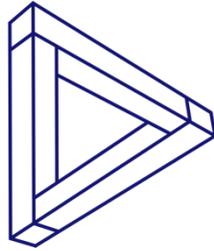


**TRILATERAL
RESEARCH**



New discussions on the complicated relationship between Poland and forced labour

Competence building, Assistance provision and Prosecution of
labour exploitation cases in the Baltic Sea Region (CAPE).

Polish Case Study.

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1 INTRODUCTION



1.1 PURPOSE OF THIS REPORT

This report stands as a deliverable for a project conducted by the Council of the Baltic Sea States (CBSS), namely the “Competence building, Assistance provision and Prosecution of labour exploitation cases in the Baltic Sea Region (CAPE)” project, funded by the Swedish Gender Equality Agency.

Aim of the research is to examine the relationship between recruitment practices and forced labour and human trafficking for labour exploitation. This aim is born out of the reality that over the past several years selected countries of origin have experienced a constant flow of nationals going abroad to find job opportunities but sometimes ending up being subjected to forced labour and labour exploitation.

This report focuses on the case study of **Poland**, a member of the council of Baltic Sea States.

1.2 KEY CONCEPT USED IN THE REPORT

This section introduces some of the conceptions that form the backbone of this report. It begins with **vulnerability**, one of the key underlying factors behind forced labour and human trafficking for labour exploitation, included within the definition of human trafficking. Human traffickers and exploiters prey on people who are vulnerable and vulnerability is perhaps the key root cause of human trafficking and forced labour. It can derive from social, economic or cultural factors, such as poverty, gender or inequality. Vulnerabilities are those life events, experiences, environmental or individual characteristics corrode individuals’ opportunities, whilst creating openings for others to exploit them; thus creating an imbalance of power (Goodin 1985, p.195). If we draw on Sample’s work, she considers vulnerability as emanating from extreme dependency as a result of an inequality in bargaining power; which is clearly visible in many cases of human trafficking.

Human Trafficking is defined in numerous regional documents, including The 2011 EU Human Trafficking Directive, which was adopted by the European Parliament on 5 April 2011 and entered into force on 15 April 2011. Article 2 of the 2011 EU Human Trafficking Directive defines human trafficking as:

1. The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a

position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of Trafficking in human beings to exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

Noting the focus on **forced labour**, it is important to recap the definition of the same. In law forced labour is defined in the ILO Forced Labour Convention 1930 (No. 29), as:

'All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.¹

The definition was confirmed, amongst other cases, in *Van der Musselle v. Belgium* (para.35) and in *C.N. and V. v. France* (para. 73). In *Van der Musselle* the Court ruled that the word labour should not be interpreted in the narrow sense of manual work, but should be understood as "all work or service" (para. 33). Central to the definition are two elements: (i) menace of any penalty and (ii) lack of voluntary agreement. The ILO (2001) explains that "'exacted under the menace of any penalty" must be understood in a broad sense including penal sanctions and the loss of rights and privileges.' On such an understanding of menace of any penalty, it seems logical a person will not offer himself voluntary. In other words, the two elements in effect become one. This has been recognised by the UNODC Issue paper (2015, p.31), which states: 'Work extracted through "menace of any penalty" is not voluntary.'

In November 2016 the ILO's Protocol of 2014 to the Forced Labour Convention, 1930, (PO29), entered into force clarifying the definition of forced labour (ILO, 2014). 'All work or service' included 'all types of work, service and employment, occurring in any activity, industry or sector, including in the informal

¹ International Labour Organization (ILO), Forced Labour Convention, C29, 28 June 1930, C29. Notably, the 1930 Forced Labour Convention only obliges States to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. In 1957 the supplementary ILO Abolition of Forced Labour Convention (No. 105) made it mandatory for all ILO Member States to take effective measures to secure the immediate and complete abolition of forced or compulsory labour: Article 2, ILO Abolition of Forced Labour Convention, 1957 (No. 105).

economy.' 'Menace of any penalty' incorporates 'a wide range of penalties used to compel someone to perform work or service, including penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological threats or the non-payment of wages. The "penalty" may also consist of loss of rights or privileges (such as promotion, transfer, or access to new employment).'

The ILO (2009) has determined a number of indicators, the presence of which in a given situation may, in some cases, imply the existence of forced labour. The ILO forced labour indicators are:



- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

In literature, Turner (2014, p.98) summarised that: '[t]ypical features of people in circumstances of forced labour include: dirty and unsafe working conditions, including a lack of protective clothing; long working hours; unrealistic employment targets; under or non-payment; and more seriously intimidation, threats, bullying as well physical and/or sexual violence. Often forced labour includes social isolation and detention, which can be in appalling conditions such as confinement to small rooms such as lofts or cellars, invariably sleeping on cold, damp floors.' Despite the agreed definition of forced labour and attempts to describe it, Ollus (2015, p.223) argues that 'legal practitioners have testified that the definition of forced labour is difficult to grasp and apply in cases of trafficking.' One of the challenges for example regards what is forced labour in the context of domestic work and what is a 'helping hand, which can reasonably be expected of other family members or people sharing accommodation' (C.N. and V. v. France, Appl. para 74). Such challenges are true for Poland and any other country. Other challenging examples include working for pay that is below minimum wage of the country of destination, but the worker is content as it is above the pay they would receive in country of origin. Moreover, and as summarised by Skrivankova (2010, p.17) 'the boundaries between severe labour exploitation, forced labour and slavery are blurred. Unpleasant and unsociable labour and conditions contrary to human dignity segues to unsafe working conditions involving coercion and violence...there is no objective and clear line demarking the beginning and the end of one form of exploitation from another.'

In addressing the relationship between recruitment practices and forced labour and human trafficking for labour exploitation one ought to note that whilst forced labour can be one of the purposes of exploitation within the act of human trafficking (the definition states that exploitation shall include, at a minimum, the exploitation of forced labour) it is also a stand-alone phenomenon. In other words,

not all forced labour is human trafficking and the two are not equal term; this is also a view being that exists amongst many legal specialists (Rijken 2013, p.16).

1.3 STRUCTURE

This report is divided into 7 sections. Following this introduction, Section 2 orientates the reader by providing an of the method used for this report. Section 3 outlines and comments on relevant legislation and policy in Poland with regard to forced labour and human trafficking for labour exploitation. Section 4 then provides an overview of Poland with regards to aspects relevant to forced labour and human trafficking for labour exploitation, including a timeline of key events. Section5 summarises the key points of the 2017 GRETA report with a focus on forced labour and human trafficking for labour exploitation. Section 6 forms the analysis of this report, and section 7 concludes with some key recommendations.

2 METHOD



2.1 LITERATURE REVIEW

The starting point for the methodology in this project was a literature review. The review formed the foundation and inspiration for further substantial, useful research. The purpose of the literature review was to pull lessons learned and evidence-based approaches for understanding the topic of the relationship between recruitment practices and forced labour and human trafficking for labour exploitation with regard to Poland. The literature review helped to put matters into context by identifying what has been studied and established in this domain, and thus allowing this research to later make an original contribution to the subject area. The literature review is guided by the following research questions:

- What recruitment practices/mechanisms facilitate exploitation in the country of origin?
- Are there links between the ways how victims are recruited and them ending up in situations of trafficking?
- Who are the victims (typology)?
- What is incentive for people to accept risky job offers?
- What have been promised to the exploited workers?
- Were the workers aware of the risks?
- What are the possible gaps in legislation/practices that allow for this to occur?
- Are there established mechanisms to combat exploitative recruitment and hiring practices, which increase the risk of exploitation and trafficking and and/or specific protections for migrant workers?

The literature review followed a four-step process:

Search: Using relevant search terms in English and Polish - human trafficking, forced labour, labour exploitation, Poland, modern day slavery – the author identified relevant literature, including articles, reports, news pieces, blogs, white papers.

Review: Initially the researcher reviewed ten pieces of literature and used emergent coding (codes are drawn from the text). This a method of generating a participant-generated 'theory' from the data. This allowed the researcher to find the answers to research questions; theory was developed from the data rather than imposed upon it. The emergent key words and codes helped narrow down focus and provide a more nuanced lens through which subsequent pieces of literature were reviewed.

Expansion: The methodology plan allowed for a snowball sample whereby reviewed literature guided the researcher to other sources that may not have come up in original searches. The above process was repeated for new sources.

Analysis: Once the literature was reviewed and coded it was analysed. This involved rigorous analysis and synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials. The researcher drew primary conclusions that served as a starting point for developing connections between recruitment practices and human trafficking and labour exploitation. This analysis helped the researcher come up with primary research questions and to engage in qualitative interviews.

2.2 INTERVIEWS

The author also relied on semi structured interviews. Findings were cross- validated with the existing literature, especially academic journals, reports from international organisations, media reports on the subject. To acquire the requisite information while interviewing and to motivating respondents to answer as completely as possible, the researchers sequenced the questions (available in Annex A) and payed close attention to phrasing, level of language and stylistic format and to the interviewees' educational, social status, ethnic, gender, cultural traits and age etc. The interviews finished with a nod to the snowball sampling strategies. As the researchers engaged with all relevant stakeholders, they snowballed other respondents who are not automatically linked to such groups.

During all interviews – which took place via phone due to lock down measures in place at the time of research - the researcher adhered to the highest ethical standards (see below). Semi-structured interviews lasted approximately 1 hour. In all cases participants' informed consent was sought. The following categorise and numbers of persons were interviewed:²

ID number	Type of research subject	Date of interview
01	Polish Victim	12 February 2020
02	NGO worker in Poland	12 March 2020
03	NGO worker in Poland	7 th April 2020
04	Safe house worker in UK	27 th May 2020
05	Academic from Poland	5 th June 2020
06	Ukrainian Victim	12 th June 2020

Covid-19 update: The interview process was significantly disturbed by the outbreak of the COVID-19 virus and subsequent lock down measures placed across Europe. The author of this report had planned to travel across Poland conducting further interviews, however the same was prevented. Consequently, this is a first draft of the report and interviews are pending with:

² The following stakeholders declined or did not respond: Medaille Trust (UK), Centrum Pomocy Prawnej im. Haliny Nieć, La Strada Poland, Salvation Army Poland,

Ms Małgorzata Makarska – Chief Specialist, Department for the Improvement of Common Courts Department of Administrative Supervision
Researchers at the University of Warsaw – Centre for Human Trafficking
Ministry of Investment and Development
Ministry of Justice
Police force staff
Border Guard staff
Victims

2.3 OWN KNOWLEDGE

The author of this report worked for four years – part-time – at a safe house for victims of human trafficking in the UK, where many Polish victims of forced labour were housed. The involvement has contributed to the authors understanding of the problem addressed by this report. Consequently, her own experiences feed into this report.

2.4 LEGISLATION AND POLICY REVIEW

This report was also prepared through the use of doctrinal research, this method ‘involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials’ (Council of Australian Law Deans, 2005). To that end, EU, international and Polish law and policy documents on human trafficking for the purposes of forced labour and labour exploitation were reviewed. Studying the documents, coupled with case law, enabled the author to present essential knowledge of the legal framework against which the crimes occur. In particular the law was analysed through the lens of effectiveness, what effect does the law/policy have on the targeted problem, and acceptability, do the relevant stakeholders view the law/policy acceptable.

2.5 ETHICS

The project understands that conducting research with human subjects requires mutual respect from the researcher and participant involved. This section sets out the ethical considerations and procedures that were put in place. It provides ethical guidelines and protocols that the researcher followed when conducting research.

Established groups, such as the Social Research Association and Economic and Social Science Research Council, have published good practice guidance in relation to social science research with human volunteers, and this research followed these guidelines closely. In addition, the researchers ensured that ethical standards and guidelines, Data Protection Act 1998 and the EU General Data Protection Regulation (GDPR) were rigorously applied. The work in this project respected the following principles:

Voluntary participation: Participants were not be coerced to partake in the study. In the course of research, no rewards, economic benefits, or incentives were used to induce participation. Any incentives undermine the requirement that participation is voluntary.

Free to withdraw: Participants were able to withdraw from any point of a study without needing to provide an explanation or being penalised for choosing to do so. They can also ask for their data to be destroyed up to the point of sending relevant deliverables to the funders.

Informed participation: Participants were informed of the research procedures, what will be required from them, and how their data will be used and stored. This information was provided in an Information Sheet.

Consent: Only consenting participants took part in the research.

