

# **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**

**Slovakia, 2014**

FRANET contractor: CVEK – Centrum pre výskum etnicity a kultúry  
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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

In the initial stage of the fieldwork we faced the difficulty of identifying institutions that would have a mandate to tackle migrant workers' labour exploitation and forced labour as defined by the present research. We therefore turned our attention to institutions concerned with the issues of migrant workers' employment in general.

Based on a preliminary desk research and consultations with migration experts we came to the conclusion that the topic of migrant workers' labour exploitation is not a priority of institutions vested with the agenda of illegal labour and illegal employment (i.e. labour offices and labour inspectorates), legal status of migrants (i.e. foreign police departments) and human trafficking (i.e. Ministry of the Interior of the Slovak Republic and its subsidiaries).

Consequently, 34 potential respondents were identified. Eventually, 30 interviews were conducted covering all required professional groups. Interviewees from some professional groups were more difficult to recruit than from others. We had difficulties particularly with respect to group E in which we were only able to recruit one respondent. Other selected candidates refused to participate reasoning that issues of labour exploitation of migrant workers were not in any way in their institution's agenda. We also encountered difficulties recruiting respondents from R professional group. Generally, recruitment agencies refused to communicate about the topic of migrant workers' labour exploitation or even about the issue of employing migrant workers at all. Therefore, R professional group was only represented by one interviewee. No support organisations targeting child victims of labour exploitation were identified in Slovakia since, as the fieldwork also confirmed, no case of child labour exploitation has ever been identified in Slovakia. After consulting this with FRA, only support organisations working with migrants in general were included in the S professional group. Professional group J included two specialised prosecutors and one judge of the Specialized Court. Office of specialized prosecutor and Specialized Court deal with cases of corruption and organised crime. As mentioned in the report cases of migrant workers' labour exploitation have so far only been prosecuted if they involved human trafficking which tends to be qualified as organised crime. This is why prosecuted cases of human trafficking have been so far dealt with by the specialised prosecutor's office and specialised court. The L professional group was represented by one criminal lawyer, two immigration/asylum lawyers and one civil lawyer.

The interviewees were contacted via e-mail, which included a brief description of the research, the informed consent form and a request to meet in person. Respondents who failed to answer the initial e-mail within 5-7 days were subsequently contacted via telephone. If they refused to take part in the research they were replaced by new, equally relevant respondents, who were soon contacted in the same way; however, most respondents approached in the first round agreed to participate.

We conducted **30 semi-structured face to face interviews** (between 28 March and 30 May 2014) with representatives of nine different categories of respondents. The table below features an overview of the structure of carried out interviews broken down by respondent category.

| Professional group | No. of interviews |           | Location of conducted interviews |        |      |
|--------------------|-------------------|-----------|----------------------------------|--------|------|
|                    | required by FRA   | conducted | West                             | Middle | East |
| M                  | 3 to 6            | 7         | 4                                | 0      | 3    |

|   |        |   |   |   |   |
|---|--------|---|---|---|---|
| S | 4 to 7 | 7 | 5 | 0 | 2 |
| P | 3 to 6 | 3 | 3 | 0 | 0 |
| L | 1 to 3 | 4 | 4 | 0 | 0 |
| J | 3 to 6 | 3 | 2 | 1 | 0 |
| E | 1 to 3 | 1 | 1 | 0 | 0 |
| W | 1 to 3 | 2 | 2 | 0 | 0 |
| N | 1      | 2 | 2 | 0 | 0 |
| R | 1 to 3 | 1 | 1 | 0 | 0 |

The average running time of the interviews was 64 minutes; the longest one took 141 minutes while the shortest one lasted 38 minutes.

Apart from the interviews, we organised **one focus group** that lasted for two hours and was attended by eight professionals. All required professional groups were represented.

| Profession | Gender | Age group |
|------------|--------|-----------|
| L          | F      | 30-50     |
| S          | F      | Under 30  |
| W          | F      | 30-50     |
| N          | M      | 30-50     |
| M          | F      | 30-50     |
| P          | F      | 30-50     |
| P          | F      | 30-50     |
| M          | F      | 30-50     |

Besides the topics the FRA had outlined for the purpose of focus groups we also decided to include one topic that arose from the preliminary analysis of conducted interviews. These interviews seemed to have indicated that in Slovakia, the issue of migrant workers' labour exploitation is largely reduced to the issue of trafficking in human beings. As a general rule, the cases of labour exploitation are only investigated if the victims are also viewed as victims of trafficking in human beings; along the same logic, only these victims are eligible to enter the official programme of victim support. Section six of our focus group therefore included the following questions:

- What support services are available to victims of labour exploitation that have not simultaneously been victims of trafficking in human beings? (Follow-up questions: What services are in fact provided to them? Who is responsible for the provision of these services?)
- How would the participants evaluate these victims' access to justice? (Follow-up questions: Are these cases investigated; if yes, in which way? Does the investigation mind the victims' best interest; if yes, in which way if we know most of these victims are deported?)

In the course of the research, we identified eight relevant case studies; however one case study had to be excluded from the research due to lack of detailed information on the case.

## 2 Legal framework

### 2.1 Basic framework provided by valid legislation

The basic legal framework covering severe forms of labour exploitation and trafficking in human beings for the purpose of forced labour is created by the **Constitution of the Slovak Republic** (Act No. 460/1992 Coll., hereinafter referred to as “Slovak Constitution”)<sup>1</sup>, the **Criminal Code** (Act No. 300/2005 Coll., as amended, hereinafter referred to as “Criminal Code”)<sup>2</sup> and the **Labour Code** (Act No. 311/2001 Coll., as amended, hereinafter referred to as “Labour Code”).<sup>3</sup>

The Slovak Constitution anchors the following human rights relevant to the research:

- “The freedom of movement and residence shall be guaranteed” (Article 23 Paragraph 1 of the Slovak Constitution); given provision applies to both citizens and foreigners, while any restrictions of this freedom are only possible under separate laws;
- “No person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment” (Article 16 Paragraph 2 of the Slovak Constitution);
- “No person shall be subjected to forced labour or services” (Article 18 Paragraph 1 of the Slovak Constitution).

The **ban on forced labour** is also one of the fundamental principles of the Labour Code **but it is not defined explicitly in one particular provision**. Basic principles of the Labour Code are stipulated by the Article 1. of the Labour Code, which further refers to the Anti-Discrimination Act. Duties of the employer are stipulated by the Article 47 of the Labour Code. Working conditions for young employees are regulated by the Article 170 – 176.

The **ban of child labour** is specifically stipulated by the Article 11 par. 4 of the Labour Code. The employment of children under the age of 15 or children older than 15 years attending compulsory schooling is prohibited. Children may perform only light work which by its nature and scope does not endanger their health, safety, further development or schooling, and only include:

- a) taking part in cultural performances and artistic performances,
- b) at sporting events,
- c) at promotional activities.

There is no separate criminal offence defined by the Criminal Code as labour exploitation or forced labour. Therefore severe forms of exploitation can be punished as a part of either a criminal offence of **trafficking in human beings** covered by the Article 179 of the Criminal code, or under provision of Article 251a of the Criminal code as an offence of “**unlawful employment**”, generally related to employment of migrants contrary to separate Acts, such as Act on Residence of Foreigners or Act No. 5/2004 Coll. on Employment Services as amended (hereinafter referred to also as “Employment Services Act”).

The issue of **trafficking in human beings for the purpose of forced labour** is regulated particularly by the **Criminal Code**, whose Article 179 features provisions defining various forms of this criminal offence.

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<sup>1</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>2</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>3</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

Article 179 Paragraph 1 stipulates: “He who applies deceitful conduct, trick, restriction of personal freedom, abduction, violence or threat thereof, threat of other severe detriment or other forms of coercion, accepts or provides remuneration or other benefits in order to attain consent of a person on which another person is dependent, or abuses their status or the person’s defenceless or otherwise vulnerable position to beguile, transport, keep, deliver or take over another person, even with that person’s consent, for the purpose of the person’s prostitution or other forms of sexual exploitation including pornography, *forced labour or services including beggary, slavery or practices resembling thereof, serfdom*, forced marriage, perpetration of criminal activity, trafficking in organs, tissues and cells or other forms of *exploitation*, shall be punished by four to ten years of imprisonment.”

Based on this definition, human trafficking occurs when three elements are met: **action** (recruitment, transportation, transfer, harboring or taking people); **means** (the threat or use of violence, other forms of coercion, abduction, fraud, deceit, abuse of power, a position of vulnerability); and **purpose** (prostitution or other forms of sexual exploitation, including pornography, forced labor or services, slavery or practices similar to slavery, servitude, removal of organs, tissues or cells or other forms of exploitation).

The Criminal Code separately views the criminal offence described above if the **victim is a child**. Article 179, Paragraph 2 reads: “He who beguiles, transports, keeps, delivers or takes over a child, even with that child’s consent, for the purpose of the child’s prostitution or other forms of sexual exploitation including child pornography, *forced labour or services including beggary, slavery or practices resembling thereof, serfdom*, forced marriage, perpetration of criminal activity, illegal adoption, trafficking in organs, tissues and cells or other forms of *exploitation*, shall be punished by the same way specified in Paragraph 1.”

**Child labour** is, along with its prohibition by the Labour code, specifically criminalised in Article 181 Paragraph 1 of the Criminal Code, which stipulates that entrusting a child into other person’s power for the purpose of child labour shall be punished by four to ten years of imprisonment. The punishment increases in the same vein as in Article 179 Paragraph 1.

According to Article 179 Paragraph 3, perpetrators of criminal offences specified in Paragraphs 1 and 2 shall be punished by seven to 12 years of imprisonment if they:

- a) Gain material benefits for themselves or somebody else;
- b) Expose other persons to dangers of severe health damage or death;
- c) Perpetrate them in the capacity of a public official;
- d) Perpetrate them against a protected person (a child);
- e) Perpetrate them out of specific motive; or
- f) Perpetrate them in a serious manner.

Even stricter punishments are envisaged by Article 179 Paragraph 4, which stipulates that perpetrators of criminal offences specified in Paragraphs 1 and 2 shall be punished by 12 to 20 years of imprisonment if they:

- a) Gain major benefits for themselves or somebody else;
- b) Cause other persons severe health damage, death or other particularly serious detriment;
- or
- c) Perpetrate them as members of a dangerous group.

Exemplary punishments are envisaged by Article 179 Paragraph 5, which stipulates that perpetrators of criminal offences specified in Paragraphs 1 and 2 shall be punished by 20 to 25 years of imprisonment or life sentence if they:

- a) Gain particularly major benefits for themselves or somebody else; or
- b) Cause severe health damage or death to several other persons.

A legislative framework is also created by the definition and a merit of a criminal offence of “**unlawful employment**” (with the elements of severe labour exploitation and slavery). This criminal offence is defined by the Article 251a of the Criminal Code. The definition includes cases, when according to paragraph 2 of the article, if offence of “unlawful employment” was committed on a protected person, or **acting in a more serious manner**, or **under extremely exploiting working conditions** including work conditions based on discrimination, significantly disproportionate as compared to working conditions of legally employed persons and which effect human health and security and security and is in conflict with human dignity, or on a person who has become the victim of human trafficking.

Above provision of Article 251a is concerned particularly with foreigners who reside in the Slovak Republic without relevant residence permit (“unlawful residence”). However, Article 2 par. 2 letter g) of Act on Residence of Foreigners defines the status of an “unlawful residence” - as a residence on the territory of the Slovak Republic in violation of this Act, in violation of separate acts (for instance Act on Employment Services) or international treaty. The definition therefore according to application practice includes not only undocumented migrants, but also foreigners who perform any unauthorised economic activity for which previous authorisation is required with a residence permit granted for another purpose.

While according to the Article 179 of the Criminal Code, trafficking of human beings for the purposes of slavery, servitude or forced labour can be punished by imprisonment generally from 4 to 12 years (taking into account the seriousness of the offense under par. 1 and 2), pursuant to Article 251a of the Criminal Code, an employer who takes advantage of the victim's employment can be punished directly by imprisonment up to 3 years.

## 2.2 Legal definition and punishment of illegal labour in the context of labour exploitation

Illegal labour and “unlawful employment” are regulated by Act No. 82/2005 Coll. **on illegal labour and illegal employment** that alters and amends certain laws<sup>4</sup> (hereinafter referred to also as “Act on Illegal Labour”) and by the **Criminal Code**.

The Act on Illegal Labour transposed Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, which introduced minimum sanctions and measures with respect to employers of illegally staying third country nationals. The law introduced an obligation for monitoring bodies authorised to inspect illegal labour and illegal employment to inform third country nationals that have been illegally dwelling and working on the territory of the Slovak Republic of their right to file a complaint against unpaid wages that have been agreed upon, to claim the wage owed and to have it delivered to the country to which they are bound to return or be administratively expelled, at the expense of the legal or natural person that has been lawfully fined for breaching the ban on illegal employment.<sup>5</sup>

The amount of fines that can be imposed for illegal employment is regulated by separate Act No. 125/2006 Coll. on **labour inspection**<sup>6</sup> that alters and amends Act No. 82/2005 Coll. on illegal labour and illegal employment that alters and amends certain laws (hereinafter referred to as “Labour Inspection Act”). Effective 1 November 2013, the fines for illegal employment

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<sup>4</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk) .

<sup>5</sup> Available at: <https://lt.justice.gov.sk/Attachment/4%20vlastnymat/rtf.pdf?instEID=-1&attEID=63951&docEID=356225&matEID=7141&langEID=1&tStamp=20140328094024737>.

<sup>6</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

increased. The law also stipulates the conditions of supervising the ban on illegal labour and illegal employment.

With respect to illegal employment featuring elements of labour exploitation, Article 251a Paragraph 2 letter c) of the Criminal Code was introduced with effect from 1 September 2011. There is no data available if this provision was applied in practice since its adoption in 2011.

The above provision of article 251a of the Criminal code allows for punishment of offenders of unlawful employment, and partly defines *severe forms of labour exploitation*. According to the provision, severe forms of labour exploitation, including discriminatory labour conditions, are indicated by the glaring disproportion against labour conditions of legally employed persons, particularly if this disproportion affects health protection and safety standards and goes against the principle of human dignity.

Article 251a Paragraph 2 letter a) of the **Criminal Code** stipulates that illegal employment of minors shall be punished by 6 months to 3 years of imprisonment. This provision concerns foreigners residing in the Slovak Republic without a valid residence permit.

Also, as mentioned in chapter 2.1, the employment of minors (i.e. children younger than 15 or children who participate on compulsory schooling) is prohibited by Article 11 Paragraph 4 and Article 11 Paragraph 5 of the **Labour Code**. According to Article 171 of the Labour Code, young employees (i.e. persons between 15 and 18) must not perform hard work (e.g. mining).<sup>7</sup> Government Regulation No. 286/2004 **introducing the list of jobs and workplaces that are prohibited for young employees** and establishing certain obligations of employers who employ such employees specifies jobs young employees are forbidden to perform.

According to Article 251a Paragraph 2 letter d) the perpetrator who illegally employs a person that is a victim of trafficking in human beings may also be punished by 6 months to 3 years of imprisonment. As opposed to people smugglers, this provision is specifically designed to punish employers who hire victims of trafficking in human beings. Unfortunately, practical application of this provision seems unenforceable due to the problematic criteria of recognising victims of trafficking in human beings (for further details see chapters 4.1.1., 4.3.1., 5.1.1.). As a general rule, the victims are not allowed to remain in Slovakia throughout criminal proceedings because they have resided illegally on Slovakia's territory; unless the person is granted a tolerated residence, the victims cannot testify as witnesses before law enforcement authorities or in the court.

For these reasons, an important legal norm in terms of tackling the consequences of forced labour and labour exploitation of third country nationals is **Act on Residence of Foreigners**<sup>8</sup>. The law allows:

- a) an institution of tolerated residence to be granted to *victims of trafficking in human beings* for the period of 90 days in compliance with Article 58 Paragraph 2 letter c) of the law;
- b) tolerated residence to be granted to third country nationals who have been *illegally employed under particularly exploitative conditions* in compliance with Article 58 par. 3.
  - a) The victims of trafficking (Article **58 par. 2 letter c)** of Act on Residence of Foreigners are free to make up their minds on whether they will cooperate with law enforcement organs, in which case their tolerated residence status may be extended by further 90 days; throughout this period, the victims receive support from the Programme to Support and Protect Victims of Trafficking in Human

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<sup>7</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>8</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

Beings administered by the Ministry of Interior (0 tolerated residence granted in 2013).

- b) According to **Article 58 Paragraph 3** of the Act on Residence of Foreigners, tolerated residence permits may also be granted by the Foreign Police Department to third country nationals that have **been illegally employed under particularly exploitative conditions or minor persons that have been illegally employed**, provided their presence on Slovakia's territory is necessary for the purpose of criminal prosecution. A tolerated residence permit is issued for 180 days and may be extended by another 180 days (even repeatedly) until the criminal proceedings are lawfully ended. This applies to the exploited migrant workers who have not been trafficked. Such migrant workers are not eligible to enter the Programme to Support and Protect Victims of Trafficking in Human Beings (a tolerated residence permit pursuant to § 58 paragraph 3 was in 2013 awarded to one Ukrainian woman. The permit ended in October 2013 and afterwards this person was granted a temporary residence for the purpose of business).

The victims of human trafficking who have been officially recognised as victims by the National Coordinator for Combat Trafficking in Human Beings (see Chapter 3 and 5) are free to make up their minds on whether they will cooperate with law enforcement organs, in which case their tolerated residence status may be issued for 90 days and extended by 30 days; throughout this period, the victims receive support from the Programme to Support and Protect Victims of Trafficking in Human Beings administered by the Ministry of Interior.

As far as residence permits go, it is also important to note Act No. 480/2002 Coll. **on Asylum**<sup>9</sup>, as amended (hereinafter referred to as "Asylum Act"). According to the law, victims of trafficking in human beings may also apply for asylum; however, the very fact of being a victim of trafficking in human beings is not enough if the conditions for granting asylum status circumscribed by Article 8 of the law have not been met, i.e. the applicants cannot prove that in their countries of origin they are being persecuted due to their race, nationality, religion, political views, or affiliation to a social group. For humanitarian reasons, the Migration Office of the Ministry of Interior of the Slovak Republic (hereinafter referred to as "Migration Office") has the power to grant asylum status to victims of trafficking in human beings even though they fail to comply with these conditions; however, since the law fails to specify these reasons, it is up to the Immigration Office to assess each individual case.

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<sup>9</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

## 3 Labour exploitation and the institutional setting

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

Before proceeding with a discussion on the institutional setting of tackling migrant workers' labour exploitation in Slovakia, it should be noted that the topic of labour exploitation has not yet been defined as such by state institutions. No institution has an explicitly defined mandate to tackle labour exploitation or forced labour of migrant workers in Slovakia. Instead, the issue of labour exploitation (as understood in this research) is interpreted as the issue of illegal work and illegal employment. That means that even cases that involve exploitative practices (e.g. long working hours, no or very little remuneration, lacking labour contracts etc.) are qualified as cases of illegal labour in which migrant workers are perceived as perpetrators rather than victims. The meaning of illegal labour and labour exploitation thus overlap to a large extent in Slovakia. The only case in which migrant workers may be perceived as victims is a case of human trafficking for the purposes of labour exploitation. It is also the only case in which the term 'labour exploitation' is usually used. Although several respondents entered the research project with claims that they had never encountered cases of labour exploitation in their professional practice, it turned out in the course of individual interviews that they indeed had encountered them, only they did not qualify them as labour exploitation but as illegal labour. Interviewees mentioned cases showing signs of forced labour and labour exploitation (for example, extremely long hours for low salaries or no salaries paid at all, migrants employed only for accommodation provided by the employer at premises not designed for human habitation and/or non-existent work contracts), but did label them as illegal employment.

The research revealed that institutions playing the most important role in the field of combating migrant workers' labour exploitation include **labour inspectorates**<sup>10</sup>, **labour offices** (particularly their departments of control and departments of professional advisory services) and the **Bureau of the Border and Alien Police** (ÚHCP – particularly its National Unit to Combat Illegal Migration<sup>11</sup> and foreign police departments<sup>12</sup>).

Labour inspectorates and labour offices perform primarily monitoring and supervisory functions, while ÚHCP units perform police supervision and criminal law functions. The National Unit to Combat Illegal Migration specialises particularly in combating trafficking in human beings for the purpose of labour or sexual exploitation. Foreign police departments check on legality of exploited migrant workers' residence and issues tolerated residence permits. At the same time, all mentioned institutions closely cooperate in the field of inspecting workplaces.

Other organisations relevant with respect to migrant workers' labour exploitation are entities **that provide support services to victims of labour exploitation**. The persons who have been identified by the National Coordinator for the Fight against Human Trafficking as victims

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<sup>10</sup> Slovakia, Act No. 82/2005 Coll. on Illegal Work and Illegal Employment (*Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní*); Slovakia, Act No. 125/2006 Coll. on Labour Inspection (*Zákon č. 125/2006 Z. z. o inšpekcii práce*); Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination (*Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*).

<sup>11</sup> Slovakia, Act No. 300/2005 Coll. Criminal Code (*Zákon č. 300/2005 Z. z. Trestný zákon*).

<sup>12</sup> Slovakia, Act No. 404/2011 Coll. on Residence of Foreigners as amended (*Zákon č. 404/2011 Z. z. o pobyte cudzincov*)

of trafficking in human beings (for any purpose including that of labour exploitation) are eligible to enter the Programme to Support and Protect Victims of Trafficking in Human Beings. The programme is operated by three non-governmental organisations based on a contract they signed with the Ministry of Interior. Unfortunately, there is no support mechanism in place for the victims of labour exploitation that are not simultaneously victims of trafficking in human beings (i.e. the programme of support is only available for those who have been identified as victims of human trafficking); these persons receive rather ad hoc and limited assistance from relevant non-governmental organisations.

Victims of labour exploitation and victims of trafficking in human beings for the purpose of labour exploitation can also receive **legal assistance and legal representation** from lawyers who work in support organisations or their partners from law firms who work *pro bono*.

To a marginal degree, the issue of labour exploitation is also tackled by **employees' organisations and trade unions**, which focus primarily on monitoring and defending workers' rights in general. Previously, they have not paid special attention to migrant workers' problems; however, they have shown interest in them, thanks in part to participating in this research.

The cases of trafficking in human beings for the purpose of labour exploitation are adjudicated by **district and regional courts**; however, if these crimes are suspected to have been perpetrated by organised crime gangs (which usually is the case), the cases are handled by the **Office of Special Attorney and the Specialised Criminal Court**.

### 3.1.1. Supervisory organs (category "M")

The supervisory function with respect to migrant workers' labour exploitation is performed especially by the Ministry of Labour, Social Affairs and Family, which is the umbrella institution for other state administration organs that perform practical tasks in this area. Indirectly, i.e. through its subordinate organisations, the labour ministry performs monitoring and supervision over observance of labour law legislation (e.g. health protection and safety standards, illegal employment, observance of the Labour Code).<sup>13</sup> The Labour Ministry and its respective departments are only concerned with migrants (both EU and third country nationals) who are legally resident in the Slovak Republic. In case of violation of the Labour Code, it does record the nationality of those involved (i.e. victims or perpetrators) but does not use this information any further. At the same time, the labour ministry focuses on adopting measures aimed at protecting victims and advocating workers' rights, including but not specifically those of migrant workers.

*"This ministry's activities, in the field of legislation, drafting of bills, is focused on protection of the rights of the workers (...). This ministry has departments that deal exclusively with migrant issues. Generally. (...) [Our agenda] includes migrants as well as Slovak nationals."* [M(1)]

*„Činnosť ministerstva, teda v tej oblasti legislatívnej- príprava predpisov, je práve zameraná na ochranu práv zamestnancov. (...) Na tomto ministerstve sú príslušné útvary, ktoré sa zaoberajú len problematikou migrantov. Všeobecne. (...) My to máme vo všeobecnosti (...) migranta aj slovenského občana.“* [M(1)]

The described departments, or rather one department that specifically deals with migrant issues also focuses on integration of migrants in general on the strategic, policy-making and

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<sup>13</sup> Slovakia, Act No. 311/2001 Coll. the Labour Code (*Zákon č. 311/2001 Z. z. Zákonník práce*).

coordination level. The said department is thus responsible for drafting general integration policies, e.g. the Integration Policy of the Slovak Republic.

On the national level (i.e. that of the labour ministry), respondents very seldom encountered cases of migrant workers' labour exploitation since it is active rather in the policy-making area. Departments of the labour ministry thus do not come in direct contact with migrant workers.

More frequently exposed to these cases were organisations that report to the labour ministry (e.g. labour inspectorates and labour offices' departments of control and departments of professional advisory services and cooperation with employers). Most of the cases are brought to their attention as specific motions either by other organisations (both private and public) or via the emergency helpline operated by the Control Department at the Central Office of Labour, Social Affairs and Family where such cases can be reported anonymously [M(1)]. One could say that labour inspectorates and labour offices' control departments actively search for such cases as they also carry out random inspections [M (2)]. But one should note that while these cases may show signs of exploitation, the respondents consistently spoke of illegal labour and illegal employment, as opposed to labour exploitation.

Illegal work is work performed by a natural person that is not based on a proper contract pursuant to the Labour Code<sup>14</sup>, Commercial Code<sup>15</sup> or Civil Code.<sup>16</sup> A work is deemed illegal also if it is performed by a third country national who does not have a valid residence permit for the purpose of employment and a work permit.<sup>17</sup> Illegal employment constitutes a situation in which a) there is no contractual relationship between the employer and the employee, b) there is a contractual relationship between the employer and the employee but the employer does not pay the social security benefits, and/or c) work is performed by a third country national who does not have a valid residence permit for the purpose of employment and a work permit.<sup>18</sup>

There is no precise legal definition of labour exploitation, forced labour or particularly exploitative conditions in Slovakia. The only definition of what can be qualified as exploitative working conditions is contained in Article 251a of the Criminal Code. Definition includes cases when offence of "unlawful employment" was committed on a protected person, or acting in a more serious manner, or under extremely exploiting working conditions including work conditions based on discrimination, significantly disproportionate as compared to working conditions of legally employed persons and which affect human health and security and is in conflict with human dignity, or on a person who has become the victim of human trafficking. The problem with this definition lies in the distinction between "lawfully" and "unlawfully" employed persons since exploitation may occur even in cases when migrant workers are employed lawfully (at least formally). Moreover, the concept of human dignity may prove difficult to interpret in the application practice since there is no legal definition. The interviewees thus labelled cases showing the signs of forced labour and labour exploitation (as per the ILO Casebook of Court Decision) as illegal work or illegal employment which could, however, be reductionist and misleading. Cases mentioned by the interviewees thus involved, for instance, extremely long hours for low salaries (e.g. migrants working 16 hours a day for a

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<sup>14</sup> Slovakia, Act No. 311/2001 Coll. Labour Code (*Zákon č. 311/2001 Z.z. Zákonník práce*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>15</sup> Slovakia, Act No. 513/1991 Coll. Commercial Code (*Zákon č. 513/1991 Z.z. Obchodný zákonník*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>16</sup> Slovakia, Act No. 40/1964 Coll. the Civil Code (*Zákon č. 40/1964 Z.z. Občiansky zákonník*),. Available at: [www.slov-lex.sk](http://www.slov-lex.sk) h.

<sup>17</sup> Slovakia, Act No. 5/2004 Coll. on Employment Services (*Zákon č. 5/2004 Z. z. o službách zamestnanosti*), Para 21 – 22,. Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>18</sup> Slovakia, Act No. 5/2004 Coll. on Employment Services (*Zákon č. 5/2004 Z. z. o službách zamestnanosti*), Para 21 – 22. Available at: [www.slov-lex.sk](http://www.slov-lex.sk) .

salary of 200 EUR/month), no salaries paid at all, migrants employed only for accommodation provided by the employer at premises not designed for human habitation and non-existent work contracts.

The focus group revealed that there is also a dispute over voluntariness of work, i.e. work of migrants who are not considered victims of human trafficking is considered voluntary as *“they can always do something about their conditions, quit, go somewhere else or whatever, whereas victims of trafficking in human beings don’t have such a chance”* [FG(N)]. However, as the ILO Casebook of Court Decision says and as also another respondent of the focus group admits [FG(L)] *“employment in conditions contrary to human dignity could be established regardless of the consent of the worker.”*<sup>19</sup>

### **Organisations reporting to the Ministry of Labour, Social Affairs and Family of the Slovak Republic**

The organisations reporting to the Labour ministry that may come in direct contact with cases involving migrant workers’ labour exploitation include **labour inspectorates** and **labour offices**, particularly their *departments of control* and *departments of professional advisory services and cooperation with employers*. According to these organisations’ representatives, migrant workers enjoy identical rights to Slovak citizens.

