage or non-material harm caused by the commission of the criminal offence, or to surrender any unjust enrichment which the defendant obtained at the victim's expense through the criminal offence. However, the pursuit of legal claims of compensation is a lengthy matter of many years, for which reason many victims are easily discouraged from making such a claim. Even if a person is awarded damages, the chance of obtaining even part of the monetary compensation is slim, as the offenders often (make sure to) no longer possess the proceeds of their crime. Moreover, only trafficking victims with residency within the respective territory or in another EU Member State have access to state compensation for victims of crime.

2.3.2 Legal assistance

In the **Czech Republic**, adult and child victims of human trafficking are entitled to free legal assistance under the Act on Victims of Crime. Moreover, based on the Program for Support and Protection of Victims of Trafficking in Human Beings, adult victims have the right to legal aid and legal representation during the criminal proceeding. Victims who participate in criminal proceedings can also seek the services of an attorney recommended by specialised NGOs, or of in-house lawyers of such NGOs in matters of civil law, family law and social security law. The provision of legal assistance depends on the special characteristics and needs of victims, like age, nationality, and language skills.

In **Poland**, victims of trafficking who can demonstrate their inability to bear the costs of legal aid are entitled to free legal assistance under the general provisions of the Polish code of criminal procedure that applies to all victims of crime. However, representatives of the Polish Bar Council

have indicated that in practice very few trafficking victims are assisted by lawyers during the criminal proceeding. Besides legal assistance in criminal cases, victims are entitled to free legal assistance within the National Consulting and Intervention Centre for Victims of Human Trafficking.

In **Romania**, trafficking victims' right to free legal assistance is regulated under three instruments: the Romanian code of criminal procedure, the Law on Preventing and Combating Trafficking in Human Beings, and the Law on Measures to Ensure Information, Support and Protection of Victims of Crime. The code of criminal procedure makes free legal assistance mandatory when the injured person or the civil party is a person with limited capacity to exercise their right. The second instrument guarantees trafficking victims the right to receive, in the language they understand, information on the applicable judicial and administrative procedures. The third instrument sets out the specific requirements for the provision of free legal assistance to victims of crime in general. There is also a provision for public legal aid under the government emergency ordinance on public legal aid in civil matters, regardless of the material condition of the applicant, if they fulfil its conditions.

2.4 Challenges to the Investigation and Prosecution of Human Trafficking and Forced Labour of Asian Migrants

2.4.1 Challenges related to the identification and investigation

The main challenges faced by all three focus countries as to the identification and investigation of trafficking of Asian migrants, concern a lack of awareness and knowledge both among victims themselves and relevant stakeholders. More precisely, these groups lack knowledge and awareness regarding victim rights and protections, the offence of human trafficking and trafficking related offences. For example, in **Poland** both TCN migrants (such as from the Philippines) and EU migrants (such as from Bulgaria and Romania) are unaware of the possible measures to facilitate legal residence and work in Poland, nor do they have any information about their rights in case they face severe exploitation. Similarly, in **Romania** migrants often run away from their exploitative employers without enquiring about their employment contracts. When the employer then terminates the contract, the migrant worker loses legal residency (which is tied to their work permit) along with the option of legal appeal as a trafficking victim – all of this at least partly due to the aforementioned lack of knowledge. Some stakeholders in the **Czech Republic** also noted that the terms 'trafficked person' or 'trafficking in human beings' are understood differently in Asian countries, which complicates matters for the migrant worker: many Asian victims do not consider themselves as 'victims of human trafficking' because the working conditions in most Asian countries are comparably harsher than those in most European countries. Consequently, an act of exploitation in the Czech Republic may be common work practice in Vietnam, for example. This lack of awareness and knowledge also extends to law enforcement authorities, who are often unaware of Asian migrant workers falling victim to human trafficking and have little data about these situations. For example, in the Czech Republic it is almost impossible to obtain a strong data set on human trafficking because the Czech Republic is primarily a transit country. Its small size, the fact that traffickers and victims do not spend a lot of time on Czech territory and the absence of border controls within the Schengen Area also decrease the possibilities to obtain strong data on human trafficking.

Additionally, in **Poland** the investigation of trafficking in Asian migrants is impeded by the lack of awareness of the overall phenomenon of human trafficking among law enforcement officials, as well as by migrant workers' reluctance to report employment violations for fear of job loss, retaliations or deportation due to their irregular status in Poland. Moreover, as touched upon before, it is problematic that the National Labour Inspectorate's mandate is limited to monitoring employment under labour law contracts and does not extend to (the common) employment under civil law. Similarly, in **Romania** the irregularity of inspections conducted by labour inspectors poses a problem to the investigation of trafficking in Asian migrants. Moreover, according to the US State Department Trafficking in Persons Report 2020, Romania lacks adequate screening for potential trafficking victims among vulnerable groups, such as refugees and asylum seekers, even though stakeholders suspect dozens of cases. Migrant workers in the construction, hospitality and food-processing industries are another group of vulnerable persons neglected by Romanian law enforcement authorities. On top of that, there is the problem that in the three focus countries – alike in other European countries – labour inspectors cannot inspect exploitation of domestic workers employed in private households.