Protection from harm: Both participants and researchers were protected from physical, psychological, social, legal and economic harm. The participants were told that should they feel distressed at any point they should communicate this and that the researcher can provide a list of organisations for emotional support should the same be required. The researcher ensured that interviews occurred in a setting that is comfortable and agreeable to the participant, ensuring their safety and emotional wellbeing and providing them with a sense of control and power within the research process.

Confidentiality: Participants data was and will be treated confidentially, and their anonymity will be respected at all times. To that end participants who took part in an interview received a unique ID number. The researcher used the ID number to anonymise all notes taken during interviews. Any handwritten notes were treated confidentially and disposed of in a secure manner as soon as possible. For example, a researcher having concluded an interview as soon as possible typed up notes and shredded the originals. Participants' names and other personal details (including the link to the ID number) are stored securely and separately from research data. This identifiable data are stored in a password protected file on the hard drive of a password protected computer that belongs to Dr Julia Muraszkwicz.³

Usage: Researchers will ensure that individual participants' data will not be mined or used for any purpose other than those explicitly and clearly needed for running activities within the project.

³ Dr Julia Muraszkwicz has previously worked on EU funded projects that considered ethical questions (e.g., Framework Programme 7 funded Value Ageing, TRACE and Horizon 2020 funded iTRACK). In the iTRACK project she has led the ethics monitoring work as well as a privacy and ethics impact assessment. Dr Muraszkwicz has undertaken primary research with victims of human trafficking and other stakeholders. She has a background in human rights and an understanding of how they relate to ethical research.

3 LEGISLATION AND POLICY



3.1 DOMESTIC LAW

Existing provisions of labour law do not address the problem of **forced labour** *sēnsū strictō*, there are however legal provisions that protect employees against violation of their rights and freedoms, which can be extended to protect persons against forced labour. Of particular importance in the Labour Code are:

Art 10 The Right to Choose Work

§ 1 Everyone has the right to a freely chosen job. No one, except in cases specified in the Act, may be prohibited from practicing the profession.

§ 2 The state determines the minimum amount of remuneration for work.

§ 3 The state pursues a policy aimed at full productive employment.

Art 11 Freedom to enter into an employment relationship

§ 1 Establishing an employment relationship and determining the terms of work and pay, irrespective of the legal basis for this relationship, requires a joint declaration of will by the employer and employee.

Comment: In this provision, the legislator explicitly confirms the principle of freedom of employment, claiming that both the employee and the employer have full autonomy. Thus, it is argued that, although not directly, but nevertheless the Labour Code guarantees the employee protection against exploitation and forced labour.

Art 11(1) Respect for the employee's personal rights

§ 1 The employer is obliged to respect the dignity and other personal rights of the employee.

Comment: This is an important provision in so far as it implements within labour law the fundamental principle of human rights, which speaks of respect for human dignity.

Art. 14 Rights to rest

§ 1 The employee has the right to rest, which is ensured by the provisions on working time, non-working days and vacation leave.

Art. 15 Safe working conditions

§ 1 The employer is obliged to provide employees with safe and healthy working conditions.

Art. 282 Offenses against employee rights related to remuneration, annual leave and work certificate

§ 1 Who, contrary to the obligation:

- 1) does not pay the employee remuneration or other benefits due to the employee or the employee's family member entitled to such benefits within the set deadline, the amount of this remuneration or benefit is unjustifiably reduced or makes unjustified deductions,
- 2) does not grant the employee annual leave or unreasonably reduces the duration of this leave,
- 3) does not issue the employee with a work certificate within is subject to a fine from PLN 1,000 to PLN 30,000.

§ 2 The same penalty shall apply to anyone, who contrary to the obligation does not comply with the enforceable decision of the labour court or settlement concluded before the conciliation commission or the labour court.

Analysing the above provisions, the ADSTRINGO project (Lasocik, Rekosz-Cebula & Wieczorek 2014, p.24) concluded, rightly, that there is a lack of a regulation that would explicitly prohibit **forced labour**. However, this does not prevent Polish law enforcement agencies from effectively eliminating behaviour involving forced labour. Authorities are also helped by the **2012 Act on the Effects of Delegating Work to Foreigners Staying Contrary to Regulations on the Territory of the Republic of Poland** (Ustawa o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej). Of particular importance is Article 10 (emphasis added):

Art. 10 § 1 He who delegates a foreigner without a valid document authorizing them to stay on Polish territory with work **in conditions of specific exploitation**, shall be punishable by deprivation freedom up to 3 years.

§ 3 The conditions of specific exploitation mentioned in paragraph 1 are understood as working conditions of a person or persons in violation of the law, violating human dignity and grossly different, particularly in relation to sex, in comparison to the working conditions of a person to whom work is delegated in accordance with the law, affecting in particular safety of persons performing work.

Wieczorek (2017, p.160) writes that on considering the content of the above-mentioned article, it can be reasoned that the national legislator has penalised exploitation and forced labour. A weakness of the cited article is however, that it only concerns foreigners and only those who are in Poland without a valid residence permit. This, in turn, significantly reduces the responsibility of the employer who commits the practices described above. If the employer entrusts the performance of work under

special conditions to a citizen of Poland or another EU country, then they will not be liable on the basis of the discussed act.

Consequently, a key question remains, namely whether the national legislator should amend existing laws to clearly indicate that all practices related to coercion and exploitation of workers are legally prohibited. This question received attention last year: towards the end of 2019 The Minister of Finance, Investment and Development (Jerzy Kwieciński) aimed to introduce penalties for forced labour. He submitted the draft of a definition of forced labour that would be added to the penal code to the Ministry of Justice. At the time of writing this report (May 2020) there has been no update whether this will become a reality. Interviewee 005, who was consulted on the new definition, stated that they have not heard of any progress and they do not expect any updates in the near future.

An update in legislation would be a welcome venture, one that is also consistent with the recommendations of the International Labour Organization (ILO). Such a development would help elevate the lack of justice with regard to victims of forced labour; currently with no definite crime when a wrongdoing is committed it is treated as a violation of employee rights or fraud. These are acts of a lower severity than the crime forced labour.

In summary it is found that a concrete legal architecture is a critical precondition for effective administration justice. However, ultimately the legal framework ought to address not just forced labour and human trafficking directly, but also to the factors underlying them. At the very least, high level policy discourse is required on the endemic features of the contemporary global economy that facilitate labour exploitation. These conversations ought to include stakeholders operating further upstream in world-wide supply chains.

Turning now to specifically the crime of **human trafficking**, it is defined in the Criminal Code at Art. 115 § 22 and § 23, as:

Art. 115 Trafficking in human beings

§ 22 Human trafficking is the recruitment, transport, delivery, transfer, harbouring or receiving a person using:

- 1) violence or unlawful threat,
 - 2) abduction,
 - 3) deception,
 - 4) misleading or exploiting a mistake or inability to sound properly comprehending the action taken,
 - 5) abuse of dependence, use of a critical position or state of vulnerability
 - 6) granting or accepting a financial or personal advantage or promise to a person caring for or supervising another person
- for its use, even with her consent, in particular in: prostitution, pornography or other forms of sexual exploitation, **at work or forced services**, in begging, slavery or other forms of use degrading human dignity or in order to obtain cells, tissues or organs contrary to the provisions of the Act. If the perpetrator's behaviour concerns a minor, it constitutes human

trafficking, even if the methods or means listed in points 1-6 have not been used. [emphasis added]

§ 23 Slavery is a state of dependence in which a person is treated as an object of property.

The provision penalizing human trafficking is contained in Art. 189a of the Criminal Code:

Art. 189a. Human Trafficking

§ 1 Whoever commits trafficking in human beings shall be subject to the penalty of deprivation of liberty for not less than 3 years.

§ 2 Whoever attempts to commit the offense specified in § 1, shall be punishable by imprisonment from 3 months to 5 years.

The general perception is that the construction of the definition of human trafficking in Polish law approximates the international ones. Within the Polish definition, as in the international, the list of types of exploitation is open. The Trafficking directives states “exploitation shall include, at a minimum,” whilst the Polish code use the phrase “in particular”; in both cases this gives law enforcement and judiciary bodies the possibility to expand the victim status to individuals who have been exploited for other purposes than those listed in the documents. This is particularly important, as we continue to learn about new forms of exploitation, e.g., benefit fraud.

On legislation and policy more broadly, interviewee 005 commented that there is not enough dialogue. Policy debates do not focus on forced labour and human trafficking for labour exploitation, and in turn this has an impact on legal development and on the general awareness of the public. The inactivity on the policy arena is demonstrated by the reality that currently there is no office of a National Rapporteur for preventing trafficking in human beings in Poland. Until 14 December 2018 this was performed by an inter-ministerial Committee for Combating and Preventing Trafficking in Human Beings, while the role of the Secretariat of the said Committee was performed by the Unit for the European Migration Network and Prevention of THB within the Ministry of the Interior and Administration. According to a statement issued by the government to GRETA (Ministry of Interior and Administration 2019, p.18):

‘currently documentation is being prepared to establish a new Committee for Preventing Trafficking in Human Beings in the Ministry of the Interior and Administration that will take over the tasks related to: assessing of programmes to combat and prevent trafficking in human beings; initiating activities aimed at combating and preventing human trafficking; and preparing the National Action Plans against Trafficking in Human beings projects, monitoring feasibility of planned tasks and developing annual reports on the implementation of the National Action Plan. The new Committee for Preventing Trafficking in Human Beings will be composed of government administration representatives and specialised NGOs experienced in matters related to trafficking in human beings. The new Committee will establish a new Standing Working Group for monitoring and evaluation of actions taken, whose tasks will include, inter alia, ongoing monitoring of the situation in Poland. A role of the new Committee

Secretariat will be still performed by the Unit for the European Migration Network and Prevention against Trafficking in Human Beings in Ministry of the Interior and Administration.'

It should be noted however that such a committee is not the same as having an independent National Rapporteur.

As to the **National Action Plan for 2020-2021**, the document states that it aims – and thus the focus for 2020-2021 is - to intensify preventive measures, strengthen the role of Voivodship⁴ Teams for Counteracting Human Trafficking and introduce corrective actions to ensure all parts making up the countermeasures trafficking are complementary. Indeed, much focus is placed on the Voivodship Teams, however interviewee 005 expressed concern that this predominantly exists on paper. As to forced labour the following paragraphs from the Action Plan are worth including (translation by author):

- We [the government] are currently observing the intensification of forced labour. The victims are often males working in the construction or agricultural sector.
- Entrepreneurs play an important role in ensuring an efficient anti-trafficking system, for whom victims of human trafficking may provide forced labour. This may not only bring legal and criminal risks, but also be a risk to business due to the to the loss of contracts. Entrepreneurs are therefore an important target group for preventive and awareness-raising activities on forced labour. Some industries are particularly vulnerable to this type of phenomenon. That's why public administration in accordance with the provisions of the National Action Plan for the implementation of the UN Business Guidelines and human rights will take action to support the business sector both in the field of response and prevention of forced labour.
- The government plans to run a poster campaign in 2020 aiming to increase awareness about the risks of exploitation and forced labour

As evidenced by the extracts of matters related to forced labour, the issues receive scarce attention in the National Action Plan. A noticeable gap in the Plan is the lack of inclusion of trade unions in the discourse or engagement with labour inspector agencies abroad. The conclusion chapter makes further recommendations as to how future Actional Plans can advance the countries response to forced labour.

Interviewee 005 emphasised that despite what is said/written, on the whole the issues of human trafficking and forced labour are absent from all relevant spaces. Sporadically there are some operations, e.g., a talk in a school, but there is a significant lack of large public campaigns that would educate the public and policy makers. The same is true for training. Many relevant stakeholders, 005 notes, do not received any applicable or useful training about forced labour. They are not presented with case studies, nor indicators and have not been instructed on procedure if they encountered a case. The interviewee concluded that the problems of forced labour and human trafficking for labour exploitation have little visibility. Absent from any dialogue are also significant contributions from, employers' and workers' organizations, this is a missed opportunity as they could principally

⁴ Poland is divided into 16 voivodeships (regions/provinces)

contribute to addressing gaps in relation to labour market-based measures, including poor contracts (as discussed further below).