*“There are no above-standard [rights] and no restrictions whatsoever. The only [requirement] is that they must work based on a [proper] labour contract. We care very much for that. (...) So, this is kind of a difference compared to Slovak and EU citizens that these foreigners must have a labour relation, a labour contract and cannot work based on various alternative forms of employment.”* [M(1)]

*„Nijaké nadštandardné, ani nie je v ničom obmedzovaný. Jediné, čo je, že musí pracovať na pracovnú zmluvu. Na to dbáme. (...) Takže v tom je taký rozdiel oproti občanom SR a EÚ, že títo cudzinci musia mať pracovný pomer, pracovnú zmluvu a nemôžu byť na rôzne tie alternatívne vzťahy zamestnaní.“* [M (1)]

Departments of professional advisory services and cooperation with employers are governed by the Employment Services Act.<sup>20</sup> They take care primarily for third country nationals who reside legally on Slovakia’s territory and need work permits. They make sure that these foreigners work legally by issuing work permits to them but they are not authorised to adopt any other measures. For instance, they cannot monitor the practical fulfilment of labour contracts they have authorised in the form of work permits; that is the job of control departments in cooperation with labour inspectorates.

Apart from labour inspectorates the said departments have a well-functioning partnership with the foreign police departments to whom they supply information on work permit they issued. In situations when illegal labour is suspected, they are supposed to document the case and provide information to other public and private organisations in cooperation with labour inspectorates and the foreign police department. If the department of professional advisory services and cooperation received an indication about a third country national’s alleged illegal work they would check for the legality of his/her work permit. Afterwards they would pass the information to either the labour inspectorate or a foreign police department. Indication could be received from any source – any natural or legal person, public and/or private institution etc. [M(1)]. However, this is hypothetical, as they have not encountered a case of illegally

<sup>19</sup> ILO (2009) Forced Labour and Human Trafficking. Casebook of Court Decisions, Geneva, p. 59.

<sup>20</sup> Slovakia, Act No. 5/2004 Coll. on Employment Services (*Zákon č. 5/2004 Z. z. o službách zamestnanosti*), Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

employed migrant workers yet. It could be argued that the department's staff is not prepared for such cases and more information and/or training would be required.

Departments of control are governed by the Illegal Labour Act<sup>21</sup> and the Employment Services Act.<sup>22</sup> The scope as well as the course of inspections is regulated by the Public Administration Inspections Act.<sup>23</sup>

According to one interviewee from the monitoring bodies group, the departments of control focus especially on third country nationals who dwell illegally in the country and often take illegal jobs. In cooperation with labour inspectorates and immigration police, they perform and organise controls in the field of employment services, i.e. compliance with contracts concluded pursuant to the Employment Services Act and Labour Code and compliance with all obligations related to payment of social security contributions. The departments thus check for compliance with the labour legislation, i.e. labour conditions regulated by labour legislation (e.g. contracts, working hours). They check upon the law's observance by carrying out field inspections; however, they do not specifically check whether inspected workers are being exploited or not but focus rather on illegal labour (see the definition of illegal work and illegal employment above).

*"...we go to the field just like labour inspectorates and make sure that the law is abided by. In doing so, we actually witness how employers treat their employees, i.e. whether they use them for legal or illegal labour. So, that is one aspect of our interest in this quasi utilisation [respondent laughs] or how did you call it? Exploitation? Yes, our somewhat indirect interest in exploitation. But we don't directly check whether these people are being exploited or not."*[M(1)]

*„...tak isto ako inšpektoráty práce chodíme do terénu a kontrolujeme dodržiavanie tohto zákona. A pritom sa vlastne stretávame s tým, ako sa správajú zamestnávateľia voči zamestnancom. Že či ich využívajú na prácu legálne alebo nelegálne. Takže to je jedna z častí, ako sa o to vlastne kvázi využívanie [respondentka sa zasmieje], alebo ako ste to vy nazvali? Vykorišťovanie? Áno, o vykorišťovanie sa tak trošku nepriamo zaujímame. Ale priamo nekontrolujeme, či je alebo nie je ten človek vykorišťovaný.“* [M(1)]

In our opinion, the quote above perfectly illustrates the perception of labour exploitation on the part of government institutions. State institutions do not use the concept of labour exploitation even in cases that show signs of labour exploitation (as per ILO Casebook of Court Decisions, e.g. extremely long hours for salaries far below the minimum wage or no salaries paid at all, unsanitary labour conditions, no work contracts). Such cases are labelled as illegal labour and departments of control (in cooperation with labour inspectorates and foreign police departments) tackle primarily the illegality of migrants' work or residence. The interviews indicated the respondents were not accustomed to using the term of labour exploitation, and certainly not with respect to migrant workers. The terms 'illegal labour' and 'labour exploitation' were, in fact, used interchangeably by the interviewees even though their meanings differ. However, the fact that cases that could be qualified as labour exploitation (with migrant workers being the victims) are labelled as illegal labour (with migrant workers perceived as perpetrators) is illustrative of the state's approach to the issue.

The departments of control refer all their findings concerning foreigners to foreign police departments or to the criminal police [M(1)] with whom they have established a well-working

<sup>21</sup> Slovakia, Act No. 82/2005 Coll. on Illegal Work and Illegal Employment (*Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>22</sup> Slovakia, Act. No. 5/2004 Coll. on Employment Services (*Zákon č. 5/2004 Z. z. o službách zamestnanosti*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>23</sup> Slovakia, Act No. 10/1996 Coll. on Inspections in Public Administration (*Zákon č. 10/1996 Z. z. o kontrolách v štátnej správe*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

cooperation. Besides, they pursue counselling activities during which they should inform migrants with illegal residence status who have become victims of labour exploitation on their rights. This obligation is sanctioned by Art. 7c of the Act on Illegal Labour<sup>24</sup>; however, they lack concrete practical experience. Moreover, they do not speak of labour exploitation but about “using work of a person who resides in Slovakia illegally.” [M(1)] As mentioned above, terms of ‘illegal labour’ and ‘labour exploitation’ are used interchangeably by the interviewees which suggests the confusion and unclearness of the state’s understanding of the issue of labour exploitation and forced labour.

Q: “Do you offer information also to victims of labour exploitation?”

A: “Yes. We even are obligated by the law. Because if the control reveals that a natural person that is illegally in the territory of the Slovak Republic and their dependent work is being used by a legal or a natural person, entrepreneur, we are obligated to inform them they have certain rights ensuing from the fact their work has been used illegally (...) And what are these rights, well, the employer must provide them with some financial things (...) Fortunately, it has not happened yet because we have not had a single case like that.” [M(1)]

Q: Vy ponúkate aj informácie obetiam pracovného vykorisťovania?

A: Áno. Zo zákona dokonca máme povinnosť. Pretože ak my pri kontrole zistíme, že fyzická osoba, ktorá tu je nelegálne na území republiky a využíva sa jej závislá práca nejakou právnickou alebo fyzickou osobou ako živnostníkom, tak my sme povinní ju informovať o tom, že má určité práva vyplývajúce z toho, že jej závislá práca bola využívaná nelegálne (...) A aké práva má, že ten kvázi zamestnávateľ mu musí určité veci finančne poskytnúť. Takže to my máme povinnosť robiť. Ešte našťastie sa to ani raz nestalo, lebo taký prípad nebol. Ale mali by sme to robiť. [M(1)]

With respect to migrant workers, departments of control focus primarily on this type of counselling and checking upon illegal labour. The inspections take place on irregular and random basis; a certain number of inspections must take place over a certain period. They do not pay special attention to labour exploitation of migrant workers.

Labour inspectorates check upon observance of Illegal Labour<sup>25</sup>, the Labour Code,<sup>26</sup> labour law and remuneration legislation<sup>27</sup> and maintenance of occupational health and safety standards.<sup>28</sup> The latter is monitored in compliance with 62 specific government legal rules, by-laws and guidelines that are based on the Slovak Government Order No. 391/2006 of 24 May 2006 on Minimum Safety and Health Requirements at Workplace<sup>29</sup> and Occupational Safety and Health Protection Act.<sup>30</sup> Again, similarly to departments of control labour inspectorates do not use the term labour exploitation or forced labour:

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<sup>24</sup> Slovakia, Act No. 82/2005 Coll. on Illegal Work and Illegal Employment (Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní),. Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>25</sup> Slovakia, Act No. 82/2005 Coll. on Illegal Work and Illegal Employment (Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>26</sup> Slovakia, Act No. 311/2001 Coll. Labour Code (Zákon č. 311/2001 Z. z. Zákonník práce). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>27</sup> Slovakia, Act No. 595/2003 Coll. on Income Tax (Zákon č. 595/2003 Z. z. o dani z príjmov). Available at: [www.slov-lex.sk](http://www.slov-lex.sk); Slovakia, Act No. 222/2004 Coll. on Value Added Tax (Zákon č. 222/2004 Z. z. o dani z pridanej hodnoty),. Available at: [www.slov-lex.sk](http://www.slov-lex.sk)

<sup>28</sup> Slovakia, Act No. 124/2006 Coll. on Occupational Safety and Health Protection (Zákon č. 124/2006 Z. z. o bezpečnosti a ochrane zdravia pri práci). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>29</sup> Available at: [www.uvzsr.sk/docs/leg/391\\_2006.pdf](http://www.uvzsr.sk/docs/leg/391_2006.pdf).

<sup>30</sup> Slovakia, Act No. 124/2006 Coll. on Occupational Safety and Health Protection (Zákon č. 124/2006 Z. z. o bezpečnosti a ochrane zdravia pri práci). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

*“Okay, to spark it off, let me say that we don’t [look out for] labour exploitation. During our inspections, we monitor [employers’] observance of Labour Code provisions and check for violations of the law on illegal labour and illegal employment in the scope of powers envisaged by the law.” [M(1)]*

*„Dobre, tak už len úplne na začiatok uvediem to, že my to pracovné vykorisťovanie nezadefinujeme ako pracovné vykorisťovanie. My pri kontrolnej činnosti sledujeme to, či sú dodržiavané ustanovenia zákonníka práce, či je dodržiavaný zákon o nelegálnej práci a nelegálnom zamestnávaní a v týchto intenciách teda v tých možnostiach, ktoré máme a aké sú naše oprávnenia, sledujeme či sú tieto predpisy dodržiavané.“ [M(1)]*

The labour inspectors perform monitoring, carry out inspections and supervise activities of temporary job agencies (*agentúry dočasného zamestnávania*) [M(1)]; however, it is very problematic to check upon practical observance of labour law regulations, for instance fulfilment of labour contracts, if there are any. According to one participant of the focus group [M(1)], it is impossible to prove unpaid salaries or excess work hours during inspections because the inspectors only can check attendance records which, however, may be formally impeccable. Furthermore, migrant workers are often reluctant to speak to inspectors due to various factors (see section 6 on attitudes).

With respect to migrants, labour inspectorates also perform task No. 112, which reads: “Inspect observance of labour conditions of foreigners who perform labour on the territory of the Slovak Republic”. While this task was quoted by one respondent [M(1)], another respondent who works with the labour inspectorate said that they focused on all workers regardless of their nationality or legal status, i.e. without specific emphasis on migrant workers.

*“We monitor violations of law as such. And we don’t care whether they have been violated with respect to this employee or that natural person. So, [we don’t take] special interest in foreigners.” [M(1)]*

*„My sledujeme porušenie zákona ako takého. A je nám jedno, voči ktorému zamestnancovi a fyzickej osobe sa tie zákony porušujú. Takže špeciálne cudzincov nie.“ [M(1)]*

The focus group also corroborated the assumption that government organs pay almost no attention to migrant workers. Labour inspectorates usually carry out their inspections based on motions (indications from third parties, e.g. foreign police or natural persons); they receive between five and six thousand such motions per year, while those pertaining to migrants make up a “*negligible proportion*” [FG(M)]. Besides, what this research project understands as labour exploitation, they tend to define as something else, e.g. illegal labour (see above).

*“[We don’t deal with] classic illegal employment the EU is interested in; [instead], we encounter illegal employment of those foreigners who have been granted residence permit in Slovakia, only for a different purpose.” [FG(M)]*

*„...nezisťujeme to klasické nelegálne zamestnávanie, ktoré EÚ a ktoré teda je sledované, ktoré EÚ zaujíma, a zisťujeme nelegálne zamestnávanie cudzincov, ale tých ktorí majú povolenie na pobyt u nás na Slovensku, ale s tým, že ho majú určený na iný účel.“ [FG(M)]*

During interviews, most representatives of labour inspectorates tended to use the term “abuse of illegal labour”; at the same time, they relatively strictly distinguished between the issue of trafficking in human beings and illegal labour on which they focus.

*“As a monitoring body that specialises in [illegal] labour, trafficking in human beings does not fall within our jurisdiction; we take a truly marginal part in educational programmes, but only*

*with respect to training that focuses on labour inspectors as this is not the area that would be our priority. As labour inspectors, [our principal focus] is illegal employment; this also includes illegal employment of third country nationals.”[FG(M)]*

*„A jednoducho v rámci obchodovania s ľuďmi pre nás, ako orgány dozoru, ktoré myslím špeciality práce, je toto záležitosť, ktorá nám nespadá do našich kompetencií a skutočne iba okrajovo sme zúčastnení na nejakých vzdelávacích programoch (...) ale nie je to oblasť, ktorej by sme sa nejako prioritne venovali. Skôr tou prioritnejšou z týchto, ktoré vykonáva inšpekcia práce ako taká, je oblasť nelegálneho zamestnávania. A tam spadá aj nelegálne zamestnávanie cudzincov z tretích krajín.“[FG(M)]*

Labour inspectorates have a rather limited number of employees (for example, allegedly two inspectors in Bratislava) who have been trained in issues related to trafficking in human beings. Training is provided by IOM International Organization for Migration (IOM) with whom the labour inspectorates cooperate also on ad hoc basis, i.e. in case any of the parties need to consult them about anything. It is these labour inspectors who, along with the immigration police, inspect operations suspected of illegal employment of migrant workers. This practice, however, is not stipulated by any legislation, and it is only based on the chief inspector's decision. The practice was introduced in reaction to practical needs and is considered satisfactory for the time being [M(1)]. Apart from foreign police departments, labour inspectorates cooperate with various other departments of the police force: the national unit to combat illegal immigration, order police, departments for combating organised crime, department for combating economic crime, and the National Anti-Drug Unit.

In cases of suspected labour exploitation, labour inspectorates document and evaluate the situation with the help of questionnaires completed by employees who have been found at the workplace (please see below). Also, they bind the employers to adopt measures aimed at resolving problems at the workplace (e.g. putting out of operation appliances that have failed to meet safety standards) and in case of major law violations impose fines on the employers [M(1)]; however, they do not act further in the case but refer the cases to other relevant institutions such as the foreign police [M(1)].

*“One should note that we don't even catch the worst cases [the most serious law violations] because if the police establish violation of our law or immigration laws – usually right in the beginning because they have ways of finding out if someone illegally crosses the border – we don't even interact with [migrant workers]; we merely see them being taken away in a paddy wagon to be expelled.”[M(1)]*

*„Tam treba ešte povedať, že tie najhoršie prípady my nezachytávame, pretože keď zistia zásadne hneď na začiatku porušenie nášho zákona alebo imigračných zákonov, oni [cudzinecká polícia] si to vedia vylustrovať, že nelegálne prekročili hranicu, tak my sa s nimi nestretávame. Iba ich vidíme, ako ich odvezú v opancierovanom aute preč a nasleduje vyhostenie.“[M(1)]*

Labour inspectorates do not provide special counselling to migrant workers; however, they do provide counselling on the interpretation of the entire Illegal Labour and Illegal Employment Act as such.

### **3.1.2. Police and law enforcement organs (category “P”)**

Within the structure of the Slovak Police Force, matters related to labour exploitation and trafficking in human beings are tackled by the Bureau of Border and Alien Police (ÚHCP), particularly its National Unit to Combat Illegal Migration and foreign police departments (OCP).

*The National Unit to Combat Illegal Migration* performs tasks related to police supervision over trafficking in human beings, especially operative and investigative activities. It also pursues coordination, expert and analytical activities (for example, membership in interdepartmental task forces). The institution's mandate is based on Interior Minister Order No. 165 and the legal framework for its activities is provided by Article 179 of the Criminal Code<sup>31</sup> as well as the Act on Residence of Foreigners. Based on a bilateral agreement with the National Labour Inspectorate, the two institutions carry out joint quarterly inspections of business subjects in order to expose trafficking in human beings for the purpose of labour and sexual exploitation.

Suspected cases are assessed following the IOM guidelines on identifying trafficking in human beings (see indicators below in section 3.1.4.).<sup>32</sup> Since 2009, IOM and the Information Centre for Combating Human Trafficking have been organising training aimed at identification of victims of human trafficking, targeting members of the border and foreign police, members of the National Unit to Combat Illegal Migration and officials of the interior ministry's Migration Office.<sup>33</sup> In cases of suspected trafficking in human beings for the purpose of labour exploitation, the National Unit secures evidence and testimonies until case prosecutor decides to lay indictment. The problem is that cases of labour exploitation are prosecuted only if they also involve trafficking in human beings. If they do not, the case is treated as a case of illegal labour and/or illegal residence. However, the fieldwork suggested that labour exploitation of migrant workers is rather frequent in Slovakia but cases involving human trafficking are, on the contrary, very rare.

Q: *"We keep speaking of trafficking in human beings but what about cases of labour exploitation?"*

A: *"That's the same thing because labour exploitation is one of the forms [of trafficking in human beings]. The same goes for the victims."*

Q: *"So labour exploitation always falls under Article 179? There is no other way of qualifying it but as trafficking in human beings?"*

A: *"Perhaps it could fall under fraud, depending on the case. We always [qualify it as] trafficking in human beings."* [P(1)]

Q: *„Bavíme sa o obchodovaní s ľuďmi, ale čo v prípadoch pracovného vykorisťovania?"*

A: *„To je to isté, lebo pracovné vykorisťovanie je jednou z foriem. To platí aj pre tieto obeť."*

Q: *„Čiže pracovné vykorisťovanie vám vždy spadne pod §179? Čiže iná možnosť nie je, len obchodovanie s ľuďmi."*

A: *„Možno by mohlo ísť o podvod, to závisí od prípadu. U nás je to vždy obchodovanie s ľuďmi."* [P(1)]

Like representatives of monitoring bodies, respondents from this category do not use the term labour exploitation even in cases showing signs of labour exploitation (as per ILO Casebook of Court Decisions, see above). Instead, such cases are qualified as illegal labour, and migrant workers working without a valid permit are not viewed as victims but rather as perpetrators. To this category of respondents, labour exploitation is relatively closely related to trafficking in human beings, and cases of labour exploitation that do not involve human trafficking are simply considered illegal labour.

<sup>31</sup> Slovakia, Act No. 300/2005 Coll. Criminal Code (*Zákon č. 300/2005 Z. z. Trestný zákon*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>32</sup> Available at <http://iom.sk/publikacie#cat3>.

<sup>33</sup> Kubovičová, K. (2013) *Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures in the Slovak Republic*, European Migration Network, Bratislava. Available at [file:///C:/Users/chudz\\_000/Downloads/emn-sk\\_studia\\_identifikacia\\_obeti\\_obchodovania\\_s\\_ludmi\\_v\\_procese\\_medzinarodnej\\_ochrany\\_a\\_nutenych\\_navratov\\_v\\_sr\\_sk\\_1.pdf](file:///C:/Users/chudz_000/Downloads/emn-sk_studia_identifikacia_obeti_obchodovania_s_ludmi_v_procese_medzinarodnej_ochrany_a_nutenych_navratov_v_sr_sk_1.pdf).

*“During those inspections we didn’t really establish labour exploitation of migrant workers; [in fact, most cases] of illegal employment occurred because the employers had failed to register the employees with the Social Insurance Company. That alone is enough to view the person as illegally employed. But I must say we have not exposed cases of labour exploitation that would be related to trafficking in human beings.” [FG(P)]*

*„ (...) my sme ani pracovné vykorisťovanie tých migrantov počas tých kontrol nezistili, skôr to súviselo s tým, že keď boli zamestnaní, keď sa to vyhodnotilo ako nelegálne zamestnanie, že to bolo z toho dôvodu, že ich podnikateľ neprihlásil do sociálnej poisťovne. Už na základe toho sa dá chápať ten človek ako nelegálne zamestnaný. Ale že by pri nich dochádzalo k pracovnému vykorisťovaniu kde by, ktoré by súviselo s obchodovaním s ľuďmi, takéto prípady zistené neboli.“ [FG(P)]*

Certain statements made during the focus group indicate that labour exploitation of migrant workers is perceived relatively moderately in the context of Slovakia’s labour market. Main emphasis is put on Slovak nationals exploited abroad while the number of migrant workers exploited in Slovakia is downplayed (FG). Furthermore, there is a dispute over voluntariness of work in cases of labour exploitation and in cases of human trafficking. The focus group revealed that labour exploitation perhaps is not viewed so seriously because the migrant workers’ decision to continue working (even in exploitative conditions) is considered voluntary and a matter of free will. Downplaying of migrant workers’ labour exploitation is also partially caused by the overall economic and labour market situation in Slovakia including low wages and the general shortage of jobs, which makes Slovak citizens willing to accept unsatisfactory labour conditions (for example, unpaid overtime work, working based on trade licences instead of proper labour contracts, etc.).

*“Also, it is necessary to scrutinise closely whether somebody has truly become the victim of labour exploitation or not. For all we know – given [the income difference between the Slovaks and third country nationals] – you may think that some third country national is a victim of labour exploitation but when you eventually meet him you are likely to find out that he is glad to be able to work here for the money he receives... I can judge this because I have seen the conditions in which our people work, for instance in Great Britain. I mean, this problem is of incomparably greater dimensions over there and our people there work under incomparably worse conditions than our information on labour exploitation here in Slovakia suggests.” [FG(P)]*

*„A tiež treba ako posudzovať, či ten človek je skutočne pracovne vykorisťovaný, alebo nie. Lebo z nášho pohľadu, aké príjmy majú tuto slovenskí ľudia, tak my si môžeme myslieť, že občan tretích krajín je pracovne vykorisťovaný, ale nakoniec keď s ním človek príde do kontaktu, tak on je rád, že za tie peniaze, čo tu dostane tu môže pracovať (...) ja viem posúdiť v akých podmienkach pracujú napríklad naši ľudia vo Veľkej Británii. Akože tam je ten problém neporovnateľne väčší a väčších rozmerov, a teda oveľa v horších podmienkach tam tí naši ľudia pracujú, ako čo my máme informácie o nejakom pracovnom vykorisťovaní tuto na Slovensku.“ [FG(P)]*

The agents of the National Unit to Combat Illegal Migration encounter cases involving labour exploitation of migrant workers approximately once a month. These are, however, cases of human trafficking for the purpose of labour exploitation. They usually learn about them from other organisations, both public (for example labour inspectorates) and private (e.g. non-governmental organisations), but also from victims themselves. Non-governmental organisations also provide expert information and training on human trafficking, which one P group interviewee appreciated very much. Cooperation with state institutions, particularly with law enforcement authorities and prosecutors, was assessed as rather rigid and inflexible,

which ensues from the fact that trafficking in human beings and/or labour exploitation of migrant workers is a rather new topic in Slovakia.

Foreign police departments (OCP) perform tasks in the field of inspection and monitoring as well as functions with respect to police supervision and criminal law. They are responsible for inland inspection, which includes, for instance, checking whether migrants' labour activities are in line with the purpose of their residence; however, labour exploitation of migrant workers is not the principal agenda of the ÚHCP or OCP. Their activities are regulated particularly by Act on Residence of Foreigners,<sup>34</sup> which does not include a single definition of labour exploitation whatsoever; nevertheless, it provides for the possibility to grant a tolerated residence status to migrants who have been illegally employed under particularly exploitative conditions (Article 58 Paragraph 3 of Act on Residence of Foreigners). So far, only one such tolerated residence permit has been issued in 2013. Although one expert said it was unclear what exploitative conditions meant, they presented examples in which it was possible to grant a tolerated residence status.

*“When [the institution of] tolerated residence for these persons was transposed from the European directive into Act on Residence of Foreigners, it was made to include illegally employed minor persons as well; according to the law, the residence status of these persons is extended until they receive wages or remuneration for the work they have performed, regardless of the concomitant circumstances. [In other words], the Act on Residence of Foreigners guarantees that these persons will get paid even though [the employer] violated labour law regulations.” [P(1)]*

*„My sme v podstate preberali európsku právnu smernicu keď sa definoval, teda zakotvoval do zákona o pobyte cudzincov tento tolerovaný pobyt práve týmto osobám, aj vrátane nelegálne zamestnanej maloletej osobe, kedy práve z tohto dôvodu, že nebola vyplatená mzda, odmena, za tú prácu, ktorú vykonal, hoci to bolo za takých alebo onakých podmienok neprimeraných, tak v podstate do tej doby, kým nie je vyplatená, sa ten pobyt aj predlžuje. Čiže tam ten zákon o pobyte cudzincov takéto osoby aj chráni pred tým, že nebude vyplatená mzda ak nie sú dodržané takéto pracovno-právne predpisy z tohto pohľadu.“ [P(1)]*

OCPs tackle primarily problems related to migrants' residence status; if they suspect labour exploitation, they refer the case to the National Unit to Combat Illegal Migration [P(1)]. Labour exploitation is here understood as violation of labour legislation (see above) and is assessed by labour inspectorates who then report back to the immigration police. With respect to labour exploitation of migrant workers, OCPs grant tolerated residence permits to third country nationals who have been illegally employed under particularly exploitative conditions for the purpose of criminal proceedings (Article 58 Paragraph 3 of Act on Residence of Foreigners):

*“Upon a request of a law enforcement authority the police department can grant a tolerated residence permit to a third country national who have been illegally employed under particularly exploitative conditions or to an illegally employed minor if the presence of the said third country national in the territory of the Slovak Republic is necessary for the purposes of criminal proceedings. The police department grants the tolerated residence permit for 180 days. The police department can extend the tolerated residence permit by 180 days, even repeatedly, until the criminal proceedings are lawfully concluded or until the third country national is compensated for the performed work.”<sup>35</sup>*

<sup>34</sup> Slovakia, Act No. 404/2011 Coll. on Residence of Foreigners (Zákon č. 404/2011 Z. z. o pobyte cudzincov). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>35</sup> Slovakia, Act No. 404/2011 Coll. on Residence of Foreigners (Zákon č. 404/2011 Z. z. o pobyte cudzincov), Para 58 Art. 3. Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

It should be noted that tolerated residence permit is only granted if the victim's presence is required for the purposes of the criminal proceedings. The victims are thus viewed as instruments of criminal proceedings.

OCPs encounter illegal employment (see the definition above) of migrant workers several times a month; they learn about them either based on their own inspection activity or from other public institutions (e.g. labour inspectorates) or individual citizens. Respondents assessed the cooperation with labour inspectorates as exceptionally good. This was, however, due to established personal contacts and cooperation since *“those people know each other beyond their professional duties, they know each other personally and it really works perfectly. They are in touch, they can call each other on the phone, even outside office hours. There is no problem – you can share or exchange information anytime.”* [P(1)] Apart from labour inspectorates, OCPs also cooperate with the Labour Ministry and the Ministry of Foreign and European Affairs of the Slovak Republic.

One P group respondent referred to inspections that exposed two illegally employed migrant workers in 2013.

*„But labour exploitation was not an issue there as [they were illegal] only because their employer had failed to register them with the Social Insurance Company; otherwise they had proper residence permits, so [their legitimacy] was no problem. This year, we have had some eight cases so far, I believe, but again [it is not related to] labour exploitation...”* [P(1)]

*„To však nemôžeme hovoriť o pracovnom vykorisťovaní, pretože to bolo len na základe toho, že ich podnikateľ neprihlásil do sociálnej poisťovne. Oni mali ináč oprávnený pobyt, tak tam v tejto otázke nebol problém, a tento rok máme myslím nejakých osem zatiaľ, ale tiež pracovné vykorisťovanie tam...”* [P(1)]

According to the Situation Report on Seeking and Combating Illegal Labour and Illegal Employment in 2013,<sup>36</sup> monitoring and inspection bodies during the examined period identified a total of 22 illegally employed migrant workers, including 19 third country nationals. Twelve of these third country nationals were holders of the type of residence permits that did not allow them to work in Slovakia. The inconsistency between this statistic and the number and the quote above indicates that some state officials may lack awareness about the situation of migrant workers in the labour market in Slovakia.

