

Report

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***Human Trafficking for
Forced Labour in Poland
– Effective prevention and
Diagnostics of Mechanisms***

ADSTRINGO

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ADSTRINGO Poland and Russia:

*Addressing Trafficking in Human Beings for Labour Exploitation
through Partnership, Enhanced Diagnostics and Improved
Organizational Approaches*

This report was commissioned by the Council of the Baltic Sea States Task Force against Trafficking in Human Beings under the auspices of the project “ADSTRINGO Poland and Russia: Addressing Trafficking for Labour Exploitation through Improved Partnerships, Enhanced Diagnostics and Intensified Organisational Approaches”. The project is implemented with the financial support of the Swedish Institute. The research report is also available in Polish.

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Introduction

This research was conducted by the initiative of the Task Force against Trafficking in Human Beings (TF-THB) of the Council of the Baltic Sea States (CBSS) and the Ministry of Interior of the Republic of Poland as part of the "ADSTRINGO Poland and Russia: Addressing trafficking in human beings for labour exploitation through partnership, enhanced diagnostics and improved organizational approaches" project.

"ADSTRINGO Poland and Russia" is a transnational project that focuses on trafficking for forced labour and labour exploitation in Poland and Russia. The project is being carried out from July 2012 to October 2014 with the financial support of the Swedish Institute.

The "ADSTRINGO Poland and Russia" project complements the ADSTRINGO project which is implemented with the financial support of the Prevention of and Fight against Crime Programme European Commission – Directorate-General Home Affairs in Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, and Sweden. The project is coordinated by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), and the project partners are the Council of the Baltic Sea States Task Force against Trafficking in Human Beings, the Ministry of the Interior of the Republic of Lithuania, and the University of Tartu in Estonia.

The main objective of ADSTRINGO is to prevent trafficking for forced labour through enhanced national and regional partnerships and through improved understanding of the mechanisms that facilitate exploitation of migrant labour within the region. This is being done through several project activities, with this research being one of the main activities. In addition, the project involves the organisation of national and regional meetings in Poland and Russia in order to establish a dialogue between key labour actors at the national level, the development of a set of concrete guidelines for employers and recruitment agencies and other actors for the prevention of trafficking for forced labour and labour exploitation, and

the organisation of an international high-level conference on 17 – 18 October 2013 in Vilnius.

This report presents results of the research conducted between January 1st and June 30th 2013 by the team of experts of Human Trafficking Studies Center Warsaw University, namely: Prof. Zbigniew Lasocik, Head of the Center, Ms. Emilia Rekosz-Cebula, M.A., Ph.D. candidate and Mr. Łukasz Wiczorek, M.A., Ph.D. candidate.

The purpose of the report is to provide new information on human trafficking for forced labour; especially regarding the situation of migrant workers, the different mechanisms of recruitment and methods of labour exploitation, the roles of particular stakeholders and possible methods of prevention. There was less emphasis given to human trafficking as such but focus was placed on forced labour as a specific form of "modern day slavery". The issue was also viewed in the light of two larger social phenomena – that of the economic situation of the particular country and the way the labour market functions in the country. Thanks to this it was possible to contextualise the research findings.

Human Trafficking has been discussed and studied in Poland since the mid-1990s when it appeared as an issue. As in many other countries it appeared as an identified phenomenon first in the form of trafficking of young women for sexual exploitation. Since then human trafficking as social problem has gone through a significant evolution resulting in many new methods of recruitment and new forms of exploitation including begging and forced labour¹. In fact currently almost all forms of human trafficking exist in Poland, except trafficking in organs and the relatively new phenomena of trafficking for forced marriage. What is specific here and has to be taken into account in any analysis is that Poland is a country of origin for Western European countries, it is a destination country for its neighbours as well as for Asia, and finally it is a transit country. As to the scale of the problem in Poland one can say that the number of crimes registered yearly varies between 10 and 60, identified victims are counted in

1 Z. Lasocik, O handlu ludźmi w Polsce, czyli o ewolucji zjawiska i budowie systemu jego eliminowania, Archiwum Kryminologii XXXIV, Warszawa 2012.

thousands but the perpetrators in hundreds². One of the obvious features of human trafficking in Poland is the involvement of foreigners on both sides of the equation as victims and perpetrators.

One might say that after almost twenty years, when a certain social problem is present and acknowledged in public life, it must be enough to gain comprehensive knowledge on the issue, as well as to establish an effective system to combat it. This is not necessarily the case as far as Poland is concerned. There is not enough knowledge on certain aspects of human trafficking, and there are some significant gaps in the system which has been built to eliminate it. There are many reasons for that but they can be grouped into two categories: firstly, the issue itself is difficult and constantly changing so it is not easy to deal with it or to study it effectively and secondly, one must consider the level of attention given to this issue by state institutions, civil society and the media. It was not within the scope of the project to study or outline all of these issues but it could be briefly mentioned that when considering Poland in all of these aspects there are significant shortages. Just to mention one aspect - the government devotes some money for the support of victims of human trafficking but does not allocate anything for studies to be undertaken and almost nothing for awareness building. There is an underdeveloped infrastructure of civil society as far as trafficking in persons is concerned and still not sufficient media coverage taking into account its potential educational dimension and the ever changing nature of this phenomenon³.

It must also be noted that since 1997 when a new penal code was adopted in Poland human trafficking was subject to legal regulation. From the very beginning both human trafficking and slavery were pe-

nalised as serious crimes (felonies) but there were some theoretical and practical reservations to all these provisions, including the definition of human trafficking⁴. As a result of long lasting discussions a complex transposition of all regulations regarding human trafficking took place in 2010⁵. Although it is seen as a significant improvement, especially that the new definition of human trafficking had been introduced, there are still some questions that remain related to illegal adoption and protection of victims⁶.

At the institutional level it must be mentioned that in Poland a number of institutions deal with human trafficking. The leading role is played by the Ministry of Interior but more precisely by The Interdepartmental Committee for Combating and Preventing Trafficking in Human Beings. There are special units, offices or teams dealing with this matter in some ministries and central institutions including the Ministry of Interior, the Ministry of Social Affairs, the Police, the Border Guard and the General Prosecutor Office. As Poland is divided into administrative districts (voivodeship/województwo) there is a process of establishing local networks of all stakeholders potentially interested in prevention, provision of support to victims and investigation. Institutions such as the Police, the Border Guard or Prosecutor Office have local coordinators to deal with human trafficking. Since 1995 La Strada Foundation has operated in Poland. Finally there is also the National Labour Inspection which is mostly focused on conditions of work and legality of employment.

Although such a system exists and it is quite effective it has one significant shortage as far as the subject of this research is concerned: it does not take into account important changes in the nature of human trafficking. It was designed and it is focused on human trafficking in its classical or

2 Zapobieganie handlowi ludźmi w Polsce. Materiały do raportu za lata 2009-2011, Warszawa 2012, Ministerstwo Spraw Wewnętrznych.

3 The system of combating human trafficking in Poland had been subject of comprehensive and complex research project implemented by the Human Trafficking Studies Center, the report was published in the book: Z. Lasocik, Eliminowanie handlu ludźmi w Polsce – analiza systemu, Warsaw 2012, Warsaw University.

4 See: O. Sitarz, Wątpliwości i kontrowersje wokół definicji handlu ludźmi, Archiwum Kryminologii tom XXXII, Warsaw 2010

5 Journal of Laws 2010, No 98, item 626.

6 This matter had been commented and discussed intensively at the conference organized by the Prosecutor General <http://www.pg.gov.pl/index.php?0,821,4,661>

typical forms, but it seems to ignore the fact of the growing scale and social importance of forced labour around the world.

The problem of forced labour is also present in Poland and it is not just a theoretical one; it is also not a problem, which would allow all participants of the labour market "to sleep well" either when factoring in the scope of the situation. The issue was noticed in the middle of the previous decade, but it was only after the adoption of the National Programme for Combating and Preventing Trafficking in Human Beings for 2007-2008⁷ when the roles of public institutions which were envisaged to work against the new challenge were defined. However, it is worth to underline the fact that the document does not refer to forced labour as a spontaneous violation of labour rights, but about one of the forms of human trafficking that is human trafficking for the purposes of forced labour. The text reads as follows: *In 2006 numerous cases of Polish citizens have been identified as – victims of trafficking in human beings for forced labour which confirms the hypothesis that keeping labour market restrictions concerning access to their labour markets by some EU Member States results in side effects such as the growth in illegal employment, including trafficking in human beings for forced labour. There is a need for information campaigns addressed to those seeking work in the EU Member States aiming at raising awareness of the risk of becoming a victim. In order to implement this task, the organizational capabilities of MSWiA (Ministry of Interior), MPiPS (Ministry of Welfare) and MSZ (Ministry of Foreign Affairs of the Republic of Poland) should be made use of, as well as programs concerning Polish citizens abroad being realized by these institutions should be benefited from. Establishing cooperation with mass media is necessary.*

There were also two additional tasks in the Programme described here. First, the analysis of Polish law in terms of possible pursuit of human traffick-

ing for the purposes of forced labour: *The indications concerning cases of trafficking in human beings for forced labour are more and more frequent. Only one such indication was subject to penal procedure. An analysis of the state of law in order to identify regulations concerning human trafficking and disclosing potential loopholes that obstruct penal procedure is requested. Due to the escalation of human trafficking for the incidence of enforced labour in Europe, experts call our attention to the inadequacy of the regulations of international and national law concerning forced labour. It is highly probable that such a situation is also true for Poland.*

And finally the Programme foresees carrying out public information campaigns: *Due to the progress of the process of opening the Polish labour market to citizens from third countries and incidents concerning cases of trafficking in human beings for forced labour in Poland it is necessary to organize in Poland an information campaign addressed to those coming to Poland in order to commence work (mainly Ukrainian citizens) which aims at raising awareness concerning the risk of becoming victims of trafficking in human beings. In order to implement this task, the organizational capabilities of Ministry of Interior, Ministry of Labour and Social Policy, and Ministry of Foreign Affairs should be made use of.*

The subsequent National Action Plan against Trafficking in Human Beings for the years 2009-2010⁸ covered some more tasks. But what seems to be important is that in this Action Plan forced labour is mentioned as priority. The document reads as follows: *Priority 3. growth of employment and raising its quality. Conducting a rational migration policy: preventing negative effects of economic migration. This priority will involve tasks related to the issues of human trafficking for forced labour for both Polish citizens and foreigners coming to Poland, assigned to the above mentioned specific objectives of the Program.*

The Action Plan mentioned also some additional

⁷ This Programme serves as national instrument to describe priorities of the state in combating human trafficking in Poland. The draft of the document is prepared by the Ministry of Interior, after that it is presented to the Interministerial Committee for Combating and Preventing Trafficking in Human Beings, with preliminary approval of this body the Program/Plan is presented to the government for final approval.

⁸ The National Action Plan against Trafficking in Human Beings is a continuance of the National Program for Combating and Preventing Trafficking in Human Beings mentioned earlier.

tasks related to this issue, such as: *creating a system of training and professional development for coordinators and officers of the Border Guard from the operation and investigation sector, the border sector and officers for foreigners, including in particular the issues of child trafficking and trafficking for forced labour or organising training for labour inspectors in issues related to the phenomenon of human trafficking for forced labour.*

The Government refers also to a new competence of the National Labour Inspectorate related to the control of illegal employment and the lack of knowledge on the phenomenon of trafficking in human beings among inspectors in the face of an increasing number of cases of human trafficking for forced labour which resulted in the need to train inspectors in issues related to human trafficking. The content and organisational concept of the training should be agreed on during the work of the group of members and experts of the Interministerial Committee for Combating and Preventing Trafficking in Human Beings.

Finally the Action Plan recommends support for scientific research on victim profiles. Still, the National Action Plan mentions only human trafficking for the purposes of forced labour.

Human Trafficking as one of the most difficult social problems has been present in Poland since the mid-1990s. In the beginning it was a subject of interest for NGOs, certain media and international organisations, including UN. After some time one could observe a growing interest of the government, to the extent that in the new penal code of 1997 special provisions regarding human trafficking, slavery and illegal adoption were introduced. After a decade it appeared that human trafficking does not necessarily mean only sexual exploitation of the victim but also other forms of enslavement leading to labour exploitation. This way forced labour as a spontaneous independent social phenomenon with its own etiology and phenomenology became the subject of public debate in Poland. Since the quality and intensity of the debate was very unsatisfactory the Human Trafficking Studies Centre of University of Warsaw organized in March 2010 the First National Meeting on Forced Labour. It was meant to serve as a national platform of exchange of experience and knowledge on this social phenomenon. Almost all national institutions,

governmental agencies and non-governmental organizations, which according to our judgement could play any role in the elimination of forced labour, took part in this event. This meeting provided the first ever occasion for experts to initiate professional debate at a national level about this social problem. The most important result of the meeting was the Memorandum regarding forced labour directed to national authorities, non-governmental organizations and media. This is what we wrote there:

“Forced labour is a special form of enslavement and in extreme situations it may take the form of slavery. Despite the fact, that the perpetrators of forced labour are most often individual entrepreneurs and private persons, the victims are (mostly foreigners), who fear repression from the national authorities the most (acting by means of specialized controlling authorities and law enforcement agencies).

The number of already identified victims of forced labour in Poland gives authority to the claim that the phenomenon can be categorised as a grave social problem. This, in turns, means the necessity for the real involvement of the state. Investigation on this issue is of key importance. It mostly refers to describing and defining a series of phenomena so that knowledge gained could serve as a basis for practice, to assist in diagnosing needs as well as defining duties of the specific institutions. Creation of the system for identifying victims of forced labour and elimination of the phenomenon is a matter of urgency. The tasks shall be realized by the state. However, based on discussions held, it appears that there is no such an institution in Poland which would take the role of the leader for the task as difficult as the one above. Because of the problems specificity, it should be the institution which is professionally prepared for it. Knowing, the ways of how the public sector functions in Poland, one shall assume that bearing in mind the lack of interest of other institutions, the duty shall also be realized by the Ministry of Interior.

It is also necessary to create such legal, organizational and personnel solutions in Poland which would guarantee the efficiency of such a system and the given institutions. These are the most serious lacks: Polish criminal law does not cover penalization of labour enforcement, The Polish Border Guard

is not statutorily authorized to act in the area of human trafficking elimination and forced labour, the competences of Polish National Labour Inspectorate are still too narrow, there is no effective network of full-time coordinators for forced labour in the regional units of Police and Border Guard, it is essential to assign resources for professional personnel training, as the infrastructure of non-governmental organizations which deal with the issue of forced labour in Poland is insufficient by far, the same one could say about the ability of the system to face the challenges of intercultural dialogue, which has appeared with the presence of people representing so many different cultures.

It shall be considered whether labour in Poland is subject to real protection as described in the Constitution of the Republic of Poland, especially because it affects Polish citizens and foreigners residing in our country. Indicated shortcomings in terms of legal and organizational solutions go together with the specific attitude of a part of society in relation to foreigners working in Poland. If it refers to people who come from situations and countries where there is less opportunity and therefore a more impoverished reality, who are ready to argue that even labour for the smallest wages and provided in harsh conditions is economically beneficial for them and is something 'better' than the one they could expect in the country of their origin. Such attitudes shall be subject to public debate.

Forced labour is such a problem in Poland, the scale of which indicates the necessity for undertaking urgent actions. Most of all, the following is essential:

- constructing a real interest from the state and local government authorities,
- carrying out thorough studies and analyses on the situation,
- undertaking a series of actions for the benefit of creating a system for identification of victims and the elimination of forced labour phenomenon in Poland,
- guaranteeing the participation of trade unions and employers' organizations in the process,
- creating a support system, also financially, for civil

society and the activities of the very citizens providing support in terms of civil society structures".

Four years have passed from the moment when the Memorandum was accepted. All the elements of diagnosis presented there, still remain in force. Not much has changed also with reference to the proposed legal and organizational solutions. There is a new definition for human trafficking, which covers also forced labour as one of the purposes of exploitation. One cannot still, however, notice a state mobilization to face the problem of forced labour. First of all, in accordance with the expectations, there is no such an institution, which can be considered as a leader in the difficult process of organizing the forced labour elimination system from societal practise in Poland.

Forced labour was also mentioned several times in the last National Action Plan against Trafficking in Human Beings for years 2011-2012⁹. The Plan still refers to the issue of human trafficking for forced labour: *Given the more and more frequent cases of trafficking of human beings for forced labour, in 2012 the national conference will be entirely devoted to this issue.*

The list of other tasks for state institutions and nongovernmental organisations is a bit longer this time and includes: Organising training for labour inspectors in issues related to the phenomenon of human trafficking for forced labour; organisation of an information meeting on trafficking in human beings, in particular for forced labour, for the consular staff of the home countries of victims identified in Poland, organisation of trainings on trafficking in human beings for the Polish consular staff of destination countries for Polish victims of trafficking in human beings, identified abroad and establishing cooperation with trade unions in order to prepare them for providing professional support to foreigners whose employee's rights were broken, including alleged victims of trafficking in human beings (*new task*).

⁹ http://www.msw.gov.pl/portal/pl/682/8972/National_Action_Plan_against_Trafficking_in_Human_Beings.html

Chapter 1.

*Polish legal regulations
related to protection
against exploitation and
forced labour*

The purpose of the analysis is to present Polish legislation on human trafficking and human trafficking for the purposes of forced labour. In the Polish legal order, there is full human protection against human trafficking and partial employee protection against exploitation and the act of enforcing people to work under forced labour conditions. The protection is guaranteed in the *Constitution of the Republic of Poland*¹⁰, in the *Penal Code*¹¹, in the *Labour Code*¹² and also in some acts related to the labour market: in the *Act on promotion of employment and institutions of the labour market*¹³, *Act on employing temporary workers*,¹⁴ and *Act on the consequences of entrusting labour to foreigners residing on the area of the Republic of Poland against the regulations*¹⁵. All the aforementioned regulations shall be discussed below.

However, it is essential to indicate at the very beginning, that there is no such provision in Polish law, which would penalize forced labour directly. While there are many other types of behaviour which may be related to the phenomenon of exploiting and forcing people to labour that are penalized. They will be discussed in more details in the following chapters. It happens, e.g. in the case of regulations which penalize human trafficking or entrusting labour to foreigners against the law. One can say, then, that there are some provisions which indirectly refer to the issue of forced labour.

