

Trafficking for Forced Labour in Poland

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Chapter 1: Introduction and terminology

When human trafficking first made headlines in Europe 15–20 years ago¹, it was generally associated with the sex industry and its response to the growing demand for more and more sophisticated sex services involving very young women coming from different cultures, children and child pornography. It was also associated with a growing migration problem and the rapid growth of organised crime, both in Europe and worldwide.² It was a view shared by the international community, governments, researchers and non-governmental organisations. This can be seen in how the issue was covered or in the names of victim support organisations which mainly focused on women and sex services. Almost no one ever considered forced labour, especially not on the “old continent”. Asia or Africa might be affected, but not Europe – we seemed to think at that time.

In fact, the problem persists on a growing scale³. All European countries are affected. While forced labour varies from country to country, data collected e.g. by the ILO shows that no place in Europe is free from forced labour. Depending on the level of wealth, some countries and areas are countries of origin, transit countries or destination countries. A country of origin is one whose citizen becomes a victim of human trafficking. A transit country is one through which victims are transported or smuggled. A destination country is one in which people become victims of human trafficking for forced labour. Some countries, such as Poland, can play all three roles, while some others are countries of destination or origin only. No country is known to be a transit country only.

¹ The organisation of human trafficking. A study of Criminal Involvement in sexual exploitation in Sweden, Finland and Estonia. Stockholm 2008, p. 19; Buchowska, Stana (2006): Czynniki sprzyjające handlowi ludźmi. In Lasocik, Zbigniew (eds.): *Handel ludźmi. Zapobieganie i Ściganie*. Warszawa: Ośrodek Badań Praw Człowieka Uniwersytet Warszawski, p. 332.

² Trafficking in Human Beings in South Eastern Europe, UNDP, 2003; Elaine Pearson, Historical Development of Trafficking – The Legal Framework for Anti-Trafficking Interventions, in: *Challenging Trafficking in Persons. Theoretical Debate & Practical Approaches*, Nomos 2005; R.J. Kelly, J. Maghan, J.D. Serio, *Illicit Trafficking. A Reference Handbook*, ABC CLIO 2005; M. Tchomorova, *Trafficking in Women – Personal, Psychological and Social Problems in (Non)-United Europe*, in: *Trafficking in Women. Questions and Answers*, Animus Association, La Strada Foundation 2002.

³ ILO Minimum Estimate of Forced Labour in the World, Geneva 2005.

Forms of forced labour vary greatly across Europe. The differences are found in the industries involved, how the victims are exploited and who they are.⁴ For example in some countries people are forced into work on fruit and vegetable plantations while in others in small factories or on construction sites. In some countries, forced labour is a problem in private enterprises but there are others where state-owned enterprises take advantage of forced labour.⁵ In some countries, the majority of the victims are foreign nationals from the poorer countries of the European Union, but in others the victims come from non-European countries, including Asia. While most of the victims are adults, children are also exploited. Those engaging in forced labour come from different ethnic origins or are members of different organisations. They are *ad hoc* “consortia” of employment agencies and employers, or organised crime groups.⁶

This brief overview shows the extent of the problem. You might think that because we understand the different aspects of forced labour, we have extensive and in-depth knowledge of the problem. But we do not. Our knowledge is anecdotal, inaccurate and not based on evidence. We must build a system to study forced labour, collect reliable information and analyse the data.

This is not an easy task. The usual research procedures do not work well with forced labour and human trafficking. There are many barriers to consider. The most important one is that migrant victims often stay illegally in the country and their biggest fear is of the authorities rather than the perpetrators. Another barrier is the conspiracy of silence between perpetrators and victims. There are mental and cultural barriers which stop people from admitting that they are a victim of a crime, not to mention being exploited. According to recent experience of La Strada, this is a particular problem for men from Asian male dominated countries.⁷ Finally, organising forced labour involves conspiracy, and there is very little the police can do unless these crimes are reported by the victims (which they understandably are not doing) or by citizens. Many communities believe that it is not right to interfere with other people’s business and it is immoral to report others to the police, especially when foreign nationals are involved.

The objective of the project was to develop a model for studying forced labour. The idea was not to collect knowledge but to consider different ways to **study forced labour, describe it and analyse it** and ensure that the information we obtain is useful for cognitive and practical reasons, e.g. to prevent the problem or help the victims.

Forced labour did not happen overnight. The problem existed in different parts of the world, but it was not until Europe and the United States became affected

⁴ Forced labour and human trafficking. Handbook for labour inspectors. International Labour Office, Geneva 2008.

⁵ Trafficking in Persons Report. U.S. Department of State, 2010.

⁶ ILO Minimum Estimate of Forced Labour in the World, Geneva 2005.

⁷ This issue was presented at the First National Expert Meeting held in Poland in March 2009.

that it attracted public attention. We need to understand the social and legal context of forced labour in Poland. This is not to study the aetiology of the problem, but to identify areas that need more research and analysis, and to understand how the legal infrastructure addresses the problem of forced labour. This will be covered in Chapter 1. Chapter 2 presents the basic study assumptions forming the foundations of our work and a description of the methodology applied with a special focus on international cooperation. As much as it is important, international cooperation is not easy when you consider the social, cultural and legal differences between countries. Further in the report we will present everything we have been able to find out about forced labour. The picture is far from complete but that was not the point. In fact the objective was to gain a better understanding of the problem, identify sources of information and develop a data collection system to include statistics from government agencies, NGOs and research organisations. Next, this publication gives a description of the system which responds to cases of forced labour. Again, rather than attempting to provide a complete description, the report identifies specific parts or segments of the system which should help with further in-depth analyses and the establishment of effective mechanisms for eliminating forced labour from public life. We will analyse four aspects of the system. They are prevention of forced labour, victim identification, prosecution and penalisation of perpetrators and helping the victims. The final chapter tackles the question of how to collect knowledge on forced labour and use it effectively.

To ensure consistency in the terminology used in the report, it is important to define the main terms. Some terms have legal definitions based on national or international law and others have been defined in the course of our work.

The basic term used in this publication is **forced labour**. It consists of two words: labour and forced. Let us discuss them one by one. Labour is usually defined as a conscious and deliberate human activity designed to create and produce specific material or cultural goods which are the basis and condition of the existence and development of human society⁸. In legal terms labour is an occupation rendered in conditions of subordination for which people are paid⁹. The second term in forced labour is forced and can be defined as exerting an influence or pressure on another person against their will¹⁰. This can also mean subjecting another person to unlawful physical and/or mental pressure.

Forced labour (sometimes referred to as **compulsory**) has been defined in the International Labour Organisation's Convention No. 29 concerning forced or

⁸ T. Bulenda, Forced labour and employee exploitation – ethical and legal aspects, [w:] Human trafficking – prevention and prosecution, (red.) Z. Lasocik, Warszawa 2006, p. 292.

⁹ Work in conditions of subordination implies the rendering of work in a place and at a time agreed to in a contract and under the management of and for the benefit of the organisation (employer) that organises the work. Por. L. Florek, T. Zieliński, Labour law, Warszawa 2007, p. 2.

¹⁰ T. Bulenda, Forced labour, op. cit., p. 293.

compulsory labour¹¹. In the light of the convention forced labour or compulsory labour means “... *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*”. Because it is quite concise, let us consider the terms used in the definition. *All work or service* means any type of work, employment or occupation where the employment relationship or the legality of employment are not of importance¹². As a result, forced labour will include occupations that are illegal in a given country, such as prostitution or are not regulated in the labour law¹³, such as domestic work or forcing family members into work¹⁴. *Any person* refers to adults and children and it is of no significance whether the victim is a citizen of the country in which he was subjected to forced labour¹⁵. *The menace of any penalty* refers not only to penal sanctions but different forms of coercion, including the threat to use force (punishable threat), withholding of identity documents, restricting freedom and failure to pay for work done¹⁶. The definition also says that the person *has not offered himself voluntarily* for the work or service. This applies not only to people being forced into work but to people who are misled by their employers as to the conditions of work, employment or pay and cannot annul the employment contract or quit¹⁷.

The reason why we are quoting this convention and discussing it at length is because the Polish law does not include a definition of forced labour. However under Article 91 of the Constitution, international agreements ratified by Poland become part of the Polish legal system, making the above definition a legally binding definition in Poland. In addition, many countries follow the definition given in the ILO Convention No. 29¹⁸.

Our research shows that forced or compulsory labour very often involves human trafficking. Because we have often dealt with cases of human trafficking for forced labour in this work, it is important to quote the relevant definition. While Poland adopted its own definition of human trafficking in July 2010, for the purposes of this report we will be using the definition of the Palermo Protocol¹⁹. It says that **human trafficking** means “... *the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force*”

¹¹ Journal of Laws of 1959, No. 20, Heading 122.

¹² B. Andrees, A handbook for labour inspectors, International Labour Office, Geneva 2008, p. 4.

¹³ However, forced prostitution was not include in the research of the FLEX project.

¹⁴ Ibidem, p. 4.

¹⁵ Combating forced labour: a handbook for employers and business, International Labour Organization, Geneva 2008, p. 8.

¹⁶ B. Andrees, A handbook for labour inspectors, op. cit., p. 4.

¹⁷ Ibidem, p. 4.

¹⁸ ILO Convention No. 29 has been ratified by 174 countries.

¹⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which is a protocol to the Convention adopted by the United Nations against transnational organised crime (Journal of Laws of 2005, No. 18, Heading 160).

or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

The focus of our work was not only on cases of human trafficking for forced labour but also cases of slavery and exploitation. It is important to define **slavery** and **exploitation** because these terms are confused with forced labour. Let us take the definition from international law, i.e. the League of Nations Slavery Convention²⁰. It states that “*slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*”²¹. And so **slavery** is a condition in which a person is treated like an object (property right), where a slave is the object not the subject of law. Slavery is often considered an equivalent to forced labour. Although the differences are subtle, slavery is the state of being owned by a master and being treated like an object. While a victim of forced labour can also be treated like an object, it is the element of coercion that matters, and who the victims belongs to, if at all, is secondary. This is why slavery is treated as one of the forms of forced labour²².

To define **exploitation** let us refer to the Polish penal law. Under Article 304 of the Penal Code exploitation involves “*taking advantage ... of a natural or legal person or an organisation ... who is in a position of vulnerability and entering into an agreement with that person under which they are required to provide a service which bears no proportion to the reciprocal benefit*”²³. It is fair to say, however, that this definition does not include labour exploitation and was originally meant to cover situations closer to usury than to exploitation in the sense of slavery. As it is described here the exploitation occurs when an employer knowingly takes advantage of the employee’s position of vulnerability and enters with him into an employment contract or a civil law agreement which offers inferior conditions to the employee. A position of vulnerability does not only involve material things but also health, family, etc. And so an employee in a position of vulnerability could be a foreign national who has spent his savings to be able to work abroad. However, after he had arrived in the country of destination, he was told by his employer that he would be paid much less than originally promised. Exploitation also occurs when an employer pays the wages but it is much less than agreed in writing or orally between the employer and employee. Exploitation occurs when the employee is paid significantly less than

²⁰ Journal of Laws of 1930, No. 6, Heading 48.

²¹ Ibidem.

²² See: Trafficking for forced labour. How to monitor the recruitment of migrant workers, International Labour Organisation, Geneva 2006, p. 5.

²³ Journal of Laws of 1997, No. 88, Heading 553.

the going rate for the specific job. In fact it is the only definition of the exploitation.

Because the report frequently uses the terms of **victim** and **perpetrator** we need to define victims and perpetrators of forced labour. A victim is someone who has been forced, exploited or enslaved to work or provide a service. We considered people victims when they were harmed by a perpetrator of (or person accused of) the crime of human trafficking for forced labour. Victims included also those who received help under the *Programme of support and protection for the victims/witnesses of human trafficking*, a scheme run by the La Strada Foundation for the Ministry of the Interior and Administration. This included people who were considered victims of forced labour by other non-governmental organisations which support migrant victims.

A perpetrator is someone who has been taking advantage of, forcing or enslaving a victim to work or provide a service, irrespective of whether he has been tried for forcing people to work (there is no such crime in Poland). A perpetrator is also someone who has been involved in the *recruitment, transportation, harbouring or receipt of victims*. And so a perpetrator is someone who has been sentenced for or charged with human trafficking for forced labour.

The report also uses the term **irregular migration** which we define according to IOM nomenclature as the crossing of a state border and/or staying in a country in violation of national or international law. Illegal/irregular migration also refers to foreign nationals who have entered a country legally but their visas have already expired²⁴.

²⁴ Compare: World migration 2008. Managing labour mobility in the evolving global economy, International Organization for Migration, Geneva 2008.

Chapter 2: The Polish context

2.1 Social context

Owing to the specifics of forced labour (as defined above), foreigners are its most common victims. Local citizens are much more often exploited, treated badly at work or become victims as a result of other violations of the employee's rights. If this is the case, then the extensive area of social phenomena related to the movement of human populations, namely migrations, must be of concern to anyone who deals with the issue of forced labour.²⁵

In Poland, the migration issue appeared only after 1989, i.e.: after system transformations. In the past decades, foreigners were not very numerous, so actually they did not draw the society's attention. The ethnic origin of newcomers was also of much importance as Poland became most often the country of destination for citizens of other European countries. The only multi-ethnic groups were students from a few African and Asian countries, including Angola and Vietnam, who landed in Poland as part of the programme aimed at supporting the youth from those countries which were getting involved in the "development of socialist management methods". The programme was implemented collectively by the Eastern Bloc countries, whereas particular members of that community were responsible for supporting specified countries. Also various political refugees, who gained support from the group of socialist countries, found a shelter in Poland. Such was the case with e.g.: a large group of Greeks who left their country after the military junta coup in 1967.

The situation changed quite fundamentally at the beginning of the nineties. The opening of borders, the alleviation of the visa regime, the collective fascination with capitalist forms of economic management and the ubiquitous freedom, intensified the movement of people in Eastern Europe in all possible directions. In Poland, citizens of neighbouring countries, such as, predominantly Ukraine, Russia and Belarus, the Baltic countries, and in particular Lithuania, as well as inhabitants of the Balkan countries, mainly Romania and Bulgaria started to arrive more often in Poland.

The first social response to the effects of migration movements and economic mobility (trade) was rather negative in Poland. Polish people were not mentally prepared for "sharing" their country with foreigners. Such critical attitudes were even reinforced by media, which presented foreigners as smugglers and perpetrators of serious crimes. In time, the situation however changed and already in the late nineties, Poles started to perceive also positive features in

²⁵ To prove the importance of this issue, suffice it to mention that the Report of the International Organization for Migration addressing the issue of the world labour mobility covers over 500 pages, see "World Migration 2008. Managing Labour Mobility in the Evolving Global Economy, IOM 2008".

foreigners. First and foremost, it turned out that foreigners could be very useful in performing some types of work and that they could enrich the native culture. In consequence, the presence of migrants was accepted by the society and tolerated by the state that did not have any coherent strategy of dealing with the growing number of migrants. Moreover, Poland had had a relatively liberal visa regime for many years, which by no means served the purpose of consciously creating migrant populations in Poland. In the meantime, two other nationalities appeared, which since their arrival, have been playing a key role in the Polish labour market: the Vietnamese and the Armenians.

The legal situation of migrants in Poland changed fundamentally after Poland's accession to the Schengen information system. The new situation also forced the state authorities to start a debate on the creation of a coherent and long-term migration policy, including the protection of migrants' work. The state authorities did not treat the issue as specifically important, given the still modest number of migrants, the dominance of citizens from neighbouring European countries and the absence of overwhelming adverse effects of the foreigners' presence in Poland. Also for that reason, there was no intrinsic institutional sensitivity in Poland to the ill-treatment of foreigners. The lack of interest and possibly negligence on the part of state authorities manifested themselves, among other situations, in the fact that it was not until 2007 when the National Labour Inspectorate was vested with respective powers (and obligations) to oversee the employment of foreigners for its legality; however farms and households were excluded.

Another important factor that must be considered when analysing the work of foreigner in Poland, is the massive outflow of work force from Poland in 2004. It is estimated that during this period, between one and a half million and two million people emigrated to work in other European countries (mainly English-speaking countries). Even when we consider the fact that part of them have already returned, the loss of work force is still considerable and must be compensated. Undoubtedly, foreigners are the only new source of labour.

Just like everywhere else, migrants in Poland are migrants who stay in Poland legally, namely in accordance with local regulations and those who stay in the state's territory by violating such regulations. The analogous situation concerns a work permit – some of them hold such a permit and some do not. Obviously, in these two cases, the dominance of the latter, i.e. those who infringe extent immigration regulations and work without a required permit, is conspicuous. The following two examples are the most characteristic ones: it is estimated that in Poland there are between 300,000 and 500,000 Ukrainians who work illegally, while the number of work permits issued to citizens of Ukraine is slightly over 3,000. The situation looks similar with the citizens of Vietnam. While Polish consulates in Vietnam issue from 500 to 700 visas annually, the number of Vietnamese people in Poland is estimated at 50,000–60,000.

This situation is further proven by figures obtained from the National Labour Inspectorate (in Polish: PIP). During the past three years, inspectors of this institution detected roughly 1,000 cases of illegal employment of foreigners who

are working without a required work permit. At the same time it is observed that along with gaining experience in this type of controlling activity, the number of identified migrants hired by violating applicable legal provisions grows year by year.

Criminal activity of migrants in Poland is a significant aspect that reflects their situation. In the years 2004–2009, the number of such criminal acts dropped considerably. While in 2004 foreigners committed about 3,800 crimes, in 2009 this number amounted to only 2,000. The disparity in figures, which reflect the victimological vulnerability of this group is even much more visible. Thus, in 2004, migrants were victims of about 4,300 crimes, while in 2009 this number dropped to 1,300.

2.2 Legal context

Poland, being a democratic state of law, is morally bound by such documents as the Universal Declaration of Human Rights from 1948, which in its Article 4 bans slavery and proclaims that no one shall be held in slavery or servitude, and that slavery and the slave trade shall be prohibited in all their forms. At the same time, the same document contains provisions in Article 23, in which the international community declared that everyone had the right to free choice of employment.

Poland is also a party to almost all important international conventions, which address slavery, human trafficking or forced labour, at global and regional (European) level. The following acts of international law must be mentioned: the Slavery Convention signed on 25 September 1926²⁶, which defines slavery and slave trade and also determines (Article 5) that forced labour can only be applied in exceptional situations; the International Covenant on Civil and Political Rights from 16 December 1966²⁷, which in its Article 3 clause 3 prohibits forced or compulsory work, the Convention on the Rights of the Child from 1989²⁸ and the optional protocol thereto on the sale of children, child prostitution and child pornography from 25 May 2005²⁹, which impose the obligation on states to protect children from any economic exploitation as well as any work and activities which could be harmful or hazardous to their physical and mental or social development; last but not least, the (European) Convention for Protection of Human Rights and Fundamental Freedoms adopted in 1950³⁰ which explicitly addresses the issue of forced labour: Article 4 of the said Convention prohibits slavery and servitude, as well as forced and compulsory work.

²⁶ O.J. from 1930 No. 6 item 48.

²⁷ O.J. from 1977 No. 38 item 167.

²⁸ O.J. from 23 December 1991 No. 120 item 526.

²⁹ O.J. from 2007 No. 76 item 495.

³⁰ O.J. from 1993 No. 61 item 284.

A special document, which becomes more and more operative in the European legislature market is the Charter of Fundamental Rights of the European Union³¹. In this case, the ban on forced labour was defined from the point of view of the subject that performs work. In Article 5 of the Charter, the European legislator proclaims that no one shall be required to perform forced or compulsory work. The Charter also acknowledges (Article 15) that everyone has the right to engage in work and pursue a freely chosen or accepted occupation.

The International Labour Organization (ILO) plays a special role as regards the legislation related to forced labour. Convention No. 29 on forced or compulsory labour adopted by the said Organization in 1930³² proclaims that forced or compulsory work is all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily (Article 2).

Other significant conventions enacted by the ILO that address forced labour and its elimination are as follows: Convention No. 95 of the ILO on the protection of wages³³ from 1949, Convention No. 105 on the abolition of forced labour³⁴ dated 25 June 1957, which incorporates the obligatory immediate and complete abolition of forced or compulsory work, as well as Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour³⁵ from 17 June 1999.

2.2.1 The Constitution of the Republic of Poland

Although Poland is a party to almost all instruments of international law on human trafficking for the purpose of engaging them in forced labour, in the national law, forced labour has not been penalised. However, Polish legal provisions protect employees from exploitation and ill-treatment by employers. And although forced labour has not been prohibited in Poland, it is not the case that a victim of exploitation or forced labour is helpless and forced labour and exploitation are not prosecuted. Already the Constitution of the Republic of Poland³⁶, which is the primary normative act in the hierarchy of sources of laws, lays down that “*Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.*” (Article 24 of Poland’s Constitution). And despite generality of the quoted provision, the state system legislator incorporated this provision in the core section, namely in Chapter 1 of the Constitution of the Republic of Poland. The Chapter thus contains rules that

³¹ O.J. of EC from 18 December 2000.

³² O.J. from 1959 No.20 item 122.

³³ O.J. from 1955 No. 38 item 234.

³⁴ O.J. from 1959 No. 39 item 240.

³⁵ O.J. from 2004 No.134 item 1474.