3.2 INTERNATIONAL INSTRUMENTS

Poland is a party to all the relevant international instruments regarding human trafficking:

Council of Europe Convention on action against trafficking in human beings of 2005

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime of 2000

Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims

International Labour Organisation conventions: ILO Convention No 29 concerning Forced Labour or Compulsory Labour; ILO Convention No 105 concerning the Abolition of Forced Labour; ILO Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

4 REVIEW OF THE SITUATION IN POLAND



4.1 BACKGROUND

The Republic of Poland's **modern history** is characterised by a transition from communism to democracy and capitalism. Starting with the latter, the transformation of the Polish economy started in the 1990s and it is a tale of evolution from a centrally managed economy to a free market economy, in particular: a change in the ownership structure of business entities (privatisation), the abolition of state control over foreign trade, the liberalization of financial flows abroad, the introduction of stimulating legal provisions, development of entrepreneurship and development of competition in the internal market, price liberalization and introduction of internal convertibility of the zloty and uniform exchange rate. After Poland's accession to the European Union in 2004, the period of economic prosperity took hold. The country enjoyed GDP growth of 3.1% in 2016, 4.9% in 2017 and 5.1% in 2018 as well as a steady declining unemployment rate since 2013 (Ministerstwo Rozwoju 2019). For many Poles, economic growth has meant work, an ability to support one's family and an opportunity to save. In 2020 continued growth was expected, however the same will inevitably be impacted by the restrictions placed on the economy due to the COVID-19 virus.

As to **modern democracy**: the year 1989 was a revolutionary year. The round table, which was the result of talks between representatives of the opposition of the time with representatives of the ruling camp, saw the first, partly free, parliamentary elections in June. The first completely free and democratic elections took place in 1991. A dynamic period of political and economic transformation began in Poland. The stamp of democracy and liberalism came with Poland's accession to the European Union in 2004 and subsequently joining the Schengen Agreement on December 21, 2007. In November 2015, Poland's *Law and Justice* party, a party usually categorized as being on the political right, came to power by forming a majority government, after winning both the presidential and parliament elections that year. In 2019, they narrowly won a second term in office and at the time of writing this report remain in power. The Party indorses traditional family and Catholic values and as noted by Hoff (2019, p.25) 'the current government also discouraged efforts to promote gender equality or combat violence against women'.

Of importance to this report is also **Poland's geography**, Poland is divided into 16 voivodships, 380 poviats and 2477 communes. Territorial division is specified in the Act of 24 July 1998 on the Introduction of a Basic Three-Stage Territorial Division. Crucially, it intersects Western Europe with Eastern Europe. Poland has peripheral Schengen borders with Ukraine, Belarus and the Kaliningrad Oblast of the Russian Federation. This historical and geographical context creates an interesting phenomenon described by Filipowicz, Lasocik and Wieczorek (2010, p.7) whereby the country is attractive for **migrants** coming from ex USSR states – particularly from Ukraine - as well as from Africa and Asia. As to the latter, it ought to be highlighted that the 2015 so called migration crisis, had little

impact on Poland, with few Syrians, Afghanistan's and nationals of Sub-Saharan Africans finding a home in Poland (Khan 2017). Indeed, 'in early 2018, Polish Prime Minister Mateusz Morawiecki reiterated that his government would not accept migrants from North Africa or the Middle East, despite mandatory EU quotas' (Ondřej 2019, p.147). In contrast, Poland has taken in more workers from neighbouring non-EU states than any other country, predominantly from Ukraine. According to Wilczek writing for Aljazeera (2020) '[n]early two million Ukrainian migrants have arrived in Poland since 2014. Many escaped their fledgling economy and the war in Ukraine's east.' Conversely, the situation may change as Ukraine's economy grows and as Germany loosens rules on workers' visa.

La Strada International's report on forced labour found that in Poland 'there is still an urgent shortage of labourers – partly as a result of many Polish workers leaving in the past to work abroad...Due to the downward revision of the retirement age and social benefits for families with children, the Polish worker population has further declined. This shortage of workers has strengthened demand for foreign workers and put pressure on the Polish government to encourage immigration and ease migration and employment procedures for foreign workers' (Hoff 2019, p.30). In the figure below readers will see that the highest number of migrants come from Ukraine. However, at the end of 2019 experts speculated that the number of Ukrainian migrants coming to Poland for work will decrease for the first time in six years. This is because Poland ceases to be an attractive labour market due to the likelihood of perspective earnings vis-à-vis earnings back home or in other countries and also because of lengthy procedures related to obtaining a work and residence permit. In contrast there is an increasing attractiveness of Germany and the Czech Republic (aleBank.pl 2019). This of course has to now be considered against the background of the COVID-19 pandemic. Notwithstanding the decreasing numbers, the prevalence of Ukrainian workers in Poland, particularly in sectors prone to labour exploitation and in the underground economy, it is important to note their potential vulnerability to victimhood (more below).

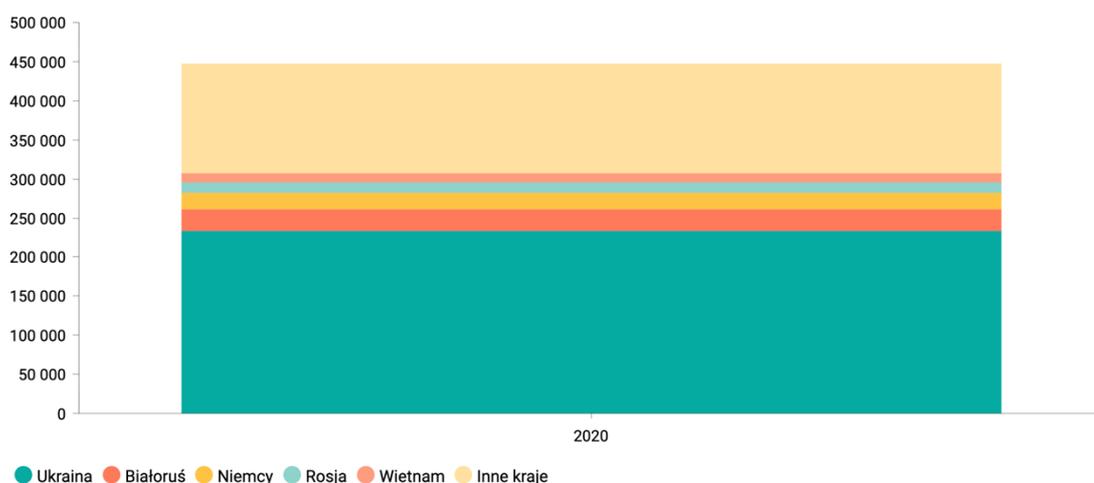


Figure 2: Nationality of migrants in Poland (Trans from left to right: Ukraine, Belarus, Germany, Russia, Vietnam, Other)

At the same time Polish nationals are one of the largest **migrant groups** in Europe. Interviewee 004 noted that Poles have always been a country of migrants, whether it was around the time of WWII or during communism; they have followed freedom and opportunities. Migration is something that is not scary to the Poles. Interviewee 004 stated that Poles know their grandparents or parents moved

and they feel they can too, even when they don't speak the language of the host country. One can contrast this with hostiles that Poles have with regard to migrants coming to Poland, particularly those from the Middle East, Africa or Asia.

Today people seek prospects in countries to the west such as Germany, Ireland, UK, or the Netherlands. They are drawn to these countries by the: presence of other Poles (who can aid in the provision of documents, family reunification potential, integration opportunities), perceived economic opportunities (in specific job sectors interesting for migrants) and/or opportunities to obtain money and status and integration possibilities due to perceived realities (progressive) in host countries. Amongst those migrants are victims of forced labour and human trafficking; working in agriculture, construction, factories, car washes, recycling plants. They are either directly exploited by an employer or by their trafficker, who does not employ them but nevertheless acts as an intermediary. Another form of exploitation that often runs parallel to labour exploitation is fraud. Victims are forced to obtain loans or social benefits, this is then transferred to the perpetrator (Bojarski 2017, p.118).

Interestingly, migration numbers are decreasing. 2018 was the first year in eight years in which the number of migrant Poles in other countries, mainly in Great Britain, decreased. This, according to the National Office of Statistics (GUS 2019, p.1), can be attributed to both a decrease in the number of Poles leaving their home country and the increasing number of returns. In turn this is recognised to be the result of a vibrant labour market in Poland, including low unemployment, and - in the case of Great Britain – uncertainties related to Brexit. By the end of 2018, around 2,455,000 Poles were living temporarily outside of Poland; this was 85,000 (3%) less than in 2017. In the EU, the largest number of Polish migrants live in Germany (706,000), Great Britain (695,000), The Netherlands (123 thousand) and Ireland (113 thousand). In 2018, compared to 2017, there was a decrease in the number of Polish residents in Great Britain and Italy. The most significant changes were observed in the case of Great Britain: the number of Polish immigrants staying there temporarily decreased by about 98,000 (12%). More people have left Great Britain than migrated there. A slight increase in the number of Poles was observed in Germany (by 3,000), as well as in the Netherlands, Austria, the Czech Republic, Denmark, Ireland, Sweden, Norway and other non-EU countries (mainly in Switzerland and Iceland). The main reason for traveling abroad was to seek employment (GUS 2019, p.1). Regrettably, we do not – at this time – have data⁵ to draw robust conclusions on whether the decrease in migration translates to lower numbers of Poles subjected to forced labour and human trafficking for labour exploitation, however this ought to be a subject of research in the near future. It is worth noting that interviewee 004, who works in safe houses for male victims (predominantly of forced labour) in the UK, noted a decrease in the number of Polish victims. The interviewee stated that at a point in 2018, 18 out of 26 victims in their safe house were Polish, currently (May 2020) there is only one Polish national out of 36.

The **role of NGOs** is crucial in addressing human trafficking⁶ and forced labour, thus it is pertinent to highlight their presence in Poland. NGOs initiated actions against human trafficking in Poland in 1995 (Bukowska 2016, p.6), beginning with the formation of La Strada in three countries - the Netherlands,

⁵ The latest, and fourth, report published by the European Commission that presents a compilation of statistics at the EU Member State level on trafficking in human beings covers the years 2015 and 2016 and updates the 2014 data collection as relevant.

⁶ Providing safe houses, rehabilitation centres, friendship and help with immigration status are just some of the illustrations of their involvement.

Poland and the Czech Republic. Noting the timeline, it is possible to argue that the NGO sector concerned itself with the problem of human trafficking in Poland before the government, and subsequently used its platform to lobby and advocate the government for action. The same bore fruit as indicated by the below timeline. Yet currently the NGOs are struggling due to poor access to governmental funding. La Strada International notes, based on interviews it conducted, that: '[g]overnment funding programmes have been cut, stopped or frozen, including funding for legal support, professional counselling, psychological assistance and other services offered by NGOs. The government also reduced financial support for the National Action Plan and policies on combating human trafficking. According to NGOs, this demonstrates a lack of political will to seriously address human trafficking' (Hoff 2019, p.26). Interviewee 005 praised the work of the NGOs but highlighted the fact that in a country of 40million people there are only two NGOs genuinely dealing with human trafficking – La Strada and POMOC – active in two cities, Warsaw and Katowice. Moreover, POMOC focuses on delivering help to women and children, thus when it comes to male victims of forced labour there is only La Strada. Of course there are other NGOs that seek to help vulnerable persons, including victims of human trafficking however only the two mentioned have direct expertise and who are active. The interviewee also expressed doubt as to how much assistance the NGOs can deliver when they only receive around 250,000 Euro a year (note: the current National Action Plan states that the budget for addressing human trafficking allocating by the Ministry of Interior and Administration is 1 235 000 PLN [276232.45 Euro], which includes 1 100 000 PLN for victim care [246052.31 Euro]). Compare this to the UK, where the cost of the Victim Care Contract for England and Wales during financial year 2016/17 was £14 million (15712130.00 Euro). 005 acknowledged Poland is a poorer country but also highlighted that it is a country of origin, transit and destination and that more money is required for NGOs to adequately protect victims and contribute to preventing the crime. 005 felt that the lack of funding is not only a matter of economics, but predominantly a matter of a lack of political will.

4.2 TIMELINE OF ANTI- HUMAN TRAFFICKING EFFORTS IN POLAND



- 1995 Formation of La Strada Poland.
- 2001 Signing of the Palermo Protocol.
- 2002 La Strada Foundation organised a round table meeting on the creation of the National Program for the Prevention and Combating of Trafficking in Human Beings, with the participation of representatives of the Chancellery of the Prime Minister, the Senate of the Republic of Poland, the Ministries of National Education and Sport, Home Affairs and Administration, Foreign Affairs, Justice, the Office of the Committee for European Integration and the Ombudsman.
- 2003 First National Program is adopted by the Council of Ministers: National Program for Combating and Preventing Trafficking in Human Beings for 2003-2004.
- 2003 Ratification of the Palermo Protocol.