1.1.

The Constitution of the Republic of Poland

The Constitution of the Republic of Poland is the most important normative act¹⁶, in the hierarchy of law sources¹⁷ in Poland; it contains a few regulations related to the protection of labour rights. The most important is the article contained in the state system's founding rules, which states at Article 24 that 'Work shall be protected by the Republic of Poland. The state shall exercise supervision over the

conditions of work'. The Legislator, while entering the provision among the system founding rules, decided on the importance of protecting labour rights in Poland and formulated this duty quite extensively, as it explains what labour protection shall involve and what the scope of the protection is. Based on article 24 of the Constitution of the Republic of Poland, one can conclude that there are, or there will

10 Journal of Laws 1997 No. 78, item 483.

11 Journal of Laws 1997 No. 88, item 553 as amended

12 Journal of Laws 1974 No. 24, item 141 as amended

13 Journal of Laws 1997 No. 99, item 1001, as amended

14 Journal of Laws 2003 No. 166, item 1608.

15 Journal of Laws 2012 No. 0, item 769.

16 The Constitution is of a normative act character, that is a generally applicable document. This, in turns, means that the provisions of the constitution are binding for all the organs of public authority and all citizens. More information about it can be found in: L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Liber Press, Warszawa 2006, page 40.

17 Article 8 section 1 of the Constitution of the Republic of Poland.

be such legal mechanisms in Poland which would allow for controlling labour performance by the State¹⁸. This way, the constitutional legislator avoids the explanation of how labour protection is understood. And even though article 24 is supplemented with the article 64 of the Constitution of the Republic of Poland, which shall be discussed below, it does not respond to the question regarding the scope of labour protection.

It has to be stated then, that inclusion of article 24 among the system's founding rules imposes specific, though undefined, obligations on the State and also indicates that human labour is under the special protection of the State. Inclusion of the provision among the system's founding rules was purposeful, leading to labour being covered with special protection and also acknowledging that control and supervision over its performance conditions is one of the foundations for the state's functioning¹⁹. The thesis is also confirmed by the fact that the state legislator in other legal regulations obliged national institutions, such as the National Labour Inspectorate or the Labour Court, to supervise labour performance.

Based on constitutionalism, one can conclude that labour protection comes from another legal provision included in the Constitution of the Republic of Poland, namely Art. 2 which states that "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice". It means that on one hand, the Constitution has to protect the social interest of various social groups; these are, e.g. employees and employers, too, although social justice does not need to involve the award of equal rights and obligations to all the entities (groups of citizens)²⁰. This is why it has been so often underlined in the doctrine of constitutional law that it is the employee that is subject to greater protection as in an employer-employee relationship, the employee is the weaker entity.

At the same time, in the opinion of the Constitutional Tribunal, social justice expressed in the Constitution shall be connected with, inter alia, the order of assuring social minimums by the state to its citizens²¹.

The principle of labour protection contained in the Constitution is realized also by the state interference in the relationships between the employees and employers so that no party of the labour process was exploited/ damaged by the other. While, it is not only for labour protection to concentrate on supervision over the employees' interests only, it is also (for supervision) over employers and even consumers of goods and services which are provided. But it must be underlined that in the Polish legal system the employees are those who are protected better, as they are the weaker party in employee – employer relations²².

It is worth to note, that in the interpretation of Article 24 of the Constitution, it is underlined that both, people employed based on labour contract and those employed in terms of civil law relationships, provision of non-rationed labour and provision of forced labour are subject to labour protection²³. So, pursuant to basic law, a definition of an employee is quite extensive, this in turns means that in relation to protection (e.g. against exploitation and enforcement) is assured to every person who is subject to gainful employment with respect to legal regulations, that is, who does not work illegally.

The Constitution of the Republic of Poland guarantees not only supervision over the conditions for work performance (Article 24 of the Constitution of the Republic of Poland), but also freedom of choice and work performance as well as selection of the workplace. So applicably to Article 65 section 1 of the Constitution of the Republic of Poland, public authorities may not impose taking a job or decide about choosing the profession or workplace²⁴. It means that the Constitution, somehow, states prohi-

18 P. Winczorek, *Comments to the Constitution of the Republic of Poland as of April 2nd, 1997*, Liber Press, Warsaw 2000, page 37.

19 T. Liszcz, *Konstytucyjne zasady prawa pracy (w:) Konstytucyjny ustrój państwa. Księga jubileuszowa Profesora Wiesława Skrzydły, Uniwersytetu Marii Curie-Skłodowskiej Press, Lublin 2000*, page 157.

20 B. Banaszak, *Prawo konstytucyjne*. C.H. Beck Press, Warsaw 2010, page 228.

21 See: B. Banaszak, *Prawo konstytucyjne*. C.H. Beck Press, Warsaw 2010, page 228; see also: *Orzeczenia Trybunatu Konstytucyjnego 1993 part II*, Warsaw 1994, page 266.

22 P. Winczorek, *Prawo konstytucyjne Rzeczypospolitej Polskiej*, Liber Press, Warsaw 2000, page 37.

23 J. Boć, *Konstytucje Rzeczypospolitej: 1997, 1952, 1935, 1921, 1791*, Kolonia Limited Press, 2000, page 61.

bition of forced labour despite the fact that it is not directly mentioned in the provisions of basic law²⁵. The Legislator, however does not apply an expression that forced labour is prohibited, nevertheless, based on the literal meaning of Article 65 section 1 one can conclude that it is prohibited to force people to perform labour. In the opinion of commentators, the provision guarantees the right of choice of labour as well as performance of labour including the profession, the choice of workplace and also for a protection against forced labour²⁶.

Also in the opinion of the Constitutional Tribunal, the provision guarantees the right for protection against forced labour²⁷. Despite the above, in the literature on the subject, the opinion that the basic law also has to reflect the provisions of international agreements, to the party of which Poland has signed, related to the prohibition of forced labour or slavery is not isolated²⁸. It especially refers to such documents as the Convention concerning Forced or Compulsory Labour no. 29 of the International Labour Organization from 1930, the Convention no. 105 of the International Labour Organization from 1957 on abolition of forced labour, the International Covenant on Civil and Political Rights from 1966 and the (European) Convention for the Protection of Human Rights and Fundamental Freedoms from 1950.

On the other hand, the prohibition of forced labour is not of absolute character, as Article 65 section 2

states that 'Labour obligation may be imposed only by means of an act'. So the legislator anticipates situations in which the state will be able to and will have to impose the labour obligation to its citizens. At the same time, these are the state authorities that specify when and on what rules the obligation will be introduced. The legislator however does not characterize with full freedom, as based on the Convention no. 29 and Convention no. 105 of the International Labour Organization, each introduction of labour obligation which has to be fully justified. Nowadays, Polish law anticipates that forced labour may be introduced in a few cases, these are situations related to: fighting a natural disaster and liquidation of their consequences²⁹, preparation of state defence³⁰, serving a sentence of imprisonment³¹ or serving a custodial sentence³² and being placed in pre-trial detention³³, while, a labour obligation may be imposed only on the citizens of the Republic of Poland and exclusively by means of an act³⁴. Additionally, state authorities while introducing the labour obligation, have to observe the international agreements ratified by Poland, including especially, the aforementioned Convention no. 29 of the International Labour Organization from 1930 and Convention no. 105 of the International Labour Organization from 1957³⁵. To sum up, one can state that binding Polish legal regulations protect the citizens from arbitral introduction of forced labour by public authorities.

24 Konstytucja Rzeczypospolitej Polskiej. Komentarz [L. Garlicki, et. al.], Wydawnictwo Sejmowe (Sejm Press) 2005, Chapter II „Wolności, prawa i obowiązki człowieka i obywatela”, article 65, page 3.

25 B. Banaszak, Konstytucja Rzeczypospolitej Polskiej. Komentarz, C.H. Beck Press 2009, page 337.

26 K. Sobczak, Gospodarka w ujęciu konstytucyjnym, Przegląd Ustawodawstwa Gospodarczego 12/1997, pages 2-7.

27 See: Judgement of the Constitutional Tribunal of Poland 503. K 33/98 and Constitution of Polish Third Republic in the decisions of Constitutional Tribunal and selected courts (edited by M. Zubik), C.H. Beck Press 2008, page 348.

28 L. Florek, Konstytucyjne gwarancje uprawnień pracowniczych, Państwo i Prawo 1997, Z. 11-12, page 207.

29 See: Article 22 section 1 of the Act of April 18th, 2002 on state of emergency due to natural disaster [Journal of Laws 2004, Nr 62, item 558 as amended].

30 See: Article 200 section 1 of the Act of November 21st, 1967 on general obligation of defending the Republic of Poland [Journal of Laws 2004 No. 241, item 2416].

31 See: Article 116 Act of June 6th, 1997, Executive penal code [Journal of Laws 1997, Nr 90, item 557 as amended].

32 See: Article 34 of penal code.

33 Article 218 of executive penal code; See also: B. Banaszak, Konstytucja Rzeczypospolitej Polskiej. Komentarz, C.H. Beck Press, Warsaw 2009, page 338.

34 B. Banaszak, Konstytucja Rzeczypospolitej Polskiej. Komentarz, C.H. Beck Press 2009, page 339.

35 T. Liszcz, Konstytucyjne zasady prawa pracy (w:) Konstytucyjny ustrój państwa. Księga jubileuszowa Profesora Wiesława Skrzydły, Uniwersytetu Marii Curie-Skłodowskiej Press, Lublin 2000, page 152.

As pursuant to the provisions of basic law, children are also subject to protection not only against child labour and harmful work but also against permanent employment. Article 65 section 3 of the Constitution states 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'. The provisions results, *inter alia*, from other Constitution regulations regarding the principle for labour protection (Article 24) and protection of children's rights (Article 72)³⁶. However, in the literature on the subject³⁷ it is underlined that the provisions of Article 65 section 3 are not clear and may be interpreted in a different way. One can assume that Constitution allows for permanent employment of children under 16, but it requires applicable statutory regulations. On the other hand, the provision may be interpreted so that Constitution absolutely prohibits permanent employment of children and only in specific cases it is possible to temporarily employ children under 16³⁸.

It may be concluded then, that forced labour and employment of children pursuant to the Constitution of the Republic of Poland is prohibited, however the prohibition is not of absolute character. The Polish legislator allows for situations in which some people, including children, may be obliged to carry out specific works or services. It is however possible only in special cases and only based on the act as far as the premises which allow for such restrictions of citizens' freedom are observed. One of the premises is e.g. the occurrence of a natural disaster in the state of Poland. Besides, the act which will bind the citizens to carry out labour specified by public authorities must, at the same time, conform to the provisions of international law, the party of which Poland is signatory.

Based on the quoted regulations of the Constitution of the Republic of Poland related to labour pro-

tection and their interpretation, it can be concluded that there is constitutional basis for prohibition of forced labour in Poland. It is most of all certified by the contents of Article 65 section 1. Even if the provision (*in fine*) speaks about certain exceptions to be determined by the act, it does not mean that the regulations may go that far to essentially change the sense of the norm contained in the first sentence. The exceptions may refer to, e.g. youth professional training or placement of probation by a junior doctor. On the other hand, based on section 2 of the Article concerning the allowable labour obligation, one cannot conclude the allowance for forced labour. A similar prohibition structure was included in Article 4 of the European Convention for Human Rights.

36 Konstytucja Rzeczypospolitej Polskiej. Komentarz (L. Garlicki, et. al.), Sejm Press, Warsaw 2005, Chapter II „Wolności, prawa i obowiązki człowieka i obywatela”, Article 65, page 8.

37 See: L. Florek, Konstytucyjne gwarancje uprawnień pracowniczych, Państwo i Prawo 1997, z. 11-12; T. Liszcz, Konstytucyjne zasady prawa pracy [w:] Konstytucyjny ustrój państwa. Księga jubileuszowa Profesora Wiesława Skrzydły, Uniwersytetu Marii Curie-Skłodowskiej Press, Lublin 2000.

38 More information: Konstytucja Rzeczypospolitej Polskiej. Komentarz (L. Garlicki, et. al.), Sejm Press, Warsaw 2005, Chapter II „Wolności, prawa i obowiązki człowieka i obywatela”, Article 65, page 8.

1.2.

Labour law

On the grounds of labour law there is not such a regulation which would prohibit forced labour directly. However, there are provisions which protect the employee from exploitation and enforcement to work. Firstly, it is necessary to refer to basic labour law principles which were included in Section One in Chapter II of the Labour Code³⁹. There are regulations which are especially important from the point of view of the analysis herein. It is mostly in regard to Article 10 § 1 of Labour Code, which states that everyone has the right to choose and to pursue his/her occupation. No one, except for cases described in the act, may be prohibited from practising his/her occupation.

Similarly to the Constitution of the Republic of Poland, it also guarantees freedom for choosing the job, which can also be interpreted as a prohibition for enforcement to work⁴⁰. It is worth remembering that the principle of labour freedom has been expressed in many documents of international law, of which Poland is party, the European Social Charter from 1996 as one example.⁴¹ It can be then acknowledged that guaranteeing labour performance freedom is essential for the national legislator since the principle has been expressed in two legal acts. The only limitation of the right, which is mentioned both in the Constitution and the Labour Code, may take place by means of an act, as a result of lawful court decision or lawful disciplinary statement⁴².

In the context of the analysis herein, provision of article 11 of the Labour Code is also essential. It states that 'Establishing an employment relationship

and determination of work and payment conditions, regardless of the legal basis of such a relationship requires an unanimous statement of will of the employer and employee'. The provision refers also to the principle of freedom of employment and means that both, the employee and employer hold full autonomy when deciding whom to work for (employee) and whom to employ (employer). The legislator allowed also for a decision regarding the type of labour contract which shall be signed by the parties as well as the agreed work and payment conditions⁴³. There are, however, some limitations referring to, at least, the minimum wage⁴⁴, or the obligation of making a labour contract if a labour relationship is present. The most essential aspect is, however, the fact that the arrangements listed require approval from both employer and employee⁴⁵. This is why it can be stated, that Article 11 of the Labour Code guarantees protection for the employee against exploitation and enforcement to work which the employee did not agree to.

While Article 111 of the Labour Code states that the Employer is obliged to respect the dignity and other personal rights of employees. It is a special provision in the context of issues discussed herein, as, firstly, it refers to Article 30 of the Constitution of the Republic of Poland, regarding 'natural and inalienable human dignity' and secondly, it expresses provisions mentioned in the regulations of international law, including conventions of the International Labour Organization⁴⁶. This is why the fact that the Polish legislator included the regulations regarding protection of

39 Journal of Laws 1974, Nr 24, item 141 as amended

40 See: M. Barzycka-Banaszczyk, *Prawo pracy*, C.H. Beck Press, Warsaw 2005, page 28.

41 Journal of Laws 1999, No. 8, item 67.

42 T. Romer, *Prawo pracy. Komentarz*, Prawnicze LexisNexis Press, Warsaw 2007, page 97-98.

43 Ibidem, page 101.

44 Journal of Laws 2002, No. 200, item 1679, as amended

45 L. Florek, *Prawo pracy*, C.H. Beck Press, Warsaw 2011, page 11.

46 *Kodeks pracy. Komentarz* [red.] L. Florek, Wolters Kluwer Press, Warszawa 2009, page 88.

human dignity in the labour code shall be evaluated positively, as it is during work performance when human dignity is threatened with essential violation. Literature on the subject indicates that it mostly refers to situations, in which someone is exploited for economic purposes and treated as cheap labour. However, the spectrum of violations of employee dignity may be broader and contextualised and not necessarily connected with the performance of labour. Situations may take place in which employees are exploited to work whilst at the same time the employer/s violate bodily integrity (e.g. sexual harassment) or undermine the employee's opinions with inappropriate and condescending remarks that belittle the employee. The analysis of cases of forced labour⁴⁷ clearly shows that forcing people to work is always related to a violation of human dignity. It is then undisputable, that Article 111 of labour code shall be considered as a very important supplement to employee protection against exploitation.

Article 111 of the Labour Code contains an expression that employers are obliged also to protect 'other personal rights of employees'. In order to explain what the protection would mean, it is necessary to refer to regulations included in the Civil Code (hereinafter referred to as c.c.)⁴⁸. Art 23 of c.c. states that human personal rights cover especially '... health, freedom, honour, freedom of conscience, surname or nickname, image, privacy of correspondence, residence inviolability, scientific, creative, inventory and/or innovation activity'. So, Article 111 of the Labour Code is another legal regulation which guarantees protection of rights and freedom of employees. Even though in the provision discussed the legislator does not suggest in any way that it also refers to situations in which employers force employees to work, however based on its literal expression, one can conclude that the provision may also be applied with reference to forced labour. After all, these are the rights and freedoms mentioned in Article 111 of the Labour Code,

that are the most often violated by the perpetrators of forced labour and human trafficking in general⁴⁹.

In the context of the issues discussed here the regulations of Article 13, Article 14 and Article 15 of the Labour Code, which oblige employers to pay decent remuneration, assure relaxation for employees and guarantee safe and hygienic work conditions, are also essential. The regulations supplement the series of rights which employees are authorized to.

When analysing basic principles of the Labour Law which are covered by Chapter II of Section One of the Labour Code, one would notice that the legislator did not refer to the issue of exploitation and/or people being forced to work without break or having recreational space. Issues related to the protection of employee dignity, freedom of employment and ensuring safe and hygienic work conditions have been formally addressed. One of the principles of the Labour Law is even the prohibition of discrimination in employment (Article 113 of the Labour Code), there is no doubt that this is an important provision as it introduces the concept of equal treatment of all employees regardless of their gender, race or sexual orientation under the law.