### 3.1.3. Inspections

The inspections are carried out by labour inspectorates in cooperation with labour offices' departments of control and foreign police departments. Once every three months, joint inspections are carried out in cooperation with the National Unit to Combat Illegal Migration; these inspections are specifically aimed at exposing cases of trafficking in human beings.

The inspections focus particularly on employers. Labour inspectors and inspectors with departments of control are entitled to enter private property and private objects that are registered as places of business activity, but are not allowed to enter private homes. They avoid checking upon private dwellings in order not to breach the sanctity of the home, which is guaranteed by the Slovak Constitution; only the police are allowed to enter private dwellings

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<sup>36</sup> Available at: [https://lt.justice.gov.sk/Attachment/4%20vlastnymat\\_rtf.pdf?instEID=-1&attEID=63951&docEID=356225&matEID=7141&langEID=1&tStamp=20140328094024737](https://lt.justice.gov.sk/Attachment/4%20vlastnymat_rtf.pdf?instEID=-1&attEID=63951&docEID=356225&matEID=7141&langEID=1&tStamp=20140328094024737).

based on a court warrant [M(1)]. Yet, one of the respondents suggested that private dwellings could well be the hotbed of labour exploitation.

*“We are also not allowed to inspect [private individuals] who build houses or garages through a self-help scheme. That is another legislative loophole because there can be a lot of [illegal labour] there in my opinion. For the time being, nobody is allowed to intervene, perhaps except the foreign police department, which is allowed to check out for foreigners but only in the case of suspected trafficking in human beings or illegal residence.” [M(1)]*

*„A takisto nechodíme ani zatiaľ v tých prípadoch, keď je vyslovene svojpomocná výstavba domu alebo garáže. To, by som povedal, je tiež určitá legislatívna diera, lebo podľa mňa tam sa toho môže vyskytovať dosť. Ale momentálne na to nemá nikto dosah. Okrem cudzineckej polície, ktorá môže naháňať cudzincov, ale to len kvôli tomu, že je tam buď problém obchodovania alebo nelegálny pobyt.“ [M(1)]*

The view that the constitution-guaranteed sanctity of the home is a problem for the police as well as for labour inspectors was seconded by another respondent.

*“Another area of [desirable improvement] is legislation, especially with respect to our scope of authority, i.e. your question on us checking people’s private homes. But here it gets tricky because [such powers would infringe on] constitutional rights, sanctity of home and so on; I can hardly imagine [parliament passing legislation that would allow us] to open the door and enter people’s homes without a court’s authorisation. So, there is certainly room for improvement but that room is rather difficult to fill [without controversy].” [P(1)]*

*„A druhá oblasť samozrejme je tá legislatívna vo vzťahu najmä k oprávneniam, t.j. to, čo ste sa pýtali, či sme oprávnení vstupovať do obydľí. Ale zase sa tu naráža už na ústavné práva, na nedotknuteľnosť obydľí a tak ďalej. A tu by sa asi ťažko prerazila tá možnosť mať také, že bez súhlasu sudcu. Takže asi ťažko by to bolo možné v takej bežnej kontrolnej činnosti, že si otvorím dvere do domu len tak. To určite nie. Takže tu určite sú medzery, ale to sú aj medzery, ktoré skôr nie sú riešiteľného charakteru.“ [P(1)]*

Labour inspections target primarily illegal labour and illegal employment, as opposed to labour exploitation of migrant workers.

*“Recently we have intensified cooperation with the foreign police. It is either at request of the foreign police as they want to check upon concrete individuals. Meanwhile, we do our job and check the employer from the viewpoint of illegal labour or illegal employment.” [M(1)]*

*„Dost’ veľa teraz v poslednom čase spolupracujeme s cudzineckou políciou. Čiže, buď je to na vyžiadanie cudzineckej polície, keď oni v rámci svojej činnosti kontrolujú tú samotnú fyzickú osobu. A my zase v rámci svojej kontrolujeme toho zamestnávateľa, čo sa týka nelegálnej práce, nelegálneho zamestnávania.“ [M(1)]*

Foreign police departments check upon individuals’ legitimacy in terms of residence status, while leaving criminal law aspects up to the National Unit to Combat Illegal Migration. OCPs do not have the powers to deal with severe forms of labour exploitation, but as one respondent pointed out [P(1)], these powers rest with the labour ministry. This might be due to the fact that labour exploitation is primarily viewed as a violation of labour legislation, and not as a criminal act. OCP inspections are carried out in compliance with Article 75 of the Act on Residence of Foreigners<sup>37</sup> and include different types of checks.

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<sup>37</sup> Slovakia, Act No. 404/2011 Coll. on Residence of Foreigners (Zákon č. 404/2011 Z. z. o pobyte cudzincov). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

*“We even perform various types of inspection. Some measures are taken before migrants are granted a residence, or rather before they enter [the territory of] the Slovak Republic. At this point, we check what they are up to, where they want to work, whether everything is all right and so on.” [P(1)]*

*„Dokonca máme rôzne formy kontroly. Opatrenia sa vykonávajú pred udelením pobytu, resp. pred tým vstupom do Slovenskej republiky. Čiže sa preverí a dopredu určí, že či chce to robiť, ako tu chce robiť, či je to v poriadku.“ [P(1)]*

Labour inspectors use a questionnaire that is supposed to help them establish individual employees' job positions at the workplace, their labour conditions, the contractual basis of their employment (i.e. type of labour contracts), how they got into the job position (i.e. who recommended or brought them in), who they concluded their agreements with and so on [M(1)]. However, this questionnaire cannot be considered a full-fledged checklist to identify victims of labour exploitation. The inspectors strive to establish the so-called objective state of affairs on which they make out a protocol that features inspection conclusions and must be signed by all parties involved.

After labour inspectors have checked the place visually, they check identification papers of present individuals and ask them additional questions that are not too difficult.

*“I take a look at documents, then I take a look at the individual and I have seen what he does. I am able to assess [the situation] even without him having to tell some long-winded stories or answer any concrete questions. We can actually show them [in a sort of sign language] questions like ‘what do you do, how long have you been doing it for and what do you get for it.’” [M(1)]*

*„A ja si pozriem doklad, pozriem si tú fyzickú osobu a videla som, čo robí. Tak viem zhodnotiť bez toho, aby on musel nejaké siahodlhé vyjadrenia rozprávať alebo nejaké konkrétne otázky odpovedať. A to, že ‘čo robíš, odkedy robíš a čo za to dostávaš?’, to mu vieme aj ukázať.“ [M(1)]*

During check-ups, labour inspectors often encounter the language barrier, which they typically overcome with the help from migrant workers at the workplace who claim they are able to interpret. Labour offices' departments of control find hiring interpreters difficult for three reasons: first, they cannot afford them due to financial and organisational reasons; second, they seldom know the destination business in advance; last but not least, valid laws do not require them to provide interpreters, which is why they do not do it. At request, though, labour inspectors can use the services of interpreters who cooperate with the foreign police [P(1)]. The National Unit to Combat Illegal Migration distributes information fliers in several different languages including Vietnamese, Korean, Romanian, etc. The interpreters are hired at the point when potential victims of trafficking in human beings have been identified, otherwise it would be too costly [P(1)].

### **3.1.4. Organisations providing victim support services (category “S”)**

The organisations that specialise in providing victim support services encounter labour exploitation of migrant workers either as part of helping victims of trafficking in human beings, which is their principal agenda [S(4)] or as part of everyday routine work with their migrant clients [S(3)]; however, according to representatives of the former organisations, they most frequently come in touch with Slovak victims who have been trafficked abroad [S(4)].

*“The victims are mostly Slovaks but every now and then we see a foreign victim as well.” [S(1)]*

*„Väčšinou sú to slovenské obeť, ale tu a tam sa nájde aj zahraničná obeť.“ [S(1)]*

With respect to migrants who were identified as victims of trafficking in human beings, these organisations target all categories of migrants, i.e. the legal status of migrant workers or their country of origin do not affect the organisations' approach. However, in case a migrant was exploited but did not qualify as a victim of trafficking in human beings, the country of their origin and their residency status could determine the extent of the help he or she is eligible to. This is due to the fact that the support organisations have a strictly defined target group (usually third country nationals with both legal and illegal residence status) as such organisations' activities are based on specific projects limited by the donors' requirements regarding target group, timeframe and scope of activities. Therefore, in some cases the country of origin or the illegality of migrant's status can become disqualifying conditions in access to support services, and the organisations are either not able to provide help at all, or the migrant is required to legalise his or her status first.

*“Well, if they are illegally resident and have no way of legalising their residence in Slovakia, we can only offer them a programme of assisted voluntary return plus reintegration. If they are third-country nationals with the status of a permanent resident, our Migration Information Centre is able to help them with social security, residency, education, finding a job, virtually anything; I repeat: if they are third-country nationals who reside here legally. If they are EU nationals, our possibilities to help them are rather limited because our Migration Information Centre is only designed for third-country nationals who legally dwell on Slovakia's territory. So, yes, we distinguish between them in this sense but we never tell people from any of these categories: go away because we don't deal with you. “[S(1)]*

*„No, ak je to nelegálny cudzinec, tak nemá si ako legalizovať pobyt na Slovensku, lebo taká možnosť neexistuje, tak vieme mu ponúknuť len program asistovaných dobrovoľných návratov späť do krajiny pôvodu plus reintegráciu. Ak je to občan tretej krajiny, ktorý tu má trvalý pobyt, tak v rámci migračného informačného centra mu vieme pomôcť so sociálnym zabezpečením, pobytom, vzdelávaním, nájsť prácu, všetko možné. Ak je tu legálne a ak je z tretej krajiny. Ak je to občan európskej únie, zase, vieme mu pomôcť v obmedzenej miere, pretože migračné informačné centrum je len pre občanov tretích krajín, ktorí sú tu legálne. Takže v tomto zmysle to rozlišujeme, ale nerozlišujeme to tak, že ktorákoľvek z tých kategórií, keď by prišla, tak by sme povedali nechod'te preč, lebo vami sa nezaobráme.“ [S(1)]*

Since support organisations lack the resources to search for victims themselves, most of their clients are referred to them by other organisations or concerned individuals [S(5)]. Support organisations cooperate with other institutions (both state, for example labour inspectorates, foreign police, prosecutors' offices, and non-governmental) not only with respect to referring suspected victims of human trafficking and/or labour exploitation, but also in the area of sharing expert information. The cooperation was assessed as satisfactory, particularly between NGOs. However, respondents highlighted that the quality of cooperation greatly depended on the respective institutions' personnel and their engagement in the issue of labour exploitation and/or human trafficking.

To identify victims, they use brochures [S(2)], which feature indicators that help them identify victims of trafficking in human beings. Victims are identified by NGOs who are contracted by the Ministry of Interior to run the Programme of Support and Protection of Victims of Human Trafficking. Victims are identified during a so called identification interview in which the interviewer uses the above mentioned brochures. Indicators are concerned with several areas: age, gender, nationality, identification documents, last place of residence and circumstances.

Each area features several questions to be considered that are based on the existing knowledge of human trafficking cases. For instance, “Does the person’s nationality correspond with countries of origin from which victims of trafficking usually originate?” When conducting the identification interview, the interviewer must approach the suspected victim with sensitivity and take into account cultural, social and gender specifics. The interview setting must also be carefully considered (e.g. the interviewer’s gender, privacy and confidentiality, non-judgemental tone used by the interviewer etc.). The brochures further contain a set of questions to be asked inquiring about the suspected victim’s recruitment (e.g. What made you leave your home? How did you get here?), transportation (e.g. Did you have your own passport? Who organised your journey?) and exploitation (e.g. Is your job different from the one you were promised? Were you forced in any way to do this job?). The questionnaire also contains additional questions about sexual exploitation, labour exploitation, organ removal, forced begging and questions for minors. Questions regarding labour exploitation are concerned with the possibility of the suspected victims being indebted to their employers and being threatened.

Support organisations focusing on victims of human trafficking pursue their activities in compliance with the National Programme of Combating Trafficking in Human Beings [S(2)] and based on a contract with the Ministry of Interior, which has contracted these organisations for the purpose of implementing the Programme to Support and Protect Victims of Trafficking in Human Beings. The victims of trafficking in human beings that have been placed into this programme are provided with protected housing at a secret address, legal counselling, financial assistance, medical care, retraining and language courses, personal assistance and psychological support.

The organisations whose principal agenda is not to support victims of trafficking in human beings [S(3)] encounter labour exploitation of migrant workers more or less accidentally while tackling their clients’ problems with residence permits, integration to the labour market, etc. These support organisations focus primarily on providing counselling and support to victims.

At the same time, some of the support organisations also specialise in prevention and building expert capacities (for example police officers, labour inspectors, social fieldworkers) through educational activities [S(5)]. Besides, some of them perform tasks in the field of monitoring and defending workers’ rights; however, these activities usually take place on an individual basis, which is why they cannot be described as traditional advocacy activities.

*“Defending workers’ rights is what I was talking about. If anything happens, they can turn to our legal counsel who will help them to resolve their situation.” [S(1)]*

*„Obhajoba práv pracovníkov, to je to, čo som spomínam. V prípade, ak sa niečo stane, tak môžu využiť nášho právneho poradcu, ktorý im pomôže, akým spôsobom vyriešiť tu situáciu.“ [S(1)]*

In cases of suspected labour exploitation, victim support organisations perform various tasks that range from documenting and evaluating the situation [S(3)] to providing basic initial information to victims and other public institutions [S(3)] to adopting measures aimed at protecting the victims from further exploitation [S(2)] .

### 3.1.5. Judges and prosecutors (category “J”)

The Office of Special Attorney deals with cases of labour exploitation and trafficking in human beings only when these cases involve organised crime gangs,<sup>38</sup> which is the highest form of organised crime [J(1)]. So-called regular cases of labour exploitation and trafficking in human beings - i.e. those that do not involve organised crime gangs - are tackled by district or regional attorneys' offices. The Office of Special Attorney performs traditional tasks in the field of criminal law. Special prosecutors personally participate in these activities, laying indictments and supervising concrete cases [J(1)]; at the same time, they supervise legitimacy of criminal proceedings and investigations, making sure victims' rights are being respected. In compliance with Article 14 of the Code of Criminal Procedures, their role is primarily a reactive one as opposed to that of prevention or defending workers' rights. The principal role of specialised criminal courts is to apply the Code of Criminal Procedures.

*“A court is not here to protect or condemn anybody. So, our mandate according to the law – and that goes for any court in any democratic society – is to adjudicate on [cases concerning] corruption or organised crime, as opposed to struggle against [these phenomena]. Its role is not to combat illegal labour or any other criminal activity... We are here to judge independently.” [J(1)]*

*„Súd tu nie je na to, aby chránil alebo odsudzoval kohokoľvek. Čiže naším mandátom zo zákona, a to je mandátom každého súdu v demokratickej spoločnosti, že súd nebojuje proti korupcii, súd nebojuje proti organizovanému zločinu, súd súdi tieto veci. Jeho úlohou nie je potierať nelegálnu prácu ani žiadnu trestnú činnosť. (...) My sme niečo, čoho úlohou je nezávisle posúdiť.“ [J(1)]*

Generally speaking, Slovak prosecutors and judges rarely encounter labour exploitation. Most frequently they deal with cases of labour exploitation that are combined with trafficking in human beings; occasionally, though, they deal with cases involving classic slavery or other types of personal freedom restriction. In tackling such cases, they cooperate primarily with the Department of Crime Prevention of the Ministry of Interior and the Information Centre to Combat Trafficking in Human Beings, which reports to the same ministry. Several respondents agreed on the need for further education of law enforcement officers in the field of treating victims of labour exploitation, this despite the fact (or perhaps exactly because of it) that these cases are very rarely brought to justice in Slovakia [J(1)].

*“Treating the victim is always a problem because it is very difficult to distinguish between a true victim and somebody who maybe doesn't even realise that they have been trafficked. Be it as it may, the attitude of police officers of the first contact is often inadequate.” [J(1)]*

*„Vždy je to problém, ako sa správať k tej obeti. Lebo to rozdelenie, či je to skutočne obeť alebo je to človek, ktorý si možno ani neuvedomuje, že bol niekým zobchodovaný, je veľmi ťažké a ten prístup policajtov na tom prvom kontakte často nie je dostatočný.“ [J(1)]*

According to the respondents, education should be systematic and cyclical and should be available to police officers as well as to prosecutors and judges. The principal philosophy of

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<sup>38</sup> Article 129 Paragraph 4 of the Criminal Code reads: “For the purpose of this law, an organized crime gang is a structured group comprising at least three individuals, which operates over a certain period of time and acts in a coordinated way in order to perpetrate one or more crimes, the criminal offence of legalising income from criminal activity in compliance with Article 233 or other corruption-related criminal offence in compliance with Chapter Eight, Part Three of the Special Section for the purpose of gaining direct or indirect financial or other benefits.” Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

this education is that migrants who have become victims of labour exploitation are in a much more vulnerable position than Slovak citizens in a similar situation.

*“This type of crime requires a special approach. We cannot apply procedures that are used when investigating regular criminality. I mean, the victims are foreigners who are not familiar with the law, local conditions, our country’s life and institutions; they have a different mentality and different approaches to life. All this must be taken into account during the investigation. Most importantly, one must bear in mind that these victims suffer; they have been deceived and they need help.”* [J(1)]

*„Tento druh kriminality si vyžaduje osobitné prístupy. Nemôžu byť aplikované prístupy, ktoré sa používajú pri dokazovaní bežnej kriminality. Predsa len, obeť sú cudzinci, ktorí sa nevyznajú v oblasti práva, v miestnych podmienkach, nepoznajú život v našej krajine, majú inú mentalitu, iné prístupy k životu. Toto všetko treba zohľadňovať pri tom vyšetrovaní. A hlavne treba myslieť na to, že tieto obeť trpia, sú podvedené a oklamané a treba im nejakú pomocť.“* [J(1)]

The only problem is financing such educational programmes; neither the Ministry of Justice nor the Ministry of Interior seem to have the necessary funds [J(1)].

### 3.1.6. Lawyers (category “L”)

Lawyers who work for non-governmental organisations [L(2)] relatively frequently encounter labour exploitation of migrant workers in the line of duty; however, these cases do not make up their principal agenda as they tackle primarily their clients’ problems related to residence status. This has to do with the prevailing model of financing non-governmental organisations, which is pegged to concrete projects with limited discretionary activities. Nevertheless, if their clients become victims of labour exploitation, they either provide free counselling to them or negotiate on their behalf with the employer in question. The cases that are likely to go as far as criminal proceedings are usually referred to lawyers who specialise in such cases.

*“We are rather the kind of organisation which, if it learns about it, strives to advise them or refer them to a place where they can get the help they need. So, it is mostly counselling with us; I cannot see us anywhere else.”* [L(1)]

*„My sme skôr taká organizácia, ktorá, ak sa o tom dozvie, snaží sa im poradiť alebo ich poučiť o tom, kde inde hľadať tú pomoc. Takže to poradenstvo, inde nás nevidím v tomto.“* [L(1)]

These organisations relatively often encounter cases of labour exploitation.

*“If I think of it, every second [client] can be [exploited] in my opinion.”* [L(1)]

*„Každý druhý [klient] podľa mňa môže byť [vykorisťovaný], keď sa nad tým zamyslím.“* [L(1)]

*“[They are mostly] softer forms of labour exploitation – they didn’t have proper labour contracts or were not paid for overtime work.”* [L(1)]

*„[Ide o prípady] tých ľahších foriem pracovného vykorisťovania – nemali poriadne pracovné zmluvy, nevyplácali im nadčasy.“* [L(1)]

They usually learn about these cases directly from clients, in the process of helping them solve problems related to their residence status. An absolute majority of these cases is not solved at all. According to one of the respondents [L(1)], 90% of their clients lack the necessary

perseverance. Only a few cases actually make it to the stage of criminal proceedings, at which point they are taken over by lawyers with commercial law firms; however, neither commercial nor third sector lawyers actively search for cases of migrant workers' labour exploitation.

The activities and professional standards of commercial lawyers are governed by the Advocacy Act.<sup>39</sup> In compliance with the law, they provide their clients with legal counselling and legal services (i.e. legal representation) in criminal proceedings; they also perform roles in the field of victim support and defending workers' rights. Besides, some of them [L(1)] are also active in terms of monitoring and analysing the state of affairs in the field of migrant workers' labour exploitation.

Respondents from this category agreed on the importance of further education in this area, including exchange of experience between law firms [L(1)] and intensified cooperation with organisations that specifically deal with the issue of migrant workers' labour exploitation [L(1)].

### 3.1.7. Recruitment and employment agencies (category "R")

We managed to get one recruitment agency involved in the research project; however, this subject is not a classic employment agency but acts rather as a mediator between employers, migrant workers and the foreign police. In this capacity, it has no influence over labour exploitation.

*"I cannot tell you much as far as compensation for overtime work is concerned. It is the exclusive business of my clients; I do not intervene with, nor have access to these issues."* [R(1)]

*„Toto vám neviem povedať, čo sa týka či už preplácania nadčasov alebo podobne – to je vec vyložené mojich klientov, do týchto vecí ja nezasahujem, ani nemám prístup.“* [R(1)]

### 3.1.8. Workers' organisations and trade unions (category "W")

Workers' organisations focus particularly on monitoring, counselling, victim support and defending workers' rights. Although workers' organisations and trade unions in Slovakia are aware of migrant workers and their problems, they do not show specific interest in this category of workers [FG(W)]; instead, they focus on helping Slovak citizens who intend to travel abroad to seek jobs [W(1)].

*"As far as our activities on the territory of the Slovak Republic are concerned, true to goals, roles and missions of the trade union movement [we place emphasis on] helping and assisting all employees, i.e. including migrants who work for our employers either based on work permits or [as victims of] illegal employment."* [FG(W)]

*„Čo sa týka pôsobenia na území Slovenskej republiky, s odkazom na ciele, úlohy a poslanie odborového hnutia tam máme záujem pomáhať a poskytovať pomoc všetkým zamestnancom, to znamená je to kategória aj migrantov, ktorí pracujú u našich zamestnávateľov na základe buď povolenia, alebo teda stávajú sa aj prípady nelegálneho zamestnávania.“* [FG(W)]

Migrant workers' rights are specifically monitored only by migrant organisations that, *inter alia*, monitor the further integration of their fellow countrymen in the labour market. In this context, one could rather speak of preventive measures as these organisations are striving to help their

<sup>39</sup> Slovakia, Act No. 586/2003 Coll. on Advocacy (*Zákon č. 586/2003 Z. z. o advokácii*). Available at: [www.slovlex.sk](http://www.slovlex.sk).

fellow countrymen find legal jobs abroad, improve their language skills, develop their labour skills and enhance their qualifications [W(1)]. Regular workers' organisations seem to distinguish especially between categories of legal vs. illegal workers, i.e. migrant status does not affect the organisation's approach to the workers. Treatment of workers depends on the legality of their work as it requires different administrative procedures. For instance, the largest trade union in Slovakia can appoint their lawyers to represent exploited workers who worked legally regardless of the residence status (migrant/non-migrant).

If a worker worked in Slovakia illegally, the workers' organisations focus mainly on the violation of their rights and of the valid Slovak legislation by the employers. Using the method of negotiations, they therefore strive to ensure that employers do not employ workers illegally [W(1)]. In situations of suspected labour exploitation, they cooperate with labour inspectorates and labour offices with whom they search for solutions should the case of exploitation occur. In such cases, they document the case [W(1)], provide assistance to victims and inform other public organisations (particularly labour inspectorates), which subsequently act upon that information [W(1)]. However, it should be noted that workers' organisations do not use any checklist for assessing suspected cases of labour exploitation. The largest workers' organisation [W(1)] does consider introducing some sort of checklist in the future. At the moment they only use existing labour legislation as a guideline, i.e. they assess compliance with the labour legislation (for example working hours, payment of social security benefits, minimum wages, health and safety in the workplace etc.). They usually hear about such cases from natural persons. The largest workers' organisation, according to one W group respondent, is also able to actively search for cases, but they usually target workplaces in which exploitation was indicated. Based on individual indications they tend to conduct exploration in a larger scale.

### **3.1.9. Employers' organisations (category "E")**

Employers' organisations do not pay any attention to issues related to labour exploitation whatsoever; a fact that was independently corroborated to us by one respondent who represented the largest association of employers in Slovakia and a representative of another important employers' association who refused to take part in the research project, arguing that their organisation did not deal with these issues at all but that its principal mission was to defend employers' rights and interests, for instance vis-à-vis the government, which is why they completely ignored migrant issues. According to the respondent who did take part in the project [E(1)], it was up to government institutions, for instance labour inspectorates or the police, to tackle the issue of migrant workers' labour exploitation.

### **3.1.10. National policy experts (category "N")**

The institutions from this category focus primarily on coordinating campaigns against trafficking in human beings; the umbrella institution for the entire agenda is the Ministry of Interior, particularly its Department of Crime Prevention whose activities are regulated by Crime Prevention Act.<sup>40</sup> Apart from other activities, the department organises awareness-raising activities and provides counselling and support to victims of labour exploitation, but only those who are simultaneously victims of trafficking in human beings. Based on Interior Minister Order No. 47/2008, the Information Centre to Combat Trafficking in Human Beings oversees the Programme to Support and Protect Victims of Trafficking in Human Beings;

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<sup>40</sup> Slovakia, Act No. 583/2008 Coll. on Crime Prevention (*Zákon č. 583/2008 Z. z. o prevencii kriminality a inej protispoločenskej činnosti*), available at: [www.slov-lex.sk](http://www.slov-lex.sk).

however, the programme's practical implementation is up to contracted non-governmental organisations.

The Information Centre's activities are regulated primarily by Crime Prevention Act and Directive of the European Parliament and of the Council 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. As part of its activities, the Information Centre monitors trafficking in human beings in the form of gathering relevant statistical data; however, it focuses primarily on supporting Slovak victims of trafficking in human beings while migrant workers form a relatively marginal share of its target group.

*“So far, we have not come in contact with migrant workers on a large scale. Most of the victims that have been placed into our programme to support and protect victims of trafficking in human beings were of Slovak origin, which means they were Slovak citizens who had been trafficked either outside of the territory of the Slovak Republic or on its territory. So, [migrant workers] are a bit marginal [for us].” [FG(N)]*

*„A s migrantmi sme doteraz vo veľkom rozsahu neprichádzali do kontaktu, väčšinou čo sme mali obeť, ktoré boli zaradené do nášho programu ochrany a podpory obetí obchodovania s ľuďmi, väčšina bola slovenského pôvodu, teda boli občanmi Slovenskej republiky, ktorí boli obchodovaní buď teda mimo územia Slovenskej republiky alebo teda aj na území Slovenskej republiky. Takže tí migranti sú trošku okrajovo.“ [FG(N)]*

Category “N” institutions learn about concrete cases from other organisations, both public (e.g. Immigration Office) and private ones (e.g. non-governmental organisations). The standard process of reporting cases involving potential victims of trafficking in human beings is via telephone.

### **3.1.11. Mandate with respect to child exploitation**

According to several respondents [e.g. J(1); L(1); M(1); S(1); W(2)], labour exploitation of children is non-existent in Slovakia. Sometimes, juvenile persons are illegally employed, especially by private individuals (e.g. cleaning services); however, some respondents refused to qualify this as labour exploitation or forced labour [e.g. M(1)]. Some respondents [J(1); L(1)] cited sporadic cases of labour exploitation of juvenile migrants (i.e. between 15 and 18) but no cases of exploited minors under 15. According to one of the respondents [M(1)], migrants younger than 18 are exempt from material liability, which is why employers refuse to hire them since they are not obligated by law to indemnify the loss incurred through their fault to the employer. A number of respondents [e.g. J(1); S(2)] mentioned cases of forced begging by children from Romanian Roma families; however, the respondents either did not consider this to be a severe form of forced labour or were not sure how they should qualify it.

*“We had that in Slovakia a couple of years ago; about four or five years ago, we had a case when children, literally 10-year-old little kids, were forced to beg by adult perpetrators who subsequently collected the money from them... If I remember correctly, it was the Roma from Romania... But it is a matter of definition whether this would qualify as forced labour or not.” [J(1)]*

*„To bolo aj na Slovensku pred pár rokmi; 4-5 rokov dozadu sme tu mali prípad, kedy vlastne deti, vyslovene deti plus-mínus 10 ročné boli nútené k žobraniu. S tým, že potom dospelí páchatelia od nich brali tie vyžobrané peniaze. (...) Ten prípad, keď si spomínam, to boli rumunskí Rómovia. (...) Ale či to podradiť pod tú nútenú prácu, to je otázka definície.“ [J(1)]*

The respondents seemed to disagree over which institution should intervene against child exploitation. One respondent [J(1)] suggested both the police and the prosecution should certainly intervene in particular cases. Others [e.g. L(1)] argued that the power to intervene should rest with labour inspectorates and the Department of Socio-Legal Protection and Social Guardianship of the Ministry of Labour, Social Affairs and Family; it remains a question, though, how this department would learn about cases of child exploitation [L(1); S(1)]. In such cases, the Ministry of Interior could also place the children to the Programme to Support and Protect Victims of Trafficking in Human Beings and entrust them to the care of non-governmental organisations that are contracted to provide support to these victims, for instance Slovak Catholic Charity [L(1)]; in order to be eligible to enter the programme, though, these children would have to be victims of trafficking in human beings. Potential victims of human trafficking are at first identified by support organisations via checklists, particularly the one designed by IOM. Support organisations then submit the results of their assessment to the National Coordinator for Combating Trafficking in Human Beings who then either official recognizes the victim (allowing them to enter the Programme to Support and Protect Victims of Trafficking in Human Beings) or not (see above in section 3.1.4.).