³⁶ J.L. from 1997 No. 78 item 483.

govern the political, social and economic system of the Republic of Poland. This in turn allows the state to step in to oversee relations between employees and employers so that none of the parties to a labour process could be exploited/harmed by the other party³⁷. However, such labour protection is understood quite broadly by the Polish state system legislator. Not only is this the matter of the protection of employees' interests but also of the interests of employers, or even of consumers of manufactured goods or services.³⁸ Nevertheless, employees are under special care because it is the employee who in economic terms is undoubtedly the less powerful party in the employee-employer relationship.³⁹

The Constitution of the Republic of Poland ensures, however, not only the oversight of working conditions (Article 24 of the Constitution) but also the freedom to choose and pursue occupation and choose a place of work. In the light of Article 65 clause 1 of Poland's Constitution, public authorities cannot impose employment or decide about the choice of employment and a place of work.⁴⁰ This signifies that the Constitution prohibits forced or compulsory labour⁴¹, although only implicitly. There are however linkages with corresponding provisions in Convention No. 29 of the ILO, which define forced labour as all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily. It is true that Poland's Constitution provides for the introduction of the obligation to work by statute but provisions of Conventions Nos. 29 and 105 of the ILO regulate this issue in a similar manner. However, every introduction of the obligation to work must each time be justified by the legislator and caused by exceptional situations. The Polish law specifies such exceptions explicitly; therefore the obligation to work is legitimate only in the following situations: prevention of natural disasters and elimination of their effects⁴², the protection of the state⁴³, the penalty of imprisonment⁴⁴, the penalty of restricted liberty⁴⁵, or

³⁷ *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (L. Garlicki, et. al.), published by Wydawnictwo Sejmowe 2005, Chapter 1 „Rzeczpospolita”, Article 24, p. 3.

³⁸ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, published by Wydawnictwo C.H. Beck 2009, p. 142.

³⁹ P. Winczorek, *Prawo konstytucyjne Rzeczypospolitej Polskiej*, published by Wydawnictwo Liber, Warsaw 2000, p. 37.

⁴⁰ *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (L. Garlicki, et. al.), published by Wydawnictwo Sejmowe 2005, Chapter 2 „Wolności, prawa i obowiązki człowieka i obywatela”, Article 65, p. 3.

⁴¹ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, published by Wydawnictwo C.H. Beck 2009, p. 337.

⁴² J.L from 2002 No. 66 item 558 as amended.

⁴³ J.L from 2004 No. 241 item 2416 as amended.

⁴⁴ J.L from 1997 No. 90 item 557 as amended.

⁴⁵ J.L. from 1997 No. 88 item 553 as amended.

provisional detention⁴⁶. Another crucial fact is that the obligation to work can only be imposed on citizens of the Polish Republic provided that they are to fulfil constitutional obligations, including but not limited to the protection of their Homeland⁴⁷. One can infer from the present legal provisions that they protect the citizens from any arbitrary introduction of the obligation to work by public authorities.

The Constitution of the Republic of Poland also contains the provision, which prohibits any permanent employment of children under 16. Article 65 clause 3 lays down that “*The permanent employment of children under 16 years of age shall be prohibited. The types and nature of admissible employment shall be specified by statute*”. On the one hand, the wording of the quoted provision is not clear enough and it may be construed in different ways. One may, hence, conclude that the Constitution provides for the permanent employment of children under 16 but this requires the application of respective statutory provisions. On the other hand, the foregoing provision may be construed as a peremptory ban by the Constitution on the permanent employment of children and the admission of temporary employment of children under 16 only in specified situations⁴⁸.

On the grounds of the above quoted provisions of Poland’s Constitution one cannot infer that forced labour in Poland is prohibited although we are bound to forbid it on the grounds of international regulations Poland is a party to. However, one can conclude that despite the fact that the Constitution does not provide for a ban on forced labour, there are still constitutional grounds to deem human exploitation or forced labour forbidden. This stems from, first and foremost, the wording of Article 65 clause 1 of Poland’s Constitution which ensures the freedom to choose and pursue an occupation and choose a place of work. And although the further wording of the said provision sets forth that an obligation to work can be imposed by statute, this applies to exceptional situations only, which are explicitly specified. The same position was expressed in Article 4 of the European Convention for Protection of Human Rights and Fundamental Freedoms. The European legislator did forbid forced labour but at the same time it admitted the obligation to perform work in specified situations. For the sake of clarity, these works are works that citizens may not want to perform, such as any work performed by persons sentenced to imprisonment or when preventing a natural disaster. Therefore, the obligation to work as construed above cannot be defined as a violation of the ban on forced labour.

⁴⁶ J.L from 1997 No. 90 item 557 as amended.

⁴⁷ Read with B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, published by Wydawnictwo C.H. Beck 2009, p. 338.

⁴⁸ Szerzej: *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (L. Garlicki, et. al.), published by Wydawnictwo Sejmowe 2005, Chapter 2 „*Wolności, prawa i obowiązki człowieka i obywatela*”, Article 65, p. 8.

2.2.2 Polish Penal Law

As far as Polish criminal provisions which penalize trafficking in humans for the purpose of engaging them in forced labour are concerned, the issue is more intricate due to the latest amendment of the Penal Code, which concerned the very crime of human trafficking. Prior to the said amendment, i.e.: before 7 September 2010, the Penal Code had described the crime of trafficking in humans in its Article 253. This act was ranked in the category of crimes against the public order. The contents of the Article was as follows: *“Whoever is trading in persons even with their consent, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years”*. In addition, the Penal Code also contained Article 204 clause 4, which penalised any conduct that consisted of luring or abducting any person with the intent to engage that person in prostitution abroad. Such conduct was subject to the penalty of imprisonment for the period of one to ten years. On the other hand, provisions which introduced the Penal Code incorporated Article 8, which reads as follows: *“Whoever causes the hand-over of another person to make such person a slave or trades slaves, shall be subject to the penalty of imprisonment for a minimum term of 3 years”*. Hence, in Poland, the crime of human trafficking has been so far penalised on the basis of three legal provisions. However, as one can easily conclude, these provisions provided for different forms of sentencing. Thus, the perpetrator, in the case of human trafficking with the intent to engage the person into prostitution, could be sentenced on the grounds of Article 253 of the Penal Code, which provided for the imprisonment for the term of 3 to 15 years, or under Article 204 clause 4 of the Penal Code, which imposed the penalty of imprisonment for the term of “only” 1 to 10 years. Such disparity of sanctions in the aforementioned provisions raised many objections on the part of penal prosecution bodies. The legislator’s reason for treating the perpetrator leniently as described in Article 204 clause 4 of the Penal Code is hence vague when compared to the much more severe punishment envisaged for the perpetrator of the act described in Article 253 of the Penal Code. Moreover, the perpetrator of the act under Article 204 clause 4 of the Penal Code had to lure or abduct his/her victim, hence fulfil additional attributes of the act. The perpetrator of the crime under Article 253 of the Penal Code did not have to fulfil any additional attributes as the act described in the said Article could be committed even with the victim’s consent⁴⁹.

The most material change in the amended Penal Code concerned the incorporation of the definition of human trafficking. The absence of this definition restrained the interpretation of provisions that penalised human

⁴⁹ Compare to: Krzysztof Karsznicki, *Analiza polskiego prawa pod kątem efektywności ścigania handlu ludźmi do pracy przymusowej*. The study was prepared in 2008 for *Instytut Wymiaru Sprawiedliwości* (Institute of Justice) in Warsaw.

trafficking by penal persecution bodies and justice administration⁵⁰. Given this context, it was forced labour that was the most dubious issue because some other issues concerning human trafficking with the intent to engage in forced labour could be classified as crimes against rights of persons who performed paid work. On the other hand, a more lenient penal sanction is envisaged for such crimes because in Polish penal law, crimes against the employee's rights are treated as a misdemeanour and not as a crime as in the case of human trafficking. For this reason, *Ośrodek Badań Handlu Ludźmi* (the Human Trafficking Studies Center) stressed many times the need of introducing the definition of human trafficking to the Penal Code.

Finally, after a six-year debate, the Polish legislator decided to introduce a legal definition of human trafficking to the Penal Code. And despite the fact that the Polish penal law does not yet incorporate any provision that penalises forced labour, the definition of human trafficking acknowledges, nevertheless, that any work or service of a compulsory nature, including slavery, is a form of human trafficking.

Hence, the said definition renders that *“Trafficking in persons shall mean the recruitment, transportation, delivery, transfer, harbouring or receipt of persons, by means of force or an illegal duress, abduction, deception, inducing into error, or unfair profiting by somebody’s error, or incapacity of due understanding of an undertaken action, the abuse of a position of vulnerability, or the abuse of a critical position or the state of helplessness, the giving and receiving of a financial or personal benefit, or a promise thereof to a person exercising custody or having control over another person; for the purpose of exploitation, even with such person’s consent, specifically in prostitution, pornography or other forms of sexual exploitation, at work or in service of a compulsory nature, begging, slavery (underlined by the authors) or other practices of exploitation degrading human dignity or for the purpose of obtaining cells, tissues or organs against statutory provisions. If the conduct of the perpetrator affects a minor, such conduct shall constitute trafficking in persons even if no methods or means mentioned in clauses 1-6 have been applied.”*

One can easily observe that the construction of the definition of human trafficking applied in the Polish penal code is close to the definition proclaimed in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements *the United Nations Convention Against Transnational Organized Crime*⁵¹, which was adopted by the General Assembly of the United Nations on 15 November 2000⁵². Alike the Palermo Protocol, the Polish legislator selected a conclusive list of attributes that

⁵⁰ See: Joanna Warzyszkiewicz, *Opinia funkcjonariuszy ochrony porządku prawnego na temat wprowadzenia definicji handlu ludźmi do kodeksu karnego* [in:] *Handel ludźmi. Zapobieganie i ściganie*, (ed.) Zbigniew Lasocik, *Ośrodek Badań Praw Człowieka*, Warsaw 2006, p. 231–235.

⁵¹ The colloquial name of this document is the Palermo Protocol and this name is applied in this report.

⁵² J.L. from 2005 No. 18 item 160.

are characteristic to this act, including but not limited to, the recruitment or transportation of victims. Also the manner of committing the crime consisting in trafficking in persons is a closed catalogue, e.g.: the use of violence or the induction into error. However, the perpetrator (subjective party) includes intent with a simultaneous indication of aims of the perpetrator's action. The first aim is hence to exploit a person. The manner of exploiting a person by the perpetrator is for the legislator an open category. The legislator only enumerated the most specific situations, such as prostitution, pornography, sexual exploitation, begging, and also work or service of compulsory nature or slavery. Thus, the legislator deemed forced labour and slavery to be one of the forms of trafficking in persons, being at the same time crimes subject to prosecution.

In addition to the introduction of the definition of human trafficking and the recognition of forced labour as one of the forms of this crime, the legislator also defined slavery. In the light of Article 115 clause 23 of the Penal Code, slavery is “(...) a state of dependence whereby a human being is treated as property”. This definition is close to the definition applied in the Geneva Convention on Slavery dated 25 September 1926 r.⁵³ The Convention defined slavery as the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised.

In the amended Penal Code, provisions in Article 204 clause 4 and Article 253 were deleted and Article 189 a. was added. The present provision that penalises human trafficking reads as follows: “*Clause 1. Whoever commits trafficking in persons shall be subject to the penalty of imprisonment for a minimum term of 3 years. Clause 2. Whoever makes preparations to commit the offence specified in Clause 1, shall be subject to the penalty of imprisonment for the term of 3 months to 5 years.*” The provision so constructed and addressing trafficking in humans, introduced some constituents as compared to Article 253 of the Penal Code applied hitherto.

Firstly, the disposition of the provision was transformed. The expression: “is engaged in trafficking in persons” was replaced with “commits trafficking in persons”. Moreover, Article 253 of the Penal Code contained a stipulation that one deals with trafficking in persons also when the victim gives his/her consent to it. While in Article 189a there is no reference to the victim's consent because this is determined in the definition discussed above, provided in Article 115 clause 22. The sanction remained intact because trafficking in persons is still subject to the penalty of imprisonment for a minimum term of 3 years, which signifies that this act is a crime. The legislator also penalised the preparations to commit such a crime. Here, the penalty of imprisonment ranges from 3 months to 5 years.

Secondly, the placement of the provision on trafficking in persons changed. So far, the provision of Article 253 of the Penal Code had been placed in the category of crimes against the public order (Chapter XXXII), while Article 204

⁵³ J.L. from 1930 No. 6 item 48.

clause 4 (the luring or abduction of a human being with the intent to engage in prostitution abroad) was placed in the category of crimes against sexual freedoms and decorousness (Chapter XXV). Presently, Article 253 and Article 204 clause 4 are deleted and replaced with only one provision, specifically Article 189a of the Penal Code placed in Chapter XXIII on crimes against freedoms.

The wording of Article 8 in Provisions which introduce the Penal Code was also amended. The present provision was defined as follows: “*Whoever causes the hand-over of another person into the state of slavery or keeps such person in such state, or trades slaves, shall be subject to the penalty of imprisonment for a minimum term of 3 years*”. In the previous edition of the said Article the expression “keeps such person in this state (of slavery – reminded by the authors)” was absent while only the take-over of a person into the state of slavery and trade in slaves were forbidden.

Obviously, the amendment of the Penal Code, in its part concerning trafficking in persons, regulates many issues. Mostly, the definition of trafficking in persons introduced to the Penal Code, although not flawless, does define the scope of this crime. This, in turn, allows for taking more effective measures by prosecution bodies and the judiciary while counteracting this crime. Although the definition raises many reservations, specifically regarding a comprehensive nature of casuistry in terms of attributes of the crime consisting in human trade and the manner of committing such crime, one should, nevertheless, restrain oneself from assessing this definition because the coming years will prove whether the definition has passed an exam, whether the introduction of the definition has translated actually itself into more effective work of prosecution bodies and whether the phenomenon consisting forced labour, including slave trade, is effectively prevented in Poland.

The amendment of the Penal Code also regulated one more issue, namely the issue of penalisation for human trafficking as such as well as the issue of luring or abducting with the intent to engage in prostitution abroad. So far, there have been two separate prohibited acts, distinguished by the Penal Code in terms of sentencing although both of these two provisions concerned *de facto* human trade.

Furthermore, in addition to the provisions discussed above, the Polish Penal Code penalizes any conduct which consists of violating rights of persons who perform paid work. Most of all, provisions on a malicious or persistent violation of the employee’s rights (Article 218 clause 1 of the Penal Code); the exposure of the employee’s life or health to danger (Article 220 clauses 1–3), and the failure to notify of an accident at work or an occupational disease of a person who performs paid work (Article 221) are the most important.

Article 218 clause 1 of the Penal Code penalises any conduct which consists of a malicious or persistent violation of the employee’s rights that result from an employment relationship or social insurance. This act is subject to the penalty of fine, the penalty of the restriction of liberty or imprisonment for a maximum term of 2 years. However, the discussed provision only applies to those persons

who are employed under an employment relationship and not civil law agreements (e.g.: an agreement to perform a specified task)⁵⁴. The violation, by commission or omission, of the provisions of Article 218 of the Penal Code may pertain to e.g.: the non-payment of remuneration or the non-payment of health insurance contributions on behalf of the employee. It also needs highlighting that Article 218 of the Penal Code is read in conjunction with provisions in Articles 281–283 of the Labour Code (hereinafter referred to as: L.C.), which also envisage the employer’s liability for a misdemeanour against the employee’s rights. Here, the relation materialises itself by the fact that the violation of the provisions of Articles 281–283 (which are misdemeanours), become a crime under Article 218 of the Penal Code⁵⁵, if the perpetrator’s conduct consists of a malicious and persistent violation of the employee’s rights⁵⁶. For this reason, some penal law theorists claim that Article 218 clause 1 of the Penal Code constitutes, in its sense, a “graded type of misdemeanours” under Articles 281–283 of the L.C.⁵⁷

On the other hand, Article 220 of the Penal Code penalises the conduct of the employer or any other person responsible for work which consists of the failure to provide secure and hygienic work conditions to the employee, and which consequently may lead to the loss of life or a grievous detriment to health. Thus, one can infer from the wording of Article 220 of the Penal Code that the said provision protects not only the employee’s rights as such but also his/her life and health⁵⁸. The conduct described in Article 220 of the Penal Code is subject to the penalty of imprisonment for a maximum term of 3 years. Article 220 of the Penal Code can also be treated as a “graded type of misdemeanour” under Article 283 clause 1 of the L.C.⁵⁹

Another provision in the Penal Code, aimed at the protection of employee rights, is Article 221. This provision penalises any conduct, which consists of the failure to notify a competent body within required timeframes of an accident at work or an occupational disease by a person liable for such notification. This provision protects hence the employee’s rights to benefits that he/she is entitled to in connection with an accident at work or an occupational disease, but also

⁵⁴ *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 712.

⁵⁵ However provisions in Article 218 of the Penal Code do not square in full with those contained in Articles 281–283 of the L.C. since the provisions in the Labour Code are more inclusive and contain a more comprehensive catalogue of employee issues subject to protection.

⁵⁶ *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 711.

⁵⁷ W. Radecki, *Granice ingerencji prawa karnego w stosunki pracy*, published by Prokuratura i Prawo, 6/2005, p. 13.

⁵⁸ *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 717.

⁵⁹ W. Radecki, *Granice ingerencji prawa karnego w stosunki pracy*, published by Prokuratura i Prawo, 6/2005, p. 13.

secure and hygienic work conditions⁶⁰. Article 221 of the Penal Code, alike Articles 218 and 220 of the Penal Code, also corresponds to a provision in the Labour Code, namely Article 283 clause 2 sub-clause 6 of the L.C.⁶¹.

It is true that the above category of conducts consisting of the violation of employee rights does not penalise forced labour but it still constitutes an additional form of protection against exploitation at work, especially in such cases which are not eligible as human trafficking. One can conclude hence, that these provisions protect the employee from exploitation at work. Article 189a of the Penal Code protects persons from forcing them to work by treating forced labour as a form of human trafficking.

2.2.3 Institutions dealing with trafficking in persons

In Poland, there are several institutions which counteract trafficking for forced labour, such as the Prosecutor's Office, Police, Border Guard and the labour inspectorate. While the role of the Prosecutor's Office, the Police and the Border Guard is clear as these are prosecution bodies, the responsibilities of the labour inspectorate in the scope of the elimination of forced labour are quite specific. The National Labour Inspectorate is the only Polish entity empowered to control employment and work conditions, the observance of the occupational health and safety regulations, etc. Moreover, since mid-2007, the powers of the labour inspectorate have been widened to also comprise the control of the legal employment of foreigners in Poland. Until then, the issues related to the legality of the employment of foreigners had been dealt with by, in the said order, provincial labour offices, powiat local governments, or services subordinated to province governors⁶².

Presently, responsibilities of labour inspectors include controlling the employment of foreigners for its legality, in cooperation with officers of the Border Guard. In April 2008, an agreement was thus signed between the National Labour Inspectorate and the Border Guard. By virtue of this instrument, labour inspectors and officers of the BG not only control jointly the employment of foreigners and their stay for their legality but they also exchange information about the foreigner's work in Poland. The substantial constituent of this agreement is also the concept of enhancement of labour inspectors' and Border Guard officers' skills by the exchange of information and experience.

Obviously, the agreement between the National Labour Inspectorate and the Border Guard is a very advantageous solution. Joint controls related to the

⁶⁰ *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 722.

⁶¹ W. Radecki, *Granice ingerencji prawa karnego w stosunki pracy*, published by Prokuratura i Prawo, 6/2005, p. 13.

⁶² See <http://www.pip.gov.pl/html/pl/info/doc/99030075.pdf>.

monitoring of work performed by foreigners in Poland is an unquestionable advantage for these two entities. It is an advantage not only in the scope of the identification of a larger number of cases of forced labour or exploitation at work but also in the exchange of knowledge and experience between representatives of these institutions. Labour inspectors can thus gain knowledge about the legality of stay of foreigners in Poland while officers from the Border Guard can gain knowledge about labour provisions and regulations which concern the issue of work conditions in Poland.

Chapter 3: Data and methods

3.1 Research questions

The basic objective of the EU-funded project *Trafficking for Forced Labour and Labour Exploitation (FLEX) – towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* was to gain a deeper understanding of human trafficking for forced labour in Estonia, Finland and Poland and strengthen the cooperation and exchange of information between organisations involved in identifying and investigating human trafficking and forced labour in these three countries. The specific objective was to study the problem of forced labour using a consistent methodology for collecting and analysing quantitative and qualitative data and to evaluate the legal framework of human trafficking for forced labour on the basis of the current laws, criminal cases and the decisions of the judiciary. The project's other key objective was to build channels of cooperation and exchange of information between the relevant national and international institutions in Estonia, Finland and Poland. This was realised through national and international expert meetings.

The FLEX project also gives Polish authorities a great opportunity to discuss forced labour and labour exploitation issues in Poland. Since 2007, law enforcement bodies or the labour inspectorate have not taken these issues into consideration, despite that members of the Human Trafficking Studies Centre have raised the forced labour issue many times since 2004.

