

THE NARROW GATEWAY TO HUMAN RIGHTS | Petra Kutálková | La Strada Czech Republic

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IDENTIFICATION OF TRAFFICKED PERSONS IN THE CZECH REPUBLIC

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LIST OF ABBREVIATIONS

AGO	Attorney General's Office
CC	Criminal Code
CE	Council of Europe
CoE CAT	Council of Europe Convention on Action against Trafficking in Human Beings, also referred to as the European Convention on Action against Trafficking in Human Beings
CPD	Crime Prevention Department, MI
UN	United Nations Organization
CPIS	Criminal Police and Investigation Service
CR	Czech Republic
AMPD	Asylum and Migration Policy Department, MI
DECCB	Diaconia of the Evangelical Church of Czech Brethren
ECHR	European Convention on Human Rights
EU	European Union
EU FD THB	Council Framework Decision of 19 July 2002 on combating Trafficking
HTT	Human Trafficking Tool
ICCPR	International Covenant on Civil and Political Rights
ICG	Inter-institutional Co-ordination Group
ILO	International Labour Organization in Human Beings
IOM	International Organization for Migration
MI	Ministry of the Interior of the Czech Republic
MLSA	Ministry of Labour and Social Affairs
NGO	Non-governmental Organizations
OAR	Organization for Aid to Refugees
PCR	Police of the Czech Republic
PEJA	Prosecution, Law Enforcement and Judicial Authorities
PP	Public Prosecution
PRP	Long-term Residence Permit for the Purpose of Receiving Protection
REA	Refugee Facility Administration
SPD	Security Policy Department, MI
UCOC	Unit for Combating Organized Crime
UN HCHR	UN High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking
UN Traf Prot	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime



1. INTRODUCTION

In the Czech Republic, Europe and numerous other places across the world, instances of labour exploitation of women, men and children occur on a daily basis. Labour exploitation can take many forms and can differ in terms of the industry and regions in which people are exploited, practices of groups or individuals profiting from the work of the exploited, accessibility of legal protection for the exploited people and the life experience of individuals who are exploited. However, all these different constellations have one thing in common: someone (an individual or a group of people) exploits the work of someone else.

Viewing this reality through the lens of the policies for preventing and combating trafficking in human beings is just to adopt one of the many viewpoints from which the issue of people exploited for their labour can be observed.

However, measures adopted under these policies can provide the means of fighting labour exploitation, since the perspective of policies for preventing and combating trafficking in human beings offers a wide range of instruments that can be used, at least in theory, to facilitate access by trafficked persons to important services, legal or otherwise.

The present study examines one of the instruments of the above policy that is often invoked, namely the *identification of trafficked persons*. In order to analyse the use of this tool, the author has had to investigate the content of the term *trafficking in human beings*, as the *identification of trafficked persons* needs to rely on an operationalised definition that can be used as the basis for specific practical indicators.

The present study also offers an overview of the international legal framework for combating trafficking and a thorough description of the human rights standards related to the identification of trafficked persons. In addition, it also discusses different approaches to the conceptualisation of trafficking in human beings, especially with regard to the practical success with which trafficked persons can exercise their rights and access the services aimed at them. The study further analyses the problems related to the very construction and application of the definition of the term *trafficking in human beings*. It also examines the possible interpretations of some of the key topical terms, such as *duress* and *other forms of exploitation*.

The second part of the study analyses the institutional arrangements underpinning the policy for preventing and combating trafficking in human beings, while emphasising the role of this policy in the identification of trafficked persons.

The third, practical, part of the study includes the findings of experts meeting to discuss the practical issues in identifying trafficking in human beings and the ways of addressing these. The study also includes accounts of actual experiences of individuals – clients of NGOs who have been positively identified as having been trafficked.

The study concludes with an assessment of the achievement rate in meeting human rights standards in the field of the identification of trafficked persons and by making a series of recommendations for the design and application of measures in the analysed field.

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2. PINPOINTING THE PROBLEM

A set of human rights standards that establishes the rights available to trafficked persons constitutes one of the pillars of a strong policy for preventing and combating trafficking in human beings. These standards include measures recommended to be implemented by States, such as the duty to prosecute and punish trafficking in human beings; to provide assistance and protection to trafficked persons, including assistance related to their standing as witnesses; to guarantee the right to adequate and appropriate remedies, including repatriation and compensation and other means of offsetting the damages incurred by trafficked persons.

