

# **Social Fieldwork Research (FRANET)**

## **Severe forms of labour exploitation**

### **Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States**

#### **Bulgaria, 2014**

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## Categories of interviewees:

Nine categories of experts working in the context of labour exploitation took part in the interviews and focus groups:

M – Monitoring bodies (such as labour inspectorates, health and safety bodies)

P – Police and law enforcement bodies

S – Victim support organisations

J – Judges and prosecutors

L – Lawyers

R – Recruitment and employment agencies

W – Workers' organisations, trade unions

E – Employers' organisations

N – National policy experts at Member State level.

FG – Focus Group

Throughout this report, references to these groups as 'M', 'P' etc. are to be understood as referring to the above-named 9 categories.

Where [M(X)] appears, this denotes the group from which the referenced interviewee came, in addition to the number of interviewees from that group referenced (for example, if a statement is supported by references to three interviewees from the M group, two from the S group and one from the J group, the reference will read '[M(3); S(2); J(1)]'. Likewise, if a statement is supported by statements from interviewees who participated in focus groups (in the following example, a lawyer), the reference will read '[FG(L)]'.

For data protection reasons, no names of interviewees have been mentioned.

# 1. Introduction, including short description of fieldwork

This country report reflects the main findings from the fieldwork research in Bulgaria on severe forms of labour exploitation of migrants (SELEX). In Bulgaria the fieldwork included thirty individual interviews with experts from different professional groups, one focus group discussion and ten case studies. In addition, this final country summary report integrates information on the institutional and legal setting underpinning the national response to labour exploitation.

The fieldwork took place from late September 2013 until late January 2014. It coincided with unprecedented heated political and public debate on foreign nationals in Bulgaria in relation to the drastically increased number of asylum seekers in the country due mainly to the Syrian crisis.

Thirty individual semi-structured interviews were conducted in Bulgaria during the fieldwork research period with representatives of professional groups with different functions as follows:

- M – Monitoring bodies: 6 interviews
- P – Police and law enforcement bodies: 2 interviews
- S – Victim support services: 8 interviews
- J – Judges and prosecutors: 4 interviews
- L- Lawyers: 3 interviews
- R – Recruitment and employment agencies: 2 interviews
- W – Workers organisations, trade unions: 2 interviews
- E – Employers organisations: 2 interviews
- N – National policy experts : 1 interview

The breakdown of gender of interviewees is as follows: 10 males and 21 females.

With regard to their geographical location, the interviewees are from five different areas. Most of them are from the capital Sofia, whilst four were conducted outside of the capital. These four interviews outside Sofia were conducted via phone. The remaining 26 interviews were conducted face to face.

The duration of the interviews was as follows:

- <45' - two interviews [E(2)]
- 45'-60' - five interviews [M(1), S(1), L(1), J(1) and S(1)]
- 60'- 75' - seven interviews (R(2), W(1), J(3), S(1))
- >75' – sixteen interviews (the rest)

The proportion of declined invitations for interview has been significant among professional group P (police and law enforcement bodies). Invitations were declined by key competent stakeholders – the Migration Directorate from the Ministry of the Interior, the State Agency for National Security and the General Directorate 'Police' at the Ministry of the Interior. In the case of the State Agency for National Security, the FRANET contractor was informed by phone call

that the Agency had no relation to the topic of the study and could not provide a representative for an interview. In the case of the National Police Directorate at the Ministry of the Interior, the FRANET contractor received a letter with information in writing with regard to measures against trafficking of Bulgarian children abroad.

Invitations for interview were declined also by the following relevant stakeholders in Bulgaria:

- Animus Association Foundation (professional group S), the NGO in Bulgaria with key functions in provision of direct services to victims of trafficking and other violence in Bulgaria and a leading partner in the development of the national referral mechanism for victims of trafficking;
- National Bureau for Legal Aid (professional group L), the institution which under the Law on Legal Aid grants legal assistance to persons who are unable to afford to pay for a lawyer;
- Ministry of Foreign Affairs, Consular Directorate.

Most refusals related to lack of experience with respect to labour exploitation, or it being outside their field of competence.

Interviewing respondents from group E (Employers organisations) turned out to be the biggest challenge throughout the fieldwork research. The following employer organisations declined to be interviewed, stating that they have no experience in the studied topic: the Bulgarian Chamber of Commerce and Industry, the Bulgarian Hotel and Restaurant Association, the Bulgarian Construction Chamber, the Association of Meat Processors in Bulgaria, the Confederation of the Employers and Industrialists in Bulgaria –CEIBG, the Bulgarian Industrial Capital Association and the Bulgarian – Lebanese Business Club. The biggest employers' organisation in Bulgaria, the Bulgarian Industrial Association, indicated that the methodology of the research (not allowing for preliminary sending of the interview questionnaire) was problematic. The FRANET contractor managed to carry out two interviews with professionals from group E. From these two interviews and from the number of refusals of interviews received from group E, the conclusion is that the employer organisations in Bulgaria have little experience in the subject matter of the study.

One of the unintended consequences of the fieldwork research in Bulgaria was the inclination of government officials to assume that recognition of existence of severe forms of labour exploitation would imply criticism of their work.

Furthermore, the refusals to participate in the study, the reluctance to provide answers or the inability to provide data are indicative in themselves and highlight the lack of experience and awareness in Bulgaria with regard to supporting migrant victims of severe forms of labour exploitation in having access to justice in the country. This information is taken into account in the analysis of the collected material in the substantive part of the report.

The focus group discussion in Bulgaria involved ten participants with the following demographic profile:

- 4 males and 6 females;
- 1 in age group under 30, 6 in age group 30-50; 3 in age group above 50.

Focus group participants represented the following stakeholders and professional groups: [P(2); S(3); W(1); M(2); N(1)].

The focus group participants discussed the following additional contentious issues that were identified during the individual interviews in the Bulgarian national context:

- *Are criminal sanctions for perpetrators of severe forms of labour exploitation proportionate to the seriousness of the crime and leading to prevention or rather they reveal impunity? E.g., two years conditional sentence for human traffickers for labour exploitation.*
- *What is your opinion on the idea of criminal responsibility for legal entities to be introduced as possibility in terms of preventing exploitation attitudes on part of employers as legal entities?*
- *Should administrative sanctions in the form of financial fines for perpetrators be higher or lower (one interviewee expressed the opinion that their size is so high that implementation is not feasible)?*
- *What is the effectiveness of cross-border judicial cooperation between Bulgaria and other EU countries in criminal cases of exploitation of Bulgarian workers?*
- *When Bulgarian workers are exploited abroad, why only the Bulgarian national perpetrators are prosecuted and there often are no defendants from the country where the exploitation took place?*
- *Concerning the access to the Bulgarian labour market: Do you think that work permits for foreigners serve as prevention of labour exploitation or contribute to migrants' vulnerability?*
- *According to the Bulgarian Law on Asylum and Refugees, asylum seekers are allowed access to the Bulgarian labour market one year on from the start of their asylum procedure. Does this mean that after the first year asylum seekers are exempted from the requirement for a work permit or they need a work permit in order to work?*
- *Does a complaint about labour exploitation by a migrant in Bulgaria entail a risk for losing one's residence status?*
- *Is regularising the situation of certain groups of migrant workers with an irregular status or once they have become victims of severe labour exploitation an adequate measure to improve the way labour exploitation is addressed in the case of Bulgaria?*
- *Would it be useful and feasible to set up specialised police units to monitor and investigate labour exploitation in Bulgaria?*

*Is there a need for intervention when formally prima facie the Labour Inspectorate finds no breach of the labour legislation of Bulgaria?* Besides the individual interviews and the focus group discussion, the fieldwork research in Bulgaria produced ten case studies with descriptive analysis of events of alleged labour exploitation. Eight of the cases concern severe forms of labour exploitation of Bulgarian citizens in other EU Member States, on which Bulgarian institutions have worked. With regard to third country nationals in Bulgaria, only two case studies could be produced. Sources of information for these cases were experts from professional groups J (one by judge and one by prosecutor), N, W, M, L, R, the media and own research of the expert. With regard to Bulgarian workers in other Member States, the economic sectors in which exploitation took place were agriculture (picking of fruits and vegetables), animal production (sheep farmers), manufacture of food products (meat factory) and construction of buildings (the victim was a skilled worker, electrician). In the two cases

studies on labour exploitation in Bulgaria, the economic sectors are construction of buildings (the victim worked as an unskilled worker) and hotels (the victims were cleaning ladies). In two case studies, investigations by authorities were ongoing and the cases were still pending. In two other cases the perpetrators were convicted of crimes by the court. In one case there was alleged corruption, because the court found the Bulgarian employer not guilty as it had only posted the workers to Germany, while the exploitation was carried out by a German perpetrator. In another case administrative sanctions were imposed on the recruiting agency. In one case the victim was placed in a social care institution in Bulgaria and given social assistance, but the victim could not provide sufficient data for investigation to be made. In another case the victim filed a complaint before the Labour Inspectorate. It is noteworthy that in both cases of labour exploitation of immigrants in Bulgaria victims did not succeed in accessing justice.

## 2. Legal framework

In this section the national researcher was asked to refer to and make an analysis of the findings on the national legal framework.

With regard to the question as to whether there is national legislation in place criminalising slavery/servitude or forced labour, it is important to note that in Bulgaria these actions are criminalised only in the context of human trafficking.

Human trafficking is criminalized in the Criminal Code (*Наказателен кодекс*), Article 159 from a) to d)<sup>1</sup>.

A peculiarity of the legal definition<sup>2</sup> of human trafficking under Bulgarian criminal law and national penal judicial practice is that it is broader than the international law definition of human trafficking in the Palermo Protocol and the practice of the European Court of Human Rights under Article 4 of the European Convention on Human Rights (ECHR).

The Bulgarian definition excludes the ‘means’ element<sup>3</sup>. According to Article 159a, Paragraph 2, point 2 of the Criminal Code, coercion and deception are only aggravating circumstances, but not a constitutive element in order for the action to qualify as human trafficking. This interpretation of irrelevance of consent by the victim is viewed as beneficial by the interviewees in the study (6 BG N, 19 BG P, FG BG), because coercion or deception do not need to be proven in the criminal process and the number of prosecutions and convictions increase easily.<sup>4</sup> Furthermore, the Bulgarian Supreme Court of Cassation has adopted an Interpretative Decision<sup>5</sup> acknowledging that the scope of criminalisation of human trafficking under Bulgarian

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<sup>1</sup> Translation into English of the Bulgarian Criminal Code, as well as most of the legal instruments relevant to the topic of human trafficking in Bulgaria can be found at the official website of the Bulgarian National Anti-Trafficking Commission, available at [www.antitrafficking.government.bg/en/2011-12-15-11-21-11/legislation](http://www.antitrafficking.government.bg/en/2011-12-15-11-21-11/legislation). (accessed on 21 February 2014).

<sup>2</sup> Bulgarian Criminal Code (*Наказателен кодекс*), Article 159a, (1) (Amended, SG, No. 27/2009; 84/2013) *Any person who recruits, transports, harbours or receives individuals or groups of people for the purpose of using them for lecherous activities, for forced labour or for begging, for the removal of a body organ, tissue, cell or bodily fluid or for keeping them in forced servitude regardless of their consent shall be punished by deprivation of liberty from two to eight years and a fine from BGN three thousand to twelve thousand. (2) Where the act under par. 1 has been committed: 1. with regard to an individual who has not turned eighteen years of age; 2. through the use of coercion or by misleading the individual; 3. through kidnapping or illegal deprivation of liberty; 4. through abuse of a status of dependency; 5. through the abuse of power; 6. through promising, giving away or receiving benefits; 7 (new, SG, No.84/2013) by an official during or in connection with the performance of his duties (amended, SG, No. 27/2009) punishment shall be deprivation of liberty from three to ten years and a fine from BGN ten thousand to twenty thousand.*

<sup>3</sup> Article 4(a) of the Council of Europe Trafficking Convention stipulates that ‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, *by means of* the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Therefore, ‘the means element’ refers to threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

<sup>4</sup> According to the latest available official statistics published by the Bulgarian Prosecution’s Office, in the first six months of 2013 there have been 52 persons convicted of human trafficking (1 was convicted on probation; 34 were convicted conditionally and 17 – effectively). Source: Prosecution of the Republic of Bulgaria, *Summary information on the cases and files of PRB for the first half of 2013*, available in Bulgarian language at [www.prb.bg/main/bg/Information/3878/](http://www.prb.bg/main/bg/Information/3878/) (accessed on 21 February 2014).

<sup>5</sup> Bulgarian Supreme Court of Cassation, Interpretative decision No.2 of 16 July 2009. A summary of the interpretative decision in English is available at:

law is wider than the one under international law, and referring to the principle of state sovereignty in this regard.

However, this definition of human trafficking in Bulgarian criminal law is subject to criticism<sup>6</sup> as being overly inclusive, which makes it difficult to undertake a realistic assessment of the problem. According to Vladislava Stoyanova from Lund University, over-criminalisation should be viewed as problematic as it renders human trafficking unrecognisable: “... *at a national level the label of human trafficking has become so wide-ranging that the boundaries between migrations involving criminal abuses and non-abusive migrations are indiscernible in the eyes of the criminal law.*”<sup>7</sup>

A side effect of this expansive approach towards defining human trafficking is that it has been ignored that in Bulgarian law there is no criminalisation of slavery, servitude or forced labour *as such and on their own* when there is no element of movement<sup>8</sup> of the victim as required by the definition of human trafficking. That is, in order for these abuses to constitute crimes, they have to be combined with the actions of recruitment, transportation, transfer, harbouring or receipt. The latter is contrary to the positive obligations of the state under Article 4 ECHR as defined in the case law<sup>9</sup> of the European Court of Human Rights.

