

# **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**

#### **Lithuania, 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 project investigates severe forms of labour exploitation of migrant workers and focuses on migrants' access to justice, risk factors and preventive measures for labour exploitation as well as the types and frequency of such incidents.<sup>1</sup>

The qualitative fieldwork took place from 24 February to 3 June 2014. The information was collected using three methods: 20 individual semi-structured interviews were conducted with experts from particular professional groups, one focus group interview was conducted with experts from different professional groups and five incidents were described as case studies of alleged labour exploitation. The fieldwork was conducted by three experienced researchers, all of whom have a doctoral degree in social sciences (sociology and social anthropology); two of whom are female and one is male.

The fieldwork went smoothly. The main challenge encountered by the research team was to identify experts with professional experience related to migrant workers' labour exploitation. The number of officially recorded and/or reported incidents that could be described as migrant worker's labour exploitation is low and, in numerous cases, experts provided information based on their general work experience and not on specific professional experience in dealing with migrant workers' labour exploitation.

The distribution of 20 semi-structured interviews among target groups is presented in the table:

<b>Target group</b>	<b>Number of interviews</b>
Monitoring bodies (M)	3
Police and law enforcement bodies (P)	4
Victim support services (S)	4
Judges and prosecutors (J)	3
Lawyers (L)	2
Recruitment and employment agency (R)	1
Trade union (W)	1
Employers' organization (E)	1
National policy experts at Member State level (N)	1
<b>TOTAL</b>	<b>20</b>

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<sup>1</sup> Fundamental Rights Agency (FRA) (2014) *Severe Forms of Labour Exploitation. Supporting Victims of Severe Forms of Labour Exploitation in Having Access to Justice in EU Member States.*

Twelve interviews were conducted with females; eight interviews were conducted with males. As regards age group, the majority of interviews (16) were conducted with interviewees from the second age group (30–50 years old), two interviews with interviewees from the third age group (more than 50 years old), and two interviews were conducted with interviewees from the first age group (less than 30 years old).

The majority of interviewees (12) have 10 or more years of experience on issues relating to labour exploitation [L(2); J(3); P(3); W(1); S(2); M(1); E(1)]; four interviewees have between five and nine years of professional experience on issues related to labour exploitation [S(1); N(1); L(1); M(1)]; and four interviewees have less than five years of professional experience on issues related to labour exploitation [M(1); P(1); R(1); S(1)].

The selection of interviewees was also based on geographical distribution. Vilnius and Klaipėda, the main industrial cities of Lithuania, are the regions where the highest numbers of third-country nationals reside.<sup>2</sup> Therefore, the majority of interviews were conducted there. The rest of the interviews were conducted at several other sites in Lithuania where relevant organisations and institutions are located.

The majority of interviews (13) lasted from 45 to 60 minutes [M(3); J(2); P(3); W(1); E(1); S(2) L(1)], three lasted from 60 to 75 minutes [J(1); P(1); N(1)], two lasted for more than 75 minutes [L(1); S(1)], and two lasted for less than 45 minutes [S(1); R(1)].

All interviews were conducted face to face. All 20 individual interviews were audio recorded. The interviews were conducted at a time and place most convenient for the interviewees.

The focus group interview was conducted by a male main interviewer, who is a social scientist whose research focuses on migration issues and who has a high level of expertise in migration issues. Two observers who were present during the interview are members of the research team. The focus group interview lasted for more than two hours (142 min) and was audio recorded. The interviewees were from M, P, S, L and W groups. Two of them were male and three female. The team proposed and discussed the following additional themes: if and why labour migrants, and sometimes refugees, are more vulnerable to labour exploitation than other groups of migrants (those who came to join their families, study, etc.); what are the reasons that experts from different professional groups often evaluate the same incidents differently; what are the reasons for the low number of cases of labour exploitation that reach the courts; the mechanisms/indicators that should be in place for the effective monitoring of the labour conditions of migrants; the mechanisms of control for employers and their responsibilities with regards to their employees; the possible reasons why the trafficking of migrant workers for the purpose of labour exploitation in Lithuania was not perceived as an urgent and relevant problem by the majority of experts; the reasons why children's labour exploitation was not identified as a real problem in Lithuania by the majority of experts interviewed.

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<sup>2</sup> Platform for information and cooperation on migration issues (*Migracijos informacijos ir bendradarbiavimo platforma*) (2013), The concluding forum of the project "The Platform for Information and Cooperation on Migration Issues": overview and results (*Baigiamasis projekto "Migracijos informacijos ir bendradarbiavimo platforma" forumas: apžvalga ir rezultatai*), available at: [www.mipas.lt/lt/projekto-eiga/250/baigiamasis-projekto-migracijos-informacijos-ir-bendradarbiavimo-platforma-forumas-apzvalga-ir-rezultatai](http://www.mipas.lt/lt/projekto-eiga/250/baigiamasis-projekto-migracijos-informacijos-ir-bendradarbiavimo-platforma-forumas-apzvalga-ir-rezultatai) (accessed on 30 June 2014).

Information on five case studies was gathered in May/beginning of June 2014. This information was provided by different sources: for the first case study, the information was provided by a lawyer [L(1)]; the information for the second case study was collected from a few sources [M(1); P(1)], the mass media and an official communication with the Prosecutor General's Office (*Lietuvos Respublikos generalinė prokuratūra*); the information for the third study was provided by a representative of the workers' organisations group; the information for the fourth case study was also provided by a representative of the workers' organisations group and collected from publicly available documents; and the information for the fifth case study was taken from court files.

The case studies deal with diverse economic sectors: translation services, transportation, construction and food services provision. It was a significant challenge to identify some incident or case of alleged migrant labour exploitation, which happened in recent years and which could be described for the purpose of this research. The absence of such cases that come to the attention of state institutions was indicated in the official communication from the Labour Dispute Commission under the State Labour Inspectorate (*Darbo ginčų komisija prie Valstybinės darbo inspekcijos*),<sup>3</sup> which was founded on 1 February 2013 and where the employees can report various labour-related disputes. Therefore, three described case studies refer to 2008, i.e. the period prior to the economic crisis in Lithuania. Two case studies are from 2012–2013. Two of the cases provided (the first and the fourth) were successfully resolved in favour of the employees. The second and fifth cases provide information on the incidents that ended with some administrative fines for employers, but the pretrial investigation under particular articles of the Criminal Code of the Republic of Lithuania (*LR Baudžiamasis Kodeksas*) (hereinafter – the Criminal Code) was terminated. The third case describes the situation where a migrant's appeal was not upheld.

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<sup>3</sup> Lithuania, State Labour Inspectorate (*Lietuvos Respublikos Valstybinės darbo inspekcijos prie socialinės apsaugos ir darbo ministerijos Asmenų aptarnavimo ir teisės taikymo skyrius*) (2014) Communication of NFP-Lithuania, 2<sup>nd</sup> June 2014.

## 2. Legal framework

In Lithuania, criminal and civil/administrative legal acts do define the standards at which the violation of working conditions will be considered as a form of labour exploitation and dealt with by state institutions. As will be shown below, the criminal legal acts deal with cases of trafficking and forced labour. Civil/administrative legal acts identify cases which constitute illegal work, employment without a valid contract, the withholding of salaries by an employer, unpaid overtime, and biased termination of a work contract.

In Lithuania, forced labour and human trafficking are criminalised under the corresponding articles in the Criminal Code. In addition, Lithuania has ratified a number of international documents and agreements. In 2012, it ratified the Council of Europe Convention on Action against Trafficking in Human Beings No. 197 of 2005; in 2004, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; in 2003, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime; in 1994, the International Labour Organization Forced Labour Convention No. 29 of 1930 to name but a few. These amendments to the Criminal Code are in accordance with the standards of the main international documents on preventing and combating trafficking in human beings and protecting its victims, including Directive 2011/36/EU of the European Parliament and the Council of April 2011.<sup>4</sup>

The new amendments incorporate criminal liability for all forms of trafficking in human beings as well as for the exploitation of forced labour or services and the use of a person's forced labour or services.<sup>5</sup> These provisions are integrated in the following articles under the Criminal Code: Article 147 Human Trafficking, Article 147<sup>1</sup> Exploitation of Forced Labour or Services, Article 147<sup>2</sup> Usage of A Person's Forced Labour or Services, Article 157 Sale and Purchase of A Child, Article 292<sup>1</sup> Work of A National Illegally Staying in the Republic of Lithuania, Article 307 Profiting from Prostitution Performed by Another Person and Article 308 Involvement in Prostitution.<sup>6</sup>

Article 147 of the Criminal Code criminalises trafficking in human beings and establishes conditions under which a person involved in trafficking is punished. These include selling, purchasing, conveying or acquiring a person; recruiting, transporting or holding a person in captivity by using physical violence; threatening or depriving a person of the possibility of resistance; taking advantage of the victim's dependence or vulnerability; resorting to deceit or taking or paying money or getting or granting other benefits to a person who actually has the victim under his or her control, and the offender is aware of or seeks that victim, regardless of whether he or she agreed to be exploited for slavery or conditions similar to slavery, prostitution, pornography or other forms of sexual exploitation, forced labour or

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<sup>4</sup> Janušauskienė D. (2013), 'Lithuanian migrants as victims of human trafficking for forced labour and labour exploitation abroad' in: Ollus N, Jokinen A. and Joutsen M. (eds), *Exploitation of migrant workers in Finland, Sweden Estonia and Lithuania: uncovering the links between recruitment, irregular employment practices and labour trafficking*, Helsinki, Hapkaio Oy, p. 313.

<sup>5</sup> Ibid.

<sup>6</sup>Lithuania, Seimas (2000) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

services (including begging), committing a criminal act, or for other exploitation. Legal entities can also be held liable for these criminal acts.<sup>7</sup>

Article 147<sup>1</sup> of the Criminal Code criminalises the exploitation for forced labour or services and identifies the following conditions under which punishment will be enforced. These include unlawful force used against a person to ensure that he or she performs a certain task or provides a certain service, or force used to ensure that work is performed or services provided under the conditions of slavery or under other inhumane conditions.<sup>8</sup>

On 30 June 2012, the Criminal Code was amended by Article 147<sup>2</sup> establishing criminal liability for the use of forced labour or services (the amendments come into force on 13 July 2012). Paragraph 1 provides penalties for an offender who uses human labour or services, including prostitution, when he or she is aware, or could be aware, that a person has been forced to perform this work or service because of physical violence, threats, deceit or other methods indicated in Article 147.<sup>9</sup>

Article 157 of the Criminal Code regulates the exploitation of children for slavery or conditions similar to slavery, prostitution, pornography or other forms of sexual exploitation, forced labour or services (including begging), committing a criminal act or for other exploitation when a child is purchased or sold.<sup>10</sup>

In Lithuania there is no legal act that directly criminalises the exploitation of child labour. However, Article 292<sup>1</sup> of the Criminal Code, which regulates the labour exploitation of third-country nationals illegally staying in the Republic of Lithuania, criminalises the employment of third-country national minors staying illegally in the Republic of Lithuania.<sup>11</sup>

The Criminal Code was amended on 13 December 2011 and enforced on 6 January 2012 by including Article 292<sup>1</sup>, which regulates the labour exploitation of third-country nationals staying illegally in the Republic of Lithuania. An employer can be punished if third-country nationals illegally staying in the Republic of Lithuania work under particularly exploitative working conditions. However, this article does not specify or provide a list of exploitative working conditions or refer to any other legal acts to define what it means under particularly

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<sup>7</sup> Lithuania, Seimas (2000) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 [article 147] (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

<sup>8</sup> Lithuania, Seimas (2000) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 [article 147<sup>1</sup>] (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

<sup>9</sup> Lithuania, Seimas (2000) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 [article 147<sup>2</sup>] (as last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

<sup>10</sup> Lithuania, Seimas (2000) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 [article 157] (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

<sup>11</sup> Lithuania, Seimas (2000) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 [article 292<sup>1</sup>] (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).



exploitative conditions. The Article 292<sup>12</sup> stipulates that legal entities are also held liable for these criminal acts.<sup>12</sup>

Article 307 of the Criminal Code criminalises the earning of a profit from prostitution performed by another person. Criminal liability is stipulated for any person who organises and/or manages prostitution or traffics a person for prostitution with his or her consent to/from the Republic of Lithuania. Gaining a profit from the prostitution of a minor, organising or being in charge of the prostitution of the minor, or transporting the minor with his or her consent for prostitution to/from the Republic of Lithuania is also penalised. Legal entities are held liable for these criminal acts.<sup>13</sup> Article 308 of the Criminal Code criminalises involvement with prostitution, including minors. It is specified that involvement of a person who is dependent financially, subordinate in office or otherwise, or involvement by using physical or mental coercion or deceit or involvement of a minor in prostitutions will be punished. Legal entities are also liable for these criminal acts.<sup>14</sup>

In 2011, the Government of the Republic of Lithuania (*Lietuvos Respublikos Vyriausybė*) approved the Bill on the Banning of Illegal Work in order to stop illegal work of third-country nationals and enforce sanctions against employers who employ irregular migrant workers. The government aimed to transpose the provisions of the Employers Sanctions Directive (2009/52/EC) into Lithuanian legislation.<sup>15</sup> The government defined illegal work as a commercial, economic, financial or professional enterprise performed without following the formal legal requirements regulating employment; when employees work without legal contracts, salaries are paid in “envelopes” (without paying taxes to the state) and longer hours are worked than officially agreed upon in a work contract.<sup>16</sup> However, the bill was not approved in parliament and was returned to the government for improvement. In 2013, the government cancelled the bill.<sup>17</sup>

The Government of the Republic of Lithuania transposed the provisions of the Employers Sanctions Directive (2009/52/EC) to the Labour Code (*LR Darbo kodeksas*) on 30 June 2012, which was subsequently enforced on 1 August 2012.<sup>18</sup> Article 98 of the Labour Code

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<sup>12</sup>Lithuania, Seimas (2000) *Lietuvos Respublikos baudžiamasis kodeksas*, No. VIII-1968, 26 September 2000 [article 292<sup>1</sup>] (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

<sup>13</sup> Lithuania, Seimas (2000) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 [article 307] (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

<sup>14</sup> Lithuania, Seimas (2012) Criminal Code of the Republic of Lithuania (*Lietuvos Respublikos baudžiamasis kodeksas*), No. VIII-1968, 26 September 2000 [article 308] (last amended on 8 November 2012), available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437555&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437555&p_query=&p_tr2=2).

<sup>15</sup> Lithuania, Seimas (2011) Explanatory Note of the Draft Law on Prohibition of Illegal work (*Nelegalaus darbo draudimo įstatymo projekto AIŠKINAMASIS RAŠTAS*), No. XIP-3383, 27 June 2011, available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=402531](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=402531).

<sup>16</sup> Lithuania, Ministry of Social Security and Labor of the Republic of Lithuania (*LR Socialinės apsaugos ir darbo ministerija*) (2014) *Darbo rinka ir užimtumas: Nelegalus darbas*, available at: [www.socmin.lt/lt/darbo-rinka-uzimtumas/darbo-teise/nelegalus-darbas.html](http://www.socmin.lt/lt/darbo-rinka-uzimtumas/darbo-teise/nelegalus-darbas.html).

<sup>17</sup> Lithuania, Government of the Republic of Lithuania (*LR Vyriausybė*) (2013) Order on Cancellation of Draft Laws of the Republic of Lithuania submitted to the Seimas (*Nutarimas dėl Lietuvos Respublikos Seimui pateiktų Lietuvos Respublikos įstatymų projektų atšaukimo*), No. 396 8 May, 2013. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=448132](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=448132).

<sup>18</sup> Lithuania, Seimas (2012) Law of the Republic of Lithuania on Amendments of the Articles 98 and 99 of the Labour Code and Adding Article 98<sup>1</sup> to the Labour Code (*Lietuvos Respublikos darbo kodekso 98, 99 straipsnių ir*

defines illegal work as work without contract, without formal notification of the employee to the State Social Insurance Fund one day before starting employment; and without following formal employment regulations for third-country nationals. The levels of sanctions and measures for employers who employing third-country nationals illegally are regulated in Article 98<sup>1</sup>.

Sanctions for employers who violate the regulations of labour laws are incorporated in the Code of Administrative Offences of the Republic of Lithuania (*LR Administracinių teisės pažeidimų kodeksas*).<sup>19</sup> Article 41(3) imposes sanctions on employers for employing workers illegally, Article 41(4) – on paying salaries in “an envelope”, Article 41(5) – on fraud in recording working hours in an employees’ schedule and Article 41(8) – on failure to maintain legal guarantees for posted workers as stipulated in work contracts. In 30 June 2012, the Government of Lithuania transposed the provisions of the Employers Sanctions Directive (2009/52/EC) and amended the Code of Administrative Offences through Article 206<sup>3</sup>. This article provides fines for employers if their employee carries out duties other than those indicated in the work contract or if he or she works without having a residence permit for Lithuania.<sup>20</sup>

In Lithuania, the residence permit for a migrant worker is granted on the basis of his or her employment contract and is regulated by the Law on the Legal Status of the Aliens (*Užsieniečių teisinės padėties įstatymas*).<sup>21</sup> If an employment contract is terminated, the migrant worker must depart the Republic of Lithuania, or he or she will be staying illegally in the country. The Article 49<sup>1</sup> of the law stipulates the conditions under which a migrant could be granted a residence permit without a labour contract. These conditions indicate the provision on the legal status of a foreigner who is a victim of human trafficking or undocumented foreigner who has worked under severe labour exploitation or is a minor who worked under this severe labour exploitation. The resident permit will be issued if a victim cooperates with pretrial investigation institutions or the courts and these institutions mediate on behalf of a victim.<sup>22</sup>

A recent study under the auspices of the ADSTRINGO project (Addressing trafficking in human beings for labour exploitation through improved partnerships, enhanced diagnostics and intensified organisational approaches) analysed the tendencies for labour exploitation of Lithuanian citizens abroad. The study has shown that there is no precise data about human trafficking for forced labour since only a small proportion of these cases are reported to the police and till present there have been no cases in court resulting in a conviction for human

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*priedo pakeitimo ir papildymo ir kodekso papildymo 98<sup>1</sup> straipsniu įstatymas*), No. XI-2191, 30 June 2012. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=429558](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=429558).

<sup>19</sup> Lithuania, Seimas (2014) Code of Administrative Offences of the Republic of Lithuania (*Lietuvos Respublikos administracinių teisės pažeidimų kodeksas*). Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=472205](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=472205).

<sup>20</sup> Lithuania, Seimas (2012) Law on Amendments of the Articles 206<sup>3</sup> and 233 of the Code of Administrative Offences (*Lietuvos Respublikos administracinių teisės pažeidimų kodekso 206<sup>3</sup> ir 233 straipsnių pakeitimo įstatymas*). Available at: [www3.lrs.lt/pls/inter3/oldsearch.preps2?a=429559&b=](http://www3.lrs.lt/pls/inter3/oldsearch.preps2?a=429559&b=).

<sup>21</sup> Lithuania, Seimas (2004) Law on the Legal Status of the Aliens (*Užsieniečių teisinės padėties įstatymas*), No. IX-2206, 29 April 2004 (last amended on 10 October 2013) No. XII-548, available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458448](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448).

<sup>22</sup> Lithuania, Seimas (2004) Law on the Legal Status of Aliens (*Užsieniečių teisinės padėties įstatymas*), No. IX-2206, 29 April 2004 (last amended on 10 October 2013) No. XII-548, available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458448](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448).

trafficking for forced labour.<sup>23</sup> As will be shown later in this report, SELEX research revealed very similar trends about severe labour exploitation of migrant workers in Lithuania.