Even the best instruments aimed at helping trafficked persons exercise their rights cannot work if the number of people identified as trafficked persons having access to the relevant rights and measures is inadequate. Therefore, identifying individuals as trafficked persons is the first step towards providing access to the rights which the trafficked persons have as such and as human beings. Identification is the key element in determining the overall policy efficiency.

In the Czech Republic, strategic documents and legislation spell out the measures aimed at making rights and protection accessible to trafficked persons. In practice, however, only few trafficked people can actually make use of them.

The Czech Republic has been repeatedly criticised internationally for the low rates of prosecuted and sentenced cases of trafficking in human beings. Recently the number of sentenced criminals in this field has been below five per year. No sentence has been passed for trafficking in human beings *for the purposes of forced labour or other forms of exploitation*, although the country's criminal legislation has enabled the prosecution of trafficking in human beings for purposes other than exploitation for prostitution since 2004. Even the number of identified crimes is very low. Out of 29 identified crimes in 2008, only 10 were related to exploitation outside of the sex industry; in 2009, out of just 10 identified crimes, only 3 were related to other forms of exploitation or forced labour (MVČR, 2010; MVČR, 2009).

The number of trafficked persons who have been served by specialised NGOs amounts only to a few dozen. Those who have been trafficked into exploitation outside the sex industry represent a smaller, if increasing, proportion of these.

Nonetheless, both media reports and research mention at least hundreds of foreigners of both sexes experiencing slave-like working conditions in the Czech Republic¹. Although a consistent comparison of the data is not possible, there is no doubt that the exploitation of and trafficking in human beings in the Czech Republic is no small issue. Most trafficked or exploited people are not able to exercise their rights in practice. They do not have access to legal assistance, usually are not offered services and do not have sufficient information: either they are deported from the Czech Republic or remain there without any valid documents.

¹ See Annex 3 for more details.

The present study focuses on the problems linked to the various forms of conceptualisation of *trafficking in human beings* and their impact in practice on the *identification of trafficked persons*. It submits that an inadequate understanding of the term trafficking in human beings, which ignores the context, is one of the root causes of the obvious discrepancy between the official statistics of incidence and the estimated real scope of the problem. This narrow view of the problem of *trafficking in human beings* also results in only few people having access to the rights and services stipulated in the formal documents. In other words: the specific use of the definition of trafficking in human beings is instrumental in trafficked persons' access to the services and rights assigned to them - not only in the identification phase, but also in terms of compensation.

The text discusses the issues linked to the identification of instances of *forced labour and other forms of exploitation* in adults outside the sex industry. Some parts of it may, however, also relate to the issue of trafficking in human beings in general.

The subject of the present study, namely the construction and application of the definition of trafficking in human beings, with an emphasis on the means of identifying *trafficked human beings*, has been chosen in view of its undeniable current relevance (Burčíková, 2008; MVČR, 2010). The inadequate or absent identification of trafficked people represents a problem that is hampering the implementation of the policy measures and, by extension, practical compliance with the required standards.

The present study aims to:

- a) describe the institutional background for the prevention and combating of trafficking in human beings in the Czech Republic, with an emphasis on the measures relating to the identification of persons trafficked into exploitation outside the sex industry;
- b) systematise the knowledge related to the inadequate or missing implementation of measures for the identification of trafficked persons;
- c) compare the policy instruments spelled out in theory with practical evidence;
- d) assess whether the Czech Republic is meeting its international commitments in the field;
- e) draw conclusions and make recommendations.

Measures under the policy for preventing and combating trafficking in human beings sometimes have unintended negative consequences for the rights of the group of people that the policies were originally designed to protect, or a negative impact on the rights of other groups of people (cf. especially GAATW, 2007). Although the present study does not provide a discussion on the possible negative impacts of the analysed policy on the rights of other groups of people, it takes these into account in the final recommendations.



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3. METHODOLOGY

This text is the result of a research project aimed at testing the *Human Rights & Trafficking Tool* (HRTT), a framework for the analysis of policies for preventing and combating trafficking in human beings.