In transposition of the Employers' Sanctions Directive, in March 2012 Bulgaria criminalized employment of irregular immigrants under certain conditions. The transposition of Article 9 of the Employers' Sanctions Directive is found in Article 227 of the Criminal Code. With regard to Article 9(1) c (particularly exploitative conditions), Article 227 (5) of the Criminal Code envisages a qualified punishment for those who employ an illegally staying third country national under '*working conditions that substantially differ from the working conditions of lawfully employed persons and violate human dignity*'. Article 9(1) d (exploiting a victim of human trafficking) and 9(1) e (illegal employment of minors) are literally transposed in paragraphs 2 and 3 of Article 227 respectively. According to an official reply by the Bulgarian Supreme Prosecution Office of 6 March 2013 received early on in the research, there have been no criminal charges or convictions on Article 227 of the Criminal Code since its adoption in March 2012.

With regard to legislation criminalising the exploitation of child labour, the Bulgarian Criminal Code contains the following provisions:

- Art.192a of the Criminal Code criminalises admission to work of individuals below the age of 18 in the absence of a due permit;
- Art.159a, Paragraph 2, Subparagraph 1 of the Criminal Code criminalises trafficking for the purposes of forced labour and provides for heavier punishment when the victim is a person below the age of 18;

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[www.antitrafficking.government.bg/images/documents/Polezna\\_informacia/EN/1263815111.doc](http://www.antitrafficking.government.bg/images/documents/Polezna_informacia/EN/1263815111.doc) (accessed on 21 February 2014). The full version of the interpretative decision in Bulgarian is available at: [www.vks.bg/vks\\_p10\\_36.htm](http://www.vks.bg/vks_p10_36.htm) (accessed on 21 February 2014).

<sup>6</sup> Vladislava Stoyanova (2013), *The Crisis of a Definition: Trafficking Human Beings in Bulgarian Law*, Amsterdam Law Forum, Vol. 5, No. 1, pp. 64-79, 2013.

<sup>7</sup> *Ibid.* p.77.

<sup>8</sup> The 'element of movement' refers to the definition of human trafficking under Article 4a of the Council of Europe Trafficking Convention, according to which 'Trafficking in human beings' shall mean '*the recruitment, transportation, transfer, harbouring or receipt of persons*' by certain means for the purpose of exploitation.

<sup>9</sup> See *Siliadin v France*, Judgment 26 July 2005, ECHR; *C.N. v. the United Kingdom*, Judgement 13 November 2012, ECHR.

- Art.189 of the Criminal Code criminalises forced begging imposed to children.

In Bulgaria, the provision of sexual services is not legalized and therefore no legal employment relationship could be established in this regard. Against this background we assess irrelevance to the study of Article 156 of the Criminal Code, which criminalises abduction for the purpose of placing the person at the disposal for acts of debauchery.

With regard to the national criminal law framework, the following general legal acts are also of relevance: the Code on Criminal Procedure (*Наказателно-процесуален кодекс*)<sup>10</sup>, the Law on Extradition and the European Arrest Warrant (*Закон за екстрадицията и европейската заповед за арест*)<sup>11</sup>, the Law on Protection of Persons Threatened in Relation to Criminal Trials (*Закон за защита на лица, застрашени във връзка с наказателно производство*)<sup>12</sup> and the Law on Crime Victim Assistance and Compensation (*Закон за подпомагане и финансова компенсация на пострадали от престъпления*)<sup>13</sup>.

Reference to the national labour law and immigration law framework has been integrated in the analysis of findings of fieldwork research presented in the sections that follow.

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<sup>10</sup> Available in English language at: [www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation](http://www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation). (Accessed on 21 February 2014).

<sup>11</sup> Available in Bulgarian language at: [www.lex.bg/bg/laws/ldoc/2135504378](http://www.lex.bg/bg/laws/ldoc/2135504378) (accessed on 21 February 2014).

<sup>12</sup> Available in Bulgarian language at: [www.lex.bg/bg/laws/ldoc/2135495492](http://www.lex.bg/bg/laws/ldoc/2135495492) (accessed on 21 February 2014).

<sup>13</sup> Available in English language at: [www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation](http://www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation). (Accessed on 21 February 2014).

## 3. Labour exploitation and the institutional setting

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

Institutions tasked with preventing labour exploitation of migrants and enabling victims to access justice reflect the diversity and interdisciplinary character of the phenomenon itself. They might be grouped in governmental institutions in the labour and social affairs field (monitoring and institutions providing assistance); governmental institutions specialised in immigration and asylum law; national human rights institutions; police and law enforcement bodies; the prosecution, the courts and the legal aid providers; the non-governmental organisations; the trade unions; and missions of international organisations in Bulgaria.

#### 3.1.1. Governmental institutions in the labour and social affairs field

##### a) Ministry of Labour and Social Policy (*Министерство на труда и социалната политика*)

As part of the Government through its Minister, the mandate of the Ministry of Labour and Social Policy (MLSP) is to observe the implementation of the labour and social security legislation on the territory of Bulgaria. It also observes the compliance of national law with EU norms that regulate work of posted workers in another country and migrant workers within the EU. MLSP also participates in drafting of relevant legislation that is proposed by the Council of Ministers to the Parliament for adoption. Furthermore, it supervises the work of the Employment Agency and the Labour Inspectorate that are subordinate to the Minister of Labour and Social Policy.

##### b) Offices for Labour and Social Affairs (*Служби по трудови и социални въпроси*)

The Bulgarian Ministry of Labour and Social Policy has a network of Offices for Labour and Social Affairs in four EU countries. The so-called “labour attachés” that head these four offices provide labour and social affairs services to Bulgarian citizens in seven countries. The attaché in Britain covers also Ireland; the attaché in Germany covers Austria; the attaché in Greece covers also Cyprus; The Spanish one is responsible only for Spain. Theoretically the mandate of the Office covers, besides Bulgarian nationals, also EU nationals who (would like to) work in Bulgaria. However the labour attaché that was interviewed for this study has not had such cases and has provided services only to Bulgarian nationals.

Labour attachés provide information to potential workers from Bulgaria, preferably before they enter into an employment relationship, in order to prevent labour exploitation. The labour attachés try to provide this information by reaching people proactively (e.g., through the offices’ websites), but also quite often people call at the embassy in order to check whether certain job offer corresponds to the legal requirements and to inform themselves what is reasonable to expect and require from the employer:

*“In practice exercise of rights and obligations by Bulgarians as part of the free movement of persons is the main mandate of the Offices.”* In Bulgarian: *“На практика, ползването*

*на правата и задълженията от българите като част от свободното движение на хора е основният мандат на службите“.* [S(1)]

### **c) Employment Agency (Агенция по заетостта)**

The Employment Agency is an executive agency at the Minister of Labour and Social Affairs tasked with implementing the state policy in the field of employment promotion. It is a public agent on the labour market with intermediary role between job seekers and employers. With regard to labour exploitation, it sees its tasks mainly in terms of prevention as its functions are completed once the labour contract is concluded [M(1)]. The Employment Agency has local Employment Bureaus (in Bulgarian: “*Бюро по труда*”) in each municipality where job seekers register as unemployed and search for jobs. The Employment agency has the task to check the quality of the work offered. Article 18 of the Law on Employment Promotion<sup>14</sup> (*Закон за насърчаване на заетостта*) specifies which categories of migrants have a right to register as job seekers in the employment bureaus of the agency. Migrants with continuous residence (with a renewable term of up to one year), asylum seekers and irregular immigrants are in principle excluded from the scope of the law. Migrant workers who have a right to register for job seeking services usually know the Bulgarian language or come with a person who knows Bulgarian. The agency itself does not secure translation services. The registration process involves completing a registration form, which is available only in Bulgarian [M(1)]

Another important task of the Employment Agency is the issuance of work permits for third country nationals to enable them to access the Bulgarian labour market.<sup>15</sup>

An additional important task of the Employment Agency is that it provides licence registration to private employment and recruiting agencies that act as intermediaries to Bulgarian workers abroad.

The Employment Agency is not directly involved in inspections and investigations of labour exploitation [M(1)].

### **d) Executive Agency “General Labour Inspectorate” (Изпълнителна агенция „Главна инспекция по труда“)**

According to the Labour Code<sup>16</sup> (*Кодекс на труда*) and the Law on Employment Promotion (see above), the Executive Agency “General Labour Inspectorate” is the institution that carries out inspections<sup>17</sup> to monitor employers’ compliance with laws protecting the rights of workers. According to the Law on Healthy and Safe Working Conditions<sup>18</sup> (in Bulgarian: *Закон за здравословни и безопасни условия на труд*), the General Labour Inspectorate has specialised powers to control its implementation.

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<sup>14</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/-12262909> (accessed on 21 February 2014).

<sup>15</sup> Further information on work permits in Bulgaria can be found in Section 4.1 below.

<sup>16</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/1594373121> (accessed on 21 February 2014).

<sup>17</sup> With regard to the question on checklist or guidelines for assessing labour exploitation and/or identifying victims of labour exploitation, the interviewee replied that at a training organised by the National Commission for Combatting Trafficking in Human Beings they were given a handbook on identification of labour exploitation (as far as the respondent remembers, it was in English). In principle, however, the Labour Inspectorate follows the rights and obligations established in the labour law. [M(1)].

<sup>18</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/2134178305> (accessed on 21 February 2014).

Inspections can be carried out at any time, also outside working hours. The labour inspectors have no right to enter private homes unless the company that employed the workers is registered at a private address.<sup>19</sup> Upon inspections, the Labour inspectors speak with workers, but also ask them to fill out and sign information forms (declarations) regarding their personal data and working conditions. These documents are used as written evidence if necessary. The declarations (information forms) which the labour inspectors ask workers to fill in are also in English and Turkish language.<sup>20</sup> Labour inspectors offer initial information and assistance to workers.

The following categorisations of workers are meaningful at inspections (according to one M group interviewee):

- Workers who are country nationals/EU nationals/non-nationals – if immigrants are third country nationals, the Labour Inspectorate checks whether they have a work permit for accessing the labour market;
- Third country nationals who are legally resident/ third country nationals in an irregular situation/Asylum seekers – if the third country nationals are in an irregular situation the Labour Inspectorate will definitely have to inform the Police and the Migration authorities about them. Inspections can be carried out jointly with the Migration Directorate at the Ministry of the Interior.
- Asylum seekers are not allowed access to the labour market in Bulgaria unless the work is organised by the State Agency for Refugees. If the Labour Inspectorate detects that an asylum seeker is working without the necessary work permit, his/her employer will be sanctioned (with a fine) and eventually also the asylum seeker (Law on Asylum and Refugees, Law on Employment Promotion and Work Permit Ordinance).<sup>21</sup>
- Legally employed/not legally employed – if the persons are not legally employed, the Labour Inspectorate issues an act to establish an administrative offense. If the immigrant has a right to work, but the employer has not concluded a labour contract with him/her, the Labour Inspectorate can issue a decree under Article 405a of the Labour Code, which has the force of a labour contract.

According to Article 78a (2) of the Law on Employment Promotion, the Labour Inspectorate is the competent body to identify and assess the areas of high risk for incidents of labour exploitation. Each year the General Labour Inspectorate adopts annual plans where the economic sectors on which priority will be given in inspections are stated.

At the interview it has been noted that the general workload of the Labour Inspectorate is quite large. For example, one labour inspector has to carry out about 180 inspections per year [M(1)].

The General Labour Inspectorate Executive Agency decides on applications for permission to employ minors. According to the Labour Code, it monitors the implementation of the prohibition to employ minors without permission and the respect for the specific working conditions on child employment.

### **e) Child-specific institutions**

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<sup>19</sup> Asked specifically about domestic workers, the interviewee said that he/she was not sure how to reply. [M(1)].

<sup>20</sup> However the interviewee didn't know about information brochures of the Labour Inspectorate in foreign languages and admitted that there is room for improvement in this regard. [M(1)].

<sup>21</sup> With regard to the contentious issue whether asylum seekers have a right to work without a work permit after the elapse of the first years of their asylum procedure, see the discussion below at Section 4.1.

Specialised child-specific-institutions exist both at central and local level in Bulgaria. At central state level, the institution primarily tasked to carry out the State policy and intervene in cases of child exploitation is the State Agency for Child Protection - SACP (in Bulgarian: *Държавна агенция за закрила на детето*).

There are two children-specific referral mechanisms in Bulgaria, in which the leading role belongs to the State Agency for Child Protection.<sup>22</sup> SACP does not have the legal right to enter private homes, but inspects schools, hospitals and other public institutions. In most of the cases inspections are based on received signals from other institutions, the media or citizens [M(1)].<sup>23</sup>

At local level, the Agency for Social Assistance (*Агенция за социално подпомагане*) at the Ministry of Labour and Social Policy has Child Protection Units at each municipality. When there is a signal for any exploitation or violation of the rights of a child, the social workers have to prepare their reports and evaluations, and to recommend measures to be taken by police or judicial authorities [L(1)].

Besides its Child Protection Units, the Agency for Social Assistance has a general role in the implementation of the Law on Social Assistance<sup>24</sup> (*Закон за социално подпомагане*), where lack of sufficient subsistence resources is a decisive criterion for qualification.