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

### 3.2.1. Forms of labour exploitation

Generally speaking, the most frequent form of migrant workers' labour exploitation is **trafficking in human beings for the purpose of labour exploitation**, which was indicated by 17 respondents. The second most frequent form is **employment of migrant workers under particularly exploitative conditions**, which was chosen by 13 respondents. Seven respondents cited **forced labour including debt bondage**, while slavery and child labour were each highlighted by three respondents.

| Forms of labour exploitation  | Number of indications by professional group |   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|---|---|
|   | M   | P | S | J | L | R | W | E | N |
| Slavery   | -   | 1 | - | 1 | 1 | - | - | - | - |
| Forced labour, including bonded labour (e.g. debt bondage)  | -   | 1 | 3 | 1 | 1 | - | - | - | 1 |
| Child labour  | 1   | 1 | - |   | 1 | - | - | - | - |
| Trafficking for labour exploitation   | 2   | 3 | 3 | 4 | 3 | - | 1 | - | 1 |
| 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) | 4   | 2 | 2 |   | 2 | 1 | 2 | - | - |

### 3.2.2. Most frequent occupations of exploited migrant workers

Most respondents (18) said exploited migrant workers usually work as **non-qualified labourers**, for instance jobbers, auxiliary workers and unqualified factory workers. The second most frequent answer was **semi-qualified craftsmen**, which was indicated by six

respondents. Finally, five respondents said it was **service workers** such as waiters, care workers, household helps).

| Most frequent occupations of exploited migrant workers                            | Number of indications by professional group |   |    |   |   |   |   |   |   |
|---|---|---|----|---|---|---|---|---|---|
|   | M   | P | S  | J | L | R | W | E | N |
| Skilled worker e.g. electrician, foreman, motor mechanic                          | -   | 1 | -  | - | - | - | - | - | - |
| Semi-skilled worker e.g. bricklayer, bus driver, cannery worker, carpenter, baker | 4   | 1 | 1  | 3 | 2 | 1 | - | - | - |
| Unskilled worker e.g. labourer, porter, unskilled factory worker                  | 4   | 1 | 3  | 3 | 4 | 1 | 2 | - | 2 |
| Farm worker e.g. farm labourer, tractor driver, fisherman                         | 2   | 1 | 2  | - | 1 | 1 | - | - | 1 |
| Service occupations e.g. waiter, care-taker, domestic worker                      | 2   | 2 | 3  | 1 | 4 | - | 2 | - | 1 |
| Sales occupations e.g. shop assistant   | -   | - | -  | - | - | - | - | - | - |
| Clerical occupations e.g. clerk, secretary  | -   | - | -  | - | - | - | - | - | - |
| Professional and technical occupations e.g. engineer, accountant                  | -   | - | -  | - | - | - | - | - | - |
| Other   | 1   | 2 | -  | 2 | - | - | - | - | - |
| Don't know  | 8   | 1 | 12 | - | 1 | - | 2 | 3 | 2 |

### 3.2.3. Sectors of economy most prone to labour exploitation

In general, the economy sectors where labour exploitation of migrant workers occurs most frequently are **construction** and **restaurants and food delivery**; each of these two options was indicated by eight respondents. They were followed by the somewhat more precisely specified sector of **building construction**.

| Sectors of economy most prone to labour exploitation                         | Number of indications by professional group |   |   |   |   |     |   |   |     |
|--|---|---|---|---|---|-----|---|---|-----|
|  | M   | P | S | J | L | R   | W | E | N   |
| Agriculture, forestry and fishing (01)                                       | -   | - | 1 | - | 1 | N/A | - | - | N/A |
| Growing of vegetables (02)   | 1   | 2 | - | 1 | - | N/A | - | - | N/A |
| Growing of fruits (03)   | 1   | 1 | - | - | - | N/A | - | - | N/A |
| Other agriculture (06)   | -   | - | - | 1 | - | N/A | - | - | N/A |
| Silviculture (07)  | 1   | - | - | 1 | - | N/A | 1 | - | N/A |
| Manufacturing (19)   | -   | - | 1 | 1 | 1 | N/A | 1 | - | N/A |
| Manufacture of food products (20)  | -   | 1 | 1 | - | - | N/A | - | - | N/A |
| Manufactures of textiles (22)  | 1   | - | - | - | - | N/A | - | - | N/A |
| Manufacture of metals and metal products (29)                                | -   | 1 | 1 | - | - | N/A | - | - | N/A |
| Construction (43)  | 1   | 1 | 4 | 1 | 1 | N/A | 2 | 1 | N/A |
| Construction of buildings (44)   | 2   | - | 1 | 2 | 2 | N/A | - | - | N/A |
| Other construction (48)  | 1   | - | - | - | - | N/A | - | - | N/A |
| Wholesale and retail trade and repair of motor vehicles and motorcycles (50) | -   | - | - | - | 1 | N/A | - | - | N/A |
| Retail trade, except of motor vehicles and motorcycles (52)                  | 1   | - | - | - | - | N/A | - | - | N/A |

|   |   |   |   |   |   |     |   |   |     |
|---|---|---|---|---|---|-----|---|---|-----|
| Transportation and storage (54)   | - | - | - | - | 1 | N/A | - | - | N/A |
| Freight transport by road and removal services (56)                               | 1 | - | - | - | - | N/A | - | - | N/A |
| Warehousing and storing (58)  | 1 | - | 1 | - | 1 | N/A | - | - | N/A |
| Accommodation and food service activities (60)                                    | - | - | 1 | - | - | N/A | - | - | N/A |
| Restaurants and mobile food service activities (64)                               | 2 | 1 | 2 | 1 | 2 | N/A | - | 1 | N/A |
| Other food service activities (67)  | 1 | - | - | - | - | N/A | - | - | N/A |
| Administrative and support service activities (81)                                | - | - | - | - | - | N/A | 1 | - | N/A |
| Cleaning activities (86)  | 1 | - | - | - | - | N/A | - | - | N/A |
| Sex workers <sup>41</sup> , Social escorts, club hosts and dancing partners (111) | - | 2 | 1 | - | 1 | N/A | - | - | N/A |
| Activities of households as employers (120)                                       | - | - | 1 | - | - | N/A | - | - | N/A |
| Non-diplomatic households as employers of domestic personnel (122)                | - | - | - | - | 1 | N/A | - | - | N/A |
| Don't know (99)   | 6 |   | 6 | 1 |   | N/A | 1 | 1 | N/A |

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<sup>41</sup> Sex workers are mostly employed officially as hostesses or masseuses which is why the item was presented to the interviewees along with other items.

## **4 Risks and risk management**

The following chapter examines the risk factors that contribute to labour exploitation of migrant workers. The research findings suggest that the most serious risks of labour exploitation include unsatisfactory institutional setting and poor implementation of policies aimed at effectively punishing the perpetrators. The low effectiveness of monitoring mechanisms is a direct cause for the low rate of exposing labour exploitation, which is why employers feel “safe” to exploit workers. A certain role is also allegedly played by corruption, although the rate of exposing it virtually nears zero, which is why most interviewed experts hinted at it rather than explicitly identified it in their comments. The personal characteristics that negatively affect labour exploitation include, in particular, the socio-economic situation of migrant workers who often hail from countries plagued by poverty and therefore are willing to work under severely exploitative labour conditions. The generally low education status and poor command of the local language are direct causes of migrant workers’ poor legal awareness and their inability to defend their rights at the workplace. In certain economic sectors, migrant workers work in isolation and existentially depend on their employers who often provide room and board to them. Many insiders believe that recruitment agencies play a rather negative role in the process as they reduce employers’ immediate feeling of responsibility for their employees, divide legal capacity in a non-transparent way between them and the employers and make it very complicated to pin the blame on them for irregular or exploitative labour conditions. Furthermore, a number of recruitment and employment agencies have faced suspicions of taking part in trafficking in human beings.

The practice that makes the investigation of labour exploitation extremely complicated is that the victims are typically viewed as illegal workers or illegal migrants, which is why they face immediate administrative expulsion from the country. Not only does this prevent identifying them as victims, but it also renders effective investigation of labour exploitation cases practically impossible. Recently, parliament introduced legislative means to grant a tolerated residence status to victims of severe forms of labour exploitation. Unfortunately, due to the generally low effectiveness of exposing and investigating these cases, only one migrant worker has been given this privilege.

Slovakia currently pursues various prevention activities that are not primarily aimed at combating labour exploitation, but specifically target trafficking in human beings. Moreover, all prevention programmes are primarily aimed at protecting Slovak citizens abroad, as opposed to migrant workers in Slovakia. While migrant workers are not explicitly excluded from these prevention programmes, there are no measures adopted that would take their specific situation (for example social isolation, poor command of language and lacking knowledge of Slovakia’s legal order) into account.

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

The research confirmed that migrant workers, particularly third country nationals and those with unclear legal status in Slovakia, are particularly vulnerable to labour exploitation. Many of them arrive in the country without even the basic knowledge of its legal order, language or without any social contacts whatsoever. Generally speaking, the situation of migrants in Slovakia is complicated by the relatively rigorous and restrictive immigration and integration policies.

Because of the generally low number of foreigners in Slovakia, no adequate social networks have been created as yet, according to one S group expert. Unlike Slovak citizens whose social capital as well as knowledge of the legal environment and labour market is substantially higher, foreigners often become victims of labour exploitation. This was suggested particularly by respondents with organisations that provide legal, social or psychological assistance to victims (i.e. category “S” organisations). According to one of the respondents [M(1)], the factors contributing to migrant workers’ labour exploitation include their general social isolation and the low degree of integration.

*“They live in rather close communities as if they did not wish to communicate or were afraid of it. That is the root of all their unawareness and all the mistakes they make.” [M(1)]*

*„Oni si tú svoju spoločnosť tak uzavru a ako keby nechceli alebo sa báli komunikovať. A z toho potom vyplývajú všetky tie neznalosti a všetky tie chyby, ktoré robia.” [M(1)]*

Generally speaking, the factors that according to respondents facilitate labour exploitation of migrant workers include poor socio-economic situation, low education status (including legal awareness) and poor command of the local language. These factors are examined in greater detail below.

#### 4.1.1. Legal and institutional framework of risks of migrant workers’ labour exploitation

| Risk factors  | Number of indications |
|---|-----------------------|
| Low risk to offenders of being prosecuted and punished  | 19                    |
| Low risk to offenders of having to compensate exploited migrant workers   | 14                    |
| Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs | 17                    |
| Corruption in the police  | 4                     |
| Corruption in other parts of administration   | 9                     |
| Other (please specify)  | 6                     |
| Don't know  | 1                     |

| Risk factors  | Number of indications by professional group |   |   |   |   |   |   |   |   |  |
|---|---|---|---|---|---|---|---|---|---|--|
|   | L   | E | M | N | S | W | R | P | J |  |
| Low risk to offenders of being prosecuted and punished  | 3   | 1 | 4 | 0 | 5 | 2 | 0 | 2 | 2 |  |
| Low risk to offenders of having to compensate exploited migrant workers   | 2   | 0 | 3 | 0 | 4 | 2 | 0 | 2 | 1 |  |
| Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs | 2   | 1 | 3 | 2 | 5 | 1 | 0 | 0 | 3 |  |
| Corruption in the police  | 1   | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |  |
| Corruption in other parts of administration   | 3   | 0 | 1 | 0 | 3 | 0 | 0 | 1 | 1 |  |
| Other (please specify)  | 0   | 0 | 4 | 0 | 0 | 1 | 0 | 1 | 0 |  |
| Don't know  | 0   | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |  |

As far as the legal and institutional setting goes, perhaps the most important factor that increases the risk of migrant workers' labour exploitation is **the low risk of punishing the perpetrators**. This risk factor was rather evenly cited by all categories of respondents, especially those who worked with organisations that specialise in victim support. According to many respondents, law enforceability is generally very poor in Slovakia, which makes employers quite immune to fines and criminal prosecution; the generally prevailing feeling is that "nothing can happen to them". This view was shared by many respondents from different categories, particularly S, W but also M. Respondents from the latter category suggested employers were often unaware of potential consequences of labour exploitation, for instance the obligation to compensate victims of labour exploitation. Perhaps it is because no businessman has ever been ordered by a Slovak court to compensate victims of labour exploitation. The media also ignore this issue, although there have been employers sentenced for labour exploitation of their employees (but not of migrant workers); all this strengthens employers' feeling of impunity.

*"It seems these people – both Slovaks and foreigners – are willing to take the risk and exploit migrant workers because they believe nothing can happen to them."* [S(1)]

*„Ono to tak vychádza, že tí ľudia si to dovoľia robiť, či už sú to cudzinci alebo Slováci, zneužívať ich a nútiť ich na prácu, pretože majú pocit, že sa im nemôže nič stať.“* [S(1)]

That feeling is further cemented by delays in the criminal justice system.

*"It often takes months to press charges, let alone lay an indictment."* [S(1)]

*„Aby bola vznesená obžaloba, nebodaj vznesené obvinenie, to často trvá mesiace.“* [S(1)]

Because of the high fluctuation of employees and the labour market's general instability, employers do not feel that perpetrators of labour exploitation will ever be brought to justice. This feeling is supported by the perceived incompetence of different government organs that are supposed to investigate labour exploitation, as two interviewees [from the L and M groups] claim:

*"They throw [the case] like a hot potato before they find out who is supposed to deal with it in the first place. Then [they take their time to] overcome the language barrier. And then they begin to dissect the problem to such great lengths that instead of [resolving] the situation at hand, they try to convince [the victims] that they did not actually end up that bad and that it would be the best for them if they just returned home."* [L(1)]

*„...prehadzujú si ho ako horúci zemiak, kým vôbec zistia, kto sa tým má zaoberať. Potom, než prekonajú jazykovú bariéru. A potom začnú ten jeho problém rozpitávať tak, že namiesto toho, aby reálne posúdili jeho stav, tak sa ho snažia presvedčiť, že nedopadol až tak zle a že by bolo lepšie sa vrátiť domov.“* [L(1)]

*"The problem with "lack of institutions that would effectively monitor the situation" is quite the opposite in my opinion. Not that there is a lack of institutions but there are too many of them. Each institution has its own [sand bed to play in and nobody sees the whole playground]; that was the reason why I deliberately named all the different police units a while ago to make you realise how many different police departments are involved, plus customs administration, labour inspectorates, etc. [It's a total] inflation."* [M(1)]

*„Ten nedostatok inštitúcií, ktoré by monitorovali situáciu, to by som povedal skôr naopak. Neexistuje žiadna, je toho veľa. Inštitúcií je veľa. Každá má nejakú tú oblasť z toho a ja som vám to preto nachvál' vymenoval, to množstvo cudzineckej polície, aby ste si uvedomila, že*

*len v tej polícii koľko zložíek sa tomu začne venovať, keď k tomu dôjde. K tomu teda tá colná správa, my atď., ono to narastie. Každý má nejakú oblasť.“ [M(1)]*

Furthermore, legal persons in Slovakia are exempt from criminal liability (except for specific protective measures, such as seizure of money<sup>42</sup>), which considerably complicates criminal proceedings. It is therefore very difficult to prove that an individual entrepreneur who acts in the capacity of their firm's legal representative is guilty of labour exploitation.

This means that only natural persons can be criminally prosecuted under the current Slovak Criminal Code.<sup>43</sup> However, a new legislative amendment is currently (as of September 2014) submitted for governmental negotiation. This amendment proposes full criminal responsibility for legal persons in areas such as economic criminality, human trafficking or organised crime.<sup>44</sup>

This unsatisfactory state of affairs could be improved by more consistent implementation of the EU directive on sanctions for employers of third country nationals,<sup>45</sup> which has been transposed into Slovakia's legal order through the Illegal Labour and Illegal Employment Act<sup>46</sup> and especially through the Act on Residence of Foreigners.<sup>47</sup> The latter law made victims of labour exploitation eligible to obtain a tolerated residence status if their presence is necessary for the purpose of investigation [R(1)]. Very few respondents were aware of the directive; in fact, it was spontaneously cited by only two of them – one from category “P” and one from category “R”. Some of the focus group participants suggested that one of the obstacles to investigating and punishing the perpetrators was that the victims were often identified as illegal workers and illegal migrants and were immediately deported, which substantially complicated investigation (for further details, please see Chapter 4.3 Protection).

The poor prospects of punishing perpetrators are largely related to the **lack of institutions that would effectively monitor** labour exploitation of workers in general (for further details on particular institutions' powers, please see Chapter 3). This shortage was the second most frequently mentioned risk factor of labour exploitation; it was cited by 17 respondents, i.e. more than half of all interviewees. The feeling that monitoring of labour exploitation remains inadequate seems to be rather general. One respondent from category “W” suggested there was no institution that would specifically monitor labour exploitation of migrant workers. Employment agencies and labour inspectorates lack the adequate capacity or know-how to be able to deal with this issue specifically. Most of the government agencies are unable or improperly equipped to detect and expose labour exploitation. The focus group discussion revealed that the National Labour Inspectorate acted almost exclusively upon motions received and that it hardly received any motions that would complain about labour exploitation of migrant workers.

Several respondents, particularly those from categories “S”, “L” and “J”, said a properly functioning monitoring mechanism was the basic prerequisite to exposing and properly investigating cases of labour exploitation by the police and other law enforcement organs.

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<sup>42</sup> Criminal Code, Act No. 305/2005 as amended, Art. 83a.

<sup>43</sup> Criminal Code, Act No. 305/2005 as amended, Art. 19/2.

<sup>44</sup> See <https://lt.justice.gov.sk/Document/DocumentDetails.aspx?instEID=-1&matEID=6921&docEID=345316&docFormEID=-1&docTypeEID=1&langEID=1> (in Slovak).

<sup>45</sup> 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.

<sup>46</sup> Slovakia, Act No. 82/2005 Coll. on Illegal Labour and Illegal Employment (*Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

<sup>47</sup> Slovakia, Act No. 404/2011 Coll. on Residence of Foreigners (*Zákon č. 404/2011 Z. z. o pobyte cudzincov*). Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

*“In my opinion it is a job for the police. I am not sure if some clerks from [labour] inspection or labour office would be willing to risk their safety and frequent construction sites to check something out. Also, the point is not to have such a department but to have it show some actual performance; I believe they would find enough if they raided all those construction sites and small factories.” [S(1)]*

*„Podľa mňa je to už práca pre políciu, lebo neviem, či nejaký úradník z inšpekcie alebo úradu práce bude ochotný riskovať svoju bezpečnosť a chodiť po stavbách, aby toto zisťoval. A nielen aby existovalo toto oddelenie, ale aby aj reálne niečo robili, lebo keby nabehli do všetkých tých stavieb a malých tovární, tak by toho našli dosť.” [S(1)]*

Corruption within the ranks of the police and other state administration organs is another factor that was brought up by some respondents; although none of them were able to cite concrete cases of corruption. Most respondents agreed that although corruption was often suspected it was very difficult to prove it. While corruption is generally perceived as one of the most pressing social problems in Slovakia, very few cases are exposed and even fewer see the courtroom; in the field of migrant workers' labour exploitation, not a single case of corruption has been substantiated.

*“Well, [I have heard] various things, including suspected bribing of members of the aliens' registration office, but these suspicions have never been brought to court ... In my position, I can only speak of corruption in various areas of public life as long as it is substantiated.” [J(1)]*

*„No, kadečo tam bolo aj to, že podozrenia, že niekto podplácal cudzineckú políciu, ale nebolo to predmetom obžaloby. ja som v pozícii kedy hovorím o korupcii v rôznych oblastiach spoločenského života len vtedy, keď sa preukáže.” [J(1)]*

Although some respondents suggested existence of corruption indirectly and rather marginally, most of them avoided the issue; this was also true of representatives of organisations that specialise in victim support. But despite the latent nature of this phenomenon, it is fair to assume that the scope of corruption is significantly greater than this type of research project is able to expose. For instance, the question on the overall efficiency, relevance and informative value of the labour inspection was raised. As the focus group revealed, despite the fact that the *“exact place is known only to one or two people who basically prepare the entire inspection”* FG[S], there are some indications that in some cases the information about the forthcoming inspection might leak and the employers might be warned in advance. As a result of this warning they might prepare for the inspection and secure that the migrant workers, some of them working illegally and in harsh conditions, do not meet with the inspectors.

*“According to our information, which we don't double-check too much, managers of some of these warehouses receive [reliable] information on labour inspections, for instance that they will go somewhere in the morning and somewhere else in the afternoon. [Based on this information], the employers often set the shifts for refugees and shifts for people with legal work permits.” FG[S]*

*“V podstate máme informácie, nejakú si to veľmi neoverujeme, ale že v niektorých týchto skladoch je nahlásené napríklad kedy prídu, že by mali chodiť kontroly. Napríklad doobeda chodia tam a poobede tam a že veľakrát si zamestnávateľia vyberajú, že kedy pracujú utečenci a kedy pracujú ľudia, ktorí majú nejaké legálne povolenia.” FG[S]*

Also, in some cases, employers are able to make agreement with the inspectors and rather decide to pay a fine than to change the working conditions of their employees.

“It often happens that the operations are able to strike a deal with labour inspectors and then our efforts are ill-fated. For instance, they agree to pay some minimum [fine] or they put all the documents [in order] so that the labour inspectorate cannot say anything.” [P(1)]

„Častokrát sa stáva, že tie prevádzky sa vedia dohodnúť s inšpektormi práce a potom naša práca ide zlým smerom. Napríklad, že zaplatia nejakú minimálnu [pokutu] alebo to zariadia tak, že si dajú dokopy všetky dokumenty tak, aby inšpektorát nemohol povedať nič.“ [P(1)]

“So we know that even if a problem occurs, those employers quite arrogantly say “what the hell, it is worth a couple of thousand in fine” and they make sure through their contacts and money that they are fined only couple of thousand and not the maximum amount.” [S(1)]

„Takže vieme, že aj keď je problém, tí zamestnávateľia si povedia tak arogantne, že “ved” čo, aj tak nám to stojí za nejakú pár tisícovú pokutu” a to, že je tá pokuta pár tisíc a nie je maximálna, tak si oni už vedia nejakú obšliapať a zaplatiť.“ [S(1)]

#### 4.1.1.2 Personal characteristics and initial situation of migrant workers

| Personal characteristics and initial situation of migrant workers  | Number of indications |
|--|-----------------------|
| Migrant worker has a low level of education  | 24                    |
| Migrant worker does not know the language of the country of workplace  | 22                    |
| Migrant is not allowed to enter into employment  | 9                     |
| Worker comes from a country the nationals of which are often exploited in the destination country  | 4                     |
| 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) | 3                     |
| Worker is prone to discrimination on behalf of their sex   | 2                     |
| Worker has experienced extreme poverty at home   | 20                    |
| Other (please specify)   | 1                     |
| Don't know   | 0                     |

| Personal characteristics and initial situation of migrant workers  | Number of indications by professional group |   |   |   |   |   |   |   |   |
|--|---|---|---|---|---|---|---|---|---|
|  | L   | E | M | N | S | W | R | P | J |
| Migrant worker has a low level of education  | 2   | 1 | 8 | 2 | 5 | 2 | 1 | 1 | 2 |
| Migrant worker does not know the language of the country of workplace  | 4   | 7 | 2 | 5 | 2 | 0 | 0 | 0 | 2 |
| Migrant is not allowed to enter into employment  | 3   | 0 | 2 | 0 | 3 | 0 | 0 | 1 | 0 |
| Worker comes from a country the nationals of which are often exploited in the destination country  | 1   | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 |
| 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   | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Worker is prone to discrimination on behalf of their sex   | 1   | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Worker has experienced extreme poverty at home   | 2   | 0 | 6 | 2 | 5 | 2 | 1 | 0 | 2 |
| Other (please specify)   | 0   | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Don't know   | 0   | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

As we have already said earlier in this chapter, poor initial socio-economic situation, inability to speak the local language and inadequate education are basic characteristics of third country nationals that are perceived as making them most vulnerable to labour exploitation in Slovakia, according to interviewees.

Practically all categories of respondents agreed on these characteristics. Substandard **education** seems to be perceived as the single most serious risk factor of labour exploitation, although it often goes hand in hand with poor command of the local **language**. Most respondents did not point out inadequate education *per se* but related it primarily to ignorance of the country's legal order, generally low awareness of legislation that could protect them and the lack of social contacts, ties and skills to be able to gather useful information on the labour market and avoid potential pitfalls of labour exploitation.

*“Due to inadequate education, the man does not know what he is entitled to, how to defend himself, or who can he turn to. As a result, he may not see coming something that can threaten him.” [M(1)]*

*„Nedostatočné vzdelanie spôsobí, že ten človek nevie, na čo má nárok, nevie, ako sa brániť, na koho sa obrátiť. Nevytuší príznaky niečoho, čo by ho mohlo ohrozovať.” [M(1)]*

At the same time, people with lower education status have significantly fewer real opportunities to find a job, which is why they tend to accept any job they can find, even at the risk that it will be disadvantageous; however, this is not to say that an educated person is immune to the risk of labour exploitation. According to one respondent from category “S”, education itself does not guarantee that the person cannot be deceived and become a victim of labour exploitation. For example, one case study collected as part of the research describes a case of highly qualified workers who became victims of labour exploitation although they were university graduates.

Another risk factor that was brought to our attention during the focus group is the fact that educated migrants, especially from third countries, often have problems with their qualification not being recognised in Slovakia. As a consequence they are often forced to take low-grade jobs.

*“...then there are also other things, for instance that they are hired for dirtiest kinds of work, although they are often educated people [but have the bad luck that] their education is not fully acknowledged in Slovakia. So they work as dishwashers, for instance.” FG[S]*

*“...tam sú potom také ďalšie veci, že sú braní na najšpinavšie práce a sú to veľa krát ľudia, ktorí majú vzdelanie, ale veľa krát aj ľudia, ktorí majú vzdelanie a samozrejme na Slovensku nie úplne uznané. Takže potom robia napríklad umývačov riadu.” FG[S]*

A total of 20 respondents viewed **extreme poverty in the country of origin** as one of three principal risk factors contributing to labour exploitation of migrant workers in Slovakia. In this context, however, it is not just about the mere fact that migrants experienced extreme poverty. The point is that the generally poor socio-economic situation of migrant workers at the point of entering the country combined with the desperate effort to improve their standard of living makes many of them accept jobs that are much more disadvantageous compared to their co-workers or even become victims of trafficking in human beings. To them, even the slightest improvement of their situation is an improvement nonetheless.

*“[Migrant workers who] experienced extreme poverty in their home country will gratefully [grab any job opportunity], which in turn increases the exploiters' appetite.” [J(1)]*

*“Ak pochádzajú z krajín s extrémnou chudobou, tak sú vďační za všetko a o to je potom väčšia chuť ich vykorisťovať na strane zamestnávateľov.” [J(1)]*

*„There was one [migrant] who gathered the courage to come forward and said: “Do whatever you wish with me, but if you are in a situation that you have a family and you don’t have anything to eat, no roof above your head, you grab anything you see. And that is the answer to the question of why I work under these conditions.” FG[W]*

*“Jeden ktorý sa odvážil, ten povedal, že “spravte so mnou čo chcete, ale keď ste v pozícií, že máte rodinu, nemáte čo jesť, nemáte strechu nad hlavou, v tom prípade beriete všetko čo vidíte. A to je odpoveď na to, prečo pracujem za takýchto podmienok.” FG[W]*

The country of migrant workers’ origin seems to be a weighty factor by itself. Some respondents pointed out that migrants from Central African countries, India or Vietnam hailed from very poor socio-economic backgrounds, adding that since they had experienced poverty in their home country, they were more prepared to accept it in Slovakia as well.

*“If they didn’t have [running] water back home, they don’t mind sleeping on the floor and being without [running] water here.” [S(1)]*

*“Ak nemali doma vodu, tak im nevadí, že tu spia na zemi a bez vody.” [S(1)]*

The history of poverty is the main reason why migrant workers are willing to work in undignified conditions without complaining or reporting it to anybody. It also reduces their ability to establish social ties and networks with people who could help them. Many of them spend all their financial resources in getting to the country, and subsequently become completely dependent on any job they can find – be it legal or illegal.