- 2004 Establishment of the Team for Combating and Preventing Trafficking in Human Beings (Zespół do Spraw Zwalczania i Zapobiegania Handlowi Ludźmi). An advisory and consultative body of the Prime Minister. Chaired by the Secretary State, the Team consists of representatives institutions, international organizations and non-governmental organizations.
- 2005 Signing of the Council of Europe Convention on Action against Trafficking in Human Beings (Ratified in 2008).
- 2006 Establishment of the Central Team for Combating Trafficking in Human Beings at the Police Headquarters, and then at each provincial police headquarters team to fight THB.
- 2007 Amendments to the Act on Social Assistance - voivodes are now responsible for helping victims of trafficking in human beings.
- 2009 Formation of KCIK (Krajowe Centrum Interwencyjno-Konsultacyjne dla Ofiar Handlu Ludźmi), which is the National Center for Intervention and Consultation for Victims Trafficking in Human Beings. KCIK was established to help victims of human trafficking in Poland. As part of its tasks it includes identification of victims of trafficking, intervention, counselling, consultations for institutions and organizations, and running a specialist shelter for victims. KCIK employees provide advice not only to victims of human trafficking, but also to their relatives, organizations and institutions, people at risk of human trafficking.
- 2010 Entry into force of the amendment to the Penal Code, which contains the definition of the crime of human trafficking.
- 2012 Adoption of the Act of 15 June 2012 on the Effects of Entrusting the Performance of Work to Foreigners Staying Contrary to the Regulations on the Territory of the Republic of Poland.
- 2016 National Action Plan against Trafficking in Human Beings for 2016-2018.
- 2019 Deletion of the inter-ministerial Team for Combating and Preventing Trafficking in Human Beings and establishing in its place an advisory body of the Interior Minister called the Team for Combating Trafficking in Human Beings.
- 2019 Poland falls from Tier 1 to Tier 2 within the TIP report.

4.3 THE ROLE OF THE LABOUR INSPECTORATE

The Polish Labour Inspectorate (*original: Państwowa Inspekcja Pracy*) is trusted with the control of compliance with occupational health and safety rules, as well as provisions regarding the legality of employment. The Inspectorate also investigates accidents at work as reported by employers. 'When inspecting the legality of employment and employment of foreign nationals, labour inspectors check whether there are indications of forced labour. In 2008 and 2015 agreements were signed between the 48-border guard Chief Commanders and the Chief Labour Inspector, with the aim of strengthening the capacity of labour inspectors to respond to the illegal employment of foreign nationals and to the phenomenon of trafficking in human beings' (Hoff 2019, p. 52). For a full list of tasks that fall within

the Labour Inspectorate please see the Report on the National Labour Inspectorate's activity in 2017 (Summary for the ILO).

Although the role of the Labour Inspectorate does not specifically focus on the issue of forced labour, one could argue that their work does provide scope to protect employees against violation of their rights, or at the very least it contributes towards uncovering potential cases. However, La Strada International found that the NGO sectors opposes the fact that the Labour Inspectorate has a dual function: to inspect labour violations and to check on the legal status of workers. 'This means that workers cannot safely report abuse without fear of repercussions. NGOs therefore call for a clear firewall between the two, which would allow vulnerable workers to report exploitative practices without fear of deportation or arrest. Currently, when third country nationals file a complaint against an employer, they have to be cautious about the fact that the Labour Inspectorate forwards information about their legal or work status to the border police, which most likely results in an obligation for them to return to their home country. It also puts their co-workers in similar danger' (Hoff 2019, p.52).

4.4 VICTIMS IN POLAND

Skalski and Maciejewski (2019, p.277) write that 'in recent years, the number of cases of trafficking in persons used in forced labour in European countries, including Poland, has been continuously on the rise. As far as Poland is concerned, the problem concerns Poles involved in forced or bonded labour abroad and foreigners working illegally in Poland.' The authors then add that 'in Poland, law enforcement agencies have until recently focused only on eliminating human trafficking in relation to sexual crimes. The use of persons and abuses in the labour sector are therefore a relatively new phenomenon for the police and the prosecutor's offices' (Skalski and Maciejewski 2019, p.279). Statistics are therefore incomplete, indeed interviewee 005 notes that with regard to numbers there is a great gap. 005 elicited that when it comes to statistics and data: 'no one accumulates it. The only thing is the number of cases handled by the Police. In addition, the Border Guard also counts its own cases. And there are victims who are in La Strada, who the NGO counts. But on the whole the picture is incomplete.' As the data is scarce it is hard, and would be irresponsible, to provide clear-cut comments on patterns. Of course, one can report on cases observed, but the same needs to be treated with caution. For instance, the case of Polish victims of force labour in Italy (the Terra Promesa case⁷) predominantly concerned men, likewise in her work at safehouses in the UK the author observed that a rich majority of victims were also men; yet one is restrained to draw a conclusion that forced labour is a strictly male issue.

KCIK (The National Consulting and Intervention Centre for Victims of Human Trafficking) is the central victim support system in Poland and it aims to improve the standards of assistance offered to victims and to make the assistance more available. It is supposed to collect statistics on the number of people

⁷ This case concerned the mass exploitation of Poles in southern Italy in 2006. Victims were forced to work and were accommodated in very basic conditions, namely in barracks or outbuildings, sometimes without electricity and toilets. They were guarded by violent guards of employers armed with firearms (Lasocik 2016, p.8)

to whom support is provided, it then sends those to the EU Commission (page on Poland, date unknown). For 2011 -2018 they were:

Year	Number of persons supported by KCIK
2011	133 persons (81 Polish citizens, 52 foreigners)
2012	198 persons (89 Polish citizens, 109 foreigners)
2013	222 persons (103 Polish citizens, 119 foreigners)
2014	207 persons (71 Polish citizens, 136 foreigners)
2015	229 persons (103 Polish citizens, 126 foreigners)
2016	200 persons (96 Polish citizens, 104 foreigners)
2017	187 persons (87 Polish citizens, 100 foreigners)
2018	181 PERSONS (83 Polish citizens, 98 foreigners)

Statistics from the Police look as follows, albeit it has to be noted the same concern number of cases and not victims and they are not broken by type of human trafficking:

	Proceedings initiated	Proceedings completed	Ascertained crimes	Detected offenses
2019	16	32	25	23
2018	33	42	67	64
2017	27	36	85	82
2016	31	38	9	7
2015	30	31	105	105
2014	28	36	64	61
2013	27	31	100	99
2012	26	31	61	60
2011	12	22	427	424

Of interest are also data found by Wieczorek (2018, p.85), in his analysis of prosecution cases. He found that the prosecutor’s office opened the following number of investigations concerning **forced labour**:

	Proceedings initiated
2015	21
2014	8
2013	6
2012	7
2011	8

Wieczorek comments that the majority of cases concerned cases of Poles being forced into labour abroad, and only a small number of cases concerned forced labour in Poland; in these latter cases the victims were predominantly foreign. The low number of prosecutions can be explained by difficulties

in identifying the crime, confusion as to definition, particularly with regard to forced labour, lack of proficiency amongst police, prosecutors and judges and difficulties with regard to witness testimonies. This is confirmed by an interview with a potential victim in Poland, 006, who states that despite his numerous efforts, law enforcement agencies are not interested in his case. He states that the Police asked him two questions: 1) were your documents withheld and 2) could you have physically walked away. As the answers were no and yes respectively, the Police told him it is not a matter of human trafficking and there is nothing for them to do.

Wieczorek also recalls figures concerning illegal employment of foreigners in Poland (Wieczorek 2018, p. 86-87), which increase year on year. He determines that the increase in numbers is most likely due to the increase in effectiveness of the actions undertaken by the labour inspection authority.

Number of irregular foreign employees as recorded by the National Labour Inspection Authority	
2015	1122
2014	873
2013	494
2012	644
2011	901

Notwithstanding the figures available, there is agreement both in GREТАs (2017) report and in the responses from interviewee 005 that there is a dearth of data. It is almost impossible to estimate the number of cases and victims of human trafficking for labour exploitation and forced labour. The consequences of this are clear. Without a clear data picture, it is hard to fully comprehend the crime, including the nuanced elements such as the genuine root causes, recruitment practices or gendered vulnerability to forced labour. Without clear records of the crime, there is a lack of detailed understandings of how, why, and under what circumstances different phenomenon's, such as power relations, culture, inequalities, etc., can give rise to forced labour across and within various business models, sectors, and geographic settings, and how these unite or discern across contexts. Subsequently, this sternly limits the potential design and effectiveness of anti-human trafficking and forced labour initiatives.

One ought to also recall LeBaron and Fore (2020, p.1095) who note that '[e]fforts to understand forced labour have also been held back by theoretical and analytical shortcomings, namely, the tendency to study forced labour as an individualised and anomalous phenomenon, isolatable from broader relations of labour in global supply chains.' That is why later in this report, the author looks at labour contracts and welfare provision. However, this alone is not enough and broader analysis of the role that national states, businesses and neo-liberal structures play in creating the conditions in which unfree labour can flourish is required.

As to actual cases of forced labour and human trafficking for labour exploitation in Poland, the same seldom appear afore the Polish courts. As stated by Wieczorek (2017, p.57), between 1998-2012 Polish courts looked at a total of seven criminal cases related to forced labour. The first case (sygn. III K 145/04), before the district court in Kielce, bares the hallmarks of other similar cases and is thus

described here. It concerned a Vietnamese citizen who wanted to migrate to Poland for work in order to send money back home. One of the defendants offered to help him with the journey to Poland for \$3000. The victim agreed but was only able to raise \$2000. One of the other defendants offered to lend the victim the remaining amount on the pledge that the victim will repay through work in Poland. The victim did not realise that by borrowing the money he ended up in a situation of debt bondage. In Poland he was forced to work at marketplaces and received no payment. The defendants justified the lack of payment by stating that he was repaying the debt and informed him that the debt will last 4-5 years. During one of the working days the victim was detained by the border guard on the grounds that he was in Poland in breach of migration laws. During questioning, the victim testified that he had been forced to perform work for which he has never been paid.

Another case worth recalling concerns at least 22 Ukrainian victims, and was heard before the district court in Rzeszow (sygn. II K 49/07). For a period of two years the victims were subjected to human trafficking for the purposes of forced begging; this was different to the reality they were promised. Those responsible for recruitment assured of work either in the care sector or working on market stalls. The defendants encouraged the victims to bring their children to Poland. After the victims arrived in Poland, the defendants confiscated their ID cards and the children's birth certificates. The victims were then told that they would in fact be begging on the streets. On hearing this, many victims refused, however they were quickly informed that their travel amounted to \$2000 of debt, and that each day they had to make at least 200 Polish Zloty (45.00 Euro). To coerce the victim into "co-operation" the defendants used threats and physical force, and in the case of one woman they took away her child. This case came to the attention of the police, after receiving a tip from an owner of a hostel where one of the victims was housed.

5 GRETA'S REPORT



5.1 SUMMARY OF GRETA'S REPORT ON FORCED LABOUR AND POLAND

In 2017 the Council of Europe's anti-trafficking expert group (GRETA) assessed developments in Poland, and subsequently published a report on the implementation of the *Council of Europe's Convention on Action against Trafficking in Human Beings*. This was the second publication and followed GRETA's first evaluation report in May 2013. This section provides a summary of the key points within the 2017 report in relation to the relationship between recruitment practices and forced labour and human trafficking for labour exploitation within a Polish context.

According to GRETA's report on Poland published in 2017, there has been an increase in the number of victims of human trafficking for the purpose of forced labour. Indeed, these constituted 37% of the victims identified by The National Consulting and Intervention Centre for Victims of Human Trafficking (KCIK) and 75% of those identified by the Border Guard (GRETA, 2017, pg. 7). The report indicates that this increase in human trafficking for the purpose of labour exploitation, is linked to an increase in the share of male victims of human trafficking. Additionally, the report indicates that the largest number of Polish victims abroad were identified in the UK, between 2013 and 2015, the majority of which were victims of forced labour (GRETA, 2017, pg. 7). Filipino (pg. 18), Ukrainian (pg. 18) and North Korean (pg. 19) victims were highlighted as being particularly at risk of labour exploitation in Poland.

According to the report forced labour is still not adequately addressed in Poland, despite some progress within the domain of inspections. Inspections are carried out to ensure compliance with labour law by the National Labour Inspectorate. Labour inspectors are trained every year and according to the report, about one fourth of labour inspectors (i.e. 416 persons), undertaking these inspections, have been trained on human trafficking (pg. 11). However, few suspected cases of human trafficking for the purpose of labour exploitation have been found and these inspections can occur only if there is a properly registered work contract, which is rarely the case (GRETA, 2017, pg. 16).