The Agency for Social Assistance does not have a checklist or guidelines for assessing labour exploitation and/or identifying victims of labour exploitation [S(1)]. Some social workers speak English, but in all other cases, foreign nationals are expected to be helped with translation by a relative or friend [S(1)].

### **3.1.2. Governmental institutions specialised in immigration and asylum law**

**a) Migration Directorate (*Дирекция „Миграция“*) at the Ministry of the Interior (*Министерство на вътрешните работи*).**

The Director of the Migration Directorate is the main body competent to decide on the residence and to impose coercive administrative measures (such as return and detention orders) under the Law on Foreign Nationals in the Republic of Bulgaria<sup>25</sup> (*Закон за чужденците в Република България*) and the Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family<sup>26</sup> (*Закон за влизането, пребиваването и напускането на Република България на гражданите на Европейския съюз и членовете на техните семейства*).

**b) State Agency for Refugees (*Държавна агенция за бежанците*)**

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<sup>22</sup> See Section 4.3. below.

<sup>23</sup> For example, one S group respondent [S(1)] told that their NGO has informed SACP with the request to speak to parents who have allowed their children to work.

<sup>24</sup> Available in Bulgarian language at <http://lex.bg/bg/laws/ldoc/2134405633> (accessed on 21 February 2014).

<sup>25</sup> Available in Bulgarian language at <http://lex.bg/bg/laws/ldoc/2134455296> (accessed on 21 February 2014).

<sup>26</sup> Available in Bulgarian language at [www.lex.bg/bg/laws/ldoc/2135535758](http://www.lex.bg/bg/laws/ldoc/2135535758) (accessed on 21 February 2014).

The Head of the State Agency for Refugees (SAR) is the decision-making body on applications for refugee and subsidiary protection status in Bulgaria. Furthermore, it is the body responsible for the reception conditions of asylum seekers. According to the Law on Asylum and Refugees<sup>27</sup> (*Закон за убежището и бежанците*), SAR disposes of Integration Centres, which tasks are to “provide training in Bulgarian language, vocational training and other activities necessary for the integration of foreigners seeking or having received protection in the Republic of Bulgaria”.

Currently the Government discusses the new Integration Program, which shall regulate the procedure to assist refugees to find work and to provide them information about Bulgarian labour legislation and rights of workers.

SAR does not have a checklist or guidelines for assessing labour exploitation and/or identifying victims of labour exploitation. The interviewee believes that it will be useful for SAR to have it. [S(1)]

### **3.1.3. National human rights institutions**

#### **a) National Commission for Combatting Trafficking in Human Beings** (*Национална комисия за борба с трафика на хора*)

The National Commission’s competences are stipulated in Article 7 of the Law on Combating Trafficking in Human Beings<sup>28</sup> (*Закон за борба с трафика на хора*). It works to prevent trafficking in human beings and to protect, assist and reintegrate victims of trafficking. It manages and supervises the activities of the Local Commissions for Combating Trafficking in Human Beings and the centres for protection and support of victims of trafficking. The Commission drafts and proposes an annual programme to the Government,<sup>29</sup> and determines the priorities in this line of work. It carries out preventive and awareness-raising campaigns on the subject; training sessions for employees who exercise preventive and counteractive functions in terms of human trafficking and for other individuals (e.g., teachers, social workers). It also registers individuals and legal entities that provide shelter to victims of trafficking.

The National Commission for Trafficking in Human Beings is a collective body, with 12 Ministries and institutions as its members. They are listed in Article 4, paragraphs 2 and 3 of the Law on Combatting Trafficking in Human Beings. These are the vice-ministers or vice-heads of the following institutions: the Ministry of Foreign Affairs, the Ministry of Labour and Social Policy, the Ministry of Interior, the Ministry of Justice, the Ministry of Health, the Ministry

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<sup>27</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/2135453184> (accessed on 21 February 2014).

<sup>28</sup> Available in English language at [www.antitrafficking.gov.bg/en/2011-12-15-11-21-11/legislation](http://www.antitrafficking.gov.bg/en/2011-12-15-11-21-11/legislation). (Accessed on 21 February 2014).

<sup>29</sup> Every year the Government (Council of Ministers) adopts Annual National Programmes for preventing and combating trafficking in human beings and protection of its victims. The annual programmes are drafted by the Commission for Combating Trafficking in Human Beings. In these programmes prevention is always a priority, as well as protection of victims. The last year’s annual programme also added a section on analysis and statistical data gathering. Trainings for experts and professionals who could have direct contact with victims and potential victims have also been a priority in the last annual programme. Furthermore, in relation to labour exploitation, activity 1 in the section on prevention includes conducting an informative campaign for preventing trafficking for labour exploitation. [N(1)].

of Education, Youth and Science, the State Agency “National Security”, the State Agency for Child Protection, the Central Commission for Combating Juvenile Delinquency, the Supreme Court of Cassation, the Supreme Prosecutor’s Office of Cassation, the National Investigative Service.

NGOs and international organisations are members of the *permanent working group at the National Commission* at the expert level. Cooperation with other stakeholders is at the heart of the functions of the National Anti-Trafficking Commission.

**b) Commission for Protection against Discrimination** (*Комисия за защита от дискриминация*)

The functions of the Commission are to monitor compliance with the prohibition of discrimination and equal treatment in employment and working conditions. The anti-discrimination body does not carry out direct inspections in this regard, but under the Law on Protection against Discrimination<sup>30</sup> (*Закон за защита от дискриминация*) it receives complaints by employees who have been discriminated against at the workplace. The Commission offers independent advice and investigative assistance, issues binding appealable decisions and instigates its own proceedings and investigations. It can also submit legally binding recommendations to the parliament and government. If victims cannot take the case themselves, they can look to NGOs for support.<sup>31</sup> Since 2009, the Commission for Protection against Discrimination, together with the Employment Agency, has conducted information campaigns to popularise the rights of migrant employees. [M(1)]

Everyone can submit an appeal before the Commission, regardless of nationality and residence status. All the procedures however are in Bulgarian. The submitted documents must be translated into Bulgarian too. [M(1)]

During the focus group discussion, an NGO representative of group S [S(1)] shared that in their experience, victims of exploitation get in touch either with the Commission for Protection against Discrimination or with the Ombudsman.

**c) Ombudsman of the Republic of Bulgaria** (*Омбудсман на Република България*)

The Ombudsman intervenes when human rights and freedoms are violated by an action or inaction of the state and municipal authorities and their administrations, as well as by entities entrusted with the provision of public services. The means for intervention are envisaged in the Law on the Ombudsman<sup>32</sup> (*Закон за омбудсмана*). The Ombudsman has no power to revoke administrative acts. Their task is through the power of the arguments and equitable public opinion to persuade an administrative body to correct its maladministration or to repeal its acts if they infringe human rights. The Ombudsman cannot represent persons in court and cannot pursue cases on their behalf.

**d) State Agency for Bulgarians Abroad** (*Държавна агенция за българите в чужбина*)

The main point of relation of the work of the State Agency for Bulgarians Abroad (SABA) to labour exploitation of migrant workers is the work they carry out with Bulgarian communities

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<sup>30</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/2135472223> (accessed on 21 February 2014).

<sup>31</sup> Source: MIPEX [www.mipex.eu/bulgaria](http://www.mipex.eu/bulgaria).

<sup>32</sup> Available in Bulgarian language at [www.lex.bg/bg/laws/ldoc/2135467520](http://www.lex.bg/bg/laws/ldoc/2135467520) (accessed on 21 February 2014).

abroad. According to one interviewee [L(1)], in cases of problems that Bulgarians experience abroad, including their labour relations, their first reaction is to search for help from SABA where they receive information on how to protect their rights. SABA refers persons to the competent institutions.

### **3.1.4. Police and law enforcement bodies**

#### **a) General Directorate 'National Police' (Главна дирекция "Национална полиция") at the Ministry of the Interior**

Police officers are mandated to carry out the initial investigation of crimes. They have general protection powers with regard to victims. Legal regulation of their powers is mainly in the Law on the Ministry of the Interior<sup>33</sup> (*Закон за МВР*) and the Code on Criminal Procedure<sup>34</sup> (*Наказателно-процесуален кодекс*).

#### **b) State Agency for National Security (Държавна агенция за национална сигурност)**

The relevance of the Agency to the study concerns its tasks to counteract organised crime. At its General Directorate on fight against organised crime there is a "Human Trafficking" Unit.

At the focus group discussion, participants were informed by persons from professional groups N and P that currently a reorganisation is under way and it is expected that there will be a "Human Trafficking" Unit at the General Directorate 'National Police' at the Ministry of the Interior.

#### **c) General Directorate 'Border Police' (Главна Дирекция „Гранична полиция“) at the Ministry of Interior**

It is a specialised police force to guard the border and control the observance of the border regime. Its functions aim to prevent illegal border crossing and human trafficking and the use of false identity documents for that purpose. The powers of the Border Police are regulated by the Law on the Ministry of the Interior. The institution is an active participant in the referral mechanism for victims of human trafficking.

#### **d) National Revenue Agency (Национална агенция за приходите)**

In general, the National Revenue Agency (NRA) is the taxation authority in Bulgaria. The legal basis for NRA's mandate is the Code on Taxation and Social Security Procedure<sup>35</sup> (*Данъчно-осигурителен процесуален кодекс*). NRA deals with non-compliance with tax or social security obligations in relation to the employment relationship.<sup>36</sup> Furthermore, the labour legislation (Art.62 of the Labour Code) requires that each employer in Bulgaria submits notification to NRA with information about the concluded labour contract within three days from its conclusion before the worker starts work. In order for a person to be lawfully employed, his/her labour contract should be declared at NRA by the employer. NRA stores that

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<sup>33</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/2135516991> (accessed on 21 February 2014).

<sup>34</sup> Available in English language at: [www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation](http://www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation). (Accessed on 21 February 2014).

<sup>35</sup> Available in Bulgarian language at <http://www.lex.bg/bg/laws/ldoc/2135514513> (accessed on 21 February 2014)

<sup>36</sup> For example, NRA often comes across forced payment of lower social security instalments at the size of the minimum contribution threshold as employers declare lower salary than the actual one or limited working time than the actual one. [P(1)].

information, but most use of it is made by the Labour Inspectorate, which also has access to it. NRA and the Labour Inspectorate carry out joint inspections of employers.

With regard to Bulgarian workers in another EU Member States, the mandate of NRA concerns both employed workers (i.e., the implementation of the EU regulations regarding the coordination of social security schemes, mainly with regard to health insurance and retirement pensions) and posted workers (NRA provides permission to Bulgarian companies that send posted workers to another EU Member State).

NRA also cooperates with the Prosecution Office with regard to criminalized forms of tax and social security evasion and non-payment.

According to the Code on Taxation and Social Security Procedure, NRA is allowed access only to offices/places of work. Access to private homes is explicitly prohibited without any exceptions to the ban. Inspections at offices/places of work can be carried out at any time, including outside working hours and during holidays.

### **3.1.5. The prosecution, the courts and the legal aid providers**

#### **a) The Prosecution Office** (*Прокуратура на Република България*)

It is responsible for pre-trial investigation, initiating criminal charges and maintaining them in court. The legal regulation of its powers is mainly in the Code on Criminal Procedure.

#### **b) The courts**

**Administrative Courts** are competent in administrative-criminal justice under the Law on Administrative Infringements and Punishments<sup>37</sup> (*Закон за административните нарушения и наказания*) in cases of infringement of laws. In relation to labour exploitation of immigrants, administrative courts examine *inter alia* the following cases:

- Cases relating to residence permits of immigrants under the Law on Foreign Nationals in the Republic of Bulgaria; often there is dependency of the residence permit on the work permit;
- Cases involving sanctions imposed on employers for infringements of their labour law obligations; The majority of cases in this regard concern unlawful employment of immigrants without a work permit;
- Cases on disguised activity of employment and recruitment agencies carried out without meeting the legal requirements and obtaining a license;
- Tax cases of the National Revenue Agency – for example, in relation to issues of posted workers. [J(1)]

**The Criminal Divisions of courts** [J(1)] adjudicate with regard to crimes in accordance with the Criminal Code.

**The Civil Law Divisions of courts** [J(1)] adjudicate with regard to labour law claims such as ones for back pays under the Labour Code. According to one respondent [J(1)], indirectly the court promotes the rights of workers, including migrants, because it monitors for the law enforcement and helps realization of their rights.

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<sup>37</sup> Available in Bulgarian language at [www.lex.bg/bg/laws/ldoc/2126821377](http://www.lex.bg/bg/laws/ldoc/2126821377) (accessed on 21 February 2014).

### **c) National Bureau for Legal Aid (Национално бюро за правна помощ)**

The National Bureau for Legal Aid is the institution which under the Law on Legal Aid<sup>38</sup> (*Закон за правната помощ*) grants legal assistance to persons who are unable to afford to pay for a lawyer.

#### **3.1.6. Support organisations: NGOs, trade unions and missions of international organisations in Bulgaria**

These support organisations have a key role in prevention of abuses and assistance to migrants who are victims of severe forms of labour exploitation. They are often the first ones to encounter and understand the problems. However as they do not form part of the institutional framework in the country, information about them is not included in this section of the report. The input from their participation in the study was of great value and is integrated throughout the report.

#### **3.1.7. Cooperation with other institutions**

Asked about **cooperation with other institutions** when addressing labour exploitation of migrant workers, most interviewees replied that it is active and effective [M(5); S(3); W(1); P(1)]. Three former agreements for cooperation were described by respondents during the fieldwork research: agreements of the Employment Agency with the Labour Inspectorate and with the State Agency for Refugees [M(1)], as well as a tripartite agreement between the National Revenue Agency, the Labour Inspectorate and the National Social Security Institute [P(1)].

