

# TRAFFICKING IN HUMAN BEINGS AND FORCED LABOUR OR LABOUR EXPLOITATION IN THE CZECH REPUBLIC

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## METHODOLOGY

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The aim of the research, on which this report is based, was to identify and assess the situation in the area of trafficking in human beings for the purposes of forced labour in the Czech Republic, especially for purposes other than sexual exploitation. Based on the information and outcomes of this research, recommendations targeting prevention of this phenomenon and better protection of the rights of migrant workers has been formulated. The research was carried out in the framework of an international project 'Trafficking for Forced Labour' (JAI/AGIS/2003/073) funded by the AGIS Programme of the European Commission in partnership with 4 European NGOs – La Strada Czech Republic, Anti-Slavery International, UK, Migrant Rights Centre, Ireland, and the Association for Victim Support (APAV), Portugal. To enable a final synchronisation of the outcomes from each of the 4 country reports, the research methodology had to be shared by all international project partners (necessary national variations were given for the specific country context).

With respect to the research methodology there are a number considerations that should be made. It is a new area of research that is often complicated by the context of illegality. So far there has been no clear system of data collection to enable international comparison. Moreover, gathering information from victims, hence "using" them for research purposes, is also ethically problematic – their disclosure could for example cause their deportation by the authorities. The complex political and economical context associated with the demand for migrant workers and cheap products/labour offers further complications for researchers. These factors present serious challenges to researchers when attempting to obtain the relevant, particularly quantitative, data needed to provide a substantial overview of the situation. For these reasons, the main focus in this project was put on qualitative research methods.

### Research methodology

The following methods were used to obtain information in the framework of the research: *questionnaires, structured interviews, media monitoring and case studies.*

### Identification of the respondent target group

The "snowball" method was adopted to identify the respondent groups for questionnaires, interviews and cases studies. Firstly, the existing contacts of La Strada were used and other relevant informants "snowballed" out from these contacts. The issue

of representation of the sample was hence not taken into account as a primary criterion for the choice of people to be contacted. This approach was unavoidable because, given the already mentioned lack of accessible information, it was not possible to accurately establish the respondent target groups without excluding a target group that had so far been unknown. The fact that it is not feasible to establish a concrete representative sample of respondents is an illustrative example of why research into forced labour and trafficking cannot focus on collection of exact quantitative outcomes (per-cent, increases and decreases, extrapolation etc.). In general, the research sample was too small to make any quantitative outcomes.

To identify the target groups, 5 areas were defined: 1. NGOs, faith-based and migrant-supporting organisations. 2. Welfare/service provision institutions. 3. Immigration/law enforcement institutions, embassies, prosecutors, detention and refugee centre workers. 4. other professionals (academics, IGOs, journalists). 5. Migrants.

The initial assumption was that the best place for first contact with the migrants would be in the workplace, asylum and detention centres or other social centres. Certain industries, where migrant workers are typically found in the Czech Republic (hereinafter "CZ"), were also targeted. These included: agriculture, food industry, services, construction, security firms, storage and domestic work.

### Questionnaires

The aim of the questionnaires was to get a real picture about the level of knowledge and awareness concerning the issue of trafficking for the purpose of forced labour amongst professionals. The questionnaires were sent to groups 1–4 from the above mentioned target areas. The questionnaires focused in particular on:

- the level of information available within the selected categories of professionals
- the type of information they have
- who they think are the major actors in combating of trafficking for the purpose of forced labour

The questionnaires were accompanied by a short cover letter explaining the aim of the project/questionnaire, providing the definition of "trafficking in human beings"

and “forced labour” used in the project and a list of “forced labour indicators of ILO” (more information can be found in the relevant chapter).

### **Interviews**

20 semi-structured interviews were carried out within the research: 15 with migrants and 5 with professionals. The aim was to assess the indirect or personal experience of the target groups with trafficking for the purpose of forced labour. The interviews were structured in a way that allowed for a real picture about the situation to be revealed and particularly sought to gather concrete personal experiences of exploited migrants. When interviewing professionals, the questions also focused on assessments of professional opinions and possible recommendations for improvement and more effective solutions to the present situation.

In order to make international comparisons with the other country reports, the relevant sections of the reports summarising the information gathered from interviews and questionnaires are organised according to the structure of topics/questions on the list, and not the verbatim (more information can be found in the relevant chapter; the suggested interview structure can be found in annex 2).

### **Case study analysis**

Three cases, containing the plight of 4 people, were analysed. The main aim of the case study analysis was to identify possible violations of rights stemming from (inter)national conventions and legislation. In order to identify these a matrix of violations and important international instruments was developed. Six key areas were analysed in each case. Based on these areas a list of guiding questions for the interviews was created (more information can be found in the relevant chapter and the topics of questions can be found in annex 3.).

### **Media monitoring**

Media monitoring was carried out in order to: 1) obtain a better understanding of how, if at all, migrant workers that were/are trafficked for the purpose of forced labour are portrayed in the printed media. 2) develop a comprehensive understanding regarding the general public awareness of the issue and the existence of “invisible” trafficked persons.

The media monitoring was carried out for 26 weeks using monitoring sheets. There were 26 monitoring sheets in total – one table for every week – and 1 cumulative table of all collected data. As such all narrative within this report regarding the media is based on these sheets. The media monitoring, like the other parts of the research, focused on qualitative rather than quantitative evaluation of the gathered data. The monitoring was carried by using key words that were generated as a part of the common methodology of the international project and adjusted with regards to the specifics of the Czech language and CZ situation (for more information please see the relevant chapter).

### **The storing and analysis of data**

The ethical principles of confidentiality, personal data protection and anonymity were the guiding principles of the research. In case of sensitive information, it was imperative to obtain the consent of the person. Contact details of people involved in the assessment were stored separately from their stories and were removed from the stories that were used in the report. During the research it was also ensured that no pressure put on the respondents to share their traumatic experiences.

## NATIONAL CONTEXT

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### The Czech Republic – country of origin, transit or destination?

Trafficking in human beings can be simply defined as the movement of persons using some form of coercion with the aim to exploit these people. Trafficked persons come from the countries of origin, pass through the countries of transit and are exploited in the countries of destination. In the case of trafficking in human beings, countries can be classified according to this model. The Czech Republic is in a specific position, being at the same time a country of origin, transit and destination.

In the 1990's the CZ was an important country of origin, along with other post-communist countries. Czech women were trafficked into the sex-industry especially in Western Europe (Germany, the Netherlands, Italy, Spain etc). At the turn of the millennium the regional coverage expanded and new destinations appeared. After 2000, cases of Czech women trafficked outside of Europe were recorded, with the destinations being in Asia (Japan) as well as in the North America (USA, Mexico). The information available suggests that this trend is of only minor significance compared with Europe.

During this period (end of 1990s) the range of countries of origin for persons trafficked to CZ also gradually broadened with cases of persons trafficked from Central Asia and Far East documented.<sup>1</sup> Up to this point trafficking had been associated almost entirely with sexual exploitation but this began to change as the first cases of exploitation in the forced labour context were recorded (textile and processing industries).

At this point it is important to note that Ukrainian and Vietnamese<sup>2</sup> citizens form the biggest group of foreigners, from third countries (i.e. countries outside of EU), in the Czech labour market. Within the Ukrainian “client system”<sup>3</sup> practices vary from

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<sup>1</sup> This information is especially interesting considering the fact that until 2002, trafficking was considered a criminal offence only in case of trafficking from CZ to other countries. The criminal code did not cover similar transactions carried out from other countries to CZ.

<sup>2</sup> Horáková M., 2004, Trends in foreign labour migration in the Czech Republic 1995–2004, Praha, VÚPSV, p. 4.

<sup>3</sup> It concerns especially arrangement of a job through Ukrainians settled in CZ, connected with Czech firms and entrepreneurs, for people from the Ukraine or other former USSR countries.

completely legal employment, where all usual working conditions are met, to cases of exploitation, forced labour and trafficking for these purposes. Some information exists about severe forms of exploitation and forced labour in connection with the Vietnamese community. However, the information is scarce and hard to obtain due to the closed nature of the community and also due to cultural and social specifics. Given this the community members do not see themselves as victims of rights violations, even in relatively serious cases. Vietnamese and Ukrainians are most often mentioned in connection with forced labour, both as those who are exploited and as the exploiters.

At present, even after the accession of CZ to the EU, trafficking of Czech women abroad for the purposes of sexual exploitation still exists<sup>4</sup>. It also significantly increases at the border of CZ. There are cases of sexual exploitation, via pimps and partners, connected with domestic violence and economic exploitation that are often the result of loans taken out in the name of the exploited female partner. This situation significantly complicates the possibility of re-integration to the society.

The position of CZ as a country of origin, transit and destination represents a great challenge for identification and implementation of effective strategies against trafficking in human beings, exploitation and forced labour since it requires to deal with various forms and mechanisms of trafficking as well as different nationalities of trafficked persons, including their cultural specifics, distinctions in mentality and legal position. The effectiveness of general programmes and measures vis-a-vis such a variety of needs is highly questionable.

### What factors affect the vulnerability of migrants to exploitation?

We live in a world where the unequal distribution of wealth is a reality. There are countries, where it is very difficult to secure a basic living whilst simultaneously there are countries where it is comparatively easy. In this world, the movement of persons from the poor to the better off countries is absolutely clear. Obstacles to such movement, such as a restrictive migration policy, rarely achieve their intended goal. Rather individuals wishing to migrate, will have to rely on more flexible and less legal ways.

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<sup>4</sup> La Strada received this information from organisations in the Netherlands, Great Britain, Austria and Norway.

It is interesting, but logical, that migration, which consequently leaves migrants vulnerable to exploitation, is often connected or even identical with so-called “burden” migration. This means that foreigners cannot gain a status that would enable them to reach complete independence on middlemen or the benefits provided by the state (e.g. asylum procedure). Dependence on middlemen associates the migrants with criminal structures, since middlemen are usually those who are able to bypass legal obstacles and have their ways to arrange whatever is needed. Dependence on the benefits provided by the state identifies the migrants as those who abuse the system. Hence it is clear why the state sees this form of migration as “burden”. If a wider offer of legal migration opportunities were available and the potential that migrants can offer a destination country recognised then this form of migration could theoretically be less a burden.

Among persons potentially and actually exploited and trafficked to CZ for the purposes of forced labour practically none are Czechs or citizens of EU or other countries that would have immigration or legal employment issue in CZ (e.g. USA, Switzerland, and Norway etc). One of the significant factors that influence the vulnerability of migrants to exploitation is the very **specific situation of migrants being from less developed or economically weaker countries than CZ**. Hence, because of their undocumented or unsure residence status, they are easily manipulated or blackmailed. Often they mistrust the governmental agencies (based on their experience in home countries), and this mistrust is reinforced by true and false information from the exploiters. As a result of this, they would not turn to the agencies to protect their rights<sup>5</sup>.

The situation is not much better even if the migrants arrive legally and their residence permission is lost or expires. They soon find themselves in a similar situation to undocumented migrants. Aware of the uneasy economic and social situation in their home country, they are willing to put up with exploitative practices (most often withholding of wages or documents) in the prospect of at least a minimum income that they could bring or send home.

In the case of foreigners legally residing on the territory, the fact that **the work permit is tied** to one employer, workplace, or a specific work and is valid for the maximum of one year they are also likely to be vulnerable to exploitative employers. The work permit and the residence permit are interrelated, and thus the loss or termination of

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<sup>5</sup> One of the persons interviewed for this research described this situation following: “undocumented status is the whip that the exploiters hold over the migrants.”

one often means the cancellation of the other. This situation clearly diminishes the ability of foreigners to protect themselves from exploitation from their employers since quitting or complaining could lead to the cancellation of their residence permit.

**Lack of information** about the conditions of employment, possibilities of protection from exploitative practice and **the lack of political will** to eliminate the circumstances that contribute to possible exploitation of migrants also influences the vulnerability of foreigners.

**The pressure of the consumers on lowering of the prices and the effort of the producers to maximise the profit** along with the lack of financial resources of non-profit subjects (e.g. hospitals) make the importance of compliance with the labour laws and the prohibition of forced labour rather relative.

A very important contributing factor is also the **perception of migrants** from economically weaker countries as **those who attract criminality and take jobs from the indigenous people**. This is partially caused by the lack of political will to change this situation. As a consequence the effort to combat the “crime connected with migrants” in a form of tightening of migration policy and protection of the labour market are exactly those factors that in the end “force” foreigners to illegal activities because of the lack of legal income opportunities. Likewise the demand for migrant labour continues to attract individuals from abroad. The question to be asked in this sense is: Would it be advisable to find ways to legally connect those, without creating a risk for the weaker side?

### **What is the legislation on forced labour in the Czech Republic?**

The prohibition of forced labour is incorporated in international agreements<sup>6</sup> which are binding for CZ. In case of a contradiction with the national legislation, the international instrument have precedence.<sup>7</sup> The prohibition is also included in the fundamental national instruments on human rights, the Bill of Fundamental Rights and

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<sup>6</sup> E.g. Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, declared as a law No. 209/1992 Coll., Art 4; International Covenant on Civil and Political Rights, 1966, declared as a law No. 120/1976 Coll., Art. 8

<sup>7</sup> Constitutional law no. 1/1993, Coll. The Constitution of the Czech Republic, art. 10

Freedoms.<sup>8</sup> Article 9 says that no one shall be subjected to forced labour or servitude. It further contains a negative definition of forced labour taken from the ILO Forced Labour Convention,<sup>9</sup> which is included with small variations also in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights. According to the Convention, forced labour shall not include any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 or during conditional release from such detention; any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service; any service exacted in case of an emergency or calamity threatening the life or well-being of the community; any work or service which forms part of normal civic life. A positive definition is not included either here or in any other provision. Hence, it is necessary to apply the **Forced Labour Convention** in which *"forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*<sup>10</sup>

By adopting the Convention states are bound to prosecute forced or compulsory labour as a crime.<sup>11</sup> However, in the Czech criminal code<sup>12</sup> forced labour is not listed<sup>13</sup> as a crime.