The Labour Code also discusses issues related to the responsibility of the employer for petty offences against employment rights. The provisions have been dealt with in Section Thirteen of the Labour Code - they are often called '*labour penal law*'⁵⁰. The term comes from the fact that petty offences described in Article 281 and 282 of the Labour Code become crimes from Article 218 § 1 of the Penal Code if the employer or a person acting on the employer's behalf, in a deliberate way violates the employment rights listed in Article 281 and 282 of the Labour Code. While, if the employer does not observe the regulations contained in Article 283 of the Labour Code and exposes the employee to the dangers of loss of life or any serious detriment to the health of the employee, then the employer commits a crime

47 See: Z. Lasocik, Ł. Wiczorek, Trafficking for Forced Labour in Poland - Research Report, Human Trafficking Studies Center, Warsaw University, Warsaw 2011 (in English).

48 Kodeks pracy. Komentarz (red.) L. Florek, Wolters Kluwer Press, Warsaw 2009, page 89.

49 Z. Lasocik, Ł. Wiczorek, Trafficking for Forced Labour ..., op. cit., page 40-62.

50 See: W. Radecki, Kryteria rozgraniczenia wykroczeń i przestępstw przeciwko prawom pracownika, Monitor Prawa Pracy 2005 no. 9.

from Article 220 of the Penal Code. There is, then a clear relationship between the discussed regulations of the Labour Code and the Penal Code in the context of protection of labour rights.

Article 281 of the Labour Code lists situations in which employers are subject to a fine⁵¹ and these are, inter alia, applications with regard to employees of penalties other than those mentioned in the Polish labour law regulations on employees' responsibility in respect of order or violation of regulations on work time or regulations on employee' authorizations related to parenthood and employment of minors⁵². While employers are responsible for the offences not only because of wilful misconduct but also because of negligence or recklessness that is also based on unintentional fault⁵³. For the offences against employment rights which are contained in Article 281 of labour code, the perpetrator is subject to a fine from 1,000 PLN (240,00 EUR) to 30,000 PLN (7150,00 EUR).

In the context of the analysis herein, the provision of Article 282 § 1 of the Labour Code, which concerns situations in which remuneration is not paid, is essential, as according to the Convention no. 95 of the International Labour Organization of July 1st 1949 on wage protection⁵⁴, earnings shall be paid in regular time intervals and the way of paying shall not deprive the employee of the possibility of resigning or quitting from the work performed by the employee. If such a possibility is missing, it means that the employee in the meaning of the Convention no. 29 of the International Labour Organization from 1930⁵⁵, is the victim of forced labour. This is why, despite the fact, that legislator in the aforementioned provision does not apply such terms as exploitation or forcing to work, Article 282 § 1 of the Labour Code shall be considered as an essential instrument of labour law which protects employees against such phenomena as the above. The article penalizes behaviours which involve non-payment of wages (or its decrease) and application of

unlawful deductions from the employee's salary.

The last provision of the Labour Code which refers to the responsibility for crimes against employment rights is Article 283 § 1 and 2 of the Labour Code. It penalizes, inter alia, behaviours which involve inobservance of principles of work safety and hygiene as well as any hampering of the National Labour Inspectorate work (hereinafter referred to as PIP) – the institution authorized to control work conditions and legitimacy of employment.

Despite the fact that the aforementioned labour law regulations do not refer to the problem of forced labour in the strict sense, they make up an important instrument for the protection of employees against a violation of their rights and freedoms related to their gainful employment performance. At the same time they contribute to the creation of a climate of protected work and thus the elimination of forced labour. There is, of course, still an open question, whether the national legislator shall write the labour law regulations in such a way so that it was clearly indicated that all practices related to exploitation and forced work are prohibited by law.

51 Fine may amount from 1,000 PLN to 30,000 PLN.

52 Minors and employers with parental rights are subject to special protection in labour law. See also: M. T. Romer, *Kodeks pracy. Komentarz*, Prawnicze LexisNexis Press, Warsaw 2008, page 1075.

53 Ibidem, page 1073.

54 *Journal of Laws* 1955, No. 38, item 234

55 *Journal of Laws* 1959, No. 20, item 122.

1.3.

Penal law

As it was mentioned, there is no crime of forced labour in the Polish Penal Law. However, a new definition of human trafficking introduced in 2010⁵⁶ indicates that one of the purposes for using the victim of the crime may be work or services of compulsory character, including also slavery. It means that the Polish legislator stated forced labour and slavery as one of the forms of human trafficking.

The definition discussed before is included in Article 115 § 22 and § 23 of the Penal Code, which contains explanations of statutory terms as follows:

Article 115 § 22 of the Penal Code. Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of:

- 1) *violence or unlawful threat,*
- 2) *abduction,*
- 3) *deception,*
- 4) *misleading, the exploitation of a person's mistake or their inability to properly comprehend the action being undertaken,*
- 5) *the abuse of a relation of dependence, taking advantage of a critical situation or state of helplessness,*
- 6) *giving or accepting material profits or personal profits or promise of such by a person caring about or supervising another person*
*- in order to exploit him/her, even with his/her permission, especially in prostitution, pornography or other forms of sexual abuse, **at work or services of compulsory character**, in beggary, in slavery or other forms of exploitation which cheapen human dignity or in order to gain cells, tissues or organs against*

the act regulations. If the perpetrator's behaviour refers to a minor, it is considered as human trafficking even if methods and resources listed in items 1-6 were not applied.

§ 22 Slavery is the condition of dependence in which a human is treated as a subject of ownership.

The aforementioned definition of human trafficking is based on the definition from the *Protocol to prevent, suppress and punish trafficking in persons, especially women and children which supplements the United Nations Convention against Transnational Organized Crime*, adopted by the General Assembly of the United Nations on November 15th, 2000⁵⁷ (the so-called Palermo Protocol⁵⁸).

What has to be again underlined is the fact that in the Polish legal order, forced labour is considered to be one of the forms of human trafficking, similarly to what was expressed in international public law. While the Polish legislator, states that one of the purposes for exploiting a victim of human trafficking are 'works or services of compulsory character' at the same time the legislator does not specify what such behaviour involves. Based on the regulations of international law, including especially from Convention no. 29 of the International Labour Organization from 1930, we know how to define compulsory or forced labour. Bearing in mind the above, the expression used in the definition - 'work or services of compulsory character' is not precise and poorly legible; it at the same time may cause difficulties in the clear determination of criminal responsibility for a crime

⁵⁶ Journal of Laws 2010, No 98, item 626.

⁵⁷ Journal of Laws 2005 r., Nr 18, item 160.

⁵⁸ Palermo Protocol is a casual name for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which supplements The United Nations Convention against Transnational Organized Crime, adopted by General Assembly of the United Nations on November 15th, 2000. Both documents, the Convention and the Protocol were signed on November 15th, 2002 in Palermo (Sicily) in Italy. The place of signing the documents is not accidental, as it was Palermo where judges Giovanni Falcone and Paolo Brosellino, who became the symbol of fighting mafia in Italy, worked. They both died in bomb assassinations prepared by mafia families. Falcone died on May 23rd, 1992 and Brosellino on July 19th, 1992

of human trafficking. The expression as well as the whole definition may, then, raise essential interpretation problems and then what follows, difficulties in the provision application.

In the definition discussed, the legislator uses another expression which is also essential from the point of view of the analysis herein. It is namely focused on the fact that a victim may also be exploited in slavery. The way it should be understood is explained by the legislator in Article 115 § 23 of the Penal Code, where we can read that *Slavery is the condition of dependence, in which a human is treated as a subject of ownership*. It is quite a concise definition which refers to the definition formulated in the Convention on Slavery of September 25th, 1926⁵⁹ (the document provisions have been discussed in the section related to international law). So, the national legislator, similarly to the international one, referred to regulations applicable to property law. It means that everyone who treats another person as a thing and/or manages him/her the way a thing is managed (e.g. agricultural tools), commits the crime of slavery. It is then quite a broad and unclear definition; this is why courts, especially the Supreme Court, will have to deal with the interpretation of the provision.

Transposition of the Penal Code of May 20th, 2010⁶⁰, concerned not only the introduction of a human trafficking definition. The legislator decided to change the hitherto provision on human trafficking which was included in Article 253 of the Penal Code⁶¹. The contents of the Article were as follows '§ 1. *Whoever conducts human trafficking even with their consent shall be subject to deprivation of liberty of not less than 3 years. § 2. Whoever, who in order to gain material profits organizes the adoption of children in violation of the law, shall be subject to deprivation of liberty from 3 months to 5 years*'. While, at present, the provision which penalizes human trafficking is contained in Article 189a and it says: '§ 1 *Whoever conducts human*

trafficking shall be subject to deprivation of liberty of not less than 3 years. § 2. Whoever prepares to committing a crime specified in § 1, shall be subject to deprivation of liberty from 3 months to 5 years'. It can be noticed then, that the change involved most of all the separation of human trafficking from illegal adoption and the introduction of penalization for the preparation to commit the crime of human trafficking. The hitherto provision was also subject to changes, as the expression 'those who deal with human trafficking' used in Article 253 was replaced with 'those, who commit human trafficking'. The change is fully justified especially with reference to formulation of legal norms in accordance with the principles of the Polish language. It is because it was assumed that a crime is committed or may be committed but not dealt with. Besides, the Polish legislator, while describing other prohibited actions in the Penal Code does not use the expression 'deals with' but only 'commits' (e.g. Article 134 of penal code, "*Whoever makes attempt on the life of the President of the Republic of Poland...*"). The exception is Article 204 of the Penal Code, which penalizes behaviour which involves deriving material benefits from practising prostitution by another person. It is also important that from the provision referred to human trafficking, entry related to the victim's consent was also removed. It happened because nowadays it is regulated by the definition included in 115 § 22.

The most essential changes, however, concern two issues. Firstly, penalization covers also the very preparation of committing the crime of human trafficking (Article 189a § 2). Secondly, regulations related to human trafficking and the so-called illegal adoption were separated. For now, the provision on the latter is included in Article 211a., in chapter XXVI of the Penal Code which refers to crimes against family and guardianship. The content of the art 211a of the penal code specifically penalizes organized business of arranging adoptions with defiance of the law – the

59 Journal of Laws 1930, No. 6, item 48.

60 See: Act of May 20th, 2010 to amend – Penal Code; Act on Police; Act Introducing Penal Code and Code of Criminal Procedure (Journal of Laws 2010 No. 98, item 626).

61 As a result of transposition, the hitherto Article 204 § 4 of the Penal Code has also been overruled; it concerned human trafficking for the purposes of prostitution abroad. The change shall be considered as very good, as until now we faced the situation in which human trafficking was a felony punished with deprivation of liberty for 3 years while human trafficking for prostitution abroad was a crime subject to deprivation of liberty from one to 10 years.

perpetrator is the person organizing illegal adoption and not the persons selling or buying the child. The legislator, while formulating the entry referred to the opinion of Penal Law Codification Committee, concerning the project of penal code transposition, inter alia, in terms of introducing the definition of human trafficking into the Penal Code. The Committee stated that the crime involving organization of adoption against legal regulations shall be included in chapter XXVI of the Penal Code concerning crimes against family and guardianship and not in chapter XXIII of the Penal Code with the crimes of human trafficking⁶².

The Penal Code in its transposed version contains one more regulation which joins with the issues of forced labour. It is Article 8 of the provisions introducing the penal code, which says: *"Whoever causes slavery of a person or maintains him/her in such a condition or deals with the slave trade is subject to deprivation of liberty not less than 3 years"*. The regulation fulfils the provisions of international agreements (inter alia the Rome Statute of the International Criminal Court from 1998⁶³), the party of which Poland is a signatory and refers to the principle of universal repression. Based on Article 113 of the Penal Code, the Republic of Poland is obliged to prosecute specific crimes committed by a citizen of Poland or a foreigner regardless of the place of crime and binding legal regulations. International law clearly states which crimes it refers to and those crimes involve, inter alia, human trafficking and slavery or exploitation of prostitution⁶⁴. As far as penalization for the aforementioned crimes is concerned, then similarly to human trafficking, the behaviour was considered as a serious crime that is in accordance with Polish law order for a grave crime.

Another group of penal regulations which in some way contribute to prevention of forced labour are the

provisions on offences against the rights of persons pursuing paid work, included in chapter XVIII of the Penal Code. The provisions related to malicious or persistent violation of employee rights (Article 218 § 1) and exposing an employee's life or health to danger (Article 220 § 1-3) are especially essential.

Article 218 § 1 of the Penal Code penalizes behaviour involving malicious or persistent violation of employee rights resulting from a work contract relationship or social insurance. The offence is subject to a fine, restriction of liberty or deprivation of liberty for a period of up to 2 years. Hence, not all the employee rights are protected under the Article 218, because the legislator determined in this Article only employee rights regarding labour contractual obligations and those of social insurance. This, in turns, narrows the employer's responsibility as it refers only to violation of the rights of those people who are employed in terms of a work contract and not based on civil law agreement (e.g. mandate contract)⁶⁵. Violation of provisions of Article 218 of the Penal Code may be connected with e.g. non-payment of salary or non-payment of health insurance fees for the benefit of the employee and it can be committed by the way of action or omission. It is also necessary to underline, that Article 218 of the Penal Code is related to the regulations of Article 281-283 of the Labour Code (what was mentioned before), which also speaks about the employer's responsibility for offences against employee rights. While the relation means that violation of regulations of Article 281-283 (which are offences), become crimes based on Article 218 of the Penal Code⁶⁶, if the perpetrator's behaviour involves malicious and persistent violation of the employee rights⁶⁷.

The cited regulation does not mention enforcement or even exploitation of people to labour, however the

62 See also: "Opinion to the Draft of the Act changing following acts: Penal Code; Regulations Introducing Penal Code; Code of Criminal Procedure; Act on Police", [Druk Sejmowy nr 2387] [Parliament Printed Works no. 2387].

63 Journal of Laws 2003, No. 78, item 708.

64 Kodeks karny. Cześć ogólna, szczególna i wojskowa (red. T. Dukiet-Nagórska), LexisNexis, Warsaw 2010, page 192.

65 Kodeks karny. Komentarz (red. O. Górniok), Prawnicze LexisNexis Press, Warsaw 2006, page 712.

66 However regulations contained in Article 218 of penal code do not fully cover those included in Article 281-283 of labour code, as the regulations of labour code contain a more extensive catalogue of employee rights subject to protection.

67 Kodeks karny. Komentarz (red. O. Górniok), Prawnicze LexisNexis Press, Warsaw 2006, page 711.

behaviours listed in it may be committed in connection with forced labour. Especially when it comes to such issues like work time limits observance, application of penalties not covered by law in relation to employees or employment of minors. The regulations protect all the people who are currently employed so also those who work based on civil law agreements e.g. mandate contracts. Based on the judgements of the Supreme Court⁶⁸, and also labour law doctrine⁶⁹, employment specified in Article 22 § 1 of labour code refers to every situation in which the employing entity is authorized to give orders to the employee. The type of contract made between the parties is not important as the only issue that counts is the fact that the employee is subordinate to the employer and is obliged to perform orders⁷⁰.

The last provision which may be important from the point of view of protection of people subjected to gainful employment is Article 220 of the Penal Code. It penalizes such employer's behaviours which involves a lack of assuring safe and hygienic working conditions, which as a consequence, may lead to life loss or serious detriment to health of the employee. Based on 220 of the Penal Code it can be concluded that the regulation protects not only the rights of the employee which may be violated by the employer but also the life and health of the employee⁷¹. Behaviours described in Article 220 of the Penal Code are subject to deprivation of liberty up to 3 years. It is also necessary to underline, that the provision is often described by Penal Law doctrine as a '*qualified type of offence*' based on 283 § 1 of the Penal Code⁷². The provision was mentioned as based on the research on cases of forced labour in Poland or of Polish citizens abroad⁷³ one can conclude that employers did not pay attention to assuring safe and hygienic work conditions whilst at the same time exposing them to danger of detriment to health.

Summing up the considerations, it is essential to state that the only regulation which penalizes behaviours involving forcing people to work is Article 189a § 1 of the Penal Code. And despite the fact that the provision does not include information about penalization for forced labour, the issue is settled by the definition of human trafficking included in Article 115 § 22 of the Penal Code. Additionally to this, there are many, aforementioned, regulations of penal act, which anticipate penalization for behaviours which may accompany in the cases of enforcing or exploiting people to work. There is no doubt then in stating that Polish penal law allows for pursuing behaviours involving forcing individuals to work, though there is no crime of forced labour in the penal code.

68 The judgement of Supreme Court of April 4th, 2002, I PKN 776/00, OSNP 2004, No. 6, item 94.

69 A.M. Świątkowski, Kodeks pracy. Komentarz, C.H. Beck Press, Warsaw 2010, page 106-107.

70 The judgment of the Supreme Court of February 14th, 2001, I PKN 256/00, OSNAPiUS 2002, No. 23, item 564.

71 Kodeks karny. Komentarz (red. O. Górniok), Prawnicze LexisNexis Press, Warsaw 2006, page 717.

72 W. Radecki, Granice ingerencji prawa karnego w stosunki pracy, Prokuratura i Prawo, 6/2005, page 13.

73 See: Z. Lasocik, Ł. Wieczorek, Trafficking for Forced Labour....., op. cit.

1.4.

*Act on the Promotion of Employment and the Institutions of the Labour Market*⁷⁴

In the act from April 20th, 2004 on the *Promotion of Employment and the Institutions of the Labour Market*⁷⁵ there are several regulations which are essential from the point of view of this report content. One of them is the provision of Article 6 Section 4, stating that employment agencies 'entered into the register of entities operating employment agencies which provide services in terms of job brokerage, job brokerage abroad, personnel consultancy, occupational guidance or temporary work' are important entities on the labour market. Although the agencies shall serve the employees and employers, sometimes they play a shameful role in recruitment of employees for forced labour.

In the act mentioned here, there are regulations which refer to responsibility for offences against employee rights, including foreign workers. Article 120 and Article 121 of the act are essential as far as the above is concerned.

Article 120 refers to employment of foreigners. In Section 1 of the provision, the legislator penalizes illegal entrusting of labour to a foreigner. The act is subject to a fine not less than 3,000 PLN (715,00 EUR). While foreigners who provide services illegally are subject to a fine not less than 1,000 PLN (Section 2). In Section 3 of the Article discussed, it is stated that "*Whoever by means of misleading a foreigner, ex-*

ploiting the professional relations or inability to comprehend the undertaken action leads to illegal work performance by the foreigner". Responsibility here is stricter and the penalty higher as much as up to 10,000 PLN (2385,00 EUR). The regulation contained in Section 5 of the Article which penalizes behaviour involving misleading another person as a result of which the person entrusts the realization of illegal employment to a foreigner is also essential. Such an act is also subject to a fine up to 10,000 PLN.