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<sup>23</sup> Janušauskienė D. (2013), 'Lithuanian migrants as victims of human trafficking for forced labour and labour exploitation abroad' in: Ollus N, Jokinen A. and Joutsen M. (eds), *Exploitation of migrant workers in Finland, Sweden Estonia and Lithuania: uncovering the links between recruitment, irregular employment practices and labour trafficking*, Helsinki, Hapkaino Oy, pp. 305-359.

### **3. Labour exploitation and the institutional setting**

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

The institutional mechanism to prevent and fight against labour exploitation encompasses governmental institutions: the police, the State Labour Inspectorate and local labour inspectorates, the Lithuanian Labour Exchange (*Lietuvos darbo birža*) and local labour exchanges, the Ombudsman for Children's Rights (*Vaiko teisių apsaugos kontrolieriaus įstaiga*), the Refugees' Reception Centre, the Foreigners' Registration Centre, the Prosecutor General's Office and the courts; intergovernmental organisations, such as the International Organisation for Migration (IOM), Vilnius Office (*Tarptautinės migracijos organizacijos Vilniaus biuras*); non-governmental organisations (NGOs): Caritas Lithuania (*Lietuvos Caritas*), the Lithuanian Red Cross Society (*Lietuvos Raudonojo Kryžiaus draugija*) and individual experts (lawyers and independent advocates). However, none of the above-mentioned institutions or organisations has a checklist or guidelines for assessing migrant labour exploitation and/or identifying victims of migrant labour exploitation. Due to the absence of specific guidelines, activities of governmental institutions and non-governmental organisations, with regards to migrant labour exploitation, are fragmented. Therefore, institutions and organisations are not promoting the rights of migrant workers in particular. Migrant labour exploitation is not a prioritised activity of any of the above-mentioned institutions and organisations; while migrant employees are not specifically targeted as a target group of any policy related to labour exploitation or labour relations.

Mandates of monitoring bodies (the State Labour Inspectorate and the Lithuanian Labour Exchange) are related to the promotion of the rights of workers in general without an emphasis on migrant workers in particular. The lack of specific measures targeting the migrant labour force is compensated through cooperation with NGOs (for example, when specific cases of migrant labour exploitation occur, governmental institutions are cooperating with NGOs such as Caritas Lithuania and the Lithuanian Red Cross Society). However, as two interviewees from the focus group [FG(M); (L)] revealed, the cooperation between NGOs and governmental institutions is limited due to the absence of a coordinating institution and guidelines, specifically targeting migrant labour exploitation.

The activities of the State Labour Inspectorate are regulated by the Law on the State Labour Inspectorate of the Republic of Lithuania.<sup>24</sup> Its work is related to safety at work, labour relations and protection of employees. Labour inspectors perform prevention of violations of standard acts regulating occupational safety and health, labour relations as well as the prevention of accidents at work and occupational diseases in enterprises. Among other functions performed by the State Labour Inspectorate are those to identify and publish the most risky sectors of activity in which illegal work of third-country nationals occurs. The State Labour Inspectorate has specific measures in order to apply sanctions on the entities misusing the third-country national labour force. It is foreseen that special attention should

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<sup>24</sup> Lithuania, Seimas of the Republic of Lithuania (2003) *Lietuvos Respublikos Valstybinės darbo inspekcijos įstatymas*, No. IX-1768, 14 October 2003. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=430581](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=430581).

be paid, if working conditions of third-country nationals are worse in reality than is legally determined in the legislation.<sup>25</sup>

Inspectors of the State Labour Inspectorate may examine any place of work. Though there are obstacles in relation to private property due to its inviolability, labour inspectors can inspect all workplaces. Usually complex inspections take place, when, for example, a construction site is surrounded, workers are counted and identity documents are checked. If there is a need, the process is monitored and recorded on video camera (according to one representative [FG(M)]. While implementing inspections, the need for cooperation with law enforcement institutions was emphasised by the interviewees from the focus group [FG(M); (P)]. When necessary, police assistance is used. The police cannot always participate in these processes; the inspections are more effective, however, when the State Labour Inspectorate and the Migration Board (*Migracijos tarnyba*) are working together. Such inspections are being carried out at the moment ([M(1); P(1)]. However, neither of the monitoring bodies (the Migration Board and the State Labour Inspectorate) are actively looking for cases of migrant labour exploitation. These institutions have no specific guidelines targeting migrant labour exploitation.

The activities of the Lithuanian Labour Exchange and local labour exchanges are not directly related to migrant labour exploitation or preventative activities. However, as a state institution, the Lithuanian Labour Exchange is obliged to inform other institutions if such cases are identified. The basis of the activities of the labour exchange is the Law on Public Administration,<sup>26</sup> which provides the basis for the cooperation of other agencies by exchanging information and expertise. The labour exchange looks at whether employees are discriminated against on any possible grounds and it is directly involved with foreigners as the labour exchange checks employers and looks for any violations in terms of working conditions and in respect of workers' rights. Such inspections are provided in order to monitor if work of foreigners is organised as indicated in their contracts. The Lithuanian Labour Exchange has no specific guidelines targeting migrant labour exploitation [M(1)].

The Lithuanian Labour Exchange and local Lithuanian Labour Exchange offices at county level monitor whether the work of foreigners is organised as per the terms of their contracts. The labour exchange looks at if foreigners are working in the specific role that is indicated in their labour contracts. It means that inspectors examine documents related to work permits. Every migrant worker is checked. A planned inspection is carried out under the framework of regulations approved by the Lithuanian Labour Exchange. In addition, there are unplanned inspections, especially if the institution receives information on particular violations. All the inspections are carried out in companies (not in private places). The Lithuanian Labour Exchange checks on formal aspects of the employment of a foreigner: the labour contract, the type of work (which has to coincide with that indicated in the labour contract) and other documents. In practice, only the State Labour Inspectorate inspects working conditions, while living conditions are not inspected at all. However, the nature of labour immigration

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<sup>25</sup> Lithuania, Seimas of the Republic of Lithuania (2012) *Lietuvos respublikos darbo kodekso 98, 99 straipsnių ir priedo pakeitimo ir papildymo ir kodekso papildymo 98 straipsniu įstatymas*, No. XI-2191, 30 June 2012. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=429558](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=429558). Art. 98.

<sup>26</sup> Lithuania, Seimas of the Republic of Lithuania (1999), *Law on Public Administration (Viešojo administravimo įstatymas)*, No VIII-1234, 17. June 1999. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=473798](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=473798).

policies evidences that employers have a significant impact on the working and living conditions of migrant workers. As was mentioned by an interviewee [W(1)], migrant workers are dependent on employers with regards to workplace, accommodation and legal status.

The Lithuanian police system consists of the Police Department under the Ministry of the Interior (*Policijos departamentas prie Vidaus reikalų ministerijos*), specialised police units, territorial police units and police professional training institutions. At the specialised police agency – the Lithuanian Criminal Police Bureau (*Lietuvos kriminalinės policijos biuras*) – a Trafficking in Human Beings Unit (*Prekybos žmonėmis tyrimo skyrius*) was established in 2006, which investigates and implements the prevention of regional, interregional and international criminal acts related to human trafficking.

At each of the 10 local County Police Headquarters (*apskričių vyriausi policijos komisariatai*), a Migration Board (*migracijos skyrius*) was established. The Migration Board regulates the legal status of foreigners in Lithuania. This status is regulated according to national legislation – the Law on the Legal Status of Aliens.<sup>27</sup> The Migration Board performs inspections on three grounds when the temporary residence permit is granted: if migrants are paid their salaries, if they have a place of residence and if they declared their place of residence. As the migration service controls the legal status of foreigners, consequently the working and living conditions of foreigners are checked both at the workplace and in private properties. As a P group interviewee in the focus group indicated, if there is a suspicion of a violation, officers go to the places of residence and evaluate the conditions there. Then, interviews with employers take place in order to change any unsatisfactory working and living conditions.

At each county's police department, there is a Unit for the Investigation of Economic Crimes (*Ekonominių nusikaltimų tyrimo skyrius*). The units' mandate relates to the investigation of criminal activities in economic relations and other violations of the law, the investigation of labour exploitation as a criminal activity and the violation of other laws (without emphasis on the exploitation of the migrant labour force). An interviewee [P(1)] indicated that inspections are taking place in businesses. Inspections in private property could be carried out if any construction work is in process there. Sometimes, targeted measures for inspecting illegal employment are organised. NGOs are not directly involved in the inspections. However, in specific cases, social workers or lawyers from NGOs can act as intermediaries; for example, in the case of potential migrant labour exploitation, they can talk to an employer about working conditions [S(1)].

There are other institutions, such as the Foreigners' Registration Centre, which accommodates asylum seekers and irregular immigrants; or specific units in ministries, such as the Public Security Policy Department at the Ministry of the Interior (*Vidaus reikalų ministerijos Viešojo saugumo politikos departamentas*), which implements policies and measures to combat trafficking in human beings and legalisation relating to immigrants in Lithuania. However the activities of these institutions and units are not directly linked to exploitation of the migrant labour force. Though these institutions are directly involved in

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<sup>27</sup> Lithuania, Seimas of the Republic of Lithuania (2004), *Law on the Legal Status of Aliens (Istatymas Dėl užsieniečių teisinės padėties)*, No. IX-2206, 10 October 2013. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=458448](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448).



asylum and immigration procedures (for example, granting the legal status to foreigners, implementing immigration policies in Lithuania, accommodating asylum seekers, etc.), they are not working with issues related to migrant integration, including access to labour market, labour relations and migrant labour exploitation.

The activities of trade unions are regulated by the Law of the Republic of Lithuania on Trade Unions.<sup>28</sup> The mandate of trade unions is related to the promotion of the rights of workers in general without an emphasis of migrant workers in particular. Trade unions have the right to supervise an employer's adherence to and implementation of the labour, economic and social laws related to the rights and interests of their members, as well as of the collective, and other agreements. For this purpose, trade unions may have inspectorates, legal advice services and other institutions. However, trade unions defend the rights of their members solely (representing them in courts, acting as mediators between employees and employers, negotiating, etc.); a group in which migrants are not yet included. On one hand, there are no limitations for immigrants to join trade unions; on the other hand, trade unions do not have enough resources to recruit immigrants. However, the right to join trade unions have only those foreigners, which have official employment (legal labour contract).

Victim support organisations are NGOs, which act in an area of immigration and migrant integration. However, the infrastructure of migrant integration is only related to the project-based activities and is mostly funded by the European Refugee Fund and the European Fund for the Integration of Third-country Nationals. On the one hand, project-based activities are not self-sustainable and, as a result, are not stable over time and space; whereas on the other hand, NGOs are not distinguishing and/or prioritising migrant labour exploitation as a key issue, which should be addressed (although migrants are the target group for the implementation of integration measures).

The main reason for not prioritising migrant labour exploitation as the key integration obstacle is external funding. NGOs, which are working in an area of migrant integration in Lithuania (and, to a certain extent, reflect the issues of migrant labour exploitation), receive funding from the European Refugee Fund and the European Fund for the Integration of Third-country Nationals. However, the guidelines of the above mentioned funds are linked to language courses, social consultations, psychological assistance and legal services, where issue of labour relations and labour exploitation are not prioritised. Moreover, NGOs are having challenges to reach those migrants in need for legal assistance due to labour exploitation.

With regards to the other NGOs, Caritas Lithuania's activities are project-based. It provides aid to people who were/are trafficked to brothels, and to women who were involved in prostitution. It provides aid to people who suffered from other forms of human trafficking: those who were sold for labour exploitation, sham marriages, criminal acts or begging. Although the institution's mandate does not directly promote the rights of workers in general and immigrant workers in particular, its services for victims (counselling and support) are based on the promotion of the rights of migrant workers. Caritas (Kaunas office) is

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<sup>28</sup> Lithuania, Seimas of the Republic of Lithuania, Law on Trade Unions (*Profesinių sąjungų įstatymas*), No. I-2018, 28 June 2013. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=452476](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=452476).

implementing the project 'Aid to the victims of trafficking and prostitution'. The main objective of the project is to provide legal, psychosocial and all other necessary assistance to victims who suffered from prostitution and any forms of human trafficking. However, activities are directly related to Lithuanian citizens who were trafficked abroad. In addition, Caritas Lithuania (Vilnius office) is implementing the project 'Migrant Learning Centre', which is funded by the European Fund for the Integration of Third-country Nationals. The main aim of the project is the provision of such integration measures as language training, courses on Lithuanian history and culture, etc. Employment and labour relations of third-country nationals are not among the implemented activities.

The Lithuanian Red Cross Society is the key stakeholder in the area of migrant integration in Lithuania as it is implementing two projects: the Klaipeda Centre for Migrants (funded by the European Fund for the Integration of Third-country Nationals) and the Refugees' Integration Centre in Kaunas (funded by the European Refugee Fund). These projects are considered to be the key element of migrant integration infrastructure in Lithuania (mediation and representation of migrants in different areas of public life). However, the main aim of the above-mentioned projects is the implementation of integration measures without an emphasis on labour relations and migrant labour exploitation. Consequently, the Lithuanian Red Cross Society and lawyers cooperating with the NGO dealt with only a few cases of migrant labour exploitation (according to two interviewees from the lawyer group and the victim support services group, respectively). These cases were identified without using specific targeting measures.

When identifying cases of migrant labour exploitation, the target group and the priorities of different NGOs has to be emphasised. For example, one of the reasons that refugees are more frequently identified as potential victims (compared with other types of immigrants) is that more attention is paid to refugees as to the target group and infrastructure, which deals with integration. This is because NGOs have more information about refugees since there are many organisations which have worked with refugees for a very long time and, at the same time, the number of refugees in Lithuania is considerably lower than other types of immigrants. Concerning third-country nationals (or migrant workers), migrant consultancy centres have recently been established (the target group of these centres is legally residing third country nationals). These centres became interested in the issue just a few years ago. For example, the Lithuanian Red Cross Society has information on all persons who have been granted asylum in Lithuania; while there is very little information on third-country nationals.

The Refugees' Reception Centre, under the Ministry of Social Security and Labour, has a mandate for the implementation of the social integration programme for foreigners granted asylum. Although the activities of the centre are not directly linked to migrant labour exploitation, social workers from the centre contact employers and act as mediators if specific cases emerge and so the centre should be mentioned in the research.

In a parallel to project-based activities and the issue of migrant labour exploitation, which, as a challenge, is not as pressing as the prioritised activities, general migration trends in Lithuania have to be emphasised. Only a few experts from NGOs indicated that they are facing migrant labour exploitation [M(1)], while the reason given for the lack of experience was low immigration flows [W(1); S(1)]. However, in the focus group, experts from the



monitoring body and the police indicated that with an increase in immigration, the potential for migrant labour exploitation will increase and monitoring bodies will encounter more cases of it [P(1); M(1)].

Lawyers and independent advocates with experience in working with legal issues of foreigners and representing foreigners in courts might be considered as part of the mechanism to prevent and fight against migrant labour exploitation. However, often migrants approach lawyers and independent advocates on an individual basis or via consultative projects when they are invited to act as experts by different NGOs.

The prosecution service and the courts are institutions which face migrant labour exploitation very rarely. As the research revealed [J(3)], few if any cases of migrant labour exploitation reached the prosecution service and the courts.

Human trafficking and child exploitation were identified as challenges only in relation to the emigration of Lithuanian citizens. In the case of human trafficking, Lithuania is not yet a country of destination. Rather it is a country where victims are often recruited by traffickers.

The way cases of migrant labour exploitation are identified varies according to the institutions/organisations involved. NGOs are not looking for specific cases of migrant labour exploitation, while monitoring bodies identify such cases through (un)planned inspections, when complaints from different organisations/individuals are received or when monitoring bodies have some suspicions with regards to violations of labour rights. In the latter case, as an interviewee in the police and law enforcement bodies focus group indicated, unplanned inspections are being carried out.

With regards to the institutional mandate to promote the rights of workers in general and of migrant workers in particular, as well as to categorise different migrant (target) groups, no distinction is made between different groups of employees. The State Labour Inspectorate does not categorise Lithuanian citizens, third-country nationals and citizens of other EU Member States. Lithuanian law does not distinguish between local employees from migrants as in the Labour Code it is written that their status in relation to labour rights is the same (according to a respondent from the monitoring bodies group). Local labour exchanges do not categorise employees as they look at employment policies in general, taking into consideration legally employed people, including foreigners [M(1)]. In this respect, NGOs (particularly those which are acting in the area of immigration and migrant integration: Caritas Lithuania and the Lithuanian Red Cross Society) identify only legally residing third-country nationals and foreigners granted asylum as target groups [S(1)]. However, questions related to migrant labour exploitation are not prioritised. Trade unions do not promote the rights of migrant workers in particular as they represent the rights of employees in general. In this case, migrants are not distinguished from other workers in legal acts and trade unions also do not distinguish migrants from the rest of their members. If a migrant is a member of a trade union, his or her citizenship or country of origin does not play any role [W(1)]. However, the right to become the member of trade union belongs to those who are legally employed.

In general, the language barrier was not indicated as an obstacle to tackling migrant labour exploitation as Russian or English are mostly used; though two interviewees [M(1); P(1)]

indicated that they face a language barrier when communicating with Chinese migrants. In particular cases, organisations use the services of interpreters. However, when discussing possible improvements, an expert from the monitoring bodies group indicated that the dissemination of information could be improved and more information in other languages (apart from Russian and English) could be provided.

Improvements in the activities of particular organisations when dealing with migrant labour exploitation vary in different organisations. However, the main disadvantage, which was mentioned by different experts and participants in the focus group [M(1); P(1); L(1)], is that there is no clear coordinator (or coordinating institution). Such a person or institution could create a mechanism encompassing different governmental institutions and non-governmental organisations in order to identify the steps that should be taken when a case of migrant labour exploitation emerges. Currently, the activities of different organisations are fragmented. In addition, legislative and institutional developments could also be initiated. The guidelines, specifically targeting migrant labour exploitation, have to be adopted and the State Labour Inspectorate and could be given more mandates in order to deal with migrant labour exploitation [P(1)]:

*“The main disadvantage is that there is no clear coordinator, who possibly could set up a mechanism, where all organisations could be involved and our contribution could be visible... I think that more could be done by spreading the information, perhaps more interest and initiative could be shown in order to find out what those conditions are... We can always come up with a decision as to what to do next” [L(1)].*

*“Pagrindinis trūkumas yra tas, kad nėra aiškaus koordinatoriaus, kuris galbūt galėtų sukurti mechanizmą, kuriame visi puikiai dalyvautume ir savo indėlį matytume... Aš galvoju, kad daugiau būtų galima ir tos informacijos skleisti, galbūt tais atvejais labiau domėtis ir pačiam tos iniciatyvos daugiau rodyti, išsiaiškinti, kokios tos sąlygos, kuriomis dirba... Ką toliau daryti, tai visada galima sugalvoti, ką toliau daryti...” [L(1)].*

*“...cooperation is close and effective as institutions know each other quite well. However, there are problems as there is no system in place... There is no clear plan and coordination in order to identify what steps should be taken if something happens... It should be a strategic approach, which has to come from the state; also, there have to be guidelines or a concrete plan” [M(1)].*

*“...bendradarbiavimas iš tiesų vyksta ir jis vyksta pakankamai gerai. Mes labai gerai pažįstame vieni kitus... mes turime problemų, mes neturime sistemos... bet mes neturim vieno bendro aiškaus plano, nes neturim vieno aiškaus koordinatoriaus, ką turim daryti, jeigu atsitiktų taip, taip... Turi būti kažkoks aiškus strateginis valstybinis požiūris ir ne tik strateginis, bet gairės, konkretus planas.” [M(1)].*

The training of practitioners was mentioned by different experts. Training courses to prepare inspectors could be initiated as inspectors are not well prepared specifically for work related to the identification of cases of migrant labour exploitation [M(1)]. Services provided by lawyers could be improved by an increased specialisation of lawyers in the area of migrant labour exploitation [L(1)]. In such ways, a better understanding of the problem of migrant

labour exploitation could be reached and the ability to identify the victims of human trafficking or migrant labour exploitation could be increased.