Poland did amend its legislation to Polish minimum wages must be paid under "civil law contracts" with inspections to ensure this does take place, however, "specific task contracts" (original: *umowa of dzieło*) continue to be widespread in Poland. Under these contracts, the minimum working conditions standards do not apply, a person is paid a fixed amount of money for a specific task, regardless of the time it takes, and employers are not required to pay social security contributions.

As of 2015, citizens of Armenia, Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine can get a visa to work in Poland for six months a year through Polish employer's "statement of intention to employ" (pg. 17). Workers can change their employer, provided this change is recorded and their total time of employment does not exceed six months. However, there are various issues with the "statements of intention to employ" as they do not necessarily, guarantee

employment thus leading some migrant workers to be in precarious situations whereby they accept any offer of employment. The report also indicated that the abuse inflicted by employers tends to increase towards the end of the six-month period in which the employer is allowed to work in Poland. Also, according to trade union representatives, police officers sometimes do not consider violations of the labour legislation as a societal harm and are sometimes reluctant to investigate them, especially as the punishment is limited to a fine (pg. 17).

The report outlines various steps Poland has taken to tackle labour exploitation in Poland which is a welcome development. For instance, the introduction of the “National Legalisation of Foreigners’ Employment”, which will include a training workshop for entrepreneurs who employ foreigners and will encourage the replacement of “civil law contracts” with employment contracts. Poland has also introduced regional anti-trafficking teams which among other things, will undertake awareness-raising activities in co-operation with the border guard officers and labour inspectors (pg. 17). However, we should exercise caution in applauding these developments. Interviewee 005 stated they predominantly exist on paper, and that in reality these endeavours are invisible.

Research activities and projects on labour exploitation have also been developed and are praised by GRETA in this report. Among these activities, GRETA lists the research entitled “Study on Demand Reduction Measures to Combat Trafficking in Human Beings for the Purpose of Labour Exploitation through Engagement of the Private Sector” published in 2016 and “Trafficking for Forced Labour: Mechanisms of Formation and Effective Prevention” carried out by the Centre for Human Trafficking Studies of Warsaw University in the framework of the project “ADSTRINGO - Addressing Trafficking for Labour Exploitation through Improved Partnerships, Enhanced Diagnostics and Intensified Organisational Approaches” in 2014. Further, a study entitled “Modern Slavery Landscape in Poland”, carried out in 2014 by the Centre for Human Trafficking Studies of Warsaw University as commissioned by the Australia-based NGO Walk Free Foundation, drew a map of modern slavery in Poland (pg. 13). Other projects were also mentioned including ‘Migrants’ Rights in Practice’. The report also praises meetings and seminars held between NGOS, international organisations and Polish and Ukrainian authorities to discuss the forced labour among Ukrainians in Poland (pg. 18). Despite these initiatives, the “Polish authorities acknowledge that measures to facilitate legal residence and work in Poland are not sufficient to prevent human trafficking” (pg. 19). Indeed, GRETA recommends:

Reviewing and assessing the system of “statements of intention to employ”;

Providing the National Labour Inspectorate with necessary resources and further training to effectively prevent and combat THB;

Strengthening inspections in sectors considered at risk of THB by engaging with key stakeholders, including with a view to preventing THB in supply chains;

Working closely with the private sector, in line with the Guiding Principles on Business and Human Rights and consider including business representatives in the regional anti-THB teams.

6 ANALYSIS



6.1 RECRUITMENT AND THE IRONY OF POSITIVE GDP DEVELOPMENT & HOMELESSNESS

As mentioned in section four, Poland's economy – until COVID-19 – was performing strongly. However, growth is not uniform and the number of people living in extreme poverty has recently increased by 1% (in a population of 38,645,240 people) (Business Insider Polska 2019). In addition, Poland has a high wage dispersion 'caused by the high wage premium for tertiary education and segmentation of the labour market, in particular the substantial proportion of people hired through irregular employment forms' (Brzeziński 2017, p.0). Consequently, we need to interpret Poland's economic growth against a background of unequal income shares, experiences of poverty and with some individuals living on the peripheries and caught in a social environment of homelessness, addiction and victimisation. This has become the textbook breeding ground for those seeking to exploit vulnerabilities and make a profit from human trafficking. Interviewee 002 highlighted that despite economic growth in Poland many parts of the country still struggle with poverty and unemployment, and that is where numerous victims are recruited from. 002 also added that even if victims come from bigger cities – those associated with a well-to-do economy – they come from needier districts. 002 also enhanced that many of the victims are either ex- prisoners, had an arrest warrant (more below) or are homeless. This was also supported by interviewee 003, who also highlighted that many of the victims are from poor or broken families, who lead pathological lives. Likewise, interviewee 004 identified that even though there is economic growth, the same does not translate equally across the population and those who were traditionally economically marginalised - e.g., those with criminal records or substance abuse – miss out on the fruits of a booming economy.

When it comes to becoming a victim of forced labour, poverty coupled with homeless evidently play a role. Interviews confirmed that the homeless in Poland are a targeted group and a rich ground for successful recruitment. As a group facing discrimination, violence and marginalisation, their susceptibility to exploitation is easily imaginable. Homeless persons have also been exploited in other parts of the world: a 2017 study in the United States interviewed 911 homeless persons, aged 17 – 25, and found that nearly one in five persons was a victim of human trafficking (Murphy 2017). Nevertheless, there is a lack of acknowledgement of the relationship between homelessness and human trafficking. It is important to highlight that, that relationship is three-fold:

- Individuals who are homeless are vulnerable to exploitation;
- Victims risk becoming homeless after escape from their situation of exploitation;

- Victims who escaped exploitation and who are homeless risk becoming re-exploited and/or re-trafficked.

Why are homeless persons so predisposed to human trafficking and exploitation? Above the report recalled that vulnerability surfaces during times of extreme dependency, this is clearly visible when one party is homeless. A position of unequal bargaining power leads to ‘the person who has the greater power in the relationship [using] it to gain the advantage in a way that fails to respect the other person in the relationship’ (Sample 2003, p.87-88). The state of homelessness erodes dignity and resilience. Lack of income, scarcity of work and a dearth of social networks push a person into the luring offers made by traffickers. In homelessness we find a phenomenon with several overlapping dimensions of marginalization, the consequences of which are varied but undoubtedly include a heightened risk of human trafficking and exploitation. ‘In terms of human-trafficking, Maslow’s hierarchy of needs can help practitioners understand why victims are drawn to and controlled by traffickers...[highlighting that] risk factors for victims include homelessness, prior neglect and abuse, and poverty. A lack of housing, food, clothing, safety, and financial security cover most of the two rungs of basic needs in Maslow’s hierarchy. Traffickers are able to offer these things to victims, which both draws victims to traffickers as well as makes it difficult to leave’ (Maslow 1943).

The vulnerability of homeless individuals, and the intersection between homelessness and human trafficking is evidenced by a recent case from the UK. This case saw more “than 400 people – many of them homeless, ex-prisoners or alcoholics” forced into labour exploitation in the West Midlands region of the UK by a well-organised Polish gang (see below).

Case study 1 (Baynes 2019)

On the streets of Poland and at the front gates of prisons, vulnerable men and women were recruited, with the promise of decent wages, a better life, a future in the UK. A group of over 400 victims (aged between 17 and 60) were subsequently exploited by two Polish crime families.

The traffickers placed them in cramped, rat-infested accommodation across the midland region of the UK (West Bromwich, Walsall, Sandwell and Smethwic). Complaints were met with threats or physical abuse, in one case a broken arm. “House spies” – previously trafficked victims – kept an eye on the workers.

The victims were forced to work on farms, in rubbish recycling centres, they made fencing, sorted parcels, and worked in poultry factories. The wages – if at all – amounted to maximum 50p an hour. In order to survive the victims relied on soup kitchens and food banks. In turn, the traffickers apprehended the victims’ identity cards and then registered victims for national insurance numbers which allowed them to open bank accounts in the victims’ names using bogus addresses. Traffickers also claimed benefits without the victims’ knowledge.

The traffickers made great profits, reported as millions of pounds, from the criminal organisation, and flaunted their wealth by driving luxurious cars (e.g., a Bentley) Five men and three women were sentenced in 2019 by UK courts (Birmingham Crown Court).

The issues of homelessness as vulnerability is also relevant to Polish persons exploited in Poland as demonstrated by a 2016 case:

Case study 2 (Czajkowska and Lewińska 2016)

Waldemar K was exploited in Annowie, a village near Bydgoszcz (Northern Poland) by a married couple and their son. He was recruited at a marketplace in Bydgoszcz where he sold candles and wreaths for the cemetery. He had been unemployed and homeless for many years. In the past he was a seasonal worker in the UK, afterwards he served a jail sentence for minor crimes. He struggled with substance abuse. The prosecution described him as *battered by life, lost, easy to manipulate*. He knew the trafficker from seeing him around the village. The trafficker offered accommodation and a job on his farm.

He was housed in heinous conditions on the farm belonging to the traffickers. Few days prior to his identification he was joined by another victim, also a homeless man brought by the traffickers to labour on the farm.

Waldemar tried to commit suicide by stabbing himself because he was scared of physical abuse that was sure to follow after he was unable to complete a task. The paramedics at the scene noted the living conditions of the two men and alerted the Police. At the hospital Waldemar K told the police his story. He told them about inhumane treatment at the hands of the traffickers; beatings, humiliation, burning with cigarettes. According to the victims, such action was undertaken to force them to work constantly.

Despite emerging evidence that homeless persons are targeted, there has not been enough research on how human trafficking and homelessness overlap and impact one another. This of course is part of a bigger problem, those aiming to prevent human trafficking, protect its victims and prosecute criminals are too narrowly focused. Fighting the crime should not be defined by solely criminal law or migration policies; it should be understood in tandem with socioeconomics, social-inequality, politics, power disparities to name just some of the examples. We thus need to embrace a more macro view, which requires one to question how and why oppressions are able to occur, including how homelessness fits into this. The story of homelessness of so many of the Polish victims draws our attention, not just to their regretful fate but also demands of a reflection of the political, social and economic conditions that enable the possibility of exploitation of this group in the first place. Part of the answer lies in the lack of safety nets, and we turn to this in the next sub-section.

6.2 RECRUITMENT AND THE LACK OF WELFARE

When the author of this report asked a Polish victim of forced labour (001) what he thinks were the authentic, long-term rather than immediate, causes to his victimisation, he highlighted the role of the state. Not prompted, the research subject stated that Poland has a weak social welfare system and identified that this is a problem, particularly amongst for those like him, who were recruited from

homelessness and/or who have criminal convictions (either spent or pending). In brief, he noted that the care service provided is not adequate to the range of needs of the population.

This research subject pertinently identified a key issue, also summarised by Praszkiar et al. (2017, p.3) who note: '[t]he welfare regime in Poland is dominated by two opposing trends originating from Poland's recent history. On the one hand, there is the heritage of the "Communist welfare state" and, on the other, a strong liberal shift that followed the political and economic transformation in 1989. No matter which perspective we adopt: liberal or one that prefers equal welfare distribution, the condition of the Polish welfare system is rather poor...'

Social expenditure in relation to GDP in Poland is lower than the average in EU countries, although it must be acknowledged that it is higher than the average in the countries of Central and Eastern Europe (Sawulski 2015, p.4). More importantly perhaps than the level of GDP spent on social welfare, is the focus of that spending. If we study the details of social welfare expenditure, we begin to see where people's lack of resilience stems from. Compared to EU countries, Poland is characterized by high pension and disability expenses, an EU average expenditure on education but regrettably a low expenditure on health care, support and social security for vulnerable persons and housing benefits. The very spending that creates a safety net for people susceptible to human traffickers. As noted by Fenger (2007) the Polish welfare state can be regarded as a conservative-corporatist type as to dogma but with lower payments on social services. Taking unemployment as example, in 2015 Poland spent 0.6% of its GDP on this category, moreover with regard to social assistance for excluded persons and housing benefits it spent 0.4% of its GDP. This is by 1.0% and 1.1% (respectively) less than the average in the EU-15 countries.⁸ Note: socially excluded persons are those who customarily are perceived as at risk of human trafficking, they include: migrants, refugees, persons with substance abuse problems, victims of domestic violence and those in poverty.