Based on Article 121 Section 1 of the *Act on Promotion of Employment and the Institutions of the Labour Market*, a fine is also given (not less than 3,000 PLN) to the person who runs the employment agency without the required entry to the applicable register. A fine not less than 3,000 PLN is also given to the person, *who while running an employment agency collects from the person seeking for employment, another gainful employment or assists in selection of an adequate profession and place of employment, additional fees other than the ones mentioned in Article 85 Section 2 item 7* (Article 121 Section 2).

In the *Act on Promotion of Employment and the Institutions of the Labour Market* there is no such a regulation then, which would prohibit forced labour. There are, however, provisions which penalize the behav-

⁷⁴ Polish title of the act reads as follows: Ustawa o promocji zatrudnienia i instytucjach rynku pracy.

⁷⁵ Journal of Laws 2004, No. 99, item 1001 as amended

hours which may be present in the cases of exploitation or forcing a person to work. Research shows⁷⁶ that these are foreigners that are most often victims of forced labour and especially those, who are illegally employed. In this context, the discussed Article 120 of the *Act on Promotion of Employment and the Institutions of the Labour Market* which refers to illegal employment of foreigners gain special importance. Additionally, one can conclude that the victims of forced labour come to Poland also via the mediation of employment agencies. However, the act discussed in no way refers to the problem of human trafficking or forced labour despite the fact that these are employment agencies which may be essential elements of the crimes.

It should be mentioned also that in September 2013 the Polish Government presented a draft of the amendment to the act discussed here. The main purpose of the bill is to increase the impact of labour market policies on employment growth and the mitigation of a structural mismatch, especially in terms of qualifications and skills of the unemployed. It is also necessary, the government explains, to increase the flexibility of the labour offices by adapting their activities to the specific needs of the workers and employers. Although it is not said, one can expect that it will also cover migrant workers. The bill is important for migrant workers since it excludes the liability of the migrant worker for circumstances for which are totally on the side of another party offering/arranging the job.

According to a draft of the amendment of the *Act on Promotion of Employment and the Institutions of the Labour Market* from 2013, any institution providing employment, such as employment agencies for instance, will be subject to a fine up to 3,000 PLN (720 EUR) (Article 121 Section 2-3). The same penalty fines will also be imposed on those who provide job placement services, provide information or inconsistent with the actual state of affairs (article 121c)⁷⁷. *Act on Employing Temporary Workers*⁷⁸

Employment agency functioning is subject to the act of July 9th, 2003 on employing temporary workers⁷⁹, that is so-called *worker leasing*. The act determines such issues as the principles for temporary worker employment and directing the workers for temporary work (Chapter II); directing of people not being the employees of employment agency to temporary work (Chapter III) or penal regulations (Chapter IV).

The act introduces a new category of employers who employ temporary workers and determine them as employer-user. The acts penal regulations (Article 27) penalize behaviour of such an employer involving lack of assuring safe and hygienic work conditions; equipping work posts with machines and appliances which do not meet specific technical requirements; lack of industrial safety trainings for employees, lack of refreshments and meals, especially for strenuous work such as construction, safety clothes and footwear or not giving information about occupational risk. Inobservance of obligations which were agreed with the temporary employment agency which employs the temporary worker is also penalized. All behaviours listed in the penal regulations of the act on employment of temporary workers are subject to fine from 1.000 PLN (240 EUR).

It can be noticed then, that penal regulations of the act cited mostly refer to assurance of safe and hygienic work conditions. Only the last item of penal regulations refers to inobservance of obligations resulting from the agreement made between the temporary employment agency and the employer-user. There are not any entries referring to exploitation and forced work.

76 See: Z. Lasocik, J. Filipowicz, Ł. Wieczorek, *Susceptible Economic Sectors and Assistance Structures for Victims of Forced Labour*, Human Trafficking Studies Center, Warsaw University, Warsaw 2010.

77 To know more about the draft see: <http://www.mpips.gov.pl/bip/projekty-aktow-prawnych/projekty-ustaw/rynek-pracy/ustawa-o-zmianie-ustawy-o-promocji-zatrudnienia-i-instytucjach-rynku-pracy-oraz-niektorych-innych-ustaw/>.

78 Polish title of the act reads as follows: *Ustawa o zatrudnianiu pracowników tymczasowych*

79 *Journal of Laws* 2003, No. 166, item 1608.

1.5.

Act on the Consequences of Entrusting Work to Foreigners Residing on the Area of the Republic of Poland against the Regulations⁸⁰

The latest legal Act on labour market that is the act of June 15th, 2012 on the *Consequences of Entrusting Work to Foreigners Residing on the Area of the Republic of Poland against the Rules*⁸¹ is essential in the context of exploitation and enforcing people to work. The act contains mostly punitive regulations which penalize different forms of employment of foreigners whose residence in Poland is not regulated. However, from the point of view of this report's purpose, the most important is the regulation of Article 10 Section 1 of the act in which the legislator penalizes the act of entrusting **'labour to foreigners residing without a valid document which authorized to stay on the area of the Republic of Poland in the conditions of special exploitation'**. Such behaviour is subject to a stricter penalty that is penalty of deprivation of liberty up to 3 years. The same penalty applies with reference to those who entrust labour to foreigners without a valid document which authorizes him/her to stay on the area of the Republic of Poland, who at the same time are the victims of human trafficking (Article 10 Section 2).

The act defines also the expression of '*conditions of special exploitation*' which were defined by the legislator as conditions of work entrusted with violation of law, which offend human dignity and are glaringly varied, including, especially because of gender, in comparison to work conditions for people who were entrusted work in accordance with the law, which has influence on the safety of people performing it (Article 10 section 3).

It can be said that both regulations in an essential way supplement the legal and punitive regulations discussed above concerning human trafficking. The regulations refer only to foreigners and do not apply to forced labour but to '*conditions of special exploitation*'. It has to be stated, however that they indirectly prohibit exploitation and forcing of foreign employees to work. It cannot be then stated that the provision of Article 10 Section 1 constitutes the crime of forced labour but it surely strengthens protection of foreign employees who are victims of exploitation.

80 Polish title of the Act reads as follows: Ustawa z dnia 15 czerwca 2012 r. o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej

81 Journal of Laws of 2012, No 0, item 769.

1.6.

Summary

The analysis conducted indicates that in the Polish legal canon there is no provision which would specifically and categorically penalize behaviour involving enforcing people to work in a direct manner. There are, however several provisions starting from the Constitution of the Republic of Poland, the Labour Code, the Penal Code and finishing with the specific Acts which regulate the labour market or the functioning of employment agencies which guarantee the employee, inter alia, freedom of profession or workplace selection and which protect the employee from exploitation.

It can be stated that at the level of legal regulations employment rights, including undocumented migrants, are well protected in Poland. Several provisions ensure protection of dignity and workers' rights. Moreover, according to the Polish Constitution, work should be protected by the state. This analysis also demonstrates the evolution of Polish law related to labour exploitation. Although forced labour is still not penalized, one of the new provisions of the law suggests that even undocumented migrants receive strong legal protection from labour exploitation (see: the *Act on the Consequences of Entrusting Work to Foreigners Residing on the Area of the Republic of Poland against the Regulations of 2012*, mentioned earlier).

It is known that legal regulations themselves are not fully sufficient to protect employees' rights. Malpractices in the labour market can not be eliminated by introducing just laws, "good" practices must be established to implement the laws.

Subsequently, to ensure that good practices are implemented, the following three actions need to be taken:

- 1. to raise awareness of all those involved in the labour market,**
- 2. to strengthen the capacity of law enforcement, labour inspectorates and other authorities which are or should be involved in eliminating labour exploitation and**
- 3. to establish an effective system of supervision over the labour market and all actors operating there.**

Chapter 2.

*Experts on Forced
Labour and Exploitation
in Poland*

2.1.

Introduction

The empirical material is based on interviews with representatives of various institutions whose activity is directly or indirectly connected with the elimination of trafficking and forced labour. The selection of respondents for the study was deliberate. The purpose of the research was to conduct interviews with key experts in the field of human trafficking and forced labour, and the labour market in general.

Interviews were conducted by the authors personally. The places where the interviews took place were decided upon by the respondents. These were mainly the offices of each institution (the workplaces of the respondents), but also a cafeteria, or a private apartment of the respondent. In one case, the interview was conducted by telephone. For each conversation the familiarity principle was preserved.

Depending on the technical possibilities and the consent given by the respondents, some interviews were recorded (almost half). These transcripts of recordings have been transcribed and written in full. From the other interviews detailed notes were prepared.

The results of the empirical studies are based on qualitative analysis of the material obtained in interviews with experts. According to the methodology of qualitative research, we identified key issues from the point of view of the research, according to which we developed collected material.

In terms of the ADSTRINGO project we carried out interviews with 15 experts. They were people who professionally deal with labour issues or, in the author's opinion, possess knowledge or experience interesting from the point of view of the project. Apart from thereof, the authors held numerous supplementary talks, which did not meet the criteria of an interview but were sources of important information, with other experts representing different institutions and organisations, including an organization which deals with the promotion of Corporate Social Re-

sponsibility among employers. The interviewees were:

- an employee of a large network employment agency,
- two employees of employment agencies,
- an employer,
- a department director of a big enterprise,
- a National Labour Inspectorate Headquarters employee,
- a senior Police Officer,
- two local Police Officers,
- a Senior Border Guard,
- an Attorney, employers' association Advisor,
- an Expert on trade unions' activity,
- a representative of an association providing legal assistance to victims of human trafficking,
- a representative of an association which deals with migrant workers,
- a representative of an association which gives support to victims of human trafficking.

The fact that almost all experts made stipulations that their knowledge especially about forced labour is still limited and that there are many issues which should be discussed and solved in the near future demonstrates that the level of discussion on forced labour in Poland is in the early stages. In their opinion, if anybody wants to get information about the challenges of employing foreigners in Poland or about Poles working abroad, there is little chance to come across interesting and valuable materials. Organizations which deal with helping migrants, despite the fact that they increasingly give better and better service provision, often do not find their place in the so-called extra-governmental mainstream. Additionally there are only a few papers which would be generally accessible.

Experts gain their knowledge mostly based on practise, from experience obtained in the course of their professional career and sources such as

scientific dissertations, official reports, and media publications. One of the experts introduced an interesting distinction stating that when it comes to Poland, the main sources of information are other people (experts) or media announcements. While, when it comes to European or world issues, he reaches for professional documents, reports and analyses prepared by international organizations or institutions such as the World Bank. Officers of uniformed services get to know about the problem of

forced labour from cases they manage, from training (very rare) and business meetings with other professionals – police, border, and customs duty officers. The source of knowledge for the activists from non-governmental organizations is their own practice and professional documents. While until now, forced labour has not been the subject of study and analysis of trade unions and employers' associations.

2.2.

Findings from the interviews

2.2.1.

Susceptible sectors of economy

One of the main issues every country faces is to identify those sectors where by exploitation is more rife. Experts agree that the sectors which are most threatened in Poland cover agriculture, construction and food processing as well as housekeeping and cleaning. Cases of labour exploitation have been identified also in industrial production and the catering sectors. In experts' opinions these are the sectors which traditionally are the domain where contacts of an informal nature proliferate as well as they have been characterized with traditional ways of achieving agreements with reference to labour provision: orally in accordance to generally applied principles and for regular rates. At the same time, experts underlined that these are the sectors in which 'it is the easiest to hide a workplace' as you never know what is the nature of the job that the specific person performs in the specific work place. Additionally, the seasonal nature of employment in those sectors makes it difficult for possible inspection from state institutions such as the police or the

labour inspectorate.

When it comes to countries which the victims of forced labour come from, the experts reached almost full agreement. Most of them mentioned four countries: Belarus, Romania, Russia, and Ukraine. While a few of them indicated mostly Asian countries. Three experts talked about a giant market place of Asian country nationals in Wólka Kosowska, saying that employees who come from Asia are surely exploited there. The countries mentioned covered: Bangladesh, China, India, Korea, Nepal, Philippines, Tajikistan, Thailand, Uzbekistan, and Vietnam. None of the experts listed African countries. Two of them mentioned Azerbaijan. It is the only country of Caucasus region which appeared due to the case announced in media about three Azerbaijanis who were exploited for illegal production of cigarettes. It is worth noting that The OSCE Office for Democratic Institutions and Human Rights which is based in Warsaw, Poland (OSCE-ODIHR) has been intensively involved in this issue. This Office

is active throughout the OSCE area in the fields of election observation, democratic development, human rights, tolerance and non-discrimination, and the rule of law⁸².

A separate problematic situation is the exploitation of Polish citizens abroad after they have decided to leave Poland. In the experts' opinions, the countries where the exploitation mostly takes place according to the sources were France, Germany and Italy. It is

interesting if one takes into account that UK and Ireland⁸³ are the two countries with the greatest number of Poles living there outside of Poland and the number is calculated in the hundreds of thousands. It may mean that: no exploitation takes place there or it is a hidden exploitation or that the exploitation is so subtle that the people exploited do not identify themselves as victims and therefore it is unreported.

2.2.2.

Recruitment

One of the key objectives of the AGSTRINGO project is to determine how the recruitment process takes place. It is this element of forced labour which is still within the reach of state institutions and civil society. It means that on the one hand an effective system of state control over the labour market gives a small chance to reduce the negative impact of this phenomenon. On the other hand well educated and well aware citizens, supported by NGOs can be constantly alerted and ready to react in case there are symptoms of discrimination and exploitation.

There are four models of recruitment of foreign nationals seeking work in Poland. The first one is the recruitment carried out by individual recruiters acting either for specific employers (business) or for other agents. The second model is the recruitment carried out by employment agencies operating in the countries of origin. Such agencies may operate at the order of employers or agencies which operate in Poland. The third model is the recruitment carried out by Polish employment agencies in the countries of the victims' origin. This model applies only when the agency operates within a service contract or an request from the specific employer. Finally, the last model of recruitment takes place within so-called

"export service" scheme. It is a special kind of recruitment as it aims at gaining a qualified specialist for the purposes of performing a specific task or carrying out specific activities within an indefinite period of time.

The greatest number of problems is caused by individual recruitment and recruitment carried out by employment agencies operating in the country of origin. Based on the experts' replies, one can formulate a series of features of such a recruitment process.

First of all, potential employees are selected very scrupulously. Most often they are poor, relatively young, poorly educated people who do not know any foreign language, especially the language of the target country, who find themselves in a hard situation, with strong family connections (the connections are then used against them), they active and healthy, so ready to go abroad. The recruiters are almost always their fellow-citizens; this can be equally referred to Chinese in China or Poles in Poland. The most important factor is ease of communication. A potential employee having the comfort of contact with the fellow-citizen loses her/his watchfulness. What calms the potential victim is the fact that the journey is most often legal (e.g. by plane) but the employee does not know how s/he shall cross the border of the target country.

82 See also: <http://www.osce.org/odihr>

83 There are studies on this issue, see: <http://www.jrf.org.uk/sites/files/jrf/forced-labour-food-industry-full.pdf>

The element which accompanies the recruitment is most often debt. It may be smaller in the case of Poles leaving to work, e.g. in Italy or bigger as it is in case of the Vietnamese worker. But it is almost always present; either way the recruitment process is always organized in such a way so that such a debt was made.

More and more often, the employee is not recruited in the country of origin but at the moment s/he is already in Poland. It may concern, e.g. people whose visa's validity period is over, another contract has terminated or, possibly those individuals that came to Poland illegally. And this is the element which is often used: foreigners who found themselves in new conditions, do not know the culture, language, they often have no place of residence so they are an easy target for recruiters. In one of the cities near Warsaw (Piaseczno) specific "human fairs" takes place every Tuesday and Thursday very early in morning, where potential foreign employees meet their potential local employers. This information was confirmed by the Head of the Local Police, who explained that the majority of them are legally in Poland. Those whose status is questionable try to avoid that place as Border Guards control this place from time to time. One of the researchers had visited that place and for some time observed a little crowd there.⁸⁴

A specific way for recruiting employees in Poland is the system of statement/declaration of the intention to employ a foreigner from these countries: Belarus, Georgia, Moldova, Russia, and Ukraine. In a nutshell the system works as follows: an employer issues such a statement or declaration that s/he intends to employ a particular person for specific work. Such a statement has to be registered in the District Labour Office having jurisdiction over the registered office or place of residence of the declarant and then signed. A registered original of the statement must be delivered to the foreigner who on this basis can obtain a Polish visa in the nearest Embassy or consulate. An entity is required to employ a foreigner (when s/he comes to Poland), which was the subject of a declaration of intent to perform work in accordance with the applicable provisions of the Labour Code. The

period of performance of work by citizens of those countries should not exceed six months within the next 12 months.

At first glance the system looks very promising but the problem is that no one controls whether the employee started working in the place s/he should. What's more, no one controls whether any employee appeared in the company which issued such a statement. In Poland, the statement is issued free of charges, while in some countries, e.g. Ukraine, it is the subject of trade transactions. The highest price which was mentioned by one of the experts amounted to 1000 US dollars. It is understandable as it almost guarantees a Polish visa and it opens the way to other European countries.

One of the demands of the experts was the introduction of a central statements register. Such a register would be an efficient way of controlling at least two processes. Firstly, in order to assess which entities issue the greatest number of statements and how this number corresponds to the employment level and production profile. If an employer employs 5 people and issued 30 statements, it may be assumed that the employer's intentions were not good. Secondly, central statement register would allow for verification of how many people appeared in the company which issued such a statement and what is the history of such employees. In the experts' opinion, creation of such a register and the whole system of statements monitoring should be done by the Ministry of Labour and Social Affairs. One of the ways of recruiting employees mentioned by one of the experts is the 'lover boy' method.

The characteristic feature of the individual recruitment process is also the fact that almost no documents, contracts, obligations, statements are written down. It is slightly different in case of employment agencies which are obliged to document the recruitment process. The obligation can be omitted by means of signing a simple document with the clause that the final agreement shall be made in the target country. Then, such an agreement is always made in the local language and this way the employee is deprived of any insight in the contractual provisions.