The purpose of the research was to learn as much as we could about the problem of trafficking for forced labour in Poland. In doing this we looked at the problem from two angles. One was to describe the phenomenology and the other to understand how the relevant institutions identified and investigated human trafficking for forced labour. The reason for this holistic approach was the fact that very little is known about human trafficking for forced labour in Poland. While the relevant institutions can quite successfully deal with cases of human trafficking for sexual exploitation, they do not do so well when the cases do not involve the sex industry. Because forced labour is seen as a new phenomenon, law enforcement and labour inspectorate officers are still learning how to deal with it. This is why the results of this study will be made available to those officials who are responsible for eliminating forced labour. What makes this project so critical is that the problem is poorly researched in Poland⁶³. While we

⁶³ The only work on forced labour comes from the Human Trafficking Studies Centre Warsaw University: M. Koss, Z. Lasocik, Ł. Wiczorek, Assessment of legal framework and responses of the justice system to trafficking and forced labour in Poland, Human Trafficking Studies Centre Warsaw University, Warszawa 2008; and J. Filipowicz, Z. Lasocik, Ł. Wiczorek, Study on trafficking for forced labour in Poland. Susceptible economic sectors and assistance structures for victims of forced labour, Human Trafficking Studies Centre Warsaw University, Warszawa 2010.

still know very little about forced labour, human trafficking for sexual exploitation⁶⁴ has been increasing since Poland's accession to the European Union in 2004 accompanied by a new form of human trafficking, i.e. for forced labour.

Because forced labour in Poland is a fact, we decided to take part in an international research project⁶⁵. The objective was to build a model for collecting data about forced labour. Although human trafficking for forced labour is not a new problem, it was not treated seriously enough.

The study had several objectives. The priority was to establish which sectors are most likely to use forced labour, and what methods were employed by perpetrators, such as threats, physical violence or debt bondage. Another area of interest were the conditions of work and pay of victims and their status in the destination country, how they were recruited / trapped into forced labour or how they learned about the job which eventually turned out to be slave labour. It was also important to understand who the victims of forced labour in Poland are, and who the perpetrators are. Our study was also designed to establish how the victim was identified and what happened afterwards, in particular whether they have received any assistance or compensation. We studied case files and expert interviews to establish whether Polish law enforcement agencies have cooperated with other countries during their investigations when the victims were foreign nationals.

We carried out similar analyses of Polish victims of forced labour abroad. Currently, two cases are ongoing (one is handled by the prosecutor's office and the other one is in court) involving Poles forced to work on plantations in Italy. These cases are covered in greater detail in the sources and methods section of the study.

The questions and research areas were designed to help us collect materials and understand the problem and gain as much information as possible about cases of forced labour in Poland and Polish victims of forced labour abroad.

3.2 Data and methods used

The study under the project *Trafficking for Forced Labour and Labour Exploitation (FLEX) – towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* was divided into several stages. It began with a series of interviews with experts who identify and investigate

⁶⁴ See police statistics <http://www.policja.pl/portal/pol/768/41222/Sprawozdania.html> and http://www.policja.pl/portal/pol/31/560/Handel_ludzmi_and_nielegalna_adopcja_art_253.html.

⁶⁵ The study on human trafficking in Poland was made possible under a grant *Trafficking for Forced Labour and Labour Exploitation (FLEX) – towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* funded by the European Commission. The project's coordinator, HEUNI (The European Institute for Crime Prevention and Control), played an important role.

human trafficking and forced labour in Poland. The interviews were conducted based on an interview template developed by the Project Team comprising representatives of HEUNI (Finland), Tartu University (Estonia) and the Human Trafficking Studies Centre Warsaw University (Poland). The template consisted of 16 questions asking about cases of forced labour, perpetrators, existing laws, systems to assist victims of forced labour and what data are collected about forced labour and labour exploitation⁶⁶.

A total of 10 interviews were conducted with representatives of the Police, Border Guard, Prosecutor's Office, National Labour Inspectorate, Ministry of Labour and Social Policy, Office of the Governor, non-governmental organisations, trade unions and employers' associations. The experts interviewed work for organisations that deal with problems of human trafficking, forced labour, employee rights or corporate social responsibility. Because we have been studying human trafficking and forced labour for seven years, our data analyses will also be based on knowledge we have from previous studies or interviews with people dealing with different aspects of how these problems can be eradicated.

The interviews were organised as follows. In the first stage, experts from the organisations mentioned above were identified. The work of these experts involves areas such as human trafficking, forced labour, workers' rights or corporate social responsibility. Next, we contacted the experts to explain our project and the objective of our study. We asked if they would agree to talk to us about human trafficking for forced labour and labour exploitation. We then agreed on the date of the meeting. All interviews were held in the experts' offices and went on for about an hour. All interviews were written down and are archived in the documentation centre of the Human Trafficking Studies Centre Warsaw University. The interviews were conducted from April to July 2010.

In the second part of the study victims of forced labour were interviewed. The difficulty at this point was how to define victims of forced labour. This is because Poland is both the destination country for people from the East (including the Far East) and the country of origin of victims of forced labour in Western Europe. As a consequence, there are in fact two groups of victims in Poland, one comprising Poles subjected to forced labour outside Poland and the other one comprising foreign nationals exploited in Poland. In Poland, Italy and Spain people have been charged with organising so called "labour camps" where as many as almost 200 Poles were trapped into forced labour. Despite our numerous attempts, none of the Polish victims of forced labour agreed to talk to us either personally or via government institutions and refused to take part in the study. With regard to foreign nationals who were victims of forced labour in Poland, none of the victims were in Poland during the fieldwork phase of the study (May–September 2010). However, before the FLEX team developed the victim interview template, we had managed to talk to four victims of forced labour in Poland. These were a woman from Ukraine exploited on a farm in

⁶⁶ Expert interview guides are included in Annex 3.

Poland, and three foreigners exploited in a shipyard.⁶⁷ The interviews were conducted in January and February 2010. All interviewed victims were under the assistance of NGOs' which are dealing with the victims of trafficking and domestic violence. To ensure the safety and confidentiality of the victims the interviews were made in the NGOs' office. Each interview was conducted on the date specified by the victim and the NGOs. All interviews were made only with those victims who agreed for being interviewed. The interviews were made in the Polish or English languages and were made by Łukasz Wieczorek in the presence of an NGO representative. This was made to give the victims as much psychological comfort as possible during the interview.

The interviews were carried out based on an interview framework prepared by the team for Human Trafficking Studies Centre Warsaw University, because the FLEX joint interview framework was not ready yet.⁶⁸

By chance, a member of our research team met a member of the criminal group responsible for organising working camps in Italy (file no. VI Ds 49/09 District Prosecutor's Office in Gorzów Wielkopolski). This group recruited people in Poland, transferred them to Italy and offered hard work, low salaries and difficult conditions to leave. At the time of the interview it had not been decided yet whether these perpetrators would be accused of forced labour or not. This interview was made possible because the perpetrator contacted us via an internet forum. We left the information at one Polish online forum, explaining that we are looking for victims who have been exploited to work in Italy. However none of the victims contacted us, but the perpetrator made a phone call to the Human Trafficking Studies Centre Warsaw University to talk with us. The perpetrator wanted to explain to us the whole situation with Polish workers exploited in Italy and this is how the interview with the perpetrator was possible.

Another important objective of the study was to analyse criminal cases involving human trafficking for forced labour (Article 253 of the Penal Code⁶⁹). A total of 5 criminal cases were analysed which are the only ones that have been tried (some are still ongoing) before common courts of law in Poland. These five criminal cases are the only cases on trafficking for forced labour in Poland so far. We excluded cases which involved victims and/or perpetrators from Poland investigated by law enforcement in other countries, e.g. the case known as *terra promesa* (file no. 21/07 District Court in Krakow). The case was tried in two court proceedings because some of the perpetrators were charged in Italy, and others in Poland. In both cases, charges were pressed against Poles, except that

⁶⁷ Although we did not have the interview guide at the time, we made the decision to carry out those interviews because the victims were receiving assistance from two non-governmental organisations and because we were concerned that the victims might leave Poland or move when the pre-trial proceedings are over.

⁶⁸ Interview framework for the victims prepare by the Human Trafficking Studies Centre are included in Annex 7.

⁶⁹ After the revision of the Penal Code of 20 May 2010 human trafficking is defined in Article 189a of the Penal Code, in Chapter XXIII which covers crimes against freedom.

the Italian court also convicted perpetrators who were nationals of Ukraine, Bulgaria, Italy and Algeria while the Polish court tried Polish perpetrators only.

We excluded cases in which Polish victims were exploited or forced to work abroad and investigated by the law enforcement from other countries because of insufficient time to bring these cases to Poland. Also technical restrictions, such as money for travels and translations, was a reason why we decided to analyse only those cases which have been investigated by Polish law enforcement bodies.

Each of the criminal cases involved a different sector of the economy. In the first case, a Vietnamese man was forced to work on market stalls in south-east Poland (file no. III K 145/04 District Court in Kielce). The next case involved Ukrainian nationals trafficked into Poland and made to beg in the streets despite promises of domestic work or work as salesmen (file no. II K 49/07 District Court in Rzeszow). Two other criminal cases involved Poles in forced labour on plantations in Italy. The cases are quite different. One is tried by the District Court in Krakow and involves nearly a thousand victims of forced labour from Poland working on farms in Italy in the region of Apulia. The case is still pending (file no. 21/07 District Court in Krakow). The second case involves Poles in forced labour in Italy working on tangerine plantations in the region of Calabria in 2009. In this case Poles were defrauded as to the working conditions, but the charges are about trafficking in human beings. The case is still in the pre-trial stage, handled by the District Prosecutor's Office in Gorzów Wielkopolski (file no. VI Ds 49/09 District Prosecutor's Office in Gorzów Wielkopolski). Another case involves forced labour of 19 Bangladeshi nationals working in the Gdansk Shipyard as ship builders. The victims were working illegally because their work permit was for fish processing rather than ship building. The victims received no pay and were not allowed to move freely without the perpetrator's consent. The case is tried in the District Court in Gdańsk (file no. IV K 141/10 District Court in Gdańsk). Poland has very few criminal court cases concerning trafficking for forced labour.

Criminal court cases give us the most important information about the forced labour issue in Poland, and because of this we decided to base our research mainly on court cases. On the other hand, we realize that court cases probably show only the tip of the iceberg in terms of labour exploitation or forced labour in Poland.

The criminal cases were analysed using a file questionnaire developed by the researchers at the Human Trafficking Studies Centre Warsaw University⁷⁰. It is designed to extract the key information from the files of criminal cases. It first collects the basic details about the victims and perpetrators such as age, gender, education, family or criminal record (in the case of perpetrators). Next the questionnaire asks about the type of work in which the victims were employed. We wanted to know how the victims were exploited, in which sector of the economy, what the conditions of work and stay were, and whether the victims

⁷⁰ The criminal file questionnaire is included in Annex 6.

had insurance and employment contracts, and what status they had in the destination country. It is important to point out that it is still not quite clear in Poland how to identify victims of human trafficking, especially victims of forced labour⁷¹. This is why part of our project was to establish how the victim had been identified and what happened next, i.e. whether they had received any help or support.

All criminal cases have been archived and are stored in the documentation centre of the Human Trafficking Studies Centre Warsaw University where only members of the Centre have access to them. The documents archived are not entire case files but only the key details such as the charges, justification of the charges, testimonies of victims, witnesses and defendants and the sentences.

An important source of information about cases of forced labour in Poland and Poles exploited abroad is the press. We looked for cases of forced labour in Poland and abroad involving Polish people. What we wanted to establish was how the press reported the problem and what issues they focussed on regarding forced labour. The question was whether the press only described cases of forced labour or whether they also tried to analyse the problem and understand the underlying social problem.

The analysis of press publications was divided into two stages. We began with a review of all articles in the Polish press from January 2010 to June 2010. A total of more than 900 national and regional papers and magazines were analysed. This was carried out by the Institute of Media Monitoring (hereinafter: the IMM), an organisation specialising in press analysis. The IMM searched for the key words such as exploitation of people, abuse of workers, abuse, forced labour, human trafficking, slavery, slave labour.

Press materials were sent to us every day in electronic form throughout the entire period of monitoring. We received them by e-mail or downloaded them from the IMM server using a special access code. That way we could view all press articles containing the key words.

At the end of each month we put together all the materials we had received and selected the ones that covered forced labour in Poland and Poles in forced labour abroad. In addition, the IMM server generated monthly summaries using IMM's special software. These monthly reports included statistics about press publications during a particular month, the overall number of publications during the month compared with other months, the newspapers which carried most of the relevant information, the authors who had written most about human trafficking and forced labour and the overall circulation of those newspapers with information of interest to our study.

Thanks to the data we were able to assess the contents and the number of press materials on human trafficking and forced labour by day, week, month and

⁷¹ See: Z. Lasocik, J. Filipowicz, Ł. Wiczorek, Study on trafficking for forced labour in Poland. Susceptible economic sectors and assistance structures for victims of forced labour, Human Trafficking Studies Centre Warsaw University, Warszawa 2010.

quarter, and by region. In addition, the reports also gave us a good idea of how many people may have read the news.

During the study period (January–June 2010) a total of 497 articles were published containing the above key words. Of these, 139 articles covered forced labour not involving sexual exploitation.

In stage two of the analysis, press archives were searched for articles covering forced labour, slavery and human trafficking which were published from 2004 until the end of 2009 in *Gazeta Wyborcza*. There are four leading national dailies in Poland, of which *Gazeta Wyborcza* has the highest circulation (about 400,000 copies daily) and is one of Poland's most read papers. This is why we decided to analyse the press archives of *Gazeta Wyborcza*.

Another source of information on the sectors of the national economy which may be affected by forced labour are the data collected by institutions responsible for controlling the observance of employee rights, and the National Labour Inspectorate (PIP) in particular. Although the annual reports of the National Labour Inspectorate do not as yet feature any statistical information on cases of forced labour identified in Poland, information can be found there on illegal employment of both Polish and foreign workers.⁷² The data referred to above has been acquired in the course of inspections controlling the legality of employment, carried out since 2008 by PIP jointly with the Border Guard.⁷³

Information about human trafficking and forced labour is also archived by organisations involved in identifying and investigating these matters. We studied the records of the National Labour Inspectorate, the Ministry of the Interior and Administration, the Office for Foreigners, the International Organisation for Migration (Polish section), La Strada Foundation, trade unions and the Centre of Migration Research Warsaw University. We studied annual National Labour Inspectorate reports of the Chief Labour Inspector, National Action Plans against Human Trafficking developed by the Ministry of the Interior and Administration, reports on the work of the Team for Combating and Preventing Human Trafficking and the Working Group, part of the Team. We also used statistics on human trafficking, migrant workers and assistance provided to victims of human trafficking. We analysed documents and papers on the topic of human trafficking for forced labour or labour exploitation that have been published by the above organisations.

For that part of the analysis we especially used several publications (see the literature list at the end of the report).

⁷² See *Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2007 r.*, Warszawa 2008; *Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2008 r.*, Warszawa 2009; *Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2009 r.*, Warszawa 2010. <http://www.pip.gov.pl>.

⁷³ However, the National Labour Inspectorate PIP initiated the inspections controlling the legality of employment as late as 1 July 2007.

The statistics and information analysed in this part of the project involved cases of forced labour or labour exploitation recorded by the above organisations. We also examined documents produced by these organisations about the problems in question such as annual reports, reports on human trafficking in Poland, migrant workers in Poland and Poles working abroad.

3.3 Ethical questions related to the research

This type of research always raises questions about ethical standards. Because they are in a vulnerable position, victims of human trafficking or forced labour must be treated with great care and researchers must make them feel as comfortable as possible. The victims must agree to talk even if it only involves asking them if they would agree to be interviewed. We must ensure that the victim stays anonymous. Obviously, before we can talk to the victim, law enforcement or an NGO must first establish the victim's personal details, but these will be protected when they talk to a researcher. The second important issue is the trauma that the victim has gone through. The task of the researchers is to do everything they can to limit the victims' exposure to their worst memories. This is why we suggested that police officers should only talk to the victim once and not repeat the questioning. As a consequence, researchers too must not make the victim suffer again. Before they talk to a victim, researchers must first understand their social and mental state and very carefully prepare a strategy for the interview. They should consult a doctor, psychologist or care worker first. As much as it is our goal to gain information, we cannot do it at the cost of the victim. In our research we have also prepared a strategy for the interviews. Firstly we contacted the NGO workers who were held responsible for assistance to the victims of human trafficking. We asked these people, whether they were currently helping victims of forced labour. If they were, we talked with the NGO worker about the opportunity to provide an interview with the victims of forced labour in Poland. This was made to be sure that the victims are in good mental/psychological condition and that they agree to talk with the researcher. Otherwise, conducting the interview was impossible.

Finally, when talking to victims of crime and in particular the crime of human trafficking and forced labour, we must use the right language and register, avoid negative words or terms and not sound judgemental. Because the victims are usually foreign nationals, we should use qualified interpreters and explain to them the vulnerability of the victim. During the interview run by the Polish team involved in the FLEX project, the researcher did not use a qualified interpreter, because all interviewed victims spoke Polish or English.

When talking to experts, there are other issues to consider. First, we must keep the interviews confidential and protect the anonymity of the experts. Not all experts agree to have their names revealed and this must be respected. A lot of times this has nothing to do with the particular topics but with the fact that their knowledge is limited which they do not want others to know. Experts also ask

for anonymity when their views are different from their bosses' or from the official policy of their organisation. Finally, because the interviewee may have limited knowledge of the issue, we must avoid comments which would be considered judgemental, leading or personal.

With regard to perpetrators, we must adhere to all criminological standards.⁷⁴ The person we are talking to must be ensured confidentiality and anonymity as a source of information for our research. We must avoid any statements suggesting that they are a perpetrator or may be held liable, especially when they have not been convicted of the crime. When we are not quite certain that we are dealing with human trafficking for forced labour, we should only discuss issues related to how employees are treated and not to human trafficking as such.

It happens quite often that we talk to or we interview a person who is a suspect of crimes related to human trafficking or forced labour, but the early stage of the investigation does not allow us to be certain that either of these did actually occur. This happened to us when a member of our research team met with a member of the criminal group being responsible for organising working camps in Italy. This group recruited people in Poland, transferred them to Italy and offered hard work, low salaries and difficult conditions to leave. At the time of the interview it had not yet been decided whether these perpetrators would be charged with forced labour or not. In such situation the interview should be designed in such a way that the researcher can collect as much information as possible on relations between the organisers of the job and the workers, on working conditions, on payments etc., to assume that this basic information will be available. This type of data has to be treated as material to describe the social context of the activities related to forced labour. Sometimes the information may help to find traces of forced labour, obviously only for research purposes.

⁷⁴ R. K. Schutt, R. Bachman *Fundamentals of Research in Criminology and Criminal Justice*, Deutscher Gemeindeverlag 2008, M.G. Maxfield, E.R. Babbie, *Research Methods for Criminal Justice and Criminology*, Wadsworth Inc Fulfillment, 2007, E. Babbie, *Badania społeczne w praktyce*, Warszawa 2005, Wydawnictwo Naukowe PWN.

Chapter 4: Analysis of research results

4.1 General information about the forced labour phenomenon in Poland

Within the scope of the FLEX project, we have tried to collect as much information as possible about cases of forced labour and exploitative situations, involving Polish citizens both in Poland and abroad. The task has not been easy, as the phenomenon of forced labour in Poland remains largely unresearched. The public administration, law enforcement and judiciary bodies, as well as the National Labour Inspectorate (PIP) turned their attention to the problem of trafficking in human beings for forced labour only three years ago.⁷⁵ Before then, the bodies referred to above focused mainly on the phenomenon of trafficking in human beings for sexual exploitation, without noting (or wanting to note) the equally important problem of exploitation and forced labour of Polish citizens both in Poland and abroad. The public administration finally took notice of the problem of trafficking in human beings for forced labour as late as in 2007. In 2008, the Labour Inspectorate (PIP) and the Border Guard (SG) resolved to carry out joint inspections focused on controlling the legality of residence and employment in Poland. The fact that, three years ago, the discussion started in Poland on preventing and combating trafficking in human beings for forced labour does not mean, however, that Poland's public policy bodies are capable of coping with the elimination of this phenomenon. There are three reasons for this state of affairs, i.e. problems with identification of forced labour victims in Poland, low social awareness of the problem, and organisational problems within the institutions which are – or should be – committed to the elimination of forced labour.⁷⁶

Problems with the identification of forced labour cases translate directly to the small number of such cases detected. To date, Poland's law enforcement and judiciary bodies have noted around seven cases of trafficking in human beings for forced labour, four of which either have been submitted to courts or are pending litigation. The research focused exclusively on the criminal law cases either already resolved by, or still pending before Polish courts. The cases of exploitation of Polish citizens abroad, processed by foreign law enforcement bodies, have not been taken into account in the analysis due to the inaccessibility of data on such cases.

⁷⁵ As early as in 2004, the Human Trafficking Studies Centre (Ośrodek Badań Handlu Ludźmi OBHL) issued an appeal to the Ministry of Interior and Administration (Ministerstwo Spraw Wewnętrznych i Administracji MSWiA) to incorporate the counteracting of forced labour into the National Programme for Combating and Preventing Trafficking in human beings. MSWiA, however, raised the problem of trafficking for forced labour as late as in 2007.

⁷⁶ The most notable of these institutions are the National Labour Inspectorate (PIP), the Police Force, the Border Guard and the State Prosecution Office.