It is also not mentioned in any other legal norms. This causes problems in application of the prohibition of forced labour, since the definition is not incorporated into any national legal norm. For the same reason there are also significant problems with the application of the new definition of trafficking in human beings that entered into

force in 2004 and is derived from the definition in the Palermo Protocol<sup>14</sup> and in the Council framework decision<sup>15</sup> on trafficking in human beings. According to this definition a person shall be prosecuted for trafficking when they induce, recruit, transport, transfer, harbour or receive for the purpose of using this person for a) sexual intercourse or other forms of sexual harassment or exploitation b) slavery or servitude, or c) forced labour or other forms of exploitation in case the given person is under 18 years of age. In cases of trafficking in adults, violence or threats of violence, deceit or abuse of a fallacy, distress or dependence<sup>16</sup> is required in order to be punishable. In both cases the sentence is from 2 to 15 years. So far, there has been no court judgement according to this definition and as such this causes problems to the police and the investigators who complain of an absence of a clear interpretation statement, especially with respect to interpretation of forced labour.

International Labour Organisation, as an author of the Forced Labour Convention offers help in a form of guide to interpretation of the forced labour definition (see above).

The definition assumes the existence of two conditions in order to constitute forced labour: it must be a work or service which is exacted from any person under the **menace of any penalty** and it must be **involuntary**.

In connection with the **first condition**, the penalty could also be a loss of rights or privileges. ILO also offers 6 indicators of forced labour,<sup>17</sup> which usually occur in combination.

- 1. Threats or actual physical harm.
- 2. Restriction of movement.

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<sup>8</sup> Resolution of the Czech national council 2/1993, on the declaration of the Bill of fundamental rights and freedoms as a part of the constitutional order of the Czech Republic, art. 9

<sup>9</sup> ILO Forced labour Convention No.29, 1930, proclaimed as a law No. 506/1990.

<sup>10</sup> Article 4 of the Convention

<sup>11</sup> Article 2 of the Convention

<sup>12</sup> Law No. 140/1961, Coll., Criminal Code

<sup>13</sup> The criminal code does not include the crime of forced labour, however it includes crimes of blackmailing and oppression, when a person is forced to do something, to forbear from doing something or to submit to something by the use of violence or the threat of violence (blackmailing) or by abuse of distress or of dependence (oppression). Forced labour can hence be subsumed under this provision.

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<sup>14</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention against Transnational Organised Crime), 2000

<sup>15</sup> EU Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings

<sup>16</sup> § 232a of the criminal code

<sup>17</sup> International Labour Office, 2005, Human Trafficking and Forced Labour Exploitation – Guidance for Legislation and Law Enforcement, Geneva, p. 18

- 3. Debt bondage.<sup>18</sup>
- 4. Withholding of wages or excessive wage reductions, that violate previously made agreements.
- 5. Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status.
- 6. Threat of denunciation to the authorities.

The second condition that the person has not offered himself voluntarily overlaps the first one to a high extent. It is hard to imagine that someone carries out “voluntarily” work to which s/he is forced “under the menace of penalty”. Also in this area the ILO provides some guidelines or indicators. It is important to be aware of the fact that even a seemingly voluntary acceptance of a job offer could be a result of manipulation or of an uninformed decision. Whatever restriction exists preventing the possibility of leaving a job, regardless of whether it is a physical restriction or psychological pressure, for example in a way of withholding of wages, could be considered forced labour and even in cases where the decision to accept the work was absolutely voluntary.<sup>19</sup> Indicators of “involuntary” can penetrate to a high extent the indicators of menace of penalty. The ILO lists the following indicators that fulfil the condition of not being voluntary:

- Indebtedness, it does not need to be debt bondage but could be caused by falsification of accounts, inflated prices, reduced value of the produced good or provided service, excessive interest rates, etc.
- Deception or false promises about the types and terms of work.
- Psychological compulsion, i.e. an order to work backed up by a credible threat of penalty for non-compliance.

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<sup>18</sup> According to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, debt bondage shall mean the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

<sup>19</sup> International Labour Office, 2005, Human Trafficking and Forced Labour Exploitation – Guidance for Legislation and Law Enforcement, Geneva, p. 21

- Deprivation of personal freedom or imprisonment in the workplace.
- Withholding or non-payment of wages.
- Retention of identity documents or other valuable items.
- Sale of a person into the ownership of another.

Among the indicators listed are also birth/descent into “slave” or bonded status and kidnapping. However, these almost never occur in our circumstances.<sup>20</sup>

ILO states that a complete implementation of ILO standards of the rights connected with work for all workers, including migrants is key in the attempt to eliminate conditions that enable the traffickers and employers to exploit workers on the grounds of their nationality and immigration status.<sup>21</sup>

In this respect it is extremely important to monitor compliance with the labour conditions and standards in place. The control mechanisms in the area of labour and employment are quite thorough in the Czech Republic. The basic legislation includes the labour code,<sup>22</sup> law on employment<sup>23</sup> and law on labour inspection.<sup>24</sup>

The labour code obliges all employers to care for and develop working relations in compliance with the code and other norms.<sup>25</sup> In case of violation of the labour legislation by the employer, the control power is given to the superior authority over the employer, such as unions, employment offices and labour inspectorates.<sup>26</sup> The **super-**

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<sup>20</sup> According to International Labour Office, 2005, A global alliance against forced labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights and Work, Report I (B), International Labour Conference, 93<sup>rd</sup> Session, Geneva, p. 6

<sup>21</sup> International Labour Office, 2005, Human Trafficking and Forced Labour Exploitation – Guidance for Legislation and Law Enforcement, Geneva, p. 21

<sup>22</sup> Law No. 65/1965 Coll., Labour code

<sup>23</sup> Law No. 435/2004 Coll., Employment law

<sup>24</sup> Law No 251/2005 Coll., Law on labour inspection

<sup>25</sup> § 8 section. 3 of Labour code

<sup>26</sup> Ministry of labour and social affairs, Information for citizens about violations of the employment law by the employer. Available at [www.mpsv.cz/cs/49](http://www.mpsv.cz/cs/49)



ior authority over the employer is the authority that supervises the employer<sup>27</sup> and monitors the fulfilment of duties in the area of development of working relations. It is authorised to draw consequences from the established violations. If there is a union at the workplace, the union has the authority to monitor the employer with regards to compliance with labour laws and the obligations of the collective agreements.

Employment offices and labour inspectorates carry out the monitoring either from their own initiative or on the bases of an incentive. Their authority in the area of monitoring is divided. **Labour inspectorates** check compliance with the regulations on work safety, working hours, wages, working conditions or collective bargaining.<sup>28</sup> **Labour offices** focus on checking especially the obligations based on the employment law i.e. in the area of employment provision, unemployment benefits, labour agencies, employment of foreigners, active employment policy etc.<sup>29</sup> Both the labour inspectorates and the employment offices, provide, according to the law, advice in their respective areas of responsibility. However, it is questionable to what extent this service is available to migrant workers, given the language barrier and the lack of information.<sup>30</sup>

Although the monitoring in the area of work and employment is quite well secured, it is not quite clear who should be monitoring the compliance with the prohibition of forced labour, since this issue is not included in any other national legal regulation apart from the Bill of the Fundamental Rights and Freedoms and in the Criminal code (here only as one of the purposes of trafficking in persons).

In these circumstances it is practically impossible to accuse anyone of violation of the prohibition of forced labour. Forced labour can hence be considered a consequence of the inability of the state to ensure the compliance with the standards and working conditions. The Forced Labour Convention does not differentiate between citizens and foreigners, thus the obligation of the state to protect people from forced labour is valid also for migrants. This fact is especially important in the context of the CZ that

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<sup>27</sup> E.g. founders of state firm, founders of budgetary and contributory organisations.

<sup>28</sup> Especially based on the Labour Code, Law in wages, salaries, collective bargaining and travel instalments.

<sup>29</sup> The employment offices further monitor the compliance with the law on the protection of employees against inability to pay from the side of the employer. .

<sup>30</sup> § 8 sect. 1 No. f) Employment law and. § 4 sect. 2 No. d) and § 5 sect. 1 No. k) Law on labour inspection.

has not yet adopted many of the ILO conventions, especially those that ensure the protection of the rights of migrants<sup>31</sup>.

### What are the possibilities of assistance to trafficked persons?

A state guaranteed and financed system of care for trafficked persons has been in place in CZ since 2003, when the government approved the National Strategy of Combating Trafficking in Human Beings for the Purpose of Sexual Exploitation in the Czech Republic<sup>32</sup> (hereinafter “Strategy”) as a first comprehensive and systematic government policy dealing with this issue in CZ. The Strategy also included a Model of support and protection of victims of trafficking in human beings for the purpose of sexual exploitation (hereinafter “Model”) that represented a mechanism of cooperation of interested subjects (both governmental and non-governmental) with the aim to provide adequate assistance to trafficked persons. Prior to the approval of the Strategy and creation of the Model, non-governmental non-profit organisations shared their experience of provision of services to trafficked persons<sup>33</sup> and CZ also actively participated in the UN Global Programme against Trafficking in Human Beings realised in 2002–2004. Creation of a functional system of care for trafficked persons was one for the aims of the programme.

As it is clear from the title of the Strategy, assistance in the framework of the Model was provided exclusively to persons trafficked for the purpose of sexual exploitation. It was linked to the legislation at that time. Until 2004 trafficking in human beings in the criminal code constituted only: luring, recruitment or transport of a woman (since 2002 person in general) abroad (from 2002 also from abroad) with the intention to use her for sexual intercourse with other person. Only the 2004<sup>34</sup> amendment of the criminal code broadened the definition to cover other forms of trafficking, including forced labour (see chapter on legislation).

From 2004 the Model has been further modified and adjusted to the practice and was renamed to Programme of Support and Protection of Victims of Trafficking in Persons

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<sup>31</sup> In particular Migration for Employment Convention No. 97 Migrant Workers (Supplementary Provisions) Convention No. 143

<sup>32</sup> Governmental resolution No. 849, 3rd September 2003

<sup>33</sup> La Strada ČR was for a long time the only organisations providing such services and contributed greatly in this sense with its experiences.

<sup>34</sup> Law No. 537/2004 Coll., that amends the law no. 140/1961 Coll., criminal code

in CZ (hereinafter 'Programme')<sup>35</sup>. The title indicates that inclusion of a person trafficked for other purpose than sexual exploitation to the Programme is now possible. Nonetheless, until the time of completion of this research<sup>36</sup> only one person trafficked for other purpose than sexual exploitation<sup>37</sup> was accepted to the Programme. Although more people applied to the Programme, they did not receive a positive statement from the police that would enable them to enter the Programme.

In general, the Programme is accessible to foreigners and CZ citizens that have reasonable grounds to declare they had become victims of trafficking. It is not decisive whether the trafficking occurred across the border or within the border and no form of trafficking is excluded. The condition for accession to the Programme is cooperation with the authorities. Even though this condition is not included in the Programme documents, it is impossible to avoid it in practice. The Programme commences with a 30-day period, during which the trafficked person consider their cooperation with the authorities. In practice, if an NGO (not the police) proposes accession of a trafficked person to the Programme, a police statement to the case is always required.

It is the issue of application of the words "reasonable grounds" in practice while specifying the group of people eligible to apply for accession to the Programme as those that have reasonable grounds to declare that they became victims of trafficking. The words "reasonable grounds" mean that such circumstances must exist that justify the acceptance of a person to the Programme. These circumstances are verified by the police in their statement to the proposal of an NGO. The decision on the proposal is based on this statement.

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<sup>35</sup> In the framework of the Programme, trafficked persons are offered the following services: immediate rescue from the place of exploitation, legalisation of residence in CZ for the period of criminal proceedings, in exceptional cases a possibility of permanent residence on humanitarian grounds, secret shelter, financial support, accompanying social services, psycho-social counselling, legal advice, translating services, medical care, re-qualification courses, assistance in job searching, assistance in care for children etc. In most serious case the victims can be place in witness protection programme according to the law No. 137/2000 on a special protection of witnesses in connection with the criminal proceedings on the amendment No. 99/1963 Coll., Civil court order. This possibility has not been used so far used for victims of trafficking in the Czech Republic.

<sup>36</sup> 30. 4. 2006

<sup>37</sup> According to the evaluation of the Programme, persons trafficked for other purposes than sexual exploitation represent 44% of all clients not accepted to the Programme (Demography Information Centre o.s., 2006, Evaluation Survey: Programme of Support and Protection of Victims of Trafficking in Persons in CZ, Prague, Ministry of the Interior, p. 34

This is one of the reasons that, although theoretically possible, persons trafficked for other purposes than sexual exploitation hardly ever make use of the Programme. This question is also connected to other reasons, such as an unclear interpretation of "forced labour and other forms of exploitation" in the trafficking definition. In practice, this complicates both the investigation and the accession of the potential victims to the Programme. The relevant authorities find it often difficult to distinguish bad working conditions from forced labour or trafficking for the purpose of forced labour. Another reason is also the lack of capacity of the relevant law enforcement authorities whose staff have not been increased in connection with the broadening of their mandate for dealing with the crime of trafficking in human beings. As a consequence of this the identification of persons trafficked for other purposes than sexual exploitation is still very problematic. Particularly in a situation when also the identification of persons trafficked for sexual exploitation is not yet clarified and carried out in a same ways by all relevant actors.

Another important point is also the unwillingness to extend the Programme to persons trafficked for other purposes than sexual exploitation. This is connected with a concern that if the potential clientele increases, the capacity of the Programme will not be sufficient to deal with this increase. Certain, but still unclear possibilities to solve this situation are being discussed in connection to the transposition of EU Directive 2004/81/EC. An amendment to the alien's law has been approved on the basis of the directive. This amendment introduces the possibility of a visa to protect trafficked persons and other foreigners that became victims of smuggling if they cooperate with the authorities. A creation of a special programme for this category of persons is beings discussed in this sense. Persons trafficked for all purposes would fall under this category. Added to that, the Ministry of the Interior is preparing a concept policy focusing on this category of persons for the second half of 2006.