⁸⁴ Photo documentation of the place is also available.

An essential feature of the recruitment process is the fact that offered wage conditions are almost never real. Recruiters or representatives of unreliable employment agencies present the conditions much better than they really are. Lack of knowledge and inability to speak foreign languages makes the employee unable to verify the information passed on.

As in the recruitment process swindles are often committed, even the least experienced employee shall soon realize that s/he was misled - unless s/he accepts such a situation and conditions do not worsen, s/he will work peacefully even for a longer period of time. However the first symptom of lack of satisfaction from the employee's side is always received by the employer as a signal to reinforce control and guarantee the employee's submission. As it can be concluded from the experts' opinions, a list of instruments which discipline the employee is very long. What more, it includes a number of ways which were not known a few years ago.

If anyone tempted to indicate basic problems which appear in the process of recruitment the most important one would be the disparity of equality between the parties, as the recruiter and then the employer are stronger entities. Both, the recruiter (an individual or an agency) know more than the person recruited. Recruiters know the reality of work (real or fake) whereas employees do not have a clear idea. What's more, employees are unable to verify information. Finally, recruiters and employers know the law and employees do not. Another important problem is the economic compulsion of the employee, which can result in exploitation leading to a negative reaction from the employee which in turns causes a situation in which the employer uses more and more drastic means of disciplining the employee culminating in a specific vicious circle. The third problem which attention shall be paid to is the continuously weak position of the state and its institutions in the situation. Neither structural solutions nor legal ones protect the interests of weaker foreign employee in relations with a stronger and better organized employer. Finally, a purely psychological and mental issue - the employer, if acting in bad faith perfectly knows what situation the employee finds herself or himself in, especially

a foreign national (e.g. has a debt to pay) and takes advantage of the situation. The employer can change the work conditions to the detriment as the employer knows that the employee will have to accept them.

From the point of view of recruitment process, there may be three situations which determine mutual relations of an employer and an employee. The first one takes place when the employer recruits employees on her or his own, the relationship is more personal then, the employer is interested in the employee and knows more about the employee and at the same time more can be expected from the employee. The second one takes place when the employer hires an agent who recruits employees. The relationship is similar then, however it may be less intensive, as the employer found herself/himself in the company as a result of action of another entity than the employer, so a portion of the employee's loyalty stays on her/his side. The third possibility is a classic work leasing, when the employer does not recruit or employ the employee but only hires her/him from the company which provides such services. In the model, the employer-employee relationship is completely impersonal as the employee is only one of the elements in the chain of recruitment.

More and more frequent occurrence of the latter model is somehow the symbol of general societal changes on the labour market. As it was noticed by one of the experts: "employers get rid of the so-called 'human resources departments', not to bother with employees, do not recruit them, do not manage their matters and this is why they do not need to be interested in them". Employers are happy that somebody else does it. But on the other hand, experts jointly underlined that this strategy pays only in the short run. In the longer perspective taking care of the employees and protection of their rights is profitable as it builds good relations in the company. Employers however have not noticed it yet, as they are satisfied with decreasing the expenses for here and now.

In one of the expert's opinions, employers should be responsible for recruiting of all employees, including the 'leased' ones. What's more, they should also be interested in the path of recruitment and how the employees hired by her/his contractors are treated.

On one hand it is the consequence of universal order to care about another person who commits herself/himself to the employer while on the other hand there is Corporate Social Responsibility (CSR).⁸⁵

2.2.3.

Forms of control and exploitation of victims

The most typical method of subordinating an employee is keeping her/his passport or other type of ID as it is such an important element of identity and safety for a foreigner. Of course there are several ways of over-bearing influence which lead to an intensification of fear that an employee feels towards a potential interference by state institutions and the potential criminal liability which could be attached in terms of irregular status. This may cover for example, the threat of informing the police from the employer about the fact that the employee does not have the correct documents or informing border guards that s/he illegally resides in the territory of Poland. The other group of methods of influence involve everything that is connected with the process of labour and the organisation of logistics. Efficient methods comprise depriving the employee of information where s/he is located, putting up all of the employees in a type of barracks which is in one place, at the place of work or if somewhere else, transporting them back and forth from the workplace. A separate category is the means which involve limitation of employees' contacts with the external world. The most disconnecting is taking the mobile phone from the employee, removing access to a computer, not allowing them to approach windows in the place of residence or work and/or supplying meals directly to the place of accommodation in order to limit access

further. In one of the cases described above by an expert, the employer allowed contact with relatives in the country of origin only, while prohibited any contacts in Poland. Proven methods for 'softening' employees are all those which have elements of mental pressure. Indeed, the objective of the employer is to manipulate emotions and intensify stress. Continuous promises of future benefits replaced with threats about being removed from work or losing some of the earned money or being punished with a financial penalty which means that the employee's debts will not be paid any time soon (or ever), that s/he will disappoint her/his relatives, or that s/he will be compromised in some form in their eyes both serve the aforementioned purposes. Admitting to one's own lack of foresight and failure is difficult for women and men. For women, there is often an additional stress factor due to direct separation from the children. For individuals especially from traditional Asian societies, it is rather a matter of ambition, as an unsuccessful leave is a matter of shame, not to mention the accumulation of costs incurred. Employers who exploit such a mentally difficult situation for employees seem to be saying 'get what you have and do not be fretful as it can always be worse'.

The most drastic methods of control and influence on employees involve, in the experts' opinion, the following: physical compulsion, including painful beatings,

⁸⁵ For definition see <http://bas.sagepub.com/content/38/3/268.short>, see also: <http://www.csrwire.com/>, <http://www.fcsr.pl/>

separation of parents from children (this form was actually applied by a gang which forced women to beg on the streets of several Polish cities), sleep deprivation and taking advantage of the employees' susceptibility to alcohol or a conscious creation of such a susceptibility. Another particular form of control is one in which a type of discord or distrust is formulated which leads to conflicts between employees in order to weaken the group cohesion and decrease the possibility of a collective protest. There are many different forms of possible influence and manipulation employed against workers. Some of them are very radical and extremely unfair and they indicate a dramatic lack of respect of the employer to the workers. Among them is something what we can call "self-denunciation". There is confirmed information from one of the experts on such an action by an employer. In practice an employer calls the police "anonymously" with the information that

a particular person illegally employs foreigners. In the nick of time the employer informs the employees that s/he has received a message about the tip off. The employees have no way out but to run away making it difficult for the employees to claim their money due to the time constraint. This way is especially advantageous for those employers who hire a great number of workers for a longer period of time. This is because the fine for the illegal employment of foreigners will be much smaller than the unpaid salaries. In such a situation, employers take advantage of the fact that the employees do not know Polish law and cannot define their own legal situation. This is why, just in case, they prefer not to risk any further difficulty and run away. As far as the very employment without legal basis is not a problem, those, who stay in Poland illegally, would also risk deportation.

2.2.4

Role of employers in elimination of forced labour

Expert opinions on the role of employers in eliminating forced labour differ greatly and are more divisive than convergent.

However, all experts agree, that the role of an employer is of key importance as it is s/he who employs, specifies conditions and can manipulate employees. Though the opinion on how s/he performs this role is various. The first issue is of systemic character and is connected with the general level of competition in the market. ***If the lowest price is the most important criterion of the offer and everybody has more or less the same access to materials, it is obvious that labour expenses will decide about the final price.*** The employers who plan to save on such expenses need to find employees who will accept the remuneration lower than the

average. Following this logic, only foreigners may be such employees. Each bid in the tender which is very beneficial in terms of the finances shall be treated suspiciously as it may involve exploitative labour.

Experts who think that the role of the employers is of key importance may be divided into two categories: idealists and realists. Idealists are convinced that the role of the employer is of key importance because if the employer decides not to exploit employees, pay them well and care about them, exploitation will not happen. In their opinion a perfect employer respects contracts with employees and observes labour law regulations. This way of thinking seems to disregard some internal circumstances, strong market competition for one and preoccupation on cost. One of the respondents stated even that employers should

care not only about their own employees but also 'intervene if they as an employer observe exploitation of other employees in the companies of their contractors, e.g. by informing the related law enforcement agency'. Such a view shall be treated as the one which determines perspectives for the future.

Experts also noticed the fact that there is more and more debate concerning the social responsibility of business operators in Poland. But in practise it is not about the rights of workers. Employers are very happy to talk a lot about what they do in order not to damage the natural environment and how they offer assistance to local communities. The situation of their employees working 12 hours a day in vile conditions is passed over in silence. When the issue appears it is explained away by a difficult economic situation and the needs of the labour market as such.

Realists admit that the employer's role is of key importance and they could do much more, but in practise they do not seem to be interested in the matter. Each employer who perceives the issue as uncomfortable will evade responsibility. In order to deal with the issue, s/he shall apply e.g. legal regulations or knowledge of her/his employees or the influence of the Employers' Confederation. But finally s/he shall take advantage of the situation that her/his employees are socially weaker. When it comes to foreigners, they are in a situation of double weakness, as they rarely know the local language and almost never know their rights, particularly under the national law of where they find themselves exploited. If it was possible to improve the situation, the respondents see two possible ways forward. Firstly, inspections at employers' premises shall be more frequent and not only involve state authorities but also local authorities and/or the media. If the employer disregards the Trade Inspection Office⁸⁶ or Border Guard then s/he will surely be unwilling to accept a critical article about her/his company in the local or national newspaper. Another way of approaching the situation is to educate employers as a sensitising exercise in order to improve their

awareness by means of trainings and other forms of education. It is not only about making entrepreneurs sensitive to the employee's situation in the mother company but also about teaching them to cooperate with subcontractors and contractors in a positive way to keep in check the potential for exploitation by means of employing a cheap workforce to decrease costs.

Respondents paid attention to the fact that there is another entity in the enterprise which may play an essential role in protecting employees from exploitation and forced labour. Trade Unions are the entity which in a perfect situation could help to identify possible victims of human trafficking and forced labour.

⁸⁶ The Trade Inspection Office is part of The Office of Competition and Consumer Protection which deals with all matters related to quality of services offered by companies to consumers in Poland

2.3.

The role of employment agencies in prevention of forced labour

The second, important participant in the labour market, apart from the company employer, are the employment agencies. Most experts agreed that the role of employment agencies in the protection of employees against exploitation is essential at many levels, but the agencies currently do not play this role. Agents, in the opinion of one of the respondents have a bigger part to play than the employer but it is rather a moral obligation, as there are no provisions which would enforce such actions. If this is the case, in the opinion of one of the experts 'making the agency take care regards the employee is hardly possible'.

There is a quite common opinion that the role of agencies should be reduced just to serve as intermediates between the potential employee and the potential employer. But in the opinion of the majority of experts, this role should be much wider. Employment agencies should play a role of one more "controller" or "regulator" of the labour market – as some experts expressed it. As an example two experts claimed that employment agencies should on their own thoroughly examine all job advertisements and offers directed by employers to potential employees. Since they know the market, it is much easier for them than for anybody else. They should also check employers which they work for or which they represent. It is mostly because, in the respondents' opinion, it is the agent that is responsible for the type of work and wage conditions that employees can expect. It is obvious that agents cannot proceed with a typical inspection and have their hands tied. But they can do it in an unofficial way, e.g. collect

information from other employees or from local government authorities. If agents have any doubts about the employer's credibility, the agent shall consider whether to embark on further cooperation with such a partner. While, if the employer states obvious violations of law or customs, the agent shall report it to the labour inspectorate, public prosecutor's office or the police.

Employment agencies should also operate more actively, that is by way of teaching people how to check a potential employer. They should also instruct the potential employee how to protect their interests before leaving one country to work abroad in another. For the purposes of the above, agencies shall organize information campaigns directed to society, trainings for potential employees and also prepare packets of basic information for people going abroad. One of the experts used the term '**SOS packet for employee-migrant**'. A representative of one of non-governmental organizations told us about good practise in relationships with the local employment agency. The agency proposed the association to prepare training for the agency employees on human trafficking. Secondly, from the agency resources, a leaflet for those who go to work abroad was financed which was then distributed by the association.

As the role of the employment agency in the protection of employees' interests is huge, they shall be, in the respondents' opinion, **subject to frequent and more detailed inspections**. In case regulations are violated, they shall be punished and even eliminated from the market. One of the ways of eliminating "bad practise" on the labour market is

enforcing the cooperation between the employment agencies which recruit employees to work abroad. One of the respondents said that a Polish employment agency cannot send an employee to Germany unless he has an agreement signed with a German agency. It is an example of good practise.

One of the basic obligations of employment agencies is to examine the credibility of the enterprise it recruits employees to. Agency representatives say that they do it routinely. They apply three methods of action. Firstly, they ask credit information agencies for help, secondly they apply data available on the Internet and in the media and they also apply a method of prepayments. It means that the agency asks the enterprise for making a prepayment towards future amounts due for the recruitment of employees. If a company refuses, it is a signal for the agency that its credibility is doubtful. Agencies, in case of any doubts with reference to a possible partner, in an ideal situation shall not engage with any further business contacts. It may be financially unprofitable, but other solutions would be unethical and contrary with the requirement for maintaining the highest standards of the labour market.

However, the very credibility of an employer (the so-called nominal credibility) is not enough. From the point of view of high labour standards which employees expect, it is important whether the information passed on to the employment agencies about the employment conditions for employees are real. It is whether the information which the employment agencies pass on to employees is reliable and if this information is misleading or not (even unwillingly so). In order to avoid a situation, employment agencies shall check not only the employer's credibility as such, but also the details of working conditions. In the experts' opinions, agencies do it in a few ways. One of them is receiving a written statement from the employer about working conditions. Such a document may be supported with other documents about the company, e.g. report from the last audit or information about the results of the most recent labour inspectorate control. Another way to guarantee the working conditions promised is to make an agreement which, in its content or annex, includes a specificity of the employment conditions, including the

wages, the working time and housing conditions (if provided) within the working period. Agents may also check the employment conditions on the site by means of delegating a representative to the employer's registered office. On one hand it seems to be the solution which may be difficult and time consuming for employment agencies, on the other hand, however it is the most efficient way of verifying information received from the employer with actual conditions. Finally, employment agencies which were informed by employees about the fact that actual conditions deviate from the agreed ones may proceed with retrospective claims.

Another important issue, from the point of view of employees' interests is the scope of information she/he receives and who she/he receives it from. All the experts agree that the most important way to prevent exploitation is to raise the low or general level of the potential employee's awareness to high - of what the general rules of employment are, what basic working conditions are required, what is the potential risk of being exploited of the situation and/or whom to contact in case of any doubt or real problem. (It is so obvious that an equally important complementary aspect is the level of awareness of employers but here some experts expressed the view that employers are well aware but they are not interested to make use of their knowledge. It is a matter of sensitivity and empathy.) If we are ready to agree with the statement, that the awareness of workers is so important it is justified to ask who should be responsible for passing on essential information to them about their rights, binding laws, inspection institutions or possible employee reactions in the event their rights are violated. Some experts seemed to suggest that employment agencies should be seen as one of the key actors in this process.

Employment agencies' representatives assured the authors that they also see things that way. They stated already they make efforts so that the employees have as much information as possible but they also admitted that it is not possible to pass on all information. When it comes to the ways of passing on knowledge to employees, experts indicated the most obvious ones. They underlined the role of a direct contact of the employment agency employee with a potential employee.

A personal contact makes it possible for the employees to ask essential questions. An important supplement to the information included in the agreement or passed on in conversations are all the types of

brochures and information materials, which give information about employee rights and also contain practical information such as intervention telephone numbers.

2.4.

Prosecution of perpetrators

As the authors think that prosecution of perpetrators of human trafficking and forced labour is an important aspect to assess the effectiveness of the state in human rights protection, experts were asked to express their opinions on that issue specifically. Most of them are convinced that the system which currently exists in Poland is not effective. Only senior Police Officers and Border Guard Officers presented different opinions. Secondly, while they were talking about the effectiveness of prosecution they mostly referred to human trafficking as it is described in the Penal Code (mostly sexual exploitation), and not human trafficking for forced labour or forced labour itself. The regular officers of both institutions (the Police and the Border Guard) had a completely different opinion as they stated that the effectiveness of prosecution is equal almost to zero. But how can it be different – asked the respondent from the Police – if we know almost nothing about the problem?

The problem therefore exists in two dimensions. The first is one of axiology: when only one person is trafficked or one person is forced to work – questions of ethical rights and goods are raised for the society in question. A second dimension is the scale of the problem demonstrated by statistics: there is no doubt that there is a problem of human trafficking in Poland. The scale justifies any steps to be taken to reduce it.

According to official statistics for the last five years (2007 – 2011) there were over 600 investigations related to human trafficking carried out across all law enforcement agencies. Over all these cases there

were 104 suspects and 1.170 victims. A large majority of victims were Polish citizens (in one of these cases there was a group of 859 victims). Similarly, the perpetrators are more often than not also Polish (the percentage varies between 75-80%).

The statistical data shows that there are several dozen criminal proceedings on the grounds of human trafficking that have been initiated in Poland but that those comprise just a small portion of all crimes of this type that have been committed. There are even less cases of forced labour⁸⁷ in recent years (2003-2012). A labour inspectorate representative states that within the last couple of years, the institution has informed the public prosecutor's office only 5 times regarding cases which are of drastic nature in terms of violation of employee rights, which might suggest the presence of forced labour.

One of the experts noticed that a small number of criminal proceedings could be interpreted in two ways. The government may argue that the efficiency of the prevention system is so high that there are not many cases. Whereas in reality it may be the opposite, due to the still poor level of victim identification in terms of cases of forced labour thus relating in the small number of cases of forced labour prosecuted. From this point of view, it is very important to improve awareness of law enforcement officers but also to encourage the full application of the existing binding legal regulations. The fact that many officers do not know that human trafficking does not need to be related with, e.g. illegal border crossing or border crossing

87 It must be explained that all these cases were dealt with under the provision of the Penal Code related to human trafficking. As one of the forms of exploitation mentioned there is forced labour, courts used these provisions to sentence the perpetrators.

at all and forced labour does not need to be the consequence of selling a human. Prosecutors do not know this either. There is also the so-called "litigation prudence" or simply extreme caution (a type of attitude sometimes called "sitting on the fence") of prosecutors who prefer to present charges concerning deprivation of liberty or falsification of documents instead of charging someone for human trafficking as it is easier to prosecute on those grounds. The latter charge of human trafficking is more difficult in terms of evidence gathering and corroboration and requires intensive investigation. It is also related with a specific attitude of the courts to perpetrators of human trafficking. Because of reasons which have not been examined yet, judgements imposing the sentence for human trafficking are generally incommensurably low to the nature of the action.