Hence, there are very few cases of forced labour reported in Poland, against the annual average of approximately 2,000 cases of violations of employee rights (Article 218 of the Criminal Code).⁷⁷ The total number of offences committed annually against the rights of persons performing activities as part of gainful employment (Article 218–221 of the Criminal Code) is approx. 3,000.⁷⁸ Judging by the above, if law enforcement bodies report several thousand cases of employee rights violations each year, the cases of forced labour in Poland must be expected to occur much more frequently. However, the number of detected cases of forced labour in Poland depends mostly on the awareness of law enforcement officers and labour inspectors. Also officers and labour inspectors need “tools” to combat this special crime. One of these tools can be the operational indicators of trafficking in human beings prepared by the ILO.⁷⁹ This simple tool could be very useful in recognizing trafficking, forced labour and labour exploitation situations.

Secondly, it must be noted that Poland is the country of origin, as well as the transit and target country for victims of trafficking in human beings. What is also important, Poland's borders are the external borders of the European Union. This situation makes our country a very attractive work place for foreigners. According to our research, such foreigners are also particularly vulnerable to becoming victims of forced labour.⁸⁰ According to our observations, analysis of the press and data provided by La Strada, until recently most forced labour and exploitation victims came from the former USSR. They are now being outnumbered by citizens of Asian countries.⁸¹ The most probable reason underlying the increasing share of Asians among the aliens in Poland is Poland's membership of the European Union and the Schengen area, coupled with a relatively easy visa procedure, as compared to other EU Member States, and to the Western European countries in particular.

Although the number of forced labour cases reported in Poland is very low, the material accumulated in this study may provide a multitude of information on this phenomenon in Poland. We must start by clarifying that until now, all criminal law cases concerning trafficking in human beings for forced labour in Poland are different in terms of victims, perpetrators and types of work that the victims have been forced to perform. The offences under analysis involved work

⁷⁷ Cf. http://www.policja.pl/porta1/pol/26/522/Naruszenie_praw_pracownika_art_218.html.

⁷⁸ Cf. <http://www.policja.pl/porta1.php?serwis=pol&dzial=26>.

⁷⁹ Cf. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf.

⁸⁰ Filipowicz, Joanna, Lasocik, Zbigniew, Wieczorek, Łukasz: Study on trafficking for forced labour in Poland – Susceptible economic sectors and assistance structures for victims of forced labour, Human Trafficking Studies Centre Warsaw University, Warsaw 2010.

⁸¹ T. Kiryan, M. N.J. van der Linden, Trafficking of migrant workers from Ukraine: Issues of labour and sexual exploitation, Geneva 2005, ILO; Trafficking in Persons Report 2009, US Department of State, p. 242; W Polsce trwa wyzysk tysięcy niewolników. Chińczyk jest tani i je raz dziennie, Dziennik Daily, August 14, 2008.

in bazaars, panhandling, work on agricultural plantations and at shipyards. The cases of trafficking in human beings for forced labour referred to above also involved a group of unemployed Polish persons, forced by a criminal group to open bank accounts in Germany, later used for abusing the credit limits assigned to such accounts, and a case of Azeris, illegally employed by force in a Polish tobacco plant.^{82 83}

In the former case, a criminal group recruited a number of unemployed persons from north-western Poland, promising them well-paid jobs in Germany. Upon arrival, however, the victims learned there were no jobs waiting for them. Instead, the perpetrators forced the victims to open accounts in German banks and to buy appliances, mainly radio and TV equipment, within the credit limits on their debit or credit cards.⁸⁴ After a limit was used up, the perpetrators shared the goods, and the victims were free to go. In the latter case, an organised criminal group from Poland recruited three engineers, citizens of Azerbaijan, to launch a cigarette production line at a Polish tobacco plant. The victims held tourist visas to Italy. Instead, they flew to Vienna, from where they were taken to a city in western Poland. During their employment at the tobacco plant they were not allowed to leave their work place, and even had their food brought there by the perpetrators. The victims received no money for their work. The entire affair was discovered during a Border Guard inspection of the plant. The prosecution had the Azeris arrested under the charges of participating in an organised criminal group. The Azeris initially pleaded guilty and voluntarily submitted to punishment. Only after an intervention from OSCE were the victims provided legal assistance and revoked their earlier depositions, declaring to be victims, and not offenders. The court procedure in this case is still pending.

Looking at these cases, one must note that the construction industry, agriculture or household assistance services may not necessarily be the only sectors where forced labour may occur, as was frequently pointed out by the experts we interviewed in this matter; these sectors, however, are particularly susceptible to trafficking in human beings. As evidenced by the few criminal law cases referred to above, one can conclude that forced labour victims may be found in any sector of industry. There are, of course, certain sectors of the national economy which are particularly susceptible to human exploitation or forced labour, but such phenomena are not limited only to these sectors. Hence, one can conclude that the methods of trafficking in human beings for forced labour are changing continuously. As in the case of criminal groups which may promptly adjust to

⁸² See Daniel M. woli milczeć, *Gazeta Wyborcza Szczecin*, 06.03.2010; Leszek Wójcik, 7 lat za handel ludźmi, *Kurier Szczeciński*, 18.03.2010; Adam Zadworny, 7 lat za handel ludźmi, *Gazeta Wyborcza Szczecin*, 18.03.2010; Mariusz Prakitny, Skazany za niewolnictwo, *Głos Szczeciński*, 18.03.2010.

⁸³ See Marcelina Szumer, Pracowali jak niewolnicy. Teraz trafią do więzienia?, *Metro Warszawa*, 05.03.2010.

⁸⁴ Human Trafficking Studies Centre Warsaw University do not have a lot of information about this case. This information were based only on a few articles in the Polish newspapers.

market needs and generate profits from various sources of criminal activity, victims of trafficking in human beings may be subjected to forced labour in various plants and companies, not necessarily operating within the so-called grey area.

4.2 Modus operandi of the perpetrators

Although the forms of forced labour change constantly, the *modus operandi* of the perpetrators remains unchanged. In all criminal law cases that we analysed, the victims were given false information about the working conditions. The work offers presented by the perpetrators have never been met. Victims were given false information regarding the nature of employment, i.e. the citizens of Bangladesh who were promised work in the fish processing industry, ultimately found themselves employed at a shipyard to polish ship hulls. The most sophisticated methods of misleading victims about the working conditions, however, have been employed by a mixed organised crime group from Ukraine and Moldova, which forced Ukrainian citizens brought to Poland to panhandle on the streets of Polish cities.⁸⁵ The victims were promised employment at Polish bazaars or as domestics help, and were told to travel to Poland with their children to facilitate the crossing of the Polish-Ukrainian border. The perpetrators did not participate in the transfer of victims across the border, but only brought them there and told them to cross the border on their own on the basis of a tourist visa. Cars waiting on the Polish side of the border took the victims to a city, where the criminal group was based.

In the opinion of a police expert, in numerous cases the victims were recruited using the same method. The victims are recruited by an intermediary, promising interesting work and good wages. Next, the victim is transferred across the border. In most cases, the intermediary (recruiter) is a citizen of the same country as the victim. The intermediaries are well organised, they know how to manipulate the recruited persons and how to effectively mislead them. However, they usually know nothing about the procedures regarding the employment of aliens applied in the target country. A good example is the case of the Bangladeshi citizens who were forced to work in a shipyard. The victims were recruited by the perpetrator and his acquaintance. Like their victims, both were citizens of Bangladesh. Most people they recruited came from an impoverished background and had little education. The perpetrators knew how to manipulate these people to make them want to travel to work in Poland. Of course, the people they recruited were promised well-paid work in Poland. The perpetrator provided the Bangladeshi citizens with all necessary documents and made the travel arrangements to Poland. The perpetrator accompanied the victims throughout their entire trip from Bangladesh to Poland. Upon arrival at a Polish airport, the victims were taken over by the perpetrator's female partner.

⁸⁵ Case file no. II K 49/07, District Court in Rzeszów.

The analysis of criminal law cases indicated that victims were being misled about the remuneration, meals and accommodation. Upon arrival at their destination, the victims learned that they must pay for their meals and accommodation, although they had been promised that such costs would be covered by the employer. In the case of Bangladeshi workers, the victims had to pay the perpetrator a three months' rent in advance. However, they lived at the perpetrator's premises for two months only. In the case code-named *terra promessa*⁸⁶ involving Polish citizens forced to work in the Bari and Foggia regions of Italy, the victims were also charged with accommodation costs. These costs, however, coupled with other benefits, such as i.e. the fee for seeking employment, were too high for the victims to cover from their wages. In the case of Polish citizens working at a tangerine plantation in Calabria, Italy, the victims were also forced to pay approx. 120 euro per month for accommodation. They were forced, however, to live in filthy and mouldy premises, without hot water or heating, even though it was November. Above that, the victims were forbidden to use any electrical appliances other than kettles and water heating equipment. Those who violated this rule were liable to a fiscal penalty of 20 euro per day.

As in other cases, the promised wages were actually never paid, if the victims received any money at all. In numerous cases⁸⁷ the victims received no money at all for their work. In nearly all cases, the perpetrators provided the same explanation for their failure to pay the promised wages. In most cases, the perpetrators maintained that they incurred considerable costs associated with the transportation of victims to the destination country and finding work for them. They simultaneously noted that the victims would start getting paid the promised money as soon as they provided enough work to pay back their debt. However, such a situation never occurred in any of the cases under analysis. Even after the victims had worked enough to pay back a significant part of their alleged "debt", the perpetrators told them that they had incurred more costs associated with their stay in Poland, so they needed to work more in order to finally start getting paid. This was the situation which occurred in the case of the Ukrainian citizens forced to panhandle.⁸⁸ When a Vietnamese citizen forced to work at Polish bazaars asked the perpetrator how much longer it would take to work to cover the costs of his travel from Vietnam to Poland, he was told that it would take approximately 4–5 years, despite the fact that the victim paid most of the travel costs himself. Failure to pay the victims, or partial payment of wages occurred in

⁸⁶ It is the code name for an international operation carried out by Polish and Italian police, aimed at destroying an international crime group. The group exploited citizens of Poland, Ukraine, Italy and Algeria by forcing them to work for agricultural farms in Foggia (region of Apulia) in south-eastern Italy (case file no. III K 21/07, District Court in Kraków).

⁸⁷ Case file no. III K 145/04 District Court in Kielce; case file no. III K 21/07, District Court in Kraków; case file no. II K 49/07 District Court in Rzeszow.

⁸⁸ Case file no. II K 49/07 District Court in Rzeszów.

all cases of forced labour in Poland and of forced labour of Polish citizens abroad.⁸⁹

4.3 Who are the victims?

According to the research, most forced labour victims in Poland are young or middle-aged, male and female. In rare cases, the victims are underage. The analysis of criminal law cases concerning trafficking in human beings for forced labour indicated that most victims were between 18 and 60 years of age. Hence, it is difficult to unanimously determine what age group and gender are dominant among forced labour victims. The age and gender of victims seem to depend on the type of work. Hence, the case of panhandling (II K 49/07 District Court in Rzeszów) mostly involved young women with small children, whereas the cases of Polish citizens forced to work at Italian plantations (III K 21/07 District Court in Kraków and VI Ds 49/09 District Prosecution Office in Gorzów Wlkp.) involved mostly males aged between 18 and 60. On the other hand, however, in the case of Bangladeshi citizens (IV K 141/10 District Court in Gdańsk) forced to work at Stocznia Gdańska shipyard, all victims were male, most of them rather young. The average age of this group was 29, with the oldest victims 38 years old. It must be noted here that in the case of forced labour, neither age nor gender matter, provided that no sexual abuse is involved⁹⁰.

According to the material collected for this study (i.e. criminal cases, interviews with experts, press materials, materials from institutions involved in eliminating trafficking in human beings), most victims of forced labour or exploitation in Poland are foreigners. It is difficult to unanimously determine the dominant nationality of victims, but it must be noted that most victims come from poorer countries, usually from Eastern Europe (mainly from Ukraine) and Asia (i.e. Bangladesh and Vietnam). Just a few criminal law cases and very limited information from institutions committed to the elimination of trafficking in human beings and forced labour are not enough to draw far-reaching conclusions, although certain tendencies may be observed in the migration of labour to Poland. Poland is an attractive destination for the citizens of poorer countries, particularly those bordering with Poland. For many years now, citizens of Ukraine, Russia and Belarus accounted for a considerable part of labour migration to Poland.⁹¹ In the case of other countries, Poland is not as much a more affluent neighbour, where employment may be found, but mainly a “passage” to other (more affluent) European Union Member States. Since Poland belongs to the so-called Schengen Area, a foreigner entering into Poland may without much difficulty travel across nearly the entire EU territory.

⁸⁹ Case file no. III K 145/04 District Court in Kielce.

⁹⁰ Most victims of sexual abuse are young women.

⁹¹ See the statistical data of the Office for Foreigners: <http://www.udsc.gov.pl/Zestawienia,roczne,233.html> cf. <http://www.mpips.gov.pl/index.php?gid=1286>.

Poland is also becoming an attractive destination for labour migrants from Asia, mainly from Vietnam, the Philippines, India, China or South Korea. The citizens of these countries quite frequently become victims of forced labour, exploitation, or fraud by misleading them about working conditions or the nature of employment. For several years now, Polish press has been carrying regular press coverage of exploitation of foreigners (especially since Poland joined the EU).⁹²

Citizens of Eastern European or Asian states are not, however, the only victims of trafficking in human beings and forced labour. Polish citizens also become victims of forced labour in Europe, as evidenced by the two criminal law cases that involved Polish citizens forced to work at Italian plantations.⁹³ Although the cases referred to above involve citizens of Poland, i.e. of an EU Member State, exploited in another EU Member State, certain similarities may be observed with the exploitation of foreign victims in Poland. In both cases we are dealing with rather uneducated people, usually unemployed and underprivileged. On rare occasions, single victims with higher education could be found both among foreigners and Polish citizens. The Bangladeshi citizens forced to work at the shipyard were more diversified in terms of education. While some of the victims from this group never even attended school, others graduated from primary or vocational schools, and several had a higher education. The group also included a single university student. Nevertheless, the group was dominated by people with primary and vocational education, with only a few secondary school graduates. Cases have been reported, however, involving well educated victims. In the case of Azeris forced to work for an illegal tobacco plant, all victims had higher technical education; they were all engineers. Filipino women employed at a mushroom farm were rather well educated, and most of them had good command of English.

The common factor reported both in the case of forced labour victims in Poland and Polish citizens forced to work abroad was their family status. Firstly, both groups of victims (foreign citizens in Poland and Polish citizens abroad) came from impoverished backgrounds and lived in small towns and villages. As a rule, they were the breadwinners for their families. For them the trip abroad was the only chance to provide for their families. For this reason, many of the victims either raised loans, or, like the foreign victims (and those from Bangladesh in particular), they sold their entire property, mainly land and valuables (i.e. jewellery).

Both groups have one more feature in common: the inability to communicate in the language of their country of destination. A definite majority of foreign victims of forced labour in Poland did not speak any Polish. Only a few of the

⁹² Between January and July 2010, a total of 139 articles on forced labour were published, including 20 articles about foreigners either exploited or forced to work in Poland.

⁹³ See III K 21/07 District Court in Kraków and VI Ds 49/09 District Prosecution Office in Gorzów Wlkp.

victims knew several expressions in Polish.⁹⁴ The same occurred in the case of the Polish citizens forced to work on Italian plantations, since most of them did not speak Italian. Out of over one thousand victims, only a few persons knew several expressions in Italian.

4.4 Who are the perpetrators?

We also aimed our research at profiling the perpetrators of trafficking in human beings for forced labour. The profiles of the perpetrators were based on five criminal cases, which are the only cases of forced labour dealt with by criminal courts in Poland so far. Because of that, the information given below is only an indicative picture of the perpetrators. In all analysed criminal court cases there were 38 prosecuted or convicted perpetrators.

In the course of the initial analysis of the material, we noted that as a rule, the perpetrators were of the same nationality as their victims. The perpetrators, however, sometimes used the assistance of citizens of the country of destination of the trafficking operation.⁹⁵ It is absolutely understandable why both the perpetrators and the victims are of the same nationality. Let us mainly consider the organisation of a forced labour scam. In such situations, the perpetrators know what kind of people may be misled about working conditions and where to find potential victims. This shows that the perpetrators mostly have a clear intent from the beginning of the recruitment to the exploitation phase. The lack of a language barrier between the perpetrators and their victims is also of some relevance.

In terms of age, most perpetrators were between 23 and 62 years old, averaging 36 years of age. Their age distribution indicates that the trafficking in human beings and forced labour-related offences are committed both by young (23 years old), and older people (62 years old), whereas common or criminal offences are usually committed by young people, aged between 17 and 29. Hence it must be noted that in the case of trafficking in human beings for forced labour, the age of the perpetrators is of no relevance.

The gender of the perpetrators is an important factor. In all criminal law cases concerning forced labour, charges were pressed against 38 perpetrators. Of these, 27 were male and 11 female. Concluding, men and women accounted for 70% and 30% of the perpetrators, respectively. Although this particular criminal activity is dominated by males, one must note that the share of female

⁹⁴ The above applies mainly to Ukrainian women, forced to panhandle on the streets of Polish cities. Their command of Polish was, however, limited to their "employment", i.e. begging passers-by for money.

⁹⁵ Such a situation occurred e.g. in the case of the Polish crime group which recruited Polish citizens to work on plantations in Italy, also referred to as the *terra promesa* case. In this case, the perpetrators relied mainly on the assistance of local criminals (case file sygn.akt 21/07 District Court in Kraków).

perpetrators in trafficking in human beings for forced labour is higher than the share of female perpetrators in the total number of common or criminal offences, which in Poland stands at 10%.⁹⁶ Based on the court data, the share of female perpetrators is higher, at least in this sample.

In terms of education, a definite majority of the perpetrators had secondary or vocational education (43% and 33%, respectively), and only three persons had primary education (8%). Six perpetrators had higher education. The group of graduates from higher education facilities included a high school teacher, several persons with a Master's degree in economics, a graduate from managerial studies and an engineer. According to the above specification, the offence of trafficking in human beings for forced labour is to a large extent committed by persons with either secondary or higher education (accounting for nearly 60% of the perpetrators), and to a lesser extent by persons with either primary or vocational education (40% of the perpetrators). On the other hand, common and criminal offences are committed mostly by persons with either primary or vocational education.⁹⁷ This difference is hardly surprising, as the offences of trafficking in human beings and labour exploitation are usually associated with crossing borders and operations of organised crime groups. Since such activities necessitate the mastering of interpersonal relations and elementary command of foreign languages, organised crime groups tend to delegate these responsibilities to persons with the best educational background. On the other hand, research into border area crime indicates that the perpetrators of such offences, mainly committed by violating regulations governing trade in goods, are usually better educated than the perpetrators of typical criminal offences, committed under “regular circumstances”.⁹⁸

In the course of our research we attempted to determine whether the perpetrators of forced labour are convicted felons, and if yes – for what kind of offences. The analysis of criminal law cases indicated that a definite majority of the perpetrators had never before been sentenced by a court of law. Only in the case code-named *terra promesa*, several persons (out of twenty-three defendants) had prior court sentences. The group of convicted felons included five men and two women. One of the men was convicted in the past for a traffic accident, while the remaining perpetrators had past convictions for fraud associated with organising foreign employment, including one person convicted for trafficking in foreign citizens. According to the information above, some of the perpetrators had already some previous “work experience” in the area of exploiting people abroad by misleading them about wages and terms of employment. Moreover, one of

⁹⁶ Atlas przestępczości w Polsce 4, A. Siemaszko (red.), Oficyna Naukowa, Warszawa 2009, pages 56 and 89.

⁹⁷ See T. Szymanowski, *Polityka karna i penitencyjna w Polsce w okresie przemian prawa karnego*, Wydawnictwo Uniwersytetu Warszawskiego, Warszawa 2004, pages 161–162.

⁹⁸ K. Laskowska, *Kryminologiczne aspekty przestępczości granicznej*, AK t. XXVI, Warszawa 2004, and also: I. Rzeplińska, *Przestępczość cudzoziemców w Polsce*, Warszawa 2000, Wyd. Scholar.

the perpetrators, before joining an organised crime group forcing Polish citizens to work in Italy, was involved in trafficking citizens of Ukraine to Poland.

4.5 Working conditions and salary

The analysis of the criminal law cases referred to above indicates that the victims were used to perform various types of work. In most cases, the victims were forced to collect fruit or vegetables at agricultural plantations. The above applies both to Poland, and to the victims of forced labour abroad. Apart from the above, the victims were being forced to work at bazaars, a shipyard and as domestic help. There was also one case of two citizens of Azerbaijan who were forced to provide labour at an illegal tobacco factory in Poland. The victims were exploited from a few up to twenty months.

The actual working conditions were never the same as promised by the perpetrators or the intermediaries assisting them. Sometimes the victims neither earned any money they were promised when they were recruited, nor performed the promised work. For instance, in a case where citizens of Ukraine were forced to panhandle in Poland, the victims were promised work at bazaars or as domestic help, whereas the citizens of Bangladesh were promised work in the fish processing industry, and in Poland it turned out that they had to work at a shipyard, polishing ship hulls.