Finally, it is problematic that there is no clear firewall between labour inspections and immigration control. This forms a serious bottleneck, as it impedes save reporting and complaint mechanisms for TCN workers. In all three countries, the Labour Inspectorates are responsible for monitoring both working conditions and irregular employment. Moreover, when labour authorities prioritise checking workers' immigration status, this diverts attention from the working conditions and limits the chance that workers come forward, while it increases the likelihood that exploitative practices continue.

2.4.2 Challenges related to the investigation and prosecution

The foremost challenges to investigating and prosecuting trafficking offences are generally the same for the three focus countries, and relate to the following: the difficulty in interpreting and applying anti-trafficking law, the non-application of the principle of non-punishment, the secondary victimisation during legal proceedings, and the unlikelihood of obtaining awarded compensation. Fourteen cases concerning human trafficking of Asian victims have been reviewed for this research; each receiving a case number including a country code (e.g. CZ01).

In **Poland**, the problem that the criminal code does not contain a definition of forced labour, adds to the difficulty in the interpretation and application of anti-trafficking legislation. In the **Czech Republic** the human trafficking offence under the criminal code does not explicitly state the irrelevance of the victim's initial consent to the subsequent exploitation, which can lead to an incorrect application of the law.⁴¹ Additionally, there is a problem of misapplication or uneven application of the provisions on human trafficking by the Czech judges and prosecutors in trafficking cases. Furthermore, regarding the problematic non-application of the non-punishment principle, Czech jurisprudence on human trafficking reveals the punishment of trafficking victims for acts committed as part of their trafficking situation. For example, in case number CZ04, Vietnamese migrants who were forced to work on cannabis farms were prosecuted for cannabis cultivation.

⁴¹ GRETA 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic' (11 February 2020), GRETA(2020)01, para. 57.

Similarly, in June 2012, the Czech media reported the case of a Vietnamese worker who was forced to work on a cannabis farm in the Western part of the Czech Republic, and was prosecuted for drug offences alongside the remaining gang members, even though the incarceration of the Vietnamese worker was a strong indicator of human trafficking for the purpose of criminal exploitation.

2.4.3 Case law

For the desk research a total of fourteen cases on human trafficking have been reviewed in the Czech Republic, Poland and Romania, covering a broad spectrum of Asian countries and types of exploitation. Very few victims of human trafficking have been formally identified, and there is a severe lack or even absence of criminal proceedings of traffickers. In Romania, no relevant jurisprudence was found by the LSI member ADPARE, which means that the review concerning Romania below is based on media reports of trafficking investigations and prosecutions of Asian victims.

Czech Republic

La Strada Czech Republic reviewed four cases on human trafficking for this report. Evidently, the well-known “Tree Workers Case” (CZ01) is the most important case on human trafficking in the Czech Republic, due to the high number of victims and the atrocious working conditions to which the victims were subjected. This case is an ample example of the challenges faced in the investigation and prosecution of human trafficking, as both the police and the Public Prosecutor’s Office failed to adequately investigate and examine the indicators of exploitation that were evidently displayed before the courts. The Constitutional Court found that the decision of the police and Public Prosecutor’s Office to drop the case, was a violation to the complainants’ right to an effective investigation. The Court also stated that the case displayed clear indicators of human trafficking. The victims had argued that they were deceived into signing training contracts written in Czech (a language foreign to the workers), which meant they were trainees and not employees, whose regulation fell outside the mandate of the Czech Labour Inspectorate. The workers also argued the use of coercion through non-payment of (agreed) salaries and overtime work, inhumane working conditions, and abuse of a position of vulnerability as the employers knew that many of the workers had debts in their country of origin and were therefore forced to continue the work. Investigations of the case are currently taking place, more than 12 years after the exploitation occurred. Many of the almost 2000 female and male victims have disappeared or returned home, are unable or unwilling to cooperate or can no longer remember their earlier depositions. Many victims are also still awaiting the award of compensation for the injuries incurred.

The second (CZ02) and third (CZ03) human trafficking cases in the Czech Republic are good examples of the difficulties faced during the investigation of human trafficking and the importance of knowledge among stakeholders about the indicators of exploitation. At the time, both cases were investigated by the Czech specialised police unit dealing with trafficking cases. Case CZ02 concerns labour exploitation of 15 female and male regular migrants from the Philippines, aged between 30 and 50 years, working in massage, manicure, and pedicure parlours. The police investigations of this case are still taking place. For some of these Filipino migrants, the investigations already identified clear indications of forced labour and forced prostitution.

Case CZ03 investigates (possible) labour exploitation in the meat industry of a group of female and male regular migrants aged between 20 and 40 years from Mongolia. This case was dismissed by the specialised Czech police unit due to a lack of evidence of labour exploitation. The police concluded that the alleged acts of non-payment of overtime, the threat of revocation of residence permits, the alteration of timesheets and the forceful signing of documents in a foreign language, did not meet the threshold of the offence of human trafficking under the Czech criminal code. In particular, the police found that the employers' actions did not completely restrict the workers' freedom of choice; they had learned about the possibility of employment in the Czech Republic by themselves, paid employment-related fees voluntarily, and signed perfect employment contracts with enough time to translate and understand their content when still in Mongolia.