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

A significant proportion of interviewed experts [J(3); M(2); P(2); S(1)] indicated that they had not faced migrant labour exploitation in their professional careers. Therefore they did not choose from any codes of forms of migrant labour exploitation. However, an interviewee from the monitoring bodies group indicated the fifth category from the questionnaire – exploitation of migrant workers under particularly exploitative working conditions. Moreover, in the focus group the interviewee added that migrant labour exploitation is a problem and used the example of long-distance drivers:

*“So, in principle it is difficult to define, if we say that foreigners come here and they are being exploited. In my opinion, yes, they come here and are being exploited. The transport sector, I agree, totally. Having in mind all the risk, that drivers can dismantle cars, still, their employers are also very successfully abusing them by paying relatively low wages and basically taking advantage of the fact that workers’ ability to protect their interests are quite limited. Our posted employees are allowed by law to use the full arsenal of legal instruments, but they are not using them because of ignorance, because of the language barrier, etc. [...] He has to go to his country – Ukraine, Belarus or Moldova – and there defend his rights violated in Lithuania, which is in fact a very complicated process” [M(1)].*

*“Tai va, iš esmės sudėtinga būtų apibrėžti, jeigu mes kalbėtume apie tai, ar užsieniečiai atvažiuoja čia ir jie yra išnaudojami. Mano galva, taip, jie atvažiuoja čia ir yra išnaudojami. Transporto sektorius, pritariu, visiškai. Prie visos tos rizikos, kad jie gali išardyti mašinas, bet darbdaviai irgi juos pakankamai sėkmingai skriaudžia, mokėdami gana mažus atlyginimus ir iš esmės pasinaudodami tuo, kad jų galimybės ginti savo pažeistą interesą yra gana ribotos. Mūsų komandiruojamiems darbuotojams įstatymas leidžia tokiems žmonėms naudotis visu arsenalu teisinių priemonių, bet jie nesinaudoja dėl nežinojimo, dėl kalbos barjero ir t.t. <...> Jis turi važiuoti į savo Ukrainą ar Baltarusiją, Moldovą ir ten ginti savo pažeistą teisę Lietuvoje, kas iš esmės labai sudėtingas procesas” [M(1)].*

Service providers indicated the variety of forms of migrant labour exploitation. The most frequent form was the exploitation of a migrant worker under particularly exploitative working conditions (for example, illegal work, health damages which are not officially registered and for which no reimbursement is provided; an employment contract where working hours and wages do not match those agreed). Slavery (employment under very poor conditions, work without being paid) and forced labour were also mentioned. Exploitation of a migrant worker under particularly exploitative working conditions was also indicated by lawyers. In addition, the majority of expertise in the focus group revealed that migrant labour exploitation is rare

and most cases (which have been identified by the experts in the focus group) do not fall under severe forms of labour exploitation.

<b>Forms of labour exploitation</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Slavery 01	1	0	0	0	0	2	0	0	0	<b>3</b>
Forced labour, including bonded labour (e.g. debt bondage) 02	2	0	0	0	0	0	0	1	0	<b>3</b>
Child labour 03	0	0	0	0	0	0	0	0	0	<b>0</b>
Trafficking for labour exploitation 04	1	0	0	0	0	0	0	0	1	<b>2</b>
Moving beyond the categories mentioned so far: exploitation of a migrant worker under particularly exploitative working conditions (in the terms of the Employer Sanctions Directive) 05	2	0	2	0	0	0	1	0	0	<b>5</b>

One interviewee [N(1)] identified the fourth category – trafficking for labour exploitation – and gave an example of the prostitution of girls from Ukraine, Russia and Belarus.

Different interpretations of migrant labour exploitation between governmental institutions and NGOs were revealed. For example, some interviewees [P(1)] used the example of migrants who were not paid and had doubts whether this can be considered as a case of labour exploitation; while other interviewees indicated that such examples had to be considered as slavery [S(1)]. An interviewee in the monitoring bodies focus group indicated that the different interpretations of labour exploitation are related to laws which regulate the activities of governmental institutions and non-governmental organisations. On the one hand, non-governmental institutions look at the problem ‘humanely’; while on the other hand, the activities of governmental institutions are strictly regulated and sometimes there is no space to apply certain instruments or attitudes. In addition, two interviewees in the monitoring bodies and workers organisations focus groups revealed that there is no clear definition of what “labour exploitation” means.

With regards to the three economic sectors, where migrant labour exploitation occurs most frequently, practitioners did not identify any of them. However, the State Labour Inspectorate, while carrying out its functions related to the prevention and control of illegal work, indicated that the most risky areas where undocumented workers are used are the construction, agriculture and trade sectors (undocumented workers means all employees, who work without employment contract. These employees also could be Lithuanian citizens and foreigners). According to different groups of interviewees, the most risky economic sectors for labour exploitation are construction, the manufacturing of textiles, transportation and storage, accommodation and food service activities. Shipbuilding will be dealt with separately at it is a specific trend of employment of third-country nationals in Klaipeda’s harbour. The focus group validated the above discussed economic sectors by emphasising the construction sector, the manufacturing of textiles and transportation (particularly, long-distance drivers).

<b>Economic sectors</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Agriculture, forestry and fishing 01	0	0	0	-	0	0	1	0	-	<b>1</b>
Mining and quarrying 13	0	0	0	-	0	0	0	0	-	
Manufacturing 19	2	0	0	-	0	0	1	1	-	<b>4</b>
Electricity, gas, steam and air conditioning supply 32	0	0	0	-	0	0	0	0	-	<b>0</b>
Construction 43	3	0	3	-	3	0	3	0	-	<b>12</b>
Wholesale and retail trade, repair of motor vehicles and motorcycles 49	0	0	0	-	0	0	0	0	-	<b>0</b>
Transportation and storage 54	0	0	0	-	1	0	0	1	-	<b>2</b>
Accommodation and food service activities 60	2	0	2	-	0	1	1	0	-	<b>6</b>
Information and communication 68	0	0	0	-	0	0	0	0	-	<b>0</b>
Financial and insurance activities 74	0	0	0	-	0	0	0	0	-	<b>0</b>
Real estate activities 75	0	0	0	-	0	0	0	0	-	<b>0</b>
Professional, scientific and technical activities 76	0	0	0	-	0	0	0	0	-	<b>0</b>
Administrative and support service activities 81	0	0	0	-	0	0	0	0	-	<b>0</b>
Public administration and defence 93	0	0	0	-	0	0	0	0	-	<b>0</b>
Compulsory social security 94	0	0	0	-	0	0	0	0	-	<b>0</b>
Education 95	0	0	0	-	0	0	0	0	-	<b>0</b>
Human health and social work activities 100	0	0	0	-	0	0	0	0	-	<b>0</b>
Arts, entertainment and recreation 106	0	0	0	-	0	0	0	0	-	<b>0</b>
Other service activities 113	0	0	1	-	0	0	0	0	-	<b>1</b>
Activities of households as employers 120	0	0	0	-	0	0	0	0	-	<b>0</b>
Activities of extraterritorial organisations and bodies (does not include diplomatic households) 125	0	0	0	-	0	0	0	0	-	<b>0</b>
99	0	0	0	0	0	1	0	0	-	<b>1</b>

In most cases, economic sectors, where migrant labour exploitation occurs most frequently, were identified without reference to the professional experience of a particular expert or by considering few (or one) case(s) of migrant labour exploitation. In such cases, experts referred to their general professional knowledge of the Lithuanian labour market. In other cases, the identification of risky sectors was based on particular assumptions; for example, the sectors where mostly migrants are employed (transportation and storage or shipbuilding in Klaipeda's harbour) or sectors where the exploitation of Lithuanian citizens is more visible (for example, the manufacturing of textiles).

In some cases, the construction sector was noted as the only one sector where the potential for migrant labour exploitation is high; especially, taking into consideration the pre-crisis period, when construction was at its peak. While discussing the construction sector as the most risky one, experts in individual interviews and in the focus group emphasised the case of Chinese migrant workers. In addition, the case of Turkish migrant workers in 2008 was also highlighted:

*“One thousand Turks [...] No. It was not all right. They lived in those living wagons. We went there, inspected these wagons, so that they would have more or less normal living conditions. But there were all kind of problems there. For example, Turks come here, here is freedom. Immediately they lost all their money in casinos, drank excessively. Then, as far as I know, they had to work [their debts] off, so they worked for free. Well, as if for free. But often they would be sent out back home [by the employer]. The human resources department kept their passports and did not allow them to carry their documents with them so that they would not run away. Such was the experience, but now, when we do not have many migrants, we are trying to catch them one by one” [P(1)].*

*“Tūkstantis turkų [...] Ne. Ten nebuvo gerai. Jie gyveno tuose vagonėliuose. Mes važiuvom, tikrinom tuos vagonėlius, kad būtų tos sąlygos daugmaž tokios, pakankamai geros. Toliau. Bet ten visokių problemų buvo. Tarkim, atvažiavo turkas, čia laisvė. Iš karto kazino prasilošdavo, prasigerdavo. Tokiu būdu, kiek aš žinau, reikėdavo atidirbti, todėl dirbdavo už „ačiū“. Na, kaip už „ačiū“. Bet dažnai juos iš čia išsiųsdavo. Personalo tarnyba laikydavo pas save pasus, jų neduodavo nešiotis, kad jie nepabėgtų. Tokia buvo patirtis, bet dabar, kai čia nieko nėra, tai gaudom po vieną” [P(1)].*

With regards to accommodation and food service activities, Chinese immigrants, working in Chinese restaurants, have to be emphasised and the exploitation of these Chinese migrant workers by other Chinese migrants should be noted [M(2); P(1)].

The most frequent occupations of exploited migrant workers are illustrated above in the economic sectors discussed. According to experts, the most frequent occupations of exploited migrant workers are semi-skilled workers (particularly, long-distance drivers, shipbuilders, construction workers, cooks and seamstresses) but also include skilled workers (particularly, welders in the ship industry). As in the case of the economic sectors, the most frequent occupations of exploited migrant workers were evident from different sources of information: the general situation of exploitation of Lithuanian citizens, a few cases of migrant labour exploitation, general knowledge or public discourse.

<b>Occupation</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Skilled worker, e.g. electrician, foreman, motor mechanic 01	2	0	1	0	1	0	1	0	0	<b>5</b>
Semi-skilled worker, e.g. bricklayer, bus driver, cannery worker, carpenter, baker 02	4	0	2	0	1	1	1	1	0	<b>10</b>
Unskilled worker, e.g. labourer, porter, unskilled factory worker 03	2	0	0	1	0	0	2	1	1	<b>7</b>
Farm worker, e.g. farm labourer, tractor driver, fisherman 04	0	0	0	0	0	0	2	0	0	<b>2</b>
Service occupations, e.g. waiter, care-taker, domestic worker 05	0	0	1	1	1	1	2	0	0	<b>6</b>
Sales occupations, e.g. shop assistant 06	0	0	0	0	0	0	0	0	0	<b>0</b>
Clerical occupations, e.g. clerk, secretary 07	0	0	0	0	0	0	0	0	0	<b>0</b>

Professional and technical occupations, e.g. engineer, accountant 08	1	0	0	0	0	0	0	0	0	1
Other – please specify 09	0	0	0	0	1	0	0	0	0	1
Don't know 99	0	0	0	0	0	1	0	0	0	1

With regards to the gender dimension, a distinction between different professions has to be made. If such professions as long-distance drivers, shipbuilders, construction workers and cooks are predominantly performed by men, then women usually work as seamstresses. Also, the labour immigration structure by gender has to be emphasised as the vast majority of migrant workers in Lithuania are men.<sup>29</sup>

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<sup>29</sup> Erentaitė R., Pilinkaitė Sotirovič V. (2012). *The Gender Perspective in Migration: Analysis of Third Country Nationals in Lithuania*. Ethnicity Studies 2012/1-2. Lithuanian Social Research Centre, Vilnius, In Flexum, ISSN 1822-1041.

## 4. Risks and risk management

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

In Lithuania, the residence permit of a migrant worker is directly dependant on his or her work permit (issued for work at a specific company) – if an employment contract is terminated, the migrant worker must depart the Republic of Lithuania.<sup>30</sup> The dependence of a residence permit on a work permit has been noted, by interviewees in the focus group discussion, as a factor that hinders the protection of the rights of employees, but has not been listed as a risk factor for labour exploitation. One case study demonstrated that in case of violation of labour relations (such as delay of wages), the migrant workers appear in particularly vulnerable situation, because the labour permit does not allow changing employers. The migrant workers were not able to support themselves financially and could not secure any other form of income. The rights of the migrant workers could be protected only with the legal support provided free of charge by a trade union which also supported the workers by providing temporary accommodation and food. In the interviews, most respondents listed risk factors related to personal characteristics and the initial situation of migrant workers. Factors such as poor knowledge of the local language, culture and legislation were mentioned by 13 (out of 20) respondents, and low levels of education by three respondents.

Only five respondents (out of 20) identified migrants' dependence on the wishes of their employer as an important risk factor for labour exploitation [J(3); S(1); W(1)]. Yet the connection between legal residency in the country and employment has not been discussed in detail by any of the respondents. The respondents noted that the employee is dependent on an employer from the very beginning of his or her stay in the country:

*“Clearly, [one of the risk factors is] dependence on the employer's wishes regarding the employee's stay in the country. The employer, well, is formally bringing him in and, again, it depends whether the employee is staying in Lithuania legally or illegally. Most often exploitation takes place when a person is staying illegally or is engaged in an activity other than that he or she officially has the right to be here for” [J(1)].*

*“Aišku, priklausomybė nuo darbdavio valios dėl paties buvimo valstybėje. Tai darbdavys, na, formaliai jį atsiveža ir, tarkim, vėlgi priklauso, ar darbuotojas yra legaliai ar nelegaliai Lietuvoje. Dažniausiai išnaudojimas būna tais atvejais, kai tas asmuo yra nelegaliai arba užsiima ne ta veikla, dėl kurios jis oficialiai turi teisę čia būti.” [J(1)].*

Five out of 20 respondents mentioned differences in work culture and the difficulties for migrants to identify a situation as labour exploitation [J(1); L(1); M(1); N(1); P(1)]. It was noted that often employees might not understand that they are being exploited:

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<sup>30</sup> Lithuania, Seimas (2004), Law on the Legal Status of the Aliens (*Užsieniečių teisinės padėties įstatymas*), No. IX-2206, 29 April 2004, last amended on 10 October 2013, No. XII-548.



*“It can happen that if a person comes from a poor country, where labour exploitation [takes place]... They don’t even identify a situation as labour exploitation and don’t see it as a problem. And then, it is normal that those people limit their rights when they come here. Because they don’t understand what is happening with them. In general, labour exploitation is nasty, because people usually come and let themselves be exploited. [...] In the case of labour exploitation, people come and work willingly and often don’t really understand that they are being exploited.” [M(1)].*

*“Gali būti taip, kad, jeigu žmogus atvyksta iš skurdesnės valstybės, kur, tarkim, tokie išnaudojimo... Jie net išnaudojimo patys neidentifikuoja kaip tokio ir nesupranta, kad čia yra kažkokia problema. Ir natūralu, kad tie žmonės, atvykę čia, jie susimenkina savo teises palyginti. Nes jie nesupranta, kas su jais darosi. Apskritai išnaudojimas darbo tikslais yra bjaurus tuo, kad žmonės dažniausiai savo kojom ateina ir leidžiasi išnaudojami. [...] Darbo tikslais žmonės patys atvažiuoja ir patys dirba, ir dažnai nelabai supranta, ar juos išnaudoja.” [M(1)].*

There were no contradictions or divisive issues in the answers of the respondents, as many respondents mentioned several risk factors that often overlapped. The only singular answer was from a respondent who worked in a monitoring body—who stated that they could not understand what is meant by risk factors and argued that there are no risk factors for labour exploitation.

Respondents were more prone to identify personal characteristics and a migrant’s initial situation as risk factors for labour exploitation rather than risk factors in legal and institutional settings. When considering risk factors in legal and institutional settings, seven respondents (out of 20) could not name all three factors, two of the respondents [E(1); M(1)] did not identify any risk factor.

The majority of the respondents chose answers coded 01, 02 and 03 when considering risk factors in legal and institutional settings. They differed in their consideration of the importance of these factors and in their reasoning as to why the system of labour exploitation prevention and protection is not working properly (i.e. due to a lack of institutions or qualified professionals). Yet, the breakdown of the answers shows that the system as such is inefficient. An exemplary quote from a respondent from the lawyers’ group can be provided (the respondent chose 06 “Other”):

*“There is no institution that could provide complex assistance to a migrant worker in a problematic situation. It is based on luck, a very beneficial set of circumstances – when all factors work in his or her favour – only then a victim, a migrant might be able to defend his or her rights from beginning to end.” [L(1)].*

*“Tai tokios kompleksinės pagalbos, iškilus tokiai problemai, kad žmogus galėtų susilaukti, tokios institucijos nėra. Tai turi labai sėkmingai tai aukai, migrantui susiklostyti aplinkybės, kad šitie faktoriai jam palankiai sukristų, kad jis galėtų savo teises nuo pradžios iki galo apginti.” [L(1)].*

The lack of a systematic approach to prevent and protect against labour exploitation has been noted both in the focus group interview and in a discussion on one of the case studies.

Discussing the case of labour exploitation of 150 Chinese work migrants, the expert [M(1)] noted that one of the main reasons for failure to defend the rights of the 150 Chinese work migrants was problematic communication among different state institutions. The respondent argued that although all institutions that dealt with this case conducted their work properly and in accordance to their competencies, the final outcome for the migrants was negative (i.e. no compensations were awarded and the perpetrators were not fined). The expert suggested that the main problem was the lack of a key/umbrella institution that would be responsible for addressing such cases. The expert argued that a more active role of non-governmental organisations would have been important in resolving the issue in favour of the exploited workers. See also Section 3.1.

Discussing risk factors related to personal characteristics and the initial situation of a migrant worker, respondents most often chose a lack of knowledge of the local language and low education levels of migrants. A low level of education as a risk factor was chosen most often, not due to the fact that most migrants have a low level of education, but because the respondents considered that people with a low level of education are in general less able to defend their rights and therefore are more prone to exploitation. Risk factors such as poverty and labour exploitation in their home country or discrimination were chosen less often. Considering the risk factors related to a workplace, the respondents often based their answers on cases of labour exploitation of the local workforce, especially with regards to certain sectors of the economy. Two respondents [E(1); R(1)] did not provide any risk factors at all, stating that the coded answers are irrelevant.

The breakdown of answers related to risk factors of exploitation, are provided in the tables below.

<b>Factors adding to the risk that migrant workers may be exploited – legal and institutional setting</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Low risk to offenders of being prosecuted and punished	2	0	1	1	4	1	2	1	1	<b>13</b>
Low risk to offenders of having to compensate exploited migrant workers	3	0	1	1	4	1	2	1	0	<b>13</b>
Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs	3	0	1	0	2	3	1	1	0	<b>11</b>
Corruption in the police	0	0	0	0	0	0	0	0	0	<b>0</b>
Corruption in other parts of administration	3	0	0	1	0	0	1	0	0	<b>5</b>
Other (please specify)	0	0	1 <sup>#</sup>	0	1 <sup>+</sup>	1 <sup>*</sup>	0	0	0	<b>3</b>
Don't know	1	3	2	0	1	3	3	0	2	<b>15</b>

\* The respondent from the judges and prosecutors group suggested that institutions responsible for the prevention of and protection against labour exploitation are not fulfilling their duties properly.