Voices of criticism were rare and concerned difficult identification of and access to officials from the institutions that are assigned to work on the issues [S(2)]. Interviewees from the State Agency for Child Protection [M(1)], the Border Police [P(2)], the Prosecution [J(1)] and a judge [J(1)] claimed that there was room for improvement in the cooperation with their national counterparts in other Member States of the European Union. One interviewee [S(1)] had experience difficulties in cooperation on the issues with the competent institution arising from lack of experience by the Bulgarian partner in the problems of severe forms of labour exploitation of migrants.

A respondent from professional group M recommended enhanced cooperation with [N(1)] in Bulgaria and gave as example the help provided by trade unions in other EU countries, such as, e.g., the trade union of transport workers in the Czech Republic that helped Bulgarian workers there.

An interviewee from group S was very positive about the cooperation between their centre and the public institutions in their region. The respondent further noted the importance of social capital (close informal relationships between people working in the centre and migrant employees in private entities) for effective work on prevention of labour exploitation. It created more trust in the working process.

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<sup>38</sup> Available in Bulgarian language at [www.lex.bg/bg/laws/ldoc/2135511185](http://www.lex.bg/bg/laws/ldoc/2135511185) (accessed on 21 February 2014).

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

It should be noted that – after the explicit introduction to the topic and the definitions made at the beginning of the interviews – most of the *government* interviewees still assumed that the questions about severe forms of labour exploitation of migrants encountered by their institution referred to Bulgarian nationals working abroad. Hardly any of them had experience with migrant workers in Bulgaria.

An interviewee from the Labour Inspectorate, which is the most important institution with regard to inspections on compliance with workers' rights, said that their institution has not come across any of the listed forms of labour exploitation, although the respondent remembered cases that concerned Bulgarian workers in other EU Member States. The respondent [M(1)] reasoned their answer with the following arguments:

*"We as a nation are extremely tolerant. That is, we don't have an attitude towards third country nationals to believe that they are anything less from us, that we can treat them as slaves or humiliate them, etc. Basically we Bulgarians are open-minded people." In Bulgarian: „Ние като нация сме изключително толерантни. Тоест, нямаме никакво отношение към граждани на трети страни да смятаме, че са нещо по-малко от нас, че можем да се държим с тях като роби, да ги унижаваме и т.н. По принцип ние българите сме широкоскроени хора.“*

Similarly, a second M-group respondent who provided very detailed information about severe forms of exploitation of Bulgarian workers in other Member States, said that their institution has never had a case of foreign worker filing a complaint or signalling for labour exploitation in Bulgaria. The respondent added that - if such cases appear, language barriers will pose a problem.

The fact that cases of severe forms of labour exploitation of migrants in Bulgaria do not yet reach the competent national institutions is reflected also in the case studies that were collected during the fieldwork research. Only two out of ten case studies concerned migrant workers in Bulgaria, while the rest of them concerned Bulgarian workers in other Member States. In both cases of labour exploitation of immigrants in Bulgaria, victims did not succeed in accessing justice and their cases were not known to institutions.

With regard to severe forms of labour exploitation of migrants in Bulgaria, there is a sharp contrast however between the experience of governmental bodies and other stakeholders. It is especially evident in the fieldwork research findings with regard to the issue of exploitation of child labour. On the one hand, a respondent [M(1)] said that their institution has never come across any case of severe forms of labour exploitation of children. The same was confirmed by professionals in other interviews [M(2); N(1); L(1); E(1); S(3)]. One professional [J(1)] said that prevention of exploitation of child labour is a priority, but doesn't know of such cases.

On the other hand, other professionals [S(4); L(1); W(1)] highlighted that exploitation of child labour is one of the most frequent severe forms of labour exploitation of migrants in Bulgaria. One respondent [S(1)] said that its organisation has come across cases of children girls

between 14-18 years of age working in the kitchen of restaurants instead of going to school (allegedly with the agreement of the parents). Another S-group respondent pointed out that there are refugee children in Bulgaria who work under very hard working conditions. The respondent's organisation works on prevention with minors who have no parental support and thus easily become victims of labour exploitation. These asylum seeking children receive only 65 BGN per month (33 euro) by the Bulgarian state and that is the reason why many of them begin working for someone who normally is from their country of origin. The practitioner [S(1)] claims that in Bulgaria there is no effective mechanism for protection of child victims of labour exploitation and of unaccompanied refugee children in general. A respondent [S(1)] even said that child exploitation is not controlled effectively, and talked about this in the context of corruption.

Against the background of the above information, here is a summary of the replies provided at the individual interviews and the focus group discussion:

### **a) Forms of labour exploitation**

**Trafficking for labour exploitation** was most frequently highlighted by interviewees (in 17 interviews). In seven of the interviews it was mentioned along with forced labour, including bonded labour (code 02). A respondent [J(1)] noted that usually these are cases of Bulgarian citizens working in other EU countries when they are forced to work for the money that the employer had previously paid to the person (trafficker) who has brought them to work for the employer. In one of the interviews [R(1)] an example was given concerning Moldovan seasonal workers who had been trafficked for labour exploitation at the Bulgarian Black seaside.

**Forced labour and debt bondage** were most frequently witnessed by professionals from group S who have experience with foreign nationals in Bulgaria. One respondent [S(1)] referred to two cases: one concerning a worker in a restaurant who was kept locked away in the basement; another about a person working for a trading firm who was kept in the back room to put goods in order and was not allowed to go out for a couple of months. Both were asylum seekers –one Iraqi, the other Palestinian. One respondent [S(1)] claimed that debt bondage happens in cases where migrant workers do not have enough money to move to another country or to pay the traffickers. As a result of this, they borrow money and are later forced to work and pay back the amount borrowed. A professional [S(1)] stated that they knew of groups of refugees or asylum seekers who are being transferred to countries in Western Europe (Belgium, Germany) for work – against certain payment. The jobs they go for in Western Europe are done illegally. According to the interviewee, such arrangements of working without contracts hide high risks of not being paid and entering into exploitative situations.

**Exploitation of child labour** was pointed out by six interviewees. A professional [S(1)] said that child exploitation is a widespread phenomenon and one of the most serious problems nowadays. For further details on this form of exploitation, please see above.

**Exploitation of a migrant worker under particularly exploitative working conditions** was also mentioned by six interviewees. In all but one of the interviews, the respondents referred to Bulgarian workers in another Member State. A respondent [M(1)] gave an example of good practice of cooperation between institutions in Member States and adequate follow-up by

Bulgarian institutions. The case concerned Bulgarian citizens who were sent by a Bulgarian intermediary firm to collect strawberries in the United Kingdom. Once there, these workers were made to live in extremely bad conditions without any sanitary facilities against very low payment that was not sufficient to cover even their food needs. The case was identified by the English Employment Inspectorate and taken to the attention of the Bulgarian Ministry of Labour and Social Policy (MLSP) through the British Embassy. The case made by the British side was that the Bulgarian MLSP had to exert stricter control over the Bulgarian intermediary firms for hiring of workers abroad in order to prevent such cases of labour exploitation.

**Slavery** was mentioned by the representative from a trade union [W(1)] and by an NGO providing assistance to victims of trafficking [S(1)].

## **b) Most frequent occupations and economic sectors**

With regard to Bulgaria, interviewees often noted that there are preconditions for labour exploitation in the occupations and economic sectors that they highlight, but they have not come across severe criminal forms of labour exploitation. For example, a respondent [L(1)] explained about encountered cases of irregular immigrants in the construction business in Bulgaria being forced to conclude contracts that were not in the right legal form – the contracts were not concluded as labour contracts according to the Labour Code, but as civil contracts. Such a situation put the migrant workers in a vulnerable situation, but is not by itself counted as a severe form of labour exploitation.

With regard to the occupations of exploited migrant workers, almost all interviewees most frequently referred to unskilled workers such as labourers, unskilled construction workers, sewers/ tailors in clothing factories, car washers. Next in succession, 13 interviewees pointed to service occupations, in relation to work in restaurants and kitchens in Bulgaria and Bulgarian domestic workers in other EU Member States. Twelve interviewees pointed to farm workers, mainly pickers of fruits and vegetables. Although only 5 interviewees mentioned semi-skilled workers as being most at risk, it is noteworthy that their concrete answers coincided and complemented each other with regard to Bulgarian bus drivers in other EU Member States that worked there as posted workers, as well as semi-skilled construction workers [L(1); W(1); M(1); J(2)]. Three interviewees pointed to sales occupations such as shop assistants and one interviewee [L(1)] pointed to code 08 with regard to interpreters and translators.

The three main **economic sectors** mentioned by interviewees in Bulgaria are as follows:

- 1) Construction, including construction of buildings and building completion and finishing;
- 2) Agriculture and forestry, including animal production, growing of fruits and vegetables, and logging;
- 3) Accommodation and food service activities, including maids in hotels, restaurants activities and beverage serving activities. This sector was particularly highlighted by professionals who have experience working with immigrants in Bulgaria.

Four interviewees pointed to the sector of Freight transport by road and removal services, while two interviewees mentioned the sector of Manufacture and wearing apparel.

With regard to the domestic services sector, one S-group expert noted that Bulgarian women who go to work as 'au-pairs' in the United Kingdom are particularly vulnerable. With regard to domestic workers in Bulgaria, however, no exploitation has been detected. Interviewees [S(2)] explicitly stated that they know of women who work as domestic workers, but they have never complained of the conditions and are apparently rather satisfied with the setting.

In comparison with all the above data, according to an official reply provided by the General Labour Inspectorate Executive Agency on 12 March 2013 early on in the project, the areas of high risk of labour exploitation in Bulgaria are construction, trade business, agriculture, construction of vehicles (excluding automobiles), extraction of oil and gas and overland transport.

## 4. Risks and risk management

### 4.1 Identification of common risk factors for labour exploitation

The key common risk factor that could be identified from the fieldwork research in Bulgaria relates to the structural vulnerability of migrant workers when they have no legal access to the labour market. This could entail work as self-employed, work with a civil law contract or without a contract at all. A respondent from professional group M phrased it in this way:

*“In the countries, where employing migrant workers is forbidden due to various reasons and there are encumbrances for the employers, the circumvention of these prohibitions leads to lower wages and higher exploitation. As a general rule, the lack of formal frame of the employment relationship leads to many problems and of course to exploitation.”* In Bulgarian: *“В страните, където е забранено наемането на работници мигранти, поради различни причини и има утежнения за работодателите, заобикалянето на тези забрани води до по-ниско заплащане и до по-висока експлоатация. По принцип липсата на формално оформяне на трудовите взаимоотношения води до много проблеми и разбира се експлоатация.”*

Lack of access to the labour market could be due either to irregular residence status or to the requirement for a work permit for lawfully residing immigrants.

Therefore, in the first place, irregular residence status is a risk factor for severe forms of labour exploitation in itself.<sup>39</sup> In this relation, respondents [L(1); S(1)] explained that even though migrant workers do not have right to work, many of them have no other choice but to work. Migrants in such condition are willing to compromise their rights and to work without valid contracts. According to the interviewees, it also puts the employer in a difficult situation as well, as in such cases both parties are in violation of the legislation if they conclude a labour contract. Employers, when knowing that the migrant does not have a choice, offer lower wages or worse conditions of work, for which they know they will receive the same work volume and result for lower price:

*“The lack of legal status makes migrant workers extremely vulnerable to labour exploitation”* In Bulgarian: *“Липсата на легален статут прави хората безкрайно уязвими за трудова експлоатация”* [S(1)].

Respondents [J(2); L(1)] also noted that this situation adds both to the dependency of the migrant worker on the employer and to his/her invisibility. One interviewee [L(1)] explained that when the migrant is undocumented, he/she will try to escape any form of contact with institutions or authorities at any cost. Such migrants themselves are in a situation of hiding and preventing publicity.<sup>40</sup>

*“As a whole, the problem is how they can protect their rights, because these people do not address their complaint; neither to us nor to another institution which can protect their rights.”* In Bulgarian: *“Кое то пък е проблем въобще за начина, по който те могат*

<sup>39</sup> This was explicitly highlighted by interviewees [L(1); S(2); J(1)].

<sup>40</sup> For further information on this point, see Section 4.3. below.

да си защитят правата, защото такива хора обикновено не ни сезират нас, нито друг орган, който да им защити правата...” [J(1)]

Secondly, the lack of access to the labour market in Bulgaria could be due to the requirement for a work permit for lawfully residing immigrants. According to the so-called ‘labour market test’ in Bulgaria, access to the Bulgarian labour market is granted to third country nationals only if their prospective employer proves that no other Bulgarian or EU national or other permanent status holder living in Bulgaria is able to perform the job. Thus foreign nationals with a ‘continuous’ residence permit (with a renewable term of up to one year) in principle do not have free access to the Bulgarian labour market.<sup>41</sup> They need a work permit by the Employment Agency, which is issued only if their prospective employer manages to pass the labour market test.