The fourth Czech case (CZ04) illustrates the obstacles faced when prosecuting trafficking offences, as well as the courts' failure to apply the principle of non-punishment in cases of human trafficking for the purpose of criminal exploitation. Legal charges were brought against a group of men from Vietnam and the Czech Republic, who were forced to cultivate cannabis as part of their exploitation in the Czech Republic. Among them was a young and undocumented Vietnamese man, who was brought to the Czech Republic under the false pretence of working in agriculture or forestry in Germany. Instead, he was subjected to poor working and living conditions and received death threats to prevent him from leaving the exploitative situation in the Czech Republic. He was never properly identified as a victim of human trafficking by authorities or courts, and he was sentenced along with his traffickers to two years of imprisonment and five years of expulsion from the territory of the Czech Republic.

Poland

The five Polish human trafficking cases reviewed for this report reveal common sectors of exploitative work for Asian migrants in Poland, namely the garments and agriculture industries. The first two cases (PL01 and PL04) illustrate the difficulty of prosecuting trafficking offences in Poland. Both cases have been suspended under the provisions of international legal assistance. These cases were initiated in Poland as the victims were identified on Polish territory; but in the course of the proceedings, it turned out that the offences had taken place in another country. The first case (PL01) concerned forced labour in the garments industry in Lithuania by a group of six female irregular migrants aged between 34 and 53 years from Sri Lanka. In this case the court dismissed the charges of illegal border crossing brought against the victims, pointing out that the act was committed by victims of human trafficking who crossed the border to obtain assistance at the embassy of their country of origin. The second case (PL04) involved labour and sexual exploitation in the garments and sex industries in Russia of a female irregular migrant aged about 26 years from Vietnam.⁴² In both cases no legal charges were brought against the perpetrators because the offences occurred outside Polish territory; consequently, the Prosecutor's Office transferred the investigation reports to the respective foreign authorities.

The last three Polish cases (PL02, PL03 and PL05) highlight the barriers faced during the investigation of human trafficking offences and the importance of knowledge among stakeholders about the indicators of human trafficking. In all three cases, the exploitation did not meet the high threshold of human trafficking according to the Polish prosecutors and courts. For example, case PL02 concerned labour exploitation in the garments industry of a female irregular migrant aged 33 years from Vietnam. Even though there was evidence of debt bondage, removal of the worker's

⁴² In this case the exploitation in the sex industry occurred in Russia only.

documents by the employer, prohibition to leave the accommodation without the employer, and unequal treatment of foreign and Czech workers, this case was charged as deprivation of liberty instead of human trafficking. Cases PL03 and PL05 concerned labour exploitation in the agricultural industry of a female regular migrant aged 42 years from the Philippines and in the domestic sector of two female regular migrants aged 32 and 45 years from Sri Lanka. In these cases, the Prosecutor's Office concluded that there was a lack of evidence of labour exploitation. In case PL03, the Prosecutor's Office argued that an unfavourable work contract in itself did not constitute an indicator of exploitation, in particular as the workers were informed of the harsh working conditions when still in the Philippines, the living conditions in Poland were of a good standard and there was no deprivation of liberty that would have prevented the worker from leaving the exploitative situation. The argument of the Prosecutor's Office that the victims were informed of the harsh working conditions when still in the Philippines, demonstrates an ignorance of international and regional legal instruments on human trafficking that stipulate the irrelevance of the victim's consent to the subsequent trafficking. In case PL05, the Regional Court in Warsaw upheld the decision of dismissal based on the lack of evidence of labour exploitation, on the grounds that there was no counter evidence to the (employer's) claim that the victims were allowed to leave the employer's house and that the employer had taken their passports only to organise their work permits.

Romania

The five Romanian human trafficking cases reviewed for this report also reveal common sectors of exploitative work for Asian migrants; specifically the construction, hospitality and food processing industries. The information about these cases is gathered solely from media reports, due to the lack of identified, investigated, and prosecuted human trafficking cases in Romania, as well as the lack of further information provided by law enforcement authorities. Overall, these cases highlight systemic challenges in the enforcement of labour rights and victim rights. In case RO01, a group of 13 male regular migrants from Sri Lanka were exploited in the construction industry. In 2021 the media reported about this case. This report underlines that the minimum wage laid down in Romanian law would be unacceptable to most Romanian workers. Case RO03 regards labour exploitation in the construction industry of a group of 10 male regular migrants aged between 26 and 38 years from India. This case shows the need for better safeguards against the deportation of migrant workers who report labour violations and subsequently find out that they had been in irregular work situations all along through the fault of their employer. In this case, the employer never requested the issuance of work permits from the Immigration Service so that the work performed by those workers was irregular all along. However, it is unclear whether sanctions were ever imposed against the employer for failing to request the necessary work permits. Contrastingly, the exploited migrant workers themselves were sanctioned by deportation from Romanian territory. Case (RO04) relates to labour exploitation in the construction industry of male regular migrants from Vietnam. This case underscores the need for more stringent checks and balances on the issuance of work permits to large companies. It also highlights the need for the enforcement of health and safety standards for work sectors in which exploitation is known to occur. According to media reports from 2019, about 300 migrant workers were employed by the same company, each of them forced to live with 12 others in containers with insufficient toilets and showers. Legal charges have been brought against the employer culpable of homicide and non-compliance with safety and security measures at work.