The victims never earned the money there were promised, if they received any at all. In the case of the Bangladeshi citizens forced to work at a shipyard, the victims never received any wages, apart from small amounts for the purchase of food or winter clothing. When they were recruited in Bangladesh, the perpetrator and his intermediary promised them salaries of 800 USD per month. After the first month, when the victims started to claim their money, the perpetrator informed them that the company employing them will pay the money, but after one more month. After two months had passed, the shipyard terminated the contract with the Bangladeshi citizens, since their work permits were valid for fish processing industry, and not for shipyard work. The perpetrator, however, informed the victims that the contract was terminated because the employer was dissatisfied with their work, and that they will not be paid because the cost of their stay in Poland was very high and the money they had earned so far was insufficient to pay their bills, rent and food costs. Simultaneously, the perpetrator forced the victims to sign a document confirming that they had been paid, even though they received none of their wages. Fearful that victims might refuse to sign the document, the perpetrator threatened to take their passports away. Only two persons refused to sign the documents, and escaped on the following day.

The only victims in our sample of cases to receive any money were the Polish citizens employed in Italian citrus plantations in the region of Calabria, who received about 10 euros per month, with the outstanding amount confiscated by the perpetrators and promised to be paid at a later date. As a rule, most perpetrators never paid the victims any money. Only a small group of people

received a part of the money after having returned home, most probably because of the interest in the case expressed by the Consulate of the Republic of Poland in Rome. The victims of labour camps in Bari and Foggia earned 1 euro per day of work, the difference being that the victims who fell ill and could not work had to pay the perpetrators a penalty of 20 euro per day. In both cases, the victims were forced to pay for their meals and accommodation, according to exaggerated accommodation rates and sub-standard wages, resulting in that the victims being unable to pay back their debt, even after several months of work.

The other victims, i.e. the Vietnamese citizen and the citizens of Ukraine forced to panhandle did not receive any remuneration. The Ukrainian woman exploited first as a farm hand, and later as a domestic help, initially received some wages, but as soon as she moved to the perpetrator's premises she was not paid any more, despite the fact that the victim asked for money explaining that she must support her child and parents in Ukraine. When the victim became more insistent about the payment of any money at all, the perpetrator locked her up in a garage, and during winter moved her to the attic of the house, forbidding her to leave the house.

In terms of working hours, the victims worked in most cases for more than 8 hours per day, and some of them were forced to work as much as 15 hours per day. Most victims worked 5-6 days per week, and the Ukrainian citizens forced to panhandle in Poland by a mixed, Ukrainian and Moldavian organised crime group, had to work 7 days per week, 12 hours per day regardless of the season. In the last case, the victims had to collect at least PLN 200 (about 50 euro) every day, a quite substantial amount as for Polish conditions. Nevertheless, although some victims were able to “earn” as much as PLN 800 (about 200 euro) per day, the fact of having earned a higher amount on one day did not mean that the victim would get time off on the following day and would not be forced to beg or to bring in less money to the perpetrators. Neither was it tantamount to the victims paying back their debt sooner to the perpetrators. Moreover, the victims were unable to keep any of the money they collected, as they were systematically checked that they did not hide any money and they were frisked by the perpetrators as soon as they returned to their place of residence. The woman who was found to conceal a part of the money she had collected was subjected to a beating by the perpetrators.

4.6 Means of control used against the victims

The research indicated that the perpetrators aim at assuming control over the victims, although by variable methods. Some perpetrators applied subtler methods of control, such as psychological violence, while others resorted to plain physical violence.

The classic method of control was threats and verbal abuse. Since most victims had an unclear status of their stay in Poland, the perpetrators threatened to notify the law enforcement agencies of their illegal alien status. The Ukrainian citizens

forced to panhandle were threatened by the perpetrators who told them that they know corrupt police officers in Ukraine, who will press charges against them for illegal employment in Poland as soon as they are deported home. Moreover, the perpetrators abused the victims physically, humiliated them and threatened they would kill the victims or members of their families.

In the case of the victims from Bangladesh, the perpetrators told one of the victims that he would be imprisoned if caught by the police. The perpetrator knew what methods to use to intimidate the victims, as he was a citizen of Bangladesh himself. Not without relevance is the fact of corruption among Bangladeshi police and their brutality, with the general society fearful of any contact with the police or other law enforcement bodies. Being aware of this fact, the perpetrator used it to his advantage; i.e. when one of the victims escaped, he called the victim's sister in Bangladesh asking her to tell her brother to come back right away because of the danger he was in – once caught by the Polish police, he might get killed. In another case, the perpetrator blackmailed the victim by telling him that the father of the perpetrator's girlfriend worked for the Polish government, and if the victim ran away, his visa would be cancelled and he would have problems in Poland.⁹⁹

Apart from the begging case, physical violence was also applied in the case of the Polish citizens exploited in labour camps in Italy, in the case code-named *terra promesa*¹⁰⁰. The victims were threatened with detention, they were beaten, and several persons were forced to take mind-altering substances. One of the victims (female) was repeatedly raped by the perpetrators and was mutilated by tattooing. Moreover, the penalties for refusing to follow the orders of the perpetrators included detention in a cage with a raving bull. In one case, a man placed in the bull cage died of a heart attack. The bull cage was placed in the yard, to make other victims see the penalty for disobedience. According to the victims' testimonies, the perpetrators maintained contacts with local police officers, which made the victims too afraid to escape the labour camp. The victims were aware that they would be immediately caught and subjected to severe penalties. The most surprising aspect of this case is the fact that Italian police officers knew about the Polish citizens forced to work (and saw them, too), but failed to intervene in any way. For this reason, the ensuing investigation was carried out by a special Carabinieri unit (ROS) from Rome, and not by the local police.

Apart from violence and threats, the perpetrators also applied other means of control. *Inter alia*, they restricted the possibilities of the victims to leave their place of work and/or residence. Nearly in all cases, save for the case of the Vietnamese citizen forced to work in bazaars and the Bangladeshi citizens exploited at a shipyard, the victims could not leave their work place without

⁹⁹ Information based on court files (file no. IV K 141/10 District Court in Gdańsk) and an interview with the judge dealing with this case.

¹⁰⁰ Case file no. III K 21/07 District Court in Kraków.

permission and were kept under guard.¹⁰¹ ¹⁰² At work, the victims were controlled by various methods. In the *terra promesa*¹⁰³ case, the victims were guarded by guards carrying firearms. The guards also used dogs for guarding the victims. In the case of the Ukrainian citizens forced to beg, the victims were controlled by a criminal group. They were checked for presence at the venue assigned to them by the perpetrators and for performing their “work”. When one of the victims escaped and returned to the home country (Moldova), the perpetrators quickly found her and brought her back to Poland to continue begging for them. The perpetrators forced their victim to return to Poland with threats that she still had a debt to pay. Only after regaining their trust in her, the perpetrators allowed the victim to continue begging in another Polish city, where she could live and work on her own. However, the victim was obligated to report daily the money earned and send it to the perpetrators, mainly via a messenger service or by money order, and sometimes the perpetrators arrived in person to collect the earnings (the money collected by begging). The victims relocated to another city were forced to leave a security bond in the form of e.g. the birth certificates of their children. In one case, the victim was forced to leave her youngest (3-year-old) child with the perpetrators, who forced the child to beg with another woman, who was childless.

Additionally, the victims of trafficking in human beings for forced labour had their documents confiscated. Nearly in all cases under analysis, the perpetrators deprived the victims of their identity documents and passports. Knowing of the criminal liability for the seizure of official documents, the perpetrators usually restricted themselves to a single document, i.e. an ID card, leaving the passport with the victim. Such was the case of the Polish citizens forced to work at a citrus plantation in the Italian region of Calabria.¹⁰⁴ In the *terra promesa* case, the perpetrators confiscated the mobile phones of their victims. The phones were taken away in order to prevent contacts with families or calls for help. In the case of the Bangladeshi citizens forced to work at a shipyard, the perpetrators initially refrained from confiscating any documents from the victims, but as soon as the victims ceased to work at the shipyard (the employer terminated their contracts on the pretext that their permits allowed them to work in fish processing industry only, and not in shipbuilding), the perpetrators demanded the victims to hand over their documents, arguing they needed them for the purpose of Immigration Office procedures. In the case of the Vietnamese citizen forced to work in bazaars, the perpetrators deprived him of his passport already at the when he travelled to Poland. In Poland, he was given a forged Vietnamese driving license, which later caused his detention by the Border Guard during its routine inspection of aliens. In the case of the Ukrainians forced to panhandle, the perpetrators confiscated the identity documents from the victims, leaving them

¹⁰¹ Case file no. III K 145/04 District Court in Kielce.

¹⁰² Case file no. IV K 141/10 District Court in Gdańsk.

¹⁰³ Case file no. III K 21/07 District Court in Kraków.

¹⁰⁴ VI Ds. 49/09 District Prosecution Office in Gorzów Wlkp.

only with temporary Polish residence permits. One of the women who came to Poland with her underage children, had their birth certificates confiscated by the perpetrators. The fact that the perpetrators did not confiscate ID cards or passports of victims was caused by the type of “work” performed by the victims, since panhandlers are exposed to inspections by law enforcement authorities.

Case analysis and interviews with victims indicate that one of the methods of controlling the victims is to provide them with accommodation at their workplace or within the premises owned by the perpetrators. Victims living on the premises owned by the perpetrator(s) include the Polish citizens forced to work in Italy, the citizens of Bangladesh exploited when working at a shipyard, the Vietnamese citizen forced to work in Polish bazaars and the Ukrainian woman forced to work as farm hand and a domestic help in a village in the vicinity of Warsaw. In the latter case, the victim was housed in a garage owned by the perpetrator, despite the fact that she was pregnant with him.¹⁰⁵ Only after the onset of winter, the perpetrator resolved to move the Ukrainian woman to the attic of his house, where she remained even after her child was born until she was taken away by the police. Moreover, the perpetrator repeatedly battered the woman during her pregnancy and after the birth of the baby rendering her unable to breast-feed the child.¹⁰⁶

According to the information presented above, the forms of control may vary from sophisticated acts, such as confiscation of documents or providing accommodation on premises owned by the perpetrators, to very brutal ones, such as beatings, rape or forceful use of mind-altering substances.

Sometimes the perpetrators applied several of such methods in combination. In most cases, the perpetrators threatened the victims with beating or harming their families, while simultaneously placing the victims at the premises owned by the perpetrators, where the victims could be controlled at any time of day or night. Physical violence was rare, but if applied, was usually very brutal.

4.7 Economic sectors affected

Based upon the accumulated data for this study, it is difficult to extrapolate directly which sectors of Polish economy are particularly susceptible to forced labour. The analysis of all criminal law cases processed by Polish prosecutors so far indicate that most cases of forced labour occur in agriculture, commerce and shipbuilding industry. In one case, victims recruited for work at bazaars and as domestic help were forced to panhandle on the streets of Polish cities.

On the other hand, the experts we interviewed maintained that trafficking in human beings for forced labour affected mainly such sectors as agriculture,

¹⁰⁵ The pregnancy was not a result of rape.

¹⁰⁶ This information was acquired from an interview with the victim.

construction industry, food and agricultural processing and domestic help.¹⁰⁷ Several experts indicated that according to their knowledge, forced labour also occurs in the so-called “grey zone”, i.e. illegal manufacturing plants, as well as in small workshops and production plants.¹⁰⁸ A representative of one of Poland's largest trade unions explained that most cases of exploitation were reported in agriculture, construction industry and textile industry. The trade union, however, has no information on the situation of labourers working as domestic help, although they assume that this “industry”, too, is affected by forced labour and human exploitation. The representative of the labour and social policy sector was the only interviewee who was unable to specify which sectors were affected by exploitation. All that this person knew was the fact that until recently, exploitation occurred in brothels, and had no information on exploitation or forced labour. A representative of one of the Voivodeship¹⁰⁹ Labour Offices, on the other hand, was unable to provide any information on which sectors of the national economy were susceptible to the exploitation of forced labour victims.

Press information and interviews with experts committed to the elimination of trafficking or counteracting the violations of employee rights indicate, however, that small agricultural farms and small workshops and manufacturing plants constitute a considerable problem in terms of exploitation or forced labour. In 2009 alone, Polish law enforcement and labour inspection bodies reported three cases of exploitation of foreign labourers by small entrepreneurs. Two cases involved persons employed on a Champignon mushroom farm, and one involved illegal employment and provision of misleading information on labour conditions at a tobacco plant.^{110 111} The latter case refers to employment in an illegal cigarette production facility.¹¹²

According to information from the National Labour Inspectorate (PIP), illegal employment of Polish staff members most frequently occurred in hospitality and catering enterprises.¹¹³ Other most frequently affected sectors include

¹⁰⁷ These opinions have been provided by representatives of prosecutor's offices, labour inspection, an NGO, Interior and employers' organisation.

¹⁰⁸ Opinion of a representative of the Police Force and Border Guard.

¹⁰⁹ Voivodeship is traditionally high-level administrative subdivision or administrative unit of Poland. Recently there are sixteen voivodeships in Poland. Administrative authority at voivodeship level is shared between a government-appointed governor (wojewoda) and locally elected assembly and the executive chosen by that assembly.

¹¹⁰ Barbara Majewska, Niewolnicza praca w pieczarkarni, *Polska Gazeta Krakowska*, 20.01.2010 r.; Janusz Włodarczyk, Filipinki nadal są bez pracy, *Słowo Podlasia*, 02.02.2010 r.; Maciej Miłosz, Tajowie w Polsce: praca za grosze, potem deportacja, *Rzeczpospolita* 10.03.10 r.

¹¹¹ Marcelina Szumer, Pracowali jak niewolnicy. Teraz trafiają do więzienia? *Metro Warszawa*, 05.03.2010 r.

¹¹² Case file no. V Ds. 38/09 Appeal Prosecutor's Office in Białystok.

¹¹³ Most frequently, the illegal nature of such employment was caused by failure to make an employment agreement and to state the terms and conditions of employment (in writing), as well as the failure to report staff members to the Social Insurance Institution.

construction industry, industrial processing, agriculture and hunting, commerce and repair services. Foreign workers are most frequently employed in processing industry (i.e. in tobacco plants, food processing plants), hotels and restaurants, construction industry and agriculture.¹¹⁴

The sectors most probably affected by exploitation or forced labour still remain undiagnosed in Poland. One must note here that the phenomenon of trafficking in human beings for forced labour in Poland has been subject to discussions in Poland for the past two years only, and apart from the research carried out by the Centre for Research into Trafficking in human beings of the University of Warsaw, no one else has actually tried to explain this phenomenon.

According to our research, particular attention must be paid to agriculture, construction industry, commerce and domestic help. Moreover, both the Labour Inspectorate and law enforcement bodies should include in their inspections small-scale workshops and production plants, in particular those employing foreigners.

4.8 The legal status of the victims in the country of destination

In our study, we also attempted to determine the legal status of the victims in their country of destination. This information is of particular importance to law enforcement and labour inspection bodies, since it is the staff of these two institutions that actually identify the victims.

The information collected indicates that most forced labour victims stayed in Poland illegally, and victims from Ukraine travelled to Poland on tourist visas. However, the visas were valid for three months only, and upon their expiration the status of victims in Poland became irregular. Also the Polish citizens forced to work on Italian plantations performed their work illegally, although as EU citizens, they could legally stay in Italy. The victims from Bangladesh had Polish visas and work permits, but their employment with the shipyard was illegal, as their permits restricted their employment to the fish processing industry. The citizens of Philippines and Thailand exploited in mushroom farms arrived legally in Poland and held work permits. The only discrepancy was the fact that the citizens of Thailand worked for a different employer than the one specified in their permits. It must be noted, however, that the fact that we are dealing with legal aliens does not preclude that they might be victims of forced labour.

Another issue is the lack of insurance and employment contracts. In all criminal cases we analysed, the victims had no insurance. On the other hand, any employment contracts entered into with the victims were found to be either false, or to contain civil law clauses prohibiting the employees from claiming their

¹¹⁴ See the annual reports by the Chief Labour Inspector on the operations of the National Labour Inspectorate (PIP) <http://www.pip.gov.pl>.

rights concerning remuneration or working hours. In the opinion of an expert from the Labour Inspectorate, employers who enter into contracts with their staff members are frequently found to fail to pay all components of remuneration, and insurance premiums in particular.

In the case of the Bangladeshi citizens employed by the shipyard, the perpetrators entered into two agreements with each victim. The first contract, signed while still in Bangladesh, contained provisions according to which the Bengalese were to be employed by a company owned by the perpetrator, which promised to provide them with meals and lodgings, as well as covering the transportation costs of employees from Bangladesh to Poland, and also from Poland to Bangladesh upon the expiration of the contract. The contracts were made in the Polish, Bengalese and English languages. Based upon these contracts, the Pomeranian Voivodeship Authorities in Gdańsk issued work permits for the Bangladeshi workers, and the Embassy of the Republic of Poland in New Delhi, India, issued them visas, allowing them to live and work in Poland.¹¹⁵ As soon as the Bangladeshi workers arrived in Poland, the perpetrator informed them that their working conditions had changed. Instead of filleting fish, they were to be employed in a shipyard. Simultaneously, the perpetrator informed the victims that due to changed terms and conditions of employment, they must make a new contract. They were to sign contracts for physical work, even though the permits of the citizens of Bangladesh did not allow another type of work. In the new contracts, the perpetrator withdrew from the obligation to provide the workers with meals and lodgings within the territory of Poland, and to cover the costs of their return trip from Poland to Bangladesh. Above that, the new contracts were made in the Polish and English languages. None of the workers knew any of these languages, and some of them could not even read or write. An important difference must be noted between the contracts signed in Poland and those signed in Bangladesh. Additionally, other documents which the perpetrator forced the workers to sign, such as e.g. the declaration of having been paid remuneration, which they never actually received, were made in the Polish language.

4.9 Other related phenomena – agency or leased workers

To date, only a few cases of trafficking in human beings for forced labour have been reported in Poland. However, based on several criminal law cases we noted a new phenomenon which emerged about two years ago, i.e. the so-called agency or leased workers. Agency or leased workers refers to people who have employment contracts with other business entities than the ones they actually work for. Such staff members are performing work by virtue of temporary

¹¹⁵ The Embassy of the Republic of Poland in New Delhi, India, was vested with the right to issue Polish visas to the citizens of the People's Republic of Bangladesh.

employment agreements.¹¹⁶ In this case, the actual employer is the temporary work agency, whereas the employees actually work for a substitute employer-user. The objective of this form of employment is to provide employers with employees having appropriate skills or qualifications to perform certain work. The system allows the employers to reduce their personnel costs, associated e.g. with personnel training. Moreover, the enterprise is free of administration and personnel costs, such as disbursement of remuneration or payment of insurance premiums. All these actions are performed by the agency which is “leasing” the employee. The only role of the employer is to transfer the employee's wages to the temporary work agency.

Hence, the leasing of employees allows companies to save on staff recruitment costs, although in its misunderstood and abused version, employee leasing may result in numerous violations of employee rights, also in the form of forced labour. The entire responsibility is vested in the company running employee leasing operations. A company leasing a staff member may have no information on whether such an employee has actually been paid full wages, or whether agency has made illegal deductions from the employee’s remuneration.

In the opinion of experts, increased numbers of citizens of Asian states arrive in Poland on the basis of so-called employee leasing schemes. The Border Guard reported a case of a woman from China, who was brought to Poland by a Polish temporary employment agency ran by a citizen of China. The victim had an employee visa and a work permit. The victim expected to earn about 700 USD per month. The employer was supposed to provide her with meals and lodgings. Upon her arrival to Poland, however, her employment conditions turned out to be very different than those presented by the leasing agency when she was recruited. The victim was forced to work 6 days a week, 11 hours daily. Sometimes, she had to work on Sundays, too. Apart from the above, the victim did not receive the promised meals. For monthly work she received a salary of PLN 800, out of which she had to pay PLN 600 to the leasing agency. Ultimately, the victim resigned and asked the leasing agency to find her another job. The broker became angry and imprisoned the victim at his house, forcing her at the same time to perform domestic chores and to babysit his child. When the victim was finally freed by the Border Guard, she was already in a very bad mental condition and wanted to commit suicide. Initially, the prosecutor's office pressed charges against the perpetrator according to provisions under Article 253 of the Criminal Code (trafficking in human beings), but ultimately the perpetrator was convicted based upon Article 275 of the Criminal Code (using the identity document of another person).¹¹⁷

The case of Bangladeshi citizens exploited at the shipyard also involved employment by an employee leasing company, owned by the perpetrator. In this case, the perpetrator's company leased employees to a shipbuilding company

¹¹⁶ Journal of Laws Dz. U. 2003, No. 166, Item 1608 as amended.

¹¹⁷ Information based on the interview with an expert from the Border Guard.

operating at the shipyard. The remuneration of Bangladeshi workers was paid to the perpetrator's company, who was expected to then settle the accounts with the workers – which he actually never did. The victims worked for two months according to this scheme (from October to December 2009), i.e. until the Border Guard's inspection checking the legality of their stay. In the course of the inspection, it turned out that the workers from Bangladesh were allowed to work in the fish processing industry, and did not have the permit to work in the shipbuilding industry. Pursuant to the above, the shipyard terminated the employee leasing contract with the perpetrator's company.