The fieldwork research however revealed that the competent institutions to grant and inspect work permits for foreign nationals in Bulgaria, namely the Employment Agency and the Labour Inspectorate, respectively, see the labour market test as a method for prevention of labour exploitation. A respondent [M(1)] explained that during the application procedure for a work permit, the employer goes through many checks and has a high standard of proof to meet. Therefore, *“We consider this procedure enough to prevent labour exploitation. For this reason we have no signals because still at the time of application we regulate the labour terms and conditions concerning the foreigner.”*<sup>42</sup> One respondent [M(1)] claimed the following:

*“If he has a work permit, I don’t think that there will be labour exploitation. If he has no work permit, he simply has no right to do this job”.* In Bulgarian: „Ако има разрешение за работа, не смятам, че ще има трудова експлоатация. Ако няма разрешение за работа, той просто няма право да извършва тази работа.“

The issue was suggested as a contentious one for discussion during the focus group, during which one expert [S(1)] stated that asylum seekers in Bulgaria were more vulnerable during the period of time when they have no access to the labour market. Another participant [N(1)] made a parallel with Bulgarian citizens who fell into the grey economy of Member States that applied transitional restrictions for access to the labour market by Bulgarians:

*“This is definitely not a prevention measure. On the contrary. They become even more stigmatized. And then these “saviours” and traffickers appear – regardless whether it is about labour or sexual exploitation – and they say: “I will arrange it for you, I am already registered, I can help you”. This is a vicious circle.”* In Bulgarian: “Това определено не е мярка за превенция, дори напротив. Те биват още повече стигматизирани. Там се появяват едни спасители, трафиканти, независимо дали става въпрос за сексуална или трудова експлоатация, и така „Аз сега ще те уредя тебе, аз съм вече регистриран, ще ти помогна. Това е един порочен кръг.”

It is noteworthy that the same was repeatedly highlighted by one S-group interviewee [S(1)]. In relation specifically to the restrictions for Bulgarian workers in place in some EU Member

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<sup>41</sup> Because of the these restrictions on access to the labour market, the predominant work profile of the immigrant in Bulgaria is one of running a small family business or direct foreign investments. Further discussion on the work permit requirements under Bulgarian law is provided below in Section 4.1.

<sup>42</sup> In Bulgarian: “Чрез тази процедура се счита за свършена работата да не се стига до трудова експлоатация. Затова нямаме сигнали, защото още на етап кандидатстване за нас е ясно дали условията на труд са уредени относно този чужденец.” [M(1)].

States until 31 December 2013, the respondent stated that the model in itself makes workers from these nationalities vulnerable as they are initially in a disadvantaged position by law: “I’m fully convinced from my experience that the current model adds risk (for exploitation)”. In Bulgarian: “Аз съм напълно убеден от моята практика, че в момента моделът създава предпоставки”.<sup>43</sup>

An additional contentious issue discussed at the focus group was the interpretation of Article 29(3) of the Law on Asylum and Refugees<sup>44</sup> (*Закон за убежището и бежанците*), according to which asylum seekers have the right of access to the labour market if the procedure for status has not ended within one year from the date when the asylum application was submitted due to reasons beyond their control. Some of the respondents from the individual interviews interpreted it as meaning that after this first year asylum seeker had a right only to apply for a work permit [M(2)], while others believed that after the first year asylum seekers had access to the labour market without the need for a work permit [S(2); J(1)]. During the focus group discussion a respondent [M(1)] said that since asylum seekers were third country nationals, they had to go through the labour market test and obtain a work permit in order to be able to access the labour market. At the same time, another expert [S(1)] said that they did not know of a single case in which an asylum seeker applied and received a work permit.

The rest answers of participants in the fieldwork research with regard to risk factors are summarized below:

### **1) Legal and Institutional Setting**

The three main factors pointed by interviewees are:

#### **a) Low risk to offenders of being prosecuted and punished and Low risk to offenders of having to compensate exploited migrant workers**

These two factors were equally important and relevant for almost all of the interviewees<sup>45</sup>.

One respondent [S(1)] explains that there is a sense of understanding among the Bulgarian employers that if they exploit someone who is from a different country they would not be punished because the migrant would not know how to access the institutions responsible for labour exploitation. The respondent claims that Bulgarian employers are much more careful with Bulgarian workers because they know that they would probably refer the institutions for labour exploitation.

#### **b) Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs**

This factor was pointed out by sixteen interviewees from professional groups M, L, N, S, W, E and J.

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<sup>43</sup> The same has been confirmed by one interviewee [L(1)] who pointed out that foreign nationals of Bulgarian origin were granted immediately permanent residence in Bulgaria and thus they did not need to obtain a work permit in order to work. Therefore they had special advantage in regard to their right to work in Bulgaria in comparison with the rest of the foreigners. This was emphasised by the interviewee as a specific factor to be taken in consideration for the purpose of the research.

<sup>44</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/2135453184> (accessed on 24 February 2014).

<sup>45</sup> Mentioning of them lacks in only three interviews: [M(1); J(1); W(1)].

Following the line of thought of the previous risk factors, one S-group expert said that the lack of institutions effectively monitoring the situation is actually the cause of the employers' attitude that they will not be punished.

Another interviewee [J(1)] raised as an issue whether the Labour Inspectorate has sufficient human resources capacity in order to carry out effective monitoring.

### **c) Corruption in the police or parts of the administration**

This factor was mentioned mainly in relation to Bulgarian workers in other Member States [M(1); J(1)], but also with regard to Bulgarian institutions [L(1); S(1)].

A respondent [J(1)] referred to a case of severe labour exploitation in Greece. In that case, one of the women workers went to the police and made a complaint. After that, policemen came to the farm and it turned out that they were in close familiar relations with the employer. The policemen threatened the workers that if they continued to lodge complaints, they would be expelled from the country.

Another risk factor mentioned by an interviewee [S(1)] is the *“generally bad schooling system, as there are no consequences if a child does not go to school and it often happens”*. This was observed by the respondent mainly with regard to Roma people in Bulgaria.

## **2) Personal characteristics and the initial situation of the migrant worker**

### **a) Worker has experienced extreme poverty at home**

Almost all interviewees pointed this out as a risk factor. Most of them referred to Bulgarian workers in other Member States.

Thus during the focus group discussion, one participant [P(1)] gave the example that nobody is going to complain that they were given three instead of ten Euro per hour; this is because in Bulgaria they could not earn that much.

Interviewees saw poverty as a great “push factor” (in the words of one respondent [W(1)]. A respondent [N(1)] shared:

*“We observe that if one lives in extreme poverty he/she is more likely to accept any job offer without a contract or labour conditions.”* In Bulgarian: *“Ние наблюдаваме, че ако живее в крайна бедност въпросното лице е по-склонно да приеме каквото и да е предложение за работа, без договор и условия на труд.”*

Two respondents [M(1); S(1)] highlighted the relationship between poverty and lack of accommodation when some migrant workers become dependent on the people who have hired them and provide a living space for them.

An expert from professional group J noted that even if a person is aware of his/her rights, they may well accept a job which violates his/her labour rights in order to work and earn a living.

### **b) Migrant worker has a low level of education (code 01)**

Almost all interviewees pointed to this risk factor as well. A respondent [N(1)] phrased it in this way:

*“Lower degrees of education facilitate unskilled labour in high-risk areas such as construction, agriculture...”* In Bulgarian: *„По-ниският образователен ценз благоприятства за по-ниско квалифициран труд във високорискови области като строителство, селско стопанство ...“*

One interviewee from professional group M claimed that Bulgarian citizens leave to work in other EU states without being properly informed and without caring to have such information. According to the respondent, what is important for them is that they get jobs, as in Bulgaria they are unemployed or with low incomes.

Many interviewees [M(2); N(1)] explained that the risk factor “low level of education” is also understood to mean lack of social experience and lack of information about the ways for legal migration and work. Some respondents also phrased the risk factor as ‘*lack of information*’ that is available and accessible to migrant workers in Bulgaria [R(1)]. The fieldwork research as a whole has revealed that in principle a specific *institutional* risk factor for Bulgaria is lack of information on migrant workers’ rights and on the way to exercise and defend them.

### **c) Migrant is not allowed to enter into employment (code 03)**

*Please see the key point on access to the labour market at the beginning of the section.*

With regard to the remaining risk factors, it is noteworthy that one interviewee [S(1)] mentioned the factor ‘worker is prone to discrimination’, saying that many of the migrant workers coming from sub Saharan Africa are subjected to labour exploitation and discrimination in Bulgaria because there is racism among the Bulgarian employers.

With regard to other risk factors pointed out by the interviewees under this heading:

- a respondent [M(1)] pointed to starting work at a lower position than one’s qualification due to difficulties with legalization of diplomas and documents proving qualification, or lack of such documents, especially in case of refugees;

- another respondent [N(1)] highlighted the fact that people lose their sensitivity about exploitation and violence and get used to it. Sometimes this comes from their family origin and the social and work environment: *“People have somehow grown accustomed to exploitation and violence as well.”* In Bulgarian: *“Хората някакси вече са нормализирали експлоатацията и насилието също така.”*;

- two respondents [J(1); W(1)] pointed to “residence in smaller villages”. The J-group expert clarified that in smaller villages the labour market is more limited and people there are more trusting.

### **3) Situation of migrant workers at their workplace** (question 22 from the Guide)

The majority of interviewees have pointed as risk factors under this heading;

- the migrant works in a sector of the economy that is particularly prone to exploitation;
- the migrant works in relative isolation with few contacts to clients or to people outside the firm;
- the migrant is a seasonal worker.

These answers were seen as self-evident by interviewees.

Seventeen interviewees also highlighted the following factor: the migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed.<sup>46</sup> Some respondents pointed it as a risk factor that pertains to specific occupations and economic sectors. For example, with regard to the domestic service sector and the so-called *au-pairs*, a respondent [S(1)] stated: *“Bulgarian mediators make people to be self-employed and when women come to work the responsibility lies with them, not with the employer”*. In Bulgarian: *“Български посредници карат хората да бъдат самонаети и когато жените дойдат да работят, цялата отговорност лежи върху тях, а не върху фирмата”*

Five interviewees<sup>47</sup> pointed as a risk factor: the migrant worker is employed as a posted worker by a foreign company. The cases cited in this regard concern Bulgarian workers who are sent on false business trips as posted workers to another Member State. As explained by one respondent [M(1)], the host employer (in Western EU MS) does not pay the same salary that would be paid to country nationals and does not pay social security fees at all. According to the interviewee, this is a form of “social dumping”. The respondent recalled such cases in the sector of construction (in France and Belgium), in canning factories and international transportation (employers in Belgium and the Netherlands). Another respondent [J(1)] had encountered similar cases of Bulgarian bus drivers in other Member States. However the professional [M(1)] noted:

*“Posting workers is the form to hide abuse of labour rights, but it in itself is not the factor for labor rights abuse”* In Bulgarian: *«Командироването е формата на прикриване на злоупотребата с правата на работника, а не че то самото е фактора за нея»*

The respondent recommended explicit and detailed transposition in national law of the applicable EU regulations – for example, the requirements for sending national workers to work in another EU country as posted workers under Directive 96/71.

### **Role of recruitment agencies**

Almost all<sup>48</sup> interviewees in the fieldwork research stated that the role of recruitment agencies in creating or preventing situations of vulnerability is very important. A respondent [N(1)] noted that very often these intermediaries happen to be traffickers. At the same time, according to another respondent [R(1)], licensed agencies are one more guarantee for prevention of labour exploitation (interview 7 BG R).

The Employment Agency at the Ministry of Labour and Social Policy exercises *preliminary* control of such private agencies. Firstly, prevention takes place in the procedure for granting a license (there are checks, for example, whether the agency has office and complies with the rules in order to start working). Secondly, the recruitment agencies register sample of the labour contract in the Employment agency. The Labour Inspectorate controls the agencies *after* they start work. However inspections are done mainly after receiving a complaint, due to lack of enough labour inspectors [R(1)]. According to one M-group expert, there is a great number of registered private agencies and they cannot be regularly monitored. Their total number is 559, out of which 206 are for employment abroad. A representative from the

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<sup>46</sup> In this regard please see the key point on access to the labour market at the beginning of the section.

<sup>47</sup> Interviews with [N(1); R(1); J(2); W(1)].

<sup>48</sup> With the exception of the respondents [L(1); M(1)].

Employers' organisations noted that "*The professional level of employment agencies is very low. There is no control by the state*".<sup>49</sup>

A separate practice noted by one respondent [J(1)] was in relation to a case that involved sending Bulgarian workers to England in the form of education or traineeship. Workers signed contracts for education with the sending agency, which later on connected them with another intermediary for job seeking. The contracts provided for certain requirements from the workers (such as, e.g., working time), which if not fulfilled were related with penalties for the trainee. In spite of that, in the concrete case it had not been proven that the relationship also included intermediary/recruiting functions by the agency and therefore the sanctions were repealed by the court. However the judge noted the existence of the practices, although in the concrete case the sanctioning administrative body did not gather sufficient evidence.

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

From the fieldwork research it can be concluded that organisations that carry out prevention measures aimed to reduce the risks of labour exploitation are mainly the Employment Agency, the Ministry of Labour and Social Policy and its Offices at Bulgarian embassies in other EU Member States, the National Commission for Combatting Trafficking in Human Beings, non-governmental organisations providing support to migrants and missions of international organisations in Bulgaria such as IOM and UNHCR. The kind of prevention measures stated by the interviewees concern provision of information to workers, on a regular basis<sup>50</sup> and through ad hoc information campaigns<sup>51</sup>. However, as noted also during the focus group discussion, the measures for prevention of labour exploitation are targeting Bulgarians working abroad and not immigrants in Bulgaria. With few exceptions<sup>52</sup>, none of the interviewees were aware of any pre-departure information programmes or of mechanisms of standard-setting and accreditation at national and international level.