The remaining two cases concern labour exploitation in the hospitality and food industries of a male migrant worker from Nepal (RO02) and of a group of 44 female and male irregular migrants from Bangladesh (RO05). These cases demonstrate the need for broader solutions to the labour shortages in Romania. These would need to include safe migration for Asian workers in tourism, restaurants, childcare and construction work. Currently, there is no agreement between Romania and Nepal to regulate the influx of migration for work to Romania, which forces foreign migrants into exploitative situations of migration and work. This was the case for the Nepalese worker (RO02) who was forced to work 12-hour shifts without breaks and without pay for four months. Similarly, in the case of the Bangladeshi workers (RO05), their travel documents were taken from them by the employer to prevent them from leaving the exploitative situation. Due to this confiscation of travel documents, the case is currently under investigation by the Romanian Immigration Inspectorate.

3. The Protection of Asian Trafficking Victims in Europe: In Practice

3.1 The Challenges to Bringing a Case of Human Trafficking or Forced Labour

In the **Czech Republic**, one of the main difficulties to bringing a case of human trafficking or forced labour is the complexity of the definition of human trafficking. Moreover, the unequal representation of the interests of the employer and employee within the legal framework regulating labour migration forms another large barrier. As in most countries, the definition of human trafficking under the Czech criminal code is complex, as the multi-dimensional nature of the crime requires that all its three elements – the act, the means and the purpose – must be proven. The ‘means’ can include the threat or actual use of force, deception, abduction, coercion, fraud, threats and abuse of power or of a position of vulnerability.⁴³ Consequently, a high threshold of proof needs to be met in order to hold a perpetrator criminally responsible for the offence of human trafficking. Moreover, less visible forms of coercion like threats or debt bondage are even more difficult to prove than physical violence, making it even harder to prove the offence of human trafficking. The difficulty to prove the less visible forms of coercion of human trafficking seriously hampers the prosecution of the crime. It also encourages at least some prosecutors to bring charges for other related offences, such as solicitation, which are easier to prove.

The system of labour migration in the Czech Republic is unfavourable towards TCN migrant workers and the bargaining power in employment relationships lies with the employer. Foreign employees are made dependent on their employers through the conditions of work and residence visas. For example, holders of Employee Cards have limited possibilities to change their employer during the initial six months of employment. Many of them (are led to) believe that it is not possible at all, a myth often sustained by employers. The consequence of such a system is that many workers stay in exploitive conditions of work as they fear losing their work permit if they leave their employer. At the time of the COVID-19 pandemic, during the state of emergency from 16 October 2020 till 11 April 2021,⁴⁴ Employee Card holders were temporarily granted the possibility to freely change their employer during the (normally restricted) initial six months of employment. This decision was welcomed as a progressive step towards the protection of foreign migrants but ceased to apply when the state of emergency ended in April 2021.

⁴³ Article 3(a): “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” United Nations, Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime, 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

⁴⁴ In the Czech Republic, 11 April 2021 was the end of the state of emergency declared because of Covid-19.

In **Poland**, one of the main difficulties to bringing cases of human trafficking or forced labour is the absence of a definition of forced labour under the Polish criminal code. Even though the offence of forced labour is criminalised as a form of human trafficking, many abusive employment practices that would constitute forced labour, are currently deemed 'acceptable' and remain unpunished. A definition of the crime of forced labour is therefore necessary to ensure a common legal understanding of the criminal nature of forced labour, and affect a change in attitude of law enforcement authorities towards the seriousness of this crime. Some Polish authorities are not aware of or do not refer to international standards against forced labour or human trafficking as found in the case law of the European Court of Human Rights or the reports of GRETA, for example in relation to the vulnerable position of trafficking victims. In fact, the ambiguity surrounding the three components of the offence of human trafficking is a difficulty that is observed in all three focus countries, as well as other European countries.⁴⁵

In **Romania**, the main difficulty to bringing a case of human trafficking or forced labour, relates to the ineffective protection of victims of human trafficking under domestic law, in particular foreign victims. Although the Romanian constitution and the criminal code refer to the rights of Romanian, foreign and stateless citizens, there is a practical lack of political commitment and awareness for the need to protect foreign migrants from exploitative situations of work. In particular as Romanian employers can easily terminate their employment relationships with foreign employees, who then must find a new employment relationship within six months to avoid deportation. Moreover, there is a lack of transparency when it comes to the corporate structures of employers, and an absence of sanctions on recruitment agencies in relation to human trafficking offences. Although businesses are often involved in exploitative practices, criminal liability of the legal person does not appear to be applied to hold them responsible.

3.2 Procedural Obstacles to the Investigation and Prosecution of Human Trafficking and Forced Labour

In the **Czech Republic**, the main procedural obstacles faced when investigating forced labour or human trafficking, are that many indicators of exploitation only constitute violations under the labour code. This is the case for indicators such as long working hours, unpaid overtime work and the retention of personal documents by the employer. As a result, in most cases of exploitation the exploiter can never be prosecuted and convicted for the offence of human trafficking under criminal law. Moreover, the process of reporting labour law violations, as well as the commencement of legal proceedings and actions taken by the Labour Inspectorate, take too long. When a labour law violation is reported, it can take up to five months before the labour inspectors carry out an inspection based on the report. Even then, there is no guarantee that the Labour Inspectorate will find the violation. As a result of these discouraging prospects, many cases of exploitation remain unreported.

⁴⁵ The three required elements are the act, the means and the purpose of exploitation. See: art. 3(a) UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime, 2000.