In theory, persons trafficked for other purposes than sexual exploitation should have the same possibilities of support and protection like persons trafficked to the sex-industry. However, this does not work in practice due to the above mentioned facts. However, the mentioned activities of the Ministry of Interior could bring hope for a more comprehensive solution of this issue. Equally important would be to get other actors involved in the solving of this issue, namely the Ministry of Labour and Social Affairs, as the central administrative body for employment and coordinator of the monitoring of fulfilment of the obligations set out in the ILO conventions. Many non-governmental organisations can also contribute with their expertise to the discussion on the prohibition of forced labour and its implementation in CZ and also contribute to the efforts to find suitable solution to this issue.

## RESEARCH OUTCOMES

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### Outcomes from the questionnaires

From the 35 questionnaires that were sent out, 20 were returned, filled out as follows: 6 filled out by the foreign and border police (SCPP), 5 filled out by the employees of the Administration of the refugee camps (SUZ), 8 filled out by NGOs and 1 by the criminal police (SKPV). In some of the returned questionnaires there were no replies to certain questions.

The first two questions focused on **the information that the respondents have on forced labour and trafficking for forced labour in CZ**. Most of the respondents gave positive answers, only in one case was the answer negative. It was the questionnaire filled out by SUZ. However, the 5 other questionnaires returned from this institution provided quite concrete information. The respondents did not really differentiate between forced labour and trafficking for forced labour. These notions are in practice interrelated and given the legislation in the CZ, they can in some cases completely merge. Although the question did not ask for definition of these notions, some respondents did provide them. The respondents mentioned the abuse of the hard situation of foreigners; in one case trafficking for forced labour was defined as “slavery in the third world”. This understanding was further reflected in other answers. Hence not all of them were taken into account as relevant for a given question.

The respondents further answered a question, **whether the information given is based on personal experience and if not, what the source was**. >From the nature of the actors that returned the questionnaires it is clear that they do not have the information about forced labour and trafficking for the purpose of forced labour from their own experience, but mainly from a direct contact with migrants that experienced the described situations.

The question **in what capacity did they come across this information** was similar, due to which some respondents did not answer (4). According to the rest of the answers, the respondents have obtained this information as policepersons or employees of SUZ (4) or as NGO workers (4).

The next questions focused on **the industries/labour sectors in which forced labour took place**. This question was answered in a relevant way in 16 of the questionnaires. In the remaining four questionnaires, the question was twice left without answer,

once answered only from the perspective of sexual exploitation (which is not the subject of this research) and once it was answered by a person that understood trafficking for the purpose of forced labour as slavery in the third world (this distorts some other answers, so it was not counted as a relevant answer). Construction was the most mentioned industry (in 11 cases) where, according to the respondents, forced labour occurs. Other frequently mentioned sectors were: **agriculture**, including gardening and forestry (in 6 cases) and **service sector** (restaurants, cleaning, work in a bar/kitchen), mentioned in 4 cases. Some answers mentioned work in storage, hospitals and prostitution. Anecdotally, cases of coercion to criminal activities, forced labour in households or forced begging were also mentioned.

The respondents also commented on the nature of the work (9) in their answers to this question. In 4 cases they stated that the work was physically demanding and poorly paid, without ensuring safety whilst also mentioning exploitation of foreigners for forced labour. Casual labour in various sectors (3) and manual labour (2) was also mentioned.

This question was further extended by sub-questions focusing on the nationalities of the persons in the forced labour context and ways how they came to CZ. In the majority of cases, they were from the former USSR (in 17 cases), mainly from Ukraine (11), Russia (5), Moldova (4), Kazakhstan (2), Georgia (2), Belarus (1), Chechnya (1). The second most often mentioned region was Asia (in 6 cases). If particular countries were mentioned, they were Mongolia (3), China (2) and Vietnam (1). Two further cases mentioned Bulgarians, where cases of women in forced labour was clearly connected to prostitution. Anecdotally, persons from the former Yugoslavia, Romania and Slovakia were also mentioned in the answers.

The question about the ways these people arrived to CZ was often interpreted as a question about the mode of transport or was left without an answer. In the remaining 9 cases, in 2 cases the respondents stated that migrants come to CZ illegally, e.g. through fraudulent obtaining of a visa or residence permit. In the remaining 7 cases however the information about legal and semi-legal<sup>38</sup> entry with a valid tourist, long-term visa or work permit (which is accompanied by residence permit) was prevalent. In one of the questionnaires received from SCPP a connection is suggested between introduction of visa obligation and rise in illegal border crossings. This is in line with the frequent NGO argument that tightening of migration policy often leads

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<sup>38</sup> Meant is an entry based on invitation from a Czech person, who the foreigner does not know.

to higher dependence of migrants on people that can use unlawful means and ways to cross the border. One of the answers also supports the finding from practice that foreigners are often trafficked/recruited for forced labour once on the CZ territory as a result of their difficult social and financial position in which foreigners often find themselves. The situation was clearly illustrated in one of the answers: “It concerns also foreigners that have a problem with their residence – the foreign police had not extended their permit – and they become an easy target for traffickers.” The questionnaires also revealed an almost “classical” case of exploitation in the framework of “client system”. After arrival the “client” will find a work for a foreigner and at the same time takes away his/her documents. Once the work is finished, they will not get paid, are left in a difficult situation and have to struggle to manage to get money to return home.

The further two questions focused on **information about the working and living conditions**. In the 16 relevant answers<sup>39</sup> all respondents agreed that in the context of forced labour or trafficking in human beings, the working conditions of foreigners are at minimum sub-standard to very bad. The statements in the questionnaires ranged from very general to rather detailed descriptions. The conditions listed included: “hard to imagine for us”, “labour without rules and conditions that might be found in a gulag”, “employment without guarantee”. The more descriptive answers mentioned: the foreigners had to work 10 or 12 or even 16 hours a day (7 days a week), without a contract, health insurance, minimum or no wages, freedom of movement was restricted, their documents were withheld, they were threatened with denunciation to the authorities and with violence against them or their families.

With regards to the living conditions, the information received in the questionnaires is not very detailed and is limited to statements that the concerned foreigners usually live in hostels, where the conditions are squalid, often with a very low hygienic standard (8). In one case debt bondage was mentioned. It is hard to judge from the description provided in the questionnaire whether this case was really concerning debt bondage. However, according to the information given, it might have been possible and it would have been in compliance with the on-ground experiences. In 2 cases the violation of basic human rights, freedom of movement and threats of denunciation to the authorities were mentioned. In 3 cases threats with physical or sexual violence were mentioned. The questionnaires imply that withholding of wages and identity documents are a common practice (mentioned in 9 and 7 cases). The basic

<sup>39</sup> The reasons for excluding of 4 answers are the same as in the previous questions.

indicators of forced labour according to the ILO and their frequency in the answers provided in the questionnaires are listed in the table below:

Indicator	Frequency
Threats or actual physical harm to the worker	3
Restriction of movement	2
Debt bondage	1
Withholding or non-payment of wages	9
Retention of passport or identity documents	7
Threat of denunciation to the authorities	2

There were 9 positive and 7 negative answers to the question of **whether forced labour is a problem in CZ**. Out of the positive answers, 5 respondents identified forced labour as a serious or a widespread problem. Some of the answers focused on the position of migrants and their problematic situation and their illegal status that puts them at risk to forced labour. Of course for the migrants for the others it becomes a problem when they try to solve their difficult situation through unlawful or criminal activities. The negative answers mention that forced labour is not the problem. The problem is illegal work, illegal residence of foreigners, crime and breaking of the law.

The respondents further answered the question **who, do they think, is the most likely to get into contact with the migrants trafficked for the purpose of forced labour**. Governmental agencies were mentioned in 15 cases, most often it was the police (14) and refugee camps workers (6). The next group referred to the NGOs (5) and in two cases people at the workplace and construction sites, where the migrants work, were mentioned

There were only few direct answers provided to the last question **who should be the key stakeholders addressing the situation of trafficking for the purpose of force labour in CZ**. Many of the respondents discussed the possible solutions or shared experiences from abroad. Police and the Ministry of the Interior (5) were most often

mentioned in the direct answers. In 3 cases the respondents pointed out that solution must be looked for at a political level. One of the answers mentioned that police and other authorities need to perceive this issue as a real problem and should not raise doubts about statements of victims and witnesses. Another one assumes that first there must be someone who would like to solve this issue.

One of the recommendations mentioned that simplification of application for work permit and residence in CZ could possibly result in lowering the number of these cases. "If ordinary people were able to arrange everything themselves, they would not need middlemen and would not have to face the risk of deceit and exploitation." A further suggestion supported a law found abroad that puts the obligation on the employers to be responsible for the workers that work in the company. This could help solve the current situation of "clients"<sup>40</sup> taking the responsibility for non-compliance with the working condition standards under the cover of a job agency.

#### **Outcomes from the interviews with migrants and relevant professionals<sup>41</sup> and from case studies<sup>42</sup>**

Information concerning mainly the Ukrainian and Vietnamese migrant community was gathered in this part of the research. Information on the Ukrainian community was provided by the migrants themselves. Information on the Vietnamese community was gathered from professionals that came into contact with the community and partly also from the experience of La Strada in provision of social assistance to Viet-

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<sup>40</sup> Intermediaries especially for workers from the former Soviet Union, most commonly connected with the Ukrainian community in CZ.

<sup>41</sup> 20 interviews were carried out in the framework of the research: 15 interviews with migrants and 5 with professionals that encounter the issue of trafficking in human beings, forced labour and trafficking for the purpose of forced labour in their work. The interviews with migrants were carried out via three focus groups: the first group was a female group that included 4 women (3 Ukrainians and 1 Moldovan that had lived in the Ukraine before she came to CZ), born between 1954 and 1974. They worked in agriculture in CZ and were contacted after they came to the Prague office of IOM to get information about the possibilities and regulations for residence. The next group consisted of 5 Ukrainian women, born between 1964 and 1983. They worked in hospitality as waitresses, cooks and cleaners. They were contacted in detention centre after the foreign police had taken them into custody. The third group consisted of 6 men – 2 Belorussians and 4 Ukrainians, born between 1959 and 1985. They worked in CZ in construction and were contacted after several meetings in a supermarket near the building site they worked at. >>

namese persons. This focus reflects the existing established channels for collection of information from the migrant communities. Moreover, it corresponds with the official statistics indicating that Vietnamese and Ukrainians are the biggest groups of foreigners from the third countries living in CZ<sup>43</sup> and at the same time represent the biggest groups of foreigners from the third countries on the Czech labour market.<sup>2</sup>

#### **Situation before leaving, motivations, transport, immigration status**

The situation of migrants in their countries of origin is without doubt the most important factor that influences their decision to look for opportunities abroad. The key questions arise from the existence of work opportunities or in general opportunities to meet the basic living needs and the needs of the families. Qualification is another important factor that can influence the width of their opportunities connected to labour migration. Similarly important is also an existence of migration history and accepting of migration as a possibility to solve a difficult situation among the populations in the country of origin. Western Ukraine is a good example for a region where this factor is strongly present and labour migration a normal part of a working life of many people. A large portion of the population has experience with working abroad. A network of contacts to intermediaries abroad, so-called "clients" is available for anybody who is interested in their services.

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>> Among the interviewed professionals were employees of three departments (department of criminality prevention, department of security policy and department of asylum and migration policy) of the Ministry of Interior that focus on trafficking in human beings and migration. Another two interviews were carried out with the police from the Prague central unit of the CZ criminal police and investigation service (for detecting organised crime) and from the department for trafficking in human beings. These policemen specialised in Vietnamese community. The last interview was carried out with an interpreter of Vietnamese who is of Vietnamese origin herself.

<sup>42</sup> The case studies elaborated in the framework of the research include three stories of four people that came to work in CZ and were subjected to forced labour during their stay. It concerns three Ukrainian women and one Belorussian man. Ms 'N', 22 had finished her elementary school and without previous employment experience, was firstly exploited in forced prostitution and later in domestic work. Mr 'C', 48, a university graduate made redundant from his job in the education sector and tried to solve his uneasy financial situation through work abroad. In CZ he firstly worked in forestry and later worked as a casual construction worker and building maintenance worker. Ms 'T' and Ms 'L', 38, both elementary school teachers, long-term unemployed, worked in agriculture in CZ, as hops pickers.

<sup>43</sup> Czech statistics bureau, 2005, Foreigners in the Czech Republic, Prague

Before leaving abroad, the migrants contacted within the research had to either eke out a precarious existence as a result of loss of job or long-term unemployment or they were in a situation where although they could make a living, the income was not enough to cover their needs according to their expectations. In that case, an “extra income” to ensure a better standard was desirable. With regards to the education background of the contacted persons, those with elementary and secondary education were almost equally represented although the secondary school graduates had a slight prevalence. University graduated represented a minority, about one sixth of all contacted.

The motivation to leave was almost always identical – the possibility of income that would be in many cases brought or sent back home as a support for the family/relatives in the country of origin. Especially in case of Vietnamese it is an issue of base existence. Their families live from this money. Without it they would struggle to cover the very basic living needs. The family ties are very strong among the Vietnamese also after they leave home. Thus, if they manage to succeed in CZ, they usually bring also the rest of the family. In one case the economic migration motivation was combined with political problem, since the contacted person lost work in a country of former Soviet Union as a result of “political unreliability”. Such a combination can occur more frequently due to the unstable situation and human rights violations in Vietnam. The economic motive is however present in almost all the cases.

Transportation and gaining of contacts for arrangement of work abroad happen in different ways; however it is possible to observe certain patterns. In the Ukraine there is a wide network of intermediaries that work in more or less formalised structures and dispose of contacts in CZ. Thanks to these, the arriving Ukrainians are equipped with telephone numbers to contact persons here or contacts to hostels where these people could be found. The list of phone numbers is extended during their stay by sharing information among themselves. The arrangement happens of course for a fee. This fee varies and can go up to 1000EUR for arrangement of all the necessary formalities.

Sometimes, the arrangements and transportation are done in a formal way through an official employment agency. In one of the researched cases, an employment agency arranged on a basis of contract and against a charge of 500 USD all the necessary documents (visa, work permit) and also a work contract with an employer in CZ. Nonetheless, according to the contract on work arrangement, the agency did not carry any responsibility in case of non-compliance of the employer with the working condition. In case of migration from Vietnam it is common that a third person securing the connection between Vietnam and CZ is involved in the transport. This

form of transportation is usually carried out in an informal way, through a wide circle of acquaintances or other people. The involvement of professional agencies in activities that may result in forced labour is, according to the obtained information, significantly lower. Transport is also organised by organised groups of smugglers and traffickers that pass the transported persons between each other.