Uncertainty of legal status is a specific threat for those migrant workers who have come to Slovakia because of employment. If they lose their job, they must find another in a very short period of time, otherwise their residence permit falls through and they become illegal aliens in the country. These migrants are even more vulnerable to labour exploitation.

*“For instance, he loses a job today, becomes deregistered tomorrow and must be gone or find another job within 30 days. Who can find a job that fast? Even if somebody is legal here, it is very easy to become illegal.” [S(1)]*

*„Například dnes stratí práci, zajtra ho odhlásia a on musí byť do 30 dní preč alebo si nájsť inú prácu. A kto si nájde tak rýchlo prácu? Aj keď je tu niekto legálne, veľmi ľahko spadne do ilegality.“ [S(1)]*

Very few respondents cited discrimination based on gender or ethnic origin. Those who did (especially respondents from categories “P”, “S” and “E”) spoke rather of general rejection of foreigners, the country’s isolation or specific vulnerability of women on the labour market.

#### **4.1.1.3 Risk factors of labour exploitation at the workplace**

| <b>Risk factors of labour exploitation at the workplace</b>                             | <b>Number of indications</b> |
|---|------------------------------|
| The migrant works in a sector of the economy that is particularly prone to exploitation | 16                           |
| The migrant works in relative isolation with few contacts to clients or to              | 15                           |

|   |    |
|---|----|
| people outside the firm   |    |
| The migrant worker is not a member of a trade union   | 2  |
| The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed   | 13 |
| 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 | 15 |
| The migrant worker is employed as a posted worker by a foreign company  | 0  |
| The migrant is a seasonal worker  | 10 |
| Other (please specify)  | 1  |
| Don't know  | 4  |

| Risk factors of labour exploitation at the workplace  | Number of indications by professional group |   |   |   |   |   |   |   |   |  |
|---|---|---|---|---|---|---|---|---|---|--|
|   | L   | E | M | N | S | W | R | P | J |  |
| The migrant works in a sector of the economy that is particularly prone to exploitation   | 3   | 1 | 2 | 1 | 2 | 2 | 1 | 1 | 3 |  |
| The migrant works in relative isolation with few contacts to clients or to people outside the firm  | 2   | 0 | 3 | 2 | 5 | 0 | 1 | 1 | 1 |  |
| The migrant worker is not a member of a trade union   | 0   | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |  |
| The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed   | 3   | 0 | 4 | 0 | 5 | 1 | 0 | 0 | 0 |  |
| 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 | 2   | 0 | 4 | 1 | 4 | 1 | 0 | 1 | 2 |  |
| The migrant worker is employed as a posted worker by a foreign company  | 0   | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |  |
| The migrant is a seasonal worker  | 0   | 1 | 4 | 0 | 2 | 1 | 0 | 1 | 1 |  |
| Other (please specify)  | 0   | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |  |
| Don't know  | 1   | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 |  |

The type of economic sector turned out to be the single most important risk factor with respect to the situation at the workplace. According to interviews, certain sectors of the economy simply seem to create better conditions for labour exploitation by themselves (e.g. seasonal jobs, the need of qualified labour, labour conditions, etc.). Specific characteristics of some sectors, e.g. seasonality of work, night shifts etc., are preconditions for labour exploitation more than in other sectors or seem to attract labour exploitation more than others. In the opening stages of the interviews, many respondents pointed out that labour exploitation most frequently occurred in construction, agriculture and food-processing industries. They did not view it necessary to elaborate on this issue at later stages of the interview; instead, they preferred to discuss other aspects related to economic sectors such as the seasonal nature of labour and working in relative isolation. The latter is a factor but also the result of labour exploitation. When people work in an isolated environment (i.e. without contacts with a broader community), they become more vulnerable to labour exploitation. This typically happens when the employers provide not only jobs but also room and board to their employees, making them completely dependent, preventing them from

maintaining contacts with the outer world and minimising their access to institutions that might be able to help them.

*“Of course, the victims are isolated, with a low number of contacts to people outside the firm. They are subject to pressure and often work as slaves. These people don't even have [identification] papers as they completely depend on their employer.” [N(1)]*

*„Samozrejme, obeť je izolovaná, s nízkym počtom kontaktov na ľudí mimo firmy. Je na ňu vyvíjaný nátlak a často pracuje ako v otroctve. Tí ľudia nemajú ani doklady, sú úplne závislí na zamestnávateľovi.“ [N(1)]*

Although it was not the most frequently cited one, a much stronger factor seems to be the performance of recruitment agencies that specialise in finding temporary jobs for people. A significant number of respondents (15) viewed this method of hiring migrant workers as the most risky from the viewpoint of labour exploitation. Since the workers have been hired via the agency, the employer does not feel immediate and direct responsibility for them. This divides the legal capacity between the employer and the agency in a non-transparent way and makes it very complicated to pin the blame for irregular or exploitative labour conditions.

*“They are [very skilled in] passing the buck between each other. The firm claims it is not responsible for the employee as it merely pays the agency some pre-arranged sum; the agency, for its part, claims that the firm ordered some service and it merely provides it.” [W(1)]*

*„Tak si ten horúci zemiak medzi sebou prehadzujú, lebo firma povie, že nezodpovedá za zamestnanca, lebo platí agentúre a tá má zabezpečiť podmienky a agentúra zas povie, že ona len zabezpečuje službu.“ [W(1)]*

*“The person concludes a [labour] contract with a job agency; [the agency] dispatches him to a job where they treat him wilfully. And if he doesn't like the job, he does not know who he can turn to because his labour law relation is with the recruitment agency. The employer [for whom he works] is a stranger to him. And that's the space for the curtailment of rights because he does not have an opponent in the legal sense.” [M(1)]*

*„Ten človek uzavrie zmluvu s nejakou pracovnou agentúrou, tá ho niekam vyšle a tam s ním narábajú podľa svojvôle. A on nevie v prípade, ak sa mu práca nepáči, na koho sa môže obrátiť, lebo právny vzťah má s pracovnou agentúrou. Tam ten zamestnávateľ, ku ktorému bol vyslaný, tak je pre neho cudzí. A tam je priestor na obmedzovanie v právach, lebo nemá protivníka v právnom zmysle.“ [M(1)]*

Several respondents (especially those from categories “S”, “J” and “M”) suggested that recruitment agencies, especially temporary job agencies, often benefited from trafficking in human beings. The agencies usually help migrant workers obtain residence permits, legalise their status and comply with all administrative requirements, making them completely dependent. Consequently, the risk factors accumulate because the migrant workers become completely isolated; they have nobody to turn to as they cannot deal directly with the employers. This practice most typically concerns seasonal work that is offered by temporary job agencies to hundreds of employees who subsequently become exploited in the country of destination (according to respondents from categories “S” and “M”).

Only two respondents (from the “P” and “W” categories) cited (non-)membership of trade unions as a risk factor for migrant workers' labour exploitation; however, the focus group discussion brought up a very relevant argument in favour of migrant workers' membership in trade unions. Although trade unions in Slovakia continue to have a very bad reputation and are not trusted much by employees, they may prove very helpful in eliminating the risks of labour exploitation as they are allowed to provide legal counselling to their members and even

represent them in labour law disputes. According to one respondent from category “W” who took part in the focus group discussion, membership of trade unions cannot help much in cases of severe forms of trafficking in human beings or labour exploitation; however, in traditional labour law relations where serious forms of labour exploitation may also occur as the result of employees’ ignorance of the country’s legal order or the language barrier, membership of trade unions could be an important and effective preventive tool against labour exploitation [W(1)].

#### 4.1.2 The role of recruitment agencies

Only one recruitment agency was interviewed for this research project. According to the respondent [R(1)], its role is to represent large international corporations in recruiting the needed workforce. At the same time, it specialises in helping migrant workers from third countries obtain residence and work permits. In this sense, the agency protects employees’ rights to a certain degree as it provides migrant workers with information on Slovakia’s legal order and the need to submit certain documents, helps them communicate with employers and represents them in administrative procedures related to obtaining residence permits.

Other respondents showed very vague knowledge of the role of recruitment agencies. In the capacity of government institutions, labour offices issue work permits and even help foreigners find jobs to a certain degree; however, that is very rarely the case because of the valid legislation, which prefers domestic workforce to foreign. In other words, if there is a job seeker who is a Slovak citizen and complies with qualification requirements, the vacant job position must be offered to this job seeker. Several respondents (especially those from categories “M”, “N”, “L” and “J”) suggested the principal role of labour offices should be to monitor observance of valid laws and to provide relevant information on job opportunities or risks of trafficking in human beings and labour exploitation.

Another very important category is temporary job agencies that have already been mentioned in the section about the risks of labour exploitation. Their activities have recently started to be monitored by institutions that deal with labour inspection or combatting trafficking in human beings. Most respondents viewed these agencies very suspiciously as they believed many of them participated in trafficking in human beings and partly also labour exploitation.

*“In my opinion, those recruitment agencies or rather temporary job agencies exploit everybody, Slovaks or foreigners, because they make money by actually renting out workforce and [deliberately] putting their employees into situation when they work for the minimum wage.” [R(1)]*

*„Čo sa týka tých pracovných agentúr, alebo agentúr dočasného zamestnávania, tie podľa mňa vykorisťujú všetkých do radu, či už sú to Slováci alebo cudzinci, pretože zarábajú na tom, že vlastne pracovnú silu prenajímajú a vystavujú svojich agentúrnych zamestnancov do stavu, že zarábajú len tú minimálnu mzdu.“ [R(1)]*

According to one respondent from category “J”, some of these agencies are rather short-lived as they do not fulfil the purpose for which they have been established and participate in illegal activities.

*“After some time it turns out that this agency has not been paying any taxes or contributions; of course, the authorities have tolerated it because their clerks have been bribed. If some corrupt inspector or investigator finds out, they simply close down the agency and create another one under a new name.” [J(1)]*

„Po čase sa zistí, že agentúra neodvádza dane, odvody, je to tolerované tým, že jej zamestnanci podplácajú úrady a keď na to nejaký skorumpovaný kontrolór príde, tak ju jednoducho zrušia a založia inú.“[J(1)]

At the same time, there is no effective monitoring mechanism that would supervise the performance of temporary job agencies. Their licences are issued by the Ministry of Labour, Social Affairs and Family; however, respondents failed to specify what requirements had to be complied with or what was the mechanism to evaluate their performance. According to several respondents, the power to supervise temporary job agencies rests with labour inspectorates and partly also labour offices; so far, though, these institutions have been unable to expose illegal activity of temporary job agencies. One respondent from category “N” informed that a recent amendment to Employment Services Act bound temporary job agencies to submitting annual reports on their activities. According to his information, only about 10% of these subjects submitted these reports.

*“[I hope] the current number of 1,700 will be cut to some 180 and supervision will finally make some sense. I mean, [you stand no chance if you want to supervise] 1,700 subjects; basically all you know about them is that they have a licence.”* [M(1)]

„Z tých 1700 zostane nejakých 180. A tie už viete nejako kontrolovať. Ak ich je 1700, tak o nich nič neviete, iba, že majú licenciú.“ [M(1)]

The institutions that are supposed to monitor temporary job agencies obviously lack the capacity to supervise effectiveness and legality of their performance.

*“Due to capacity reasons, we manage to check out perhaps 10-15 agencies a year. It is neither systemic nor sufficient.”* [M(1)]

„Z kapacitných dôvodov odkontrolujeme tak 10 – 15 agentúr za rok. Ale nie je to systémové a nie je to dostatočné.“ [M(1)]

*“[The problem is] rather that the law allows them to perform roles regular employers cannot perform. They are allowed to procure labour – which is actually resale, nothing more – and most of them [abuse this privilege]. Of course, there are those who are in it for honest business – I don't want to jump to sweeping conclusions – but I would say only 10% of these firms do it honestly while the remaining 90% merely rake in money. Another problem is that temporary job agencies count on the fact that people in general are in a desperate situation – and it makes no difference whether it is our people or foreigners, although the latter are even worse off – and they absolutely consciously take advantage of them.”* [M(1)]

„Lepšie povedané, ten zákon im umožňuje vykonávať činnosti, ktoré normálny zamestnávateľ nemôže robiť. Už tým, že im umožňuje robiť priekupníctvo, lebo je to vlastne priekupníctvo, nič iné to nie je, u väčšiny teda, sú samozrejme aj poctivé, to ako sa zase nedá povedať. 10% je tých, čo to robí riadne a ostatných 90%, čo na tom iba zarába. To je jedna vec, druhá záležitosť je, že sa tie ADŽtky spoliehajú na to, že tí ľudia sú v dosť zúfalej situácii a to je jedno, či je náš alebo či je cudzinec, ale cudzinci teda v tomto prípade ešte viac ako naši, a oni to celkom vedome zneužívajú.“ [M(1)]

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

Slovakia currently pursues various prevention activities that are not primarily aimed at combating labour exploitation but specifically target trafficking in human beings. Moreover, one should note that all prevention programmes described below are primarily aimed at protecting Slovak citizens abroad, as opposed to migrant workers in Slovakia. The respondents who described these activities pointed out that while migrant workers were not explicitly excluded from these prevention programmes, there were no concrete measures or specific activities that would take into account the specific situation of migrant workers who come to Slovakia from abroad. However, one interviewee representing supporting organisations pointed out that their organisation cooperates with consuls of countries of origin in providing information and support about human trafficking and potential labour exploitation:

*“Before they are posted abroad, consuls undertake general preparation. As part of their training, we inform them about the services provided by our migration information centre; [once in the country of their posting], they encourage people who intend to travel to Slovakia to check our website just in case and contact us while still in their home country so that they arrive here well prepared. Also, we inform them about our programme to help victims of human trafficking and teach them the basics of detecting and identifying these victims as well as subsequent procedures.” [S(1)]*

*“Áno, aj konzuli v rámci pred výjazdovej prípravy, my tam máme svoju čas v rámci pred výjazdového vzdelávania ich, kde jednak hovoríme o službách migračného informačného centra, kde oni potom vedia sprostredkovať, že kto ide na Slovensko aby si pre istotu pozrel našu stránku, aby nás kontaktoval ešte z krajiny pôvodu, aby sem prišiel pripravený a takisto ich informujeme aj o programe pomoc obchodovaným osobám a o tom, ako odhaliť prípadnú obeť obchodovania s ľuďmi, ako ju identifikovať a znova čo potom, aký postup potom zaujať.” [S(1)]*

The roles in the field of prevention of trafficking in human beings are performed by the Department of Crime Prevention of the Ministry of Interior and the Information Centre to Combat Trafficking in Human Beings, which reports to the same ministry. Several respondents representing state administration, especially those from category “P” and “N”, described an ambitious programme aimed at preventing trafficking in human beings, which encompassed various activities. Most importantly, it is Gift Box Slovakia, an awareness-raising campaign that was launched in January 2014 and targets mostly public places such as airports and shopping malls in regions where people face the greatest risk of becoming victims of trafficking in human beings.

*“The campaign’s basic motive is a gift box [that symbolises situations] when potential perpetrators present [lucrative job offers] that may eventually turn into trafficking in human beings. We deliberately used the motive of a gift box that looks as something glamorous on the outside but inside it hides concrete cases of trafficking in human beings for the purpose of forced labour and sexual exploitation, giving an overview of all potential forms in which a person may become a victim of traffickers in human beings.” [N(1)]*

*„Ide o krabicu s darčekom, kde tak, ako to väčšinou v týchto ponukách a motiváciách pre obeť obchodovania s ľuďmi prebieha, kedy im potenciálni páchatelia ponúkajú niečo vynikajúce a nakoniec z toho môže byť práve obchodovanie s ľuďmi. Práve túto myšlienku sme využili pri krabici s darčekom, ktorá vyzerá navonok ako pozlátka, vo vnútri sa ale nachádzajú spomenuté prípady obchodovania s ľuďmi aj za účelom*

*nútenej práce, ale aj sexuálneho vykorisťovania. Sú tam samozrejme spomenuté aj všetky ostatné formy a prípady, akými sa človek môže stať obeťou obchodovania s ľuďmi.“ [N(1)]*

Part of the campaign is providing information about government institutions and non-governmental organisations that should be contacted if people become victims of trafficking in human beings. Various institutions (e.g. employment agencies, police, or facilities for asylum seekers) put up posters informing potential victims about the same. According to one respondent from category “S”, these posters could also be helpful to migrant workers if they were only able to speak Slovak as they are only available in Slovak. The IOM organises meetings and public discussion in schools around Slovakia during which it informs young people of the risks of trafficking in human beings or labour exploitation ([S(2)]. Another respondent from category “S” said they distributed brochures, fliers and self-identification forms for potential victims of trafficking in human beings in several language mutations; the fliers are used by members of the foreign police, clerks of the Bureau of Border and Alien Police (UHCP) and employees of facilities for asylum seekers in contact with potential victims [S(1)].

In 2008, the Ministry of Interior in cooperation with the IOM set up a free emergency helpline (0800 800 818) that provides information on potential risks of labour exploitation or trafficking in human beings. The helpline is open every day between 9.00 and 17.00. Again, though, one should note that the helpline is designed primarily for Slovak citizens who have or may potentially become victims of trafficking in human beings abroad.

In cooperation with the Ministry of Interior, the IOM also provides information on the risks of trafficking in human beings to people who are about to leave the country, for instance on bus lines headed abroad or in booking offices. At the same time, they spread information on the helpline as well as organisations that specialise in victim support [S(1)]. The target group of this awareness-raising campaign also includes recruitment agencies.

*“We strive to implement these measures in cooperation with recruitment agencies. We want them to take initiative in informing potential job seekers who are interested in working abroad about the risks involved.” [N(1)]*

*„Tieto opatrenia sa snažíme robiť aj s pracovnými agentúrami. Chceme, aby tieto agentúry, najlepšie dobrovoľne, informovali v rámci svojich aktivít potenciálnych zamestnancov a uchádzačov o prácu aj o týchto rizikách.“ [N(1)]*

Non-governmental organisations and government institutions that specialise in helping migrant workers and defending their rights (i.e. organisations from categories “S” and “W”) implement preventive measures through organising educational activities, providing legal counselling, explaining valid laws, highlighting various risks related to migrant workers’ instable status on the labour market and so on. For instance, they strive to help migrant workers improve various skills (e.g. language) so that they are better equipped to review their labour contracts and avoid the pitfalls of labour exploitation.

*“As far as advocacy goes, when working with clients ... we provide them with basic information concerning the risks they may face in the process of seeking jobs or performing at it.” [S(1)]*

*„Čo sa týka advokácie, tak my v rámci práce s klientom (...) mu poskytujeme základné informácie týkajúce sa rizík, ktorým on môže byť vystavený pri hľadaní si práce alebo niekde už v práci.“ [S(1)]*

At the same time, these subjects provide free counselling to foreigners who have been granted a tolerated residence status, which does not allow them to work in Slovakia. The point is that

many of them work illegally, and if they were caught, they would be immediately deported. In compliance with the EU directive,<sup>48</sup> though, if these persons have become victims of severe forms of labour exploitation, they are eligible to obtain a tolerated residence for 90 days and must not be expelled from the country as long as investigation of their case is pending. Many foreigners are not aware of this legislation and fail to turn to applicable institutions out of fear of deportation. As part of their routine performance, labour offices and labour inspectorates provide counselling to all potential or existing workers in compliance with their statutes and mandates.

*“We provide basic counselling to them like where to go, how to take care of certain things, what to look out for. Subsequently, we can direct them to the Social Insurance Company, tax office, police, the International Organisation for Migration and so on.” [M(1)]*

*“My dávame to základné poradenstvo, kde ísť, ako vybaviť, na čo si dať pozor. Potom ich už vieme nasmerovať na sociálnu poisťovňu, daňový úrad, políciu alebo na Medzinárodnú organizáciu pre migráciu a podobne.” [M(1)]*

#### 4.2.1. Good practice

|   |  |
|---|--|
| <b>Title (original language)</b>  | L'udia nie sú na predaj – GIFT BOX Slovakia  |
| <b>Title (EN)</b>   | People are not for sale – GIFT BOX Slovakia  |
| <b>Organisation (original language)</b>   | Ministerstvo vnútra SR a Slovenská katolícka charity spolu so STOP THE TRAFFIK a Globálnou iniciatívou OSN pre boj proti obchodovaniu s ľuďmi  |
| <b>Organisation (EN)</b>  | Ministry of Interior of the Slovak Republic and Slovak Catholic Charity together with STOP THE TRAFFIK and the UN Global Initiative to Fight Human Trafficking   |
| <b>Government / Civil society</b>   | Government together with civil society   |
| <b>Reference</b>  | Official website of the campaign against human trafficking: <a href="http://www.obchodsludmi.sk/giftbox/index.php">www.obchodsludmi.sk/giftbox/index.php</a>   |
| <b>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</b> | January 10, 2014 with no clear ending  |
| <b>Type of initiative</b>   | Interactive campaign   |
| <b>Main target group</b>  | General public including migrants, even though it does not specifically target them  |
| <b>Indicate level of implementation: Local/Regional/National</b>  | National   |
| <b>Brief description</b>  | People are not for sale – GIFT BOX Slovakia is an interactive campaign aiming to raise public awareness about trafficking in human beings. The Gift Box is a large 3D box with an attractive packaging entailing job proposals which contains real stories of the trafficked people inside. The campaign should lead to the realisation that very often the tempting offers could have a criminal background and it is relatively easy to become a victim if one is not aware of the potential |

<sup>48</sup> 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.

|  |  |
|--|--|
|  | risks. Therefore, the box not only offers real stories and raises awareness; it also informs how to avoid becoming a victim of trafficking. The box is always placed in a crowded public space, e.g. in front of a shopping centre.  |
| <b>Highlight any element of the actions that is transferable</b>   | The Gift Box campaign was originally implemented in the United Kingdom in 2012. The original idea came from the NGO 'Stop the Traffik' and the UN Global Initiative to Fight Human Trafficking. Therefore, the practice has been originally designed to be transferable to different settings. |
| <b>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</b>  | The campaign is carried out by governmental as well as non-governmental institutions, which ensures mutual cooperation. The box is transportable and the campaign is to be implemented in all Slovak regions.  |
| <b>Give reasons why you consider the practice as having concrete measurable impact</b>   | The Gift Box is installed in public places; therefore, it is easily accessible to people who would otherwise need to seek the information themselves. Therefore, placing the box in public places can help spark the public debate.  |
| <b>Give reasons why you consider the practice as transferrable to other settings and/or Member States?</b>   | As it was already stated, the practice has been designed to be transferable to other countries.  |
| <b>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</b> | The Ministry of Interior grants its authority as a guarantor of the project. The main design has been adapted from the STOP THE TRAFFIK and UN Global Initiative to Fight Human Trafficking.   |
| <b>Explain, if applicable, how the practice provides for review and assessment.</b>  | The campaign is aimed at raising awareness of the general public; therefore, no specific review or assessment is planned.  |

### 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

#### 4.3.1 Labour exploitation of migrant workers without residence permits

According to most respondents, migrant workers without valid residence permits who are exposed during random labour inspections are not viewed as victims of labour exploitation but primarily as illegal migrants, even though they may have worked under exploitative conditions. In other words, the immigration police examine the victims' residence status, and if it is illegal, they launch the process of administrative expulsion. This view was presented especially by respondents with victim support organisations (category "S") and monitoring institutions (category "M").

The following two quotes illustrate how these migrant workers are treated according to relevant institutions' representatives.

*"I have not heard that [migrant workers] caught during these raids – and there have been a few – that these people would be viewed primarily as victims of labour exploitation... their principal role is to combat illegal migration."* [S(1)]

*„Nestretla som sa tu s tým ešte, že pri takejto razii, a takéto razie tu boli (...) tak že by tých ľudí vnímali primárne ako nejaké obeť alebo ako nejakých vykorisťovaných (...) oni primárne musia potláčať nelegálnu migráciu.“* [S(1)]

*"Judging from our past experience with the immigration or economic crime police, they deal with individual persons and are [primarily] interested in whether they are legal or illegal in Slovakia. They are not really interested in whether [these people] have or have not been exploited and what are the consequences of their actions, i.e. whether [they have worked under] undignified [conditions] or something like that."* [M(1)]

*„Podľa toho ako my spolupracujeme s cudzineckou políciou alebo s ekonomickou kriminalitou, tak cudzinecká polícia sa zaoberá tou fyzickou osobou ako takou. A rieši to, či tá fyzická osoba je na Slovensku legálne, nie je legálne. Viac menej ich nezaujímá to, že či boli alebo neboli vykorisťovaní a akú má tá činnosť cudzinca následky voči nemu samotnému. Či je to nejaké nedôstojné alebo tak, to veľmi nie.“* [M(1)]

Respondents from the ranks of lawyers, prosecutors and judges (i.e. categories "J" and "L") shared a similar experience, i.e. that labour exploitation is not the principal focus of the police; typically, migrant workers who are identified as illegal are placed in police detention centres and the process of administrative expulsion is launched. According to one of the respondents from category "L", later if ever at all will the police begin to investigate potential law violations (e.g. labour exploitation) on the part of the employer. But that is often rendered impossible exactly by the fact that illegal migrants have been detained and deported; for the same reason, it is impossible to compensate them as victims of labour exploitation.

Respondents with the police and institutions specialising in prevention of crime and trafficking in human beings presented a different opinion. According to them, law enforcement organs act

in compliance with valid legislation, which allows to identify even illegal migrants as victims of labour exploitation or trafficking in human beings and to grant them a tolerated residence status until the investigation is over. Also, they pointed out that if illegal migrants were identified as victims of trafficking in human beings, they were eligible to enter the official programme of victim support.

Interviews did not provide information on real investigation of labour exploitation. It seems to be common practice to identify illegal work and not to focus on labour exploitation. Especially in the case of migrants, monitoring institutions do not direct their investigation on labour exploitation and rely only on motions reported by migrants themselves [M(1)]. But it is rarely the case (as explained in Chapter 6). Ineffective monitoring mechanism and criminalisation of victims as it is explained in this report have direct impact on these practices. Especially migrants are not perceived as victims, but rather as perpetrators (for illegal stay in the country or illegal work).

*“It depends on how fast labour offices and labour inspectorates are able to identify cases of illegal employment. As soon as they identify such case we can talk about them [migrants] being the victims if they meet the conditions stipulated by law. That means if the case involves an adult employed under particularly exploitative conditions or illegally employed minor.” [P(1)]*

*„Záleží na tom, ako rýchlo nám úrady práce alebo inšpektoráty identifikujú nelegálne zamestnávanie. Keď nám ju identifikujú, môžeme sa baviť o tom, že sú to obeť, pokiaľ spĺnia podmienky, ktoré náš zákon hovorí. To znamená, že ak ide o plnoletého, ktorý je zamestnaný za obzvlášť vykorisťujúcich podmienok, alebo po druhé, ak je to nelegálne zamestnaný maloletý.“ [P(1)]*

It is the first sentence of the quote that is of particular importance here. As we have said earlier, the effectiveness of monitoring institutions is not particularly high, which means that they very seldom come across severe forms of labour exploitation. This issue was also brought up during the focus group discussion in which representatives of monitoring institutions admitted it was extremely difficult to expose illegal labour or labour exploitation in Slovakia. According to one of the focus group participants, their work is complicated by organisations of victim support as they refuse to file motions regarding illegal employment or labour exploitation of migrant workers [M(1)]. The representatives of victim support organisations, for their part, argued by the motivation to protect their clients, the knowledge of police procedures and the fear that their clients would either lose their jobs immediately or would be expelled from the country as illegal migrants [S(1)].

The procedure of identifying victims of trafficking in human beings and labour exploitation is closely related to **police measures aimed at halting labour exploitation and protecting its victims**. According to available information, only three foreigners have been placed into the Programme to Support and Protect Victims of Trafficking in Human Beings over the past two years. The respondents did not have any statistics on identified victims of severe forms of labour exploitation. All this suggests that there are very few such measures adopted in practice.

*“Well, this is still in its infancy really. It always depends on the competence [of police officers and clerks].” [S(1)]*

*„Tak toto je u nás fakt ešte v plienkach. Vždy to závisí od erudovanosti [policajtov a úradníkov].“ [S(1)]*

Judging from frequent application of the administrative expulsion procedure, very few migrant

workers are identified as victims. According to one of the respondents from category “P”, the measures are spelled out by the valid law.