# The respondent from the lawyers' group stated that none of the indicated risk factors are appropriate. They chose "Other" stating that the main risk factor is a lack of a systematic approach to the prevention of and protection against labour exploitation.

+ The respondent from the police and law enforcement group stated that there is a lack of monitoring for irregular migrants.

<b>Factors adding to the risk that migrant workers may be exploited – personal characteristics and the initial situation</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Migrant worker has a low level of education	3	0	1	1	4	2	2	0	1	<b>14</b>
Migrant worker does not know the language of the country of workplace	3	1	2	1	4	3	2	1	1	<b>18</b>
Migrant is not allowed to enter into employment	0	0	1	0	1	0	1	0	0	<b>3</b>
Worker comes from a country the nationals of which are often exploited in the destination country	2	0	0	1	1	0	2	1	0	<b>7</b>
Worker is prone to discrimination on behalf of their race or through their identification as belonging to a national minority (such as Roma, Dalit or sub-Saharan African)	0	0	2	0	0	1	1	0	0	<b>4</b>
Worker is prone to discrimination on behalf of their sex										
Worker has experienced extreme poverty at home;	1	0	0	0	2	3	1	1	1*	<b>9</b>
Other (please specify)	1#	0	0	0	0	0	0	0	0	<b>1</b>
Don't know	2	2	0	0	0	0	0	0	0	<b>4</b>

\* The respondent adds that the 07 risk factor is related to 03 and argues that they should be chosen together.

*"Let's take Ukraine, Belarus, we cannot say that these states are in great poverty. There is a difference in wages. Let's take Lithuania and other countries where they agree to work; they agree to work since Lithuania's minimal or medium salary is rather big in their eyes. So I think that they would agree to be exploited and without a contract, because a person's aim is to earn money, financial well-being and when they aim to earn a lot of money, they pay less attention to the legal aspects and to their own protection" [N(1)].*

*"Paimkim, pačią Ukrainą, Baltarusiją, tai negalime sakyti, kad tos valstybės dideliame skurde. Darbo užmokestis smarkiai skiriasi. Paimkim, Lietuvos ir tų valstybių, ir jie sutinka dirbti, nes jų standartais Lietuvos minimalus ar vidutinis atlyginimas jiems yra pakankamai daug. Tai aš manau, kad jie sutiktų būti išnaudojami ir be sutarties, nes žmogaus tikslas yra užsidirbti, ta finansinė gerovė, ir kada jie stengiasi užsidirbti kuo*

*daugiau pinigų, jie mažiau dėmesio kreipia į tuos teisinius aspektus ir jų pačių apsaugos.”[N(1)].*

# The respondent added that in addition to extreme poverty at home, an employee can be in a situation when he or she is in extreme need of money (has to send money home) and therefore he or she might allow himself or herself to be exploited in order to earn at least some money [S(1)].

<b>Factors adding to the risk that migrant workers - as regards the migrant workers' work place</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
The migrant works in a sector of the economy that is particularly prone to exploitation	3	0	2	0	2	3	1	1	0	<b>12</b>
The migrant works in relative isolation with few contacts to clients or to people outside the firm	2	0	1	0	3	2	2	1	1	<b>12</b>
The migrant worker is not a member of a trade union	1	0	0	0	0	0	0	1	0	<b>2</b>
The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed	4*	0	2	0	2	1	2	0	1	<b>12</b>
The migrant worker is not directly employed by the business/organisation for which they work, e.g. agency workers, or employees of cleaning or security companies	0	0	1	0	0	2	2	0	1	<b>6</b>
The migrant worker is employed as a posted worker by a foreign company	1	0	0	0	1	0	1	0	0	<b>3</b>
The migrant is a seasonal worker	1	0	0	0	2	1	1	0	0	<b>5</b>
Other (please specify)	0	0	0	0	0	0	0	0	0	<b>0</b>
Don't know	0	3	0	3	2	0	0	0	0	<b>8</b>

\* Two respondents (from the victim support organisations group) stated that risk factors 04 and 05 overlap and should be chosen together.

### **Role of recruitment agencies**

Seven out of 12 respondents did not have any specific information on the role of recruitment agencies in the employment of migrants in Lithuania [J(3); L(1); M(1); N(1); W(1)]. Their answers were more of a speculative nature, stressing the importance of transparency, honesty and responsibility in the work of recruitment agencies.

A representative of the employers' organisations group noted that both an employer and a recruitment agency share the responsibility to ensure that a migrant worker is not exploited and is provided with the same working conditions as a national worker. The respondent has not encountered inadequate or irresponsible work of recruitment agencies.

A lawyer considered the role of recruitment agencies as potentially preventive against labour exploitation. They suggested that recruitment agencies could act as barriers for labour exploitation by informing prospective employees about their rights and the labour law in the country. Yet they noted that the services of agencies were often provided very formally and the interests of an employee were not well represented. They also noted that in cases of fraud, the role of the police and the prosecution service is not active enough and further noted that the police did not start an investigation in cases when migrant workers were deceived by recruitment agencies arguing that labour relations should be mediated under civil, not criminal, law.

One case study presented in the research indicates the important role of recruitment agencies in cases of labour exploitation, yet the investigations (both criminal and administrative) of the case were discontinued by state institutions, therefore only provisional data can be provided. Two companies were involved in the employment of exploited Chinese workers in Lithuania. The company registered in China recruited citizens in People's Republic of China for work in the construction sector in Lithuania, promising rather high wages (1,500 USD per month and proper living and working conditions). The company registered in the Republic of Lithuania was responsible for the Chinese migrant workers' employment and accommodation in Lithuania.

According to information provided by the Chinese workers in interviews with labour inspectors, they had to pay 13,500 USD (according to other information source – 105,000 juanis) each for visa expenses and employment mediation services. The workers were recruited in 2008, during the economic and construction boom in Lithuania, when there was a high demand of constructors in local economy. However, when the migrant workers arrived in Lithuania, the economic crisis hit and the workers were not provided with the promised jobs in the construction sector. Some of the migrants were hired by other local companies (for ex. companies of aviculture, pig rearing farm), i.e. in the sectors and for work that do not correspond to their qualifications and were not in accordance with the granted work permits. After the case was identified by state institutions, a criminal investigation and an administrative court case were started against one of the recruitment agencies, yet both cases were terminated without any legal charges or fines for the agency. Although the case was identified as a case of labour exploitation, the two interviewees that commented on the case viewed the role of the recruitment differently. The first expert [M(1)] noted that this case could be considered a case of human trafficking and was disappointed that it was not properly investigated by the state institutions. The second expert [P(1)] was hesitant to identify the recruitment agencies as a culpable party, because their activities were not officially recognised as criminal or illegal.

The monitoring of recruitment agencies was discussed in detail by only two respondents – representatives of a labour inspectorate and of a local labour exchange.

A representative of the labour inspectorate [M(1)] noted that since 2010, monitoring of the activities of recruitment agencies is no longer under their mandate. The Order of the Ministry

of Social Security and Labour, adopted in 2010,<sup>31</sup> mandated that a legal (juridical) or a physical person, providing employment or recruitment services, must register at a local labour exchange within a month from the start of business and must report on employment and recruitment services provided four times a year. The respondent noted that since the adoption of the order, the State Labour Inspectorate does not monitor the activities of recruitment agencies. The supervision of recruitment agencies is conducted by local labour exchanges and the police, yet, according to the respondent, the monitoring is not conducted effectively:

*“Up until 2010 we were this institution and monitored those activities. Now there is no such regulation. We don’t monitor at all. The Police Department is responsible and the labour exchange carries out some monitoring. Should this monitoring be more effective? In my opinion, certainly, yes. Because up until 2010, when the labour inspectorate was directly monitoring all those employment services, there were no cases or just very few cases of people being trafficked, exported, confused, seduced and so on.” [M(1)].*

*“Iki 2010 metų mes tokie buvom ir prižiūrėjom tą visą veiklą. Dabar tokio reguliavimo nėra. Mes nebeprižiūrim visiškai. Policijos departamentas yra atsakingas ir šiek tiek Darbo birža vykdo šiokią tokią priežiūrą. Ar turėtų ta priežiūra būti efektyvesnė? Mano galva, tikrai taip. Kadangi iki 2010 metų, kada Darbo inspekcija vykdė priežiūrą tiesiogiai įdarbinimo šitų visų tarnybų, tai mes neturėjom tokių atvejų arba turėjom tikrai labai pavienius atvejus, kada žmonės buvo paimami, išvežami, supainiojami, suviliojami ir taip toliau.” [M(1)].*

A respondent from a local labour exchange [M(1)] noted that the reporting of activities and services provided by recruitment agencies is not well regulated and not all agencies provide information on time as no sanctions are foreseen for those recruitment agencies that do not report on time. Therefore, the monitoring is not always effective:

*“There is a duty for recruitment agencies to report and to inform on [their] activities to local labour exchanges. But I think that, first of all, the [burden of] responsibility should be strengthened for those agencies that do not submit reports or submit them inadequately.” [M(1)].*

*“Yra prievolė įdarbinimo privačioms tarnyboms pranešti ir informuoti, teikti ataskaitas apie savo veiklą kiekvienai teritorinei darbo biržai. Tačiau aš manyčiau, kad visų pirma galėtų būti sugriežtinta atsakomybė tų ataskaitų neteikiant arba pateikiant jas netinkamas.” [M(1)].*

A representative of a recruitment agency stated that they had never encountered any institution that would monitor the activities of recruitment agencies and considered such monitoring futile and argued that only labour relations should be monitored (i.e. relations

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<sup>31</sup> Lithuania, Lithuanian Labour Exchange under the Ministry of Social Security and Labour (2010), Order on Approval of Regulation on Provision of Information on Recruitment Services (*Isakymas dėl informacijos apie tarpininkavimo įdarbinant paslaugų teikimą tvarkos aprašo patvirtinimo*), No. V-1, 6 January 2010.

between the employers and employees) as recruitment agencies do not create workplaces and do not engage in labour relations.

Seven out of 12 respondents did not name local labour exchanges as institutions monitoring the activities of recruitment agencies, considering that the supervision might be conducted by the State Labour Inspectorate. Five out of 12 respondents [E(1); J(1); L(1); M(1); N(1)] mentioned the police as one of the monitoring institutions. Two out of 12 respondents [L(1); R(1)] could not name any monitoring institution.

In answering questions 23 and 24, the respondents did not differentiate between services provided by recruitment agencies and agencies providing temporary employment regulated by the Law on Employment via Temporary Employment Agencies.<sup>32</sup> Therefore, the breakdown of answers under these categories is not available.

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

General preventive measures against labour exploitation were mentioned by two representatives of the monitoring bodies group. The measures carried out included educational activities for schoolchildren, students and employees on the prevention of undeclared employment, violations of health and safety regulations in the workplace, etc. The respondents noted that no specific measures for migrant workers have been implemented.

The majority of respondents (six out of 11) stated that their organisation have not implemented any measures aimed at the prevention of migrant labour exploitation [M(1); N(1); R(1); W(1); S(2)].

A representative of the victim support services noted that migrant workers have little contact with Lithuanian state institutions before starting to work in the country. Work and residence permits are usually acquired by employers. Therefore, the respondent noted, state institutions have a limited possibility to inform migrant workers about their rights and labour law system in the country:

*“Usually [a migrant worker] does not go to the [labour monitoring and control] institutions him/herself. Therefore, s/he does not have any information. [...] There is no need to go for getting work permits for them, the employers goes to take the permits. It means that there are not any possibilities to inform the person about his/her rights. That is, if you are exploited at the work place, [you do not know] where you can apply... The employer him/herself would not provide such information. Thus these peoples do not come, unless apparent criminal crime against them is committed.”*

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<sup>32</sup> Lithuania, Seimas (2011), Law on Employment via Temporary Employment Agencies (*Jdarbinimo per laikinojo jdarbinimo jmones jstatymas*), No. XI-1379, 19 May 2011. Available at [in Lithuanian]: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=447166&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=447166&p_tr2=2).

*“Dažniausiai tas žmogus nenuveina iki tų tarnybų, jis neturi jokios informacijos. [...] Jiems net patiems nereikia imti tų leidimų, darbdaviai vyksta tų leidimų. Reiškia, jokios galimybės informuoti asmenį apie jo teises, kad jeigu tu būsi išnaudojamas darbe ar nepatenkintas sąlygomis, tu gali ten ir ten kreiptis. Pats darbdavys tikrai nesuteiktų tos informacijos. Tai tie žmonės neprieina, nebent koks aiškus nusikaltimas prieš juos įvykdomas, kriminalinis nusikaltimas“ [S(1)].*

Two organisations were noted as implementing specific measures aimed at the prevention of labour exploitation for foreigners. Both victim support organisations provided services for refugees and individuals granted asylum. The respondents noted that they have organised a number of meetings and seminars aimed at refugees on issues of labour law, professional orientation and employment.

*“We have an ongoing project that includes an activity related to vocational training and employment. Even templates of labour contracts are shown to refugees. Refugees are given an explanation of how to fill them in, what they need to look for when signing a contract, what are the rights of workers, what he or she should demand and what are the rights regarding holidays.”*

*“Mes vykdom projektą, kur yra viena veikla, susijusi su, kaip sakyti, profesiniu orientavimu, įdarbinimu ir yra pateikiamos netgi sutarčių šablonai, aiškinama pabėgėliams, kaip reikia užpildyti, į ką reikia atkreipti dėmesį, pasirašant sutartį, kokios yra darbuotojų teisės, ką jį turi teisę pareikalauti, kokios teisės jį poilsį.” [S(1)].*

A representative of employers' organisations noted that newly arrived migrants are informed about the company, the culture of the country, working conditions and requirements by a team lead. The information, which is considered important for the successful induction of employees, is provided in a language that the employees understand – either by providing translation or by using a native speaker. The successful induction of employees in the company is overseen by the team leader.

None of the respondents could identify a pre-departure information programme aimed at migrant workers.

A representative of the national policy experts at Member State level group mentioned the project ADSTRINGO<sup>33</sup> – currently implemented in nine countries in the Baltic Sea region. Yet, in this project, Lithuania is considered as a country of origin, not a country of destination, for human trafficking. No specific measures aimed at migrant workers in Lithuania are implemented.

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<sup>33</sup> See also Ollus, N., Jokinen, A. & Joutsen M. (2013), Exploitation of migrant workers in Finland, Sweden, Estonia and Lithuania: Uncovering the links between recruitment, irregular employment practices and labour trafficking. *HEUNI Publication Series No. 75*. Helsinki: European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), available at: [www.heuni.fi/material/attachments/heuni/reports/6KZycU1Lj/HEUNI\\_report\\_75\\_15102013.pdf](http://www.heuni.fi/material/attachments/heuni/reports/6KZycU1Lj/HEUNI_report_75_15102013.pdf) Information about the project is available at: [www.vrm.lt/lit/IMG/1368](http://www.vrm.lt/lit/IMG/1368) (in Lithuanian) and at [www.heuni.fi/material/attachments/heuni/reports/6Ka1d55bj/Adstringo\\_info\\_sheet.pdf](http://www.heuni.fi/material/attachments/heuni/reports/6Ka1d55bj/Adstringo_info_sheet.pdf) (in English).



A representative of employers' organisations noted that information provided on the Internet is sufficient for people considering employment in Lithuania. The respondent mentioned a website of the Migration Department under the Ministry of the Interior of the Republic of Lithuania and information provided by recruitment agencies. A lack of information was mentioned only in the health sector, concerning access to health services available at state and private health-care institutions (all employees are covered by statutory health insurance). It was noted that some migrants did not have enough information about how to register at a health centre and what services were available, yet the missing information was provided by the employer.

An answer to the question on the mechanisms of standard-setting and accreditation at national and international levels was provided only by a representative of employers' organisations stating that these mechanisms play a positive role and provide a feeling of safety for people migrating for work to different countries. Other respondents had not heard about such mechanisms of standard-setting and accreditation [N(1); R(1); W(1); S(5)].

In the focus group interview, all interviewees agreed that there is a general lack of knowledge on the question regarding labour relations regulation in Lithuanian society. In the discussion, it was agreed that the majority of workers – Lithuanian nationals and migrants – do not have enough information on: where they could go if their rights are violated or they are exploited at work, what the mechanisms of complaint are, and what steps they should take to protect themselves. Some project-based educational activities are provided by the State Labour Inspectorate and trade unions in schools for schoolchildren in their final years of school, but the scope of these activities was not considered to be sufficient.

An interviewee from the monitoring bodies group provided several reasons as to why the current system of prevention of labour exploitation is inefficient:

Educational activities in schools are project based (i.e. temporary) and not sufficient in scope. The demand for them is high, yet the available human resources to run them is insufficient. Furthermore, preventive educational measures are too segmented to make a significant impact.

Although the fight against undeclared work and the shadow economy has been declared as a priority by successive governments, the implemented measures have not been efficient. No effective preventative measure has been created and/or implemented.

NGOs active in the field of labour relations do not have enough resources and are not able to make a strong impact on the state institutions responsible for the regulation of labour relations. The activities of NGOs, although important, are not visible and significant in the prevention of labour exploitation.

Analysis of research findings suggests that there is no support/interest from politicians in the prevention of labour exploitation. There are no important discussions regarding labour relations in the political arena, except for the demand (by employers) to liberalise labour relations.

The issue of migrant workers is of even lesser significance in the Lithuanian labour market, therefore measures for the prevention of labour exploitation are practically non-existent. The level of immigration to Lithuania is too low to be considered an important issue:

*“We find five to ten illegal migrants in Lithuania a year. We can make an assumption that we catch 1% of the actual number, but still, it is only 1,000 people. In the labour market, 1,000 people is nothing, it is a very small number.”*

*“Jeigu mes čia turime penkis-šešis-dešimt tų nelegalių migrantų. Galime daryti prielaidą, kad gal net jeigu ir pagavome vieną procentą, vieną procentą, tai vis tiek iki tūkstančio, tarkim, ar ne. Tai kas čia toje darbo rinkoje, tūkstantis žmogui – niekas, nulis.” [M(1)].*

All participants in the focus group interview agreed that the inactivity of the government in the field of labour relations contributes to the lack of preventive measures on the exploitation of both Lithuanian nationals and migrant workers.

### **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**

All respondents agreed that in the case of a police raid on the premises where migrant workers are employed, the documents and legal status of migrants would be checked. If irregular migrants are detected, their status would be decided based on the severity of the labour conditions. The migrant workers would acquire the status of “victim” only in cases qualified as criminal offences (i.e. slavery, human trafficking, etc.). If a case is qualified as an administrative offence (when investigated by the State Labour Inspectorate), the migrant workers would not be given the status of victim.

In criminal cases, (i.e. cases of forced labour and human trafficking that are criminalised under the corresponding articles in the Criminal Code), a migrant worker is seen as a victim of crime, irrespective of the status of his or her stay in the country. A respondent [N(1)] referred to the order of the government on the period allowed for foreigners to decide on whether or not to cooperate with law enforcement institutions.<sup>34</sup> The provision on the legal status of a victim of human trafficking or illegal work under severe labour exploitation is also included in the Law on the Legal Status of Aliens.<sup>35</sup>

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<sup>34</sup> Lithuania, Government (2012), Order on approval of procedure for setting a decision period for a foreigner, who was or is a victim of human trafficking, to decide whether or not to cooperate with law enforcement institutions (*Nutarimas dėl apsisprendimo laikotarpio, per kurį užsienietis, kaip esanti ar buvusi su prekyba žmonėmis susijusių nusikaltimų auka, turi priimti sprendimą, ar bendradarbiauti su ikiteisminio tyrimo įstaiga ar teismu, suteikimo tvarkos aprašo patvirtinimo*), No. 430, 18 April 2012. Available at [in Lithuanian]: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=422963&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=422963&p_tr2=2).