Transport and other arrangements are always for payment. This practice is of course a great burden for the persons from poor circumstances that do not have the means to pay for these services. Europeans often take a loan from bank or borrow money from other people. After returning to their home countries, this often worsens their already difficult situation, if they were subjected to exploitation in CZ, as a result of which they have not received the promised wages or they got only a small part of it. The Vietnamese community solves the problem of lack of resources to cover the transport and work arrangements through loans from intermediaries/employers that are almost exclusive also Vietnamese. After arrival to CZ, the person has to first work off this loan, which could often mean they find themselves in a situation of forced labour or of direct debt bondage.

The mode of transport to CZ is also arranged in different ways that depend on the country of origin. Bus lines, train or the own means of the intermediary are the most common ways of transport from the Ukraine. There are two ways from Vietnam. On surface via Russia that is operated by local smugglers or via air, that is arranged by Vietnamese.

With respect to the immigration status at the entry, we see more often that trafficking in human beings or exploitation for forced labour is far less connected to illegal border crossing than assumed in general. The collected information clearly shows that the majority of Ukrainians enter legally either on tourist visa or with a residency permit for the purpose of employment and a work permit. However even this situation does not ensure protection from exploitation for the migrant. The work permit is tied to a residence permit and is valid for a maximum of one year and connected only to a one concrete employer. This provides the employers with great power. (If the employee loses the employment, e.g. leaves the job because the employer is exploitative – s/he automatically loses their residence permit. To get a new permit it would be necessary to travel back to the home country).

If the migrants enter on tourist visa, their situation is similarly complicated. The pressure from the exploiters increases as the visa expiry date approaches. In many cases the workers do not get paid at all or the payment of wages is continuously promised

and postponed until the expiry date of visa. After the visa has expired, the people are illegal in CZ and hence in a position when it is difficult to defend themselves against such a practice. Even if they leave the exploitative employer without their wages, they are an easy target for other similar intermediaries/employers because they cannot or will not return home without money. It is very obvious when money had to be borrowed for the travel and there would not be any money to repay the debt after return and of course no extra income either.

The findings show that Vietnamese enter illegally more often than Ukrainian, either without documents or with false documents.<sup>44</sup> It is not possible to say that they would not enter the country also legally, but only for a short time and for other purpose (e.g. tourist visa). Almost all migrants tend to legalise their stay, but this has to be paid for. This might be the beginning of debt bondage or entry to a forced labour situation.

Both groups (but also other groups) temporarily solve their illegality by applying for asylum. Vietnamese more often use also other forms of legalisation such as marriage of convenience, adoption of Czech children or false declaration of fatherhood. Contacts between Vietnamese and the Roma community in the Czech Republic serve these purposes.<sup>45</sup> The trend of looking for ways to legalise residence is probably connected to their wish to settle permanently in CZ, that is more frequent than in case of Ukrainians.

#### **Promise of work vs. actual work, working and living conditions**

The collected information does not imply that a concrete difference between promised and actual work be a significant or repeated phenomenon. An unclear notion of future work based on some actual information that built upon expectations is often present. (For example many Ukrainian women work as cleaners, hence the newcomers count on that). In several cases the type of promised work absolutely corresponded to the actual work, however the conditions of work were significantly changed during the work.

With a certain level of simplification we can identify two groups among Vietnamese migrants. One of them is formed by those who have a clear idea about what they

want to do in CZ, they plan for instance to start a business and leave Vietnam already prepared for this alternative (have business registration and trade licence arranged etc.). This group usually consists of men and adult/older women. The second group is represented by those who try their luck and expect help from the community in CZ. They come illegally or on tourist visa and are in general worse prepared for the reality of migrant in a foreign country. Women and younger persons are often in this group.

An interesting outcome is that within the research it was not possible to completely separate forced labour in prostitution and in other sectors. Forced labour in both areas is repeatedly combined in a story of a person, either as consecutive experiences or as parallel double exploitation found in case of Vietnamese women that work as prostitutes at night and during the days do other “standard” job, e.g. like shop assistants or servants in Vietnamese households. Taking up prostitution as a side job to another work is sometimes a “voluntary choice”. The higher income can enable the women to faster repay their debt. The prostitution environment is however extremely exploitative and especially in this area information about clear debt bondage was available.

Work actually carried out by the contacted foreigners included agriculture, restaurants, construction, prostitution, forestry and domestic work. The areas connected to forced labour in the Vietnamese community are in particular Asian bistros, stall sale, shop sale, prostitution, work of servants in Vietnamese households and work in sweatshops.

The working conditions vary significantly in all the areas as well as in individual cases and range from clear forced labour in extremely exploitative conditions that shows almost all or several of the forced labour indicators defined by ILO. However also in such cases the respondent reported about work that would “fulfil” forced labour criteria based on their previous experience or experience of other people which they had direct contact with.

The collected information suggest that the worst working conditions are found in forced prostitution which, as mentioned above, cannot be excluded from this research, since it is a part of the reality of the persons exploited in other sectors. The true situation in prostitution are non-stop working hours, work without wages, work for food and accommodation, minimal personal freedom, life under permanent surveillance, often no access to medical care, even in life threatening danger. This is also an area where there were clear cases of debt bondage.

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<sup>44</sup> La Strada ČR assisted recently a client that left Vietnam on false documents when she was fourteen.

<sup>45</sup> Information from the own experience of La Strada ČR

These characteristics can also be found in other sectors; however the direct restriction of freedom is less frequent. The only exception is in case of sweatshops that need to be kept secret from the outside world; hence the personal freedom is restricted to a level comparable to prostitution. In comparison with prostitution, where the whole payment is often handed-over, there are some (although very limited) wages paid in sweatshops. Due to the isolation and attempt to keep these secret, the conditions here are often very bad and health and safety regulations are not kept. There is very little information available about this area and only these anecdotal findings were gained in the course of the research. Nevertheless, this can be considered as an achievement since the problem of sweatshops is still considered by professionals to be a problem experienced by other countries rather than in CZ.

Also in other investigated sectors the working conditions varied, but some characteristics were present in almost all cases. This is especially true for the practices of withholding of wages by the employers/intermediaries. Such practices are justified in different ways: the wages are withheld because of alleged fees for arrangement of documents, accommodation, because of financial problems of the employer/intermediary or the workers get only advance payments that are only a small portion of the promised wage. Workers were not informed about such deductions beforehand and in most cases do not know what is the price of a service that is allegedly deducted from their wage. As a result of this, the migrant workers in the monitored cases received, for example, only one seventh or tenth of the originally agreed wage. The pay rate is usually agreed per hour. This is probably done in order to motivate the worker to work as many hours as possible. Wages also go lost as a result of manipulating workers to send their money home through an agency or its account with the promise of handing the money over to relatives in the home country. But the money is not handed over. This was recorded in one of the researched cases.

Withholding of wages is one of the indicators of forced labour. Its significance is reinforced in connections with the loans taken by the migrants to cover the costs of work arrangement, documents and transport. Migrant workers that do not get the promised wages are more at risk since they tend to agree to whatever work, under whatever conditions, to make at least enough to pay off the debt.

The working hours affect significantly the final income and also the working conditions. The gathered information shows that there are great difference in other sectors than prostitution. The hours range from standard eight hours a day in a five-day working week to twelve to sixteen hours a day in a seven-day week. In such case

the promised monthly salary of 5800 CZK<sup>46</sup> (approx. 193 EUR) for a 40 hour week, which means that the hourly rate of 36 CZK (approx 1.2 EUR) shrinks to 16.8 CZK (approx 0.56 EUR) for 12 hour day or to 12.9 CZK (approx 0.43 EUR) for 16 hour day. If deductions for alleged health insurance or in the end only advance payments of 100–200 CZK weekly are taken into account, we see very exploitative conditions. The most interesting in this case was, that the person had a valid residence permit for the purposes of employment, work permit and a signed work contract. This implies that exploitation does not occur only in cases of undocumented migrants, although is it most striking among this group.

Apart from prostitution or sweatshops, the restriction of personal freedom or contacts to the outside world occurs less often. Despite this migrant workers usually do not keep contact to the majority population and mainly have contact within their own migrant community. Among the Vietnamese community contacts to the outside world is minimal and this is also supported by the employers/intermediaries. The clear cultural difference and language barrier are significant contributing factors. If the social contacts are restricted in the case of Ukrainian migrant community, it is usually given by the working conditions (work on remote places, e.g. forestry or long working hours) or simply due to a disinterest in social contacts with the majority. It would be interesting to research whether this is connected with the historically based animosity of many Czechs towards “Russian” speaking foreigners.

Health and safety issues at the workplace, holidays or the possibility of filing complaints or organising in unions are areas that migrant workers practically do not see in the context of work abroad. This is most evident with regards to Vietnamese migrants. They are in the community of intermediaries/employers grateful that they enabled them to leave Vietnam. They owe them money for this service and they have to work this money off. This is understood as an obligation and to disturb the paying off of the debt by complaints or demands for improvement of working conditions is not seen as a possible alternative. One of the respondents said this very clearly – in the given circumstances the wage that enables them to pay off the debt and start a new life is the most important for a Vietnamese, not “some” working conditions.

The possibility of organising in a union is almost an illusion among migrant workers. This concept is practically unknown in the Vietnamese community. As already stated above, in the absolute majority of cases, Vietnamese tend not to defend themselves against practices that we would, from “European” perspective, perceive as exploita-

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<sup>46</sup> Czech crowns



tive. They do not feel deceived, because they are grateful and only pay for provided services. Likewise, the concept of a union is hard to realise in the Ukrainian community. They are in an insecure situation and know that any similar activities would most probably cost them their job. Moreover, work in CZ is for them usually temporary, they just want to make money and return home. Hence it is unlikely that they would personally see any benefit in organising themselves or in joining an existing union.

The conditions of accommodation among the research categories again vary to a great extent. Some of the interviewed did not mention any problems and the conditions seemed to them to be quite standard and from the outside did not appear too worrying (this was in the minority of cases). In other cases conditions of accommodation could not be considered as standard at all. A Ukrainian woman that was first forced to prostitution and then worked as a domestic worker lived in extremely harsh conditions. When forced to prostitution, she stayed in an empty house/hut without a floor; she was locked there and did not have a chance to escape. The place was heated only with a small plate. Subsequently, she lived in a household where she worked and was locked in. Her contacts with the outside world were only visual through a car window when she accompanied her employer for shopping. While he was shopping she was also locked in the car. She had neither social contact nor a choice of accommodation.

In case of Vietnamese prostitution the women usually live at the workplaces, often in the same rooms they work in. The quality of accommodation varies, but there are also cases when women provide sexual services in the cellars of the house or live 6–7 in one apartment where they receive telephonic orders and travel instructions to the customers.

In sweatshops, the women and men live directly at the workplace a technique employed to eliminate contacts with the outside world. The employer provides the accommodation in buildings that are hardly accessible for anyone from the outside. Hence, it can be assumed that they would be substandard. Interesting information emerged from one of the interviews: the living conditions of women in the sweatshops are better than those of men. Women should have more freedom. Reasons are only hard to guess given the lack of further information.

The interviewed men worked in forestry and construction. In the first case accommodation was provided in small houses in the forest that accommodated 7 people in a rather limited space. There was lack of warm water and alternative accommodation

was not possible given the type of work. In construction there were case of overcrowding (e.g. 10 people in a 4-bed room) and also in dwelling units without warm water. Water had to be warmed on a small heater. The toilet was also unavailable and the workers had to use the one on the construction site.

Information about health insurance was also varied. In some cases it was arranged by intermediaries before the entry to the country, in other cases the migrants did not take this issue into account at all, although they were doing a work with a high risk of severe injuries. Situation among the Vietnamese community is somewhat specific. The migrants either have health insurance and if not they borrow the insurance card from others against a payment. Quite often they would also go to a Vietnamese doctor, whom they probably trust more and where they do not have to deal with communication difficulties if they do not speak Czech. It is a paid service available to all regardless of whether they have a health insurance in CZ. There is no other information about alternative medical service provision in this context.

#### **Forms of coercion/force**

Given the aim of the research the forms of coercion were understood especially in the sense of the ILO forced labour indicators. In the Czech context, the main focus was put on the following ones:

- Physical or sexual violence or threats of violence
- Restriction of movement
- Debt bondage
- Withholding of wages or refusal to pay wages
- Retention of passport or other identification documents
- Threat of denunciation to the authorities
- Deceit or false promises about the form of work or working conditions
- Indebtedness that does not have to be direct debt bondage, but that is caused by changes of accounts, exaggerated prices, under pricing of produced goods or provided services, excessive interest rates, etc.

- Psychological pressure, i.e. force to work through threat of punishment in case of disobedience.

The collected information, that are in line with the information gathered in work undertaken by La Strada ČR, shows that withholding of wages or documents is the most frequent of the above mentioned forms of coercion that appeared in almost all answers. Violence, threats of violence, threats of denunciation to the authorities and restriction of personal freedom also appear to be frequent and were mentioned by half of the respondents. Debt bondage appears to be the least frequent form, although it was mentioned by some of the respondents. Other forms of debt that do not really fit into the definition of debt bondage were more common. It would be important to focus in future more on this form of coercion and attempt to collect more information.

From the previous chapter on working conditions it is obvious that withholding of wages is an effective means to keep migrants in work which, under other circumstances, they would probably leave. Two of the interviewed women, that had to work 12 hours without breaks and had their wages withheld, described such situation. Although their intermediaries/clients did neither threaten nor torture them nor did they withhold their documents or restrict their freedom, they still managed to effectively pressure them through withholding their wages and continuous promises of payment. Afraid that they would not be paid they stayed at work three months without any pay. The women themselves felt that this was “not completely rational”, but at the same time defined this form of pressure as effective means to keep them in the job and given circumstances. Now they would leave the job when the first significant problems with payment arose.

Another group of women experienced similar situations when their wages were withheld. Apart from the concern about wages they were prevented from changing employer by the fact that the demand for labour was met at this time and they would probably not find other job.