*“[We do] everything the law allows us, be it the Act on Residence of Foreigners, Criminal Code, Code of Criminal Procedures or other laws. But it is up to the investigator with the National Unit to Combat Illegal Migration to decide whether there are reasons to prosecute the perpetrators; similarly, it is up to the Alien Police to decide whether the victims are eligible to obtain a tolerated residence status; finally, it is up to the labour inspectorate or the office of labour, social affairs and family to decide [whether there are reasons to sanction the employer for violating] the labour law.” [P(1)]*

*„Robíme všetko, čo nám povoľuje legislatíva, či už zákon o pobyte cudzincov, trestný zákon, trestný poriadok alebo iné zákony. Ale či je naplnená skutková podstata trestného činu musí skonštatovať vyšetrovateľ národnej jednotky. Či je naplnený dôvod na udelenie tolerovaného pobytu skonštatuje oddelenie cudzineckej polície. A či je dôvod na postih z pracovnoprávneho hľadiska, to posudzuje úrad práce a inšpektoráty práce.“ [P(1)]*

If migrant workers are identified as victims of trafficking in human beings, they are eligible to enter the Programme to Support and Protect Victims of Trafficking in Human Beings. The programme protects the victims throughout investigation, accommodating them in protected housing facilities and providing all kinds of help to them (e.g. medical care, social and psychological assistance). Victims may also be offered the status of protected witness [N(1)].

In compliance with the mentioned EU directive, victims that have been granted a tolerated residence are allowed to remain in the country until the investigation is over; however, available information suggest this is rarely the case.

*“I admit I don’t know of a case in which the victim would be granted a tolerated residence status and would be allowed to remain in the country until the end of investigation.” [L(1)]*

*„Priznám sa, že nepoznám prípad, že by bol niekedy udelený takto tolerovaný pobyt, to znamená umožniť obeti zotrvať v krajine do skončenia vyšetrovania.“ [L(1)]*

So far, there has only been one case of granted tolerated stay to a victim of labour exploitation.

All migrants provided with the assistance within the Programme for Support of the Victims of Human Trafficking must be identified as victims of trafficking. However, obviously, not every victim of labour exploitation is a victim of human trafficking at the same time. This complicates the situation with providing support for many migrants. According to current legislation, the victims of labour exploitation can be assisted via the Programme of Support of Victims of Human Trafficking only in case they were trafficked. The current legislation regulating the relationship between labour exploitation and human trafficking is explained in chapter 2 of this report.

### ***Effectiveness of investigation and referring victims to victim support organisations***

Several respondents from categories “P” and “M” said effectiveness of referring victims to victim support organisations was high if the victims of trafficking in human beings or labour exploitation were truly identified. The police have in place precise mechanisms and methods of placing victims to the Programme to Support and Protect Victims of Trafficking in Human Beings.

The referral mechanisms in case of victims of human trafficking and victims of severe forms of labour exploitation are different [P(1)]

Firstly, in case where potential victim of human trafficking has been identified, the police contacts IOM to establish if the person is indeed a victim of human trafficking (see Chapter 3 for details on identification processes). In case he/she is confirmed to be a victim, the State Secretary of the Ministry of Interior decides whether the victim would be included in the Programme of Support [P(1)] (there is no overview of this decision-making, neither possibility of appeal).

In case the victim has been placed in the Programme of Support and Protection of the Victims of Trafficking in Human Beings, the Immigration Police grants them a permit for tolerated stay and the victim is being transferred to a safe environment. The cooperating NGOs in Slovakia include IOM, Slovak Catholic Charity and Crisis Centre DOTYK. The victim is provided with financial, psychological and social care and helped with the repatriation. The victim has 90 – 120 days to decide whether they wish to cooperate with the police or the prosecutor in the investigation of the crime [P(1)].

In case the victim decides they would not cooperate with the investigation, their protection and inclusion in the Programme ends and their status changes for that of an illegal migrant (or other status they had before the inclusion in the Programme) [P(1)].

In case the victim agrees with the cooperation, their tolerated stay in the territory is prolonged by 30 days, that can be prolonged as many times as needed, but only in case the state prosecutor still needs the victim's presence in the territory of the Slovak Republic.

The referral mechanism for the victims of severe forms of labour exploitation (that are not at the same time victims of human trafficking) is different, since they are not under the purview of the Ministry of Interior, but that of the Ministry of Labour, Social Affairs and Family. However, the Ministry of Labour does not operate with the term of employee's victimhood or that of victims of labour exploitation and has no referral mechanisms for such victims.

But again, one should note that over the past several years they identified very few victims from the ranks of migrant workers, although case studies suggest that both phenomena are relatively widespread. So, the problem is rather the highly inefficient work of law enforcement organs in the field of identifying victims, which subsequently renders provision of victim support impossible.

Significantly more effective in this respect are organisations that specialise in helping migrants. These organisations are often in touch with migrants throughout their stay in Slovakia and are able to provide legal, psychological and other forms of assistance to victims; however, as we have mentioned earlier, they rarely refer potential or actual victims to the police or other government institutions, mostly out of fear that they may cause them lose their jobs or be expelled from the country (for further details, please see Chapter 6 – Attitudes).

*“The less the police officers are sensitive to indicators of trafficking in human beings, the worse the sense of direction the victims receive. While the police are less sensitive to these [indicators], civic associations that specialise in these issues tend to identify many more people as victims of trafficking in human beings. As a result, the scissors open and the positions [of involved subjects] tend to diverge. Naturally, persons the police fail to identify or qualify as a victim do not receive proper instructions. Subsequently, civic associations or we layers may only deplore the fact that the victim was not properly instructed. So, the ability to identify victims is key in my opinion because once the victim is identified I assume the police must adopt at least minimum [precautionary measures]. The problem is that the police don't do it out of [undue] caution; I am quite sure of that.” [L(1)]*

„...čím menej je policajt schopný vnímať identifikátory obchodovania s ľuďmi, tým horšie nasmerovanie tá obeť dostane. Čiže sú to roztvorené nožnice. Polícia je menej senzitívna na túto okolnosť, kým občianske združenie, ktoré sa tomu venuje, identifikuje omnoho viac ľudí ako obeť obchodovania s ľuďmi. A samozrejme, potom sa to rozchádza, osobu, ktorú polícia neidentifikuje, ak ju ani nepovažuje za obeť, tak ju ani nepoučí v tej miere. Potom občianske združenie alebo my právnici môžeme hovoriť, že škoda, že nebola poučená, no ale my sme ju identifikovali. Takže ja za kľúčové považujem schopnosť identifikovať obeť, lebo ak tá obeť je už identifikovaná, tak v tomto predpokladám, že polícia urobí už tie aspoň minimálne kroky. Ale z dôvodu opatrnosti to polícia nerobí, to som presvedčený.“ [L(1)]

The representatives of organisations that specialise in supporting victims (i.e. category “S”) as well as the lawyers who represent them (i.e. category “L”) do not view methods of investigating labour exploitation as effective. According to them, the major flaw of the entire process is identifying victims. The police very often qualify trafficking in human beings or labour exploitation as different criminal offences such as procuring, maltreatment of close or entrusted person and so on. Consequently, the victims are not entitled to special protection in the form of being placed in the Programme to Support and Protect Victims of Trafficking in Human Beings or obtaining a tolerated residence status in the case of severe forms of labour exploitation. Another problem is that the police often view migrants as potential culprits rather than potential victims, which is why they rather tend not to believe them.

*“But I see serious shortcomings as far as securing evidence goes and I view this investigation strategy as detrimental to the victim. In that case of ours, we also came to a point when the potential perpetrator and the victim disagreed over fundamental aspects and it became clear that one of them was lying. At that point, the case investigator decided to subject the victim to psychological examination in order to test her veracity. So you can see the imbalance.”* [L(1)]

„Ale aj pri výbere dôkazov, tak tam sú medzery, taká stratégia vyšetovania mi príde v neprospech obeť. Aj tu sme dospeli do štádia, kedy potenciálny obvinený a poškodená sa rozchádzajú v zásadných veciach a je evidentné, že niekto z nich musí klamať. A vyšetovateľ sa rozhodol, že urobí psychologické vyšetrenie na pravdovravnosť obeť obchodovania s ľuďmi. Takže taká nerovnováha v prístupe tam je.“ [L(1)]

Also, effectiveness of investigation is negatively affected by ignorance of valid laws on the part of police officers and other clerks who may come in contact with potential victims as first ([L(1)]. Currently underway, though, is an extensive series of training courses for employment agencies' clerks, social fieldworkers and members of the police force in the field of identifying victims of trafficking in human beings, so it can be assumed that the situation will improve in the future [N(2); S(1)].

*“Everybody is trained on what organisations cooperate with us and they automatically refer [the victims] to them. Also, law enforcement organs and the police know that they should inform the victims on the programme, i.e. that this kind of programme is available, that it encompasses this and this and that the victim can be placed into this programme.”* [N(1)]

„Všetci sú vyškolení, ktoré organizácie s nami spolupracujú, samozrejme ich na nich odkazujú a taktiež orgány činné v trestnom konaní, teda polícia vie, že má obeť poučiť o programe. Že tu máme takýto program, čo obsahuje tento program a že môže vstúpiť do tohto programu.“ [N(1)]

## 5 Victim support and access to justice

### 5.1 The status of the victim in criminal proceedings

Before proceeding with the assessment of victims support and access to justice in cases of migrant workers' labour exploitation the status of victims in general in criminal proceedings should be clarified.

As far as protection of crime victims is concerned, a major problem is that Slovakia's legal order fails to define the term of a victim. For the purpose of criminal, administrative and civil law proceedings, these persons are viewed as "the aggrieved party" in compliance with Article 46 Paragraph 1 of Act No. 301/2005 Coll. (hereinafter referred to as the "Code of Criminal Procedures").<sup>49</sup> From the viewpoint of criminal law, there are no specific law-stipulated criteria to define the victim of trafficking in human beings.

In suspected cases of human trafficking victimhood is assessed using the definition from the internal regulation of the Ministry of the Interior of the Slovak Republic (Interior Ministry), namely the Interior Ministry's Order No. 47/2008 on Implementation of the Programme to Support and Protect Victims of Trafficking in Human Beings, as amended by the Interior Minister's Order No. 170/2010. If the person is officially recognised as a victim by the Interior Ministry's State Secretary he/she may enter the Programme of Support and Protection of Victims of Trafficking in Human Beings (see Chapter 4). But in criminal proceedings they are viewed as "the aggrieved party."

In the field of migrant workers' labour exploitation there are no guidelines to assess one's victimhood. Victims are thus likely to be assessed according to general criteria that also apply to victims of other criminal offences. They tend to be viewed as "the aggrieved party."

### 5.2 Victim support, including available support services

The system of supporting and assisting victims of labour exploitation is affected by a number of factors.

Most importantly by:

- insufficient sensitivity of public authorities and their readiness to perceive migrant workers as actual or potential victims of labour exploitation;
- existence of the mechanism designed to help victims of trafficking in human beings, which many actors believe is also designed for victims of labour exploitation;
- the fact that victim support organisations insufficiently focus on or specialise in issues of labour exploitation.

As we have pointed out, **public authorities typically refuse to see victims of labour exploitation as actual victims**; instead, they tend to perceive them solely as foreigners and

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<sup>49</sup> Article 46 Paragraph 1 of the Code of Criminal Procedures reads: "The aggrieved party is a person that has incurred health, property, moral or other damage or has seen its law-guaranteed rights and freedoms violated or threatened as the result of a criminal offence. In cases circumscribed by this law, the aggrieved party has the right to approve criminal prosecution, to claim indemnification, to make proposals to produce or complete evidence, to submit evidence, to review and examine files, to attend court proceedings and public hearings on appeals or agreements on guilt and punishment, to comment on evidence produced, to present the closing statement and to submit remedial measures in the scope circumscribed by this law." Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

their top priority is to check their legal status and make sure that they have not violated immigration legislation, particularly Act on Residence of Foreigners. [S(2); J(2)].

In other words, migrant workers who work under particularly exploitative conditions are perceived primarily as illegal migrants.

*“[They are viewed] as illegal migrants, definitely. The first thing the [foreign police] start to check is who they are, where they come from and whether they have valid residence permits... I mean, I have not encountered that the police would be primarily interested in employers.” [L(1)]*

*„Určite ako ilegálny migrant. [ÚHCP] primárne začne zisťovať, kto je, odkiaľ je a či má povolenie na pobyt.....Nestretla som sa teda s tým, že by sa primárne zaujímala polícia o zamestnávateľa ako takého.“ [L(1)]*

If the police find migrant workers who work under particularly adverse conditions and simultaneously doubt the legality of their residence, the first thing the police verify is their residence status.

*“[The police] detain the migrant because he doesn't have a valid residence permit. They place him in police detention centres for foreigners and the process of administrative expulsion is launched ... [Migrant workers are] certainly perceived as illegal migrants, that's what I encounter.” [L(1)]*

*„Zaistí migranta, pretože nemá povolenie na pobyt. Umiestni ho na útvare policajného zaistenia pre cudzincov a začne s ním konanie o administratívne vyhostenie... vníma ho určite ako ilegálneho migranta. S týmto sa stretávam.“ [L(1)]*

Another important factor that adversely affects the quality of helping victims of labour exploitation is **existence of an institutionalised mechanism designed to help victims of trafficking in human beings**. The mechanism operates under the patronage of the Ministry of Interior although it is practically implemented by non-governmental organisations based on bilateral contracts with the ministry. This mechanism affects public authorities' perception of labour exploitation. Some respondents spoke of the Programme to Support and Protect Victims of Trafficking in Human Beings<sup>50</sup> as a system that was also designed for victims of labour exploitation whereas these victims in fact receive only minimum assistance and support as long as they fail to comply with the criteria stipulated by said programme, i.e. they are not simultaneously victims of trafficking in human beings.

One respondent with an organisation that specialises in supporting victims of trafficking in human beings said they were also able to provide their services to victims of labour exploitation; however, she added the organisation had not had a single such victim and that even if this kind of victims contacted it, they would first have to comply with the criteria to be placed into the Programme to Support and Protect Victims of Trafficking in Human Beings in order for the organisation to be able to help them.

*A: “Depending on what the victim needs, we [can place them into] a programme of protected housing on a secret address, [we can provide them with] legal counselling, financial assistance, medical care, retraining and language courses, personal assistance and psychological support. We can provide virtually anything.”*

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<sup>50</sup> Slovakia, Ministry of Interior of the Slovak Republic (*Ministerstvo vnútra SR*) (2014), Programme to Support and Protect Victims of Trafficking in Human Beings; available at: [/www.minv.sk/?program/podpory/a/ochrany/obeti](http://www.minv.sk/?program/podpory/a/ochrany/obeti).

Q: "Does this also concern labour exploitation?"

A: "Yes." [S(1)]

A: „Podľa toho, čo tá obeť potrebuje, máme program chránené bývanie s utajovanou adresou, právne poradenstvo, finančnú pomoc, zdravotnícku starostlivosť, rekvalifikačné kurzy, jazykové kurzy, potom osobnú asistenciu, psychologickú podporu. Všetko môžeme poskytnúť.“

Q: „To sa týka aj pracovného vykorisťovania?“

A: „Áno.“ [S(1)]

The organisations that specialise in supporting migrants in general or victims of trafficking in human beings in particular **do not focus on issues related to labour exploitation**. In practical terms, this means they do not have in place any system of identifying victims of labour exploitation or any plan of working with these victims. If they do provide support services to victims of labour exploitation, it is often rather marginally or indirectly as part of tackling other problems, for instance legalising their residence status in Slovakia.

*“We don’t deal with labour exploitation per se. We have a programme aimed at helping the victims of people trafficking, so if anyone becomes a victim of human trafficking for the purpose of forced labour and exploitation... we have in place a programme of returning these people to the country of origin. Most of our clients are Slovak but every now and then we stumble upon foreign nationals as well. The programme also includes reintegration so if someone is granted asylum in Slovakia, for instance, we can help in facilitating their integration into society for a period of six months.”* [S(1)]

*„Pracovným vykorisťovaním ako takým sa nezaobráme. Máme program pomoci obchodovaným osobám, takže ak je niekto obeťou obchodovania s ľuďmi za účelom nútenej práce a vykorisťovania... tak máme program návratu do krajiny pôvodu. Väčšinou sú to slovenské obeť, ale tu a tam sa nájde aj zahraničná obeť. A ten program zároveň zahŕňa aj reintegráciu, takže ak osoba na Slovensku napríklad dostane azyl, tak vieme jej ponúknuť polročnú pomoc pri integrácii do spoločnosti.“* [S(1)]

One respondent with an organisation that specialises in supporting victims of human trafficking said the organisation had not yet set any rules or introduced any specific assistance programme as far as improving its services for labour exploitation victims was concerned.

*“Since we don’t have any practical experience [with labour exploitation of migrant workers], we have not set up any programme; there was no reason to.”* [S(1)]

*„Vzhľadom na to, že nemáme s týmto skúsenosť [s pracovným vykorisťovaním cudzincov], tak sme ani nenastavovali tento program, nemali sme dôvod.“* [S(1)]

### **5.2.1. Organisations that provide support and assistance to victims of labour exploitation**

The following organisations actively operate in the field of providing support and assistance to victims of labour exploitation:

**The International Organization for Migration (IOM)** – the Bratislava IOM mission cooperates with the Ministry of the Interior of the Slovak Republic on the Programme to Support and Protect Victims of Trafficking in Human Beings. Besides providing various forms of assistance to victims of trafficking in human beings who join the programme, the IOM operates a free emergency helpline that provides counselling and information to victims of trafficking in human beings or other interested persons who seek information on these issues.

The IOM also operates the Migration Information Centre (MIC) in Bratislava, which provides assistance and counselling to foreigners regarding their life in Slovakia (for further details, please see [www.iom.sk](http://www.iom.sk)).

The OZ **Marginal** civic association is a non-governmental organisation that provides counselling and support to foreigners who have been granted asylum or subsidiary protection in Slovakia. A substantial part of its activities is assistance to clients in seeking jobs and tackling labour law problems, for instance negotiating with their employers in case of labour law disputes (for further details, please see [www.marginal.sk](http://www.marginal.sk)).

**The Human Rights League** is a non-governmental organisation that specialises primarily in legal counselling and legal representation in the field of legalising foreigners' residence in Slovakia. Its focus on counselling clients on labour law issues is rather marginal (for further details, please see [www.hrl.sk](http://www.hrl.sk)).

**The Slovak Catholic Charity** is a non-governmental organisation established by the Catholic Church in Slovakia, which cooperates with the Ministry of Interior on the Programme to Support and Protect Victims of Trafficking in Human Beings. Besides helping victims of trafficking in human beings, the organisation is active in the field of identifying and monitoring these victims and pursuing prevention activities in an asylum centre in Rohovce, police detention centres for foreigners in Medveďov and Sečovce and a reception centre in Humenné. The organisation currently runs a project aimed at counselling foreigners with a tolerated residence status in Slovakia on labour law issues (for further details, please see [www.charita.sk](http://www.charita.sk)).

**DOTYK – Slovak Crisis Centre** is another non-governmental organisation that cooperates with the Ministry of Interior on the Programme to Support and Protect Victims of Trafficking in Human Beings. The organisation provides complex assistance to victims of trafficking in human beings and victims of domestic violence (for further details, please see [www.dotyk.sk](http://www.dotyk.sk)).

**The Slovak Confederation of Trade Unions (KOZ)** is the largest nationwide association of trade unions organisations in Slovakia. KOZ provides labour law counselling, consultations and even legal representation to registered employees. It closely cooperates with the National Labour Inspectorate (for further details, please see [www.kozsr.sk](http://www.kozsr.sk)).

Services to victims of trafficking in human beings that have joined the Programme to Support and Protect Victims of Trafficking in Human Beings are provided free of charge.

Other victims, for instance victims of labour exploitation who have not been simultaneously recognised as victims of trafficking in human beings, receive support and assistance on a much smaller scale. These victims can turn to one of several non-governmental or trade unions organisations that operate in this area. Unfortunately, these organisations do not specialise in labour exploitation issues as they do not have in place any method of identifying victims of labour exploitation or any plan to help them; nevertheless, they are able to provide their clients with counselling on basic labour law issues, which is free of charge.

Commercial lawyers and law firms also provide these services, but they are not free of charge. Some non-governmental organisations have established cooperation with commercial lawyers if it is necessary to get professional lawyers involved in tackling some of their clients' problems, for instance in case of criminal proceedings before a court of justice. In such cases, services of the lawyers are either free of charge or are covered by the cooperating non-governmental organisation. One respondent, a lawyer working with a non-governmental organisation, described their cooperation with a commercial lawyer in the following way:

*“Currently, for instance, we have one victim of trafficking in human beings whom I represent in asylum procedures. We have delegated matters related to criminal proceedings to this solicitor because he also represents other clients in criminal proceedings. We have never done that, we have not specialised in it, we have no expertise in this field, so we strive to delegate [these cases to professionals] who are able to help our clients in a relevant and effective manner.”* [L(1)]

*„Máme napríklad jednu obeť obchodovania s ľuďmi, ktorú ja zastupujem v azylovom konaní, a práve na toho advokáta sme posunuli veci, čo sa týkajú aj trestného konania, pretože on zastupuje aj iných klientov v trestnom konaní. My sme to nikdy nerobili, nevenovali sme sa tomu, nemáme k tomu expertízu, takže sa snažíme dať to na ľudí, ktorí vedia relevantne a naozaj efektívne pomôcť tým klientom.“* [L(1)]

In order for victims to receive the full package of services designed for victims of trafficking in human beings, they must be identified as victims of trafficking in human beings and placed in the Programme to Support and Protect Victims of Trafficking in Human Beings. The proposal to place a victim in the Programme is filed by the police and requires an approval by the state secretary of the Ministry of Interior as well as the victim's consent. This step is of crucial importance from the viewpoint of providing available services to the victim and further procedures.

*“So, the ability to identify victims [of trafficking in human beings] is key in my opinion because once the victim is identified I assume the police must adopt at least minimum [precautionary measures].”* [L(1)]

*„Takže ja za kľúčové považujem schopnosť identifikovať obeť [obchodovania s ľuďmi], lebo tá obeť je už identifikovaná, tak predpokladám, že polícia urobí už aspoň tie minimálne kroky.“* [L(1)]

However, interviews with respondents revealed that the practice of identifying victims is problematic and despite the existence of formal criteria and a methodological guideline for the police, *“identification of victims of trafficking in human beings very much depends on a concrete police officer and his assessment of the situation”* [S(1)]. As a result, most victims of trafficking in human beings, let alone victims of labour exploitation, are not formally identified as victims and are detained and deported instead.

Once the victims are officially recognised as victims of trafficking in human beings, they are entitled to receive the full scope of support and assistance that is available to all foreigners as well as Slovak citizens regardless of their type of residence and legal status.

Non-governmental organisations that provide assistance and support to foreigners outside the scope of bilateral contract with the Ministry of Interior usually operate based on projects; consequently, their ability to help victims often depends on how the project defines the type of support services as well as the target group of people who are eligible to receive them.

With respect to the effectiveness of service provision to victims of human trafficking, respondents (for example, two S group experts) indicated the need for improvement. However, they also pointed out the lack of personnel resources (lack of qualified lawyers) that prevents them from working with victims more efficiently.

*“We could certainly improve a lot of things if we only managed to increase our capacity so that we don't basically depend on a single person, i.e. I plus one lawyer, to deal with these issues on a full-time basis.”* [S(1)]

*“Určite by sme mohli mnoho vecí zlepšiť, ak by sa nám podarilo sa kapacitne posilniť tak, že by sme nemali primárne len jednu osobu mňa, plus jednu právničku, ktorá by sa dokázala tejto téme tak plnohodnotne venovať, alebo možno že by sme to mali posilnené ešte o jedného človeka.” [S(1)]*

The respondents further mentioned difficulties with providing housing to victims of human trafficking. There are no separate housing facilities for men and for women:

*“Accommodation of men is a problem. There are not enough facilities and most of them are not specifically designed for male victims of trafficking in human beings; also, most male victims refuse to be consigned to such facilities as they prefer to return home to their families.” [S(1)]*

*„Ubytovanie mužov je problém. Je málo zariadení, väčšinou nie sú špecifické pre obeť obchodovania s ľuďmi mužov a potom muži nechcú väčšinou ísť do takého zariadenia, sa chcú väčšinou vrátiť domov k rodine.“ [S(1)]*

Given the rare incidence of confirmed cases of migrant workers' labour exploitation, some respondents were reluctant to comment on the effectiveness of the victim support system.

*“As far as victims of trafficking in human beings go, I can say the system was really very effective, partly perhaps because we didn't have too many of these victims. Each of the constituents seemed to know what it should do and do its part exactly when it was supposed to. As far as other victims are concerned, I really can't say whether such services exist at all, let alone whether they are effective or not.” [S(1)]*

*„Pokiaľ ide o obeť obchodovania s ľuďmi, tak tam možno aj tým, že sme mali tých obetí naozaj málo, ale tam viem povedať, že to fungovalo naozaj efektívne. ... Každá tá zložka vedela, čo má robiť. A my sme nastúpili vtedy, kedy sme mali a pomáhali sme, ale pokiaľ ide o tie ostatné obeť, tak to ani neviem, či sú nejaké služby anie ešte, či sú efektívne.“ [S(1)]*

Respondents further suggested measures that would significantly improve the system of support provision to victims of labour exploitation, e.g. informing migrants about their rights in general and about their situation and possibilities in Slovakia [S(1)] and ensuring sustainability of support organisations' funding.

*“[The system of victim support] would work perfectly if organisations had sustainable funding. So, sometimes the project ends and it is 3-4 months until there is another call for project proposals, another public procurement in which time organisations have no funding at all.” [S(1)]*

*„[Systém pomoci obetiam pracovného vykorisťovania] by fungoval úplne super, keby bola zabezpečená kontinuita toho financovania. Čiže niekedy skončí projekt a kým je ďalšia výzva, ďalšie verejné obstarávanie, ubehnú aj ďalšie tri- štyri mesiace, kedy organizácie nie sú financované nikým.“ [S(1)]*

Not all selected support organisations encountered victims of labour exploitation on a frequent basis. Some of them have not had such a client at all which is why they could not comment on the effectiveness of victim support system [S(2)].

Support organisations focusing on victims of human trafficking and victims of labour exploitation do not systematically check the quality of their services. It could be said they provide support services rather intuitively and not as a systematic and planned service pack.

*“The basic services such as room and board are certainly provided. But if the victims have any specific individual needs, we cannot always guarantee that they will be satisfied.” [S(1)]*

*„Také tie základné potreby, ako ubytovanie a strava, tak to určite pokryté je. Ale ak má tá obeť nejaké individuálne špeciálne potreby, tak nie vždy to vieme zaručiť.“ [S(1)]*

It is difficult to assess migrants' awareness of existing support organisations. IOM Bratislava employs cultural mediators (migrants active in their respective communities) to raise migrants' awareness but other organisations have no systematic approach to the issue.

*“I believe they are [informed] because we also employ our information centre and cultural mediators in particular communities, so I believe they are aware of us and know what we can help them with.” [S(1)]*

*„Využívame na to aj naše informačné centrum a kultúrnych mediátorov, ktorých máme v komunitách, takže ja si myslím, že [migranti] vedia o nás a vedia, ako im môžeme pomôcť.“ [S(1)]*

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

Since there are no guidelines on identifying victims of labour exploitation that have not been trafficked their victimhood is likely to be assessed according to general criteria that also apply to victims of other criminal offences. They are thus possibly viewed as “the aggrieved party.” Several ways of demanding compensation thus may apply also to victims of labour exploitation.

The aggrieved party may apply for indemnification directly during criminal proceedings (“adhesion proceedings”). According to Article 46 Paragraphs 3 and 4 of the Code of Criminal Procedures, the aggrieved party may propose that the court binds the defendant to indemnify the victim as part of the judgment of conviction. The proposal may not be filed if the indemnification claim has already been settled in civil law proceedings.

According to Articles 287 and 288 of Act No. 301/2005 Coll. as amended (Code of Criminal Procedures), the aggrieved party has the right to claim for compensation of damages. The criminal court may hear such a claim. If according to the result of evidence, the amount of damage is not precisely determined, or a court needs further evidence for the final decision, the court shall refer the victim to civil proceedings.

Several respondents in interviews confirmed that there were formal ways for victims of labour exploitation to demand compensation of lost wages or other damages that had been incurred as a result of labour exploitation. Most of them evaluated the valid legislation in this area as sufficient, saying compensation could be awarded in criminal or civil law proceedings.