The component of effective prosecution is a coordination of actions undertaken by various institutions, including especially the arms of the law enforcement agencies and the labour inspectorate. Just like the assessment of prosecution effectiveness was various, so is the evaluation of coordination. First of all the presence of a numerous group of experts (5 people) shall be indicated, who did not know, whether there was any coordination and if so, what entity dealt with it. Those, who knew something about coordination, expressed two contrary opinions. Senior Police and Border Guard Officers stated that coordination was good, other respondents stated that not everything works as it should since the results are so poor.

One of the aspects of coordination is the cooperation of all institutions which are responsible for the elimination of phenomena such as human trafficking, employee exploitation or substandard treatment of foreigners. Based on the experts' opinions, one can create a map of good and bad contacts. And so, since April 2008 we can observe good cooperation between the National Labour Inspectorate and the Border Guard, the institutions of which jointly carry out inspections regarding employment legality and standard. The basis for cooperation is the agreement made be-

tween the institutions in 2007⁸⁸. While the cooperation of the National Labour Inspectorate with the Police almost does not exist, a similar situation takes place with reference to Public Prosecutor's Office. The cooperation between the Police and the Border Guard Agency has been limited for years, the two services have competed with each other and there was even an informal embargo on the information between them. Now, cooperation is much better, and even, as one of the experts said - model-like. 'We undergo joint trainings, workshops, we are willing to cooperate and investigate difficult cases together.' As far as cooperation of the Police with the Public Prosecutor's Office is concerned, it is also characterized by some dynamics: from a very difficult dynamic earlier to a good one nowadays (as it is described by one of the policemen). It is not however, the type of cooperation which can be described as good when viewing the outcomes as these are the institutions of which cooperation is of key importance for the effectiveness of prosecution.

The cooperation of state institutions with non-governmental organizations is also problematic. In the case of Poland, it mostly takes place with La Strada Foundation, which for many years was monopolist in terms of care provision to victims of human trafficking in Poland. Since 2009 in Poland there exists the National Consulting and Intervention Center for the Victims of Trafficking which is financed by the Ministry of Interior. The management of the Center was subject to a tender procedure. From the very beginning there was one NGO that submitted a bid, which was La Strada Foundation. Since this was criticised, the situation has changed very recently. In the 2013, the Center is managed jointly by La Strada Foundation and another NGO: the Po MOC Mary Immaculate Association for Women and Children.⁸⁹ In the opinion of one of the experts, having some experience in this field, the cooperation is not very satisfactory. 'On one hand - this expert says - La Strada is critical towards the actions of the law enforcement agencies, mostly the Police, while on the other hand there are more and more cases in which victims refuse to participate

88 More about that issue see: Z. Lasocik, J. Filipowicz, Ł. Wieczorek, *Susceptible Economic Sectors and Assistance Structures for Victims of Forced Labour*, Human Trafficking Studies Center, Warsaw University, Warsaw 2010.

89 See: <http://www.kcik.pl/en/index.html>

in the support programme offered by the organization'. Sometimes the information about the program 'is not adequately passed on by the police officer' and sometimes, 'what is proposed, is not very attractive for the victim.' According to opinion of this expert - victims question the quality of social support and effectiveness of the legal aid.

The key for effective prosecution of human trafficking is efficient and fast identification of a victim. It is understandable that such an obligation is imposed on all state institutions; this is why we asked experts if in their opinion, such an obligation is also imposed on citizens. Two experts replied this way: 'If various state institutions (such as the Police) cannot deal with identification, how can it be done by average people'. Of course the respondents agree that if there is such an obligation, it is of either a moral commitment or a citizen based commitment rather than a legal one. Nevertheless, when looking for the sources of activity of Polish people (probably not only Poles) in identification of victims of human trafficking and forced labour - two of them stand out as the most important. First of all, the fact that citizens have no information about the phenomenon and there was no public debate which would make people familiarized with the task. Secondly, there exists a general restraint of Polish society with reference to interference in someone else's' business, including informing law enforcement agencies about any suspicions or inaccuracies in information that appear untoward. These two aspects of course play a negative role in adequate action and identification.

As it was mentioned in the introduction, Polish punitive law does not separately describe the crime of forced labour. Regulations mention only human trafficking in which one of the forms of victim exploitation is the exploitation in forced labour. For some time now, the effectiveness of present legislation solutions and possible necessity of penalization of forced labour have been discussed in Poland. As the opinions are divided, we asked experts about their attitude in the subject matter.

Only 50% of respondents expressed the necessity for penalization. Experts who support the former identified as the most important argument the necessity for efficient prosecution. Experts also highlighted the fact that penalization will produce results in the form of a new definition for forced labour. Subsequently, its introduction is necessary because the definition of ILO does not cover the problem of forced labour nowadays and it differs from it. Only one of the experts clearly stated that penalization of forced labour is redundant as forcing people to work is one of the elements of human trafficking. Apart from that, the expert pointed at Art. 8 of the regulations introducing the Penal Code which penalizes slavery and it is not used at all.

Two experts, except for their clear support of the proposal on the introduction of the crime of forced labour into Polish punitive law also presented interesting arguments - interesting because the ideas move in opposite directions.

The first one showed that if regulations are transposed, then the punishment for forced labour shall be at least the same as for human trafficking as otherwise the two provisions would remain in conflict. The other expert stated that forced labour should be penalized, but in the expert's opinion it should be treated as a misdemeanour and not a serious crime⁹⁰ (human trafficking is as such a serious crime). This in turns would lead to a decrease of punishment. In the respondent's opinion, such a solution would make it easier to pursue proceedings and public prosecutors would be more willing to base indictment on such a provision. Nowadays, the prosecutor 'spends a long time considering whether to pursue a difficult investigation on human trafficking, which is a felony' and often declines from doing so.

⁹⁰ In Polish penal law, the offence is either a crime or a misdemeanour. But in fact what is said to be crime is also called a felony or serious crime. In the Polish legal system such a serious crime is subject to punishment not less than 3 years of deprivation of liberty. Human trafficking is a felony.

2.5.

Prevention of forced labour

Concepts of Corporate Social Responsibility (CSR) or application of Human Rights are still considered difficult in application as fundamental values of modern economy by employers in Poland. One of the experts, an Advisor of the Employers' Association, stated that when referring to these kinds of concepts when talking to employers is simply not efficient as business in Poland understands only the language of economy. In case of crisis, when the employer has the ability to hire 'a cheap worker', s/he will do so even if the process of recruitment leaves much to be desired. Employers will lightly pass over the fact that human rights have been violated. The only type of argumentation which may influence employers are based on the protections of the principles of competition and equal opportunity in business. 'If a competitor hires slave employees and pays them half of the salary I pay to mine, then that employer creates an unjustified dominance of the market. That cannot be accepted' – stated the employer.

It is somehow an extreme opinion but it can be consciously noted as an opinion that everyone who acts on the labour market shall bear it in mind. Nevertheless, it has to be stated that the concept of CSR is more and more popular among Polish employers. One of the respondents has been involved in CSR implementation in Polish companies for a couple of years. As a consequence of many various actions in Poland, CSR as a concept has started to figure more prominently and even gain more and more supporters. The fact that since 2012 a coalition of institutions and organizations interested in implementation of the so-called SA 8000 Standard⁹¹ may also certi-

fy regards process advancement. It is a document prepared in 1997 by the international organization - Social Accountability International⁹² based on the most important regulations of International Labour Organization and with reference to provisions of the Universal Declaration of Human Rights. The Standard includes information about building the highest standards of human rights in business but it is mostly an instrument for risk management in the company (forced labour constitutes severe risk to reputation if nothing else). In such a situation, employers will need an instrument which will allow them to decrease the risk resulting from exploiting slave labour and SA8000 Standard is such an instrument. Especially that it is a very complex regulation Proposing Standards in nine fields, such as Child Labour; Forced & Compulsory Labour; Health & Safety; Freedom of Association & Right to Collective Bargaining; Discrimination; Disciplinary Practices; Working Hours; Remuneration; and Management Systems. However the interest is still small. Nowadays, in Poland there are only several companies which received a SA8000 certificate. It has to be stated, however that it is really difficult and costly to get it.

In the experts' opinion there are such sectors which will not be interested in forced labour issues at all, like the financial sector (banks or other financial market institutions), but there are also such which may and even should be interested in it, like the construction and food processing sectors. Agriculture is a little specific sector of the Polish economy as it stays somehow outside of the regulated labour market.

Considering the possible role of employers in pre-

⁹¹ The SA 8000 Standard is the central document of the organization Social Accountability International. It is described as: "One of the world's first auditable social certification standards for decent workplaces, across all industrial sectors. It is based on conventions of the ILO, UN and national law, and spans industry and corporate codes to create a common language to measure social compliance. It takes a management systems approach by setting out the structures and procedures that companies must adopt in order to ensure that compliance with the standard is continuously reviewed".

⁹² See: <http://www.sa-intl.org/>

venting violation of employee rights, especially with reference to foreign employees, one shall consider three very generally outlined scenarios. The first one, the most pessimistic is the following: employers do not observe employee rights, are not interested in whether their employees are victims of forced labour or not and are not going to observe employee rights in the future either.

In such a situation the most important way of influencing the employer are by means which apply inspection institutions (labour inspectorates) and law enforcement agencies. The second scenario which is partially optimistic can be described in such a way: employers care about employees only within such a scope of which it is necessary, they are not interested in matters of forced labour and do not care how their contractors operate. The scenario is partially optimistic because many such employers proceed in such a manner just because no one had told them it is possible to act in a different manner. Such employers are ready to participate in training and are ready to join pro-social actions. All you have to do is simply reach them. As for the third scenario – in fact the optimistic one: employers are conscious employers, oriented towards the potential social mission of business, are sensitive to the situation of their employees, are ready to improve employment standards and accept standards and regulations, e.g. SA8000 standard. One may say that these scenarios may differ between sectors of work, which is right but it is more productive to consider them as ideal types as proposed by Max Weber. An ideal type (sometimes called also pure types) is formed from characteristics and elements of the given social phenomenon but it is not meant to be descriptive or equivalent of the perfect thing. It is very useful tool to analyze complicated spheres of social behaviour because the concept contains certain elements common to most cases of the given phenomenon.⁹³

From the point of view of the work objective, the subject of special interest of state institutions and the sector of civil organisations shall involve employers from the first category. It is not only because they are 'dangerous' to their employees but also because

they are able to experiment with different legal means, the purpose of which, is to free themselves from any responsibility towards their employees. Some of the means may be dangerous for the whole labour market.

One of the experts involved in regulation of the labour market mentioned a new practice, within which some employers force the employee to change the form of employment from a contract to self-employment. This way, the employee becomes an entrepreneur and so deprives herself/himself of the protection that an employee is authorized to receive or an employer is supposed to provide. If this is the case, the employer is no longer responsible for the employee – as the employee is not in effect an employee any more but an independent entrepreneur. If so, there is no basis for inspection to be carried out by labour inspectorates and this way, employees are deprived of any protection.

Finally, experts offered some comments on inadequate, biased or skewed tendering policy as a type of mechanism which creates a "good climate" for the potential violation of workers' rights. In Poland the regulations concerning bid assessment are designed in such a way that they give absolute priority to the price. If this is the case, bidders make efforts to minimize the service final price. If we assume that the prices of materials are more or less similar and surcharges are the same for everyone, then the natural source of savings are labour expenses. So, if anyone offers a very low service price, it is a situation attractive for the payer but most often it is a trap for employees who decided to provide it. In the experts' opinion, the provision of the act on public procurement and tenders shall be changed as soon as possible. It will have significant preventive effect.

As far as prevention of violation of workers' rights is concerned experts were of the opinion that it is always more effective than prosecution of perpetrators; especially when they are well directed and well-focused. Experts specifically mentioned two types of preventive actions. On one hand there are all the means of control, elimination of opportunities for violations as well as all actions of a repressive nature.

93 R. Keat, J. Urry, *Social Theory as Science*, London 1975.

On the other hand there is a long list of activities aimed at awareness building of all stakeholders of the labour market, including workers.

Looking at the labour market from that perspective the experts were almost unanimous that prevention of violations of workers' rights as an element of the overall system is completely ineffective in Poland. While looking for those who are responsible, some experts indicated that the key responsible entity is the state and its inspection institutions. Other say that the responsibility is divided among some entities, listed in such a sequence: employers, employment agencies, the labour inspectorate, trade unions and also the border guards. Only one expert stated that the list of such entities shall be much longer and comprise such institutions as sanitary inspection, construction supervision and other inspection services which, while being in the enterprise, shall also pay attention to the atmosphere, work conditions or situation of employees and inform applicable services (good practise). All these institutions – this person suggested – could play important preventive role. One person stated that non-governmental organizations should also play a role in the protection of employees, but rather as supporting and awareness building institutions.

The condition for efficient prevention is also, in the opinion of respondents, a reaction to any symptoms of inaccuracy in the function of the labour market. Some experts formulated the statement that the penalties for such violations are too 'soft'. One of the experts mentioned the scope within which the state policy shall be subject to changes. It would involve higher penalties for the recruiters for deceitful recruitment, penalties for running illegal agencies should also be stricter so as for the collection of unauthorized fees, companies which hire foreigners shall undergo more frequent inspections and penalties for employers who hire people against the law shall be higher.

The respondents, however, placed more emphasis on the actions which make people aware and build a higher level of awareness of all labour market participants. One of the respondents even stated that awareness building should be started from the very beginning as such awareness in Poland is equal al-

most to zero. The proposed sets of actions are very obvious ones such as information campaigns or school activities; and also innovative ones which indicated a more innovative way of thinking. They may involve e.g. proposal to create of a network of politicians who support the issue of forced labour or involve in prevention activities such institutions as the European Union, Council of Europe or United Nations. There were also such proposals which referred to the general functioning of justice administration, such as trainings for judges and other officers of within the justice administration as well as very practical ones, e.g. the creation of city maps which include a list of useful intervention telephone numbers. A few experts underlined the increasing role of the Internet, both in terms of employee acquisition and youth education as well as potential employees.

2.6.

Trade unions

Trade unions were very much present in all of the conducted interviews. The role of the Trade Union in the elimination of forced labour is important, even crucial, but it is very often omitted. It happens because Trade Unions state that they cannot deal with working conditions of all employees as they act only for the benefit of their members. In the experts' opinion, Trade Unions have no right to evade this responsibility, especially using such arguments as the above. They are, however, important participants in the labour market and they should have to take care for work provision conditions on the highest level.

As far as the role of Trade Unions in Poland is concerned, one shall speak about two diametrically different situations. One is the work of foreigners in Poland and the other is the work of Polish citizens in other European countries, most often countries of Western Europe. Trade Unions which operate in Poland do not offer any assistance for foreigners, what more, they still do not perceive it as their obligation.

Polish law does not prohibit the membership of foreigners in the Trade Unions and Employers' Associations but in the statutes of the largest trade unions in Poland (Solidarity, OPZZ, August 80) there is no information that foreigners cannot be members⁹⁴. It is also important that foreigners, however, are often employed by an intermediary firm from their home country who signs a contract with an employer in Poland, which means that they are formally employed in their country and cannot be members of Trade Unions in Poland. Reports regarding foreign workers in Poland also show that the Polish Trade Unions are not sufficiently interested in the protection and integration of workers from other countries⁹⁵.

One of the experts admitted to have heard about situations in which Trade Unions from third countries applied to a Polish non-governmental organization and asked for help for their members employed in Poland. Such cases were passed on to the Trade Union operating in Poland but the expert had no information about the history of similar cases.

It is a little different for Polish people working abroad, as German or Dutch Trade Unions apply a principle according to which they are ready to assure free of charge assistance to an employee who is a member of a Trade Union in Poland. Application of such a principle in practise does not happen very often as only 15% of employees in Poland belong to Trade Unions. And almost no one from those who decided to leave Poland for work belongs to one. Nevertheless, as it can be concluded from the experience of one of the experts, Trade Unions in Western European countries occasionally assure assistance for employees from Poland regardless if they are members of Trade Unions or not. Trade Unions which agree to such gestures justify them by solidarity and the joint effort to strive to ensure that no employee is exploited.

One expert recalled a situation where the expert managed to help a Polish citizen working abroad in Germany via one of the expert's Polish contact persons, by paying for them to return to Poland whilst a German Trade Union managed to receive partial salary for the employee.

Experts agreed that in many countries well developed Trade Unions run the so-called migration guidance services by their offices which cover different forms of assistance and the employees of which speak

⁹⁴ Through a phone call with the largest trade union in Poland (Solidarity) we obtained information about the existence of the possibility for foreigners to join a trade union.

⁹⁵ PTPA, Związki zawodowe a przeciwdziałanie dyskryminacji. Podręcznik dobrych praktyk, 2009; Jacek Szymanderski, Stan faktyczny i kierunki rozwoju integracji cudzoziemców w Polsce, Stowarzyszenie Wolnego Słowa 2010.

different languages. They are not able to assure legal assistance but give legal advice on a basic level. They can, for example advise what an employee who states that s/he has been or is being exploited can do, what are legal regulations in the given country and what institutions may be helpful.

Trade Unions sometimes also help non-governmental organizations (NGOs) which deal with the rights of employees and migrants in terms of stating basic information about the specific employer. It is especially important if the employer is infamous or is the subject of numerous complaints from employees directed to such a non-governmental organization.