The withholding of wages operates in different ways in practice. It is commonplace that the workers receive an advance and are promised that the rest will be paid later. However, this often does not happen. Some of the interviewed men lost money based on an agreement among them and the intermediary/client that the cost of accommodation will be paid by client. They failed to do that and the owner of the hostel demanded money from the men. In another case the migrants worked in construction, building houses for a Czech firm. When the works were finished, the Czech employer along with the intermediary/client insisted that the work was not carried out to the

correct standard and hence they would not pay for it. The migrants can only hardly defend themselves against such exploitative practices. Moreover, if they would report it to the police they would probably never find another work through a client.

Organised crime is also partially involved in labour exploitation. A group of men stated that their clients deducts about one third of their wage, but they also knew that for every one of them he paid 1000CZK monthly to the mafia as protection money.

Withholding of documents is similarly effective and a method used to restrict the possibilities of migrants to defend themselves or to choose to change employer or intermediary or even to return to their country of origin. The information about Vietnamese community shows that this practice is almost universally used and could be a way to forced labour and debt bondage. People whose documents were taken away often try to get money as quickly as possible to arrange new documents and often purchase false ones.

Threats of denunciation to the police appear to be a frequent method of coercion, however less frequent than the other two. It can be assumed that there is a certain sequence in using coercion – the latter one probably comes only into place when the two others fail. The gathered information supports this assumption – the threats of denunciation to the police usually comes in after the workers demand unpaid wages.

Interesting is in this respect the information from the Vietnamese community. Apparently, the threats of denunciation to the police are not used, as the employers/intermediaries are not interested in contacting the police over the exploited persons.<sup>47</sup> With regards to prostitution, a frequently used threat is that the family in Vietnam will be told that their daughter is a prostitute in CZ. This would be very stigmatising given the local circumstances. Moreover, prostitution is a criminal offence in Vietnam. The local police is also used as a means of coercion – they would often threaten and terrorise the family after receiving the information.

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<sup>47</sup> In theory, the Ukrainian clients should not be interested either in doing this, but they used the threats of denunciation to the police as a frequent method of coercion. The reasons for that are unclear and maybe connected to the closeness of the Vietnamese community or to the relatively easy supply of labour from the Ukraine. The fact that Ukrainian clients also supply official Czech subject with labour, whereas Vietnamese work almost exclusively within their community, plays a probable role.

Direct violence or threats of violence are present especially in prostitution, but it was recorded also in cases of exploitation in other sectors. In general, it is possible to observe that the use of violence is on the decline and there is a tendency to apply other effective methods of coercion (see above).

Women arriving from Vietnam are often raped by the smugglers during the journey. Once in the prostitution in CZ, verbal and physical violence as well as rape is common practice. Women and girls that are popular among the customers can generate a great profit; hence they are forced to service extreme number of customers. This results in serious, even life threatening, health problems. A frequently used method is the threat of violence against the family in Vietnam.

One of the Ukrainian women that later worked as a domestic worker, was forced into prostitution by physical violence, raped and threatened that they “will kill her and bury her body in a hole and nobody will find out about it” and that they would “take away her child”. In the already mentioned case of workers that did not get paid, because of poor quality of the work, one of the workers was beaten up after he demanded payment of his wage.

Direct restriction of personal freedom can be found in particular in prostitution and in sweatshops. It was also recorded in domestic work where the worker was locked in an apartment. One Vietnamese woman was forbidden to move from the household she worked in under threat that she would not be able to see anybody from her family ever again and it would be a great shame for the family. Her partner was also a part of her family. Thus, the threats were effective enough to change the woman’s mind.

Debt is a usual element of labour migration. People migrate for work mainly due to the difficult economic and social situation in their home country and work abroad is usually connected with initial costs. Since they do not have the means to cover these, they have to borrow money.

The issue of debt becomes more relevant in the context of forced labour and trafficking in human being if the debt becomes an instrument of exploitation or direct slavery like practice as contained in the Supplementary Convention of 1956.<sup>48</sup>

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<sup>48</sup> UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery from 1956

A debt becomes an instrument of exploitation if it represents a burden for the exploited person and if it grows disproportionately, especially combined with other forms of coercion, such as withholding of wages or documents. As already mentioned above, an indebted migrant whose wages are withheld puts up with the exploitative conditions and does not leave the work because of concern that the money will not be paid (what happens very often) and s/he would not be able to repay the debt after returning home. They would find themselves in a worse situation than when they were leaving with the hope of improving their circumstances through work abroad.

Debt bondage occurs in the area of prostitution within the Vietnamese community. Women are transported to CZ against a fee that is the initial debt. It is doubled after arrival and subsequently increases through “sanctions” for violation of rules given by the employer. Women work only for food and accommodation and do not receive any money. They are apparently deducted to cover the debt. This situation can be of different length, but at a certain moment, the woman is sold on to another person. The debt (e.g. the amount that was paid for her) has to be paid again from the beginning. This creates a vicious circle that fulfils the definition of debt bondage and goes perhaps even further, as there is no escape from this situation.

We can talk about debt bondage whenever a debt is being repaid by work or services provided that the length and/or nature of such labour or services is not specified or that the value of such labour or services is not applied toward liquidation of the debt. Also cases when the debtor does not have a notion about the length or nature of the work through which the debt should be repaid can be considered instances of debt bondage. The collected information implies that if paid more attention to, more cases of debt bondage would be found in CZ.

All listed forms of coercion exist in reality either in various combinations or individually. A general conclusion, based on findings that are in line with information from experience of La Strada, could be that in the area of prostitution restriction of personal freedom, violence or threats of violence are more frequent. In other sectors withholding of wages and documents or threats of denunciation to the authorities are prevalent.

#### **Possibilities of exit from the environment of exploitation and forced labour**

The data in this section of the report originates from the research but also from other sources, such as the experience of La Strada CZ, experiences sourced from other organisations or commonly accessible information. From the accounts of the inter-

viewed persons it was not possible to collect much information. This might be given by the feelings of guilt or failure that resulted in exploitation or forced labour.

Some people remain in the exploitative and forced labour situations, some run away or leave. It's given by the very circumstances and to a great extent also by personal characteristics and previous life experiences of these people. They decide to run away or leave usually when the coercion exceeds the still acceptable level. This level is individual for each person. For some the level is reached only when violence or enormous work burden or exploitation is exercised. For others the first signs of manipulation and exploitation, such as withholding of wages or failure to return their documents could be enough.

Decisions to remain in such a situation can also have many reasons. Consideration of all the pros and cons, allows the migrant to come to a conclusion about whether the given hardship in his/her home country still exceeds the level discomfort arising from exploitative working conditions. The issue of the above mentioned initial debt is very important, as it can be the crucial element of such decision. In other cases the migrant's situation may improve, which contributes to the decision to remain in exploitative environment. The improvement can be objective or only subjective. The new conditions may seem satisfactory to the concerned person, although in reality they may be further exploited. However, compared to the past experience, that might have been much worse, these may seem acceptable.

The possibilities to ask for help in the outside world are not particularly broad for the people being exploited or subjected to forced labour. In the majority of cases they tend not to contact the police, especially because they are afraid that their illegal residence might be disclosed. Moreover, they usually bring with them mistrust to police that is often corrupt and connected with criminal networks in their home countries. The exploiters reinforce this notion by telling them there is no use to turn to the police in CZ, because they are corrupted as well. This can be both true and false.

Contact with help centres is also problematic. It is very complicated for the organisations to deliver information about the possibilities of help directly to the environment where the exploitation is most serious. The reasons are mainly safety but also the tendency to keep these places secret from the outer world. Furthermore, the exploited persons usually come from countries, where there is a low awareness about the concept of non-governmental help organisations and their roles. This also affect whether the migrant is interested or disinterested in the help of a help centre. Interest often appears only when the common help mechanisms within the commu-

nity do not work, e.g. when their visa expires, after being found by the alien's police etc. Persons questioned within this research came into contact with help from organisations either through institutions (e.g. embassies of the home country, police) or through information about help available within the community. In one case this information was obtained already in the home country.

Within the Vietnamese community the situation is even more complicated, given by its closeness and cultural and language barriers that make the access to information from outside more difficult. Exit from exploitation or forced labour is usually possible after the debt has been settled, by buying out of the debt with the help of another person or after being taken in by the police. This way of escape is rarely chosen by Vietnamese, only when the situation becomes very bad. The possibility to hide within the Vietnamese community is practically zero and equally inadequate alternative is to look for hideaway outside the community, where Vietnamese are very noticeable but also suffer from isolation. If they choose to escape, they would rely on themselves or help from the community, but not on help from the outside, and especially not from the police.

With the increasing attention paid to exploitation and forced labour of migrants it is inevitable to pay in future a bigger attention to elaboration of a secure strategy to gain information about the possibilities of assistance to exploited persons.

#### **Spread of nationalities and genders over industries/sectors of (potentially) exploitative and forced labour**

The question about spread of nationalities and representation of men and women was asked in the interviews answered by migrants and professionals. The information from migrants was limited to sectors they themselves worked in. The professionals had a broader perspective; however their area of activities was also evident. Particularly respondents that specialised in Vietnamese community were able to provide information on this community or people from other Asian countries.

The interviewed migrants worked in three sectors: agriculture, services and construction. The information provided is hence relevant to those areas. The work in agriculture is divided to male and female, mainly given by the physical aspects. Men work mainly in forestry and women in less heavy agriculture labour (such as fruit picking). The majority of women come from the Ukraine, and some also from Moldova and Belarus. Services employ almost exclusively women, again mainly Ukrainians and further Moldavians, Byelorussians or Kazakhs (women from these countries consti-

tute a minority in comparison with Ukrainians). Men do appear in this sector as well, but in positions that are higher in the hierarchy, as those who for instance manage the cleaning services.<sup>49</sup> The third represented sector was construction. Mainly men are employed here, although the experience of La Strada CZ shows that women also appear in this sector and carry out cleaning on building sites. With regards to the nationalities of construction workers, Ukrainians again represent the biggest group, then Moldavians and Byelorussians. Slovaks were not regarded as foreigners and another mentioned nationality that appears in a higher number were Poles. The interviewed men knew that Ukrainian women work in hospitals, especially in cleaning and in laundries.

Professionals focusing on Vietnamese community had information about forced labour in the community. The police knew especially about forced labour in prostitution. Mentioned were also people from other Asian countries, like China, Thailand and India. Information about exploitative and forced labour in the Chinese community came up repeatedly, but so far there are not channels available to verify this information. Thailand appeared as a possible country of origin especially in connection with new information about Thai women working in Czech massage salons. Indians migrate through CZ further west; hence CZ is in this respect more a transit point than destination.

Information from other professionals had a broader perspective and pointed out the gender division of the labour market in connection with exploitative or forced labour. This information corresponds to the own experience of La Strada CZ. This division is connected with heavy manual labour and with traditional gender stereotypes. Forestry and construction sectors were labelled as typically male. Textile industry, agriculture, service and domestic work as typically female. Various work in restaurants, bistros and stall sale that are typical for Vietnamese community (and probably also Chinese) is carried out by both men and women. With regards to nationalities, Eastern Europe and Asia are mentioned in general, namely Ukraine, Vietnam, China, Mongolia, Russia, Armenia and Georgia.

The collected information shows probable incidence of forced or exploitative labour among these two groups of migrants but also among other migrant communities in

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<sup>49</sup> This gender division of “males” undertaking more intellectually demanding work and “females” performing simple manual labour exists also in other countries and other sectors. For example in Columbian flower farms, men are responsible for maintenance of the watering technique, whereas women are the ones who water the flowers.

CZ. In order to get a clear picture about this area it would be advisable to consider focusing especially on a concrete migrant community. Historical, national and cultural specifics determine to a great extent the possibility of entering the community and methods of obtaining information from the individual groups of nationalities. This further affects the general picture about the existence and extent of exploitative labour among these groups.

### **Visions of the questioned migrants for the future**

The migrants talked about their future plans within the interviews and case studies. Their ideas were not focusing on long-term future; they were rather short-term oriented, especially on the period of their presence in CZ or on the return to their home countries.

With regards to the two assessed communities it can be in general concluded that, with some exceptions, there is a bigger tendency to settlement in CZ in the Vietnamese community whereas the Ukrainian usually do not intend to settle permanently in the country. Their main aim is to make money and return to the Ukraine or possibly to create an opportunity in CZ to enable them repeated labour migration here.

The most essential part of the future plans of all interviewed migrants was to return home with at least some money. Almost all leave their countries of origin with the idea to improve their economic situation; in many cases it is a question of existence. To return without money is often unthinkable for them. Hence they are willing to accept compromises, risk a danger or submit to exploitative practices. The exploiters know this and take an advantage of it. If the migrant returns without money to the same conditions that forced him/her to leave, there is a high probability that they will try to leave again because of the lack of other opportunities. Despite all the risks and dangers they are now fully aware of. The exploited persons confirm this themselves – the majority of them would come again. Although they would try to prepare themselves better and would be more careful in contact with intermediaries/clients and would try to check them first.

If an initial debt for facilitation and transport is added to the uneasy social situation, it will become increasingly complicated. After the return to the home country there is a threat of distraintment of the remaining property in case of a legal debt, or violence against the debtor or his/her family, if the creditor prefers other than legal ways of dealing with the situation.

Two of the interviewed women depicted the options of returning migrants quite clearly when they said that after their return to the country of origin their situation would depend on whether or not they would get into conflict with the client. Either they manage to avoid the conflict and at worst will return to the same situation (if they are not in debt) or in case of a conflict they would risk reprisals. This may be one of the reasons why the interviewed migrants were not able/willing to formulate their plans for the longer term – because their future is dependent on many variables.

### Case studies analysis

Case studies elaborated within this research contain three stories about four persons that came to CZ for work and were subjected to forced labour during their stay here. The cases are of three Ukrainian women and one Belarusian man. Mrs “N”, 22 years old, with a completed elementary education without any previous work experiences was first exploited into forced prostitution and subsequently for domestic work. Mr “C”, 48 years, a university graduate that was made redundant from his job in education system tried to solve his difficult financial situation through work abroad. At first he worked in forestry in CZ and then as a casual worker on construction sites and maintenance of private properties. Mrs “T” and “L”, 38 years, both elementary school teachers, long-term unemployed, worked in CZ in agriculture as hops pickers.