<sup>35</sup> Lithuania, Seimas (2004), Law on the Legal Status of Aliens (*Užsieniečių teisinės padėties įstatymas*), No. IX-2206, 29 April 2004, last amended on 10 October 2013, No. XII-548. Available at [in English]: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=416015](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=416015).

Yet the majority of respondents considered that the legal status of a migrant worker would be one of the main concerns of the investigative officials. In the case of irregular migration, seven respondents (out of 20) stated that irregular migrants would most likely be detained either by the police or in the Foreigners' Registration Centre [J(1); P(1); L(2); S(3)].

The majority of respondents considered that in cases of irregular immigration and undeclared work, the cases of an employer and employees would be investigated separately. The employer would receive an administrative fine for undeclared work and employees (irregular migrants) would be fined for illegally staying in the country and sent back to their home country.

During the focus group interview, the main arguments were repeated – irregular immigrants would most likely be detained and/or fined for illegally staying in the country, while an employer that employed an undeclared worker would receive a fine. A respondent [FG(M)] noted that an undeclared worker (a Lithuanian national or a migrant) in Lithuanian society is often considered to be a violator, not a victim in labour relations. According to this interviewee, although Lithuania has transferred the provisions of the Directive 2009/52/EC<sup>36</sup> providing for minimum standards on sanctions and measures against employers of third-country nationals without a residence permit, in the actual implementation of the law, the practice might not reflect the status of irregular migrants as victims, although they should be seen as such according to the current law.

Two illustrative quotes from the police and law enforcement bodies and the monitoring bodies group can be provided. The quotes show how cases of undeclared work of migrants would be treated by different institutions:

*“If the investigation shows that the employer employed them illegally, we do not check if they came legally, if they are illegal. [We only investigate] the fact that the employer employed ten employees illegally. We will draw up a protocol and give it to the court. [...] We do not investigate if these persons, as you said, are victims, i.e. if they come illegally to the country by themselves or they were brought in illegally – we do not check this. We look only at violations of labour relations.”*

*“Mes netikrinsim, ar jie legaliai atvyko, ar jie yra patys nelegalai, bet už faktą, kad pas jį dirbo dešimt nelegalių darbuotojų, bus surašytas protokolas ir atiduotas į teismą. Mes netiriam, ar tie asmenys, suprantat, kaip jūs sakėt, ar jie yra aukos, ar jie patys atvyko nelegaliai ar juos atvežė nelegaliai – mes to nesiaiškinam. Mes žiūrim tik per darbo santykių prizmę, suprantat.”[M(1)].*

*“Yes, we treat him or her as an illegal migrant. We follow the procedure of detaining the illegal, returning him or her back or registering him or her. And then we can offer other services, should he or she ask for it. We hand it [the case] over to other*

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<sup>36</sup> European Union, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 18 June 2009, 2009/52/EC. Available at [in English]: [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0052:EN:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0052:EN:NOT).

*institutions and then they deal with the company where he or she was found (employed)."*

*"Taip, mums tai nelegalus asmuo. Ir mes darom visus veiksmus, susijusius su nelegalo ar sulaikymu, ar grąžinimu, jo surašymo sprendimo. O jau kitos tarnybos jau kažką, jei jis parašo, mes tada priduodam ir kitos tarnybos užsiima jau ta įstaiga, kurioje buvo rasta." [P(1)].*

In cases where there is a suspicion that migrant workers are being exploited, the police are not able to take any measures to protect potential victims. During the pretrial investigation, before enough evidence is gathered to identify criminal activities, the potential victims are not protected by the police. The police are able to step in only when enough proof is gathered to identify criminal activities and victims of crime.

*"If there are real cases, the police, of course, start from an assessment of information and after this, if it is needed, the pretrial investigation. All this is done in accordance to common regulations. If the police are informed about some case of a migrant being exploited at work, a raid is conducted, some investigation and such cases are confirmed or not. If they are confirmed, the owner, the employer is punished. If not, then everything depends on the collected information, i.e. if there is enough of proof. This is important to decide if some monitoring will be continued, if an investigation can be conducted."*

*"Jeigu yra žinomi konkretūs atvejai, tai policija, aišku, pradeda patikrinimą tų duomenų, o po to, jeigu reikia, ir ikiteisminį tyrimą. Tas vyksta bendra tvarka. Jeigu yra žinomas konkretus atvejis, kad migrantas yra išnaudojamas darbe, tai jeigu yra reidas, kaip jūs sakėte, patikrinimas, tokie atvejai nustatomi ir patikrinami ir jie arba pasitvirtina, arba ne. Na, jeigu jie pasitvirtina, tai tiesiog savininkas yra baudžiamas, t.y. darbdavys yra baudžiamas. Na, o jeigu nepasitvirtina, tai vėlgi priklauso nuo surinktos informacijos, t.y. ar užtenka įrodymų ar ne. Nuo to priklauso ar toliau tęsiama kažkokia stebėsena, ar kažkoks tyrimas gali vykti." [N(1)].*

Five respondents (out of 16 asked) stated that the police would not take any action in cases of suspicion of labour exploitation [M(1); L(2); S(2)]. A respondent from the victim support services group noted that there has not been any criminal cases of labour exploitation in Lithuania, which, according to them, demonstrates the inactivity of the police in the investigation of such cases:

*"In Lithuania no pretrial investigation has been conducted in this sphere. This is the best answer to show that no action has been taken here."*

*"Lietuvoje mes neturime nė vieno ikiteisminio tyrimo šioje srityje. Tai yra geriausias atsakymas, kad čia jokių veiksmų nėra imtasi." [S(1)].*

Nine respondents (out of 16 asked) indicated that in cases of suspicion of labour exploitation some action would be taken, either by starting a pretrial investigation or by referring the potential victims to NGOs or the State Labour Inspectorate. Yet, the active position of a potential victim is very important in the further investigation of the case:

*“First of all you have to explain to them [the victims] their legal status in Lithuania. Then their rights have to be clarified: rights related with residence in Lithuania, with employment. And only then, if [a] potential victim understands that he or she is exploited, then we have a basis [upon which] to approach institutions for help. If this potential victim does not pay any attention to this, then of course, we cannot prevent further victimisation.”*

*“Turi būti išaiškinama jų teisinė padėtis, visų pirma, jų teisinė padėtis Lietuvoje. Po to turi būti išaiškinama, sakysim, jų visos teisės: teisė susijusi su pragyvenimu Lietuvoje, su įsidarbinimo galimybėmis. Ir tik tada, jeigu potenciali auka supranta, kad ji yra išnaudojama, tada tai gali būti pagrindas jos kreipimuisi į institucijas dėl pagalbos prašymo. Jeigu, sakysim, ta potenciali auka, na, nekreips į tai dėmesio, jai bus visiškai neįdomu. Sakysim, to asmens teisės, galimybės, aišku, mes tolimesnės viktimizacijos neišvengsim.” [J(1)].*

The importance of the active role of victims in protecting their rights in cases of labour exploitation is confirmed also by the answers to the question on how effective investigations and prosecutions are.

Six (out of 13 asked) respondents commented that the main reason that there has never been a court case on labour exploitation in Lithuania is the rather passive role of the police and the inefficient system of monitoring of potential cases of labour exploitation [P(1); L(1) S(1) J(3)]. If a victim is not actively defending his or her rights, there is no institution that would continue investigating the case:

*“As to the investigation and criminal prosecution, in my opinion, the police and investigators too often terminate the investigation too early. Furthermore, I think, the liability for employers is too mild in the field of labour relations. Take for example individual cases like deception, fraud crimes. I think they should be more strictly classified and these proceedings should be conducted more actively by the police on their own initiative, because in general, not only in this particular field, in many cases that is the common approach of the police... In those ambiguous situations or unclear situations in terms of evidence, where you have to work harder, the police tend to transfer the burden of proof to the victim, offering him or her [the opportunity] to defend himself or herself in civil or other proceedings... Cases where the police would take an active position and try to protect the persons are very rare and exceptional.”*

*“Tyrimas ir baudžiamasis persekiojimas, mano supratimu, yra iš policijos ir tyrėjų pusės yra per dažnas tyrimų nutraukimas ir, mano supratimu, gan yra toks negriežtas atsakomybės taikymas būtent tokioje darbo santykių srityje. Sakykim, ten tokie atskirais atvejais apgaulė, sukčiavimo nusikaltimai. Jie mano supratimu, galėtų būti griežčiau kvalifikuojami ir tos bylos galėtų būti vedamos aktyviau policijos iniciatyva, nes bendrai, čia ne tik šitoje srityje, bet įvairiose bylose yra gan dažnas tas policijos požiūris, kad tos ribinės situacijos arba jeigu įrodymų prasme ribinės situacijos, kur daugiau reikia dirbti, policija tiesiog linkusi perkelti ir pasiūlyti aukai pačiai save ginti savarankiškai civilinėse ar kitose bylose... Taip, kad policija užimtų aktyvią poziciją, stengtųsi apginti žmones, būna labai reti ir išimtiniai atvejai.” [L(1)].*

The active role of a victim as the main reason for a successful process of mediation in cases of violations of labour relations has been demonstrated in four out of five case studies. The legal support, provided by NGOs and/or trade unions, was an important factor in the ability of a victim to protect his or her rights; yet in all cases, migrant workers were actively searching for support. In the four cases, the migrants initiated the investigation of violations of labour relations by approaching an NGO/ trade union, the police or a labour inspectorate and continued to cooperate with these institutions until the case was resolved. In the case study that concerned the exploitation of approximately 150 Chinese citizens, the lack of a more active role for social partners (NGOs, trade unions) in the defence of the rights of the victims has been noted by the experts [M(1)]. There was no close cooperation of the exploited migrants and the social partners (NGOs, trade unions) in the investigation of the case. The reasons why the cooperation was missing were not specified in the expert interviews.

Three (out of 13) respondents considered that the main reasons for ineffective investigations and prosecutions are the lenient sanctions for employers and gaps in the legislation [S(1); P(2)].

Four (out of 13) respondents stated that they would not comment on the question as they did not have enough information to do so [L(1); P(1); S(2)].

During the focus group interview, the majority of the respondents agreed that the current system of investigation of violations in labour relations is very complex and stressful (emotionally draining) for the employees whose rights were violated. Therefore, not many people make a decision to start the process, which is often complicated and lengthy. Yet the respondents noted some positive developments in legal practice, especially the specialisation of young judges in labour law and new case law on labour strikes in Lithuania. The referral of victims to a shelter or other form of support service was considered effective by five (out of 13) respondents [J(1); N(1); P(3)]. Yet, in four interviews out of five, it is unclear if the respondents are referring to actual cases of labour exploitation or to general cooperation of the police with institutions and organisations providing social services.

Six respondents (out of 13) did not know of any cases when the police would refer a victim of labour exploitation to a shelter or to another form of support service and therefore, they did not comment on this question [P(1); L(2); S(3)].

Two respondents (out of 13) considered the system of the referral of victims to support services ineffective [J(1); S(1)]. A respondent from the victim support services group noted that although a shelter for victims of labour exploitation was opened a year ago, not one person has been accommodated there:

*“[Referral of victims to victim support organisations is] absolutely inefficient. Lithuania has good laws and a great shelter [in the Rukla Refugees’ Reception Centre] that is standing empty for a year. It is built for these victims, so that they would have a period of time to consider, to decide if they want to cooperate with the law-enforcement institutions or not. But there is no inter-institutional cooperation and the services are not provided [to the victims].”*

*“[Aukų nukreipimas yra] visiškai neveiksmingas ir Lietuva turi puikius įstatymus, turi puikų šelterį [atskiras koridorius Ruklos pabėgėlių priėmimo centre], kuris tuščias metus laiko stovi šitoms aukoms, kad jos galėtų mąstyti, galvoti, ar jis nori bendradarbiauti su teisėsauga, tačiau nėra jokio tarpžinybinio bendradarbiavimo ir paslaugos jokios neteikiamos.” [S(1)].*

It is important to note that none of the respondents from the police and law-enforcement group mentioned the shelter in Rukla as an option for the accommodation of the victims of labour exploitation. One respondent [P(1)] suggested that in cases where a migrant worker has no place to live, first of all, they would contact the employer who has a duty to ensure accommodation for the migrant workers. In cases where the employer cannot be found, an option to stay in a homeless shelter would be offered:

*“Well, you know, if a foreigner came to them, saying I've got nowhere to live, then we would immediately summon the company that brought him here, because it must provide accommodation for him. If there's no company or it had gone bankrupt or disappeared altogether, then the first option – to at least provide accommodation in a homeless shelter. That's the first step. Afterwards we would confer with the police on what to do with that person, since he or she must return home, if there's no employer. Or look for another employer to take him or her in and deal, help him or her to deal with it. [...] But if they've got a valid document, I think we'd try to resolve something here.”*

*“Nu, kaip, žinot, jeigu ateitų užsienietis, kuris sakytų, kad aš nebeturiu, kur gyventi, tai iškart būtų kviečiama įmonė, kuri jį atsikvietė, nes jį privalo jį apgyvendinti. Jeigu nebūtų tos įmonės arba ji bankrutavo ir išvis ji dingo, tai pirmas variantas – bent jau apgyvendinimu pasirūpintumėm tos nakvynės namuose. Tai pirmas veiksmas. Toliau spręstumėm jau su policija, ką daryt su žmogum, nes jam reikia grįžt namo, jeigu darbdavio nebėra. Arba tada ieškot kito darbdavio, kas galėtų jį tada priimti ir tvarkyti, padėti jam tvarkyti [...] Bet, jeigu jis turi dokumentą galiojantį, aš manau, kad mes bandytume čia kažką spręsti.” [P(1)].*

In the focus group interview, the opinions of the interviewees diverged at first. An interviewee from the lawyers group) considered that the referral system is not working properly, as in their work practice they have never encountered a person that was referred from the police or another state institution. However, another interviewee from the workers organisations group disagreed, stating that their organisation had received many people (if you consider all workers, not only migrants) that were referred to it by the State Labour Inspectorate. Furthermore, their organisation often refers people to the State Labour Inspectorate or to the police.

The participant from the monitoring group joined the discussion, providing an opinion that was supported by all participants in the focus group, suggesting that there is no systematic approach to the protection of employees and the defence of their rights. All institutions that are currently operating in the field of labour relations are fulfilling their specific tasks according to their mandate, yet as a system, the protection of employees is not working. There is no common plan, no coordinator that would oversee the system – no one is

coordinating activities between NGOs and state institutions, no one is following a concrete case of labour exploitation from beginning to end:

*“We are all talking nicely today, but we must admit that we do not have one common plan, common agenda, because we do not have one obvious coordinator. We do not know what we should all do if this or that happened, because we all concentrate on our own agendas. I myself – I have to work on the illegal work question, and I work on it. The trade unions have to represent the interests of an employee – they do that. [...] We must also take into account, that these victims, they themselves are a problem, they require a lot of work. [...] Who should take care of them – the Red Cross or Caritas? Who should be there, because they [the victims] alone would not go [to court]? They have to be taken care of. [...] I am raising questions, but I have no answers to them now. [...] In order for the system to work, it cannot be based on the work of one person. There must be a clear strategic approach from the state. Not only a strategic approach but [there must be] clear guidelines, a concrete plan, an agenda [regarding] what to do.”*

*“Mes, tarkim, šiandien gražiai kalbam, bet mes neturim vieno bendro aiškaus plano, nes neturim vieno aiškaus koordinatoriaus, ką turim daryti, jeigu atsitiktų taip, taip... ar taip, nes mes turime visi aiškius savo tikslus. Man reikia išspręsti nelegalaus darbo failą, išsprendžiu, profsajungos išsprendė savo failą. [...] Galiausiai mes dar įvertinkim ir tai, kad šitos aukos, jos iš esmės yra pačios jau yra savaime problema, su jomis reikia dirbti labai daug. [...] Tai kas čia turi rūpintis – Raudonasis kryžius, Caritas turi rūpintis tais žmonėmis ar kas turėtų būti, nes jie patys nenueis. Jais reikia rūpintis. [...] Tai aš čia keliu tokias problemas ir neturiu dabar atsakymo jokio. [...] Tam, kad sistema veiktų, negali būti vieno žmogaus darbelis. Turi būti kažkoks aiškus strateginis valstybinis požiūris ir ne tik strateginis, bet gairės, konkretus planas, konkreti schema ką daryti.” [M(1)].*

The lack of a coordinating institution in the prevention of and protection against labour exploitation has been noted in the discussion of the case study that concerned the exploitation of approximately 150 Chinese citizens. The expert [M(1)] noted that although a number of institutions conduct preventive functions, there is no key/umbrella institution which collects information and coordinates the actions of different institutions. The expert had no information on if any compensation for the victims was provided. The court case against the recruitment agency that brought the Chinese migrants to Lithuania has been dismissed by the Supreme Administrative Court of Lithuania (*Lietuvos vyriausiosios administracinės teismas*). The pre-trial investigation was started at the General Prosecutors Office in October 2008 in relation of the case to the criminal activities covered by the Article 147 (paragraph 2) of the Criminal Code of Lithuania (trafficking in human beings). In March 2009 the pre-trial investigation was terminated due to the insufficient evidence that a crime under this article was committed. The Chinese work migrants were returned to their home country without any compensation for the violation of labour relations.



## 5. Victim support and access to justice

### 5.1 Victim support, including available support services

The representatives of victim support services claimed that services (initial aid and assistance in a crisis) provided by their organisations are free of charge (according to two respondents from the victim support organisations group). However, one of them added that in other organisations, such services as consultation with a psychologist or a lawyer are usually available for a charge:

*“We heard that other organisations do not have the possibility to provide free-of-charge services. This [legal aid and psychological assistance] is charged for, but during the situation of crisis, counselling is free of charge.”*

*“Neretai girdim, kad organizacijos neturi galimybės nemokamai tą teikti. Tai tas yra mokama, bet tokios krizinės situacijos metu yra nemokama.” [S(1)].*

As an example of free-of-charge assistance, two case studies could be mentioned, when free legal support was provided by a trade union. Furthermore in one case, apart from providing the migrants with legal support, the organisation also offered temporary accommodation and food for migrants. An expert who referred the case study noted that an interference of lawyer into the conflict situation is an important part of migrants' support system as the employers see that migrant has some help from outside. As three case studies show, free legal aid and consultations of the lawyer helped for migrants to receive unpaid salaries and compensations for experienced detriment.

Only one interviewee clearly indicated whether being formally recognised as a victim is a requirement to receive support services. According to the expert, the Refugees' Reception Centre, where the victims of sexual and/or labour exploitation could be accommodated, does not require persons to be formally recognised as a victim in order to receive support and allows the person to

*“stay in this institution during the reflection period, until they decide to cooperate with law-enforcement authorities.”*

*“turime teikti paramą jiems, leisti apsigyventi pas mus įstaigoje jų apsisprendimo laikotarpiu, kol jie sugalvos kreiptis, ta prasme, bendradarbiauti su teisėsaugos institucijomis.” [S(1)].*

#### **Availability of services irrespective of legal status of the migrant**

A representative [N(1)] noted that there is no categorising into “better” or “worse” migrants and that all victims are treated equally. However, responses to the question in relation to the availability of services irrespective of the legal status of the migrant reveal that it depends on whether services are provided by NGOs or by state institutions, as well as on the target group of persons that organisations are working with.