In the case of the Thai citizens exploited at a mushroom farm in south-western Poland, the victims were employed by two Polish employment agencies, specialising in the recruitment of staff from Asia. The agencies charged the Thai workers a fee for having found the jobs for them. The only discrepancy was the fact that the Thai citizens worked for a different employer than the one specified in their permits. Together, both employment agencies brought to Poland about 200 workers from Thailand.

The application of employee leasing by perpetrators of forced labour or exploitation is an entirely new phenomenon in Poland. According to our research, the fact that the perpetrators are running legal operations, e.g. in the form of an employment agency, is actually a camouflage concealing their illegal operations. The perpetrators do not actually want the people they bring to Poland to work legally, but they are only concerned about providing such workers with Polish visas. It must be noted that the employee leasing scheme was applied only in the case of Asian workers. We did receive signals, however, indicating that this method of employing foreign workers in Poland was also applied in the case of citizens of Eastern European countries. Attempts to legalise the operations of these strange “employment agencies” are actually of lesser relevance. All the perpetrators were interested in was to reach the highest profit possible for each foreigner brought to Poland, as was particularly visible in case of the citizens of Bangladesh. Even though the victims paid most of their travel costs to Poland and accommodation costs once they arrived here, they did not receive any money after having worked for a month, despite the fact that the perpetrator was paid for the Bangladeshi workers by the shipyard.

4.10 Impacts of the recession

In our study, we attempted to establish whether the current economic crisis had any impact on the increase in the number of forced labour cases reported in Poland. However, this impact turned difficult to establish based upon criminal law cases, since only two such cases occurred after the crisis started. It must also be noted that the economic crisis was not as severe in Poland as in other EU Member States. In order to learn whether the economic crisis actually had any impact upon the occurrence of forced labour and exploitation in Poland, we resolved to present this question to the experts we interviewed. The experts had

diverse opinions on this matter; some of them thought the economic crisis actually caused an increase in the number of forced labour cases in Poland, whereas in the opinion of others this effect was negligible. In the opinion of an expert representing one of Poland's largest trade unions, it is difficult to determine the impact of the economic crisis on trafficking in human beings for forced labour in Poland due to insufficient data on the subject. The expert noted, however, that although the number of cases of exploiting labour was on the increase, including the number of cases of trafficking in human beings for forced labour, this state of affairs may have been caused by two reasons. Firstly, we may be dealing in Poland with an actual growth in the number of exploitation or forced labour cases caused by the current economic crisis. On the other hand, however, institutions committed to combating forced labour and exploitation are becoming more effective and are able to report more cases of such offences. The above applies in particular to the Police Force, the Border Guard and the National Labour Inspectorate.

In the opinion of representatives of the prosecutor's offices, Border Guard, labour inspectorate and La Strada organisation, the economic crisis could have an impact upon the phenomenon of forced labour in Poland, since employers are now seeking savings in their companies, involving numerous violations of employee rights. These experts stressed that compared to preceding years, we might be dealing now with a higher share of illegally employed aliens in the total workforce. As far as illegal employment is concerned, the probability exists of non-compliance with the provisions of the labour law, including the exploitation of workers, or even forced labour. In the opinion of experts, small production plants and workshops are particularly vulnerable to such practices, especially those operating within the so-called "grey zone".

Experts also stressed that the recession was not the only driver behind the increasing number of cases of exploitation or forced labour. The employers' conviction of their impunity or diminutive liability for violating employee rights is not of small relevance. Employers convinced of their impunity will exploit their workforce even more, or at least consider the liability for violations of employee rights to be a calculated risk, taken into consideration in their profit estimates.

Chapter 5: Law in practice and law in action, i.e. how the justice system and law enforcement define forced labour

Although Poland has had very few criminal cases of human trafficking for forced labour and no laws to penalise forced labour as such, our aim was to establish how law enforcement and the judiciary define forced labour. We wanted to know how investigators and judges handle criminal cases involving exploitation or forced labour. Do they use this term at all or do they perhaps combine forced labour or forced services with other crimes stated in the Penal Code?

We agreed that law enforcement and the justice system can consider forced labour as a crime against the rights of people doing paid work (Article 218–221 of the Penal Code) or as human trafficking (Article 253 of the Penal Code, since September 2010 Article 189a of the Penal Code)¹¹⁸. With more than three thousand cases a year recorded in Poland and a busy research schedule, an analysis of criminal cases involving violations of employee rights was not possible. As a consequence, in looking for the answers we shifted our focus to criminal cases involving human trafficking without sexual abuse. In addition, the results of our expert interviews suggested that cases identified by law enforcement or labour inspection as forced labour are usually qualified by prosecutors and judges as human trafficking.

Obviously, we were only able to study a portion of forced labour cases in Poland because many of them either remain undetected or are not identified at all by investigators or labour inspectors. We know from our interviews with labour inspectors that the National Labour Inspectorate has been tackling the problem of human trafficking only since mid-2007 and had no prior powers to identify and investigate these cases. The same can be said about the prosecutors, police and Border Guard. Because law enforcement and labour inspection became involved only a few years ago, very few cases of forced labour have been investigated and tried in a criminal court. So far there have been five criminal cases involving human trafficking in Poland of which three are still on-going¹¹⁹. As a result, our analysis of the five criminal cases could not possibly provide a comprehensive picture of forced labour in Poland. All we can do is highlight some of the aspects knowing that it is only the tip of the iceberg¹²⁰.

¹¹⁸ Polish criminal law covering exploitation and forced labour including human trafficking is detailed in Chapter 1, Section 1.2 Legal context.

¹¹⁹ As of July 2010.

¹²⁰ See Beate Andrees, Forced labour as a form of human trafficking, in Z.Lasocik (ed.): Human trafficking. Prevention and prosecution. Human Rights Studies Centre, Warszawa 2006, p. 196.

Nonetheless we decided to look at these five cases of human trafficking for forced labour to try to understand how the justice system and law enforcement have been tackling the problem and how, if at all, they have defined forced labour.

5.1 The difficulty of defining human trafficking

For a proper assessment of the empirical material, it must be explained that while the Polish legal order penalised human trafficking (Article 253 of the Penal Code), it did not provide a relevant definition. This continued until the current Penal Code took effect, i.e. from 1997 until the end of 2010 when the penal law was revised in September 2010. The definition, however, is not included in the penal regulation itself specifying the sanctions. Instead it is included in the introductory part of the Penal Code¹²¹ as a definition of a statutory term.

Over the years, the laconic statement banning human trafficking but failing to provide a legal definition of the crime has been the cause of numerous misinterpretations and misapplications of Article 253 of the Penal Code (human trafficking).¹²² All it did was to make the criminal justice system more alert than it would be otherwise. The police thought they were better off not accusing people of human trafficking because of the difficulty of providing the evidence and thus to convince the prosecutor to press charges. Mindful of the possibility of a different charge formulated by the prosecutor, police officers offered a “safer” option, one that is easier to prove. Things were no different for prosecutors who would formulate charges contrary to the evidence gathered. That was often because of a lack of knowledge about human trafficking and the international laws and for fear that the judge would change the proposed charges¹²³.

The concern was legitimate because the judges in Poland differed in their verdicts on human trafficking and lacked clarity on what human trafficking really meant in the context of the laconic Article 253 of the Penal Code (human

¹²¹ Journal of Laws of 2010 No. 98, Heading 626.

¹²² There were two definitions of human trafficking in the Polish legal order. They come from two key documents of international law, i.e. the Palermo Protocol of 15 November 2000 (Journal of Laws of 2005 No. 18, Heading 160) and the EU Framework Decision of 19 July 2002 (2002/629/JHA). Whether they can be applied directly has been the topic of an intense debate within the legal community. According to Filip Jasiński, Krzysztof Karsznicki, *Combating human trafficking from the perspective of the European Union*, *Państwo i Prawo* 2003, no. 8, p. 84-96. Andrzej Sakowicz, *The crime of human trafficking from the perspective of international regulations*, *Prokuratura i Prawo* 2006, no.3, p. 52–69. Eleonora Zielińska, *The need to revise the Penal Code in light of the ratified protocol for the prevention and penalisation of human trafficking*, *Studia Iuridica* 2006, no. XLVI, p. 337–344.

¹²³ Krzysztof Karsznicki, *Prosecuting the crime of human trafficking in Poland*, *Human Trafficking Studies Centre Warsaw University*, Warszawa 2010, p. 31–46.

trafficking). The question for the courts was e.g. whether the term trafficking in human beings applies only when it involves the “sale” of more than one person¹²⁴. The regulation in Polish uses the plural of “person”, possibly suggesting that it does not apply to cases involving one person only. Another issue disputed by the judiciary was the fact that for “human trafficking” to occur, a sales agreement in the meaning of civil law must be made. In other words, the question is whether human trafficking must include a typical transaction or whether the crime occurs even if none of the commonly recognised commercial conditions are met. With each new verdict the courts tended to apply broader interpretations of human trafficking and applied Article 253 of the Penal Code more often. Of particular importance was a Supreme Court verdict providing the linguistic interpretation of the crime of human trafficking. Despite this, some problems with interpretation and application of the regulation persisted¹²⁵.

Despite the lack of a Penal Code definition, cases of human trafficking were investigated and tried with prosecutors and judges slowly but successively resorting to international law, in particular the Palermo Protocol and the 2002 Framework Decision.

The purpose of these introductory comments was to highlight an important fact which is that all the criminal cases we have analysed occurred when the Penal Code did not provide a definition of human trafficking and the doctrine and the judiciary held disputes on the meaning of terms such as human trafficking and forced labour.

In the criminal cases we have analysed, prosecutors and judges defined human trafficking and forced labour in two ways. First, they would make references to linguistic or systemic interpretation. That meant quoting the doctrine and dogma of penal law, i.e. handbooks and commentaries to the human trafficking regulation and the relevant Supreme Court verdicts.

The second strategy was to quote international law on human trafficking and/or forced labour. In this case, judges and prosecutors would usually refer to United Nations Convention against Transnational Organised Crime of 15 November 2000¹²⁶, including the Palermo Protocol of 15 November 2000¹²⁷, Council Framework Decision of 19 July 2002 on combating trafficking in human beings, and the International Labour Organisation’s conventions, primarily Convention No. 29 concerning forced or compulsory labour. That was a legitimate strategy because under the Polish Constitution ratified international agreements become part of Poland’s legal order. The only problem was whether international laws

¹²⁴ An Appeals Court verdict in Wrocław, 21 February 2003, II AKa 586/02, Verdicts of Appeals Courts in 2003, no. 5.

¹²⁵ According to Barbara Namysłowska-Gabrysiak, Analysis of courts’ verdicts in 1999–2009 in cases of human trafficking in the light of Polish and international legal regulations, for the Institute of the Justice System, Warszawa 2010.

¹²⁶ Journal of Laws of 2005 No. 18, Heading 158.

¹²⁷ Journal of Laws of 2005 No. 18, Heading 160.

quoted by the courts were self-enforcing, i.e. whether the ratification itself is enough to quote the law in trying criminal cases.¹²⁸

5.2 How the courts and prosecutors defined human trafficking for forced labour

Despite the limited number of criminal cases, the analysis shows an evolution in how human trafficking for forced labour or human trafficking as such has been defined. In the first case involving human trafficking for forced labour from 2004 (file number III K 145/04 District Court in Kielce) the court and prosecutor used very concise statements to define human trafficking for forced labour. Human trafficking for forced labour was defined as “forcing into slave labour” with no explanation of what “slave labour” meant. While the prosecutor and the judge often used the term “exploitation for slave labour” none of them had ever explained or defined it. In its final verdict the court proved that the perpetrators had knowingly taken advantage of the difficult situation of the victim. The man took out a loan to be able to come to Poland and pay the middlemen, which led to debt bondage. He had a family to support in his home country. On the other hand, he was staying in Poland illegally, did not speak any Polish, did not know Polish culture, and had no documents or means to support himself. In the verdict the judge emphasized the complete dependency of the victim on the perpetrators and that he had to follow their orders.

In the case of the Bangladeshi citizens forced to work in the Gdańsk Shipyard in 2009 (file number IV K 141/10 District Court in Gdańsk), the prosecutor defined human trafficking on the basis of the Palermo Protocol. He supported his claim of human trafficking by stating that while the perpetrator recruited and transported the people into Poland legally, he misled them about the conditions of work in Poland. The prosecutor also claimed that once in Poland the victims were exploited for compulsory labour using practices similar to slavery and that the victims had no way of refusing to work, received no pay and the work was beyond their physical capacity. In addition, the perpetrator restricted the victims’ personal freedom by forcing them to stay in a secured building and rationed their food. The perpetrator deprived them of their passports and mobile phones.

The prosecutor in charge of the case involving the Bangladeshi nationals went beyond the Palermo Protocol definition of human trafficking by referring to the revised Penal Code of 20 May 2010¹²⁹ which states that human trafficking also involves forcing people into compulsory labour or services.

¹²⁸ Po A. Sakowicz, The crime of human trafficking from the perspective of international regulations, *Prokuratura i Prawo* 2006, no. 1, p. 52–69, and K. Karsznicki, Prosecuting the crime of human trafficking in Poland, Human Trafficking Studies Centre Warsaw University, Warszawa 2010, p. 22.

¹²⁹ Journal of Laws of 2010 No. 98, Heading 626.

In the case of the Ukrainian nationals forced to beg on the streets in Poland (file number II K 49/07), the prosecutor and judge stated that the perpetrators committed the crime of human trafficking to force the victims to beg. In this case the prosecutor and judge quoted the Palermo Protocol definition of human trafficking.

The prosecutor demonstrated that the perpetrators had misled the victims about the nature of the work and were involved in the recruitment, transport, transfer and sale of the victims from Ukraine to Poland and took advantage of the victims for forced labour which was to beg. While the prosecutor accused the perpetrators of exploitation for forced labour, he never explained what it entailed. In the justification of its verdict the court stated that human trafficking involves the treatment of people as objects of trade which is often pursued to exploit these people. The court also pointed out that people (adults and minors) cannot be the objects of any trade whether for personal gain or not. The court referred to Supreme Court rulings¹³⁰ and stated that in the light of Polish law when a perpetrator/perpetrators act to transfer a human being this constitutes a case of human trafficking.

In an effort to define human trafficking, the court went beyond Supreme Court and national courts' rulings, and quoted international laws concerning human trafficking which Poland has ratified. The court first referred to documents of international law adopted in the early 20th century. They include the International Agreement of 18 May 1904, the International Convention signed on 4 May 1910 for the suppression of the white slave traffic¹³¹ and the Convention of 30 September 1921 for the suppression of the traffic in women and children¹³². In addition, the court referred to the definitions in the Palermo Protocol and Council Framework Decision No. 2002/629 JHA on combating trafficking in human beings¹³³. While the court described at length the documents of international law concerning human trafficking and the dogmas of the Polish law on that issue, it offered very little explanation of human trafficking for forced labour in the case heard before it. All the court did was to state that on the basis of the evidence gathered, the perpetrators were involved in the recruitment, transport and transfer of Ukrainian nationals into Poland to subsequently force them to beg in the streets in Poland. In addition, the perpetrators took all the money the victims had made (from begging), claiming that it was going towards the amounts they had spent to bring the victims into Poland. In the opinion of the court, the fact that the perpetrators recruited the victims, arranged their trip to Poland by helping them with the necessary documents, organised the transport, placed them in Poland, told them what the work would entail and took away the

¹³⁰ Supreme Court verdict of 19 April 2002 , V KKN 353/00, LEX no. 56863.

¹³¹ Journal of Laws of 1922. No. 87, Heading 783.

¹³² Journal of Laws of 1925 No. 125, Heading 893.

¹³³ Official Journal EC L 203 of 1 August 2002.

money they had made (from begging) and used threats, had met all criteria of the crime of human trafficking.

In the other cases that are still pending, the prosecutors use an almost identical definition of human trafficking, i.e. “... *the defendant/defendants engaged in human trafficking to exploit them for slave or compulsory labour in that they recruited the victims and misled them as to the conditions of work and pay*”¹³⁴. The indictment also states that the perpetrators held the victims against their will in conditions offensive to human dignity and used psychological and/or physical force.

Some cases are still being tried, including the *terra promesa* case of 2006. Poles were exploited on plantations in Italy outside the city of Foggia (file number 21/07 District Court in Krakow) and the perpetrators are charged with human trafficking based on the Palermo Protocol definition and the definition of forced labour used in the International Labour Organisation’s Convention No. 29 concerning forced or compulsory labour. The prosecutor claims that the perpetrators knew perfectly well that the conditions of work in Italy were bad and that the people were recruited for forced labour. As a result, the prosecutor believes that the perpetrators deliberately misled the victims by telling them that the conditions of work were very good and promised good pay. Once in Italy, the workers realised the conditions were deplorable and the pay was none or just a few euro for a day’s work. The perpetrators were involved not only in the recruitment of victims for forced labour, but also in transporting them to Italy and transferring them to others for forced labour. The perpetrators had complete control over the victims, one more criterion of forced labour. The victims were subjected to intimidation, physical and psychological violence and were not allowed to leave the premises. The perpetrators imposed financial penalties for work undone and claimed they had run up a debt for the costs of accommodation. Because those costs were very high and the pay was very low, the victims were unable to pay back the debt through work.

This case involves not only forced labour but debt bondage as well which the ILO considers a form of forced labour¹³⁵. The prosecutor, however, only used the terms of human trafficking and forced labour.

The prosecutor also explained that even though the victims agreed to take the job, they knew nothing about the real conditions of work in Italy and could not oppose their employers because they were kept in rooms guarded by armed guards. In addition, the victims had no money which made going back to Poland impossible.

In his indictment, the prosecutor emphasised the fact that the victims were held in conditions offensive to human dignity because the place was not fit for human

¹³⁴ File number IV K 141/10 District Court in Gdańsk, p. 1869; file number 21/07 District Court in Kraków and VI Dp. 40/07/S, p. 29.

¹³⁵ Human trafficking for forced labour. How to monitor the recruitment of migrant workers, handbook, International Labour Organisation, Warszawa 2006, p. 5.

occupation. The victims were placed in makeshift buildings, old cars or tents. None had toilets. The perpetrators did not allow any contact with the external world by confiscating telephones and stopping the victims from leaving the premises. The victims were held on the plantation far from the city. In addition, the victims' identity documents were confiscated. This is why the prosecutors believe that this is a case of human trafficking for forced labour.

The above overview of the criminal cases suggests that courts and prosecutors always consider forced labour in the context of human trafficking which is perfectly understandable because the Polish Penal Code does not penalise forced labour as such. On the other hand, all the criminal cases analysed were tried when the Polish Penal Code did not provide a definition of human trafficking. Today, because the definition of human trafficking has been introduced into the Penal Code, the Polish penal law considers forced labour as a form of human trafficking or at least states that forced labour can be one of the objectives of human trafficking. What remains to be solved is how to treat those acts which meet the criteria of forced labour but do not meet those of human trafficking. We must remember that according to the ILO, forced labour does not have to involve human trafficking¹³⁶. This observation poses an obvious task for anyone studying the problem of forced labour in Poland. There should be on-going monitoring of the justice system to identify cases involving exploitation of others, especially foreigners. It is also important to cover all such criminal cases in great detail and to understand how law enforcement and the courts present their case and how this is evolving.

¹³⁶ A Global Alliance against forced labour Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Organisation, Geneva 2005, p. 7.

Chapter 6: Short description of the system of elimination of trafficking in human beings for forced labour

6.1 Prevention

The forced labour prevention system includes a large number of possible actions which may be classified as: 1. policy-level solutions – creating a development strategy with consideration to the presence of foreigners on the labour market, creating a reasonable and realistic migration policy, 2. institutional and systemic solutions, such as e.g. creating and strengthening institutions responsible for verifying the legality and conditions of employment, as well as simplifying the employment procedures of foreigners; 3. penalising the behaviour associated with extortion of certain benefits and exploitation of workforce; 4. building partnerships for the elimination of forced labour, mainly with the participation of trade unions and employers' organisations; 5. solutions at the level of social awareness and mentality, aimed at building social awareness of forced labour and creating a climate of social condemnation of human exploitation.

6.2 Identification of victims

The weakest element of the system of identifying victims is the nearly complete lack of self-identification. The main problem of forced labour victims is the fact that they are usually employed illegally, and as such they are even more afraid than their employers of the authorities of the State, which has at its disposal a number of possible sanctions for such behaviour, deportation notwithstanding. Law enforcement bodies, such as the police force and the Border Guard, as well as control bodies, such as the National Labour Inspectorate (PIP), the Chief Sanitary Inspectorate (SANEPID) or the Supreme Audit Office (NIK) achieved certain success in the identification of victims of forced labour. The analysis of press articles we collected in 6 months indicated that only in a few cases, the authorities had been notified by citizens. In Poland, it is still a common rule not to interfere into somebody else's affairs, except when it is absolutely necessary.

The analysis of criminal law cases indicated that most cases of trafficking in human beings for forced labour were reported either by the victims themselves, or by third parties. Very few cases were detected in operations undertaken by law enforcement bodies. Only one such case, i.e. of a Vietnamese citizen forced to work in bazaars, was detected in the course of a routine inspection checking the legality of employment, carried out by the Border Guard. It is worth noting here that initially the Border Guard officers wanted to deport the victim because of his irregular status in Poland.