Low spending on social assistance for excluded persons leads to the emergence of a socially marginalized underclass and creates a status quo of social exclusion (not to be confused with poverty). These persons find there is not enough help for them. Interviewee 003 stated that many of the victims are unable to find an answer or resolution to their vulnerabilities within the Polish system. This is layered with a belief that in countries such as the UK or Germany one will be able to find employment, even without knowing the language, or at least some level of social security. Interviewee 004 confirmed this and stated that many of the Polish victims they worked with were not worried about migrating to new countries, even without speaking the local language, believing that they would find a job, find social security and find a way to better their lives, which they did not see much hope for in Poland. Interviewee 003 concluded that the existing system does not provide adequate opportunities for people to lift them out of their disadvantaged state.

Moreover, whilst the are institutions attending to the needs of the vulnerable, the same are greatly under-funded. In addition, there are few NGOs that deal directly, or even indirectly, with the issues of human trafficking for forced labour or labour exploitation. In fact, in 2016 the largest number of NGOS

⁸ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom

focused on sport, leisure, hobby and tourism as the main field of activity (29.1%), whilst social and humanitarian effort accounted for 7,4% (GUS 2018, p.15).

It is pertinent to also mention that with regard to victims of human trafficking and exploitation, a lack of access to welfare is broader than state welfare, but also includes a lack of a familial or friendship social safety net. Interviewee 003 stated that victims lack support in family or friends, which in turn erodes their resilience to cope with life problems and makes them a perfect target for traffickers.

Accordingly, addressing the socio-economic vulnerabilities of individuals in Poland – particularly those in marginalised positions – ought to be a priority. Strong social protection policies, including on welfare, can offset existing vulnerabilities that push people into the hands of traffickers and exploitative working contexts.

6.3 RECRUITMENT AND VICTIMS WITH (IMPENDING) CRIMINAL RECORDS

Intrinsically, the crimes of human trafficking and exploitation involve compelling a person to do something they would not otherwise necessarily have done, e.g., accepting a risky job offer. They may do so because they seek to escape something, e.g., a pending criminal sentence or the stigma of a criminal record; this was the case with interviewee 001. The author of this report, in her work with Polish victims of forced labour, came across numerous cases where victims had a criminal record. It appears to be an emerging pattern worth investigating and addressing. In addition, interviewee 002 stated that in Poland if someone has a criminal record, they have an extremely limited chance of securing a job, in the U.K there is a different approach, or their criminal past might be unknown. Consequently, they are more likely to accept offers of jobs, even if they deem them to be suspicious. The crimes committed by victims – prior and unrelated to their trafficking situation – are what can be described as low-level crimes. Interviewee 002 exemplified bike theft, low-level robberies, failure to pay alimony.

6.4 THE RECRUITMENT PROCESS

As seen in the preceding sections, exploiters prey on the disenfranchised and vulnerable, thus making the victims doubly harmed, first by the socio-political and economic system they live in and then by their fellow humankind. The victims first suffer from exclusion, poverty, economic dislocation which may cause them turn to crime, and subsequently the collective of these factors makes them very susceptible to recruitment processes that are described – with respect to Poland and Poles – in this sub-section.

Under existing systems, humans are considered – by some - a commodity to exploit and this begins with recruitment. At this first meeting of victim and perpetrator, we can already find reflections of classic criminology theories, namely that there are commonalities between people who commit crime and people who are victims. Recruitment is usually carried out by persons that have direct ties to the place of enrolment. Moreover, those doing the recruiting often having the same characteristics as the victim; the same cultural, national, ethnics and language elements make it easier for the perpetrator

to gain trust of the victim. An important factor that allows the perpetrators to work with efficiency is the ease of communication and thus their persuasiveness. Moreover, the offenders recruit on “home ground” because they know where to find vulnerable persons and how to manipulate them.

From analysis of literature, speaking to victims and reading media reports it becomes clear that recruitment methods are based more on manipulation and psychological violence rather than on the use of physical violence. A vulnerable victim is chosen, particularly a socially susceptible person seeking a better life or an escape from their reality. They either believe in the promises of a better life or feel they have nothing to lose even if the described offer sounds wary. Interviewee 003 confirmed this tenet and stated that victims might have some knowledge of a potential risk and are aware that they are not committing to a job that will elevate their career. Often the victims are so keen to explore a new prospect that they do not even enquire where exactly – e.g., which city – they are going to. The eagerness and/or need to accept the offer of employment is also illustrated through the numerous cases of debt acquisition. As is also explored in following sections, victims either take on a debt to cover the cost of travel, agree to be indebted to the offender or take out loans. Interviewee 003 stated that victims from e.g., Vietnam, take out loans and/or sell their possession so they can afford the cost of travel to Poland.

Recruitment of Poles exploited abroad, often take place directly, rather than through e.g., the internet, by those who are able to recognize pathological environments in which potential victims find themselves. Skalski and Maciejewski (2019, p. 277) found that a ‘popular method is to solicit prospective victims through conversations with random strangers in bars or pubs etc. The trafficker would try to find out about their problems and offer help to find a job.’ Interviewee 002 stated that in working with victims she noted that many of the offers were made by strangers, e.g., in hostels, homeless shelters. A person would come up to the potential victim and offer a job. There appears to be no rule on where recruitment hotspots are; both large cities (e.g., Gdansk) or smaller towns are targeted.

Subsequently all organisation happens very fast, giving little time to think things through, processes or back out. The journey to the city/country of destination often takes place on a coach. Interestingly, interviewee 004 stated that victims relayed to them that the coach journey made them feel safe about the job and their future. This is because the coach was a regular form of transportation – as oppose to a van, which is the hallmark of many stories of human trafficking – and because of the discussions they had with other passengers (non victims). Some of the other passengers were returning to the country – e.g., UK – and spoke of jobs and stable lives.

The traffickers are aware that the persons they recruit are unemployed, will struggle to find employment in Poland and are therefore more likely to accept offers. A further point on vulnerability: many of the victims – whether Polish exploited abroad, or foreign persons exploited in Poland – have a low education level. In a case concerning Bangladeshi victims exploited in a shipyard in Poland, Wieczorek (2018, p.94) observed that they had no education qualifications, and some were illiterate. Likewise, in the case of Polish people exploited in Italy, the education level was limited (Wieczorek 2018, p.94). The postulations related to levels of education are also confirmed in literature (see Jokinen, Ollus and Aroma 2011, p.64).

In all cases described in literature, court files, in interviews and from the authors own experiences, a key feature is that victims are deceived as to the type of work and/or the conditions of the work. On arrival it transpires to the victims that the information provided by the perpetrator has little to do with reality. Notwithstanding, the victims “accept” the new terms of conditions. The same is for a variety of reasons. Some victims have incurred a debt they need to pay off, some hope things will get better, some cannot return back to their old lives, whilst others feel that despite the discrepancies to the promised work, the new situation is still better than what they had before. There are also matters of their migration status or a pending criminal conviction.

As to recruitment for **exploitation in Poland**, the same appears to be more “organised”. The ADISTRINGO project noted the following models of recruitment:

- 1 Recruitment conducted by individual recruiters who act for either specific employers or other intermediaries (1-2-1 recruitment)
- 2 Recruitment by brokers operating in the countries of origin. Such agencies may act at the request of Polish employers or employment agencies operating in Poland.
- 3 Recruitment conducted by Polish employment agencies operating in the countries of origin of the victims. This model only applies if the agency has a contract to hire employees from a specific employer.
- 4 A recruitment model that takes place under the so-called "Export service". This is a special recruitment because it aims to acquire a qualified specialist to perform a specific task or conduct specific activities for an indefinite period of time.

The authors of the ADISTRINGO report find that the most common methods of recruitment are models one and two (Lasocik, Rekosz-Cebula & Wieczorek 2014, p.39). The former is cheaper and thus has its advantages. In Poland recruiters will often target migrants who are already in Poland, whose visa has expired or is about to or who are already in Poland irregularly. And this vulnerability is often manipulated: foreigners who find themselves in a country where they do not know the law, do not know the language, often do not have a place to stay, do not know the local culture are an easy target for the perpetrators.

Wieczorek (2018, p.99) also notes the use of recruitment agencies. Looking at three cases starting in 2009 he notes the use of foreign (non-Polish) recruitment agencies was an increasing phenomenon. However, unlike in the case of Polish victims abroad – where the recruitment agencies are legitimate entities – in these cases the recruitment agencies are facades. The traffickers open employment agencies so they could obtain legal work permits and visas for potential victims. The issue of an illegal agency was also part of the story of interviewee 006. The interviewee is a Ukrainian national and stated: ‘I worked for a company in Wroclaw, whose main activity was the temporary employment of citizens of Ukraine, Belarus, Poland and other countries in Poland. I terminated my employment contract after discovering that despite my will I was involved in criminal activities on the part of the employer and related companies.’ 006 states that the company created numerous fictitious small companies, moreover the people they brought to Poland were ‘treated by them only as an object that

can be recruited, cheated and "sold" for the benefit of one or other of their business organizations.' The interviewee summarised the case as follows: 'M. and G. recruited me to work via the Internet (OLX) and used deceit and deception in their criminal activities. Their deception unfolded from the first meeting and during the two years of my work for M. and G. They lied to and misled me (and other employees) that the employment of temporary employees in their various companies was fully compliant with Polish law, in particular labour and tax law. When I realized the criminal nature of my employers' activities (including money laundering), I was unwilling to participate in their crimes, and I left my employment there and immediately informed the state authorities of the Republic of Poland about possible crimes. However, after almost half a year on the part of the state organs of the Republic of Poland, I have not received an appropriate response.' The interviewee told the author of this report that he has now sent a petition for action to the European Parliament.

6.5 PLACE OF WORK AND CONTRACT FOR WORK

'The ILO estimates that 90 per cent of forced labour today occurs in the "private economy". Three-quarters of this is in productive activities such as agriculture, domestic work, construction, fisheries and manufacturing, and the remainder involves commercial sexual exploitation' (ILO 2014, p.1). Indeed, the stories of victims are not always tales of working in underground economies, to the contrary victims are exploited in plain sight. This includes working in well-known companies such as UK's sport company *Sports Direct*. Davies for the Guardian (2017) reported that Polish traffickers 'Erwin Markowski, 38, and his brother Krystian, 35, lured 18 men from Poland to work at Sports Direct's Shirebrook warehouse.'

In the years that this author worked in safe houses she heard a common tale of Polish victims exploited abroad. On arrival to the country of destination the victims were taken to a legitimate recruitment agency. There, through the translation "services" of the traffickers, they would register and soon obtain employment. The jobs varied: recycling plants, warehouses, factory work. The victim would be driven to and back from the job by the offenders. The wages earned would go to a bank account controlled by the perpetrators. The victim did not receive remuneration for their work, or if they did the amount was far below what they actually earned. In many cases the victims were informed they were paying back a debt. In many cases observed, the victim's documents and mobile phones were confiscated. Threats and/or violence were used to control the victims, and their freedom of movement was confined to houses they were held in; this happened against a backdrop of a constant provision of alcohol to keep the victims in a cycle of addiction. Interviewee 005 stated that the traffickers, whether Polish or of other nationality, perceive Polish persons as weak and easy to exploit.

It is important to note recent positive changes in the UK that aim to hinder the work of criminals. To-date many of the Polish victims exploited in the UK obtained jobs through regular recruitment agencies. This however is becoming harder to do. Interviewee 004 stated that agencies no longer accept the prospective employee providing someone else's bank account as a place to deposit salaries. Moreover, the banks have also increased efforts to address labour exploitation. Interviewee 004 noted that in the past, victims would be accompanied by the perpetrators to the bank, and the exploiters would act as translators and open the bank account on the victim's behalf. Subsequently

they would have control over the account. To-day however this is no longer feasible, banks rely on their own translators and are more sensitive to detecting such a level of control. Moreover, banks carry out further checks, including how many people are registered to an address.

As to exploitation **in Poland**, the domains most inclined to forced labour are agriculture, construction, work in factories, workshops and food processing. This is confirmed by a recent report from La Strada International which notes: '[s]takeholders interviewed by La Strada International in 2017 and 2018 reported that the sectors most vulnerable to labour exploitation in Poland are agriculture – in particular fruit and vegetable picking and horticulture – construction, food processing, domestic work (housekeeping and cleaning) and the garment sector. The Labour Inspectorate also referred to the catering trade and forestry... Ukrainian migrant workers [the largest group of migrants in Poland] are working in particular in agriculture (apples, strawberry fields), construction and factories (for example meat factories) ... while Asian migrant workers are often employed in restaurants. Migrant workers in general are regularly exploited in garment factories' (Hoff 2019, p.35-36).