Interviewees from professional group victim support organisations stated that the NGOs they represent are open to all immigrants and persons of any group which approach them for help. One of the representatives of victims support organisation thinks that whether services will be provided is irrespective of the legal status of the migrant:

*“Depends on the group that the organisation is working directly with. The assistance may not always be available to the people of other groups.”*

*“Manau, kad dar dalis priklauso nuo to, su kokia grupe dirba tiesiogiai organizacija. Tai ta pagalba ne visuomet gali būti prieinama kitos grupės asmenims.” [S(1)]*

The interviewee went on to point out that despite the fact that the target group of their organisation is foreigners granted asylum and that formally they could not provide assistance for legal migrants; in reality they provide assistance without taking into account persons' status in the country.

One P group interviewee also indicated that from their point of view, the status of an immigrant is not important for the support services. They gave an example from their professional experience when assistance was provided to irregular migrant from Vietnam by the IOM.

According to the interviewees, the legal status of immigrants becomes important when there is a need to apply to the state institutions. An expert from professional group victim support organisations thinks that:

*“Public authorities in particular are (...) limited, legal/illegal residents, clients are admitted/not admitted.”*

*“Manau, valstybinės institucijos, pirmiausia, yra ribotos, kaip čia pasakyti, legaliai/nelegaliai esančių asmenų, klientai, kaip čia pasakyti, priima/nepriima.” [S(1)]*

Another interviewee from the victim support organisations group noticed that:

*“the foreigners who are not refugees have lots of problems, people have questions and they practically cannot get support or assistance from those public institutions.”*

*“kiek man tenka susidurti su kitais užsieniečiais, kurie yra ne pabėgėliai, tai yra labai daug problemų ir klausimų turintys žmonės ir valstybinėse institucijose tos paramos ir pagalbos kaip ir nėra.” [S(1)]*

Meanwhile another representative of the victim support organisations professional group emphasised that such institutions as the State Labour Inspectorate are *“Absolutely not open to victims.”*/*“Pati Darbo inspekcija yra visiškai neatvira toms pačioms aukoms.” [S(1)].*

The situation is the same for the State Tax Inspectorate *“which has to monitor, but it does not matter for them as well.”*/*“ta pati mokesčių inspekcija, kuri turi tikrinti, jiems irgi nesvarbu, žmonės pas juos ateina.”*

Irregular migrants' concern about being sent to the Foreigners' Registration Centre in Pabradė was also mentioned during the interviews as an issue related to approaching state institutions. If migrant is staying illegally in the country and he or she approaches the authorities for assistance, he or she risks being sent to this centre [S(1)].

To sum up, accessibility to victim support services, irrespective of the legal status of the migrant, depends on whether services are provided by NGOs or state institutions. NGOs and such inter-governmental organizations as IOM provide assistance for any migrants in need, meanwhile for the state institutions legal status of migrant becomes a relevant factor providing services and planning further plan of assistance.

### **Organisations providing services**

As it was mentioned in the third part of this report, victim-support organisations are NGOs acting in the area of immigration and migrants integration (the Lithuanian Red Cross Society, Caritas Lithuania (Vilnius office)), as well NGOs that provide legal, psycho-social and all other necessary assistance specifically to Lithuanian citizens who suffered through prostitution and any forms of human trafficking. However, none of the NGOs distinguish and/or prioritise migrant labour exploitation as a key issue to address. Please refer to Section 3.1 for more details.

While answering questions in the "Victim support" part of the study, interviewees emphasised the role provided by the Refugee Reception Centre under the Ministry of Social Security and Labour and the IOM as support services providers.

The Refugees' Reception Centre is an institution where victims of sexual and labour exploitation can be accommodated and assistance is provided during the reflection period, *"until they decide to cooperate with law enforcement authorities"* *"kol jie sugalvos kreiptis (...) bendradarbiauti su teisėsaugos institucijomis"* [S(1)]. The centre also accommodates illegal migrants, who are able to receive certain assistance there, while with the cooperation of their embassy, all relevant documents for their return to their country of origin are arranged [P(1)]. Please refer to Section 3.1 for more details.

The IOM also assists irregular migrants' return to their home country according to a respondent from the police and law enforcement group. Another representative of professional group police and law enforcement identified the IOM in the case of returning migrants as *"the most efficient one."* *Vienas iš veiksmingiausių, tai ta TMO.* [P(1)]

Experts identified several limitations in relation to the accommodation of the needs of migrant workers. An interviewee from the victim support organisations group noticed that support services are not targeting migrants through information campaigns, consequently, migrants are lacking information on where they could apply for support, as seen in one case study. An expert from the victim support organisations group also emphasised the lack of communication between the state institutions (the lack of sharing of information or some statistics about the cases of migrant labour exploitation). Apart from this, additional problems emerge when it comes to communication in languages rarely spoken in Lithuania. Interviewees did not provide comprehensive answers about victim-support organisations and their services. This could be explained by the fact that some participants in the study have

not encountered cases of labour exploitation and do not have any experience related to victim-support services [W(1); P(2)]. Another reason could be, as some of the informants expressed, the non-existence of a system of victim support services in Lithuania [S(3)]. Here some relevant points could be emphasised.

Firstly, there is lack of information about labour exploitation in the public space [W(1)] and it is hard to say if there are any cases of labour exploitation in the country as there are no mechanisms for victims' identification:

*"...the State Labour Inspectorate and the heads of this institution stated that there is no foreigner exploitation in Lithuania. But informally we heard in the talks among their staff that there are plenty of [cases of exploitation involving] Kazaks, Byelorussians, Kirgizians, etc. Simply there is a problem of identification. As far as I know, the State Labour Inspectorate does not have any indicators of labour exploitation in Lithuania at all. It hardly identifies its own Lithuanian citizens as victims, let alone the foreigners."*

*"... [valstybinės darbo inspekcijos] vadovai tvirtino, kad Lietuvoje užsieniečių išnaudojimo nėra. Tačiau neoficialiai tas kalbas tarp jų darbuotojų girdim, kur pažiūrėsi pilna kazachų, baltarusių, kirgizų ir t.t. Tiesiog nėra identifikuojama. Kiek žinau, darbo inspekcija Lietuvoje iš viso neturi darbinio išnaudojimo indikatorių. Jie ir saviškius sunkiai identifikuoja, t.y. Lietuvos piliečius, ne tik užsienio gyventojus" [S(1)].*

An analysis of interview materials suggests state institutions are not open and are not willing to help victims:

*"The State Labour Inspectorate itself is absolutely not open to victims. Well, it just refuses to communicate. The same with the State Tax Inspectorate. [...] When we went there and they just looked at us and said 'What do you want? It is your problem'. But it is a governmental institution, it has to be open. The same applies to the migration service. It is also doing nothing, and also, sometimes when a person comes to the Migration to complain, he or she is told to 'go to the State Labour Inspectorate.'"*

*"Pati Darbo inspekcija yra visiškai neatvira toms pačioms aukoms. Nu, jie tiesiog atsisako bendrauti. Ta pati mokesčių inspekcija [...] Kai mes atėjom ir tiesiog į mus pažiūrėjo „o ką jūs norit, čia yra jūsų problemos“. Bet čia yra valstybinės organizacijos, jos turi būt atviros. Ta pati, (...) migracija, irgi, jie irgi nevykdo jokios veiklos, todėl irgi, jeigu kartais žmogus nueina į Migraciją pasiskųsti, jam sako „į Darbo inspekciją eik“" [S(1)].*

While a previously mentioned expert [S(1)] emphasised the indifferent attitudes of state institutions towards victims of labour exploitation, another interviewee [W(1)] noticed that:

*"Very few functions are delegated to non-governmental organisations in Lithuania. They could play a much bigger role, but it should be within the funding through projects."*

*“Aš tai galvoju, kad labai mažai Lietuvoje deleguota valstybės funkcijų nevyriausybinėms organizacijoms. Jos galėtų atlikti žymiai didesnę vaidmenį, bet tai turėtų būti per finansavimą, per projektus” [W(1)].*

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

### **Effectiveness of civil justice system in enabling the victim to claim compensation and back pay of denied wage**

Interviewees expressed different opinions concerning the effectiveness of the civil justice system to enable victims to claim compensation and back pay. Two experts from professional group judges' and prosecutors' and an expert from the lawyers' group agreed or tended towards agreement rather than disagreement with the statement that this system is effective. Three interviewees from the victim services organisations group emphasised the inefficiency of the system and one interviewee from the judges' and prosecutors' group said that the system worked in theory rather than in practise. However, all interviewees who expressed their opinion on this question said that those persons who decide to claim compensation and back pay face obstacles and challenges.

In the majority of the interviewees' points of view, challenges and problems arise mostly because the claimants do not have enough financial sources to hire a professional lawyer whose role is very important in such cases [J(1); L(1); W(1); S(2)]. According to one of the experts, a victim:

*“Needs to get very qualified legal aid, because he or she has to formulate requirements, to collect proof (...) Practically, without the help of a lawyer a person cannot do it.”*

*“Jam reikalinga atitinkamai labai kvalifikuota teisinė pagalba, nes jis turi atitinkamai suformuluot savo reikalavimus, surinkti įrodymus. (...) Praktiškai be teisininko pagalbos, žmogus savarankiškai to padaryti negali.” [J(1)].*

The complexity of the procedure was also emphasised by the interviewee from professional group victim support organisations who said that *“strong evidence is needed, and it is quite complicated. Especially for all foreigners.”* *“Reikia labai daug įrodymų, o tas yra gana sudėtinga. Ypatingai visiems užsieniečiams.”* [S(1)] Apart from this, the process is expensive because it is time consuming. As the interviewee from the lawyers' professional group noticed:

*“... in the material sense, settlement in labour relations, (...), as a rule, courts and other institutions take a more favourable position in respect to the employee, trying to prove the distribution of the burden, and in the very interpretation of the provisions of the contract, as a rule, an employee has a better chance to defend himself or herself, but this would happen on condition that it is investigated quickly, effectively and cheaply, meanwhile here, if you get involved in these civil proceedings, you may litigate for years, and, as a rule, a migrant cannot afford it”.*

*“Pačia ta materialine prasme, sureguliuavimo, tai dar čia darbo santykiuose, sakykim, kaip taisyklė, teismai ir kitos institucijos užima tą poziciją palankesnę darbuotojui, ten įrodinėjama naštos paskirstyme ir pačiam tam tų darbo kokioje nors ten sutarties nuostatų aiškinime, kaip taisyklė, darbuotojas turi geresnes galimybes apsiginti, bet tai nutiktų su sąlyga, jeigu tai būtų greitai, efektyviai ir pigiai išnagrinėjama, o pas mus tuo tarpu, jeigu tu įsileidi į tuos civilinius procesus, gali metų metus bylinėtis ir, kaip taisyklė, dažnas migrantas tokių galimybių neturi.” [L(1)]*

Another obstacle mentioned is related to the migrants' lack of knowledge of the language of the host country [J(1)] and their rights as there are only a few organisations that can provide assistance to migrants [W(1)]. An interviewee [J(1)] also mentioned the need to enable migrants and foreigners to defend their rights in the court by providing them with more information about such possibilities.

Meanwhile, an interviewee from the judges and prosecutors professional group remarked that it is *“not the legal system, but the mechanisms for compensation that are ineffective”/Ne teisinė sistema neveiksminga, o neveiksmingas kompensavimo mechanizmas.* According to the interviewee, good practices from foreign countries could be adopted, where funds for such compensation exist and are being used to pay compensation for the damages experienced by victims. The same expert thinks that it would be more effective:

*“and in other cases victims would approach for help again as they would know that they would get assistance, be heard and receive help. If there is no such mechanism for compensation, then everything collapses and even if we have a good justice system, we cannot help.”*

*“aukom būtų akstinas kitais atvejais vėlgi kreiptis, žinoti, kad jie bus išgirsti, kad jiems bus padėta, kad jiems bus pagelbėta, nes nesant tom kompensavimo mechanizmo, tada viskas griūna ir mes kad ir turėdami gerą teisinę sistemą, mes pagelbėti niekuo negalime.” [J(1)]*

### **Civil law claims dealt by the criminal justice system**

The interviews reveal that civil law claims can be dealt with by the criminal justice system if any damage (physical, moral and pecuniary/non-pecuniary) is inflicted on the victim [J(2)]. For instance, if an employer is cheating by taking a person's salary or some harm is exacted on an employee's health due to not following work security requirements, such cases are addressed by criminal legislation [J(1)].

However, in practice such cases do not occur that frequently and are usually not qualified as criminal, thus they are dealt with as the civil claims [J(1); S(1)]. An interviewee from the lawyers professional group emphasised that some cases should be classified as criminal, *“but the police tell you to investigate it in the civil procedure, because they see aspects of civil relationship”/Byla turėtų būti baudžiamoji, bet tau policija pasako, kad „aiškinkitės civiline tvarka, nes įžvelgia civilinių santykių aspektų”.* An expert stressed *“they should take a civil action in the criminal case, and not propose solving everything by means of the civil procedure”/“Kai tuo tarpu, reiktų atvirksčiai pažiūrėti. Vis tik tai yra baudžiamoji teisė. Tada*

*civilinį ieškinį pasiimti į baudžiamąją bylą, o ne tai, kad viską pasiūlyti aiškintis civiline tvarka.”*

One case study shows that, in practice, civil law claims are not always qualified as criminal ones. The migrant who was employed as a cook in a Chinese restaurant in Klaipėda and his lawyer approached the Klaipėda regional Prosecutor’s Office with a request to start pre-trial investigation under the Article 147(1) (Trafficking in human beings) of the Criminal Code. The employee stated that due to his dependency on the employer the latter forced him to work overtime and without paying the salary agreed in the work contract. However, the prosecutor did not start pre-trial investigations, because, according to him or her, the case is the object of civil rather than criminal process. The prosecutor concluded that the employer did not perform any criminal actions.

### **Availability to lodge complaints through third parties**

Most of the interviewees indicated that complaints can be lodged through third parties [J(3); S(3)]. In such cases, a legal representative [J(1)] and official authorisation [S(1)] is required. As an interviewee from the lawyer professional group explained, the prosecution service can act as a third party when it defends the public interest, the Child Rights Protection service when it protects the interests of a child, and monitoring institutions (such as tax inspectorate or labour inspectorate) can apply to the court directly if some offenses are registered [J(1)].

According to another interviewee [J(1)], a person can hire an advocate or an assistant to an advocate, but usually a complaint is submitted by the individual. A representative of the lawyers professional group explained that *“third parties can lodge complaints with the police, but person must apply to the court personally”*! *“policiją gali kreiptis gal ir tretieji asmenys. Policija gali baudžiamąsias bylas kelti tiesiog pagal nustatytą faktą, bet į teismą turi žmogus asmeniškai kreiptis.”*

### **Mechanisms that would facilitate the lodging complaints of migrant workers against employers**

Interviewees mentioned a few measures regarding the mechanisms that would facilitate the lodging of the complaints of migrant workers against employers. Firstly, it is important to raise the awareness of migrant workers about their rights, possibilities to receive assistance and ability to lodge a complaint in the case of labour exploitation [J(1); N(1); S(2)]. Secondly, services must be provided in a language that is understandable for the migrant [J(2)]. According to an interviewee [J(1)], if a case reaches court all services will be provided in a language that is understandable for the victim (translation services will be provided). However, no help is provided to enable the preparation and submission of complaints at the initial stage [J(1)].

The latter issue is related to the need for changes in the system, which was emphasised by the majority of interviewees who were asked to respond to the question regarding what mechanisms would facilitate the lodging of complaints of migrants workers against employers [L(1); W(1); J(2); S(2)].

An interviewee from the judges and prosecutors professional group thinks that there must be some simplified mechanisms for foreigners to receive elementary legal aid and suggested that some services should be provided for foreigners in state institutions. For instance, if a foreigner approaches a municipality, it is very likely that no help is provided as the migrant does not formally belong to the municipality. Meanwhile, a representative of the judges and prosecutors group expressed the view that consultative centres next to the Ministry of Social Security and Labour would be very helpful.

The importance of qualified assistance was also emphasised by an interviewee from the lawyers professional group who indicated that professionals at different institutions (e.g. the State Labour Inspectorate, institutions involved in criminal proceedings) do not have enough experience and therefore some additional training could be organised or some internal procedural rules drafted. The interviewee highlighted that, in their opinion, the most important thing is not to create additional institutions or mechanisms as:

*“all we need is a change of attitude in the existing institutions, i.e. the [State] Labour Inspectorate and our institutions of criminal proceedings in this area, and a change in the setting of their priorities.”*

*Tai tiesiog reikia tos institucijos, kur yra, tiek darbo inspekcija, tai, reiškia, tos mūsų baudžiamojo proceso institucijos, kad jos šitoje srityje, na, truputį tą pakeistų požiūrį, susidėliotų tas pirmenybes.” [L(1)]*

This opinion can be supported by the views of the interviewee from the victim support organisation professional group who stated that the State Labour Inspectorate should not only carry out the raids which aim to control the employer, but should also inform the migrant workers about their rights in the Lithuanian labour market.

Finally, an interviewee from the workers' organisation professional group expressed concerns that the Migration Department is no longer responsible for monitoring and adjusting the legal status of migrants as all the duties were transferred to local level. After the changes within the system of issuing temporary and permanent residence permits, Migration Department is not responsible for this anymore. Thus sometimes it is not clear which institution is responsible for a particular issue. According to the interviewee, migrants concerns are being left behind. The expert did not state a direct implication for access to justice issue in this statement.



## 6. Attitudes

### **If interventions into situations of labour exploitation serve the interests of the migrant workers concerned**

In general, the majority of respondents from state institutions and the NGO sector expressed their belief that interventions into labour exploitation cases serve as a preventive measure to stop employers' abuses at work. Five out of 21 (including the focus group) respondents were cautious about the interventions as a means of serving migrant workers' interests because they are slow, random and use outdated intervention methods, which cannot grasp new forms of exploitation in the technological era [L(1); S(2); M(2)]. A respondent from the lawyers' group warned that interventions might worsen the situation of migrant workers. Another respondent from the national policy experts at Member State level surmised that, regardless of the potentially worsened situation for a migrant, interventions bring positive results for both a victim of labour exploitation and the state.

Many interviewees argued that both planned checks and checks without a prior notification performed by monitoring (the State Labour Inspectorate, the Lithuanian Labour Exchange) and/or controlling (police) institutions reveal the conditions of illegal work (working without a contract, remuneration paid in "envelopes") and make an employer aware that he or she is observed and controlled and will be held liable if they violate any of the formal rules [L(1); P(1); N(1); J(2)]. A migrant worker can also feel more secure when intervention brings certain positive results in his or her working conditions, especially when working conditions have deteriorated gradually [S(2)].

Some interviewees highlighted that interventions serve as a helpful means of identifying the victims of labour exploitation. Usually, migrant workers who have experienced exploitative labour conditions do not seek support and do not report their situation to police or other institutions such as State Labour Inspectorate or the labour exchange office [P(2)]. In general, migrant workers are in a country to earn money and adjust to any working conditions without complaining or questioning them. Therefore, these interventions can stop the exploitation and improve migrant workers' working conditions [L(1)].

Additionally, one respondent from the judges and prosecutors group mentioned that these interventions can help to release victims of trafficking and forced labour who suffered from a violation of their human rights, restricted freedom of mobility and abuse of their right to sexual self-determination. In their statements, respondents from state institutions did not mention NGOs as equally important partners with the state for the purpose of identifying the victims of severe labour exploitation, though did not deny the contribution of NGOs in the field of support service [J(1); FG(1)]. A respondent from the state institution made a distinction between governmental institutions and non-governmental organisations referring to the different attitudes of both sectors. Non-governmental institutions are perceived as bodies which deal with a problem "humanely"; while the procedures of governmental institutions are strictly regulated and sometimes there is no space to apply certain instruments or attitudes [M(1)].