In **Poland**, the main procedural barriers to pursuing investigations or legal actions for forced labour or human trafficking, are that free legal assistance is not automatically provided to victims of those crimes and that the non-punishment principle is not encoded in the Polish criminal code. The legal formulation of relevant crimes is problematic too, as provisions on human trafficking for labour exploitation overlap with those concerning violations of labour rights, which seriously hampers the prosecution of offences as human trafficking instead of as violations of labour rights. The process of crime reporting and victims' interrogation also reveals problems: the uncertain legal status of Asian migrant workers, in particular the risk of deportation, understandably discourages them from reporting labour violations and testifying against their employers. Consequently, the less willing – or able – victims are to cooperate with relevant officials, the harder it is to meet the standard of proof and to secure a conviction of the perpetrators.

In **Romania**, the main procedural difficulties faced when investigating human trafficking or forced labour cases, relate to the complexity of these cases. Romanian legislation is very extensive, and gathering evidence and bringing the case before the court is extremely laborious and time consuming. The law requires all kinds of details and precise documentation of every period of exploitation for each victim. For example, telephone interceptions in themselves would be insufficient. Furthermore, written statements of each person are required. The indictment can therefore be 400-500 pages long and judges may reject the documentation due to the sheer volume of pages. In such cases, judges will typically return the indictment and request clarification. The amended criminal code has given rise to additional procedural challenges because the law on human trafficking is ambiguous and the distinction between related offences such as fraud, forced labour and solicitation, is unclear. The level of penalties which can be imposed is currently too low given the severity of this crime, and judicial practice has yet to be established. There are discussions to amend the law further to address the many challenges examined here; it would be important to involve lawyers specialised in human trafficking in this drafting process.

3.3 Practical Barriers to the Investigation and Prosecution of Human Trafficking and Forced Labour

In the three focus countries, the main practical barriers to pursuing investigations in human trafficking and forced labour, relate to the difficulty of gathering evidence and the language barriers between the law enforcement authorities and victims. Workers often do not have work contracts or other work documents, such as timesheets, to demonstrate excessive working hours or overtime work. In the rare cases in which workers do possess such documents, it is likely that these documents do not reflect the real situation and may just be provided by the employer to conceal the exploitative situation. Most migrant workers do not know that they need to keep copies of important work documents as proof, and exploitative employers are careful not to reveal any evidence of exploitation. The process of evidence gathering itself is time consuming. For example, in **Romania**, evidence gathering can take over a year, by which time the exploitative company would have changed its location and/or employees. Moreover, law enforcement authorities face a lack of time and capacity to gather evidence in each case brought before them. For example, the Romanian Directorate for Investigating Organized Crime and Terrorism (DIICOT), which is responsible for the investigation of human trafficking offences, only has 24 hours to question suspects. Also, the lack of a clear division of responsibilities regarding the detection of exploitation between law enforcement authorities (including immigration services), the Labour Inspectorate and the National Agency against Trafficking in Persons (ANITP) forms an obstacle

in Romania. Moreover, many workplaces where Asian migrants work, such as construction sites, are not accessible to law enforcement authorities and NGOs without prior consent of the employer. This obviously hampers the effectiveness of visits by the labour inspectors, other law enforcement authorities and NGOs. Diplomatic and private households are workplaces which are even completely inaccessible to labour inspectors. The testimonies of witnesses are therefore crucial.

In addition to the lack of physical access to specific workplaces of Asian migrants, authorities in the focus countries also note the negative perception among Asian migrant communities of law enforcement authorities. Asian migrant workers are therefore less likely to cooperate in investigations or prosecutions of human trafficking. This reluctance towards cooperation can be no surprise, since employers use threats and intimidation to ensure victims do not (dare to) cooperate with law enforcement. For example, in Romania, the DIICOT argues that it is difficult to gain access to the Chinese community in Romania due to their mistrust of law enforcement authorities. The difficulties in the cooperation between many Asian victims and law enforcement is also linked to their trauma of having to recount their experience of exploitation on multiple occasions to different persons, often of the opposite gender. This is particularly problematic in cases of trafficking for sexual exploitation where the female victim must recount the exploitation to a male law enforcement official.

In addition to the (understandably) negative perception of law enforcement authorities, Asian migrant communities in the focus countries also often have a different understanding of what constitutes 'exploitation', and many exploitative practices are perceived as only 'hard work'. For example, stakeholders report that in **Poland** migrants from North Korean restrained their testimonies; Indian, Filipino and Nepalese migrants have a positive disposition toward the hardships in work; and North Korean migrants treat their work documents with secrecy. For these reasons, Asian migrants in Poland are less likely to report labour violations. Stakeholders note that female migrant workers employed for domestic work in middle- and upper-class households in the Czech Republic have a similar perception of 'acceptable' exploitation, including low salaries, unpaid overtime, pressure to perform irregular work, physical violence and sexual harassment.