In both cases involving the forced labour of Polish citizens on Italian plantations, the victims themselves reported the existence of labour camps in Italy to law enforcement agencies. In the case code-named *terra promesa*¹³⁷, Polish police initially refrained from taking any actions, but as the information on forced labour of Polish citizens in Italy multiplied over time, it initiated cooperation with the Italian Carabinieri. Both Polish and Italian law enforcement bodies quickly realised that they are most probably dealing with trafficking in human beings for forced labour.

In the case of Polish citizens exploited on a tangerine plantation in the Italian province of Calabria, one of the victims upon returning to Poland asked the state prosecutor's office for assistance, but the latter refrained from taking any actions in this matter. For this reason, the victim decided to grant an interview to a local newspaper, describing the work conditions in Italy¹³⁸. Moreover, other victims who managed to leave that workplace notified the Consulate of the Republic of Poland in Rome, which subsequently entered into cooperation with the Polish police and the Italian Carabinieri. The Polish and Italian law enforcement agencies became interested in the case only upon numerous interventions of victims.

In the case of the citizens of Bangladesh forced to work at a shipyard in Gdańsk, two victims managed to escape from their lodgings to the railway station in Gdańsk. At the train station, they asked the travellers for petty change to buy train tickets, because they wanted to travel to Warsaw. Once on the train, they met a woman travelling with her grandson, who promised to assist them in finding an NGO dealing with foreigners. This way, the Bangladeshi found their way to the Association of Legal Intervention (Stowarzyszenie Interwencji Prawnej SIP) which offers assistance to foreigners, and next to La Strada Foundation which included them in its *Programme of Support to And Protection of Victims/Witnesses of Trafficking in Human Beings (Program wsparcia i ochrony ofiary/świadka handlu ludźmi)*.

A third party also played a key role in the detection of the case of the Ukrainian citizens forced to beg – in this case it was the owner of the hotel in which one of the victims was lodged. As soon as the owner learned that the woman and her child were forced by an organised crime group to beg, she offered her assistance, moved the victims to her own house, and informed the local police of the entire situation. It is worth noting here that in this case the participation of a third person went much beyond the usual notification of the right services, as the victims were also given concrete assistance.

In several other cases, forced labour victims were identified following media intervention. A good example of such intervention is the case of Philippine women, forced to work at a mushroom farm in eastern Poland. It was not,

¹³⁷ III K 21/07 District Court in Kraków.

¹³⁸ Cf. Wojciech Olszewski, Handlarze ludźmi zostali aresztowani, *Gazeta Lubuska*, 05.01.2010.

however, the only occasion, when law enforcement or labour inspection bodies learned of exploitation or forced labour from the media.

The identification methods of forced labour victims in Poland are best evidenced by the case of a Ukrainian woman, forced to work as a farm hand and a domestic help at a farm near Warsaw. The case was detected by sheer accident. The man who imprisoned the victim at his home was stopped by the police for drunken driving and failed to produce any identification documents. The man asked the police officers to accompany him to his house to allow him to collect the necessary documents. The police officers drove the man home in their car. When the Ukrainian woman saw a police car driving into the yard, she immediately ran from the house and begged the officers for help; she wanted them to take her immediately to the police station. Initially, the police officers refused to accept her complaint, explaining it falls outside their scope of competence. The officers told the woman that if she felt maltreated, she might (quote) “... *take a bike and come to the police station to testify*”¹³⁹. The Police officers did not trust the victim and did not want to talk to her. The victim, however, begged to be taken from the perpetrator's house. Ultimately, the first police patrol asked their colleagues from the police station for help. Upon arrival on the scene, the officers from the second patrol promised the Ukrainian woman to take her away from there as soon as they find her a place to stay. The police officers did not know what to do with the victim and where to take her. For this reason, they returned to their police station to enquire what institution may take in a foreign woman with a small child. After several hours, when the police officers knew the Ukrainian woman may be admitted to a women's hostel, they returned to take the victim and her child there. The Ukrainian woman was initially identified neither as victim of forced labour, nor of domestic violence. The characteristic feature of this case is the fact that the first police patrol to arrive at the perpetrator's house refused to accept the complaint of the Ukrainian woman at all, despite her insistence and begging for being taken from that house together with her child. Only the intervention of a second police patrol caused the officers to provide the woman with assistance and to take her, together with her child, away from the perpetrator's home.

The information collected indicates unanimously that the activities undertaken by law enforcement bodies to detect forced labour cases are limited, not to say nonexistent. Law enforcement bodies wait for the victims, witnesses or media to notify them of such offences. And even if law enforcement agencies actually receive information on cases of forced labour, they are not always interested in pursuing the matter any further. Hence, it is essential to enhance the system of identifying cases of trafficking in human beings for forced labour. Despite the increasing number of cases of employee rights violation, identified by Polish law enforcement and labour inspection bodies, which subsequently often turn out to be cases of trafficking in human beings for forced labour, these institutions still have problems with the identification of forced labour cases in Poland.

¹³⁹ Quotation from interview with the victim, 28 January 2010.

The basic problem in the identification of victims is the insufficient knowledge of law enforcement officers on trafficking in human beings and forced labour. For this purpose, it is necessary to increase the number of training courses, particularly training of low-ranking police officers, since it is such officers who most frequently encounter the victims of trafficking in human beings and forced labour, although in most cases they are not aware of this fact. A good example is the case of the Ukrainian woman, forced to work as farm hand and domestic servant.

Apart from training courses, it is also necessary to provide the police officers with tools enabling them to detect more cases of exploitation and forced labour in Poland. An effective solution could be offered in the form of a questionnaire, aimed at improving the identification of trafficking in human beings and forced labour victims. Already 5 years ago, the Centre for Research into Human Trafficking at the University of Warsaw (Ośrodek Badań Handlu Ludźmi UW), working together with other institutions and organisations committed to eliminating the trafficking in human beings, developed a questionnaire to help law enforcement officers in the identification of trafficking in human beings victims. Also a pilot programme of using the questionnaire was carried out. However, the concept of introducing the questionnaire as a tool assisting the police and Border Guard officers in identifying victims of trafficking in human beings did not take hold.

Another concept, not without relevance to improving the detection rate of cases of forced labour, is focused on increasing the scale of operational and investigative actions. As far as institutions involved in the elimination of trafficking in human beings and forced labour are concerned, such activities may now be carried out by the police and the Border Guard. For this reason, the agreement signed in April 2008 between the National Labour Inspectorate (PIP) and the Border Guard on controlling the compliance with regulations governing the employment of foreigners must be given high regard. The initiative is not limited to joint actions or the exchange of information, but also includes cooperation in improving inspection methods and the qualifications of both labour inspectors and Border Guard officers. The complementary nature of cooperation between these two institutions sets a good example to other institutions involved in eliminating forced labour. Such cooperation may become a remedy to the two basic problems affecting the Polish system of eliminating forced labour. The first of these problems is the fact that officers of specialist institutions are not properly prepared to identify cases of forced labour. The other problem is the low effectiveness of the Polish system of eliminating forced labour and trafficking in human beings, caused by the incoherence of actions undertaken by the prosecution and law enforcement bodies.

The small number of criminal law cases of trafficking in human beings for forced labour initiated by law enforcement and labour inspection bodies may also be a consequence of a generally low awareness among police officers on forced labour and trafficking in human beings. In the opinion of most experts, low-ranking officers and employees know little about eliminating such

phenomena. Experts indicated the lack of training on forced labour to be the reason behind this state of affairs. Moreover, the experts stressed that Polish authorities had been very late to express their interest in this matter, since the problem of forced labour was raised for the first time at the National Conference on Human Trafficking, organised in 2008 by the Ministry of Interior and Administration (MSWiA).

6.3 Prosecution of the offence of trafficking in human beings for forced labour

From the point of view of the prosecution of forced labour, the penalisation of acts aimed at forcing another person to perform given work is certainly of key importance. In the Polish legal system there is no such offence, meaning that the perpetrators of such offences must be prosecuted on the basis of either the regulation prohibiting trafficking in human beings, or a group of provisions on the violations of employee rights. The second, important precondition for effective prosecution is the existence of a highly specialised and well trained public service, namely of special teams of police and Border Guard officers, responsible for identifying forced labour victims and arresting perpetrators, assisted by investigation teams specialising in migration- and tax-related offences. The third precondition for effective prosecution of forced labour is the incorporation of trafficking in human beings and forced labour into the operational tasks of investigation services to initiate the process of gathering information which in time will be transformed into hard evidence. And finally, the last but not least element is the proper training of prosecutors and judges, who would not hesitate to apply a unanimous legal qualification of offences involving trafficking in human beings or forced labour.

In the opinion of experts, the level of preparation of institutions involved in combating trafficking in human beings for forced labour is steadily improving. The experts maintained, though, that even if the awareness of the officers of the law of trafficking in human beings and forced labour is improving, the training available in this field is still insufficient. In the opinion of experts, the prosecutors, judges and Border Guard officers employed at the Foreigners Department are particularly in need of appropriate training in this area. On the other hand, the expert representing trade unions pointed out that it is hard to assess whether the institutions involved in the elimination of trafficking in human beings are operating properly. If such institutions had no problems with the identification of forced labour victims, most probably many more cases would have been revealed. Just a few cases of forced labour over the past ten years in a country with the population of nearly forty million people certainly is not much.

Despite their rather good assessment of activities carried out by institutions and organisations involved in preventing and combating trafficking in human beings for forced labour, experts still maintain that actions undertaken by such

institutions are insufficient. This state of affairs is mainly attributed to gaps in Polish law, which prohibit effective combating of forced labour. In the opinion of nearly all experts in our study, the lack of regulations penalising forced labour prohibits law enforcement and labour inspection bodies from taking any effective actions. The experts hope that the definition of trafficking in human beings, incorporated in May 2010 into the Criminal Code, defining forced labour as one of the forms of trafficking in human beings, will resolve the problem of prosecuting the trafficking in human beings for forced labour.¹⁴⁰

Cooperation between institutions and organisations involved in eliminating forced labour within the scope of information exchange is also an important problem. The system of information exchange between such institutions must definitely be improved.

In this context, the agreements referred to above, signed in 2008 between the National Labour Inspectorate (PIP) and the Border Guard (SG) in the matter of compliance with regulations on employing foreigners, deserve high appreciation. A similar agreement with the police is now pending preparatory works by the National Labour Inspectorate (PIP). In 2010, PIP is planning to sign a new cooperation agreement with the police. The existing agreement between the police and PIP is of a general nature, whereas in the new agreement, PIP will stress the importance of information exchange and cooperation within the scope of legality of employment. The National Labour Inspectorate (PIP) and the prosecution office shall enhance their cooperation, especially due to the fact that the prosecution office has the necessary legal instruments at its disposal that could make the combating of forced labour more effective. The assistance provided by the prosecution office may also be of relevance, especially in cases of exploitation or forced labour of foreigners, since in such cases the prosecution office may apply for international legal assistance.

Ineffective information flows between law enforcement and labour inspection bodies are not the only problem they endure in this area. Our research indicated that problems with eliminating forced labour or trafficking in human beings may occur within a single institution. According to information from the Border Guard, as soon as an illegal alien worker is detained, an investigative team starts investigation into the case to detect the employer who hired such a foreigner against the law. However, the Border Guard officers responsible for foreigners want to deport the victim as soon as possible, as in their opinion such a person is simply an illegal alien in Poland. This conflict of interests, occurring within a single institution, exerts destructive influence upon the process of identifying and prosecuting cases of trafficking in human beings and forced labour.

Effective cooperation between national law enforcement institutions with their foreign counterparts also bears an impact upon effective prosecution of trafficking in human beings and forced labour. In the case of trafficking in human beings and forced labour, international cooperation is of great

¹⁴⁰ Journal of Laws Dz. U. 2010, No. 98, Item 626.

importance, as such offences are often of cross-border nature, with the victims usually being foreigners. As a consequence, investigators must rely on the assistance from foreign institutions and organisations to effectively implement preparatory proceedings. Therefore, in our analysis of criminal law cases and interviews with experts, we tried to determine whether such international assistance actually takes place, and if it does - what it focuses on. Whether only basic information is collected, i.e. concerning prior convictions, or is the cooperation based on e.g. setting up Joint Investigation Teams.¹⁴¹

The results of the study indicated that the international cooperation between Polish and foreign law enforcement bodies is improving year by year. Initially, if at all, such cooperation focused rather on the collection and exchange of basic information, particularly concerning the perpetrators of the offence of trafficking in human beings and of forced labour. In recent years, however, Polish law enforcement bodies, and the police and State Prosecution Office in particular, take advantage of international cooperation more frequently and on a broader scale. Even though Polish law enforcement bodies failed so far to set up a Joint Investigation Team, Poland may boast good international cooperation in the area of trafficking for forced labour.¹⁴² The cooperation in question was established in the case of Italian labour camps, code-named *terra promesa*¹⁴³, in the course of which Polish police cooperated with the Italian Carabinieri. The cooperation was established at the stage of preparatory proceedings. In the spring of 2006, the police of both countries entered into an agreement, followed by cooperation between national prosecution bodies. Despite the fact that no Joint Investigation Team was set up, as Italy did not implement the *Framework Decision of the Council of 13 June 2002 on Joint Investigation Teams (2002/465/JHA)*, the cooperation was nevertheless effective. The lack of institutional forms of cooperation did not keep the parties from exchanging information on the perpetrators, sending witness depositions and other evidence (such as recordings of conversations and photographs made during the surveillance of the plantation) or from a joint operation of detaining the perpetrators. The cooperation also involved the participation of Europol and Eurojust. The organisations referred to above prepared an analysis of evidence and produced a flow chart of the investigation.

¹⁴¹ The setting up of joint investigation teams is possible by virtue of Framework Decision adopted by the Council on 13 June 2002 on joint investigation (2002/465/JHA). The basic tasks of JITs include prosecution of cross-border crime and the collection and securing of evidence.

¹⁴² There have been no JITs working with the participation of the Polish police. In the case code-named *terra promesa* no Joint Investigation Team was set up, since Italy at the time still did not have adequate legislation in place. Moreover, Poland attempted to set up a JIT with Lithuania, but the operational material collected proved insufficient. On another occasion, the Central Team for Trafficking in Human Beings at the Chief HQ of the Polish police tried to set up a JIT with the German police, but differences in the qualification of cases of trafficking in human beings caused this initiative to fail, too.

¹⁴³ Case file no. III K 21/07 District Court in Kraków.

The case in question clearly indicates that even without a legal basis, international cooperation between law enforcement bodies may still exist. As it turns out, the spirit of cooperation and understanding between the parties is enough. So far, it remains the best example of cooperation between Polish and foreign law enforcement bodies.

The cooperation between Polish law enforcement bodies and their counterparts from Asian states, however, remains a serious problem. No cooperation has been established in cases concerning the exploitation of a Vietnamese citizen or the forced labour of Bangladeshi citizens.^{144 145} In the case of the victim from Vietnam, Poland has undertaken attempts to enter into cooperation with the Vietnamese side, but to no avail. There was no response on the part of Vietnam. As far as the case of Bangladeshi citizens is concerned, no international cooperation was established either. Moreover, Poland did not enter into an agreement on legal assistance with Bangladesh, and for this reason Polish law enforcement bodies will probably refrain from entering into cooperation with that country in the matter of exchanging information on the case.

The problem of cooperation between Polish and Asian law enforcement bodies must be solved, particularly due to the increasing number of Asian victims of forced labour in Poland. This situation may be remedied, *inter alia*, by signing bilateral agreements on criminal law cases, particularly with the countries of origin of most victims of forced labour in Poland.

6.4 Punishing of the offence of trafficking in human beings for forced labour

In our study, we also tried to stress the issue of penalties imposed by the courts of law upon the perpetrators of trafficking in human beings for forced labour. It must be noted here that according to the Polish Criminal Code, trafficking in human beings is subject to a penalty of imprisonment for 3 to 15 years. Hence, in the light of Polish regulations, trafficking in human beings is a crime, subject to one of the highest penalties envisaged in our Criminal Code. However, the analysis of criminal law cases indicated that the penalties applied by Polish courts of law for trafficking in human beings are rather low. Of the two criminal law cases which ended in convictions (other cases still pending), the perpetrators were sentenced to the penalty of imprisonment for from one to 4 years. One of the perpetrators was sentenced to 1 year in prison, two perpetrators – to 3 years in prison, one to 3.5 years in prison and another to 4 years in prison. It must be noted, however, that three of the perpetrators referred to above were also convicted for participation in an organised crime group. Such offences are subject to a penalty of imprisonment for 3 months to 5 years, but persons

¹⁴⁴ Case file no. III K 145/04 District Court in Kielce.

¹⁴⁵ Case file no. IV K 141/10 District Court in Gdańsk.

convicted for either establishing or commanding an organised crime group may be sentenced to a penalty of imprisonment of 1 to 10 years.

One can see that courts take a liberal approach to perpetrators of trafficking in human beings for forced labour. Such offenders are not the only ones to receive low sentences. Also in cases of trafficking in human beings for sexual abuse, most sentences call for the maximum of 3 years in prison.¹⁴⁶ According to the information above, courts frequently apply the lowest penalty envisaged in the Criminal Code for such offences, and sometimes even apply extraordinary mitigation of penalty. This court practice is truly striking, particularly in the light of the fact that some offences associated with trafficking in human beings are perpetrated using very brutal methods.

6.5 Assistance to victims

From the point of view of description and analysis of the system of providing assistance to the victims of trafficking in human beings and of forced labour, the most important aspect is whether there are any relevant legal norms in existence and who is responsible for implementing this duty. Of key importance here is to answer the question, who is actually the leading entity in this case, the State, local self governments, or NGOs? Poland actually has no such system for providing assistance to forced labour victims, although the country's legal system does envisage relevant solutions, allowing such persons to be provided with minimum care and support. There are no central institutions which could assume responsibility for such activities, nor is there a system of local institutions providing support to such persons. However, a network of voivodeship-level coordinators, dealing with trafficking in human beings and forced labour is now being established. There is only one professional NGO (La Strada) dealing with victims of trafficking in human beings, and increasingly with forced labour victims. The organisation in question receives financial support from the State, but according to its information, this aid is hardly adequate. In some parts of the country there are local organisations dealing with social problems, which provide limited assistance to crime victims, including the victims of trafficking in human beings.

Basically in Poland there is only one assistance programme for the victims of trafficking in human beings and forced labour, *Programme of support to and protection of victims/witnesses of trafficking in human beings (Program wsparcia i ochrony ofiary/świadka handlu ludźmi)*. This programme is a public task sponsored by the Ministry of Interior and Administration but implemented by the NGO La Strada Foundation. There are also a few more NGOs in Poland providing assistance for the victims of trafficking and forced labour.

¹⁴⁶ Barbara Namysłowska-Gabrysiak, Analiza orzecznictwa sądowego za lata 1999-2009 w sprawach dotyczących handlu ludźmi w świetle polskich i międzynarodowych regulacji prawnych, Opracowanie przygotowane na zlecenie Instytutu Wymiaru Sprawiedliwości, Warszawa 2010.

In order to learn more about the operations of the support system for victims of trafficking in human beings for forced labour, we tried to determine from information collected on criminal law cases, whether the victims ever received any assistance and if they did – in what form such assistance was offered. Our research indicated that a definite majority of victims never received any support, whether from the State or from NGOs. None of the victims ever received any compensation. Only in the case of the citizens of Bangladesh, forced to work at a shipyard, seven out of nineteen victims received assistance from an NGO and were included in the *Programme of support to and protection of victims/witnesses of trafficking in human beings*. In the case of the citizens of Ukraine, forced to panhandle, only one woman and her underage children could spend several days at a hostel for homeless women, where they received welfare assistance in the form of meals and accommodation.

It is surprising that so few victims of trafficking in human beings for forced labour actually received assistance in Poland. Equally striking is the fact that none of the Polish citizens, who became victims of forced labour abroad, ever received any assistance in Poland, and that no NGOs ever attempted to help these people. Only in the case code-named *terra promesa*, the Polish Human Rights Defender (Rzecznik Praw Obywatelskich – RPO) asked the Italian side to provide information on the labourer who died at the labour camp and on the site of his grave.

The experts also pointed out that the system of support to victims of trafficking in human beings does exist in Poland, but it is underdeveloped. They stressed that there is only one organisation in Poland providing assistance to victims of trafficking in human beings, but it is mainly oriented at helping the victims of trafficking in human beings for sexual abuse. For this reason, in the opinion of experts, the assistance procedures must be diversified, particularly in the case of assistance to victims of trafficking for forced labour. The assistance system should be oriented at providing assistance to a maximum number of victims, and not just to individual groups of victims of forced labour in Poland.

In the opinion of one of the experts, the problem of providing assistance to Polish citizens who became victims of exploitation or forced labour abroad must be resolved as soon as possible. At present, Polish citizens who become victims of trafficking for forced labour abroad, receive no assistance or support. Another problem is associated with the money from the State budget, allocated to the assistance for forced labour victims. In the opinion of NGO experts, and those representing the labour and social policy area, the amounts allocated for that purpose from the State budget are insufficient. In 2010, for instance, the Ministry of Interior and Administration (MSWiA) intends to allocate PLN 930,000 (about 230,000 euro) to the implementation of the “Programme for support to and protection of victims/witnesses of trafficking in human beings” addressed to foreigners and to the operations of the National Centre for Interventions and Consultations for Victims of Trafficking in Human Beings.¹⁴⁷ The amount

¹⁴⁷ <http://www.pomoc.rpo.gov.pl/index.php?md=96&s=1>

referred to above shall be allocated in full to a single Polish-based NGO. The remaining organisations, willing to assist victims of trafficking in human beings, must rely solely on the support from their donors.