The NGO sector is more critical about the attitudes that question NGO ability and competences to identify cases of labour exploitation. As one service provider explained, different criteria are applied in the NGO and public sectors for identifying a victim of human trafficking [S(1)].

*“The state thinks, that the non-governmental sector is incapable of identifying [a victim of forced labour], and if identified, the state thinks that this is a mistake. The cases of labour exploitation for state institutions are still new and a big challenge [...] the institutions of pretrial investigation, the labour inspectorate, the services of social assistance must come together and elaborate effective mechanisms on how to identify potential victims, what kind of assistance should be provided, and how to cooperate with each other. This was never done in our country. They should have clear criteria for search and identification of victims. Then the process will start and the possibilities of how to inform, how to come closer to these migrants, how to ensure security to them will emerge.”*

*“Valstybė ir galvoja, kad nevyriausybinis sektorius nesugeba identifikuoti, o jeigu jie identifikavo, tai suklydo ir kadangi kitoms valstybinėms tarnyboms tai yra nauji atvejai ir didžiuliai iššūkiai... [...] ikiteisminio tyrimo institucijos, darbo inspekcija, socialinės pagalbos tarnybos turėtų susėsti ir nusimatyti mechanizmus veiksmingus kaip identifikuoti galimus nukentėjusius, kokią pagalbą teikti jiems ir kaip tarpusavyje bendradarbiauti, ko niekad nebuvo padaryta mūsų šalyje. Ieškant tokių aukų, stengiantis turėti bendrus identifikavimo kriterijus tokių aukų. Tada ir prasidėtų ta pradžia ir atsirastų kaip informuoti, kaip arčiau prieiti prie migrantų, kaip saugumą jiems suteikti.”[S(1)].*

Several critical points about the intervention were expressed by both the service providers and state institutions. A representative from an NGO, for example, mentioned that the mechanism to stop labour exploitation is still limited and very slow [FG(S)]. Another interviewee mentioned that the absence of effective interventions by state institutions and their low capacities to protect victims make migrants refuse to collaborate with state institutions or provide proof about exploitation at work, and poor working and living conditions [L(1)]. Any victim of labour exploitation would experience:

*“a huge practical burden if a worker decided to engage in the proceedings. Evaluating the situation in Lithuania, I would not say that it really protects the person”*

*“[...] pačiam darbuotojui tų problemų arba bent jau tą didelę praktinę naštą, jeigu darbuotojas į tą procesą įsiveltų. Tai vertinant tą Lietuvos situaciją, šita sistema, nesinori sakyti, kad ji per daug žmogų apgina” [L(1)].*

Some respondents mentioned that intervention, regardless of its possible positive impact on migrant's working conditions, might worsen the situation of a victim of labour exploitation. For example, an employer can continue exploiting a worker thinking that an intervention is random and that migrant workers will not complain due to their low level of education, vulnerability, lack of contacts and inability to access information to get possible support in their destination country [M(1)].

*"[...] an employer [...] could improve the working conditions just fearing further actions and liabilities, but he could also worsen them knowing that it's just some random intervention, right? And again, if the migrant is a low-skilled worker, he cannot really defend himself and search for help. This could make the situation worse. The person could be more isolated, he could face even worse working conditions."*

*"[...] darbdavys gali [...] pagerinti sąlygas tiesiog bijodamas tolesnių veiksmų ir atsakomybės, bet gali jas ir dar labiau pabloginti žinodamas, jeigu tai yra kažkokia atsitiktinė intervencija, ar ne. Ir vėlgi tas migrantas, jeigu yra žemos kvalifikacijos, jis nelabai gali toliau apsiginti ir ieškotis pagalbos. Tai gali pabloginti situaciją. Žmogus gali būti labiau izoliuotas, jam gali būti sudarytos kad ir dar blogesnės darbo sąlygos"* [M(1)].

An intervention in an exploitation situation can result in the loss of a migrant's job and no one institution will defend and help a victim of exploitation to keep his/her job employment. According to the Law on the Legal Status of the Aliens, a migrant should leave the country within 30 days of the termination of a work contract. An employer can misuse this condition and, for example, delay salary. If an employee starts complaining, the employer can terminate the contract and an employee leaves.

*"[...] there are a lot of cases, how employers take advantage of this situation. For instance, they don't pay a wage for half a year and, when the migrant worker starts to raise a claim, they terminate the employment contract, call Migration Services and then he or she has to leave, and it's almost impossible claim back-pay once back in in China or Ukraine."*

*"[...] yra labai daug atvejų, ... kuria naudojami darbdaviai, pvz., pusę metų nemoka atlyginimo ir kai jau mato, kad darbuotojas migrantas pradeda kelti ultimatumus, nutraukia darbo sutartį, paskambina migracijos tarnybai ir tada jis privalo išvykti, o savo kilmės šalyje prisiteisti sau atlyginimą, kaip Kinijoje ar Ukrainoje, beveik neįmanoma." [M(1)].*

Finally, debates about exploitation of the labour force are limited in Lithuania; although recently discussions have started to emerge. An interviewee emphasised that taking into consideration new technologies, the Internet and other circumstances, the potential for exploitation is even greater. In the interviewee's opinion, interventions are therefore important in order to raise awareness about different types of exploitation and to inform the public debate on labour exploitation [M(1)].

One interviewee concluded that interventions have a positive impact because of several benefits for both an employee and the state. Institutions improve the labour conditions in the market, protect human rights and contribute to the welfare of the state even though that concrete intervention can worsen an employee's situation.

*"I think that yes, it serves [the interests of the migrant victim] because one thing, we simply defend that person from violation of his or her rights and freedoms. I think that migrants in some cases may think the contrary, he or she is not helped, and the situation gets worse. But I think again that one thing is the protection of his or her*

*rights, the other thing is the interests of the state and every citizen who has a job must pay taxes since the state depends on these taxes. I think that this is mutual benefit.”*

*“Aš manau, aišku, kad pasitarnauja, nes vienas dalykas, tiesiog mes apsaugome tą žmogų nuo jo teisių ir laisvių pažeidimo. Aš manau, kad vėlgi migrantas gali būti, t.y. vienu atveju galvoti, kad atvirkščiai, t.y. jam nepasitarnaujama, o tik blogiau padaroma. Bet vėlgi aš manau, kad visa ko, vienas dalykas, tai jo teisių apsauga, kitas dalykas, tai pačios valstybės interesai ir kiekvienas dirbantis pilietis turi mokėti tuos mokesčius, iš kur visa valstybė ir išlaikoma. Tai čia, manau, yra dvipusė nauda.” [N(1)].*

In summary, many respondents from state institutions and the NGO sector expressed their belief that intervention in labour exploitation cases serves as a preventive measure to stop employers' abuses at work. Some interviewees highlighted the fact that interventions serve as a helpful means of identifying the victims of labour exploitation and also the victims of trafficking and forced labour. Certain criticisms about how intervention in situations of labour exploitation currently takes place were expressed by service providers and some state institutions: the mechanism to stop labour exploitation is still limited and very slow, there is a limited capacity for state institutions to protect victims; a migrant's fear of losing his or her job and dependency on an employer also contribute to ineffective cooperation between a victim and state institutions such as labour inspectors, police, prosecution and courts.

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

Interviewees identified several factors influencing why more migrant workers who are victims of labour exploitation do not come forward and seek a way out of their situation:

- Lack of knowledge (of where to look for help; of their rights; of the language of the host country);
- Fear (of violence from employers/recruiters; of not receiving payment for work completed and of losing their jobs; of deportation);
- Feeling of hopelessness;
- Not perceiving their situation as exploitation as such, because they arrived from a country in which working and living conditions were even worse;
- Gaps in the victim support and justice system;
- Experience of violence from their employer (physical and psychological);
- Other (they blame themselves for their situation; they have agreements with their employers on living and working conditions).

The majority of interviewees pointed out that the main reason why so few migrant workers seek a way out of their situation is lack of knowledge. Firstly, migrants do not know where to look for help [L(1); W(1); S(4)]. Secondly, they do not know their rights and are not familiar with national law [L(1); M(1); R(1); S(1); P(2)]. Finally, their lack of knowledge of the language of their host country was also indicated as an issue by some interviewees [P1]; S(1)].

Various fears are also important factors in migrants not seeking assistance. As an interviewee [N(1)] pointed out, migrants *“fear to be punished, fear to return back home, fear*

*some revenge from employers or intermediaries of employment"/baimė būti nubaustam, baimė grįžti atgal, iš kur jis atvyko, susidorojimo baimė tų darbdavių ar galbūt kas jį įdarbino, kas tarpininkavo' [N(1)].* Fear of violence from employers was mentioned by interviewees from the judges and prosecutors, national policy experts, police and law enforcement and victim support organisations. One interviewee from the judge and prosecutors group, for example, stated that victims exhibit not only fear of violence from their employers that could be expressed as corporal punishments, but are also afraid of repressions from their recruiters. Apart from this, victims of labour exploitation do not seek help because they are afraid to be punished by an employer who can refuse to pay the salary or to release them from work [E(1); P(1); R(1); S(1)]. According to one of the interviewees, victims think that they could probably make an agreement with their employer without any other intervention since they are hoping to find a new job and are afraid that their employer will warn other employers about the employee who lodged the complaint against him or her:

*"Yes, I know this for certain, from talking with employers – they are sharing this information. Therefore, you can imagine, he or she [an employee] might think: If I get into a fight with him, first of all, it's unclear, the owner, might not pay me anything and, what do I know? He might have influence, power... You know, connections, he might alert other companies and then Lithuania is as good as closed for me, I'll have to leave."*

*"Taip, nes jau buvo ne vieną kartą, kai įmonė skambina, nori darbintis darbuotojas, o įmonė skambina: o kur jūs prieš tai dirbot? Jie gi mato greitai: ai ten, ir jie skambina į tą įmonę, personalas... [...] Suprantat, visi kaip ir visur tos, žinot, savi ryšiai, ir dar perspės kitom įmonėm, tai jau skaityk, kad man Lietuva užsidarė, reiškia, aš turiu išvažiuot." [P(1)].*

Furthermore, some of the interviewees expressed their views that migrant workers resign themselves to the situation of exploitation because they are afraid of being deported [N(1); S(1)]:

*"Maybe some of them know that they [are] work[ing] illegally and are afraid of [their] responsibility and punishment because of that. Maybe some of them got to the state illegally. So again, [the aim is] not to have to go back."*

*"Galbūt dalis jų žino, kad dirba nelegaliai ir bijo tiesiog atsakomybės ir bausmės už tai. Galbūt dalis būna patekusi į valstybę nelegaliai. Tai vėlgi, kad netektų grįžti" [N(1)].*

Even those who arrived in the country legally are scared that there could be something wrong with their own documents and seeking a way out of their situation would make this public [S(1)].

Five out of 20 interviewees stated that the victims of labour exploitation do not believe that their situation could be changed therefore they do not seek help [L(1); J(1); M(1); S(2)]. According to an expert from the judges and prosecutors professional group:

*"...they [victims] do not think that this will result in anything. They better admit the situation because they know that they do not have resources/possibilities to protect*

*themselves in full. He or she does not see any meaning in starting this [a complaint] if it leads nowhere.”*

*“...jie tikriausiai nemano, kad tas tai duos kokios nors naudos. Jis geriau susitaiko su šita situacija, žinodamas, nu kad jis neturi galimybių apsiginti iki galo. Jis nemato, poreikį jį mato, bet jis nemato prasmės, nes vis tiek tai nieko neduos.” [J(1)]*

An interviewee [L(1)] noticed that people often think that it is too much worry to get some sum of money, which was not paid by an employer, but they do not know that they could receive a higher sum in compensation. A representative of the victim support organisations professional group said that there is also disbelief that the situation could be resolved in favour of a foreigner.

The respondents identified one more factor regarding victims' perception of labour exploitation [P(1); M(2)]. Interviewees said that one of the main reasons for migration is poverty and migrant workers are mostly from places where they used to live and work in very bad conditions. As one of the experts from the monitoring bodies group pointed out, if migrant workers are coming from countries where working conditions and remuneration is even lower than they are receiving in Lithuania, consequently their assessment will be that working conditions in Lithuania are better than those in their countries of origin.

Meanwhile, another interviewee from the monitoring bodies professional group noticed that the public has a very narrow understanding of what labour exploitation means:

*“...if I said ‘exploitation’ on the street, I am certain that nine out of 10 people would say that it means to be caught, thrown into a car and trafficked with your documents taken away.”*

*“Kadangi, jeigu pasakyčiau „išnaudojimas“, aš net neabejoju, kad devyni iš dešimties gatvėje sakytų, kai pagauna, įmeta į mašiną, atima dokumentus ir išveža”). [M(1)]*

The expert emphasised the importance of increasing public awareness of labour exploitation:

*“In the modern world where there are even these virtual workplaces, remote workplaces, virtual employers, the possibilities of exploitation are expanding. And the question is does there always needs to be a physical contact in a case of exploitation? That physical contact might not exist at all. Therefore, I think to have the discussion and a lot of knowledge [on the subject] is very important in society.”*

*“Taip, kad šiuolaikiniame pasaulyje, kur apskritai, tarkim, yra ir tie virtualios darbo vietos, nuotolinės darbo vietos, virtualūs darbdaviai, tai išnaudojimo galimybė vis tokia didėjanti yra. Ir klausimas, ar visada išnaudojimui reikalingas fizinis kontaktas. To fizinio kontakto gal išvis gali nebūti. Taip, kad aš manau, kad plati diskusija ir daug žinių apie tai visuomenėje yra labai svarbu.” [M(1)].*

Some interviewees stated that low number of persons who decide to report cases of labour exploitation and seek help is owing to gaps in the support system [L(2); S(2)]. One representative [L(1)] emphasised the ineffectiveness of the system in protecting victims,

while another interviewee remarked that free-of-charge legal consultations are not always available. Meanwhile, a representative of the victim support organisations professional group mentioned that it is hard for victims to find interpreters who can help to communicate with these services and added that these institutions do not show goodwill towards migrants.

Two representatives [L(1); P(1)] said that migrant workers experience violence from their employer, consequently, they do not look for help. Violence can be expressed both against an employee in person, as well as against his or her relatives. For instance, an interviewee [J(1)] said that some employers threaten violence against people close to the victim, while an interviewee from the police and law enforcement bodies group mentioned a situation where an employer reminded a migrant about his or her “worthless” status and possible expulsion from the country and return back to poverty.

Over and above the mentioned factors, additional reasons for victims not coming forward and seeking a way out of their situation were noted. According to a representative of the judges and prosecutors group, victims are likely to blame themselves for their present situation. Meanwhile, a representative [P(1)] thinks that it could be related to the signed agreements between employers and employees on working and living conditions.

Similar reasons for not reporting cases of exploitation were mentioned by the participants in the focus group. The following reasons were indicated: the most important thing is to have income, thus they do not want to raise additional problems, as well as to create more problems for their employer [L(1)]. The same respondent from the workers’ organisations group also indicated lack of knowledge of their rights; lack of knowledge as to where to look for help; victims of exploitation come to terms with the situation; fear of making a complaint.

A participant in the focus group said that in their view a migrant’s country of origin should be taken into consideration when searching for an answer as to why victims do not seek a way out of their situation:

*“...things are a lot simpler. Let us see, from which countries people are migrating. The majority, probably, 95 per cent, migrate from authoritarian and totalitarian regimes. Thus, their relationship with the state is already constructed. They come here and, in principle, know that they are here illegally. They have a clear life experience of what it means to do something illegal, for example, (...) in a provincial country. I have no doubt that even they do not really believe that they might receive help... I would think that the main reason why people do not apply [for help] is that those people do not have a good experience of human rights in general... but if you look at migration flows, people migrating from poorer to better places. Usually the poorer ones have [had] a bad experience with [their] country’s officials and with other things.”*

*“...čia yra viskas daug paprasčiau. Pažiūrėkime, iš kur jie migruoja. Didžioji dalis, turbūt 95 procentai, migruoja iš autoritarinių ir totalitarinių režimų. Vadinasi, jų santykis su valstybe yra išugdymas... Jie atvažiuoja čia ir iš principo žino, kad jie čia nelegalūs. Jie turėdami aiškią gyvenimišką patirtį, ką reiškia ką nors daryti nelegaliai, tarkim, ar ne, provincinėje valstybėje, aš net neabejoju, kad jie net nelabai tiki, kad jiems čia nori kas nors padėti... Aš manyčiau, kad pagrindinė priežastis, kodėl žmonės nesikreipia yra ta, kad tie žmonės neturi geros patirties žmogaus teisių gynime apskritai... bet*

*jeigu žiūrime migracijos srautus, tai visada migruoja iš skurdžiau į geriau, ar ne. Ten, iš kur skurdžiau į geriau, tai paprastai tie, kur skurdžiau, jie turi blogas patirtis su valstybės dalyvavimu ir su visokiais kitais dalykais.” [M(1)].*

Looking at the reported cases, two factors influencing non-reporting of exploitation could be suggested. In one case study, victims did not report their situation because of the language barrier (the migrants spoke only Chinese) and they were not interested in reporting their situation as long as they had some personal economic interests and expectations. In addition, an expert reporting on another case study noted that the main motivation for migrant workers (in this case for drivers from Belorussia) to work in Lithuania is to earn money and therefore they do not care about violations of their rights (such as poor working conditions, unpaid or lengthy overtime, lack of days off, etc.).

A breakdown of the most relevant factors that significantly account for the level of non-reporting and non-seeking of assistance of migrant workers who have been exploited severely is given below.

<b>Most relevant factors that significantly account for the fact that not many migrant workers who have been exploited severely come forward, seek support or report to the police</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Lack of effective monitoring of relevant areas of economy	1	-	-	-	1	0	0	0	0	2
Lack of targeted support service provision available to victims	0	-	-	-	0	2	0	0	0	2
Victims are not aware of their rights and of support available to them	2	-	-	-	2	2	2	1	1	10
Victims fear retaliation from the side of offenders against them or against family members	1	-	-	-	3	0	2	0	1	7
Victims suffer from feelings of shame	0	-	-	-	1	1	1	0	0	3
Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings	3	-	-	-	2	2	2	1	1	11
Victims believe that proceedings are too bureaucratic and costly	1	-	-	-	0	0	0	0	1	2
Victims fear that if their situation became known to the authorities, they would have to leave the country	2	-	-	-	2	3	0	1	1	9
Victims do not trust that the police in particular would treat them in a sympathetic manner	0	-	-	-	0	0	0	0	0	0
Victims perceive being jobless as worse than	2	-	-	-	1		2		1	6



working in exploitative conditions										
Other-please specify	0	-	-	-	0	0	0	0	0	0
Don't know	0	-	-	-	0	0	0	0	0	0

The table reflects the attitudes of the interviewees who expressed their opinion on the reasons why more migrant workers who are victims of labour exploitation do not come forward and seek a way out of their situation presented above.

The majority of interviewees (11 out of 16) indicated that the most relevant factor is the victims' belief that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings.

The other factor chosen by 10 interviewees is that victims are not aware of their rights and of the support available to them. The lack of knowledge of their rights and opportunities to receive support were also mentioned by the majority of interviewees who answered the question presented in the previous section of the report.

The third most popular answer was related to the fear of being deported. Nine out of 16 interviewees said that, in their opinion, the most relevant factor affecting victims willingness to seek support and report their situations to the police is the fear that if their situation became known to the authorities, they would have to leave the country.

Less than half of interviewees chose factors related to victims' fear of retaliation from offenders against them or against their family members (seven out of 16) and victims' perception of being jobless as being worse than working in exploitative conditions (six of 16). No interviewees thought that victims did not seek support or report their situation to the police because they do not trust that the police, in particular, would that they would no treat them in a sympathetic manner.

A breakdown of the most important factors to migrant workers who are victims is given in the table below.