Also the language barrier is a main practical problem impeding the effective cooperation between the victim and law enforcement. As most Asian migrant workers – logically – do not speak the domestic language, there is often a need for interpreters. However, it is difficult to ascertain the accuracy of the translation and to prevent certain terms from being lost in the translation process. This is especially the case for languages that are less common. For example, in the **Czech Republic**, there is a need for interpreters who can speak Tagalog⁴⁶ and who can communicate effectively in a three-way dialogue in Czech, English and Tagalog. Some defence attorneys may request that the victim only speak in their mother tongue, while others may prefer communication only in English. These requirements can inadvertently make the victim uncomfortable and uncertain about their statement. One stakeholder in **Poland** notes the growing use of translation applications on mobile phones by victims to overcome this problem. Both the arrangement of official interpreters and the translation of necessary documents are challenging. It is difficult to trace and interview migrant

⁴⁶ Tagalog is a Central Philippine language within the Austronesian language family.

victims, interpreters are not always available and (cultural) communication challenges arise frequently. The costs of translating relevant documents for the legal proceedings are high, and often victims cannot afford such services. NGOs supporting victims often also lack the necessary financial resources to resolve this.

3.4 Knowledge, Skills and Resources of Relevant Stakeholders

All three focus countries experience a lack of knowledge and resources among relevant stakeholders needed for the investigation of trafficking cases. These stakeholders include the police, labour inspectors, lawyers, prosecutors and judges. To address this in the **Czech Republic**, the Czech specialised police unit dealing with trafficking cases is primarily responsible for the investigation of trafficking offences and conducts trainings and seminars for law enforcement authorities, such as the National Drug Centre Unit. This specialised police unit also organises specialised trainings on labour exploitation for the Labour Inspectorate. Moreover, within their basic training programme, the Czech police officers receive training on the proper identification and treatment of trafficked persons as particularly vulnerable victims of crime. There are also trainings at international level on international cooperation in organised crime in the Czech Republic. The situation in Poland is noticeably different, as a lack of knowledge is perceptible, in particular the necessary general knowledge as to recognising human trafficking as well as knowledge regarding international standards against human trafficking. Moreover, Polish inspectors outside the division of employment regulation do not receive specific training on human trafficking.

Within all three countries, the lack of legal professionals specialised in human trafficking is problematic. As a result, the criminal code is not always applied properly to the offence of human trafficking. For example, the labour code may be used to prosecute forced labour offences, while actually the criminal code should have been applied in order to prosecute the offence of human trafficking. Moreover, lawyers often trivialise the offence of trafficking for sexual exploitation if the victim is a consented sex worker. The trivialisation can also extend to the mental state of the victim's suffering from post-traumatic stress disorder or other mental disabilities as a direct result of the trafficker's actions. **Polish** and **Romanian** stakeholders also highlight the need for the proper assessment of victim testimonies and evidence, which take into account the special needs of victims to avoid traumatisation and secondary victimisation. A Romanian stakeholder argued that since human trafficking is not part of the law curriculum at law colleges and universities, legal professionals should receive continuous training, and a list of specialised lawyers in the field should be developed to assist in trafficking cases. Moreover, trafficking cases should be evenly distributed among specialised legal professionals so as not to exhaust available resources. Due to the lack of knowledge about human trafficking among judges, court decisions are inconsistent and unpredictable. Also, judges do not have the resources necessary to devote sufficient time to every case and attend specialised trainings on human trafficking. In Romania, the number of pending criminal cases is generally staggering and there are only 6,800 magistrates, prosecutors and judges. There is also a shortage of staff at the Romanian General Inspectorate for Immigration (IGI), and stakeholders complain that the IGI does not act other than to hand out fines to make money.

3.5 Significance of Criminal Justice Outcomes

In general, it is seen in all three focus countries that authorities attach a greater importance to criminal justice outcomes than to other aims, such as providing access to justice to victims – including providing them with compensation or redress. The conviction and punishment of perpetrators serve as the main purpose of legal proceedings, in the interest of general deterrence. Unfortunately, we also see that access to justice for victims of trafficking still largely depends on successful investigations and prosecutions, which to a large extent depend on the commitment and willingness of individual police officers, prosecutors and judges.

In all three countries, the provision of compensation for the victim is a problematic area of criminal justice, because the process is lengthy and the award of compensation depends on various factors, often including the ability of the courts to confiscate the assets of the trafficker(s). In the Czech Republic these problems continue to exist despite the authorities guaranteeing to protect victims of crime and safeguard their entitlement to compensation through different means, such as the assistance of NGOs and the Probation and Mediation Service. Stakeholders in **Poland** and **Romania** share the view that criminal justice still serves as the main means to secure victims' rights. This also counts for the right to claim compensation (or redress) in civil proceedings, which in some states is conditional on a conviction in a criminal court or on proof that the damage is the result of a criminal offence. Criminal justice outcomes also serve as a means of retributive justice, to hold employers to account for their exploitative practices. Despite all of this, in practice Polish NGOs and legal practitioners seem to agree that the system of rehabilitation for victims of forced labour or human trafficking is insufficient and financial compensation is unsatisfactory, due to the low amount of money typically granted to victims for damages – in the rare cases that they are granted any compensation at all.

3.6 Challenges to the Access to Legal Advice and Assistance for Victims

In the **Czech Republic** victims of human trafficking have access to a range of rights and protections, including access to free legal representation by professionals, interpretation in their mother tongue and the possibility to be in a separate room from their trafficker during interrogations and legal proceedings. Although it has proven difficult to provide victims with interpreters in some foreign languages, such as Tagalog, one interviewed national stakeholder has stated never to have encountered a case in which a victim was not provided with an interpreter in their mother tongue.