One of the experts pointed out a problem which had not been identified until recently, which is common in the construction sector. It relates to the general contracting of employees who are employed by subcontractors. In the legislation of some other

countries (the best example is Germany), this person argued, there are solutions which could also be introduced in Poland. One of the possible solutions is that six months after completion of construction any employee who has not received payment for the work undertaken, can ask directly for compensation to the general contractor. Although, in Poland since 2003, we have rules on shared responsibility of the investor and general contractor for all subcontractors (including issues of salary), but as practitioners indicated they do not guarantee sufficient protection for subcontractors⁹⁶. Of course it would be necessary to introduce changes in the provisions which regulate the investment process but it might appear that employers will not care about the solutions. In such a situation strong involvement of trade unions which would need to put pressure on the government to propose such solutions would be important.

2.7.

Legal assistance for migrant workers

It is said many times that migrants are most often the victims of forced labour. Their legal and social position is very special. They are not only the weakest entities on the labour market, but they are also deprived of the possibility of protecting their own rights in case they are violated. It happens mostly because foreigners do not know the local language, or local law and they are not sure what their visit at the lawyer's office will end with. They often have had bad experiences from their homeland which resulted from contacts with state institutions. Any contact with officers (and solicitors are such for many foreigners) may be associated with the

oppressive state they had left behind. Such a state of affairs makes it worth to take a look at the role of lawyers in the protection of rights of migrants and people exploited at work. It is more and more often noted that there is a group of dishonest lawyers, attorneys and legal advisers functioning in Poland who somehow con money from foreigners, for example for helping them to acquire legal status in Poland. Sometimes, foreigners are cheated by the lawyers as they collect money and do nothing.

One of the experts spoke about such a case, though he did not mention a specific attorney. The Border Guard had informed him that in one of the deten-

⁹⁶ Articles about the responsibility of investor and general contractor: G. Klich, *Solidarna odpowiedzialność inwestora i generalnego wykonawcy z tytułu zapłaty wynagrodzenia za roboty budowlane wykonane przez podwykonawcę*, *Monitor Prawniczy* 2010, Numer 6. <http://biznes.pl/wiadomosci/analizy/dochodzenie-rozszczen-przez-podwykonawce-solidarnie,5460704,news-detal.html>; http://pieniadze.gazeta.pl/Gospodarka/1,117384,13652237,Odpowiedzialnosc_inwestora_i_glownego_wykonawcy_wobec.html;

tion centres an attorney has appeared who collected several thousand Polish Zloty for submitting an application for refugee status. After some time he sent a generally available form to the foreigner but left it blank. Based on the information from the Border Guard, he did not also inform the interested party about the procedure of submitting such an application. The event described above is an example of the attorney taking advantage of the customer's weakness.

If a foreigner is in the deportation centre and is waiting for deportation, s/he is ready to pay any sum for help, or rather hope. Based on the respondent's story one can conclude that it is not an isolated case. The rates oscillate within the limit of 2000 PLN

(around 480 EUR) and amount to more for submitting an appeal or another document.

In the respondent's opinion, the quality of legal services offered is very low because lawyers do not make every effort to help. They know that most often it is of no importance as in a short time their customers will no longer be in Poland. Lawyers do not feel responsible for what they do⁹⁷. As often foreigners do not realize that they are cheated, they do not react. Thus, the Border Guard upon receiving such information should inform the Senior of the Chamber of Solicitors or Non-Government Organizations dealing with issues of human rights or migrant's rights.

2.8.

Sources of information of experts

Given the formal criteria (job, workplace, position etc.) our respondents might and should be treated as experts in the fields of human trafficking and forced labour. At the same time, almost all of them stated that their knowledge of the forced labour topic is still limited and there are many items that should still be discussed and solved in the near future.

The interviewed experts draw their knowledge from practice, their working experience, as well as sources such as official reports prepared by public institutions or media coverage. Comprehensive analyses and studies of the topic are still missing. One of the experts made an interesting remark, pointing out that when it comes to Poland, the main sources of knowledge are other people (experts) or media coverage. When it co-

mes to European or global issues, however, the expert uses professional studies, reports and analyses prepared by international organizations and institutions, such as the World Bank. The representatives of the uniformed services learn about the subject from the handled criminal cases, (very rare) trainings and meetings with representatives of other services – the police, the border guards and the customs offices. When it comes to non-governmental organizations, they use their own experience and professional publications as a source of knowledge. Forced labour, however, has not yet been studied or analysed by the labour unions or employers' unions.

In the light of the above, it is interesting to learn how the experts assess the quality and the accessibility of

⁹⁷ Since Human Trafficking Studies Center receives more and more signals about such practices this issue will be taken into agenda within new research project *Filling the gaps in the system of combating human trafficking in Poland (FIGAS)*. This project is implemented by Human Trafficking Studies Center of Warsaw University, within EU ISEC Program financed by European Commission.

the information on forced labour. They all agree that there is no comprehensive public debate on the topic in Poland, therefore should one want to get some information about foreigners' employment in Poland and Poles employment abroad, the odds are stacked against finding interesting and valuable materials. Even though the organizations helping migrants work better and better, they still have no place in mainstream of the non-governmental movement. Professional studies available to the public are scarce. Additionally, there is no institution, which could accept the responsibility for the problem, prepare its comprehensive analysis, propose a strategy of tackling the problem and coordinate the activities of various institutions wishing to deal with the topic, which is an urgent challenge for the Polish government.

Chapter 3.

*Analysis of the electronic
media content*

The empirical research has been extended to include qualitative analysis of websites' contents in order to capture the information on job search abroad. This part of the study aims at establishing the knowledge of an average member/user of Internet forums about the risks of going abroad to work. The type and scope of identified risks may prove interesting for the public services that encounter the problem of human trafficking in their everyday activities. One of the key measures to prevent human trafficking is the universality of and accessibility to the information on risks of going abroad to work, which should be an important field of cooperation between many institutions. The complexity of the subject is visible in the online discussions on the topic of working abroad. The subject of forced labour, a particularly important element of the ADSTRINGO project, is closely related to the clearly visible online topic of economic migration. However, forced labour is not always expressed clearly and often might only be read about between the lines of the discussions on searching for a job abroad. The interviews conducted

with the experts for the purpose of the study were aimed at gathering information about forced labour in terms of job agencies and recruitment for jobs abroad. Similarly, the study of the Internet sources was aimed at gathering information on labour market functioning and the process of job search abroad, including the various legal and illegal, honest and dishonest job agents and employers.

The information presented in this part of the report covers the stories of people interested in working abroad, who are looking for detailed information on the job search process, as well as conditions of such work. On the one hand, it is an analysis of key aspects and issues raised by the potential employees, on the other hand – knowledge base on working abroad, which is accessible for every Internet user wishing to leave the country and work abroad. The data collected on Poles working abroad might co-create the inevitable knowledge base for the effective preventive actions – as a base for cooperation of various institutions.

3.1.

Initial comments

The Internet is a very important source of information with regard to working abroad. It is confirmed by the number of web pages that can be found in search engines when researching the phrase "looking for a job abroad + forum" (around 10 thousands), as well as by the contents of the discussion forums – mostly focused on job searches. Polish Internet users use this medium to look for specific jobs, but also to "consult" other users about how to avoid low-paid jobs that have the potential to culminate in an offence against human dignity or even a forced labour situation.

The need for consultation covers the legality and honesty of all kinds of agents, users' opinions on specific offers and the level of "plausibility" of the offers, as well as the working conditions offered by particular employers. The advice, suggestions and warnings of the discussion forums' members comprise both "the

principles" of working abroad safely, as well as a detailed information source based on one's own experience with particular agents, workplaces and specific employers to be avoided. Discussion forums' content may help to list the unfair and – subsequently – not recommended agents and foreign employers, including specific examples of "bad" practices and difficult experiences. Therefore, this part of the report covers the topic of unfair agents and employers as well as offending against human dignity jobs abroad in the light of Internet forums.

3.2.

The scope of analysis

We have analysed Internet forums from the point of view of the process of searching for a job abroad. The analysed material covers Polish electronic media and Internet forums, therefore all presented information will refer to cases when Polish employees look for a job outside of Poland. We have focused on Polish forums, because in our opinion this was the only solution to enable a high quality of analysis. Language, which is used in the forums, is specific and very difficult to analyse if you are not a native speaker. We decided that information about Polish workers abroad, their opinions and experiences is a good sample of the situation of foreign workers. We have not aimed at securing sample representativeness, as it is almost impossible to do with such a vast scope of information.

As there is almost an infinite number of such forums, we have used the first 100 that were listed once we searched for the phrase "looking for a job abroad". We used Google Chrome, because this is the most popular search engine in Poland⁹⁸. We tried to think as an average potential worker, who is looking for a job, so in our opinion the best source as a mean base is the most popular.

At first, we have listed the forums indexed by the search engine when we searched for the phrase "looking for a job abroad + forum". Next, we have identified the sources referring to the subject of our interest, which allowed to choose about forty forums out of the found 100 to perform a qualitative analysis. This report presents the most important, in our view, information on the risks of working abroad from the perspective of the potential migratory workers. The gathered information was divided into a few categories: the characteristics of foreign job seekers, job search methods (understood as a knowledge supple-

ment to the knowledge on the recruitment process) and the descriptions of the jobs performed abroad.

The forums may be divided in to a few types – directly connected to job search process (e.g. gowork.pl), general forums featuring a thread on a job-related topic (forum.gazeta.pl), as well as dedicated forums of newspapers or institutions – answering questions raised by a published article or a piece of news (forum.zagranica.net, money.pl). It is worth noticing, that among the analysed sources there are also websites focused only on risks related to job search, i.e. forum.oszukany.pl and nieplacezaprace.pl.

⁹⁸ Article about the most popular search engine: <http://www.komputerswiat.pl/artykuly/redakcyjne/2013/04/przeglادarki-w-marcu-komuro-slo-a-komu-spadlo.aspx>

3.3.

Potential workers – potential victims?

Electronic media but especially Internet forums are the platforms of recruitment and job search processes. From the point of view of the ADSTRINGO project, the most interesting posts are the ones focused on looking for a job, as it is the core beginning of the economic migration process, which we still not know much about.

All the analysed posts, even though diversified in terms of their contents, allow creating a specific concept map enabling each user interested in finding a job abroad to identify the risks of working abroad. They also allow for the possibility to list the agents and employers to be avoided when executing a career plan. The concept map is filled with all kinds of advice, suggestions, warnings and recommendations – all expressed in an interesting web-language. It is particularly interesting to see the methods of self-presentation of the individuals and the scope of the shared information.

The users looking for a job on Internet forums almost always share the information about themselves. It is mostly about their age, education, language proficiency, previous experience, personality, but also – which is really important – their motivation to look for a job abroad.

Among the Internet forum users, there are two groups of potential employees that draw attention. The first are those sharing detailed information about them, specifying the entitlements to perform specific types of jobs (mostly in the construction area), including the experience of working abroad.

The second group – contrary to the first one – does not share any information that might be important in the recruitment process for specific jobs. Their questions about jobs are limited to age or language proficiency and sometimes the place of living. The most

important message is that these users are looking for a job (with no preferences given, however).

The latter group is quite interesting, as it presents the motivation of foreign job seekers. These motivations, obviously of primarily a financial nature, are expressed as desperate and are viewed as a rapid need for earning money. This conclusion may be drawn from expressions such as *“I am looking for any job”*, *“I am in a difficult financial situation”* and *“I need to go abroad”*. Some users disclose some details of their current situation, such as quitting the university because of financial difficulties, the need to support the parents to pay off their debt or – even – *“I have no other choice”*.

We drew attention to these examples for two reasons. First of all, difficult living conditions, including financial difficulties, are one of the factors leading to forced labour recruitment. The honesty of the forum users looking for a job abroad may influence their attractiveness in the eyes of the potential unfair employers and perpetrators of forced labour. This assumption is confirmed by practice – the examples of forced labour show, that the recruiters analyse Internet sources to find potential employees desperate to find any kind of a job, thus targets to focus on as they will relatively easily become victims to the malpractices of the recruiter. Second of all, the Internet forums include negative comments and warnings relating to such self-presentation in the job search process, as well as the comments on the poor knowledge of a language or no knowledge at all. This means that the forum users have the knowledge and negative experiences proving that the excessive openness in self-presentation might be dangerous.

EXAMPLE 1⁹⁹

If you go abroad, because e.g. you are a tiller, but you do not really speak the language, no surprise you cannot defend yourself and life will not be easy for you. If you know why you are going abroad, you do things well and you speak the language, you will handle the situation. Otherwise, though it may sound brutal, you will make it easy for others to exploit you. There are plenty of con men out there.

.....

3.4.

Job search process (recruitment reversed)

There is a vast amount of more or less detailed advice available on Internet forums on how to look for a job abroad and how one should not go about it. The advice is given as replies to particular questions of the users (advising against or recommending particular behaviours), short articles on working abroad safely or general advice, presented by a specific user, not related to any particular person.

It is important to notice that all the information comprising the principles of travelling abroad to work safely mainly concerns the rules of avoiding being cheated and accepting a low-paid job and does not focus on avoiding exploitation. One may get the impression that behind the majority of the posts there is not much reflection on the risks of becoming a victim of human trafficking, although there are examples given when the users directly refer to such situations. The preventive rules refer to both the agents and the employers being the potential exploiters.

The analysis of the posts suggests that it is safer to look for a job via an agency, rather than with the help

of individuals or on one's own. Looking for a job on one's own is only recommended to people who speak foreign languages very well and have the opportunity to look for a job from Poland. It is not recommended to leave without a clear perspective for a specific job.

EXAMPLE 2

I would rather recommend contacting some agency that will organize everything abroad. Starting yourself might be very difficult... Job agencies do not necessarily abuse naive people – sometimes they do lots of good as well!

.....

As the job agencies are widely perceived as effective and believed to be honest and professional, they can quite easily present rather unrealistic job offers or even cheat the potential workers. Moreover, it seems they feel there is hardly any chance they will be punished for any wrongdoing.

⁹⁹ The forum posts presented in the examples were translated from Polish conveying the original meaning, register and style of the language used by the forum users.

EXAMPLE 3

I have recently been looking [for a job] and either nobody could answer or it's just a (massive) fraud. It's better to have some acquaintance that can help you. Otherwise it's difficult.

.....

There are also posts, where authors advise not to use agencies – but these are less frequent in the analysed material:

EXAMPLE 4

Going blindly to find a job abroad? You need to be careful with working abroad. First of all, don't go abroad and only then look [for a job]... And these job agencies' offers...well, you never know where you will go, for how much etc. It's better to ask friends that worked abroad already; they might also help you get a job somewhere. I think it's the safest way. I would never go abroad to work via a job agency. I have heard too much about that. Cheating, withholding salaries and eventually – no job. Think twice before deciding to go, as it's not a piece of cake.

.....

One of the elements of the job search process of the forum users is the verification of particular agents or employers of migrant workers (questions e.g. “do you know/have you worked with company x, agent y, agency z”) and there are plenty of such questions on the Internet forums. Potential migrant workers ask for opinions of others on a specific employer or an agent. This way, you may get a lot of interesting information about the dishonest and honest institutions (or individuals) involved in managing work abroad. There are also posts, where specific users (based on their own experience) warn others about particular agents involved in job seeking process. They post specific names, addresses or names of individuals recruiting for a job, adding examples of dishonest behaviours.

EXAMPLE 5

Beware of such companies. Dear All, I would like to present a job offered by a company sending native Polish employees abroad. The name of the company is J(...) Sp. z o.o.¹⁰⁰ and it is based in W(...). This company cooperates with German construction companies and sends employees to Germany, providing invalid contracts with the most important information missing, e.g. the name of the contracting company. These contracts are signed in German, which the majority of the workers do not understand, so they do not know what they sign. And even if there is an interpreter, they say what the CEO A.W. from W(...) wants. People have not been paid for a long time, the ones who can afford it are getting back to Poland, but they are replaced with new ones, who then find themselves in the same situation. At this moment, it has been reported to the German labour union which is handling the case now. I have just returned from such a voyage. I have seen what is happening there.

EXAMPLE 6

I warn all the persons tempted by the fantastic job offer from the agency A(...) located in L(...). The agency recruits, among others, lift installers. The owner of the company is English, but majority of the office employees are Polish ladies.

I might talk long about the “professionalism” and the “support” from the job agency. Basically, once you get there, you get around half (or even less) of what was promised in terms of working conditions and salary. Actually, there are issues with payments every week. Sometimes an employee forgets about something, sometimes she didn't have time to calculate something, but I was actually shocked to hear her last explanation – “I had a headache”... Regardless of the promises on their website – it is a miracle to get your phone call to the office answered. On the other hand, I must admit the communication via text messages works perfectly. Recently, changes in our contracts were texted to us!!!

As a result, majority of the people tempted by the promised conditions got back to Poland, plans to do so within a couple of weeks or is intensively looking for another job. **I MOST DEFINITELY DO NOT RECOMMEND THIS AGENCY!!!**

.....

Internet forums are a source of information about the good and honest agencies as well. Members of the forums recommend verified job agencies and trusted employers, which counterbalances the information about the dishonest and illegal agents.

EXAMPLE 7

I do recommend agency e(...) from W(...), a job broker. They have offers both in the country, as well as abroad, permanent and temporary. And they are honest too.

.....

Particular attention should be drawn to the previously mentioned forum - forum.oszukany.pl, which features a subpage dedicated for listing dishonest agents.

Some of the questions aiming at verifying agents and employers refer to their way of working. The most frequent questions aim at identifying whether the payments required by the agent are reasonable and proposed conditions plausible.

EXAMPLE 8

My fiancé and I have been looking for a job abroad for a week and a half. We have found a good offer at tablica.pl. It's about picking strawberries, raspberries, blackcurrants... Everything seems good, we have contacted the company by email and phone. Departure is scheduled for Sunday, 5 August 2012. The man who wants to employ us requests a bank transfer of PLN 420¹⁰¹ per person as a guarantee to cover the bus costs. He says his company loses money, if 50 people confirm coming, but only 15 arrive at the collection point. My fiancé talked to him and agreed to pay for one person – so

PLN 420 and we'll pay for the other on the bus. We are a bit afraid to transfer the money, as it's not as small amount as PLN 20 would be. We cannot find any information on the Internet. I would appreciate your help, maybe you have already been in such a situation, what have you done, maybe you recognize this data, job, anything.