The National Anti-Trafficking Commission provided undertakes several measures to prevent human trafficking. In 2012 and 2013 it carried out specific campaigns to prevent trafficking of human beings for the purpose of labour exploitation.<sup>53</sup> However currently these measures are not designed to target immigrants in Bulgaria, but rather Bulgarian workers abroad.

A respondent [S(1)] shared information about a major NGO-run campaign in 2013 called "Summer Jobs"<sup>54</sup>, which focused on educating Bulgarian citizens on their rights when working

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<sup>49</sup> In Bulgarian: "Нивото на агенциите за наемане и посредничество за работа е много ниско, липсва контрол от страна на държавата".

<sup>50</sup> Interviews [M(4); S(1)].

<sup>51</sup> Interviews [N(1); S(1)].

<sup>52</sup> The respondents [S(1); N(1)] cited as pre-departure information programme the information provided by their institutions to Bulgarian (potential) workers.

<sup>53</sup> Report submitted by the Bulgarian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)2 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 27 January 2014, available at [www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/Country\\_Reports\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/Country_Reports_en.asp) (accessed on 24 February 2014), pp.17-18.

<sup>54</sup> More information is available at [www.summerjobs.bg](http://www.summerjobs.bg).

abroad and the dangers they might meet there. The campaign was promoted at the biggest work fairs throughout Bulgaria.

Promising practice

### Checklist to identify and prevent labour exploitation

The labour attaché at the Bulgarian embassy in London has drafted a list of risk factors, which, if present, indicated that the person might be a victim of labour exploitation. The list is published on the web site of the Office for Labour and Social Affairs, as a section in the Information Slot "Life and Work in Britain". The information reads the following (the original text is in Bulgarian language; below is researcher's translation):

*"Trafficking for labour exploitation and violations of labour law*

*If one or more of the following offenses occurred in the conditions of employment, the worker should seek assistance from the appropriate institutions:*

- *the worker is charged for finding a job;*
- *There is no possibility to organise independent journey to the United Kingdom and the worker is not familiar with the route from the starting point to the final destination ;*
- *the worker carries out work that he/she does not want to perform ;*
- *the working conditions vary drastically from those originally agreed ;*
- *The worker works without a contract or with a contract in a language that is not understood and working conditions are not established ;*
- *the worker works without being paid ;*
- *The worker does not know how much is his salary and what legitimate deductions may be made from it;*
- *the worker receives less than the national minimum wage;*
- *the payments are often irregular or delayed ;*
- *The worker accumulates unfounded financial debt to the person who provides employment for services such as recruitment, transportation, food , etc.;*
- *the worker works well beyond the reasonable hours of work ;*
- *The worker lives in accommodation provided by the employer under conditions which are not controlled;*
- *he/she is not free to quit the room and freedom of movement;*
- *The worker sleeps where works; environment is unhealthy without basic sanitary conditions and opportunities for self-sufficiency ;*
- *the worker cannot satisfy its location and address;*
- *The worker has no access to means of communication or the employer exercises control over the contacts of a person with other people ;*
- *ID (passport/identity card), return ticket and other documents were taken by the employer and not given back on request. The employer is entitled to require ID to make a copy , but must return the document immediately;*
- *The worker provides bank account information that would allow others to manage it (including - allowing bank statements to be sent to the address where the person lives ) ;*
- *Any employment where the employer threatens the person or members of his family."*

*The information is available at:*

[www.mlsp.government.bg/mission/MissionLondon/default.asp?pid=33](http://www.mlsp.government.bg/mission/MissionLondon/default.asp?pid=33) (accessed on 08 February 2014)

*\*Information provided by the Bulgarian labour attaché in London at Interview with Code No.27 BG S*

### 4.3 Protection against (repeat) victimisation: actions undertaken by the police to protect victims against the risk of repeated victimisation, including how the police conduct investigations

Treatment of irregular immigrants for whom there are reasonable grounds to believe that they are victims of severe forms of labour exploitation was one of the most contentious issues during the focus group discussion. As pointed out by many of the interviewees, in a situation where the police detect migrants who have an irregular residence status, the *routine practice* prescribed by national law is to issue return and immigration detention orders to the immigrants. In accordance with Article 41 of the Law on Foreign Nationals in the Republic of Bulgaria (*Закон за чужденците в Република България*) a return order is issued to any foreign national who cannot certify his legal entry or with regard to whom the permitted period of residence has expired. Article 44 (6) of the same law provides that in cases when there is a risk of absconding, a detention order is also imposed on the immigrant.

That is why a respondent from professional group L described in detail that in such cases the police will focus on the illegal status and will take care that the migrants are placed in corresponding centres for illegal migrants. Another interviewee from professional group J replied that as far as the powers of the police only are concerned, workers will be seen as illegally staying in Bulgaria: *“They have no other powers; in any way”*<sup>55</sup>. The interviewee assumed that if it is a joint inspection of the police and another authority such as the Labour Inspectorate, then maybe the other authority would have other powers.

One M group respondent said that the Labour Inspectorate has no powers or ways to provide assistance to the immigrants victims of labour exploitation in such a case:

*“How!?! Nor we have services to help people in such cases, neither ... We just control whether the persons work under labor contracts and whether they have a right to work in the country, whether they have a work permit, and if so, whether the work done complies with the work permit. We are until here!”*<sup>56</sup>

*“If we have information that the person is residing illegally or that his visa has expired, we will notify Directorate “Migration”. This is it. From then on they already have their own procedures.”*<sup>57</sup>

During the focus group discussion one respondent [FG(P)] replied that their institution participated in joint inspections with the Labour Inspectorate and clarified that as the institution responsible for the administrative control of immigrants in Bulgaria, they undertake relevant measures adequate to the administrative status of the foreign national (that is, whether he/she resides lawfully or not). Deeming that this policy could be improved, the respondent further

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<sup>55</sup> In Bulgarian: *“Те нямат правомощия за друго; по никакъв начин”*.

<sup>56</sup> In Bulgarian: *„По какъв начин!? Нито имаме служби, които да помагат на хората в такъв случай, нито ... Ние просто контролираме дали лицата работят въз основа на трудови договори и дали имат право да работят в страната, дали имат разрешение за работа и ако имат разрешение, дали работата съответства. Ние сме дотук!“*

<sup>57</sup> In Bulgarian: *„Ако имаме информация, че лицето е незаконно пребиваващо или че му е изтекла визата, ще уведомим Дирекция „Миграция“. Това е. Нататък те си имат вече техни процедури.“*

noted that national security should also be born in mind as most of these people have no identity documents and identity documents bear information about the past of the person.

At some point of the discussion, an N group interviewee reminded that victims of human trafficking are entitled to a residence permit. Indeed, under Article 24 (1) point 17 of the Law on Foreign Nationals in the Republic of Bulgaria, persons who have been granted a special protection status under the Law on Combatting Trafficking in Human Beings can receive a continuous residence permit (for a renewable period of up to one year). However the special protection status under the Law on Combatting Trafficking in Human Beings is a result of a formal process of identification, during which there are no guarantees in national law against the irregular immigrant's removal. Usually return decisions in Bulgaria are issued with a ruling for their preliminary execution and their appeal does not stop their execution. Therefore, there is no explicit provision in Bulgarian law which a victim of trafficking could invoke in order to temporally suspend his/her removal until the competent authorities make the decision whether to grant him/her a special protection status.<sup>58</sup>

Lack of implementation in practice of the provision allowing for victims of trafficking to receive residence permits is evident in the report of the National Commission for Combatting Trafficking in Human Beings, according to which during the period 2012-2013 it has not received information about foreign nationals who are subjects of special protection and have benefited from a Bulgarian residence permit on that ground.<sup>59</sup> Lack of experience with immigrants in Bulgaria was also confirmed by the interviewees [P(1)].

Furthermore, two respondents [M(2)] noted that in such cases both the worker and the employer are subject to sanctions, which - besides a fine - include a ban to work in Bulgaria or employ a foreign national for two years.

On a separate point in relation to protecting victims against the risk of repeated victimization, the national researcher has noted an improvement in the legal regulation with regard to non-punishment of victims of human trafficking. In relation to transposing Directive 2011/36/EU, in September 2013 the Criminal Code was amended to include a new Article 16a, which expressly stipulates: "*An act shall not be considered culpably committed if performed by a person who is a victim of human trafficking and he/she has been forced to perform the act in a direct relation to being such a victim.*"

With regard to children, a respondent [M(1)] noted one administrative measure taken with regard to Bulgarian children (returned from abroad), for whom there is sufficient data that they have been exploited. According to Article 76 of the Bulgarian Law on Personal Identity Document<sup>60</sup>s (*Закон за българските лични документи*), these children are not allowed to leave the country for two years. The interviewee explained that their travel abroad is restricted due to their vulnerability and for the prevention of their repeated exploitation.

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<sup>58</sup> Vladislava Stoyanova (2013) The crisis of a legal framework: protection of victims of human trafficking in Bulgarian legislation, *The International Journal of Human Rights*, 17:5-6, 668-688.

<sup>59</sup> Report submitted by the Bulgarian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)2 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, 27 January 2014, available at: [www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/Country\\_Reports\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/Country_Reports_en.asp) (accessed on 24 February 2014), p.57.

<sup>60</sup> Available in Bulgarian language at <http://lex.bg/laws/ldoc/2134424576> (accessed on 24 February 2014).

With regard to the questions on action taken by the police to put an end to the situation of labour exploitation and to protect the victim, including through referral to support services, none of the participants in the fieldwork research could provide a straightforward answer that such measures are taken in respect of immigrants in Bulgaria. Interviewees from group M stated that they were not competent to answer these questions:

*“I cannot comment the actions of the police”*. In Bulgarian: *“Не мога да коментирам дейността на полицията”*. [M(1)]

Interviewees from group S and J (Judges) either did not know how to reply or were certain<sup>61</sup> that no measures are taken and there is no referral to support by the police. Respondents [N(1); J(1)] replied hypothetically what should be done (crimes should be investigated and victims should be supported). Interviewees from group P clearly stated that there is no experience with regard to immigrants in Bulgaria. An interviewed lawyer expressed their belief that, if the immigrants were in a vulnerable state, the police would give them at least minimum information to which institution, organisation or lawyer to turn for protection of their rights.

Formally there is a National Mechanism for Referral and Assistance of Victims of Trafficking in Bulgaria (in Bulgarian: *Национален механизъм за насочване и подпомагане на жертвите на трафик в България*)<sup>62</sup>. It was developed in 2010 by Association Animus (NGO) in conjunction with the National Commission for Combatting Trafficking in Human Beings. It was approved by all members of the National Commission at a commission meeting. The National Referral Mechanism is a framework document, according to which all responsible institutions and NGOs coordinate their actions on cases of victims of human trafficking. An interviewee from the N group however highlighted that the mechanism concerns human trafficking victims who are adults. With regard to children, there is a special and separate coordination mechanism headed by the State Agency for Child Protection.

There are two children-specific referral mechanisms in Bulgaria, in which the leading role belongs to the State Agency for Child Protection: Coordination mechanism for referral and care of unaccompanied children and children victims of trafficking that return from abroad (*Координационния механизъм за рефериране и обгрижване на случаи на непридружени деца и деца-жертви на трафик, завръщащи се от чужбина*)<sup>63</sup> and Coordination mechanism for cooperation in case of signal for a child victim of violence or in risk of violence and for coordination in crisis intervention (*Координационен механизъм за взаимодействие при работа в случаи на деца, жертви или в риск от насилие и за взаимодействие при кризисна интервенция*)<sup>64</sup>.

Within the referral mechanism, the information for such children first arrives in the State Agency for Child Protection (SACP) and the Ministry of Interior. SACP is obliged to inform another institution or to undertake immediate measures for protection within 24 hours [M(1)].

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<sup>61</sup> Interviews [S(2); J(1)].

<sup>62</sup> Information on the Mechanism and its text are published online: <http://combattrafficking.eu/BG/>.

<sup>63</sup> Its text is available at [www.stopech.sacp.government.bg/?sid=professional\\_eng&pid=0000000046](http://www.stopech.sacp.government.bg/?sid=professional_eng&pid=0000000046) (accessed on 12 February 2014).

<sup>64</sup> Its text is available at <http://sacp.government.bg/deinosti/sporazumenie-deistvia-deca-risk/> (accessed on 12 February 2014).

When asked whether this mechanism encompasses only Bulgarian nationals returning from abroad, a national policy expert replied that the mechanism was updated in 2010 when the following statement was inserted (at page 2 of the document):

*“In the event that an unaccompanied child or a child victim of trafficking is a foreign national, national with dual citizenship or without citizenship on the territory of the Republic of Bulgaria or holder of special protection under the Asylum and Refugees Act, the Coordination mechanism applies adapted to the case as required; there should be notification to the State Agency for Refugees and the Directorate “Migration” – Ministry of the Interior, which issues a residence permits in the country, and the National Commission for Combating Trafficking in Human Beings.”<sup>65</sup>*

According to the interviewee, the disadvantage of these mechanisms in principle is that they are not backed up financially and are carried out with the existing budgets of the respective institutions. There is a need not just for more human resources, but a need for trained and really well qualified persons who understand the issues and can indeed protect the victims.

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<sup>65</sup> In Bulgarian: “В случай, че непридружено дете или дете-жертва на трафик е чужд гражданин, с двойно гражданство или без гражданство на територията на Р България или има предоставена особена закрила по Закона за убежището и бежанците, се прилага Координационния механизъм адаптиран към конкретния случай, като задължително се уведомява Държавна агенция за бежанците и Дирекция „Миграция” – МВР, която издава разрешение за пребиваване в страната и Националната комисия за борба с трафика на хора.”