However, access to the Czech system of victim protection is contingent upon the trafficking victim's participation in the Program for Support and Protection of Victims of Trafficking in Human Beings. Their participation in the support programme is dependent on whether they cooperate with law enforcement. This means that victims do not receive support through the programme in situations where the victim is not able to cooperate, or where law enforcement decides to drop the case. Participation in the support programme is important for full access to the support and protection services available to trafficking victims under the Czech law. This support programme is especially important for TCN victims whose access to assistance can otherwise be complicated or limited in the absence of professional legal representation. However, as highlighted above, not all victims of human trafficking can benefit from this support programme. A stakeholder explained another problem relates to the distrust among certain groups towards the voluntary

return. Voluntary Return is a free service to all non-EU nationals in the Czech Republic who are victims of human trafficking and who choose to return to their country of origin. This is provided for by the Czech Ministry of Interior and the International Organization for Migration (IOM). However, it is noted that among Vietnamese nationals there is a general distrust towards this assistance which is provided free of charge. Many people from Vietnam rather choose offers from individuals offering a return trip to Vietnam. IOM hires community consultants to ensure that there are no intermediaries who try to profit from this specific mindset of Vietnamese people. The distrust among specific groups towards the free Voluntary Return service persists despite the fact that IOM would manage the entire process from flight booking to ensuring that the victims have their required travel documents. This is a challenge faced only in relation to Vietnamese nationals; trafficking victims from other Asian communities, such as Mongolia, are less suspicious of public programmes in general and many of them have contacted the IOM for a voluntary return. However, during the COVID-19 pandemic, it was particularly difficult to provide reintegration services to returning victims in the country of origin, due to the constantly changing international travel restrictions.

In **Poland** and **Romania**, victims of human trafficking or forced labour are granted rights and protections under the respective domestic laws. While law enforcement authorities would argue that there is no difference between a victim's rights on paper and in practice, NGOs, legal practitioners and academics highlight the contrary. Moreover, some of these rights are only accessible to officially recognised victims of human trafficking. As in all European countries, unidentified victims of trafficking remain excluded from the protection system that guarantees victims' protection during the trial, personal protection, and assistance from the police in their relocation. Many victims are also unaware of possible free legal assistance. In Romania, there is a lack of adequate legal support for victims as the free legal aid system (*ex-officio* representation) is dysfunctional and qualitatively substandard. According to one Romanian stakeholder, *ex-officio* lawyers do not adequately represent the interests of the victim, while at the same time large employers have an army of lawyers and can therefore easily defend their positions.

The lack of resources and capacity of relevant stakeholders presents another challenge to the access to victim support services. Polish NGOs indicate that their legal assistance to victims is limited because they cannot afford to hire legal representation, and without adequate legal representation many cases have no chance of succeeding in court. While in Romania, due to the shortage of psychological counsellors, many victims have no access to the required medical care. Furthermore, there is not much tendency to provide victims with mediation and conciliation procedures supported by the state. Finally, corruption within the Romanian labour system has been reported: companies that were once sanctioned or blacklisted for labour violations or exploitation establish themselves as new companies, and the official records show that those migrant workers are now working for a new company although in practice it is the same employer.

In the three focus countries, there is some recognition for the less visible means of exploitation, such as threats and intimidation. In the Czech Republic, the pressure is typically exerted by persons within the same community as the trafficking victim. In Romania, evidence even shows the intimidation of law enforcement agencies by trafficking rings. Polish law tries to stand up against unofficial forms of pressure through preventive measures, such as pre-trial detention of the perpetrator, victim questioning in the absence of the perpetrator, video conferencing and anonymisation of witness data. In contrast, Romanian law shows no adequate data protection of victims and witnesses who fear retaliation by their traffickers if they cooperate with law enforcement.

3.7 Non-Judicial Procedures and Civil Law Procedures

For cases of human trafficking and forced labour, non-judicial procedures are uncommon in all three focus countries. Resorting to mediation for serious criminal offences like forced labour or human trafficking is unusual since only the civil aspects of the crime can be resolved through mediation. This is neither desirable nor recommendable; victims seek to hold the perpetrators accountable and secure the highest conviction possible.

In the **Czech Republic** the provision of services by the Probation and Mediation Service (providing legal information, offering psychological and other support) theoretically also extends to trafficking victims, but La Strada Czech Republic is not aware of any specific case where this was realised. Non-judicial procedures are available to secure redress for victims only when the legal representatives of both parties agree on a compromise, for example, of part payment of remaining dues. In the Czech Republic, mediation in human trafficking cases between the perpetrator and the victim is not impossible but is not seen in practice because of the nature and gravity of the crime. If compensation is not or only partially awarded during criminal proceedings, the Czech court refers the aggrieved party to civil proceedings to try and obtain (the rest of) the claim. However, only few victims pursue such a civil claim because the proceedings demand a lot of extra effort and time (typically 2-3 years) and more financial means for legal representation. Moreover, most of the perpetrators do not even have the means to pay – which means that even in the rare case that a victim is awarded damages through civil proceedings, there is a very slim chance that the victim will ever receive any of the awarded damages. An ideal system, according to one stakeholder, would be for the state to pay the sum awarded by the courts in criminal proceedings and for the state then to recover the amount from the perpetrators through financial investigations and asset recovery.