EXAMPLE 9

Hello. I also have a question about an employer. Unfortunately, I couldn't find it on the Internet, just in a newspaper. An advert: "Hard job in Norway 25k¹⁰² call 662.....". After the call it turned out we need to pay PLN 220 in advance for the translation of certificates and some papers. Of course I have found it all out from an automatic messaging service. We were also informed that applications should be made at 666..... Then I found out that somebody is coming on 7 January and will collect the applications then. Plus, the information that you need to wait a month for the decision. Have you had such an experience already? It's difficult to trust such adverts, but the salary is really tempting.

(in reply to the above post)

Hello, I am also interested in this offer. After talking to the guy I've asked how many applications are rejected, he said 50% and there's also this advance payment of PLN 220. I am not sure if it's not a fraud. If you get a positive answer, please share the information.

EXAMPLE 10

Is it enough to check if the company is listed in the country's register of employment agencies to be sure it is an honest agency? Or it is only the information that it operates legally and nothing more? And what if there is no such agency there? I have found some interesting offers with an agency, I have looked it up and it is not in the registry, should I resign?

.....

101 4 PLN equals 1 €, this amount equals 100 €

102 25.000 PLN = 6.000 €.

The questions, examples of which are listed overleaf, do not remain unanswered. The replies include information on how to behave in particular situations (e.g. "do not send any money to the agency, as it should be paid by the employer"), as well as on what the general rules for the safe use of a job broker are. It is particularly important in the light of our interviews with the experts and the conclusion that the job seekers do not refer to institutions such as the Police, the Board Guards, the National Labour Inspectorate or non-governmental organizations in order to find out what kind of actions one needs to undertake to avoid any form of potential exploitation. An average Internet forum user, also a job seeker, most probably will deal with these institutions only after the exploitation took place. Therefore, it may turn out that the posts of other forum users are the only sources of information about the threats and information how to avoid them.

EXAMPLE 11

People going abroad to find a job "blindly" should always make a list of potential employers in the region they are going to before leaving. Such a list should start with the companies that might employ the people for jobs relating to the previous experience and education. The list should also cover the companies that employ lots of non-qualified workers (e.g. retail chains, fast food chains etc.) – it's easiest and fastest to find a job there due to the high turnover rates. Such a list might also come in handy for a person that has found a job before leaving, as, unfortunately, it might always be the case that the job is not the perfect fit or the employer had second thoughts and you will need to urgently find a new job.

.....

The information gathered during the analysis of the Internet forums gives an opportunity to create and supplement a "black list" of agencies and employers dealing with foreign labour markets.

3.5.

Working conditions abroad

The analysed material includes numerous examples of specific jobs abroad the forum members advise against. Giving information about a specific employer or a workplace often entails other users' answers (usually confirming the negative information, but sometimes giving contradictory information). When replying, the forum users' give additional examples of difficult and arduous working conditions in the same or another company. It is an inexhaustible source of information about the malpractices of foreign employers and an example of such information is below.

EXAMPLE 12

I have also worked there and I do DISSUADE EVERYONE from going abroad to work for this company. B. is involved in an insurance scam --- he sends

everyone to a particular doctor (not in the place where you work or live), probably based on some agreement with him, he pays out of his own pocket (a regular doctor is paid by the insurer!!!) and later he deducts this from the salaries of the people unaware of the scam and applies to the insurance company for a refund!!! He tried to rip me off on medications (also refunded by the insurer – I never paid for them in the Netherlands) for 90 euro!!!

--- No one explains to you anything calmly in the workplace, everything is in a rush; Try asking how to do something and B. will scream at you and tell you are idiots, because you talk!!! This guy prods or grabs people by the arm so tight, that you are left with bruises; the work is so hard that many people have their hands swollen and pain is common among the employees of this company

Members/users of the Internet forums share their impressions and experience of working with foreign employers, which might be a warning against using the services of a particular agent or taking up work for a particular employer. As the below post shows, it can be quite effective.

EXAMPLE 13

THANK YOU FOR THIS POST, AS I WAS SUPPOSED TO LEAVE ON 25 MAY 2013, BUT WHEN

I CALLED THE OFFICE TO LEARN SOMETHING the lady (no capital letter – she deserves it) almost screamed at me saying everything is on the website and what else I wanted to know; I only got upset, but it's good it happened here at home, not already there; thanks and regards

3.6.

Remarks on the online language

Internet forums are not a typical source of information about social issues and therefore rarely utilized, which might be caused by the specific language used online. Not following the principles of punctuation, orthography and style might make the analysis of the contents, as well as presentation of the results in other countries, more difficult. Frequently used vulgarisms, emoticons or short and emotional expres-

sions might influence the perception of the messages as chaotic and lacking sense.

Posts about “white slaves” or “labour camps” lead us to suspect that even though there are no clear users’ messages about human trafficking for forced labour (due to the lack of knowledge or awareness?), the users do see some aspects of “the contemporary slavery” around them.

3.7.

Forced labour in the Polish media – evolution of approach

This chapter is supplementary to the one above. It offers some general considerations on the quantity and quality of media writing on forced labour. It does not pretend to serve as a complete analysis of Pol-

ish media in respect to forced labour as this would be impossible taking into account both number of publications and their geographical spread. But it must be stated that such a study would be of enormous value

if conducted in cooperation with one of the agencies specialised in media analysis¹⁰³. Additionally such in depth analysis was outside of the scope of the report requested. As a result remarks presented here are based on general overview of the main newspapers available in both electronic a traditional form as well as typical electronic media.

In the last 15 years there have been more and more media publications on human trafficking and forced labour in Poland. One could also observe a significant evolution as to the quality of these publications.¹⁰⁴ First of all human trafficking is more often depicted as a serious social problem as opposed to a "moral" curiosity, as it used to be presented. There is also more and more of an analytical approach in media writing, there is some discussion on legal matters and a reflection on the effectiveness of state institutions. But in depth analysis of media and press publications allows drawing a conclusion that despite these developments one cannot state that both human trafficking and forced labour are presented honestly and fully¹⁰⁵. This refers especially to forced labour, which is still rather unknown in Poland and less often referred to by governmental and non-governmental institutions in comparison with human trafficking for sexual exploitation. In fact the information about forced labour is most often published when a particular case is discovered either by the Police or by the media. This might create the impression that it happens from time to time and that it is not at present a real threat that one needs to be aware of at all times. The publications with full depiction of forced labour, including the risk of falling victim to forced labour, are still missing¹⁰⁶.

The analysis of the press contents allows to identify two groups of perpetrators of human trafficking for forced labour, i.e. the perpetrators who recruit and organize the transfer of workers to the destination country and the employers using the recruited workforce. Additionally, it is important to acknowledge

the information published in the Polish press, which shows that Polish citizens might not only be victims, but also the perpetrators of the crime of forced labour. Therefore, Polish citizens might not only be recruited, sold and made to work as slaves, but they also might recruit, organize the sales process and exploit foreigners working as slaves in Poland (or other Polish citizens). It can therefore be concluded that social campaigns should not only present the risks of becoming a victim of forced labour abroad, but also the issues of ethical business, the situation of foreigners in Poland and the possibility that the Poles are the perpetrators of forced labour as well as potential victims in Poland.

According to newspaper articles forced labour victims are both women and men who, while looking for a job in the country other than their country of origin, have used the support of third parties and have been deceived and forced to work. The employers treat them as slaves, they work in difficult conditions, have poor living conditions and limited freedom to make decisions or are deprived of it by means of intimidation.

It is worth noticing, that the Polish press presents a negative assessment of forced labour as a phenomenon connected with crime, including organized crime and human trafficking. The readers may also "assess" the phenomenon themselves based on the description of the perpetrators' methods and the situation of the victims when forced to work or the situation immediately after such a forced labour case had been discovered. The negative image of forced labour in the Polish press is supported by using certain expressions in the titles and content of the publications, such as "slavery", "slave conditions" or "labour camps".

The fact, that there is a wide choice of media coverage of forced labour might be confirmed by short summaries of two articles published 5 years apart. In the summer of 2008 the Polish media was covering the case of employing and exploiting workers from

103 Services of such agencies were beyond the scope of this report and available financial means.

104 *Obraz handlu kobietami w prasie polskiej* (Picture of trafficking in women in Polish press), [in:] *Handel ludźmi. Zapobieganie i ściganie*, Zbigniew Lasocik (ed.), Warsaw 2006, Warsaw University, p. 339-348.

105 The detailed analysis of some publications on forced labour can be found in the study by the Centre: Z. Lasocik, Ł. Wieczorek, *Trafficking for Forced Labour...*, op. cit., passim.

Asian countries, including Chinese, in Poland. The article referred had an unambiguous title: "Thousands of slaves are exploited in Poland", but the subtitle was even more straightforward: "A Chinese person is cheap and eats once a day"¹⁰⁷. Even though the title is not conclusive on the slaves' country of origin, the subtitle leaves no room for doubts.

The authors had not only gathered the information about these proceedings, but also used a method of journalistic provocation. They requested the Director of the Polish Chamber of Commerce to call one of the companies advertising Chinese employees in Poznan. The said company sent offers to the Polish employers describing the Chinese workers as follows: "They are not subject to the Polish labour code, have no entitlement to holidays, can work 10 hours a day six days a week and do not drink alcohol". The Director of the Polish Chamber of Commerce introduced himself as a construction sector entrepreneur and pretended to be interested in the offer. A sales woman informed him that it takes about two months to transfer Chinese workers to Poland. He also learnt that the Chinese can "work 14 hours a day, live in overcrowded primitive barracks and eat once a day. They do not need a Polish insurance number either, as they are insured in China."

It is worth adding that the above mentioned company was founded in 2003 and its main field of activities was supposed to be the export of pork from Poland to Asian countries. The Chairman of the company was at that time PXQ, a Chinese national. The case follows a typical scenario, in which the recruitment process in a specific country is performed by a citizen of this country.

A completely different situation was covered more recently in the press on the same topic, but describes a completely different category of victims. There was a piece of news published in the middle of June 2013 on a website of a popular news television channel about a "labour camp" on the outskirts of Siedlce, in eastern Poland¹⁰⁸. The authors said the owners of a farm had been illegally employing workers – in this

case Poles – paying them several dozen zlotys per week. As a result, the employees were not able to return home to remote parts of Poland. The authors have even used an expression "slave labour camp". It needs to be underlined, that this is one of the very first media coverage of slave labour of Poles in Poland, which is a strong qualitative change.

The workers described to the press the dreadful working and living conditions and extremely low salaries. One of the people claimed to have been earning PLN 50 a week. The employees continued working hoping to start earning more. One of the employees said she stayed as she had no money to buy a return ticket, others continued working for the employer, as there were no jobs available near their hometown.

The farm owner and his family had poor reputation in their village. The owner was said to be foul. The situation stirred a sensation and the Police and the National Labour Inspectorate have commenced their investigation proceedings. According to the press, already more than ten people have informed the Police they are victims of slave labour.

The situation bears traits of a typical employee exploitation case: difficult situation of the employee, full control of the employer, poor living conditions, but there are also new aspects to it, i.e. the fact that the exploited employees were Poles, who came from remote parts of Poland. The perpetrator succeeded to force them to work by first of all – poverty, as some had no money to buy a return ticket, intimidation or a confiscation of identity cards.

107 Online article: <http://wiadomosci.dziennik.pl/wydarzenia/artykuly/79295,w-polsce-trwa-wyzysk-tysiecy-niewolnikow.html>, August 14th, 2008

108 Online press information: <http://www.tvn24.pl/oboz-pracy-w-gospodarstwie-pod-siedlcami-panie-uciekaj-poki-masz-na-bilet,332546,s.html>: June 13th, 2013

Conclusions

and recommendations

As we said already human trafficking for forced labour is more and more frequent both in Poland and in Europe. As time has passed, sexual exploitation of women for prostitution, which seemed to be the only or predominant form of human trafficking in Europe has been joined by a new form of trafficking related to the exploitation of people for the purposes of labour. This is not only true in Europe, since forced labour happens everywhere, regardless of the economic situation of the country and its social infrastructure. As more evidence comes to light, it indicates that the phenomenon is rather more common than it was thought earlier.

Not surprisingly the majority of victims of forced labour in Poland are migrants, both women and men, mostly young and inexperienced. Unlike victims of sexual exploitation coming to Poland from Belarus, Russia and Ukraine, victims of forced labour are more often citizens of Asian countries, such as China, the Philippines or Vietnam. They come to Poland legally and the process of exploitation starts while they are here, working in construction, agriculture, trade and household domestic situations.

The legal status of victims of forced labour is often different from the legal status of victims of sexual exploitation – more often they have work permit or other necessary documents. The newly identified problem is related to leased workers – a lack of formal relation between worker and employer leads to reduction of costs on the employer's side but at the same time creates a lack of any emotional links between the worker and the employer. In the long run the consequences of this situation will be definitely negative.

The characteristic feature of the individual recruitment process is also the fact that almost none of the documents, contracts, obligations or statements are written down. It is slightly different in the case of employment agencies which are obliged to document the recruitment process. The obligation can be omitted by means of signing a simple document with the clause that the final agreement shall be made in the destination country. Then, such an agreement is always made in the local language and this way the employee is deprived of any insight in the contractual provisions.

The problem of forced labour, although already noticed in Poland, is not seen sometimes as very important, which demands urgent and effective actions. The

experts we interviewed expect that real national debate would start soon and proper institutional infrastructure would be created. Especially a state body to coordinate efforts of different agencies, local governments and NGOs is needed. Its establishment will be somehow enforced by the 2011 EU Directive.

There are two actors missing on the stage of battle against forced labour, namely Trade Unions and Associations of Employers. Without them this battle cannot be successful. Trade Unions do not see their role in combating forced labour claiming that victims, especially migrants, are not members of their unions. In tandem to this employers do not consider exploitation as an important problem of the labour market in Poland. The role of CSR (Corporate Social Responsibility) standards is still very limited. Some experts underlined the fact that there is more and more debate and discussion about the social responsibility of business in Poland but in practise it is not about the rights of workers. Employers are very happy to talk a lot about what they do in order not to damage the natural environment and how they offer assistance to local communities. Such an attitude is essential for natural and social environment of modern business. But how should one judge the situation when employees (especially migrant workers) of a particular employer work 12 hours a day in vile conditions? Even when the issue appears it is explained away by difficult economic situations and the needs of the labour market. Some experts confirm that from time to time they are facing arguments from employers saying: "I guess, it is better for them to work 12 hours and make something than being unemployed and have nothing in their hands?" It must be said straight that using the economic crisis as an argument for limiting basic privileges of workers is at the very least unfair. Difficult economic situations which create a "friendly environment" for exploitation should not be seen as justification for inequalities; it should be treated rather as a challenge for the whole society. When work becomes a "treasure" it should be especially well protected and shared, as much as possible.

Finally, according to the interviewed experts the current civil society infrastructure is not sufficient to deal with the scope and the nature of the problem in Poland. So far, there is no professional NGO dealing with victims of forced labour and offering appropriate care,

taking into account the cultural background and possible differences of and between migrant workers and the local community. In all interviews, in one way or another, the problem of awareness building was present. There are two dimensions of this issue: on one hand there is lack of awareness of those coming to Poland to work here, but on the other the level of awareness of local community could be seen as an important instrument in both preventing exploitation as well as immediate reaction in case of any form of unequal treatment¹⁰⁹. At the very end real interest of the government, much higher level of awareness of all participants of the labour market and better infrastructure of civil society could lead to more effective self-identification and identification of victims, which is a key element of each system of elimination of forced labour.

Looking at the problem of combating forced labour from the employer perspective one could observe an interesting tendency in relation between them and their workers. This tendency could be described as one of limiting direct contact and might be seen somehow as one of the symbols societal change. As it was noticed by one of the experts: "employers try to get rid of the so-called 'human resources departments', not to bother with employees, do not recruit them, so as to not manage their matters". They simply prefer "to lease" workers and are happy that somebody else does all these things. This is a very pragmatic approach because it is cheaper to lease workers instead of hiring them. But this strategy, experts say, pays only in the short run, in the longer perspective taking care of the employees and protection of their rights is profitable as it builds good relations in the company. Employers seem not to be aware of that and they are satisfied with decreasing the expenses for here and now.

The study we conducted (especially interviews) with the experts allow us to formulate several recommendations. We are well aware that they are of rather preliminary nature and should be studied further but it is worth to present them at least for theoretical comments and empirical verification. Also some of the recommendations are rather general whereas some

of them are very practical and refer directly to certain legal solutions introduced to the Polish legal system.

- 1. It is recommended to "introduce" forced labour into public debate as important issue to be faced by all actors (stakeholders) of labour market.**
- 2. It is recommended to introduce a newly defined crime – forced labour – into Polish penal law**
- 3. It is recommended to engage both Trade Unions and Employers' Association into the taken actions against forced labour.**
- 4. It is recommended to create in Poland a central registry of declarations of the intention to employ a foreigner (from the following countries: Belarus, Georgia, Moldova, Russia, and Ukraine) as an important tool to prevent unprotected workers coming to Poland.**
- 5. It is recommended to pay more attention to the role of employment agencies at the labour market.**
- 6. It is recommended to create a system in such a way that there is possibility for direct contact of an employment agency with a potential employee as such that a personal contact makes it possible for the employees to ask essential questions.**
- 7. It is recommended that employment agencies shall, among other things, check not only the employer's credibility as such, but also details of working conditions.**
- 8. It is recommended to offer employment agencies comprehensive and professional (tailor-made) training on human trafficking and forced labour.**
- 9. It is recommended to produce something called "SOS packet for migrant-worker" to be useful tool to build awareness and serve as guide in crisis situation.**
- 10. It is recommended to publish as much as possible brochures and leaflets on legal conditions of work in Poland.**

109 There was a well known case of North Koreans working in Gdansk Shipyard in very difficult conditions, having no access to their wages, being accommodated in one place and in fact deprived of their liberty, nobody reacted for a long time. Workers were not interested in what was happening to their fellows workers from an "exotic" country. In some media publications these people were called "slaves from North Korea", see ie: <http://wyborcza.pl/1,82423,3232883.html>

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