In his empirical work Wieczorek (2018) focuses a lot on cases of forced labour in agriculture. Finding that agriculturalists withhold their workers documents – so that the victim does not leave – and also provide far below acceptable standards of work. On the latter, Wieczorek (2018, p.90) finds the exploiters to justify their actions by comparing themselves to others, arguing that the working conditions are tough and pay is low because other farmers do the same. One can find workers, in particular foreign, working long hours, with no access to running water and their accommodation taking the form of tents. One interviewee told Wieczorek (2009, p.100) that they hire foreigners because they accept lower pay than Polish workers: *a day lasts 11h, including a 1h lunch break. The pay is 60zł per day (13.47 Euro).*

The issue however is not just a matter of employers who do not respect labour law; it is also a problem of existing labour law. Interview subjects 002 and 003 raised concerns with regard the labour market, as also emphasised above in the GRETA summary, particularly highlighting the so-called *garbage contracts*. Employment based on a mandate contract or a specific task contract is referred to in Poland, colloquially, as garbage contract work, because the contract does not provide employment protection, pay protection or holiday entitlement. Performing work under a *garbage contract* does not give a sense of stability, as it limits the implementation of certain benefits, e.g. to take out a loan for the purchase of an apartment or to obtain sickness and maternity allowance (it is necessary to pay a premium for voluntary sickness insurance). Migrants, e.g., those from Ukraine are often hired through such contracts. The contracts are in Polish, and as stated by Keryk: 'most Ukrainian workers speak Polish at a basic level; hence it is difficult for them to understand the legal language of contracts. Their knowledge of the Polish legal system is limited. Immigrants often sign contracts without understanding them or knowing what kind contracts are signed. (2018, p.4)'

According to the interview subjects, such employment structures create an environment where unfair labour practices are accepted, thus creating a culture for subsequently tolerating harsher forms of exploitation. These types of contracts are rooted in legislation, whereby the legislator, within the Labour Code, left quite a lot of discretion as to the type of employment contract to be signed by the parties, as well as working conditions and pay. Interviewees agreed that there is a need to address these manifestations of insecurity, in order to tackle the underlying root causes of human trafficking

for forced labour and labour exploitation. Interviewee 003 concluded their opinion on this by saying: 'the Polish labour law requires amendment - let's ask ourselves what we allow and what we tolerate.'

6.6 ESCAPE FROM EXPLOITATION

In their report Pohl, Burdziak and Banaszak analyse the manner in which victims escape from their situation and are identified by the authorities (2018, p.30-31). They do this for cases of forced labour in Poland, but their findings are also reflected in the stories of Polish victims abroad. Pohl, Burdziak and Banaszak state that the majority of cases of forced labour are not detected until the victims themselves or their friends/family inform the authorities (2018, p.30). In other words, there is nothing systematic about the policy arrangements for identifying forced labour. Beyond the activities of the border force, the system relies on victims (of those close to them) self-reporting, observations from the general public or on other agencies encountering it in the course of their work. This is a similar finding to Wieczorek who notes that the identification of forced labour cases often comes down to *sheer luck* (2017, p.276), because of reports made by victims or bystanders. Less often, Wieczorek continues, the same is a result of the work of law enforcements or labour inspection authorities. In cases observed by the author of this report, victims escaped and made their way to nearby public places (fast food restaurants, churches, food banks) where they sought help from strangers, who in turn would contact the police or a charity organisation. In some other cases, where victims worked in legitimate places, they told their story to co-workers, who in turn raised it with management who subsequently notified authorities.

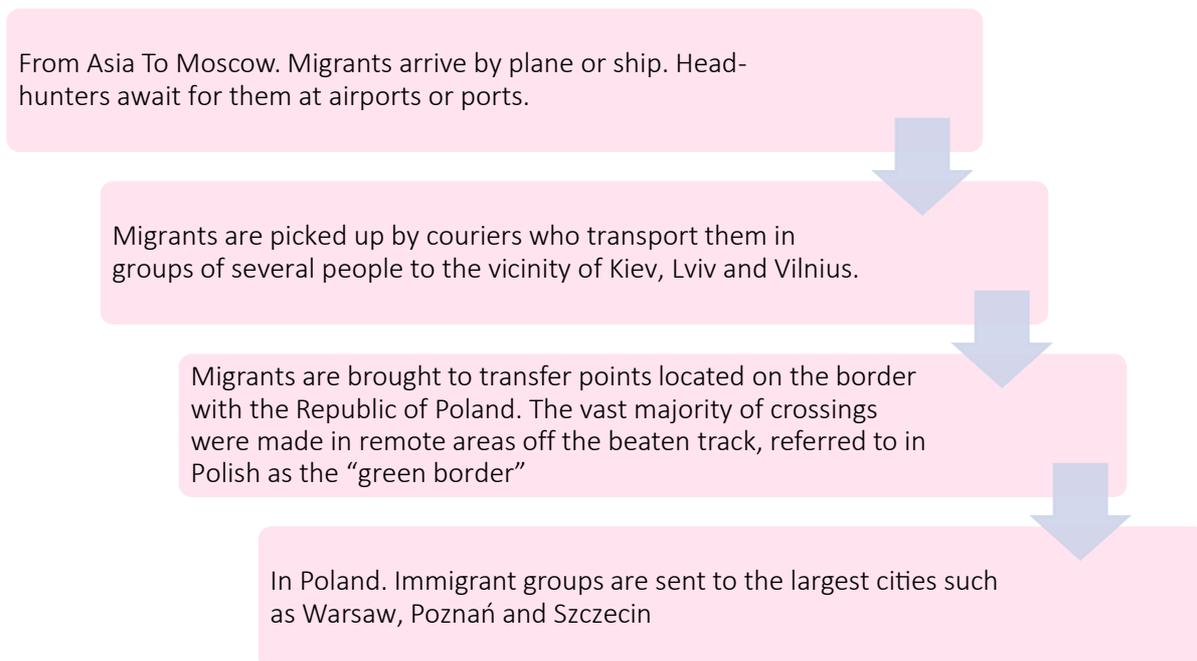
Escape is made harder by the tactics used by the traffickers, here literature highlights the use of debt bondage (Klebko 2018, p.129). Victims are told of a liability they have with regard to transport, obtaining relevant documents or a loan. On top of this, victims are told they have ongoing expenses in relation to accommodation or food. The victims often do not know how much money they owe. Debt bondage was used in a 2018 case by a Polish trafficker (TVP Info 2018). The trafficker in this case, a 44-year-old female resident of Wroclaw, recruited Ukrainian nationals to work in construction in Wroclaw. The victims had their passports confiscated and if they wanted the same returned, they were made to pay a fee. In this case the victims lived in atrocious accommodation, including up to 11 persons in a 2-bedroom flat. Another method of control and ensuring the victim stays is violence or threat of, whether psychological or physical. Another form of control is housing victims in remote locations, thus making the idea of finding help a far-off possibility.

6.7 POLAND AS A COUNTRY OF TRANSFER AND DESTINATION

Shepherd and Wilksinon in their article (2020, p.11) note 'strong links between forced labour and migration, especially the undocumented...and strong associations confirmed between exploitation at work and sub-standard accommodation.' As mentioned above Poland's geography has meant that it is the gateway to Europe for many migrants, and thus an ideal "country of transfer". Some migrants cross Poland in a legal manner, but there are also those that do so irregularly. According to Soboń and Piertuniak (2019, p.67) 'By 30th September 2018, a total of 780 proceedings were initiated in connection with the illegal crossing of the Polish border, of which 302 were concerned with illegal entry into the territory of Poland, 214 were offences on the basis of falsified documents and 264

against persons obtaining property or personal benefits for enabling or facilitating the stay of a migrant on the territory of the Republic of Poland against the provisions of law... The vast majority of crossings were made in remote areas off the beaten track, referred to in Polish as the “green border” (zielona granica), i.e. terrain border sections distinguished by the greatly diverse lie of the land covered with dense vegetation or forests.’ Not all but some inevitably may end up in situations of exploitation and trafficking. This is acutely the case when the migrants cannot pay for the services they enlisted.

Soboń and Pertuniak (2019, p.4) analysed the migration route from Asia to Europe via or to Poland, they found the archetypal journey to unfold as follows:



As already observed above, Poland also has a high number of Ukrainian migrants. A 2016 report prepared by the Ministry of Interior and Administration supports the postulation that many of the victims of forced labour in Poland are Ukrainian; the report states that Ukrainian citizens have for years dominated among the registered victims of trafficking (Zespół do Spraw Przeciwdziałania Handlowi Ludźmi w Departamencie Analiz i Polityki Migracyjnej Ministerstwa Spraw Wewnętrznych i Administracji 2016, p.24). This is also established by Skalski and Maciejewski (2019, p.281) who note that ‘the growing Ukrainian and Belarussian migrant population becomes increasingly vulnerable to trafficking, particularly in restaurants, construction industry.’ They also recall a finding from the US published Trafficking in Persons Report and note other migrant nationalities susceptible to forced labour in Poland: ‘North Korean migrant workers in shipyards, construction and agriculture. Children, especially of the Romani nationality, are recruited for forced begging in Poland...’ (2019, p.281).

When asked why many Ukrainians come to Poland, interviewee 006 stated: ‘for hundreds of thousands of Ukrainians and other foreigners, the main purpose of coming to Poland is to earn money, to feed their families. We sometimes pay brokers our last savings for a work permit and transport. And when we face deceit, violation of employee rights and human dignity in the workplace, most cannot just quit, find a better job and fight for their rights in court. Most immigrants will simply not

have neither time nor money. Many of us get a visa for three to six months, by the time we find work, we are usually in month two and there is no time to complain about exploitation. Moreover, there no guarantee that a new employer will not be worse than the previous one.' 006 felt that the existing visa laws deprive a person of the possibility of deciding his own life during a short stay in Poland.

The legislation concerning work and migration is complex, and also undergoing revision, however in brief: foreign workers have to obtain a work permit and a legal permit to stay/reside. However, the most simplified and fastest form of legal employment of Ukrainians, Belarussians, Georgians, Moldovans, Russians and Armenians by a Polish employer is entrusting work to a foreigner based on a "statement" (oświadczenie). Based on this statement of assigning the performance of work to a foreigner, among others, Ukrainian citizens can take up work in Poland for up to six months within the next 12 months of issue without being required to obtain a work permit. In 2018 the period of work on an employer's statement was extended for seasonal workers only, with the result that these groups can now work for a period of nine months on receipt of a statement by their employer. The foreign national has to perform work on the basis of a written contract concluded with the employer under the conditions set out in this "statement". An employer employing a Ukrainian or another foreigner has the same obligations towards them as to a Polish citizen regarding, among others, reporting the worker to the Social Insurance Institution and paying contributions, income tax and conforming to labour law. 006, a Ukrainian victim, states that in reality employers find ways to avoid these duties.

Interviewee 005 notes that it often happens that a foreigner with a statement to work legalises their stay in Poland but does not take up employment with the employer who issued this document. The further fate of these foreigners is no longer known, but it can be assumed that these foreigners take up irregular employment with another employer or leave for other countries from the Schengen area. This problem occurs because there is a lack of control whether an employee who is given such a statement to take up work in Poland, actually took up a job in the place stated in the document. What's more, no one controls whether any employee appeared in the company that issued the statement. The ADSTRINGO project also notes that such statements are sold in third countries and highlights that: 'both individuals and employment agencies deal with the sale of these statements. The fact that there is a demand for these documents is understandable because they almost guarantee a visa to Poland, and this opens the way to other European countries. According to one expert, no one is interested in this problem and the Ministry of Labour sees no problem' (Lasocik, Rekosz-Cebula & Wiczorek 2014, p.41). Control and regulation ought to be exercised by the Labour Inspectorate, Border Guard and the Social Insurance Institution, however these institutions predominantly check if migrant workers have documents concerning legal employment and legal stay. If it turns out that the migrants are irregular, they are faced with fines and/or a removal order. These institutions are perceived by immigrants as control institutions working against them, and not as institutions that can be contacted for help.