<b>Most important factors to migrant workers who are victims</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
To be safe and to be protected against further victimisation	3	-	1	-	4	2	3	0	1	14
For their family to be safe	1	-	0	-	1	0	1	0	1	4
To be able to stay and to make a living in an EU country	3	-	2	-	4	1	2	1	1	14
To see that offenders are held accountable and that justice is done	0	-	1	-	2	1	1	0	0	5
To be respected and to see that their rights are taken seriously	1	-	1	-	0	1	2	0	0	5
To be in a position to economically support other family members	2	-	0	-	1	0	0	1	0	4

To receive compensation and back pay from employers	2	-	1	-	2	2	1	1	0	9
To be able to return home safely	0	-	0	-	0	1	0	0	0	1
Other (please specify)	0	-	0	-	0	0	0	0	0	0
Don't know	0	-	0	-	0	3	0	0	0	3

According to the interviewees, the most important factors to migrant workers who are victims are: the need to be safe and to be protected against further victimisation, as well as to be able to stay and to make a living in an EU country (both statements were chosen by 14 out of 18 interviewees). The third most important factor, in accordance with the answers of interviewees, is to receive compensation and back pay from employers (nine out of 18 interviewees).

Five out of 18 interviewees think that for victims of exploitation, it is important to see that offenders are held accountable and that justice is upheld, as well as to be respected and to see that their rights are taken seriously.

Though limited, four out 18 interviewees mentioned that, for the victims, it is important to be in a position to economically support other family members. One interviewee indicated the importance of being able to return home safely.

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

Analysis of the interview materials suggests that respondents were more likely to identify problems, rather than support the effectiveness of addressing severe forms of labour exploitation in Lithuania. Though certain positive aspects were highlighted, the majority of respondents provided their thoughts on the ineffectiveness of public institutions, the absence of a system for inter-institutional cooperation, the limited level of information sharing between institutions, the limited capacities of professionals to deal with the issues of labour exploitation effectively, and ineffective control and accountability of employers.

Certain positive evaluations of the existing mechanism have been discussed in the interviews. Some interviewees highlighted positive developments in legislation that prevent labour exploitation [E(1); R(1); S(1); M(1); L(1)]. For example, the duty of an employer under the Labour Code<sup>37</sup> to declare a newly employed person to the State Social Insurance Fund (*Valstybės socialinio draudimo fondas*) has an impact on the prevention of undocumented employment. Increased fines for an employer for each illegally employed person also serves as a positive step to prevent illegal work [S(1)]. An interviewee argued that the state did a lot towards combating labour exploitation, therefore legislation is in place and access to justice and protection are guaranteed for employees in Lithuania who can apply for justice to the State Labour Inspectorate, the Labour Dispute Commission and the courts [M(1)].

<sup>37</sup> Lithuania, Seimas (2012) Law of the Republic of Lithuania on Amendments of the Articles 98 and 99 of the Labour Code and Adding Article 98<sup>1</sup> to the Labour Code (*Lietuvos Respublikos darbo kodekso 98, 99 straipsnių ir priedo pakeitimo ir papildymo ir kodekso papildymo 98<sup>1</sup> straipsniu įstatymas*), No. XI-2191, 30 June 2012. Available at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc?p\\_id=429558](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc?p_id=429558).

*“I think that there are more than enough legal acts and an employee always has the right to access justice, this right cannot be eliminated, and [the right to] apply to institutions such as the [State] Labour Inspectorate, the Commission of Labour [Labour Dispute Commission] and the courts.”*

*“Teisės aktų yra daug, per daug, manau tai darbuotojas visada turi teisę į teisingumą ir iš jo to niekas neatima: jis gali kreiptis ir į Darbo inspekciją, ir į Darbo ginčų komisiją, ir į teismą” [M(1)].*

Four interviewees [R(1); L(1); J(2)] pointed to the absence of cases being taken to court as a possible indicator to measure the state’s input towards addressing severe forms of labour exploitation. An interviewee from the recruitment and employment agencies group argued that the absence of cases proves the efficiency of existing measures. However, two others provided different interpretations regarding the absence of cases. On the one hand, it can show that the system works very well and that labour exploitation is stopped in the very early stages of employment. On the other hand, however, it can emphasise improper workings of the public institutions responsible for monitoring and investigating labour exploitation [J(1); L(1)]. The absence of cases makes it difficult to evaluate the measures to stop and prevent labour exploitation [J(1)].

Respondents from both governmental institutions and non-governmental organisations highlighted the fact that there is no system for inter-institutional coordination and cooperation in solving the issues of the labour exploitation of migrants [FG(N); W(1); S(3) and one case study]. Therefore important information is not shared between institutions and the activities of various institutions are fragmented. For example, NGOs could provide information about the working conditions of migrant workers more often and in a more systematic way and institutions could coordinate their activities to effectively solve the problems of exploitation.

*“The main disadvantage is that there is no clear coordinator, who possibly could set up a mechanism, where all organisations could be involved and our contribution could be visible. I think that more could be done by spreading the information, perhaps more interest and initiative could be shown in order to find out what those conditions are. We can always come up with the decision as to what to do next” [S(1)].*

*“Pagrindinis trūkumas yra tas, kad nėra aiškaus koordinatoriaus, kuris galbūt galėtų sukurti mechanizmą, kuriame visi puikiai dalyvautume ir savo indėlių matytume. Savo darbe tai nežinau. Aš galvoju, kad daugiau būtų galima ir tos informacijos skleisti, galbūt tais atvejais labiau domėtis ir pačiam tos iniciatyvos daugiau rodyti, išsiaiškinti, kokios tos sąlygos, kuriomis dirba, apie ką jau kalbėjome. Ką toliau daryti, tai visada galima sugalvoti, ką toliau daryti...” [S(1)].*

The absence of criteria by which to identify potential victims, and mechanisms by which to direct victims to services were particularly emphasised as systematic problems in Lithuania by the NGO sector [S(3)]. Several respondents from governmental and non-governmental bodies mentioned the lack of information in foreign languages about institutions and services where migrants can apply for assistance [P(1); S(1)]. Different interpretations of the very small number of immigrants in Lithuania were presented by a few respondents [M(1); P(1)].

On the one hand, institutions have limited experience in dealing with the issues of labour exploitation due to the very small number of immigrants in Lithuania [M(1)]. Whereas on the other, politicians and other state officers do not feel any pressure to develop policy measures to address these issues [P(1)]. A respondent [M(1)] mentioned that inefficient human and financial resources of state institutions make the addressing of the issues of labour exploitation problematic in general.

The need to improve the competences of professionals was highlighted by five out of 20 respondents [M(1); L(1); J(1); P(2)]. Reported cases of labour exploitation are very rare in Lithuania and professionals at different institutions do not have enough experience as to how to deal with them effectively. For example:

*“they [labour inspectors] check only formal documents as to whether vacation orders are correct, how many days a worker can be on unpaid leave etc., but do not care how many hours a migrant employee works, whether salary is paid for extra working hours and so on.”*

*“jie [darbo inspektorai] daugiausia žiūri, ar įsakymai surašyti atostogų teisingai, ar jįsai ten, kiek jįsai dienų gali būt neapmokamose... Vat tokius daugiau va tokius popierinius. Bet niekas nelabai ten stipriai gilinasi, ar tas žmogus ten dirba aštuonias, ar jįsai penkiolika tų valandų ir ar jam tikrai sumoka už tas penkiolika ar tik už tas aštuonias” [P(1)].*

In other cases, for example, a respondent mentioned that there is:

*“a lack of qualified professionals, because not all of them have experience in this area and they do not always notice it [...] officers lack qualifications because they specialise in a very narrow area and are not familiar with the criteria to identify a victim.”*

*“konkrečiai kvalifikuotų specialistų galbūt trūkumas, kadangi ne visi turi patirties su ta sritimi ir jie ne visada tą pastebi... trūksta darbuotojų kvalifikacijos, kadangi jie dirba savo siauroje srityje ir neturi tų kriterijų kaip tą auką identifikuoti.” [J(1)].*

Therefore, training to improve knowledge and understanding about exploitation are important to increase the effectiveness of professionals' work [M(1); L(1)].

Several respondents from both governmental and non-governmental sectors mentioned that there is limited control of employers and their accountability [M(1); S(1); P(2)]. Some respondents note that, in their opinion, one of the problems is the relatively high level of corruption [M(1)] and the low salaries of the inspectors, which can serve to increase corruption [P(1)]. Irregular and rare control initiatives and the absence of mechanisms to control employers contributes to the situation that exploitation continues without any accountability. Small fines do not stop employers from imposing various forms of exploitation on their employees. An employer will pay the fine and continue to exploit their employees because it is beneficial for him or her to do so because the level of accountability is very low [P(1); S(1)].

The employers benefit from the situation that no methodology or clear indicators of how to evaluate different job positions exist. For example, highly skilled and unskilled work might be considered as the same and workers in these areas might receive the same salary. As the methodology is not in place, no one can say why some people are paid more; while the others are paid less. Usually the argument is that the market regulates everything. However, an interviewee emphasises that such an understanding of the market might act as a background for the exploitation of workers [W(1)].

In summary, regardless of certain positive aspects to address severe forms of labour exploitation, the majority of the respondents expressed critical attitudes towards the state's upholding of its duties and functions. Improved legislation to control employers and strengthen their accountability contributes to the state efforts towards solving labour exploitation. However, the lack of a systematic approach by state institutions to the problem of illegal work and the working conditions of employees, coordination and cooperation between state institutions and between governmental and non-governmental bodies and the limited professional capacity of officers are the most frequently identified problems among respondents. Irregular and rare interventions by monitoring and control institutions in the labour situation, and corruption and elaborated methodologies to evaluate working conditions, lessen the accountability of employers and increase the vulnerability of employees.

A breakdown of measures which would most improve the way labour exploitation is addressed in the country is given in the table below.

<b>Three measures which would most improve the way labour exploitation is addressed in the country</b>	<b>S</b>	<b>E</b>	<b>L</b>	<b>R</b>	<b>P</b>	<b>J</b>	<b>M</b>	<b>W</b>	<b>N</b>	<b>Total</b>
Improve legislation against labour exploitation and its implementation	1	0	0	0	3	1	0	0	0	<b>5</b>
Improve legislation to allow better access to justice and compensation	0	0	0	0	3	0	1	1	0	<b>5</b>
More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation	1	0	2	0	2	2	2	0	1	<b>10</b>
Measures to ensure that all workers know their rights	3	1	2	1	2	2	1	1	1	<b>14</b>
Measures to ensure that all workers have access to labour unions	2	0	0	1	1	0	0	0	0	<b>4</b>
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	3	1	2	0	1	3	3	1	1	<b>14</b>
Setting up of specialised police units to monitor and investigate labour exploitation	0	0	0	0	0	0	0	0	0	<b>0</b>

Regularising the situation of certain groups of migrant workers with an irregular status	0	0	0	1	0	0	0	0	0	1
Regularising the situation of migrant workers once they have become victims of severe labour exploitation	1	0	0	0	0	0	0	0	0	1
Measures addressing corruption in the administration	0	0	0	0	0	0	0	0	0	0
More training of police, labour inspectors and other authorities	0	0	0	0	1	1	0	0	1	3
Police and courts taking labour exploitation more seriously	1	0	0	0	0	0	0	0	0	1
Don't know	0	0	0	0	0	0	0	0	0	0

The table reflects the attitudes of many respondents who expressed their concerns about limited state measures to address severe forms of labour exploitation as discussed above. Fourteen respondents pointed out that measures are needed to ensure the awareness of all workers about their rights. Migrant workers usually come to their destination country to earn money and do not question their working and living conditions. Consequently, they do not consider themselves to be victims of labour exploitation. Usually they are dependent on an employer and very often are isolated from the outside world. They do not get information in their first language and do not know where to apply for assistance if needed:

*“those people limit their rights when they come here. Because they don't understand what is happening with them. People come and work willingly and often don't really understand that they are being exploited. Probably...”*

*“tie žmonės, atvykę čia, jie susimenkina savo teises palyginti. Nes jie nesupranta, kas su jais darosi. Apskritai išnaudojimas darbo tikslais yra bjaurus tuo, kad žmonės dažniausiai savo kojom ateina ir leidžiasi išnaudojami... Darbo tikslais žmonės patys atvažiuoja ir patys dirba, ir dažnai nelabai supranta, ar juos išnaudoja. Galbūt...”*  
[M(1)].

The other measure supported by the majority of respondents (14 out of 20) is the improvement of inter-institutional coordination and cooperation, which is almost absent in Lithuania. This problem, that the absence of coordination and cooperation makes any response to labour exploitation ineffective, was discussed in the section above.

Half of the respondents suggested that systematic monitoring of those economic sectors prone to exploitation can serve as an effective prevention. Employers would feel more pressure from state institutions to refrain from the possible abuse of legal acts and the exploitation of their workers.

By referring to the measures to improve legislation, its implementation and the legal basis for access to justice, half the respondents highlighted the need for the strengthening of employer accountability. Two respondents mentioned that compensation rates for victims are very low therefore the legislation and its implementation to support a victim through the justice system is an important step forward [P(1); M(1)]. Support for victims through the

opportunities for them to join trade unions was emphasised by four out of the 20 respondents [P(1); R(1); S(2)].

Although limited, three out of 20 respondents mentioned the need to improve professional qualifications of those working in the state institutions that perform monitoring and controlling functions [J(1); N(1); P(1)]. The lack of professional qualifications was highlighted in the interviews as a cause of the limited identification of victims and the qualifying of cases as being labour exploitation. This is discussed in section 4.

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

Summarising the results of the social fieldwork research regarding severe forms of labour exploitation in Lithuania, an overall observation could be made that all interviewed experts provided their own interpretations as to what they perceive to be labour exploitation and its severe forms. The research shows that all interviewed experts have not had much experience in dealing with cases of migrant labour exploitation; therefore their answers were often of a speculative nature and did not refer to actual cases of labour exploitation.

It can be concluded that the legal framework provides the standards by which the violation of working conditions will be considered and dealt with by criminal justice and civil/administrative authorities. The criminal legal acts deal with cases of trafficking and forced labour. Civil/administrative legal acts identify cases of illegal work, employment without a valid contract, withholding of salaries by an employer, unpaid overtime, and biased termination of a work contract. The respondents in this research mainly referred to the conditions mentioned above while describing the situation of severe labour exploitation in Lithuania.

The report briefly describes the structure and functions of the institutional mechanism composed by both governmental institutions and non-governmental organisations. It should be noted, however, that none of these institutions and organisations has a checklist or guidelines for assessing migrant labour exploitation and/or identifying the victims of migrant labour exploitation. Nor do any of them promote the rights of migrant workers specifically. Migrant labour exploitation is not a prioritised activity of any of the above-mentioned institutions and organisations. Analysis of the fieldwork research data shows the absence of coordinating institution which would promote cooperation between governmental and non-governmental institutions targeting migrant labour exploitation.

The majority of interviewed experts stated that they had not faced any case or incidence of migrant labour exploitation in their professional careers. Therefore, they could not identify provided codes on types of migrant labour exploitation according to the interview guidelines. Only one category – exploitation of migrant workers under particularly exploitative working conditions – was specified as the most frequent one.

Analysis of the interviews' materials suggests that the most dangerous economic sectors are the following: construction, manufacturing of textiles, transportation and storage, accommodation and food service activities. Shipbuilding is emphasised separately as it is a specific type of employment of the third-country nationals in Klaipeda's harbour. The most frequent occupations of exploited migrant workers are semi-skilled workers (particularly long-distance drivers, shipbuilders, construction workers, cooks and seamstresses) and skilled workers (particularly welders in the ship industry). In general, the interviewed experts reflected that those economic sectors were particularly prone to migrant labour exploitation.

Research results on relevant risk factors show that respondents were more prone to identify personal characteristics and a migrant's initial situation as risk factors for labour exploitation



rather than risk factors in legal and institutional settings. Several specific risk factors for labour exploitation of migrant workers have been noted – that is, the dependence of a residence permit on the work permit (a migrant must depart from the country immediately after the work permit ends and therefore has a limited possibility to defend his or her rights); poor knowledge of the local language, culture and legislation; and the lack of a systematic approach by state institutions to the prevention of and protection against migrant labour exploitation. Both interviews and case studies revealed that the success of investigations of labour violations more often depend on the personal characteristics of an employee/victim (i.e. the level of education, knowledge of their rights and of support organisations, perseverance, financial resources, etc.), rather than on cooperation between investigative and monitoring institutions.

The majority of respondents considered preventive mechanisms of labour exploitation to be insufficient both for national and migrant workers in the Lithuanian labour market. It has been noted that there is a general lack of knowledge of labour rights and their regulation in the Lithuanian society and employees might not always recognise cases of labour exploitation. The lack of knowledge of specific risk factors for migrant labour exploitation could be related to the small number of cases of labour violations that were officially reported, yet it also reveals the lack of readiness of monitoring and investigative institutions to recognise cases of labour exploitation. Furthermore, it can be observed that there is little knowledge of the specific legal status of migrant workers (work permits, residence permits, etc.) and of the institutional support that is available to victims of labour exploitation (i.e. state institutions have limited knowledge of specific victim support services that are provided by NGOs and other institutions, NGOs have little knowledge of existing referral mechanisms, etc.).

An analysis of interviews and case studies shows the existence of support services provided by the NGO sector and governmental institutions; however, none of these bodies specifically targets victims of labour exploitation. NGOs work in the field of migrant integration in general and provide legal, psychosocial and all other necessary assistance free of charge for any migrants in need. Some NGOs specialise in assisting victims of trafficking for forced labour and prostitution and currently provide services exclusively for Lithuanian citizens. Support services are also provided by one governmental institution, namely the Refugee Register Centre, for a victim of trafficking and sex exploitation until they decide upon cooperation with justice system. However, as indicated in some interviews, victims of trafficking are very reluctant to apply for this assistance from the state institution. The reasons for this may be the different approaches of both governmental and non-governmental institutions to the treatment of victims, the openness of staff to hearing victims' problems and needs, and the willingness to help them.

Experts have different opinions concerning the effectiveness of the civil justice system in enabling victims to claim compensation and back pay. However, the majority of interviewees indicated that persons who decide to claim compensation usually face obstacles and challenges. In practice, civil law claims are not frequently dealt with by the criminal justice system, although there is such a possibility if any damage is done to the victim. Complaints can be lodged through third parties, but, in practice, they are mostly lodged by individuals. Finally, interviewees indicated that such factors as awareness raising of the rights of migrant workers, services provided in a language understandable for migrants and relevant changes

of access to the justice system would facilitate migrant workers lodging complaints against their employers.

Throughout the social fieldwork research, certain positive aspects to address severe forms of labour exploitation could be observed. Improved legislation to control employers and strengthen their accountability contributes to the state efforts towards solving labour exploitation. However, many respondents highlighted the problems in addressing the issues of severe labour exploitation. In Lithuania there is no standardised victim identification model, assistance to victims is not coordinated and there is no proper cooperation between the different institutions that provide assistance to and protection for victims. Many interviewed experts mentioned the fact that victims usually do not apply for any assistance because of such factors as fear of losing their jobs and income, fear of violence, fear of being deported, fear regarding the safety of their family members, a lack of knowledge about available help and dependency on an employer. Research results show that the state, up to the present, did not elaborate on common criteria to identify victims of severe forms of exploitation, particularly victims of trafficking for forced labour. Criticism about the limited professional capacities of staff of state institutions to protect victims was also recurrent in the social fieldwork research. Finally, the majority of interviewed experts highlighted that the lack of coordination and cooperation between state institutions and between governmental and non-governmental bodies hinders the development of an effective system to solve the problems of severe labour exploitation in Lithuania.