*“I don't have exact information on how it works in practice, but as far as written law is concerned, the system is effective enough as it provides enough possibilities to win compensation in court... Yes, in principle there are possibilities to win compensation in court, but only if [the victims] have a labour contract and have not been employed illegally.” [J(1)]*

*“Nemám informáciu ako to vyzerá v praxi, ale pokiaľ ide o písané právo, tak je efektívne, poskytuje dostatok možností vysúdiť odškodnenie... Áno, sú možnosti na vysúdenie odškodnenia, ak majú zmluvu a nepracovali na čierne.” [J(1)]*

According to the Act on illegal work and illegal employment, compensation can also be paid to illegally employed workers (paragraph 7a section 1 and paragraph 7c section 1).

If, for various reasons, it is impossible to get compensation from the person who has caused the damage to the victim, there is a possibility to get it from government in compliance with Act No. 215/2006 Coll. **on Indemnification of Victims of Violent Criminal Offences** (hereinafter only as “Act on Indemnification of Victims of Violent Criminal Offences”); however, several respondents questioned the law’s practical effectiveness with respect to migrant workers, pointing out that very few of them are actually viewed as victims.

*“There is the law on indemnification of victims of violent criminal offences, which stipulates that under certain circumstances government must compensate them; the problem is that [it is extremely difficult] to comply with eligibility conditions [to demand indemnification] from government... These foreigners don’t stand a chance in this system...” [L(1)]*

*„Je tu ten zákon o odškodnení obetí trestných činov, kde sa hovorí že štát za určitých okolností musí odškodniť, len tie predpoklady na to, aby bol niekto oprávnený žiadať štát, kým sa splnia... Títo cudzinci nemajú šancu v tomto systéme...” [L(1)]*

*„Sometimes we don’t expose [migrant workers] during inspections at the workplace but learn about them afterwards; for instance, the Police Force informs us that illegal migrants have been deported but I cannot qualify it as illegal employment with all the consequences including settling back payments because we don’t have them [in the system]. For us to be able to...” [M(1)]*

*“Niekedy sa o nich (migrujúcich pracovníkoch) nedozvieme počas inšpekcie na mieste, ale až následne, napríklad, keď nás cudzinecká polícia informuje, že deportovala ilegálnych migrantov. Ja sa potom týmto prípadom nemôžem zaoberať ako nelegálnym zamestnávaním so všetkými následkami vrátane požadovania kompenzácie mzdy, pretože ich takto nemám v systéme zaznamenaných, aby som mohla...” [M(1)]*

The Act **on Indemnification of Victims of Violent Criminal Offences**,<sup>51</sup> as amended, transposed the Council Directive 2004/80/EC relating to compensation to crime victims in order to facilitate filing compensation motions also in other EU member states than that of the victim’s home country. The law regulates one-off financial indemnification of persons who suffered *health damage* (as well as property, moral or other damage, or whose other proprietary rights or freedoms have been violated or threatened) as a result of violent criminal offences. At the same time, the law circumscribes who is eligible to file compensation motions in compliance with this law. According to Article 3 of the law, eligible to file motions are citizens of the Slovak Republic, citizens of other EU member states, persons without nationality with permanent residence in some EU member state, or third country nationals, under the conditions and in the scope envisaged by the international convention that has been ratified and proclaimed in a law-stipulated manner, provided that the health damage has been caused on the territory of the Slovak Republic. Given the way the law defines the aggrieved party, it is very improbable that third country nationals would be viewed as eligible to file compensation motions, since pursuant to this Act, only a small number of third country nationals residing in Slovakia may submit the application (stateless persons and third country nationals upon conditions and scope of the international treaty).

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<sup>51</sup> Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

While valid laws provide enough possibilities for victim indemnification, the respondents cited several reasons why it was difficult to win compensation in court. Most importantly, investigation of cases involving labour exploitation is not thorough enough and often focuses on the exploited migrant workers who are detained and deported, as opposed to the employers who have exploited them.

*“In my opinion it is totally tedious and absolutely ineffective... there should be some direct form of indemnification... The status of migrant worker is such a handicap... I find it a bit nonsensical to grant somebody a [tolerated] residence status in order to lodge an indemnification claim he cannot even be sure will be [awarded]. Perhaps the damage will be established but there will be no one to compensate [the victim] eventually. The perpetrator will either not be identified or he will declare himself penniless or the entire case will be shelved, so there will be no real perpetrator to punish.” [L(1)]*

*„Je to absolútne zdĺhavé, absolútne neefektívne, podľa mňa... tu by mala existovať nejaká priama forma odškodnenia... Takže to postavenie cudzinca tak hendikepuje človeka... Je predsa trochu nezmysel, aby bol niekomu priznaný pobyt kvôli tomu aby si tu mohol uplatniť škodu o ktorej ešte ani nevie, či sa zistí. Škoda sa možno zistí, ale nebude toho, kto by tú škodu mohol v konečnom dôsledku nahradiť. Lebo buď ten páchatel' nebol zistený, alebo ten páchatel' je nemajetný alebo to vyšetrovanie pôjde niekde do stratena, takže reálne nebude koho postihnúť.“ [L(1)]*

Another reason why it is difficult to win compensation in court is allegedly the notorious problem of judicial procrastination in Slovakia. Most criminal court judges tend to postpone victims' chances to win compensation by refusing to decide on indemnification in criminal proceedings and referring the victims to civil court proceedings.

Respondents who work for organisations that specialise in helping migrants were particularly critical of the ineffective mechanism of victim indemnification; some of them even said it was almost naive of victims to expect compensation in Slovakia e.g. [L(1); S(2)]. Contrary to this group of respondents, one representative of the judiciary said that they knew of cases in which victims of labour exploitation had won indemnification in court, although it was compensation of non-pecuniary damage rather than compensation of lost wages [J(1)].

Nevertheless, research findings indicate that such cases are few and far between as this is not a usual judicial practice in Slovakia; on the contrary, the usual practice is to refer the matter to civil law courts to decide on the form and amount of compensation for victims of labour exploitation. While the valid law empowers criminal court judges to award victim indemnification as part of criminal proceedings, they do not use this power in practice.

*“The usual practice of judges at Slovak criminal courts – even if the court proves beyond reasonable doubt the causality between the crime and the damage as well as the amount of the damage, which the Code of Criminal Procedures explicitly stipulates as hard-and-fast conditions to allowing the court to decide on indemnification along with the sentence verdict – is to refer the indemnification claim to a separate proceeding ... Our penal law system allows victims that have suffered pecuniary or non-pecuniary damage to claim their rights in criminal proceedings in order to settle everything before a single court of justice. In other words, the valid law provides for this possibility but the application practice diverges from it and [judges tend to] leave these matters up to civil courts.” [L(1)]*

*„Prax trestných súdov je u nás taká... že aj keď je úplne preukázané ako vznikla škoda, príčinná súvislosť, výška škody, a teda podľa trestného poriadku sú splnené podmienky na to, aby popri odsúdení bol aj výrok o náhrade škody v tom istom rozsudku (to trestný poriadok*

výslovne umožňuje), tak sudcovia sa prikláňajú k možnosti, že vylúčia nárok na náhradu škody na samostatné konanie... Systém trestného práva v prípade obete, ktorá má majetkovú, alebo aj nemajetkovú ujmu, umožňuje uplatniť nárok v trestnom konaní, aby sa to vyriešilo na jednom mieste. Číže právo je na toto pripravené, ale prax sa od toho odkláňa a ponecháva to riešiť civilným súdom.” [L(1)]

Respondents representing judicial organs tried to explain why this practice was usual in Slovakia. Most importantly, they argued, the principal role of criminal proceedings was to establish the defendant’s guilt and it was considered inappropriate to extend these proceedings by examining victims’ indemnification claims.

*“The principal role of the criminal court is not to decide on the aggrieved party’s damage claims, [although] if these claims are very precisely and exactly documented, even a criminal judge may decide on compensation, provided argumentation on the claim and indemnification does not postpone [decision] on guilt.” [J(1)]*

*„Prvoradou úlohou trestného súdu nie je rozhodnúť o nárokoch poškodeného, čiže keby boli tie nároky zdokladované veľmi precízne a presne tak by aj trestný sudca mohol rozhodnúť o nárokoch, avšak nesmie predlžovať konanie o vine dokazovaním o nárokoch a náhrade škody.“ [J(1)]*

Another possible explanation is that the victim’s indemnification claim is contentious for some reason. In such cases, criminal court judges typically refer the matter to further civil law proceedings.

*“If somebody is convicted of a concrete criminal offence, which has caused certain damage to the aggrieved party (i.e. the victim), and the aggrieved party is able to quantify the amount of damage demonstrably, the judge may award compensation in so-called adhesive proceedings. If the amount of claimed compensation is contentious, the matter is referred to civil law proceedings.” [J(1)]*

*„Ak je niekto odsúdený ako vinný za konkrétny trestný čin a v súvislosti s týmto trestným činom spôsobil obeti/poškodenému škodu a tento poškodený ju vie vyčíslit’ a preukázateľne podložiť výšku škody, tak sudca môže v tzv. adhéznom konaní priznať výšku škody. Ak je výška škody sporná, odkáže ju na občianskoprávne konanie.“ [J(1)]*

Slovakia’s legal order provides for lodging complaints via a third party. Motions for criminal prosecution may be filed with the police or the prosecution in a law-stipulated manner.<sup>52</sup> Also, criminal motions may be filed by a single person, a group of individuals or a legal person [L(1); S(1); J(1)].

Motions with monitoring bodies such as the National Labour Inspectorate or offices of labour, social affairs and family may also be filed via a third party. Monitoring bodies even have an obligation to deal with anonymous motions.

As far as civil law proceedings are concerned, the complaint must be filed by the individual that is a direct party to the case; that individual may choose to be represented by another natural person based on a proxy.<sup>53</sup> In other words, Slovakia’s legal order does not allow a third party to file motions without the consent of the person whose rights have been violated.

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<sup>52</sup>Černáková, Lucia (2011), *Ako podať trestné oznámenie* [How to File a Criminal Motion]; available at: [www.najpravo.sk/rady-a-vzory/rady-pre-kazdeho/t/ako-podat-trestne-oznamenie.html](http://www.najpravo.sk/rady-a-vzory/rady-pre-kazdeho/t/ako-podat-trestne-oznamenie.html).

<sup>53</sup> Slovakia, Act No. 99/1963 Coll. Civil Court Rule, as amended (Zákon č. 99/1963 Z. z. Občiansky súdny poriadok v znení neskorších predpisov), Article 24. Available at: [www.slov-lex.sk](http://www.slov-lex.sk).

*“Anybody is entitled to file complaints over criminal matters... Criminal proceedings may also be launched ex offa, which means all you need is a motion. The same goes for filing motions with supervisory organs – either a labour inspectorate or an employment agency. What cannot be achieved via a third person is taking a civil action on indemnification. As far as civil law proceedings go, I believe that... crime victims must file civil actions by themselves.” [L(1)]*

*„V trestnej rovine môže podať ktokoľvek... Trestné konanie možno začať ex offa, čiže tam stačí podnet. Takisto [je možné] dať podnet na kontrolné orgány – inšpektorát práce alebo úrad práce. Čo sa nedá dať pomocou tretej osoby, to je civilné konanie o náhradu škody. V civilnom konaní myslím... obeť trestných činov musia podať aktívne žalobu.” [L(1)]*

Non-governmental organisations in Slovakia have ample experience with acting as the third party that defends the rights and interests of foreigners against various actors.

*“We as the non-governmental organisation can also [act] as the third party in this respect... my colleagues, social fieldworkers who worked on this integration project contacted employers – certainly via telephone and I believe also in writing – regarding various issues we have discussed such as the failure to pay [agreed] wages or the refusal to grant adequate holiday.” [L(1)]*

*„Ako tretia strana by sme mohli byť v tomto chápaní aj my, ako MVO....kolegovia moji, sociálni pracovníci, ktorí pracovali na tom integračnom projekte, tak oni kontaktovali aj zamestnávateľov, určite telefonicky a myslím, že určite aj písomne, ohľadom všetkých tých vecí o ktorých sme rozprávali, ako nevyplatenia mzdy, že im nedali dostatočnú dovolenku.“ [L(1)]*

As far as trade unions are concerned, they can act as third party in criminal proceedings, can also file motions to the monitoring bodies and otherwise help workers to defend their rights in relations to their employer.

The respondents outlined several factors that might help increase the effectiveness of defending migrant workers' interests with respect to their employers.

1) Most importantly, it is the existence of organisations that are able to provide migrant workers with complex services, which include counselling and representing them in various types of proceedings such as administrative, civil law and even criminal ones; it is equally important that these services are available, i.e. they are provided free of charge.

*“In my opinion, the easiest way for the foreigner is to turn to an organisation that specifically focuses on defending the rights of these persons, mostly because it provides complex services ... it is able to advise them and represent them in all types of proceedings... And they receive [this assistance] for free, which is also important.” [L(1)]*

*„Podľa mňa najjednoduchšia cesta pre toho cudzinca je obrátiť sa na nejakú organizáciu, ktorá sa vyslovene zaoberá ochranou práv takýchto osôb z toho dôvodu, že poskytuje komplexnú službu... vie ho navigovať alebo vie ho zastúpiť vo všetkých týchto druhoch konaní... A dostane [pomoc] zadarmo, čo je tiež dôležité.“ [L(1)]*

2) Secondly, it is improving effectiveness of law enforcement organs in investigating cases of labour exploitation and bringing perpetrators to justice; it is equally important to inform the general public on these cases.

*“On the one hand, I understand... there is no crime without a victim but perhaps [law enforcement organs] could introduce new procedures in order to provide some guarantees to*

*[the victims] and show them it is possible to enforce law. In that case, I believe the investigation would be more effective as the victims would be more willing to cooperate.” [L(1)]*

*„Chápem na jednej strane... že pokiaľ polícia nemá obeť, tak nemá páchatel'a, ale myslím si, že by možno aj [polícia] mala zvoliť nejaké iné postupy a dať tým ľuďom nejaké záruky a ukázať im, že je možné vymôcť právo. V tom prípade si myslím, že by boli aj nejaké výsledky vyšetrovania a obeť by boli ochotnejšie spolupracovať.“ [L(1)]*

3) Thirdly, it is reducing the significant risk that migrant workers who have been illegally employed will have to leave Slovakia's territory or will be expelled. Currently, victims cannot be sure that they will be allowed to remain legally in Slovakia until their complaints make it to court; and it is this factor that reduces their willingness and courage to stand up for their rights. *“[Migrant workers] who dwell illegally [on Slovakia's territory] usually run a great risk of being administratively expelled. The greater the risk, the smaller is their willingness. It is a great challenge [in Slovakia] to resolve [migrant workers'] residence status before proving they have been victims of trafficking in human beings. For the time being, we are unable to offer this kind of security to the victims in the sense of guaranteeing them legal residence while we resolve their problem. In most cases, there is an imminent risk that the police will expulse [the victims] while legal proceedings are still underway. This awareness may discourage them from taking any measures; instead, they let themselves [be expelled] and let it be.” [L(1)]*

*„Osoba je obvyčajne vystavená veľkému riziku, že bude administratívne vyhostená, ak je tu nelegálne. Čím je toto riziko väčšie, tak tým menšia je ochota. U nás je to veľká výzva, vyriešiť pobyt, kým sa nevyrieši, že ona bola obeťou obchodovania s ľuďmi. Túto istotu u nás obetiam nevieme zatiaľ dať, že kým sa bude riešiť váš problém, vy tu môžete byť legálne. Zo strany polície v mnohých prípadoch hrozí, že počas tých konaní budú vyhostení. Toto vedomie im môže brať chuť podniknúť nejaké opatrenia - možno radšej odísť a nechať to tak.“ [L(1)]*

4) Last but not least, the process of filing complaints against employers could be further facilitated by a helpline, at least in the form of an answering machine to receive anonymous complaints. Such a helpline could be operated by the National Labour Inspectorate or other institutions.

*“A time-tested device is a telephone helpline, even in the form of an answering machine... if the [National] Labour Inspectorate set up such an anonymous helpline... at least an answering machine [to receive] anonymous [calls], I could imagine it would work.” [J(1)]*

*„Dobre fungujú telefonické linky, hoci aj vo forme záznamníka...pokiaľ by mal inšpektorát práce vytvorenú takúto anonymnú linku... Pokiaľ by tam fungoval aspoň anonymný záznamník, dokážem si predstaviť, že by to fungovalo.“ [J(1)]*

## 6 Attitudes

The research findings showed that the investigation of cases involving labour exploitation was usually not in the best interest of migrant workers in question who are very often identified and treated as illegal workers and/or illegal aliens and are swiftly deported to their home country. In other words, they are very seldom identified as victims of labour exploitation; consequently, the measures aimed at protecting them are very seldom in their best interest. The respondents from the ranks of the police argued that once migrant workers were identified as victims of labour exploitation, all government measures were in their best interest. The respondents with victim support organisations, for their part, very critically perceived government institutions' position on these issues and charged that migrant workers' rights were at the bottom of their list of priorities.

The principal reasons for not reporting cases of labour exploitation to law enforcement organs is the victims' fear of employers who typically threaten them with expulsion from the country and thus they will lose the "chance" to improve their socio-economic situation. Also, a significant role is played by the victims' lack of trust in the police and other government institutions.

The fact that the number of officially recognised victims of labour exploitation or trafficking in human beings continues to be so low in Slovakia suggests very low effectiveness of law enforcement organs in investigating these cases. According to several respondents, the current state of affairs could be improved by introducing a more effective system of monitoring employers and enhancing coordination between the police, labour inspectorates and other state administration organs. Also, raising migrant workers' awareness of the methods of police investigation and valid laws could improve effectiveness of investigation. Several experts suggested it would be ideal to set up a special police unit that would specialise in investigating cases of labour exploitation, just as in the case of violent crimes or tax fraud. Greater legal awareness of migrant workers combined with expanded possibilities of legalising their residence status would significantly increase the rate of reporting and, consequently, of exposing the labour exploitation of migrant workers.

### 6.1 Investigating cases of labour exploitation does not favour migrant workers

The respondents' positions on labour exploitation seem to be strongly affected by the generally low awareness of labour exploitation as one of the forms of violating the labour law as well as the fact that victims of labour exploitation (especially migrant workers) are typically not identified as victims but rather as culprits. Illegally employed migrants are normally viewed as illegal migrants and are subjected to the procedure of administrative expulsion, which renders their identification as victims and their potential compensation virtually impossible (for further details, please see Chapters 4 and 5). Moreover, the administrative expulsion further increases the vulnerability of the victim and could lead to further victimisation.

*"Well, [after the expulsion] they were dumped on the border of their home country with no money in their hands; they could not even get home because they didn't have ten euro for the ticket. And that in my opinion is another serious form of vulnerability [as these people are very likely] to get entangled in something [illegal]."* [FG(L)]

*“Že [po vyhostení] nemali peniaze, že boli vyložený na hranici svojej krajiny a nemali sa ani ako dostať domov. Že tam bola tá situácia, že nemali ani desať eur na ten lístok. A to zase vnímam ako ďalšiu veľkú formu zraniteľnosti, že sa môže do niečoho zaplietť.” [FG(L)]*

At the same time, the positions of various actors seemed to differ. While experts with organisations that specialise in supporting victims (category “S”), representing them in court (category “L”) or defending their rights (category “W”) were more sensitive to these issues and simultaneously more critical to the standing system of identifying and assisting victims of labour exploitation, representatives of law enforcement organs (category “P”) but also monitoring bodies (category “M”) perceived the state of affairs strictly from the viewpoint of valid laws that were effective in their opinion, which is why they focused strictly on enforcing them regardless of potentially harmful shortcomings.

This attitude can be well illustrated by their answers to the question of whether **government interventions** against labour exploitation are in the **best interest of migrant workers**. The respondents from category “P” maintained that if the victim complied with the legislative conditions to be identified as victims of labour exploitation, current system works in their best interest.

*“Well, the way the system is currently set, the interventions [aimed at their] identification must be in their best interest. Whether they truly are in concrete situations of concrete individuals is difficult to say. But generally speaking, the interventions are in their best interest the way the system is adjusted.” [P(1)]*

*„No tak, ako je systém nastavený, určite sú v ich záujme. Či to v konkrétnom prípade konkrétnej osoby tak aj bude, je ťažké vyhodnotiť. Ale všeobecne ako je systém nastavený, sú intervencie v ich záujme.“ [P(1)]*

This perception was also shared by respondents from category “J”, i.e. prosecutors and judges. In their opinion, all government interventions are in the best interest of migrant workers who are identified as victims of labour exploitation. However, it should be noted that there are no legislative conditions nor are there any guidelines for identifying victims of labour exploitation who have not been trafficked. There are only guidelines for identifying victims of trafficking in human beings (for any purpose including labour exploitation). It is therefore likely that respondents meant victims of human trafficking. This suggests the tendency to confuse the topics of labour exploitation and human trafficking and that even representatives of state institutions vested with responsibility in both areas are not clear about particularities of these issues.

Respondents from categories “S”, “W” and “L” took a different position. According to them, the decisive factor is whether migrant workers are identified as legal or illegal. Victims of labour exploitation are often viewed as illegal workers because they usually work without labour contracts or based on labour contracts that are evaluated as invalid by monitoring bodies. If a migrant worker who holds a proper work permit enters an illegal labour law relation, their entire legal status in the country turns illegal. At that point, labour exploitation becomes irrelevant and law enforcement organs become primarily concerned with the foreigner’s legal status. In other words, government interventions are in favour of expelling such foreigners rather than protecting their interests.

One respondent who works for an organisation that specialises in defending workers’ rights said the employees were always at a disadvantage regardless of the situation.

*“[Even if labour exploitation is exposed], the migrant workers always hold the dirtier end of the rope. People here are unlikely to sympathise with them; they view them as poor paupers who*

came here to make a buck. So even if [labour exploitation] is exposed and documented sometimes, the employer is always going to have the upper hand over the migrant worker who he has exploited.” [W(1)]

„Nie sú, lebo ten migrujúci pracovník, ktorý je vykorisťovaný, vždy ťahá za kratší koniec. Skôr je u nás menej obhajovaný ten obyčajný chudák, ktorý sem prišiel niečo zarobiť. Takže aj keď sa to niekedy dokáže, vždy na tom bude lepšie ten zamestnávateľ ako ten migrujúci pracovník, ktorý bol vykorisťovaný.“ [W(1)]

## 6.2 Reasons for not reporting cases and factors affecting it

As we have repeatedly mentioned, very few migrant workers in Slovakia have been identified as victims of trafficking in human beings and none of them has been identified as a victim of labour exploitation. Over the past three years, only three foreigners have been placed into the Programme to Support and Protect Victims of Trafficking in Human Beings [FG(N)]<sup>54</sup> and none of the respondents knew of any persons that had been granted a tolerated residence status because they had been identified as victims of severe forms of labour exploitation. On the other hand, experts from categories “S” and “L” during interviews or the focus group discussion described several concrete cases of labour exploitation that have never been qualified as such by law enforcement organs. All this indicates that very few migrant workers who work under particularly exploitative conditions report their situation to law enforcement organs.

One of the reasons for this reluctance is that migrant workers often lack even basic knowledge of the country’s life and institutions and have no idea of who they can turn to for help. In other words, most migrant workers do not know they can be qualified as victims of labour exploitation [P(1); L(1)].

“Perhaps they don’t even know what to do. It would certainly [help to] raise their awareness on what they can do about [their situation] and who they can turn to. If they are our clients, my colleagues always strive to help them. But if they are people without international [legal] protection and they are just illegal foreigners, or even legal ones, I believe they often don’t know what to do.” [L(1)]

„Možno ani nevedia, čo majú urobiť. Určite by bolo lepšie nejaké zvýšenie ich vedomia o tom, na koho sa môžu obrátiť a čo s tým môžu urobiť. Ak sú to naši klienti, tak vždy prišli za našimi kolegami a tí sa im snažili nejakou pomôcť. Ale ak sú to ľudia, ktorí nemajú medzinárodnú ochranu a sú to len cudzinci, ktorí sú tu nelegálne, alebo aj legálne, tak si myslím, že často nevedia, čo majú robiť.“ [L(1)]

One of the respondents suggested that if migrant workers were more familiar with Slovak laws, law enforcement organs would not be bent on punishing them but rather on supporting them.

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<sup>54</sup> See also Slovakia, Information Centre for Combating Trafficking in Human Beings and Crime Prevention (*Informačné centrum pre boj proti obchodovaniu s ľuďmi a prevenciu kriminality*) (2014) Report on Victims of Trafficking in Human Beings Entering the Programme of Support and Protection of Victims of Trafficking in Human Beings in 2013. Slovakia, Information Centre for Combating Trafficking in Human Beings and Crime Prevention (*Informačné centrum pre boj proti obchodovaniu s ľuďmi a prevenciu kriminality*) (2013) Report on Victims of Trafficking in Human Beings Entering the Programme of Support and Protection of Victims of Trafficking in Human Beings in 2012; Slovakia, Information Centre for Combating Trafficking in Human Beings and Crime Prevention (*Informačné centrum pre boj proti obchodovaniu s ľuďmi a prevenciu kriminality*) (2012) Report on Victims of Trafficking in Human Beings Entering the Programme of Support and Protection of Victims of Trafficking in Human Beings in 2011. All available at: [www.minv.sk/?informacne-centrum-na-boj-proti-obchodovaniu-s-ludmi-a-prevenciu-kriminality](http://www.minv.sk/?informacne-centrum-na-boj-proti-obchodovaniu-s-ludmi-a-prevenciu-kriminality).

A higher rate of reporting the cases would in his opinion motivate immigration authorities to helping the victims, for instance in the form of granting tolerated residence status to them [J(1)].

According to several respondents, the main reason for migrant workers' reluctance to report labour exploitation is that many of them hail from countries where their socio-economic situation was far worse than in Slovakia and even if they are subjected to severe forms of labour exploitation they are still better off than they would be in their home country.

*"In many cases, their situation at home is [so bad] that it is better for them to be able to earn at least something rather than nothing at all, which is why they are willing to put up with [labour] conditions set by these exploiting employers. Many of them have become indebted to various people smuggling gangs and they must work off that debt."* [R(1)]

*„Tak v mnohých prípadoch je ich situácia doma taká, že je pre nich lepšie zarobiť aspoň niečo ako nič a sú teda ochotní podvoliť sa podmienkam, ktoré im títo vykorisťujúci zamestnávateľia dávajú. Často sa zadlžili rôznym prevádzачským skupinám a musia si tento dlh odpracovať.“* [R(1)]

Many migrant workers put up with labour exploitation because they hope their situation will improve over time, their wages will be paid later or their labour conditions will get better once they pay off their “debt” [S(1); L(1)].

But perhaps the most important reason why victims of labour exploitation do not report their situation to law enforcement organs is **fear**; this factor was cited by virtually all categories of respondents regardless of their field of expertise.

Most importantly, it is the **fear of the exploiter**. According to many respondents, the exploiters hold sway over their victims, force them to work in considerable isolation and exert tremendous pressure on them. Since the exploiters usually provide not only work but also room and board to the victims, the victims become existentially dependent on them and any attempt to report their situation would amount to an existential threat. The exploiters keep the victims in constant fear by frequently threatening that if they report their case they will lose their job and/or legal status, they will have to return to their home country and so on [M(1); N(1); R(1)].

*"They do fear the perpetrators to a certain degree [because they have all kinds of leverage over them]. The situation is like this, for instance: - "You promised me to smuggle in my cousin." - "Well, you can't have everything – your wage and your cousin smuggled in." - "Okay, I can wait a little longer."* [J(1)]

*„Lebo do istej miery oni sa boja tých páchatel'ov... Alebo no to ale ešte viete, lebo to bolo tak, že „sľúbil si mi sem dostať sesternicu, bratranca a tak ďalej.“ – „No ale tak nemôžem všetko – aj ti dať peniaze aj sem doniesť sesternicu.“ – „Dobre, tak ja teda počkám ešte.“* [J(1)]

Another fear factor is threatening the victims with **expulsion from the country** if they are identified as illegal workers and, consequently, as illegal migrants. The fear of being deported from Slovakia and returned to the country of origin combined with the fear of being punished for working illegally, all these are the reasons why the victims are afraid to report their situation. Several respondents from categories “L” and “S” also cited victims' general lack of trust in the police and other government organs other victims normally turn to. Migrant workers most frequently come into contact with the immigration police, which they often perceive as the organ of repression that keeps their stay in the country under close scrutiny.

“Generally speaking, foreigners don’t trust the police because they expect complications that may be related to their illegal residence status or anything else... they are afraid to make any move in order to avoid expulsion.” [L(1)]

„Polícii vo všeobecnosti nedôverujú cudzinci, pretože očakávajú komplikáciu, spojenú možno s nelegálnym pobytom alebo s čímkoľvek ďalším... boja sa podniknúť akékoľvek kroky, aby neboli vyhodení.“ [L(1)]

The same respondent added that migrant workers’ fear of the police and their unstable residence status in the country makes it easier for the employers to exploit them as it supplies them with arguments they subsequently use to threaten their victims.