In **Poland**, the National Labour Inspectorate employs non-judicial procedures to secure redress for victims, but these are ineffective in forced labour cases. According to stakeholders, victims usually do not resort to civil law in Poland due to lengthy and complicated procedures. In **Romania**, the National Council for Combating Discrimination offers an extrajudicial measure for discrimination at work, forced labour, and moonlighting or undeclared work. There are also internal procedures for mediation at institutional level, but these do not usually apply to cases of forced labour or human trafficking.

4. Conclusion

One of the key conclusions from the research and interviews conducted is the fact that there is too little attention and awareness for the growing group of vulnerable Asian TCN migrant workers recruited for low-paid jobs in Europe. The challenges encountered in this research project do not all exclusively apply to Asian migrants. Many of these challenges are relevant for all TCN migrants facing exploitative situations, including victims of trafficking and forced labour. However, Asian migrant workers are found to be a particularly vulnerable group in the Czech Republic, Poland, and Romania. Reasons for this particular vulnerability include language and cultural barriers, as well as the invisibility of these specifically isolated groups that are often part of 'closed' communities. The fact that their recruitment is often connected with debt bondage, adds to this particular vulnerability. Through this research project, the following main challenges and gaps were found:

- **A lack of political will and commitment as well as the necessary awareness, knowledge and resources** to protect vulnerable Asian migrants from exploitation is broadly observed among relevant stakeholders.
- The fact that **work permits are often tied to the specific employer**, impedes Asian TCN workers to leave exploitative work situations, for fear of losing their work permit and thereby their legal residency, thus risking deportation.
- In practice, **rights and protections are accessible only to those very few officially recognised victims of human trafficking**. As Asian migrants in exploitative situations are often particularly invisible and isolated, and not well-informed about their rights, many are never identified nor referred for assistance as (potential) victims of human trafficking or other severe forms of labour exploitation and consequently do not receive any of the crucially needed support.
- Often **victims do not self-identify or are unable or unwilling to cooperate with law enforcement** authorities for fear of retaliations, loss of their job, income and housing, and the risk of deportation. A major reason for the low number of employment violations reported by Asian TCN migrant workers derives from this same fear. Sadly, too often a well-founded fear, as problematically **there are no adequate safe reporting and complaint mechanisms in place** in the three focus countries, **nor is there a clear firewall** between the labour inspection and immigration control.
- **Difficulties in the interpretation and application of existing anti-trafficking legislation** in the three focus countries risks leading to misapplication and even non-application of anti-trafficking legislation in cases of severe exploitation – all at least partly due to stakeholders' limited awareness, knowledge and capacity to identify the exploitative practices as human trafficking. As a result, there are hardly any successful investigations and prosecutions related to the trafficking of Asian migrants.
- As access to justice is closely tied to successful criminal procedures, there is a **lack of proper remedies including compensation** for TCN victims of forced labour and human trafficking.
- **It proves very difficult to hold private companies** – employing Asian migrants and directly or indirectly responsible for their exploitation – **accountable** for these exploitative practices.

5. Recommendations

To improve the situation of Asian migrant workers and Asian victims of human trafficking and forced labour in the Czech Republic, Poland, and Romania, the following actions should be taken:

1. Ratify the ILO Migrant Workers Convention and the ILO Conventions C189 on Domestic Workers Rights and C190 on Violence and Harassment in the field of work.
2. Consider enhancing legal migration opportunities for TCN migrant workers and ensure that work visas and work permits are not tied to the specific employer.
3. Work closely with trade unions, civil society and the private sector to ensure effective outreach to raise awareness of the risks of labour exploitation, especially among Asian communities, both in the countries of origin and countries of destination. Potential victims of trafficking are to be systematically informed, in a language that they understand, of the risks of human trafficking, their rights, available complaint mechanisms as well as of the available procedures and legal assistance, counselling, and other services.
4. Monitor recruitment and employment agencies and address exploitative recruitment and employment practices.
5. Enhance the capacity of Labour Inspectorates and ensure a clear firewall between the labour inspection and immigration control to ensure safe reporting for (undocumented) migrant workers. Additionally, well-functioning complaint mechanisms are to be established for these groups.
6. Strengthen the awareness and capacity of law enforcement bodies, legal professionals and other important stakeholders⁴⁷ to identify victims of human trafficking and forced labour among TCN Asian migrants by enhancing specialisation and capacity building, including periodic trainings. Especially law enforcement and legal professionals must be sensitized as to victims' rights, including the right to compensation.
7. Address gaps that hinder the effective implementation and correct application of anti-trafficking legislation, including the non-punishment principle. And ensure that labour rights protection and victims' rights are accessible to all workers, including (irregular) Asian migrant workers.
8. Establish binding legislation on (human rights) due diligence for the private sector to protect workers, including those who are exploited in supply chains.
9. Ensure access to justice for victims of human trafficking, including by facilitating the provision of information, free legal aid and qualified interpreters. This must include enabling victims to exercise their right to compensation through criminal and/or civil proceedings.
10. Consider establishing an advance payment scheme by the state for compensation awarded to trafficking victims by the courts. This lifts the victim's (almost impossible) burden to claim the payment from the perpetrator, as the state will advance the compensation payment and endeavour recovering the amount from the perpetrator through confiscating their assets.

La Strada International, October 2022.

⁴⁷ Including law enforcement officials (police, border police), lawyers, prosecutors, judges, labour inspectors, tax inspectors, social workers, immigration officials, asylum case workers, staff of immigration detention centres, and consular officials.