As far as systemic assistance to victims of trafficking in human beings for forced labour is concerned, there are several NGOs in existence in Poland dealing with the problems of trafficking in human beings, but only one of these organisations actually provides assistance to the victims of trafficking in human beings for forced labour. This situation is a consequence of the fact that only one organisation receives money from the State budget for providing assistance to the victims of trafficking in human beings and of forced labour. The money from the State budget is granted to the organisation of assistance to the victims of trafficking in human beings by way of a competition. Presently, only one NGO is capable of winning such a competition. Smaller NGOs are most probably unable to meet the requirements specified in the public procurement task concerning the provision of assistance to the victims of trafficking in human beings and forced labour.

Moreover, La Strada which implements the programme of assistance to the victims of trafficking in human beings is currently also coping with the assistance to women who became victims of trafficking in human beings for prostitution. In the fifteen years of its existence, the organisation in question created a complex system of support to women who became victims of trafficking in human beings. However, the provision of assistance to victims of forced labour gives rise to a number of problems within the organisation, particularly related to its infrastructure.

Not without relevance is also the fact that the operations of this organisation are limited to Warsaw and that it has no branch offices in other parts of Poland. Despite cooperation with local NGOs within the scope of assistance to victims of trafficking in human beings, the organisation in question is rather disinterested in the provision of assistance to victims of trafficking in human beings and forced labour or in supporting the establishment of local NGOs providing such assistance. The Ministry of Interior, which is responsible in Poland for eliminating the trafficking in human beings, is not interested in assisting local NGOs which could provide assistance and support to victims of trafficking in human beings within their areas of operation. Although there is no doubt that NGOs should not be established by top-down initiatives, any incentives for creating such foundations are definitely more than welcome, especially since the lack of local NGOs is the basic weakness of the Polish system of providing assistance to the victims of trafficking in human beings and forced labour. The existing system of providing assistance to victims is highly centralised, making many victims unable to use the support or assistance offered. The lack of organisations providing assistance to the victims of trafficking in human beings in Poland results in many victims never receiving any help. According to our study, only very few victims of trafficking for forced labour have ever been granted any assistance. It must be noted here that the cases under analysis were limited to few offences which ended in conviction or are still pending

preparatory proceedings. In other words, the analysis was limited to the cases of trafficking in human beings for forced labour already detected by law enforcement bodies. Despite the above, not all of the victims received State aid. Moreover, assuming we are dealing in Poland with a large number of undetected cases of trafficking in human beings and forced labour, the number of victims of such offences must be much higher than indicated in the statistics of the NGO implementing the *Programme of support to and protection of victims/witnesses of trafficking in human beings*. According to the aforementioned data, the *Programme for support to and protection of victims/witnesses of trafficking in human beings* covered 85 persons in the years 2006–2009, and only 15 persons in the first half of 2010 (January–June)¹⁴⁸.

¹⁴⁸ Information received from the Team for Trafficking in Human Beings of the Ministry of Interior and Administration. The figures cover both victims of trafficking for sexual exploitation and trafficking for forced labour.

Chapter 7: How to do a study on trafficking for forced labour

7.1 General remark

As far as social practices go, there are some that do not lend themselves to scientific cognition easily. Forced labour is one of them. Just as with corruption and prostitution, these social phenomena are a significant challenge for researchers. In the case of forced labour, the real problem is hidden behind a façade of what seems to be a legitimate business. The difficulty in studying trafficking for forced labour is that while the victim is abused by a private employer, the real oppressor, the one that the victim fears most, is the state. It is the system that pushes the victim into the hands of the perpetrators. This is because the victims usually come from a different country, and their work and stay are illegal. As a result none of the parties are willing to report the crime or talk about. This is where the main research difficulty lies, i.e. in poor access to information.

Another important difficulty in studying trafficking for forced labour is that it is a fairly new problem and under-researched as a result. Our knowledge continues to be anecdotal and intuitive rather than empirical. For this reason, anyone considering a study into the problem should approach it from a “tabula rasa” perspective to keep their minds open to all information for subsequent verification which will gradually help them to build a picture of the problem.

7.2 Interviews with experts (mostly law enforcement and state officials)

The researcher must also accept the fact that in the first stage of the study there may be people who know more, sometimes much more about the issue, although their knowledge may not be well structured, lacking logical order, or fragmented. For those reasons the initial interviews with experts have to be well thought out and constructed in such a way that the stream of information and facts, both related and unrelated to the topic, is properly focused.

Again, due to the nature of the crime and the special situation of the victims it is important to keep the interview confidential and protect the experts’ anonymity. Not all experts agree to have their names revealed and this must be respected. In many cases this has to do with two situations. First, they do not want to be “recognised” as revealing this or that information which could be considered confidential. Second, they do not want to be recognised because their knowledge is limited and they do not want others to know.

Experts also ask for anonymity when their views are different from their bosses' or from the official policy of their organisation. Finally, because the interviewee may have limited knowledge of the issue, we must avoid comments which would be considered judgemental, leading or personal.

Often when we interview a person who is supposed to know everything, during the interview we find that their expertise is limited or none at all. This is a very uncomfortable situation for the "expert" – the researcher should avoid any form of labelling them as non-expert.

7.3 Official data from all possible institutions

With basic information from experts, one can design the data collecting phase. This was an important part of our study. Therefore, within the context of the FLEX project, the team constructed a special table with needs, suggestions and hints on how to collect information. This table and the methodology are presented in the final chapter of this joint publication (see also Annex 1).

7.4 Press analysis

The press is an important source of information in two situations. First, when the subject of the study is not known and we use media news as an inspiration for determining the potential fields of investigation, topics to be studied, perpetrators/victims, beneficiaries, etc. We carefully collect single pieces of information and use them to build our knowledge. A good example is the trafficking in human organs or cultural justification of special types of crimes committed within ethnic minorities in countries like Poland. Second, when the subject is very well known and we simply want to enrich our studies by adding the media dimension. We do not count on the media as a source of information, but we rather see them as an indicator of the social context of a particular problem we are trying to describe. Organised crime is a good example. We know so much about that that we now go to the media to see what kind of message they transfer to the general public about this social phenomenon.

In Poland, forced labour became the subject of media interest very recently. After the change of the political regime there were many publications showing the ugly face of capitalism by demonstrating abuse of workforce, poor working conditions of workers, unjust salaries etc. In general terms one can say that the media reported many violations of workers rights. But there were no or very few articles about foreign workers. Later, the problem of human trafficking became public.

7.5 Criminal cases – law in action studies

In criminology, studying the files of criminal cases is one of the most important methods for learning about the social environment of a crime. Access to real cases has been key to understanding many crimes. This is not the case with human trafficking or forced labour. As we have said many times before, we have only limited knowledge of these crimes. When analysed empirically, they are considered only as the tip of the iceberg. What this means in practical terms is that very few cases are investigated and even fewer are tried and we only get to see a small part of the problem. As a result, any extrapolation of conclusions would be unfounded. But despite that, the research should continue because already a small number of cases provide a sufficient basis to study the most important issue, i.e. the practical application of the law.

Any investigation of a criminal case ending in a verdict should be studied. Unlike typical criminology research, where we focus on a selected aspect, human trafficking and forced labour must be analysed carefully in their entirety. Such an approach offers some important insights. First, by analysing the files we collect to gain knowledge about forced labour as such. Second, by analysing the court files we gain an understanding of how law enforcement has handled a new crime. Third, by analysing prosecution files and verdicts we can understand how competent prosecutors and judges are in interpreting the law. Fourth, by analysing the files we can judge how the justice system treats victims.

In the first instance, it is important to understand the phenomenology of the crime, who recruits workers, how and from what countries, what are the transfer channels of migrants, is organised crime involved in creating illegal labour and if so, to what extent, what are the susceptible sectors of the economy, etc.

At the institutional level, the key issue is to know who has identified the victim and how, what was the role of law enforcement, are there special structures and procedures within law enforcement to ensure effective prosecution, has law enforcement cooperated with other bodies, especially with foreign partners and international organisations, etc.

The third dimension covers all of the issues discussed at length here, i.e. can the police, prosecutors and courts effectively investigate, charge and convict perpetrators under the current laws, are the officers of the judiciary competent in interpreting domestic law, can they refer to and use international regulations and if so, to what extent (e.g. definitions of human trafficking or forced labour).

Finally, the victim – the files of a criminal case are an irreplaceable source of information about whether the justice system was willing to treat the victim in a way that would reflect the situation they are in and their mental state. Obviously, the victims themselves are an important source of information, but perhaps they will refuse to talk or not understand the intricacies of the procedures or even realise their rights. The most important issue is to establish whether the victim has received immediate help, are they looked after by the state or a non-governmental organisation representing the state, has law enforcement used

alternative sources of information or relied entirely on victim testimony, has the case been investigated without subjecting the victim to repeated victimisation, how many hearings have there been if at all, has the victim been questioned by a same sex officer, etc.

7.6 Interviews with victims

This type of research always raises questions about ethical standards. Because they are in a vulnerable position, victims of human trafficking or forced labour must be treated with great care and researchers must make them feel comfortable as much as they can. The victims must agree to talk even if it only involves asking them if they would agree to be interviewed. We must ensure that the victim remains anonymous. Obviously, before we can talk to the victim, law enforcement or an NGO must first establish the victim's personal details, but these will be protected when they talk to a researcher. The second important issue is the trauma the victim has gone through. The task of the researcher is to do everything they can to limit the victim's exposure to their worst memories. This is why we demand that police officers should only talk to the victim once and not repeat the questioning. As a consequence, researchers too must not make the victim suffer again. Before they talk to a victim, researchers must first understand their social and mental state and very carefully prepare a strategy for the interview. They should consult a doctor, psychologist or care worker first. As much as it is our goal to gain information, we cannot do it at the cost of the victim.

And finally, when talking to victims of crime and in particular the crime of human trafficking and forced labour we must use the right language and register, avoid negative words or terms and not sound judgemental. Because the victims are usually foreign nationals, we must use a qualified interpreter and explain to them the vulnerability of the victim.

7.7 Interviews with perpetrators

With regard to perpetrators, we must adhere to all criminology standards.¹⁴⁹ The person we are talking to must be ensured confidentiality and anonymity as a source of information for our research. We must avoid any statements suggesting that they are a perpetrator or may be held liable, especially when they have not been convicted of the crime. When we are not quite certain that we are dealing with human trafficking for forced labour, we should only discuss issues related

¹⁴⁹ R. K. Schutt, R. Bachman *Fundamentals of Research in Criminology and Criminal Justice*, Deutscher Gemeindeverlag 2008, M.G. Maxfield, E.R. Babbie, *Research Methods for Criminal Justice and Criminology*, Wadsworth Inc Fulfillment, 2007, E. Babbie, *Badania społeczne w praktyce*, Warszawa 2005, Wydawnictwo Naukowe PWN.

to how employees are treated and not to human trafficking as such. It is quite possible that the interview is with a person who is suspected of crimes related to human trafficking or forced labour but the early stage of the investigation does not allow certainty of that either of these occurred. In such a situation the interview should be designed in such a way that the researcher can collect as much information as possible on relations between the organisers of the job and the workers, working conditions, pay, etc. to assume that this basic information will serve as a basis for further enquiries. This type of data, if collected, has to be treated as a material to describe the social context of the activities related to work and especially forced labour. Sometimes this information seems unimportant at a first glance but may help to find traces of abuse or forced labour, obviously only for research purposes.

7.8 Public opinion polls

Although largely underestimated as a source of knowledge on forced labour, public opinion polls are worth considering at least for two reasons. The first has to do with a research model or, to put it in a broader context, with a philosophy of cognition known as humanistic sociology. If seen from this perspective, the study of forced labour as a social phenomenon is in fact the study of one of the manifestations of civilisation. In other words, it is the study of culture. If we assume that culture can only be studied by studying the awareness of individuals, we need to ask people about their understanding of the term forced labour, does it exist, is it a serious problem, do they want the state to take action or would they rather if employment was beyond the control of the state and its bodies.

The second reason is more pragmatic. We can assume that members of society not only have and express certain opinions which can be transposed into general views and opinions, but they are also holders of individual experiences which can build the image of a phenomenon or help search for new areas of research exploration. In other words, the respondents in a survey can talk about their experience with the issue, about cases they know of or about the propensity of specific sectors of the economy to exploit others. Anyone who is familiar with the practice of criminology will agree how important it is to research victimisation or use self-report studies.

Chapter 8: Conclusions and recommendations

Regardless of the legal classification, trafficking for forced labour is a felony constituting at the same time a serious violation of human rights. Forced labour is a special crime also due to the fact that it is committed all over the world, regardless of economic systems in place. According to the estimates of the International Labour Organisation, about 12 million people all over the world are forced to work or are enslaved in connection with work.

Human trafficking for sex trade purposes has been recognised as a serious problem in Europe for many years, but recently the attention of state institutions, international organisations and media has been drawn to such phenomena as forced labour or organised exploitation. Our research, conducted under the FLEX project, also indicates that this problem has a strong presence in Poland. What is more, there is evidence that forced labour or exploitation of other people's work is much more widespread than is commonly believed. Considering at the same time that the so-called dark number in the case of this crime may be high, the problem of forced labour in Poland becomes one of the more important issues to be resolved.

The basic objective of the project entitled *Trafficking for Forced Labour and Labour Exploitation (FLEX) – towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* was to create a research methodology and to develop a data collection scheme concerning trafficking for forced labour. However, during the project, we also tried to describe the forced labour phenomenon in Poland, and to analyse the system of its elimination from the social life in our country. The research conducted allows us to formulate certain regularities, share the most important observations, and propose methods of resolving problems occurring in Poland in the context of forced labour.

The significant majority of victims of forced labour in Poland are foreigners, mainly young or middle-aged. Although victims of human trafficking used in sex business usually originate from Eastern Europe (Belarus, Ukraine, Bulgaria, Russia), foreigners whose work is exploited in Poland are those coming from Asian countries (Bangladesh, Philippines, Thailand, China, Vietnam). In most cases those persons arrive in Poland legally, i.e. they have residence visas, and even permits to perform specific work, but eventually they are sent to perform different work than that specified in their contracts, and their treatment there violates basic principles of employment and the principle of respect for human dignity. It may therefore be legitimately claimed that the legality of residence and having a work permit do not exclude the existence of forced labour. This claim is confirmed also in the case of Poles who were exploited e.g. in Italy and who arrived in the destination country legally, in many cases with an employment contract, but despite this they performed work in violation of legal regulations.

Under the research conducted, we also tried to identify sectors of the economy which are particularly susceptible to exploitation or forcing people to work. In Poland those sectors are agriculture, construction, trade and domestic help. Moreover, exploitation at work takes place in small enterprises, factories and workshops of other industries which operate in the so-called grey economy. It should be emphasised, however, that these findings are preliminary and the sectors susceptible to forced work in Polish economy still have not been identified accurately. That is why there is an urgent need to conduct further research in this respect.

Another problem is the employee status of victims of forced labour. We noted that in several cases we had analysed, people subjected to forced labour or exploitation at work were people employed through the so-called employee leasing. In a nutshell, this phenomenon consists of employees being engaged by temporary employment agencies, whereas the employer who uses the services of leased employees/agency workers does not hand over remuneration to the employees but to such an agency. Research shows however that employee leasing may constitute one of the methods of importing employees to Poland, who are then exploited or forced to work. In one of the criminal cases we analysed, the perpetrator, who was the owner of a company dealing with employee leasing, brought Bangladeshi nationals to Poland and leased them to another company. Despite the fact that he received money from the company which benefited from the labour of those people, he did not pay them any remuneration. The leasing of employees as a new phenomenon requires further research and analyses.

Despite the fact that trafficking for forced labour has recently become a serious problem in Poland, the research we conducted did not indicate that Polish authorities devoted any particular attention to this phenomenon. The elimination of forced labour was entered in national programs for combating human trafficking in Poland as one of the tasks of state institutions at a relatively late point in time. Forced labour has not been the subject of a national discussion as yet. That is why it is so important that human trafficking and forced labour are dealt with by the highest national authorities, and an organised and effective response to such phenomena should be one of priorities of the state policy.

There is no institution in Poland whose main task would be to initiate activities connected with prevention and combating of forced labour. Although there are several initiatives, institutions and non-governmental organisations dealing with the elimination of human trafficking, which are coordinated by the Ministry of Interior and Administration, forced labour is still dealt with as a marginal problem in Poland. That is why establishing an institution which would assume the duties of an initiator and coordinator of activities aimed at eliminating forced labour in Poland should be considered.

Any success in this respect is possible only where two key players in the market become involved in actions aimed at counteracting forced labour. These key players are trade unions and employers' organisations. The participation of those organisations in the establishment of a forced labour elimination system in Poland should be in their own interest, but also in the interest of state authorities.

Another matter which should be dealt with is Polish legislation concerning forced labour. After many years of discussions, the definition of human trafficking has been introduced into Polish criminal law, covering the situation where victims of this crime are exploited e.g. to provide sexual services, but it does not include cases of forced labour as such. What we mean is that the Polish criminal law still does not identify a separate crime of forcing another human being to work. Of course, there are regulations protecting the rights of employees, but there is no regulation prohibiting forced labour as such. Criminal investigations conducted so far in relation to forced labour in Poland were conducted in the context of human trafficking which accompanied that phenomenon. At this moment, it is difficult to answer the question what will happen if victims of forced labour who are not at the same time victims of human trafficking are identified in Poland. This is because it should be remembered, as the International Labour Organisation has pointed out, not each case in which a person is forced to work must be connected with human trafficking. Although Poland is a party to two ILO conventions concerning forced or compulsory work, at the moment it is difficult to imagine that provisions of those documents could be applied instead of domestic legal regulations.

Another issue which should be noted is the system of identification of forced labour victims in Poland. Research shows that there is no such system in Poland. One of the reasons for this situation is the still insufficient awareness of functionaries of law enforcement bodies, labour inspection, but also social workers, to recognise this phenomenon. This means that a programme of training in problems of forced labour and work exploitation should be initiated for employees from institutions and organisations which are or should be involved in combating those crimes.

Yet another problem is the absence of non-governmental organisations which could provide help to victims of forced labour. In Poland only the NGO La Strada provides support to victims of human trafficking, that is why so far this organisation has been providing assistance to people exploited or forced to work in Poland. However, the system of support for victims of human trafficking was constructed with women, victims of sexual exploitation – usually dealt with individually – in mind. Victims of forced labour, often very large groups of foreigners, mainly men, caused new problems, especially in terms of organisation. The fact that more and more frequently victims of forced labour come from Asian countries, i.e. cultures completely different from those from which previous victims of human trafficking in Poland came – mainly Eastern European countries – is not without importance. That is why the training proposed above should include classes in cultural anthropology of the Far East, or workshops sensitizing participants to issues of intercultural dialogue.

Moreover, the issue of competences of institutions involved in the elimination of forced labour should be dealt with. It seems that the competences of the State Labour Inspectorate and the Border Guards are too narrow in that respect. Although both institutions conduct joint checks of legality of residence and

employment of foreigners, those entities should be equipped with other legal instruments enabling them to efficiently eliminate forced labour in Poland. For example, the Border Guards may investigate criminal cases concerning human trafficking only to a limited extent.

In eliminating trafficking for forced labour, social awareness of the problem also plays an important role. The research conducted indicates quite explicitly that there is still widespread consent to exploitation of people, particularly foreigners from poor countries, in Polish society. Therefore it seems essential that information campaigns sensitizing people to the problem of forced labour should be conducted, among other things to point out the potential threat of becoming a victim but also the potential threat of becoming a perpetrator. In this respect, media have an important role to play, as they should not only provide information about such cases but also sensitize the society to the problem of exploitation and forcing people to work.

And last but not least: in Poland, but also in Europe, there is still a shortage of in-depth studies and analyses on trafficking for forced labour and work exploitation. Therefore, the purpose of the FLEX project was to create a model of such research. We hope that we have managed to achieve this objective, and the best indicator of this will be further research on this phenomenon conducted using the methodology we have presented. The creation of an integrated data collection system and the use of potential sources of information about cases for forced labour would be an essential outcome.

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List of interviewed experts

1. **National Public Prosecutor's Office** – high official from the National Public Prosecutor's Office (THB expert).
2. **Polish National Police Headquarters** –a member of the police team involved in eliminating of human trafficking.
3. **Border Guard** – an expert form Polish Border Guard Headquarter.
4. **National Labour Inspectorate** – high official from the Department of Legal Employment National Labour Inspectorate.
5. **Ministry of Interior and Administration** – high official from the Department of Migration Policy Ministry of Interior and Administration.
6. **NGOs** – an expert from the La Strada Foundation against Trafficking in Human Beings and Slavery.
7. **Trade Unions** – representative from NSZZ “Solidarnosc”.
8. **Employers** - representative from Polish Confederation of Private Employers “Leviatan”.
9. **Labour Office in Warsaw** – an expert form Department of Work Permits for Foreigners Labour Office in Warsaw.
10. **Mazowieckie Province Office** – Representative form Department of Foreigners