“[They tell them, for instance:] No matter if you turn to some government institution, agency or whatever, you will go back home and end up with nothing. And then you will have to work for three years again [to pay somebody] to get to a country where you can earn decent money.” [L(1)]

„[Například im hovoria:] Akokoľvek by si sa obrátil na nejakú inštitúciu, štátnu, čokoľvek, ideš naspäť domov a nebudeš mať nič. A budeš zase tri roky pracovať na tom, aby ťa niekto dostal do krajín, kde by si mohol slušnejšie zarábať.“ [L(1)]

The following table sums up all factors that contribute to migrant workers’ reluctance to report labour exploitation to law enforcement organs as they were indicated by the respondents.

| <b>Factors of not reporting cases of labour exploitation</b>   | <b>Number of indications</b> |
|--|------------------------------|
| Lack of effective monitoring of relevant areas of economy  | 1                            |
| Lack of targeted support service provision available to victims  | 1                            |
| Victims are not aware of their rights and of support available to them   | 11                           |
| Victims fear retaliation from the side of offenders against them or against family members                           | 14                           |
| Victims suffer from feelings of shame  | 4                            |
| Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings | 4                            |
| Victims believe that proceedings are too bureaucratic and costly   | 2                            |
| Victims fear that if their situation became known to the authorities, they would have to leave the country           | 19                           |
| Victims do not trust that the police in particular would treat them in a sympathetic manner                          | 1                            |
| Victims perceive being jobless as worse than working in exploitative conditions                                      | 10                           |
| Other (please specify)   | 2                            |
| Don’t know   | 0                            |

| <b>Factors of not reporting cases of labour exploitation</b>                               | <b>Number of indications by professional group</b> |          |          |          |          |          |          |          |          |  |
|--|--|----------|----------|----------|----------|----------|----------|----------|----------|--|
|  | <b>L</b>   | <b>E</b> | <b>M</b> | <b>N</b> | <b>S</b> | <b>W</b> | <b>R</b> | <b>P</b> | <b>J</b> |  |
| Lack of effective monitoring of relevant areas of economy                                  |  |          |          |          |          | 1        |          |          |          |  |
| Lack of targeted support service provision available to victims                            |  |          | 1        |          |          |          |          |          |          |  |
| Victims are not aware of their rights and of support available to them                     |  |          | 5        |          | 3        |          |          |          | 3        |  |
| Victims fear retaliation from the side of offenders against them or against family members |  |          | 2        | 2        | 6        | 1        |          | 2        | 1        |  |

|  |  |  |   |   |   |   |  |   |   |
|--|--|--|---|---|---|---|--|---|---|
| Victims suffer from feelings of shame  |  |  | 1 | 1 |   |   |  | 1 | 1 |
| Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings |  |  |   |   | 1 | 1 |  | 1 | 1 |
| Victims believe that proceedings are too bureaucratic and costly   |  |  | 1 |   |   | 1 |  |   |   |
| Victims fear that if their situation became known to the authorities, they would have to leave the country           |  |  | 4 | 2 | 7 | 2 |  | 3 | 1 |
| Victims do not trust that the police in particular would treat them in a sympathetic manner                          |  |  | 1 |   |   |   |  |   |   |
| Victims perceive being jobless as worse than working in exploitative conditions                                      |  |  | 2 | 1 | 4 |   |  | 1 | 2 |
| Other (please specify)   |  |  | 2 |   |   |   |  |   |   |
| Don't know   |  |  |   |   |   |   |  |   |   |

The table suggests that the victims' fear of being deported, of retaliation from their exploiters, of becoming jobless and the lack of trust in authorities are the most serious risk factors for not reporting labour exploitation. Four respondents (one each from categories "N", "M", "P" and "J") also cited a feeling of shame as being an important factor. According to them, the situation of a victim of labour exploitation is very similar to that of a victim of domestic violence who finds it difficult to admit to themselves, let alone to people around them, that they have become victims of this humiliating treatment.

The following table sums up the top priorities of exploited migrant workers according to interviewees, showing that most of the respondents believed the most important thing to them was to be able to stay and make a living in an EU country (indicated by 19 respondents), to continue supporting their families economically (16 respondents) and to guarantee the safety of their families (13 respondents). The previous chapters of this report cited the fear of exploiters (i.e. safety of families), the fear of deportation (i.e. ability to stay in the country) and the fear of losing their job (i.e. ability to support their families) as the most fundamental reasons for victims' reluctance to report their situation. This seems to suggest that migrant workers who refuse to report labour exploitation strive to protect themselves; this despite the fact that their identifying themselves as victims is expected to increase their safety and improve their status in the country.

| <b>Priorities of exploited migrant workers</b>                      | <b>Number of indications</b> |
|---|------------------------------|
| To be safe and to be protected against further victimisation        | 8                            |
| For their family to be safe   | 13                           |
| To be able to stay and to make a living in an EU country            | 19                           |
| To see that offenders are held accountable and that justice is done | 7                            |
| To be respected and to see that their rights are taken seriously    | 4                            |
| To be in a position to economically support other family members    | 16                           |
| To receive compensation and back pay from employers                 | 3                            |
| To be able to return home safely                                    | 7                            |
| Other (please specify)  | 0                            |
| Don't know  | 0                            |

| <b>Priorities of exploited migrant workers</b> | <b>Number of indications by professional group</b> |
|--|--|
|--|--|

|   | L | E | M | N | S | W | R | P | J |
|---|---|---|---|---|---|---|---|---|---|
| To be safe and to be protected against further victimisation        | 3 |   |   | 1 | 3 |   |   | 1 |   |
| For their family to be safe   | 1 |   | 2 |   | 4 | 2 |   | 2 | 2 |
| To be able to stay and to make a living in an EU country            | 3 |   | 5 | 2 | 4 | 1 |   | 2 | 2 |
| To see that offenders are held accountable and that justice is done | 1 |   |   | 1 | 3 | 1 |   | 1 |   |
| To be respected and to see that their rights are taken seriously    | 1 |   | 2 |   |   |   |   |   | 1 |
| To be in a position to economically support other family members    | 2 |   | 3 | 1 | 5 | 1 |   | 2 | 2 |
| To receive compensation and back pay from employers                 | 1 |   |   |   | 1 | 1 |   |   |   |
| To be able to return home safely                                    |   |   | 4 | 1 | 1 |   |   |   | 1 |
| Other (please specify)  |   |   |   |   |   |   |   |   |   |
| Don't know  |   |   |   |   |   |   |   |   |   |

This is apparently not the case however, as the focus group discussion revealed that victim support organisations tend to “protect” their clients by refusing to report their labour exploitation to authorities exactly because it could put them in jeopardy of losing what is most important to them with respect to their stay in Slovakia. One of the respondents called the safety of migrant workers and their families the basic condition for their willingness to work under exploitative conditions.

*“So, they only ask [an oral] guarantee from the traffickers that their families will stay safe and that they will be able to provide for them. And they also ask – again orally as they don't understand written contracts – a guarantee to earn enough to be able to send some money home and [continue to] provide for their families. This is always promised to them.” [S(1)]*

*„Takže žiadajú len to ubezpečenie od tých obchodníkov, že dajú rodinám pokoj a že rodina bude zabezpečená. No a takisto žiadajú, a zase slovne, lebo zmluvám nerozumejú, aby zarobili toľko, aby mohli tie peniaze poslať domov. Aby dokázali tú rodinu zabezpečiť. Toto je im vždy sľúbené.“ [S(1)]*

The poor socio-economic situation in their home country, combined with the ambition to earn money to improve it, is often the main reason why migrant workers are willing to renounce even their fundamental rights in return for a chance to improve their standard of living.

*“I believe their rights are at the bottom of their list of priorities. In fact, they knowingly relinquish their rights by putting themselves into this kind of [position].” [M(1)]*

*„Myslím, že práva sú pre nich dôležité až na poslednom mieste. Lebo tým, že idú do takej situácie, tak sa vedome vzdávajú svojich práv.“ [M(1)]*

### 6.3 Effectiveness of tackling labour exploitation

The low effectiveness of tackling labour exploitation is obvious from the low number of identified, investigated and punished cases involving labour exploitation and/or trafficking in human beings of migrant workers in Slovakia. According to representatives of institutions that are charged with exposing, investigating and punishing these crimes (i.e. categories “P” and “J”), law enforcement organs discharge their duties effectively and intensely once potential

victims have been identified. The experts who represent migrant workers or work for victim support organisations, for their part, argued it was the low clearance rate of these cases that did not support this argument. In recent years, the government has adopted a number of strategies and action plans aimed at combating trafficking in human beings; however, these policy documents target primarily Slovak victims that are trafficked abroad, and even they have not had a perceptible impact.

*“There is a lot of various documents, policies and so on but when it comes to the crunch, even [labour] inspectors, for instance, are not fully aware of all the possibilities... when they expose illegal labour they still tend to punish both sides, the employers and the employees.”* [S(1)]

*„Je veľa všelijakých dokumentov, politik a tak ďalej, ale keď príde na lámanie chleba, tak napríklad ani tí inšpektori nie sú úplne informovaní o všetkom...a stále majú tendenciu postihovať aj jedného aj druhého.“* [S(1)]

At the same time, the government continues to fail to pay adequate attention to issues of migrants and their integration, which is another reason why the rate of exposing and investigating cases of their labour exploitation is so low.

*“Migrants [in our country] are still perceived through the prism of migrants... i.e. those with unequal rights.”* [S(1)]

*„Vis a vis k migrantom u nás je to vnímané cez nálepku migrant... že nie sú tí, čo majú rovnaké práva.“* [S(1)]

Another factor that causes the low effectiveness of exposing labour exploitation is the reluctance on the part of migrant workers to report their situation to authorities, a phenomenon that was analysed in greater detail in previous sections of this chapter. This issue was also brought up during the focus group discussion when a representative of the labour inspectorate pointed out the shortage of motions filed by migrants themselves or victim support organisations [M(1)]. On the other hand, one of the respondents rebutted that monitoring institutions were not sufficiently active in seeking out the cases themselves and they merely reacted (if ever at all) to motions filed by victims of labour exploitation or organisations that represent them [W(1)].

## **6.4 Potential areas of improvement in the field of victim identification and tackling labour exploitation of migrant workers**

Except for making sure that all workers have access to trade unions, all listed measures turned out to be important in the process of improving the situation of victims of severe forms of labour exploitation. Trade unions continue to have a less-than-stellar reputation in Slovakia according to some interviewees; during the focus group discussion, though, a trade union representative emphasised the importance of trade union membership, pointing out that trade union experts were legally entitled to defend workers' rights actively, for instance through providing legal counselling and legal representation [W(1)], a fact ignored not only by most ordinary people but also all of the interviewed experts.

| Potential areas of improvement   | Number of indications |
|--|-----------------------|
| Improve legislation against labour exploitation and its implementation | 6                     |

|  |    |
|--|----|
| Improve legislation to allow better access to justice and compensation   | 8  |
| More effective monitoring of the situation of workers in the areas of economy particularly prone to labour exploitation  | 14 |
| Measures to ensure that all workers know their rights  | 8  |
| Measures to ensure that all workers have access to labour unions   | 0  |
| 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 | 14 |
| Setting up of specialised police units to monitor and investigate labour exploitation  | 10 |
| Regularising the situation of certain groups of migrant workers with an irregular status   | 7  |
| Regularising the situation of migrant workers once they have become victims of severe labour exploitation  | 3  |
| Measures addressing corruption in the administration   | 3  |
| More training of police, labour inspectors and other authorities   | 2  |
| Police and courts taking labour exploitation more seriously  | 4  |
| Don't know   | 0  |

| Potential areas of improvement   | Number of indications by professional group |   |   |   |   |   |   |   |   |
|--|---|---|---|---|---|---|---|---|---|
|  | L   | E | M | N | S | W | R | P | J |
| Improve legislation against labour exploitation and its implementation   |   |   | 3 |   |   | 1 |   | 2 |   |
| Improve legislation to allow better access to justice and compensation   | 2   | 1 | 3 |   |   |   |   | 2 |   |
| More effective monitoring of the situation of workers in the areas of economy particularly prone to labour exploitation  | 2   |   | 2 |   | 4 | 2 | 1 | 1 | 2 |
| Measures to ensure that all workers know their rights  |   |   | 4 | 2 | 1 | 1 |   |   |   |
| Measures to ensure that all workers have access to labour unions   |   |   |   |   |   |   |   |   |   |
| 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 | 2   | 1 | 2 |   | 4 |   | 1 | 1 | 3 |
| Setting up of specialised police units to monitor and investigate labour exploitation  |   |   | 3 |   | 3 |   | 1 | 2 | 1 |
| Regularising the situation of certain groups of migrant workers with an irregular status   | 2   |   |   |   | 4 |   |   |   | 1 |
| Regularising the situation of migrant workers once they have become victims of severe labour exploitation  |   |   |   |   | 2 |   |   |   | 1 |
| Measures addressing corruption in the administration   |   | 1 |   |   | 2 |   |   |   |   |
| More training of police, labour inspectors and other authorities   | 1   |   |   |   |   |   |   |   | 1 |
| Police and courts taking labour exploitation more seriously  | 1   |   |   |   | 2 |   |   | 1 |   |

|            |  |  |  |  |  |  |  |  |  |
|------------|--|--|--|--|--|--|--|--|--|
| Don't know |  |  |  |  |  |  |  |  |  |
|------------|--|--|--|--|--|--|--|--|--|

According to interviewed experts, the best way to improve the current state of affairs is through better monitoring of the situation in industry sectors that are particularly prone to labour exploitation and better coordination between various institutions (for example labour inspectorates, police and state administration organs). Almost half of all respondents cited both options among the three potential areas of improvement.

*“For instance if the labour inspectorate finds out that something like that is going on, [it is important that] the information gets either to the police or to [the prosecution] as soon as possible so we can act further in the matter. Sometimes I feel that this information does not come at all [as the case] remains on the administrative level and is resolved by some fine or reprimand for the employer, but the point is that the information doesn't get through. So, [better] coordination would certainly help.” [J(1)]*

*„Například, ak inšpektorát práce zistí, že k niečomu takému dochádza, aby sa táto informácia dostala čo najskôr či už k polícii, alebo k nám [na prokuratúru], aby sa v tejto veci mohlo ďalej konať. Občas mám pocit, že táto informácia ani nepríde, zostane to na tej administratívnej úrovni, že sa to vyrieši nejakou pokutou, administratívnym postihom zamestnávateľa, ale tá informácia sa nedostane ďalej. Takže tá koordinácia by určite napomohla.” [J(1)]*

One potential way of improving the monitoring of labour exploitation is improved tax inspection. According to one respondent from category “J”, increased effectiveness of exposing employers' failure to pay taxes and social contributions would most likely increase effectiveness of exposing illegal labour and, consequently, labour exploitation. Currently valid laws make it easier to expose tax evasion, which suggests this may well be the right way to improve effectiveness of monitoring. Also, better monitoring could help eliminate corruption [S(1)] but it would require a truly pro-active approach on the part of monitoring institutions. In other words, they must actively seek out potential exploiters among employers because it is impossible to rely on migrant workers reporting cases themselves given the current setting of the system.

At the same time, effective monitoring requires increased awareness on the part of the police, labour inspectorates and other segments of state administration in terms of their ability to identify victims of labour exploitation. Several interviewed experts, especially those from categories “S” and “L”, said this was not the case for the time being.

*“It is important that government organs or agencies that perform some of their powers in certain areas be able to identify the victim – that is absolutely crucial in my opinion. If we are unable to identify the victim, we have nothing to discuss. Effective monitoring implies the ability to distinguish between victims and non-victims.” [L(1)]*

*„Je dôležité, aby štátne inštitúcie alebo tie organizácie, na ktoré sú prenesené kompetencie v istej oblasti boli schopné identifikovať obeť, to považujem za úplne kľúčové. Nemáme sa o čom baviť, ak nevieme, že toto je obeť. Efektívne monitorovať znamená byť schopný poznať – toto je obeť, toto nie.“ [L(1)]*

A number of respondents expressed a conviction that monitoring, mutual cooperation and the ability to identify victims of labour exploitation would increase significantly if there was a specialised unit (police or other) charged with exposing labour exploitation. Currently, the police operate specialised units that focus on domestic violence or other forms of crime. Their members have been specifically trained to identify victims in these areas of criminality. A similar specific training can also be organised in the field of exposing labour exploitation. This

view was shared mostly by experts from categories “M” (3), “S” (3) and “P” (2) as they most frequently come into contact with victims of labour exploitation. Special training in the field of victim identification coupled with amended legislation are bound to increase their effectiveness in exposing labour exploitation and punishing its perpetrators, provided their efforts are effectively coordinated.

*“I definitely believe there should be a specialised police unit, I mean experts who would be [trained in] investigation methods designed to expose [victims of labour] exploitation, i.e. not people who come to take a stroll around the factory, who knock [and wait for] somebody to open. There are certain methods members of the police force are taught at the police academy; there are specialists for this.”[S(1)]*

*„Určite si myslím, že by mal existovať špecializovaný policajný útvar. To znamená ľudia, ktorí poznajú vyšetrovacie metódy na to, aby zistili, že niekto je vykorisťovaný, neprídu tak, že sa prídu prejsť po fabrike, zaklopú, niekto im otvorí. Sú tam určité metódy, ktoré policajti študujú na policajnej akadémii, sú na to špecialisti.”[S(1)]*

The lack of awareness does not only concern the institutions but also migrant workers who become victims of labour exploitation. In the section on risk factors we have identified inadequate legal awareness and work in isolation as important factors of labour exploitation. The same factors seem to reduce the effectiveness of tackling the problem as they complicate the process of identifying victims who often do not even know they are being trafficked or exploited and have no idea about who they can turn to in case of emergency. A relatively simple way to increase legal conscience and improve awareness of the risks of labour exploitation is to join trade unions, although they are not particularly popular in Slovakia [S(1)]. At the same time, it is important to provide information to migrant workers in their mother tongues or at least in languages most of them are able to understand.

A less frequently, but much more intensely emphasised issue, particularly by representatives of organisations specialising in victim support (i.e. category “S”), was the need to legalise the residence status of migrant workers who have become victims of labour exploitation. The issue that runs like a thread through this report is migrant workers’ fear of being deported if their illegal employment or illegal residence status in Slovakia is exposed (these two are often connected). This negatively affects migrant workers’ willingness to report their situation and is the principal reason why most victims of labour exploitation are not identified as victims but as illegal aliens who are swiftly expelled from the country. This subsequently complicates investigation as it is virtually impossible to convict perpetrators (i.e. employers) without witnesses (i.e. their victims).

According to several experts, it is the legalisation of migrant workers’ residence status that might significantly facilitate tackling the problem of labour exploitation. Slovakia has a law that provides for granting a tolerated residence status to victims of severe forms of labour exploitation or minor migrants who have been found working illegally; unfortunately, this law is not effectively applied as this research project revealed that only one single migrant worker has obtained a tolerated residence status as yet. Another problem is that migrant workers are not aware of this law and, consequently, their rights ensuing from it.

*“So, if they knew they would not be expelled at once if they go to the police and prove they have been victims of labour exploitation, on the contrary, they might continue in what they have been doing and even find a legal job now because they have helped expose a crime in this country, I believe it would help eliminate [labour exploitation] and... cut the ground from under exploiters’ feet. Of course, [an important prerequisite to this] is that those foreigners are aware of their rights.”[S(1)]*

*„Takže ak on vie, že ak pôjdem na políciu a ukáže sa, že som obeťou, tak oni ma okamžite nevyhostia, naopak, ešte keď si tu nájdem prácu, tak môže pokračovať v tom, čo som robil a naopak už teraz legálne dokonca, lebo som pomohol tejto krajine odhaliť nejaký trestný čin, tak si myslím, že by to prispelo k tomu, aby sa to trošku eliminovalo a... zoberie to aj vieter z plachiet tým vykorisťovateľom. Ale to ide samozrejme ruka v ruke aj s tým, že cudzinci si musia byť vedomí svojich práv.“ [S(1)]*

Even the victims that are admitted to the Programme to Support and Protect Victims of Trafficking in Human Beings may find themselves in an adverse situation, which is not necessarily related to legalising their residence status but rather to their socio-economic situation. According to one respondent, once victims are placed in the programme they are legally entitled to collect material need benefits, which is approximately €61 a month. Protected housing is provided to them for a limited period of time and after the programme ends, they find it very complicated to integrate into everyday life. Consequently, many of them are particularly vulnerable to further trafficking or exploitation [S(1)]. If these migrant workers were allowed to legalise their residence status here, they would find it much easier to seek legal assistance, join trade unions, increase their legal awareness, and so on.

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

According to most experts interviewed for this research project, the most frequent forms of labour exploitation in Slovakia are trafficking in human beings for the purpose of labour exploitation and employing migrant workers under particularly exploitative conditions. The phenomenon almost exclusively concerns non-qualified labourers or semi-qualified craftsmen who work mostly in the field of construction, followed by restaurant, catering and food delivery services and transport & warehousing industry.

The research project revealed that the public discourse on labour exploitation of migrant workers in Slovakia has been reduced to several issues, depending on the type of institutions that are involved. Monitoring bodies speak primarily of migrant workers' illegal employment or abusing their illegal labour. Representatives from law enforcement bodies (i.e. police officers, prosecutors and judges), for their part, perceive labour exploitation almost exclusively as part of trafficking in human beings. With respect to trafficking in human beings, most attention focuses on Slovak citizens who have or may become victims of trafficking in human beings. Most prevention programmes are aimed at protecting Slovak citizens abroad, as opposed to migrant workers in Slovakia. While migrant workers are not explicitly excluded from these programmes, no measures have been adopted that would take their specific situation into account.

During interviews and the focus group discussion, respondents showed a relatively strong tendency to disparage cases of migrant workers' labour exploitation, especially because of the overall situation on Slovakia's labour market. A number of respondents suggested that labour conditions of "our people" (i.e. Slovak citizens) were also far from ideal and argued that because of high unemployment they were often forced to accept labour conditions that could be viewed as exploitative (e.g. very low wages, unpaid overtime work, working based on trade licences instead of proper labour contracts, which means that workers are not entitled to paid holiday, etc.). In doing so, the respondents failed to take into account a specific situation of migrant workers whose social capital and social networks in the host country are incomparably smaller than those of domestic population and, consequently, the risk that they become victims of labour exploitation is incomparably greater.

Perhaps the most important risk factor that makes migrant workers particularly vulnerable to labour exploitation is their socio-economic situation; many hail from countries plagued by poverty and are therefore willing to work under particularly exploitative conditions. Due to low education status and inability to speak the local language, their legal awareness is poor and they are unable to defend their rights actively at the workplace. Besides factors relating to migrant workers themselves, however, the respondents also identified other factors that increased the risk that migrant workers may become victims of labour exploitation: poor prospects of punishing the perpetrators, the lack of institutions that would effectively monitor labour exploitation or alleged corruption within the police and other government institutions.

Generally speaking, the term "labour exploitation of migrant workers" is almost unused in Slovakia, perhaps except in situations in which labour exploitation is the basic purpose of trafficking in human beings. In terms of valid laws, this issue is regulated primarily by the Criminal Code, the Labour Code and the Law on Illegal Labour and Illegal Employment. Specific provisions on labour exploitation can be found in the Criminal Code (Article 179), which also features a relatively vague definition of particularly exploitative conditions (Article 251a Paragraph 2 letter c). Illegal Labour and Illegal Employment Act transposed Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, empowering

victims of labour exploitation to claim the wage that has been agreed upon and to have it delivered to the country to which they are bound to return or be administratively expelled. In this respect, it is important to point out that only few respondents knew of this directive. Victims of labour exploitation can seek indemnification in criminal as well as in civil law proceedings; however, not a single victim has won compensation in court at the time of writing. The main perceived reasons according to interviewees is judicial delay - that has become notorious in Slovakia - sloppiness of law enforcement organs when investigating cases of labour exploitation and a general tendency to perceive victims as lawbreakers and punish (i.e. detain and deport) them instead of punishing the actual perpetrators (i.e. exploiters).

Interviews with prosecutors and judges (i.e. respondents from category "J") confirmed that cases of labour exploitation are tackled on the level of criminal law only if they feature an element of trafficking in human beings. Interesting information was also provided through the case studies; based on them, we identified cases involving labour exploitation on a mass scale, for instance a group of 343 migrant workers from Ukraine who were trafficked into Slovakia's territory, following which only 11 of them were identified as victims of trafficking in human beings. This case was one of the few to reach court; however, the judge refused to accept the charges of trafficking in human beings and reclassified the case to people smuggling. Several respondents, especially those from categories "J" and "L", viewed awareness of experts (e.g. police officers, investigators, prosecutors, judges, lawyers and other professionals) on issues related to labour exploitation and trafficking in human beings as very poor; according to them, this was the main reason why investigation of labour exploitation was often careless and its victims were often treated inadequately.

The institutional approach to labour exploitation of migrant workers can be described primarily as reactive rather than preventive or protective. Preventive and protective measures target especially Slovak victims of trafficking in human beings abroad. On the other hand, migrant workers in Slovakia typically become the subject of attention of monitoring bodies (i.e. labour inspectorates and departments of control at labour offices) and law enforcement organs (e.g. Bureau of Border and Alien Police and especially its National Unit to Combat Illegal Migration and immigration police departments). These institutions actively cooperate with each other especially when carrying out inspections of businesses during which they pursue their respective agendas.

Monitoring bodies inspect businesses' observance of labour law legislation in particular; however, even if they specifically focus on the employment of foreigners, they do not check whether migrant workers are subject to labour exploitation. Currently, they probably would not even be able to identify victims of labour exploitation as they only have indicators to identify victims of trafficking in human beings. The principal mission of monitoring bodies is to expose illegal employment of foreigners. On the other hand, law enforcement bodies examine migrant workers' residence status, and if it is illegal, they launch the process of administrative expulsion. Not only does this prevent the identification of them as victims, but also renders effective investigation of labour exploitation cases practically impossible. The currently valid Act on Residence of Foreigners provides for granting a tolerated residence status for 90 days not only to victims of trafficking in human beings, but also to illegally employed migrant workers who have worked under particularly exploitative conditions, provided their presence on Slovakia's territory is necessary for the purpose of criminal prosecution. Victims of trafficking in human beings may be placed in the Programme to Support and Protect Victims of Trafficking in Human Beings; so far, though, very few of these victims have been placed in the programme due to the low effectiveness of investigating these cases.

Generally speaking, migrant workers who become victims of labour exploitation are seldom perceived as victims. Monitoring bodies view them primarily as illegal workers who have violated labour law legislation; law enforcement bodies, for their part, consider them to be

illegal migrants who have breached immigration laws. Whenever they spoke of victims, representatives of these bodies explicitly referred to victims of trafficking in human beings. These victims can rely on a relatively well-designed and effective system of support and protection; however, this system is not available to victims of labour exploitation who are not simultaneously victims of trafficking in human beings. Migrant workers who have become victims of labour exploitation (but not of trafficking in human beings) are free to turn to some of the non-governmental organisations that provide support services to migrants in general; unfortunately, most of these organisations do not specialise in labour exploitation and lack the system or the resources to tackle these cases proactively. Due in part to an inaccessible system of support and protection, victims of labour exploitation typically do not tackle their situation and refuse to report their cases to law enforcement bodies; however, perhaps the most important reason for not reporting these cases is the victims' fear of exploiters and of being expelled as illegal migrants.

An important finding is that Slovakia's legal order fails to define the term "victim". With respect to trafficking in human beings, the term "victim" is used based on the Interior Ministry's Order No. 47/2008 on Implementation of the Programme to Support and Protect Victims of Trafficking in Human Beings, as amended by the Interior Minister's Order No. 170/2010. In criminal, administrative and civil law proceedings, these persons are viewed as "the aggrieved party" in compliance with Article 46 Paragraph 1 of the Code of Criminal Procedures). From the viewpoint of criminal law, valid laws do not stipulate specific criteria to grant the status of victim of trafficking in human beings, forced labour or labour exploitation. Therefore, victims of trafficking in human beings are qualified according to general criteria that also apply to other criminal offences.

Based on this research project's findings, a conclusion may be drawn that labour exploitation of migrant workers is a relatively new topic in Slovakia and has not yet been established as a separate issue that would deserve the specific attention of government institutions. Although case studies and especially interviews with insiders identified a relatively large number of cases that bore all the hallmarks of labour exploitation, the official view is that these cases virtually do not exist in Slovakia. Government institutions qualify them either as trafficking in human beings, which is very rarely the case, or as illegal labour. All this suggests that in practice, cases involving labour exploitation of migrant workers are not thoroughly and effectively investigated.