The case studies analysis focused in particular on identification of possible violations of rights and obligations resulting from relevant international agreements.<sup>50</sup> The following documents are legally binding for CZ: International Covenant on Civil and

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<sup>50</sup> The framework of the analysis focused mainly on the following international documents: International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, International Convention on the Elimination of All Forms of Racial Discrimination 1965, Convention on the Elimination of All Forms of Discrimination Against Women 1979, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990, Slavery Convention 1926, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention against Transnational Organised Crime) 2000, ILO Forced Labour Convention No. 29, ILO Migration for Employment Convention No. 97, ILO Labour Inspection Convention No. 81, ILO Occupational Safety and Health Convention No. 155, Council of Europe Convention on Action against Trafficking in Human Beings 2005, Council Framework Decision 2002/629/JHA on combating trafficking in human beings, Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who co-operate with the competent authorities.

Political Rights 1966 (CCPR), International Covenant on Economic, Social and Cultural Rights 1966 (ESCR), International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD), Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW), Slavery Convention 1926, ILO Forced Labour Convention No. 29 (C29), ILO Occupational Safety and Health Convention No. 155 (C155), Council Framework Decision 2002/629/JHA on combating trafficking in human beings (hereafter “Framework decision”) and Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who co-operate with the competent authorities (Hereafter “Directive”). Other listed documents are not yet binding for CZ.

*According to the article 12 of CCPR, Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Also, everyone shall be free to leave any country, including his own. Art. 2 obliges the Parties to the Convention to respect and ensure the rights recognised in CCPR and make them available for all individuals within its territory. The Parties shall for this purpose adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

Mr “C”, Mrs “N” and also Mrs “T” and “L” were in CZ based on valid documents for residence, Mr “C” had even a work permit and a contract with a Czech firm and Mrs “T” and “L” had work visas. In two cases the documents were taken away from the workers and Mrs “N” was locked in a flat where she worked, which suggests a violation of the Art. 12 of CCPR, the violation of the right for freedom of movement and the possibility to leave the country.

*CCPR further states in the art. 8 that no one shall be required to perform forced or compulsory labour.*

From the definition of forced and compulsory labour in C29 and the ILO indicators, there were at least two indicators present in all the monitored cases (more detailed description see below). Hence we could conclude that these were cases of forced or compulsory labour. In all three cases CZ has violated its obligation to ensure that nobody should be forced to such labour.

*With regards to different level of political and economical development of various countries, the obligation to ensure the rights resulting from ESCR is formulated in a less strict manner.*

*Art. 2 states that each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant. It also states that these rights should be exercised without any discrimination. Only developing countries, who are given the possibility of due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals. This implies that all other countries shall guarantee these rights to all, including non-nationals.*

*According to art.6, The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The State Parties further recognise the right. The States to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, among others: Fair wages and equal remuneration for work of equal value without distinction of any kind; safe and healthy working conditions; reasonable limitation of working hours and periodic holidays with pay (Art.7). Further, the article 9 recognised the right of everyone to social security, including social insurance.*

Mr “C” has freely chosen and accepted work in forestry. The contract was already signed when he was leaving. Later he was moved to work at a construction site and maintenance of a private property, where his freedom of movement was restricted and social contacts prohibited. Mrs “N” was brought to an apartment; where she worked as a domestic worker, by a person that she had asked for help to escape from forced prostitution. During the day she was locked in the flat to prevent her from running away. In both cases we can see a violation of the mentioned right to freely choose and accept work.

The right to just and favourable conditions was violated in different ways in all three monitored cases. None of the persons received for their work reward that could be marked as fair. When she worked as a domestic worker, Mrs “N” received for a whole days work 30–60 (CZK – approx 1–2 Euro), which, even in case she would get for every day in a month 60 CZK, is 1800 CZK (60 Euro) in a month. The current<sup>51</sup> minimum wage in CZ is 7570 CZK (approx 252 Euro) in a month (44.70 CZK/hr) and the employer is also obliged to participate in health and social insurance of the

<sup>51</sup> As of 30 April 2006

employees. Mr “C” was supposed to receive 5800 CZK (approx 193 Euro) in a month according to the work contract. The employer had begun to withhold his wages after two months and paid him in small amounts after repeated demands for payment. At the end Mr “C” would get only advance payments of 100–200 CZK per week (3.3–6.6 Euro). Mrs “T” and “L” were supposed to get 35CZK (1.2 Euro) per hour. They worked 10–12 hours per day, for which the pay should have been 10,500 CZK (350 Euro) monthly. However, they received only 1250 CZK from the employer, which is slightly more than one tenth of the originally agreed pay.

The limitations of working hours can in the given cases hardly be called reasonable. Mr “C” should have worked 40 hours a week according to the work contract. In reality, the team he worked in, worked 12–16 hours a day, 7 days a week without any entitlement to free time. Similarly, the working hours of Mrs “T” and “L” were set to 10–12 hours a day, 7 days a week. In none of the cases was there entitlement to free time or holidays.

*The framework decision states that each Member State shall ensure prosecution of crimes with respect to trafficking for labour or sexual exploitation. The definition of trafficking in the Czech criminal code is almost in compliance with the definition in the Framework decision, However, this further requires that the Member states ensure that legal persons can be held liable for an offence committed for their benefit by any person, acting either individually or as a part of an organ of the legal person (art. 4). The deadline for implementation of this Framework decision was 1<sup>st</sup> August 2004.*

According to the definition of trafficking in human beings in the criminal code, Mr “C” was recruited, transported to use him for forced labour or other forms of exploitation through the use violence or threats of violence, deceit or abuse of a fallacy and distress (he cannot change employer, his wages are withheld, the conditions stated in the work contract are not met or are significantly worse). The signals of trafficking were in this case present. Mr “C” worked for a Czech firm. The law enforcement did not classify the case as trafficking in human beings and even if they had, the employer, as a legal entity would not be held responsible, since the Czech legislation so far does not recognise responsibility of corporate bodies. In this sense it could be considered that CZ did not meet the obligations of the Framework decision.

*The Framework decision in the art. 7 reads that Members States ensure that the investigation of a crime shall not depend on the information from trafficked persons, at minimum in cases if the crime, as a whole or its part, was committed at the territory of a given Member State.*

Mrs “N” was kept in CZ in an abandoned house and by brutal violence forced to prostitution in places where she was brought to. Although these activities fulfil the elements of the criminal offence of trafficking in human beings, Mrs “N” was denied entry into the Programme that shall assist trafficked persons and help the criminal proceedings with perpetrators. The reason for that was the unwillingness of Mrs “N” to provide the police with relevant enough information about the perpetrators because she was afraid of reprisals from the exploiters. Hence, the perpetrator was not prosecuted which can be seen as a violation of art. 7 of the Framework decision.

One of the most important documents in the context of the described case studies is the ILO Convention on forced or compulsory labour No. 29. A reference to forced labour is contained also in the definition of the crime of trafficking in human beings in the Czech criminal code (see the chapter on legislation). The law enforcement was informed about two of the cases. In one case they stated that not all the facts of a case of this crime were fulfilled. Interpretations of the law enforcement in this area are often different from the NGO interpretations. Law enforcement authorities tend to search for an unbroken chain of persons/subjects that recruit and transport a trafficked person from the country of origin and are involved in her/his exploitation in the country of destination, despite the fact that according to the definition all the individual elements of such acts are punishable (recruitment, transportation, transfer, harbouring, receipt etc.). The element of coercion is often interpreted very narrowly in the trafficking definition, in particular as a direct physical violence or threat of violence, but the abuse of distress or dependence is rarely considered, although it can be identified in many cases of migrants exploited for labour.

Interpretation of trafficking in human beings is further complicated by the uncertainty of law enforcement agencies with regards to the reading of the notion of “forced labour, respectively “trafficking for forced labour”. It would be worth considering whether this problem could not be solved if the illegal demand for forced labour was punishable as a crime. This obligation is put on CZ as a party to the Forced labour Convention (Art.25). As mentioned before, the crime of forced labour is not contained in the Czech criminal code, even though it contains provisions on crimes of blackmailing and oppression. These provisions assure punishability of cases when a person is forced to perform something, forbear from doing something or submit to something by use of violence or threat of violence (blackmailing) or by abuse of distress or dependence (oppression). Forced labour can be subsumed under these provisions. This is probably the reasoning of the Czech government that CZ fulfils the obligation to punish forced labour as a crime. According to the same article of the Convention CZ shall further ensure that punishments for forced labour are effectively and conse-

quently implemented. The maximum sentence for the crime of oppression is 6 months imprisonment, whereas the abuse of distress or dependence, as facts of a case of the crime of oppression is almost always present in forced labour cases. On the other hand, the basic punishment for blackmailing is 3 years but when there are consistent elements this could be anything between 2–8 years. However, violence as a fact of the case of blackmailing crime is only one of many forms of coercion applied in connection with forced or compulsory labour. It can be reasonably doubted about the effectiveness of these punishments. With regards to their consequent application, in its ten years of existence, La Strada has not come across any information that any of these provisions would be used to prosecute forced labour. The non-compliance of CZ with article 25 of the Convention is hence very probable.

With the problems in interpretation of the forced labour definition in CZ let’s examine the previously mentioned ILO indicators of forced labour. It is six main indicators: 1) physical or sexual violence or threats 2) restriction of movement 3) debt bondage 4) withholding of wage or refusal to pay wages 5) passport or other identification document retention 6) threats of denunciation to the authorities

Some of the indicators have appeared in various combinations in all three case studies. Mrs “N” was, during the time when she was forced to prostitution, subjected to cruel physical violence. She was beaten and raped, which once led to her losing consciousness. She was threatened to be killed and that her child will be taken away. During this time she was under constant surveillance and had to hand in all money she made. Her documents with the Czech visa were withheld. In the time of the domestic work she was locked in an apartment and received little money for the work (30–60CZK). In her case, four out of the six above mentioned forced labour indicators were present – physical and sexual violence and its threat, restriction, respectively deprivation of freedom of movement, withholding of wages and documents.

Mr “C” was at the end of the labour exploitation subjected to verbal attacks and threats, while working in forestry he was, along with his team mates under constant surveillance by the forest owner and during the time of working in a private property, his movement was restricted and social contact forbidden. After two months the employer started to withhold his wages and would pay him only after he repeatedly demanded pay. Arguing that he is arranging new documents (they were stolen from Mr “C”), the employer paid him only 100–200 CZK a week. Mr “C” later found out that the employer was never arranging for his new documents and never contacted the embassy of his home country. Furthermore, Mr “C” was manipulated into sending his money back home through an agency that arranged his stay in CZ. The money should



have been handed over to his family in the home country, but this did not happen. Also in this case there are indicators present that suggest that this was probably a forced labour case.

Mrs “T” and “L” were neither subjected to violence, nor was their freedom restricted. However, when in touch with a help centre they expressed their concern about possible reprisals if they complained to the authorities about money and document withholding by the intermediary. Also in this case fulfilment of forced labour definition can be considered.

These cases show that CZ probably violated its obligation to prohibit forced or compulsory labour in all its forms according to the art. 1 of the Forced labour convention. It also violated the prohibition of forced labour given by the Bill of fundamental rights and freedoms (art.9) and International Covenant on Civil and Political Rights (art.8).

Apart from the above mentioned international documents that are binding for CZ, other documents that contain provisions that could significantly contribute to protection of rights of migrant workers and hence lower the possibility to exploit them were analysed in the research. The most important are the ILO Migration for Employment Convention No. 97 and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Both contain provisions that oblige the signatory parties to ensure equality for migrants and the citizens of the destination countries in access to certain rights. The fact that it is practically impossible for the migrants to protect their rights seems to be one of the reasons enabling their exploitation. This is on one hand given by the legislation and on the other hand by practice, when more focus is placed on prosecution of possible violations of immigration law from the migrants rather than on protection of their rights. As a result of that, in majority of cases exploited migrants do not try to approach the authorities in case of violations of their rights, because they know that the primary issue that will be dealt with is the question of fulfilment of their statutory obligations in the destination country, not the question of respecting of their rights and compliance with the obligations by the employers.

Regardless of the residence status of the migrant, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (hereafter “Migrant workers convention”) stipulates entitlement of migrants to treatment equal to that experienced by citizens in the area of wages and other working conditions, such as working hours, overtime, paid holidays, termination of employment etc. (art.25). A provision that is very important with regards to the possible exploitation

of migrant workers is the provision that considers the possibility of derogation of the mentioned equal treatment in contracts governed by private law as unlawful. The contracting parties have the obligation to ensure that migrant workers are not deprived of any rights resulting from this principle due to their illegal residence or work. Particularly, employers cannot refer to the illegality of their stay or work as the reasons for non-fulfilment or only partial fulfilment of the contractual obligations towards the migrants.

Those migrant workers that are legally on the territory of a state that is a party to the convention, the Convention guarantees equal treatment like the citizens, with regards to the protection from dismissal, unemployment benefits, access to programmes targeting combating of unemployment and under given conditions access to other employment in case of losing of the previous one. Such provision has got the potential to lower significantly the vulnerability of migrants that are tied to an employer with their work and residence permits and do not have the possibility to profit from paying of social insurance if they lose their job. The Convention further secures equal treatment with regards to employment and access to education institutions and services, professional education and re-qualification, employment services and other (art. 54, 55 and 43) to legal migrants.

Similar provisions on entitlement of migrants to equal treatment as applied to citizens of a given states are contained in ILO Convention No. 97 on Migration for Employment. This provision is however again limited only to migrants legally residing on the territory of a party to the Convention. Equal treatment is covered according to art.6 of the Convention in a similar way to art. 25 of the Migrant WorkersΔ Convention and further covers also unions, the use of advantages of collective bargaining, social security (with regards to work injury, maternity leave, old age, illness, unemployment etc.) taxes, benefits and other areas. In the present situation migrant workers have almost no access to the mentioned advantages and rights. A very concrete example is that they cannot benefit from the social insurance despite the fact that they work legally and pay levies.