## 5. Victim support and access to justice

### 5.1 Victim support, including available support services

During the focus group discussion one respondent [N] shared the case of a Bulgarian national who had been subjected to severe labour exploitation abroad and who could not get access to any social services as he had no valid identity documents:

*“A month ago a man who looks 70-80 years old due to exploitation and a harsh life but in fact is about 50 came to us in order to get support... He looked like a tramp and didn't have any identity documents, only a passport which expired in 2010. He had been periodically exploited since 2007-2008 in different EU countries, mainly in Greece and Italy. The case is very confusing because this person does not have any identity card, nobody knows who he is, but we are supposed to believe him because the idea is that we help victims with a view to their rights, so mutual trust is very important. We could hardly determine which municipality is going to issue his identity card because it turned out that he could not benefit from any kind of social service in Bulgaria and to be accommodated somewhere... luckily the weather in November was good...”<sup>66</sup>*

Although the institutions in Bulgaria have no experience in supporting foreign nationals who have been victims of labour exploitation, the above case is indicative of the effectiveness of the system of support services with regard to immigrants in Bulgaria.

Under Bulgarian law there are two lines of action with regard to victims support, including available support services. One is under the Law on Combatting Trafficking in Human Beings and the other one is under the Law on Social Assistance. The fieldwork research has revealed that neither of them has been adapted to effectively accommodate the needs of migrants in Bulgaria who are victims of severe forms of labour exploitation. The support system has been designed with the assumption that its beneficiaries are Bulgarian nationals.

Under the Law on Social Assistance<sup>67</sup> (*Закон за социално подпомагане*) lack of sufficient subsistence resources is a decisive criterion for qualification. It is implemented by the Agency for Social Assistance. The generally applicable conditions for access to the social benefits under the Law on Social Assistance take into account the applicant's income, possessions,

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<sup>66</sup> In Bulgarian: „Това, което се случи последния път преди около месец е, че един господин, който изглежда, например, на 70-80 години, вследствие на експлоатацията и на бруталния си живот, но в действителност е по-млад, например на 50 и нещо, се появи при нас. Знаете, все пак ние сме администрация и всеки има право да дойде на крака и да получи някакво съдействие от нас. Той бе тип клошар, такъв тип си представете човек. Той няма никакви лични документи; можем да кажем, задраничен паспорт, изтекъл 2010г.; лична карта няма. Експлоатиран периодично от 2007-2008г. в различни държави на Европейския съюз, основно Гърция и Италия. И ние се сблъскваме със страхотен казус. Първо, този човек е без лични документи и ние не знаем кой е. Той ни казва човекът кой е и ние сме длъжни малко или много да му вярваме, защото идеята е, че ние защитаваме жертвите с оглед на човешките им права и нали е много важно да се създаде това доверие. В крайна сметка едвам се разбрахме коя община ще му издаде лична карта, защото се оказа, че той не може да се възползва от никаква социална услуга в България и да бъде настанен някъде. Добре, че времето през ноември беше топло ...“

<sup>67</sup> Available in Bulgarian language at <http://lex.bg/bg/laws/ldoc/2134405633> (accessed on 21 February 2014).

family status, health condition, age and other relevant circumstances. According to Article 2 (3), the right to social assistance is recognized to persons who, because of age, health, social or other reasons beyond their control, are unable to meet their basic livelihood needs by the income derived from their work or possessions, or those of their family members. The categorisation of migrants is very meaningful to the Agency for Social Assistance. According to the exhaustive list in Article 2, Paragraphs 3 and 6 of the Law on Social Assistance, the right to social assistance is recognized for Bulgarian citizens, as well as for foreign nationals with *long-term or permanent* residence in Bulgaria, holders of refugee or subsidiary protection status, asylum or temporary protection under the Law on Asylum and Refugees, as well as for 'persons for whom that is envisaged in an international treaty to which Bulgaria is a party'. EU nationals and third country nationals holders of 'continuous' residence permit (with a renewable term of up to one year), as well as asylum seekers and undocumented immigrants, are excluded from the personal scope of the law.

The Law on Combating Trafficking in Human Beings<sup>68</sup> (*Закон за борба с трафика на хора*) regulates the procedures on protection, assistance and reintegration of victims of human trafficking. The procedure for access to these services consists of two stages: informal identification and formal identification as a victim.<sup>69</sup> The informal identification could be done by any entity or person, including by the alleged victim himself/herself. Under Article 9 (2) of the Law on Combating Trafficking in Human Beings, the alleged victim may request accommodation in a shelter<sup>70</sup> for a period of 10 days (it by exception<sup>70</sup> could be prolonged to 30 days). With this, the scope of rights of persons who *claim* to be victims before a formal identification is done, is exhausted. In order to access the rest of the services and support under the Law, one needs to receive a special protection status, which is granted only upon cooperation for the purpose of disclosing the alleged crime.<sup>71</sup> Besides the "shelters for temporary accommodation", there are "centres for protection and support of victims of trafficking" that serve a longer-term reintegration purposes.<sup>72</sup> However this type of service is provided to formally recognized victims only. The assistance provided by the centres is subject to criticism as characterized by ambiguity as, for example, it is not clear whether specialised psychological and medical services are provided if the trafficked person has no health insurance.<sup>73</sup>

With regard to foreign nationals, an important part of the protection derived from the special protection status under Article 25 of the Law on Combatting Trafficking in Human Beings is

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<sup>68</sup> Available in English language at [www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation](http://www.antitraffic.government.bg/en/2011-12-15-11-21-11/legislation). (accessed on 21 February 2014).

<sup>69</sup> Such a formal division is not explicitly stated in the Law. It can be derived from one Interview [N(1)] and from the document National Mechanism for Referral and Assistance of Victims of Trafficking in Bulgaria (in Bulgarian: *Национален механизъм за насочване и подпомагане на жертвите на трафик в България*).

<sup>70</sup> Under Article 10 of the Law on Combatting Trafficking in Human Beings, the "shelters for temporary accommodation" ensure normal living and sanitary conditions; provision of food and medication; emergency medical and psychological services; and assistance in establishing contact with relatives, competent agencies and support organisations.

<sup>71</sup> Articles 25 -27 of the Law on Combatting Trafficking in Human Beings.

<sup>72</sup> Under Article 11 of the Law on Combatting Trafficking in Human Beings, the "centres for protection and support of victims of trafficking" serve the following purposes: provision of simple-language information regarding the administrative and judicial procedures that administer victim support and protection; ensuring specialised psychological and medical services; and facilitation of victims' re-integration into the family and the social environment.

<sup>73</sup> Vladislava Stoyanova (2013) The crisis of a legal framework: protection of victims of human trafficking in Bulgarian legislation, *The International Journal of Human Rights*, 17:5-6, 677.

the receipt of a residence permit. Even if the immigrant has not been removed in the meantime, receipt of the residence permit might turn out to be practically impossible. In order to obtain it, one needs to fulfill a number of technical requirements listed in the Implementing Rules of the Law on Foreign Nationals in the Republic of Bulgaria<sup>74</sup> (*Правилник за прилагане на закона за чужденците в Република България*). These technical requirements concern the obligatory possession of a valid passport (although it is exempted from the requirement to have the respective visa), proof of accommodation and sufficient income, medical insurance, etc.

Furthermore, a respondent [N(1)] said that victims of “pure labour exploitation” (without sexual or physical violence) usually do not need accommodation in crisis centres or shelters, because the feeling of shame there is not so strong as in other cases, they usually have a supporting family and social environment back home and therefore are simply more active about searching legal redress for their labour rights. The respondent highlighted that this is to be borne in mind when speaking about support services provided to victims of ‘pure labour exploitation’. According to the interviewee this is the reason why neither the National Commission, nor the non-governmental organisations providing support services to victims in Bulgaria usually happen to have any cases of victims of labour exploitation:

*“They will not start looking for a place to hide, they will want their money to be compensated.”* In Bulgarian: *“Те няма да тръгнат да търсят някъде да ходят да се крият, те ще искат някой да им възстанови парите.”*

A respondent [S(1)] said that certainly there are many victims of severe forms of labour exploitation, particularly male ones, however access to them is very difficult:

*“Our only way to see them is through the government and they have never referred one to us.”*<sup>75</sup>

It is also noteworthy that Animus Association Foundation, the NGO in Bulgaria with key functions in provision of direct services to victims of trafficking and other violence in Bulgaria and a leading partner in the development of the national referral mechanism for victims of trafficking, declined the invitation to take part in the study with the reasoning that they had no experience at all in providing assistance to victims of labour exploitation.

One respondent [N(1)] also said that on the other hand the crimes of labour exploitation are difficult to identify and prove, and therefore experts working with this type of victims also need to be able to recognize them. The interviewee concluded that *“the services really need to be improved especially for labour exploitation.”*

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<sup>74</sup> Available in Bulgarian language at [www.lex.bg/bg/laws/ldoc/2135738597](http://www.lex.bg/bg/laws/ldoc/2135738597) (accessed on 24 February 2014).

<sup>75</sup> The interview was taken in English, due to which no Bulgarian translation is provided.

## 5.2 Access to justice and other mechanisms to empower victims

To a large extent, access to justice in Bulgaria is affected by the fact that slavery, servitude and forced labour are criminalised only in the context of human trafficking.<sup>76</sup> Therefore, as noted during the focus group discussion, since there is no institutional way to report these abuses if there is no element of movement of the victim (as required by the definition of human trafficking), this contributes to the concealment of these cases.

Another main issue with regard to access to justice (both civil and criminal) has been the availability of free legal aid. According to a respondent [L(1)] most of the needed *improvement* is related to how and where migrant workers or victims can get access to legal aid and consultations, including under the Law on Legal Aid<sup>77</sup> (*Закон за правната помощ*). A J group respondent highlighted that the procedure for obtaining legal aid should be simplified. Currently it requires submission of a lot of documents and people simply do not know how to get them issued. It is noteworthy that the National Bureau for Legal Aid, which is the institution which under the Law on Legal Aid grants legal assistance to persons who are unable to afford to pay for a lawyer, declined the invitation to take part in the study with the reasoning that it has not had cases of severe forms of labour exploitation of migrants.

In this regard, the respondent [J(1)] noted that although workers do not pay court fees in the civil justice system, they have to pay for a lawyer. Meanwhile, another interviewee [L(1)] concluded that much of the inactivity of people is connected with lack of information.

Against the background of the above obstacles to access justice, the following statement (made by an N-group respondent during the focus group discussion) is particularly pertinent:

*“Especially concerning labour exploitation... I don’t know... we are going to receive the statistical data for 2013 from the Prosecutor’s Office and there are almost no completed cases of labour exploitation, no compensations have been paid and it is a gaping loophole. Yes, the sanctions are severe by law, but actually no sanctions have been imposed.”<sup>78</sup>*

More specifically, with regard to the effectiveness of the civil justice system in enabling the victim to claim compensation and back pay of denied wages, several interviewees [L(1); J(2)] commented on how the civil law justice system works. The first step is to gather evidence and to prove the compensation due. The second step is to implement the decision of the court. The latter also depends on the actual ability of the offender to pay the victim. There might be practical difficulties in both stages. Furthermore, in the view of one respondent [L(1)] in case of other kinds of compensations - moral, non-material compensations - both in criminal and civil procedures, the system does not function efficiently due to legislative problems, lack of

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<sup>76</sup> See Section 2 above.

<sup>77</sup> Available in Bulgarian language at [www.lex.bg/bg/laws/ldoc/2135511185](http://www.lex.bg/bg/laws/ldoc/2135511185) (accessed on 21 February 2014).

<sup>78</sup> In Bulgarian: “Особено при трудовата експлоатация ... аз не знам колко ... ако се направи по-сериозно ... в смисъл ние така или иначе сега ще получим от ВКП статистиката за 2013-та ... За трудова експлоатация почти няма завършени дела, няма никаква компенсация, обезщетение за жертвите, там е тотална дупка според мене. Плюс това, санкциите – да, те са големи в закона, но реално това не се случва.”

educational background (even for lawyers) and the way they plead for such compensations, as well as the standards of the courts for just compensation.

With regard to the question as to what extent are civil law claims dealt with by the criminal justice system a respondent [L(1)] explained that there is an option for the victim to claim civil compensation during the criminal procedure, but it depends on the court unilaterally to decide, without right of appeal, whether to examine the civil claim within the criminal case or not (Code on Criminal Procedure). The ruling of the court on that depends on whether such claim will impede the case further. Rejection of examination of a civil claim in the criminal case does not hinder the possibility for a civil claim to be made in a separate civil court procedure, once the criminal court convicts the perpetrator of the crime. In this regard another interviewee from group L said that in a research project on legal aid and compensation to victims conducted by their NGO, they did not come across any cases where compensation was granted by courts in the context of a criminal procedure, even though such claims had been made.

However in one of the case studies collected as part of the fieldwork research,, the sentence that found the defendants guilty also provided for civil claims compensation. However, one interviewed judge noted that criminal law judges often find that the civil law claim will impede and slow down the criminal process, and therefore refuse to examine the civil law claim within the criminal law case. The examination of the civil law claims might impede the criminal process when, for example, it requires additional gathering of evidence, hearing of witness testimonies, provision of documents, etc. In this case the criminal process takes priority, as its main purpose is to determine whether there has been a crime, establish whether or not a person is guilty and whether there should be a respective punishment.