Experts and literature note that migrant workers can be unaware of their rights, extend their stay beyond the terms allowed by the visa and consequently fall into the trap of becoming an irregular migrant. This in turn leads to exposures that puts them at risk of exploitation. Another source of their vulnerability is the area of their employment; the Ukrainian Trade Union of workers in Poland, quoted by Matłacz in a news article, estimates that 40% of Ukrainians work in the underground economy (Matłacz 2018). Men often find unregulated work in agriculture and construction, whilst women in domestic help. In an interview with money.pl, the chairman of the Inter-Enterprise Trade Union of

Ukrainian Workers in Poland, Yuriy Karyagin, stated that every day up to 20 people exploited by their employers come to his information point. He lists two problems that are most common - non-payment and employment without a contract. Added to this are expensive apartments and lack of responsibility with regard to workplace accidents (Lis 2019).

It should also be noted that interviewee 005 stated that they are noticing an increasing trend amongst the number of victims from Asia, including Vietnam, Bangladesh and Pakistan. At the time of writing this report (May 2020) the interviewee stated there are few emerging cases that they were not able to discuss but did want to highlight that it was not Ukrainian workers who were exploited but persons deliberately brought from Asia. Interviewee 005 also added that the cases are not always clear situations of human trafficking, but at they do concern paying very low wages and the control of the persons on account of their irregular status.

The case of North Korean victims is particularly noteworthy, as these victims were 'granted work visas despite UN and EU sanctions forbidding the hiring of workers from North Korea' (Hoff 2019, p.46).⁹ On speaking to interviewee 005 the author learnt that North Koreans are acutely susceptible to forced labour. Similarly, the 2018 Trafficking in Persons Report highlighted that 'Media reports indicated North Korean laborers in the country were highly vulnerable to forced labour and showed indicators of trafficking. One ongoing prosecutorial investigation involved suspected forced labor of 107 North Korean potential victims in the agricultural sector with trafficking indicators, such as workers paying money to middlemen in advance to obtain employment. None of the workers were referred to services. The labor inspectorate inspected all companies employing North Korean workers but did not report finding actionable evidence to justify recommending formal law enforcement investigations' (Department of State 2018, p.354). A case from Gdynia concerning North Korean Victims showcases exploitation (see below). Susanne Hoff, the author of the already cited La Strada report, spoke to members of La Strada Poland with regard to North Korean Victims, and the interviewees concluded that the issue is a 'very problematic situation. The families of Korean people working here live under big pressure in North Korea. If we encourage some of those workers to testify, their families can be persecuted or threatened with death (Hoff 2019, p.46).

⁹ Resolution 2375 (2017) imposes sanctions on the Democratic People's Republic of Korea — including a ban on the sale of natural gas liquids to the North-East Asian nation, and on its textile exports — while also prohibiting Member States from providing work authorizations to its nationals.

Case study 3 (Breuker and Gardingen 2016, p.9-10)

'In 2014, a tragic accident at Crist Shipyards in Gdynia took the life of one North Korean worker. On August 29, Chŏn Kyŏngsu was assigned to a dry dock at the shipyard. Eyewitnesses testified that he was welding pipelines inside a tank when a sudden flame ignited his clothes. The flames soon went all over his clothes and over his body. When he was transferred to a hospital later, he already had burns on over 95 percent of his body.

Due to these severe burns he died on the following day. The local Polish Labour Inspectorate looked into the case and found a number of illegal practices by the employers. These included the lack of supervision of the worker; at the time of the accident he was working without the presence of a supervisor. Chŏn also was not wearing the necessary protective gear – the uniform provided by his employer Armex was made of flammable fabric, according to the local inspectorate. It is important to note that since 2010, the Polish National Labour Inspectorate has carried out over 20 inspections of companies that have employed or delegated workers from the DPRK. Notably, in the course of checks in 2013 at Crist Shipyards, the labour inspectorate found that 29 North Koreans were working at the shipyard illegally, because they were in fact employed by a local recruiting agency called Armex. Accordingly the workers did not have valid permits that allowed them to work for Crist...Following the paper trail laid out by companies such as Armex, and without relying on further field investigations, the Polish National Labour Inspectorate concluded that the DPRK workers are self-employed and hence outside of the jurisdiction of the Polish National Labour Inspectorate. In a situation with evidently insufficient control mechanisms, local employers continue to hire North Korean workers who work under extremely exploitative conditions.

6.8 ASSISTANCE

This report will not repeat the NRM process – or its lack – as this has been covered by numerous reports (e.g., GRETA 2017, Hoff 2019). Suffice to say that the state of the art is well summarised by Hoff (2019, p.50): 'there is no official formal National Referral Mechanism (NRM) on the issue of human trafficking established in Poland, neither is a document available describing the task division of each stakeholder.' The government in its 2020-2021 National Action Plan states that establishing an NRM is a priority, however this remains to be seen in practice.

However, it is important to highlight and as already alluded in the report, that assistance for victims of human trafficking is limited. In essence there are two official shelters for victims (one in Warsaw run by Las Strada and one in Katowice run by POMOC). Places in these shelters are also limited, and predominantly for female victims. Male victims may be placed in hostels or in the one rotating apartment for men. Interviewee 005 noted that in a situation where 20 victims would be identified it is likely that they may be placed in hostels rather than specific safe houses. Naturally, other NGOs offer help however they are not specialised in human trafficking. Interviewee 003 stated that the problem with many safehouses is that they lack proper psychological care. Interestingly the interviewee also proposed the idea that specialised safe houses for victims of human trafficking are

not always the appropriate solution, as the persons do not need to be in 24h care, it is also a certain freedom restriction and lastly, that in living together some of the vulnerabilities become exacerbated, e.g., alcohol use.

With regard to forced labour, The National Consulting and Intervention Centre for Victims of Human Trafficking (KCIK) has a section on its website about support for those migration abroad but it only includes links to two NGOs, one in the Netherlands and one in Germany.

004 highlighted that many Polish victims do not wish to return back home. They stated that this is because psychologically it is hard for them to admit “failure”; they may be escaping an arrests warrant; they think it is better to be homeless in country of destination than in Poland.

7 CONCLUSION



Forced labour and human trafficking for the purposes of labour exploitation are the subject of extensive international attention and worry. Despite this global trend, the same is not reflected in Poland, with the exception of some activities carried out by scholars and the limited NGO sector. This is disappointing as both phenomena are very much a problem in the country and for Poles abroad, and while hard data on trends over time are lacking, what we do know is that Poland is a country of origin, destination and transfer. Along this journey of origin, transfer and destination we observe the use of forced labour at the hands of private persons and businesses operating outside the realms of rule of law. Consequently, the conclusion to this report takes the form of recommendations, that unpretentiously seek to help address existing gaps:

- Existing provisions of labour law do not address the problem of forced labour *sēnsū strictō*. It is recommended **that a definition of forced labour ought to enter the Polish Criminal Code**, and that the crime be penalised. The definition ought to be clear so that it can assist law enforcement authorities in the assessment of factual circumstances as to whether or not they amount to forced labour. It is suggested that the new crime would ensure consistency and certainty and would help safeguard that future situations of forced labour are recognised.
- The problem of forced labour, which has noted cases in Poland, is not seen as very important and requiring urgent at a policy, legal or societal level. There is a need to begin **serious discourse**, which ought to lead to legal amendments and improvement of the social infrastructure used to prevent this crime. As a **minimum** forced labour ought to **receive greater attention in the next National Action Plan**, including:
 - **Set up of Business and Supply Chains Working Group** to propose strategies to address the use of serious labour exploitation and forced labour, in the supply chains of goods and services.
 - Emphasis on the need for greater **research and statistics** (desegregated by gender, age, nationality) in order to identify patterns, target groups and the main forms of forced labour.
 - Greater **co-ordinated preventive measures** with countries such as UK, Germany, Netherlands (where Polish people often fall victims to forced labour) and Ukraine, Romania, Moldova, Belarus, Pakistan, China, Vietnam (from where victims come to Poland).
 - **Expand the role of the Labour Inspectorate** to focus directly on Forced labour. Including consideration of establishing a special division within the Labour Inspectorate that would deal specifically with forced labour and human trafficking for labour exploitation.
 - **Enhance information sharing across all ministerial departments** on domestic and international issues related to human trafficking and forced labour.

- A national coordination mechanism against forced labour and human trafficking ought to be re-instated as soon as possible. The role of an independent national rapporteur ought to be created.
- Increase in the number of prosecutions related to trafficking in human beings, and those concerning labour exploitation and forced labour. This ought to be facilitated by greater training for all relevant stakeholders: frontline staff who can identify cases, law enforcement agencies, prosecutors and defence lawyers, judges and the general public. As stated by ILO (2014, p.38) 'Law enforcement personnel, including labour inspectors, trade unions, civil society organizations and other concerned actors require training and guidance to enable them to assess whether an individual worker or group is in a forced labour situation.'
- There is a need for greater awareness of employees as to their employers, particularly those hired through a third-party agency.
- 'Ending forced labour demands multifaceted responses which cut across ministerial boundaries, as well as close cooperation with the social partners and a wide range of civil society actors' (ILO 2014, p.17). In this spirit, Labour Unions and Trade Union in Poland need to pay greater attention to the problem of forced labour.
- Provide better information on regular migration channels and the legitimacy of recruitment agents, to prevent exposing migrant workers to unnecessary risk.
- Issuing work permits for foreigners with the right to work in specific sectors of the economy, not with a specific employer and in a specific position, as is currently the case.
- Promotion of decent working conditions in sectors prone to exploitation, including agriculture.
- The Labour Inspector office should monitor not only the legality of employment, but also pay more attention to the working and housing conditions of immigrant workers.
- Increase welfare spending for marginalised communities in order to increase their resilience to offers made by traffickers.
- Increased funding to NGOs dealing directly with the problem of human trafficking and forced labour and also amplify finances for NGOs dealing with vulnerable persons such as the homeless to prevent their potential exploitation.
- Related to the above point, there is a need for more resources for broad 'protection measures enable victims to recover from the material and psychological effects of their subjection to forced labour, prevent their re-victimization and encourage their willing participation in legal proceedings against their exploiters. Such measures can create a virtuous cycle of better victim identification, fewer cases of re-victimization, higher rates of prosecution and hence fewer cases of forced labour' (ILO 204, p.35).
- Connected to the above, greater attention should be paid to ensuring there is adequate protection and rehabilitation services on offer to men and boys.
- There is a direct link between homelessness and recruitment, this requires further research as well as targeted prevention campaigns.
- There should be targeted preventive programs done with those exiting the criminal justice system.

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9 ANNEX A

The following served as a base for the semi-structured qualitative interview with victims. The polish translation is provided in green.

1. If you are comfortable doing so, please state your age, nationality and gender

Jeśli czuje się pan/pani swobodnie, proszę podać swój wiek, narodowość i płeć

2. In what year were you recruited for labour exploitation / human trafficking?

W którym roku został pan/prani zwerbowany do wyzysku / handlu ludźmi?

3. Prior to your recruitment can you please provide an overview of your life.

Czy może pan/pani przedstawić przegląd swojego życia przed zwerbowaniem?

- a. Where did you live? Gdzie pan/pani mieszkał/a?
- b. Did you finish high school? Czy skończył/a pan/pani szkołę średnią?
- c. What was your employment history? Jaka była pana/pani historia zatrudnienia?
- d. What was your family situation like? Jaka była pana/pani sytuacja rodzinna?
- e. What languages did you speak? Jakie zna pan/pani języki?
- f. Have you moved for work before? Czy pan/pani przeprowadzał/a się wcześniej w ramach pracy?

4. Could you tell me in your own words how you were recruited (there is no need to mention names of individuals)?

Czy może mi pan/pani opowiedzieć własnymi słowami, w jaki sposób został pan/pani zwerbowany (nie trzeba podawać nazwisk osób)?

5. What do you think were the key factors that led to your recruitment?

Jak według pana/pani były kluczowe czynniki, które doprowadziły do zwerbowania?

6. Why did you accept the offer?

Dlaczego zaakceptował/a pan/pani ofertę?

7. Have you heard of human trafficking before your recruitment?

Czy słyszał/a pan/pani o handlu ludźmi przed rekrutacją?

8. Were you aware of possible risks?

Czy myślał/a pan/pani o możliwych ryzyka?

9. What country were transported to for work?

Do jakiego kraju został/a pan/pani zwerbowana do pracy?

10. What work did you do on arrival?

Jakia prace wykonał/a pan/pani po przyjeździe?

11. Can you describe your relationship with the employer and those who recruited/exploited you?

Czy może pan/pani opisać swoje relacje z pracodawcą i tymi, którzy wykorzystali?

12. In your opinion what were the weaknesses in existing systems that led to your exploitation?

Jakie pani/pana zdaniem były słabości istniejących systemów, które doprowadziły do pani/pana wykorzystania?