Lack of information among the migrant worker is often abused by intermediaries and employers. There are several interesting provisions in the conventions in this respect. Regardless of the legality of residence, the Migrant WorkersΔ Convention provides the workers and their families with the right to information. This information shall include rights resulting from the Conventions, conditions of entry to the country, rights and obligations and all other information that allow the migrants to meet the administrative requirement and other formal requirement effective in the

country where they are. The interested countries<sup>52</sup> are obliged to disseminate this information through employers, unions or other institutions. The information shall be provided free of charge and if possible in a language that the migrant workers understand (art.33)

Similar provision is contained in Convention No.97 that states in art. 2 that each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

The Migrant Workers Convention ensures the right of migrant workers to be fully informed about the conditions of entry to the country, where they will be employed, especially about those that are relevant to their residence and work. They further have the right to be informed about the requirements they need to meet and which governmental agency to turn to with regards to possible changes of the conditions of residency (art.37).

In the context of seeking ways of preventing the exploitation of migrant workers, other provisions of Convention No.97 are inspiring. A system of supervision of work contracts between employers and migrant workers is mentioned. It contains a requirement that a migrant should have the work contract before departure from the home country but at the latest an arrival to the country, where s/he will work. The contract must carry provisions about working conditions and wages. Moreover, the migrant shall be informed in writing in general about working and living conditions that will be applicable for him/her in the country, where s/he will work. A part of the system of supervision over the work contracts is determination of methods of ensuring compliance with the contract obligations by the employer and sanctions for violation of the above stated obligations. (Annex I of the Convention, art.5 and 7).

Questionnaires, interviews and cases studies show that withholding of wages and documents is the most common form of coercion of migrants. In this respect it is necessary to mention provisions of international agreements that aim at elimination of such practices. The Migrant Workers Convention ensures, regardless of the status of the migrants workers, their right and the right of their families to transfer the earned and saved money to e.g. their home countries. The same right is given to migrants, who fulfil the requirement of the legality of stay, with an explicit reference to the necessity to secure financial support of the family in the home country. The parties are

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<sup>52</sup> I.e. home countries, transit countries and countries where migrant work.

obliged to implement relevant measures that will enable and simplify the transfer of earned money (art. 32 and 47).

With respect to withholding of documents, the Convention states that it is unlawful, with the exception of authorised public bodies, to confiscate identification documents, documents authorising entry or residence or work permits (art.21). Provision with similar contents is also part of the Convention on Action against Trafficking in Human Beings (art. 20).

It is evident from the research that violence and threats of violence are not rare in the environment of exploitation of migrant workers. Hence, the provision of article 16 of Migrant Workers Convention is important in this context. This provision gives the migrants workers the right to personal freedom and safety and further states that they are entitled to effective protection from the state against violence, maltreatment and threats, regardless of whether they come from public authorities or private persons.

Exploitation of migrant workers and forced labour are also enabled by legislative shortcomings or unclear or insufficient implementation of legislation. Ratification of the above mentioned, and so far not binding, conventions and adoption of the relevant provisions into national legislation would be a significant step to limit and eventually eliminate exploitative and forced labour in CZ.

### **Media monitoring outcomes**

The following information is based on analysis of articles relevant to the topics of migration and presence of migrants on the Czech labour market in period from 15 July 2005 till 31 December 2005. The monitoring included national daily newspapers (MF Dnes, Právo a Blesk), weekly titles (Respekt, Reflex a Týden) and monthly magazines (Elle, Esquire a Xantipa). With regard to the number of articles on the given topic, MF Dnes is leading with 31 articles. Právo published 5 relevant articles, Blesk 2 and Respekt and Reflex one. There were no articles on this topic in Týden or the monthly magazines. It is important to mention that MF Dnes reported the most about the issue during the monitored period, and published, on the 30 November 2005, a special supplement on the issue of migrant workers in CZ that contained 8 relevant articles.

Some of the searched key words<sup>53</sup> had to be adjusted according to the Czech context,

<sup>53</sup> The searched keywords were: foreigner/foreigners AND work, migrant/migrants, foreign worker/workers, trafficking/trafficking in human beings, forced labour, intermediary, legal/illegal/irregular work, cheap labour, illicit work.

since not all the previously agreed ones were applicable in Czech conditions. When searching for the word “foreigner” articles that mentioned foreigners in the sense of tourists appeared. Thus it was necessary to use the words “foreigner/foreigners” AND “labour”. Instead of using “foreign employer/worker” it proved to better to use the connection of “migrant worker” for marking out persons doing heavy manual and worse paid labour that is usually not interesting for Czechs. On the other hand some of the keywords proved to be irrelevant, for example “forced labour” appeared in the press only in connection with forced labour in the World War II. In the monitored context of exploitative labour and labour conditions this notion is not used.

There were in total 40 relevant articles in the monitored press in the given period, the majority in the daily newspapers MF Dnes (31) and Pravo (5). This rate is interesting in comparison, since MF Dnes is considered to be a more right wing newspaper and Pravo a left wing one. In this connection it was more realistic to expect that more information and articles connected to labour exploitation of migrants would appear in Pravo.

The high number of articles in MF Dnes is clearly connected to a special supplement about the migration of foreign workers to CZ. The supplement was published in cooperation with a humanitarian organisation People in Need. It is important to take this into consideration to avoid distortion of the picture about informing on the issue. With regards to the cooperating organisation it is clear that the paper had a clear intention to inform about the situation of migrant workers and to show the reality also from their perspective, including the clarification about profits made by the intermediaries, Czech firms and in the end also by the Czech state.

A further important point is that the articles about migrant workers appeared most often in the regional supplements – in 25 cases. In the nationwide pages and in particular in the economy sections were 7 articles. 8 articles were in the above-mentioned special supplement. This division indisputably affects the possible impact of information in the regional supplement on the Czech population and suggests the importance that is given to the issue by the newspapers. It would be useful to verify in a broader sense the fact that regional papers informed in the given period more about the monitored issue than the nationwide ones or to gather more information about the reasons and implications.

According to the information from the monitoring, the foreigners mentioned in the newspapers in the researched context could be divided into 4 groups. **First group** are the migrant workers that are often presented by the media as anonymous mem-

ber of the given category. If individualised, it is often connected to crime that they committed or were suspected to have committed. Men are usually the ones mentioned or their gender is not mentioned at all. Women are hardly ever mentioned, only as victims of trafficking in human beings or in connection with their biologic functions (e.g. problems with health insurance of migrants connected to giving birth or insurance of newborns). They are most often employed in construction, agriculture or in production and sale of textile or food. This group is also at risk of exploitation from employers or intermediaries. Most frequent countries of origin are Ukraine, Vietnam. Slovakia and Poland are also mentioned, but not explicitly with exploitation practices.

**Second group** are the perpetrators that committed crimes which the media informed about. They are either traffickers or refer to the criminal proceedings, the mistakes of law enforcement authorities that led to setting the suspects free or on individual migrant workers that committed or are suspected to have committed a crime. These are mainly persons from the former Soviet Union, especially Ukraine. Only in one case criminal activities of a West European were mentioned.

**The third**, relatively small group contains especially foreigners from West Europe that work in CZ, e.g. as managers or language teachers. They are portrayed individually and there is more information available, such as gender, home country, family background or opinion about life in CZ etc. The media do not report in a negative sense about this group, e.g. in connection with crime, except one, the above mentioned fraudster from the Netherlands. The countries of origin of this group are: Germany, Belgium, Scotland, Canada and the Netherlands.

The last, **fourth group** is formed by professionals especially from Eastern and South-Eastern Europe that are in the framework of a programme of the Ministry of Labour and Social Affairs invited to CZ to fill in the positions where there is a lack of Czech professionals, e.g. doctors or scientists.

Residence status of foreigners is mentioned in particular in connection with the work, respectively with work permits in more than half of the articles. They contain information about the number of foreigners<sup>54</sup> in CZ, about how people became illegal, even if they enter the country legally, what are the pros and cons of illegal employ-

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<sup>54</sup> The total mentioned 50 000 foreigners from 180 countries, whereas the published estimations about illegal migrants vary from 18 000 to 300 000.

ment for the state, migrant and employer and about intermediaries, and Czech firms and organised crime that profit from migrants in illicit employment in CZ.

It is interesting that punishment or absence of punishment for illegal work is often mentioned, however almost only in connection with the workers. The possibility of prosecution of employer or the actual prosecution of employer is almost never mentioned. One of the exceptions was an article about South Bohemian employment offices that monitor companies that employ migrants, whether they get proper wages. When extending the work permit for a migrant, the firms have to present payslips and the office checks whether the firm pays the same money for the same work to both Czechs and migrants. One of the reasons for this is also to prevent the advantage of the firms that violate labour laws and use cheap labour of migrants to those that employ migrants and Czechs in compliance with the relevant laws and hence have higher salary costs.

The monitoring showed that the media seeks to disprove the preconception that the flow of migrants damages the labour market and takes the jobs away from CZ citizens. The presence of migrants on the Czech labour market is in 21 cases evaluated as positive and in 7 cases as a threat. The other articles do not evaluate the situation. Positive evaluation is mainly mentioned in connection with negative demographic developments in CZ. One of the articles says that, demographer estimate, that in 25 years there will be a shortage of 400 thousand workers. The situation can be improved by foreigners that would fill the empty positions. In the articles these people were portrayed as those who are recruited for badly paid job in worse conditions, thus jobs that the Czechs are not interested in. This was also confirmed by the director of employment office in Prague 3. He said that foreigners are hardworking and have less demands. They usually come from poorer countries, came to CZ to earn money, are satisfied with lower wage and are willing to work more. The market does protect its citizens and always gives Czechs a priority. However, they do not want to work in all conditions, hence if the salary is low and the working hours long, they refuse and the job is taken by a foreigner that does not have the possibility to choose.

In the articles about crime, 5 migrants are portrayed as the perpetrators (fraud, violent assault, murder, pimping, trafficking in human beings) and only twice as victims. Other violations of law appeared too, but they were not classified as crime, in particular cases where the people failed to pay health insurance, violated immigration law, but this is usually an issue for the employer, not for the employee.

Trafficking in human beings is mentioned only 3 times in the articles in the context of informing about the court proceedings with the perpetrators and in one article in connection to amendment of the aliens law that will improve the condition for entitlement of short term residence to trafficked persons that cooperate with the law enforcement authorities. The notion "trafficking in human beings" is not at all mentioned in connection with labour exploitation of migrants.

Similarly, the notion "forced labour" does not appear in the monitored articles. It is only used with regards to forced labour during the World War II. In about 9 articles hard working conditions were mentioned, as well as exploitation of workers and practices of intermediaries that might end as forced labour.

It is possible to assume based on the carried out monitoring that the information and contents about the issue of trafficking and forced labour is often balanced. However, the relevant articles were concentrated in one newspaper that, in the given period, published a special supplement on the topic. In the majority of cases the information appeared in regional supplements and not in nationwide sections.

It is rather damaging that exploitation and forced labour of migrants was never presented as a possible part of trafficking in human beings. Trafficking was almost always mentioned in connection to prosecution of perpetrators, usually connected to prosecution for pimping. This is likely to reinforce the prevalent false idea that trafficking in human beings equals forced prostitution and happens only for the purpose of exploitation in sex industry.

Significant is the clearly positive approach to informing about labour migration to CZ. There is a clear attempt to exploit what contribution migrants can bring to CZ and what risks they have to face as migrant workers. Informing about the issue in such a manner can bring about more understanding and overall improvement of perception of migrants by the so far still very homogenous Czech population.

## CONCLUSIONS

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### General

1. People exploited in CZ are not Czech citizens and “non-problematic foreigners”. It concerns persons with an unsure/illegal residence from countries less economically developed than CZ.
2. Exploitation of migrants is highly connected to an inability to protect their rights given their unsure residence status.
3. In general, there is more focus on punishment of these people for violation of the immigration laws rather than protection of their rights.
4. Trafficking in human beings and exploitation in forced labour and exploitative labour occurs much less in connection with illegal border crossing than generally believed.
5. Motivation to leave the country of origin and look for work abroad was always economic, sometimes combined with political reasons.
6. The existence of sweatshops in CZ was confirmed
7. It was impossible to consequently separate forced labour in prostitution and in other sectors in the framework of the research. Forced labour in both areas was combined in a story of one person as a subsequent experience or parallel double exploitation.

### Sectors

8. The most prevalent sectors where, according to the research, exploitative or forced labour appears, included: construction, agriculture (including forestry), services, that include in particular cleaning, sales and waiting and kitchen work in restaurants and bistros. Further mentioned sectors were working in storages, hospitals, households, workshops, sweatshops or coercion to commit crime or forced begging.

9. Gender division is evident within the individual sector. Men work mainly in construction and forestry. Agriculture, textile industry, cleaning and domestic work are areas where mainly women are employed. Men and women work in bistros and restaurants or as sales personnel, especially in the Vietnamese and Chinese community.

### Nationalities

10. The most important regions of origin of persons exploited for labour in CZ are the former USSR states, in particular Ukraine and Asia, in particular Vietnam. Other countries that appeared were Moldova, Belarus, Kazakhstan, Mongolia, China, less frequently Georgia and Chechnya<sup>55</sup>.

### Forms of coercion

11. Abuse of distress or dependence is a form of coercion that is almost universal in the context of forced or exploitative labour. It is included in the definition of crime of trafficking in human beings in the criminal code and it is also a fundamental sign of the facts of a case of the crime of oppression.<sup>56</sup>
12. From the forced labour indicators as defined by ILO, the most frequent one was withholding of wages and documents, often violence or threats of violence or threats of denunciation to the authorities and restriction of freedom. The least mentioned form of coercion was debt bondage.<sup>57</sup>

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<sup>55</sup> This information must be understood as reflecting the research methods and existing/developed channels to obtaining information from migrant communities. It is likely that exploitative labour concerns other stated migrants, but there is no concrete information about this yet. In order to gain information from individuals communities it would be advisable to focus specifically on the given community – since historic, national and cultural specifics determine possibilities of entry and methods for gathering information with in the individual communities defined by nationality, which in return influences the idea about presence and extent of exploitative labour in a given community.

<sup>56</sup> It means forcing other person to do something, to forebear something or to submit to something, abusing his/her distress or dependence. None of these provisions has so far been, according to our information, used in connection with prosecuting forced labour.