The victim has the right to submit the civil law claim before the civil law court. However the civil law judge will suspend the civil law case until the criminal law court finds whether the defendant is guilty of committing the crime. That is why in many instances the parties are interested in completing the criminal case quickly through an agreement. The agreement has the effect of a sentence with regard to the existence of guilt. [J(1)]

With regard to the question whether complaints can be lodged through third parties, it is possible in the criminal law process regarding the signals to the Prosecution. In the civil justice system that is not allowed.

With regard to mechanisms to facilitate the lodging of complaints of migrant workers against employers, two recommendations were made.

Firstly, there should be accessible information for migrants about their labour rights and on their rights to file claims in cases of labour exploitation. This could be done not only through information campaigns, but also through specialised legal consultations on migrants' labour rights and translation assistance for overcoming the language barrier.<sup>79</sup>

Secondly, interviewees concurred that the lodging of complaints should be admissible and available to be made by an intermediary instead of workers directly, provided that the latter have given their consent.<sup>80</sup> One respondent [J(1)] explained that considering that employees

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<sup>79</sup> Interviews [L(2); S(1)].

<sup>80</sup> Interviews {N(1); J(2); S(1)}.

usually want to keep their job, while lodging the complaint normally will discontinue their employment relationship, we should think of ways to allow for intermediaries in the complaint procedure (for example, NGOs, journalists, etc.) who would be able to raise the alarm with the competent authorities. Another respondent from professional group S suggested social mediation. According to this respondent, the social mediator should be a professional who can lead migrants through the procedure of lodging a complaint. Migrant workers do not usually know the language or the rules of the host country very well, and thus they need help from a professional who knows the specific labour law, the necessary procedures and who can also translate for the victim of labour exploitation.<sup>81</sup> The interviewees from professional group N noted that it is very important to be able to meet a person and explain the problem face to face, as often victims do not know how to prepare written documents necessary for accessing institutions.

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<sup>81</sup> The same opinion was expressed also by another professional [FG(S)].

## 6. Attitudes

### **Do experts believe that interventions into situations of labour exploitation, generally speaking, serve the interests of the migrant workers concerned?**

While one third of all interviewees answered unconditionally that interventions into situations of labour exploitation do serve the interests of the migrant workers concerned, another third of them refrained from giving a straightforward answer, while the final third replied that simple intervention without taking into consideration a number of factors would rather be harmful and deteriorate the situation of the migrant workers concerned.

Among those who believe that interventions play a positive role was a respondent from professional group M who provided as reasoning the fact that after the transposition of the EU Employers Sanctions Directive, the victim will have to receive remuneration, which cannot be lower than the minimum wage. Others, such as an expert from professional group W, stated that inaction is worse than intervention, so although there are many drawbacks, this is the right course of action.

However around one third of interviewees<sup>82</sup> stated that it very much depends on *how* the intervention is done. Unless the intervention is carried out taking into consideration the specifics of the potential victims, it will likely end up being contrary to their interests. One such type of specific situation pointed out by the respondents is irregular residence or work of the victims. Furthermore, a respondent [J(1)] noted that if the worker wants to keep their job, such an intervention does not serve the interest of the migrant victim. The interviewee mentioned one case where the workers accepted that kind of job in order to earn money that they sent to their relatives:

*“I think that in the period of time during which the migrant worker works for the employer, such intervention is harmful.”* In Bulgarian: *“Според мен в периода от време, през който работникът мигрант полага труд за работодателя, подобна интервенция пречи.”*

A similar line of thought was shared also by another respondent [M(1)]:

*“If we consider hypothesis: a person is working somewhere without a contract or without a work permit, and you cannot work on a contract basis, if there is no permission to work in the event that it is required. Our intervention will surely throw him out of the firm. Or if the employer continues to hold that person as worker, in recheck the amount of the penalty is doubled.”*<sup>83</sup>

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<sup>82</sup> Interviews [L(3); M(2); R(2); S(2); J(2)].

<sup>83</sup> In Bulgarian: “Ако разглеждаме хипотеза: дадено лице работи някъде без договор или без да има разрешение за работа, а пък няма как да работи въз основа на договор, ако няма разрешение за работа в случай, че му е необходимо такава. Нашата намеса със сигурност ще го изхвърли от съответната фирма. Или пък ако работодателят продължи да държи това лице при себе си като работещ, при повторна проверка размерът на санкцията е двоен.”

An R group respondent added that it is also difficult for an employee who has no labour contract to prove that the specific employer had hired them. The latter was required by the Labour Inspectorate when lodging a complaint.

### **Why do more migrant workers who are victims of labour exploitation not come forward and seek a way out of their situation?**

'Fear' was a key word in the replies of interviewees to this question: fear of the employer and fear of the authorities, which is underlined by the fear of poverty:

*"Migrant workers know that if they complain they will end up in their previous unfavourable position – it is a vicious circle."*<sup>84</sup> [J(1)]

*"Those (refugees) that we have spoken with believe that the only way for them to find a job is work without a contract in the gray sector, mainly with co-nationals. Somehow they are afraid that they may remain without a job and that there will be no one to protect them. Simply fear is on the first place."*<sup>85</sup> [S(1)]

Several interviewees<sup>86</sup> explicitly pointed to the specific vulnerability of undocumented immigrants in Bulgaria.

Some respondents said that it also happens that workers in severe situations of exploitation do not identify themselves as victims [N(1); S(1); W(1)] or they have "accepted their fate" [S(1)].

### **The most relevant factors for underreporting**

There was a noteworthy consensus among *all* interviewees in Bulgaria in pointing to the following factors as the most relevant ones: 'Victims fear that if their situation became known to the authorities, they would have to leave the country' and 'Victims perceive being jobless as worse than working in exploitative conditions'. A respondent [S(1)] concluded:

*"When a migrant worker loses their job, they lose everything."* In Bulgarian: „За един мигрант оставането без работа е оставане без всичко”

The third factor that has gathered most votes (by 11 interviewees<sup>87</sup>): 'Victims are not aware of their rights and of support available to them'.

Other factors pointed by several interviewees were:

- 'Victims fear retaliation from the side of offenders against them or against family members';

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<sup>84</sup> In Bulgarian: "Те знаят, че ако се оплачат ще се върнат в същото това първоначално положение и става един омагьосан кръг".

<sup>85</sup> In Bulgarian: "Тези, с които ние сме говорили /бежанци/ смятат, че единственият начин да си намерят работа е този – без договор, в сивия сектор, предимно при сънародници. Някак си има един страх, че могат да останат без работа, че няма кой да ги защити. Просто страхът е на първо място".

<sup>86</sup> Interviews [M(2); L(1); J(2)].

<sup>87</sup> 11 interviewees have pointed to code 03. These are respondents from interviews [M(3); N(1); S(2); W(2); J(2)].

- 'Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings'.
- 'Victims do not trust that the police in particular would treat them in a sympathetic manner'.

### **The three most important factors to migrant workers who are victims**

The most important factors pointed by the interviewees are summarised as follows:

1) 'To be able to stay and to make a living in an EU country') - 11 interviewees from professional groups M, L, S, W and J have pointed to it;

2) 'To be safe and to be protected against further victimisation' and 'To be in a position to economically support other family members' – 10 interviewees from professional groups M, N, S, J and L highlighted each of the factors;

3) 'To see that offenders are held accountable and that justice is done' – 9 interviewees from professional groups M, J, L, P and S to it.

4) 'To receive compensation and back pay from employers' was selected by 6 interviewees from professional groups L, N, W, M and J.

### **Do experts believe that enough is being done in the country to address severe forms of labour exploitation?**

While nine interviewees<sup>88</sup> (all from governmental institutions) answered unconditionally that enough is being done in the country to address severe forms of labour exploitation, 13 interviewees<sup>89</sup> replied that there is much room for improvement. The remaining eight interviewees refrained from giving a straightforward answer.

In this relation, several interviewees [L(2)|N(1); R(1); J(1)] pointed that more needs to be done in order to raise the awareness both of the host society and institutions and migrant workers about the problems. A respondent [N(1)] explained awareness should be raised both of workers and of officials and experts working on cases of labour exploitation, because labour exploitation results from a private initiative of the workers themselves. They are looking for better opportunities, for a better wage, and in their search for something better, the workers end up in an exploitative environment. Thus for example, often even if the case is investigated and reaches the prosecution, it is discontinued as being one of a private character.

Three respondents [S(1);L(2)] noted the passiveness of authorities at present and their lack of interest in the topic:

*"I think this is the passive idly thinking that this is a state activity related to a salary that is unchangeable regardless of the outcome of the working day. They are not encouraged in any way – regardless of whether they disclose a crime or not, they receive the same salary."<sup>90</sup> [L(1)]*

<sup>88</sup> [M(6); J(1); S(2)]. All interviewees work in governmental institutions.

<sup>89</sup> [L(2); N(1); R(1); S(4); W(2); E(1)|J(1)].

<sup>90</sup> In Bulgarian: „Смятам, че това е пасивното бездейно мислене, че това е една държавна дейност, свързана с определено възнаграждение, което е непроменно независимо от резултатите на трудовия ден. Те не са стимулирани по никакъв начин – дали ще разкрият или не едно престъпление, заплатата си се получава.“

## **The three measures which would most improve the way labour exploitation is addressed in Bulgaria**

The three measures seen as most important by interviewees in Bulgaria are as follows:

- 1) 'Measures to ensure that all workers know their rights' – pointed by 19 interviewees from all professional groups;
- 2) 'More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system' – pointed by 16 interviewees from all professional groups;
- 3) 'More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation' – pointed by 15 interviewees from all professional groups.

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

The results from the survey on 'Attitudes' are quite indicative of the roots of the problems in access to justice by migrant victims of severe forms of labour exploitation in Bulgaria. When a person is a victim of a crime, he/she should not fear the authorities, but be able to trust in protection by them. This is not the case with migrants in Bulgaria. An intervention by the authorities into their situation will actually often make their worst fears come true: to remain jobless and to have to leave the country.

*"Especially if his status is illegal, to whom to complain?"<sup>91</sup> [M(1)]*

There are several structural settings that underpin the above paradox:

- 1) The fact that slavery, servitude and forced labour are criminalised only in the context of human trafficking has a chain effect on the limited scope of the national referral mechanism, access to support and access to justice for victims of these abuses;
- 2) Bulgaria is seen by its institutions mainly as a country of origin. However, as admitted in the National Strategy on Migration, Asylum and Integration (2011-2020)<sup>92</sup>, there has been a steady increase in immigration flows to Bulgaria. Currently Bulgarian authorities lack experience and are not prepared to address cases of severe forms of labour exploitation of immigrants;
- 3) In principle, third country nationals in Bulgaria are not allowed access to the labour market. This forces them to undertake unlawful employment;
- 4) Undocumented immigrants are completely marginalised by the legal framework in Bulgaria: there are no guarantees for a 'recovery and reflection' period of suspension of removal in their case, even if they were victims of human trafficking.

Some of the key stakeholders in Bulgaria are not aware of the existing problems:

*"In the case of immigrants in Bulgaria, I do not think they are a vulnerable group. On the contrary, there are even cases in which persons from third countries are in very serious Bulgarian companies and receive salaries that are sometimes higher than the salaries of Bulgarian citizens."<sup>93</sup> [N(1)]*

Other officials realise that there are problems, but are unable to be proactive:

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<sup>91</sup> In Bulgarian: "Особено ако статутът му е нелегален, на кого да се оплаче?"

<sup>92</sup> National Strategy on Migration, Asylum and Integration (2011–2012), available in English language at [www.mvr.bg/NR/rdonlyres/EBCD864F-8E57-4ED9-9DE6-B31A0F0CE692/0/NationalStrategyinthefieldofMigrationAsylumandIntgrationENG.pdf](http://www.mvr.bg/NR/rdonlyres/EBCD864F-8E57-4ED9-9DE6-B31A0F0CE692/0/NationalStrategyinthefieldofMigrationAsylumandIntgrationENG.pdf).

<sup>93</sup> In Bulgarian: „В случая на имигрантите в България, не мисля че те са по-уязвима група. Напротив, даже има случаи, в които лица от трети държави работят в много сериозни български фирми и получават заплати, които са понякога по-високи от заплатите на българските граждани.“

*“You see Chinese restaurants, for example, people from this ethnicity work there, but at the same time – this will sound a bit like black humour – I do not see Chinese cemeteries in Bulgaria. People cannot live forever. The personnel are coming continuously. One passport with the same names, the person is different, that’s it. This is the person who came here. So in order to pay the traffickers who smuggled him from one of the Chinese provinces to Bulgaria, which costs a lot, this person is working without a salary. But we have not worked on such cases.”<sup>94</sup> [P(1)]*

Therefore, in order to trigger proactive measures, improvement in the situation in Bulgaria should start from awareness-raising, like this dialogue in the focus group discussion:

- As [one respondent] said, almost 90% of *Iliantsi* workers would have to leave the country. When they come here they accept their fate. [S(1)].
- Some Bulgarians also go to other countries and accept it as a normal thing ... Accepting something as normal doesn’t mean that this is not exploitation...” [N(1)].

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<sup>94</sup> In Bulgarian: “Виждате китайски ресторанти, например, там работят хора от тази националност, но междуременно – малко ще прозвучи като черен хумор, но – китайски гробища аз не съм виждал в България. Хората не могат да живеят вечно, идва постоянно персонал, един паспорт, с едни и същи имена, човекът е друг, това е. Това е човекът, който е дошъл тук. За да изработи сумата, която е била необходима, за да бъде преведен, трафикиран от Китай, някоя от провинциите, това струва много пари, той работи без заплата. Но не сме работили по такива случаи.”