<sup>57</sup> Although debt bondage as a form of coercion is hardly even present in the professional discourse in CZ, the research shows that such cases happen. Such information comes from the environment of prostitution in Vietnamese community.

13. The research has revealed a certain sequence in using of different forms of coercion. The first one would be withholding of wages or documents and only if these forms of coercion failed, others were applied, such as threats of violence or threats of denunciation to the authorities or restriction of freedom.
14. Direct violence as a form of coercion appeared mainly in prostitution; otherwise the trend to more sophisticated forms of coercion is apparent. Restriction of freedom appeared mainly in prostitution, sweatshops and domestic work.
15. While in prostitution restriction of freedom and violence was more frequent, in other sectors withholding of wages and documents as well as threats of denunciation to the authorities were more used.

#### Media monitoring

16. The notion “trafficking in human beings” rarely appeared in the press, usually only in connection with information about current criminal proceedings, the notion “forced labour” did not appear in the monitored titles. It is used only in connection with forced labour during World War II.
17. Information about exploitation of migrants did appear, however it was not presented as one of the purposes and hence part of trafficking in human beings. Trafficking in human beings was only mentioned in conjunction with prostitution and procuring. This results in confirming the false, but widespread, perception that trafficking in human beings is identical to prostitution and happens only for the purpose of sexual exploitation.
18. Prosecution or absence of prosecution for illegal labour in the press is mentioned often, but only with regards to the employees, not employers. It was repeatedly reported that employees were, or eventually were not deported as a result of their illegal employment and residence, but the issue of sanctions or the menace of sanctions for the employer was not dealt with at all in the articles.
19. The majority or relevant articles appeared in the regional supplements of the press, not in the nationwide sections. This fact probably influenced the im-

pact of the information in the regional supplements on the Czech population and it also shows how important this sort of information for the media is.

20. The effort to refute the presumption that migrants damage Czech labour market and take the jobs away from the CZ citizens is evident in most of the articles. The evaluation of migrants as a contribution to the Czech labour market is put in connection with the negative demographic development.<sup>58</sup>

#### Legal

21. Based on the cases studies and other information it can be assumed that the obligations of CZ to fulfil international and national legal requirements were repeatedly violated.
22. CZ has neither signed nor ratified any of the most significant international conventions for protection of migrant workers, such as, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990, ILO Migration for Employment Convention No. 97, Migrant Workers (Supplementary Provisions) Convention No. 143
22. With regards to consequent implementation of the prohibition of forced labour it is significant that forced labour is neither defined nor specifically characterised in the national legislation. It is only mentioned in the Bill of fundamental rights and freedoms in the provision on prohibition of forced labour and in the criminal code as one of the purposes of trafficking in human beings.
23. It is possible to raise doubts whether CZ fulfils its international obligations from the ILO Forced Labour Convention No. 29, according to which forced labour shall be suppressed and the exertion of forced labour shall be prosecuted as crime and the relevant punishments shall be consequently given.

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<sup>58</sup> According to some of the quoted assumptions of demographers, in 25 year there will be a shortage of 400 thousand workers. This shortage can be according to the media filled by migrants.

## RECOMMENDATIONS

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**(1) The existence of supply and demand for cheap labour, represented by legal and illegal migrants should be openly recognised, discussed and reflected in the measures and plans in the employment, social and migration policies.**<sup>59</sup> Although there is a clearly such demand and supply in CZ, not enough attention is paid to seeking of possibilities for them to meet in a legal environment, without risks for the weaker side – the potentially or actually exploited migrants. Hence, other flexible and often unlawful possibilities are used to meet the needs on both sides at present.

Ignoring the presence of often illegal migrants working in the low-income sectors results in the fact that this group is not reflected in designing of relevant plans and strategies for example in the area of social inclusion. Thus, a marginalised group can potentially be created, a group that is socially excluded with all the consequences and risks that are connected to it. On the other hand this group can be a benefit for both the country of destination and origin if the focus shifts in elimination of the negatives connected to illegal migration and employment and support is given to measures aiming at identification and using of the positives that the migrants represent for both countries.<sup>60</sup> Development does not have to be understood only from an economic perspective, as suggested in the definition adopted by the General Assembly of the UN.<sup>61</sup> Development is understood as a complex economic, social, cultural and political process that aims at continuous improvement of living conditions for the whole population and all individuals, based on their free and meaningful participation in development and just distribution of advantages and benefits resulting there from. If the group of often illegal migrants in low-income or unregulated sectors is left out of consideration, it impacts on the level or extent of information available in this area.

**(2) It is important to focus the research on gathering of data from this area of economic activities and on persons that are concerned with these activities. Only when**

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<sup>59</sup> According to LeVoy M., Verbruggen N., 2005, Ten Ways to Protect Undocumented Migrant Workers, Brussels, Platform for International Cooperation on Undocumented Migrants

<sup>60</sup> In the report „Towards a Fair Deal for Migrant Workers in the Global Economy“, ILO, Geneva, 2004, pp. 30 and 31, these positives involve reproduction of the population, net profit resulting from meeting the needs of the labour market; inflation prevention; offer of specific skills that are demanded on the labour market and an incentive to capital accumulation.

<sup>61</sup> Declaration on the Right to Development, Adopted by General Assembly resolution 41/128 of 4 December 1986

reliable data is available will it be possible to target accordingly measures and strategies so that they benefit both the state and migrants. Illegal migration and employment is neither in the interest of the government of the country of destination nor in the interest of the migrants. Lack of accurate data or ignoring this part of the reality can result in false adjustment of measures and plans in the area of migration, employment and social issues, which would have negative implication not only on the position of migrants, but on the possibilities of social, cultural and economic development of the destination country.

**(3) Consequent monitoring of fulfilment of the standards in the area of working conditions focused directly on the low-income sectors, in which migrants are often employed,** could help to lower the incidence of exploitative labour conditions. However, the pre-requisite of this would be that the primary attention would shift from prosecuting migrants for violation of immigration laws to prosecuting the employer and intermediaries who exploit them. The criminalisation of the workers does not have any long-term effect and does not deter employers from illegal employment of migrants. Furthermore, it would be important to discuss the issue of ensuring the monitoring of working conditions in areas that have so far not been monitored, such as domestic work, cleaning or prostitution.

**(4) Ensure awareness of migrant workers about their rights and especially about practical possibilities of enforcement of these rights.** The fact that illegal migrants do not have a chance to protect their rights and get into a practically lawless position in the country of destination is one of the main factors that enable their exploitation. The most important measure that could help to reduce or even eliminate labour exploitation of migrants would be the creation of conditions that would enable migrants access to their rights at the same level as citizens of the country of destination enjoy. If also migrants have the same possibility as citizens to demand from the state protection from violence and the same possibility to enforce respect to their rights, and even to turn to the court to demand financial compensation for the unpaid wages, it would significantly lower possibilities of exploitation.

**(5) The fundamental principles of international documents for protection of the rights of migrants,**<sup>62</sup> in particular those that state minimum standards of protection for all migrant workers and equal treatment of migrant and citizens especially with

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<sup>62</sup> In particular International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ILO Migration for Employment Convention (Revised), ILO Migrant Workers (Supplementary Provisions) Convention.

regards to working conditions, should be explicitly included in the relevant national legislation and reflected in the activities of the relevant authorities. Migrant workers and their families that are integrated to the society of the country of destination can contribute more to the development of that country through their work and participation in social, cultural and political life than migrants that are marginalised as a result of absence of access to rights and the resources of the society<sup>63</sup>.

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<sup>63</sup> Cholewinski, R., Protection of the Human Rights of Migrant Workers and Members of their Families under the UN Migrant Workers Convention as a Tool to Enhance Development in the Country of Employment



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## ANNEXES

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### Annex No. 1

#### Questionnaire

1. Do you know (have any information) about forced labour in the Czech Republic?
2. Do you know (have any information) about trafficking for forced labour?

If your answer on at least one of the questions 1 and 2 is “YES”, please proceed to questions 3 to 10.

If your answer is NO in both cases, please proceed to questions 8 to 10.

3. Is this information based on your own experience? If not, who shared the information with you?
4. In what capacity did you come across this information? (as a social worker, lawyer, law enforcement official, other)
5. What are the industries/labour sectors in which the forced labour took place? (for example agriculture, garment industry, construction work?)
  5. a What were the nationalities of the persons in forced labour?
  5. b How did this people arrive to CZ?
6. What were the working conditions?  
(working hours, payment of wages, freedom of movement, contract of employment, fees/deductions, notice period?)
7. What were the conditions of accommodation and general living conditions? (accommodation, rent, payment for food, heating etc., transport, payments of debts, privacy, freedom to leave, control over own belongings/documents)

8. Do you think that forced labour is a problem in the Czech Republic?
9. Who do you think is most likely to have contact with the migrants trafficked for forced labour?
10. Who do you think should be the key stakeholders addressing the situation of people trafficked for forced labour in CZ? (please be as specific as possible)

*If you have any materials that you would be willing to share with us to help us in our research, please enclose them.*

### Annex No. 2

#### Interviews – questions for professionals

1. What information do you have about trafficking into forced labour?
2. Is this based on your own experience? In what capacity did you find this information?

List of topics to cover:

3. Transport and initiative for working abroad; immigration status.
4. Promise of work (which sector), conditions and life, including expectations.
5. Reality of work, conditions, including pay, working hours, freedom to leave place of employment, freedom to contact own community in the host country or in the country of origin, freedom to make complaints (union issues), legality of work, legality of immigration status, health and safety provisions on the job.
6. Living conditions: accommodation provided, rate, privacy, freedom to leave, control over belongings.
7. Pressure and deception: violence (physical, sexual, threats (specific)), passport or ID card retention, incarceration, debt, forced deductions from wages.
8. Exit from situation: police raid, contacted someone, etc.

9. What rights/help are you aware trafficked people could ask for-who else are you aware are actors in this field? Who else would you approach?
10. Medium and long-term plans: how is future envisioned? What would help now and what would have helped then?
11. Policy development in organisation: what works? What is being changed? Who else do you work with on this issue?
12. What is your view on the spread of nationalities and genders over sectors? What evidence do you have for this?
13. What sources and/or people would you recommend we include in our research?
14. Any other relevant comments/questions/materials, e.g. contracts (blacked out names) if willing to share.

### Interviews-questions for migrants

1. What information do you have about trafficking into forced labour?
2. Is this based on your own experience? In what capacity did you find this information?  
  
List of topics to cover:
3. Background of the person: ethnicity, gender, age, family ties, family status (wealthy-poor-in between).
4. Situation before leaving: nationality, country of residence, employment, education, living arrangements, migration history.
5. Transport and initiative for working abroad; immigration status.
6. Promise of work (which sector), conditions and life, including expectations.
7. Reality of work, conditions, including pay, working hours, freedom to leave place of employment, freedom to contact own community in the host country

or in the country of origin, freedom to make complaints (union issues), legality of work, legality of immigration status, health and safety provisions on the job.

8. Living conditions: accommodation provided, rate, privacy, freedom to leave, control over belongings.
9. Pressure and deception: violence, (physical, sexual, threats (specific)); passport or ID card retention, incarceration, debt, forced deductions from wages,
10. Exit from situation: police raid, contacted someone, etc.
11. Medium and long-term plans: how is future envisioned? What would help now and what would have helped then?
12. What is your view on the spread of nationalities and genders over sectors? What evidence do you have for this?
13. What sources and/or people would you recommend we include in our research?
14. Any other relevant comments/questions/materials, e.g. contracts (blacked out names) if willing to share.

### Annex No. 3

Topic areas for the cases studies (the questions were also used as additional questions for interviews with migrants)

1. The situation before and during entering the country.

What was the respondent thinking/expecting before leaving the place of origin? Motivations for seeking work away from home?

Was there any third party arranging their travel/work? If yes, what was the relationship based on? (professional agency/member of family/ friend/member of community, etc.)

What were the promised arrangements? contract/owing money or favours/visa arrangements. Did the respondent fully understand what it means for him/her?

What was the worker's immigration status upon arrival?

Was any personal document/belonging taken away from the worker?

2. The working conditions.

What work was expected? Sub-contracted or otherwise? Any training/qualification requirements? What exactly did the respondent have to do?

What was his/her relation with the employer? (Was it a mixed personal/community relation?) Was there any collusion between recruiters and employers?

What were the working conditions? (working hours, health and safety, transport, etc)

Were the wages paid? How? How much? Timing of payment of wages? Any deduction to repay 'debts' from salaries? If yes, how much?

Was the right to free time, paid holiday, organising – respected?

3. The living conditions.

Was accommodation provided? If yes, what? Housing conditions (heating, rent, food, running water, how many people, facilities, sharing? etc.)?

Was the respondent allowed to choose/change the accommodation freely?

Was the respondent allowed to have social contacts?

Does the respondent have control over his/her privacy and possessions?

Access to information? Access to health care?

4. How the person got out of the situation (if she/he did).

Did the respondent get out of the situation?

If the worker is still in the situation: does he/she want to get out? If yes, what prevents him/her from doing so? If not, what makes him/her stay?

If the worker is out of the situation, how did that happen?

Were social workers, law enforcement institutions, advice centres or any other institution involved? What help was the respondent aware he/she could ask for?

Was a friend or a community member involved? Does the worker maintain social contacts with other workers/ community members etc...?

5. How the person concerned sees his/her situation.

Did the respondent receive any information/help? What were the needs?

Did he/she understand the information? Who provided the information? Was it useful? If yes, why? If not, why? What was missing?

Who provided the help? Was it useful? If yes, why? If not, why? What would have helped better?

Did the respondent get into contact with any state institution/body? Was it helpful? If yes, why? If not, why? Did the respondent have any fears about asking for help?

Based on his/her experience, whom would he/she trust in the future?

6. What his/her plans and expectations are for the future? If assistance/help/service was provided, what according to the person concerned, was and what was not useful for her/him?

What does the respondent think will happen now?

Does she/he want to go back home? If yes – why? If not – why?

If he/she will stay in the destination country, what will happen?

If he/she will go back to the country of origin, what will happen?

In retrospect, would he/she do things differently