The HRTT provided the present author direction for her analysis. The HRTT aims to function as a tool for assessing the impact of policies for preventing and combating trafficking in human beings on the human rights of affected groups (AIM, 2010 p. 1). The application and construction of the definition have therefore been examined with regard to trafficked persons' access to their rights.

The HRTT includes factsheets relating to various areas of human rights standards for policy to prevent and combat trafficking in human beings. The outline of human rights commitments in particular, but also the overall framework of human rights standards in the policy for preventing and combating trafficking in human beings, draw heavily on the documents included in the HRTT.

The present report has been drawn up using the following basic methods:

- ▷ analysis of documents and available sources;
- ▷ an expert group on the subject;
- ▷ semi-structured interviews with trafficked persons and follow-up analysis.

The present study draws on the relevant legislative and strategic documents, technical texts and articles in the media, in both the Czech and English languages.

The expert group has been set up, based on the focus group concept as the focus group represents an efficient way of acquiring information from a group of experts (Morgan, 2001; Hendl, 1999). The output of the group provided the basis for the part of this study devoted to actual practice.

The construction and application of the definition, as discussed here, is largely a topic for experts. The *trafficked person* category is, in terms of an accurate description, an artificial one, created by experts. The analysis could never have been carried out without the author's continued collaboration with people who have been designated as trafficked and who have decided, on grounds of their own experience and needs, to become clients of, in this case, the *La Strada* NGO. It is these people that experience the (lacking) practical impact of the instruments that the system - in theory - uses in order to provide, to these very same people and to others in similar situations, access to their rights and services. The perspective of these persons is indispensable. While mindful of the scarcity of time and resources, the present author invited at least a few people who have first-hand knowledge of what *being trafficked* feels like, to share some of their experiences and viewpoints in interviews. All the interviewees were trafficked individuals who had been exploited outside the sex industry.

Ethical considerations, such as preparations for obtaining informed consent from the interviewees and steps to ensure their security during data gathering, were taken into account, both before and during the actual interviews (cf. Kutálková, 2010). The pro-

fessional qualifications and experience of both the present author and the interpreter ensured that the interviews were carried out in a sensitive manner.

Details of the expert group and the interviews follow in the text below.

Methodology-wise, the present author is not an impartial observer of the subject she is analysing. She is, in fact, part of the *system* which she is examining. As a worker in *La Strada ČR*², she has actively contributed towards the implementation and preparation of the measures for the prevention of trafficking in human beings. All the same, socially committed research still has to follow the principles of scientific ethics, and the present author has strived to abide strictly by these.



² The present author is a professional social worker and a Ph. D. student in Public and Social Policy.

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4. TERMINOLOGY

Unless otherwise specified in the text or otherwise arising from the context, the present author uses the key terms/concepts in the following way:

Trafficking in human beings means an artificial category referring to a dynamic phenomenon of a processual nature. The present author, seeking to establish borderline criteria to designate *trafficking in people*, uses the definition given by the criminal law in force, while considering the human rights perspective of the issue and emphasising the category of the means and the ends of an action (see below) in the interpretation of the definition, based on her practical experience and knowledge of the relevant literature and current trends in the field.

Trafficked person means a human being whose history shows the constituent elements of *trafficking in human beings*.

Identification of trafficked person means a professional activity aimed at providing potentially trafficked persons access to their rights or to the specific services dedicated to this group.

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5. INTERNATIONAL FRAMEWORK FOR TRAFFICKING IN HUMAN BEINGS

5.1 SELECTION OF INTERNATIONAL DOCUMENTS

The international community, as well as individual countries, have declared their interest in combating trafficking in human beings. Protecting the rights of trafficked persons is an integral part of this effort.

The UN, EU, CE, ILO and other stakeholders have been designing their own policies for preventing and combating trafficking in human beings, stressing the importance of assistance to trafficked persons.

However, the primary focus of most key international documents setting out the obligations of countries in the field of preventing and combating trafficking in human beings and of most measures aimed at trafficked persons is not human rights (Factsheet 6: Human rights standards for preventing and combating trafficking and the protection of the rights of trafficked persons, 2010). This does not mean that human rights are not taken into consideration. However, the primary concern motivating countries to create these instruments has been, amongst others, preventing organised crime from threatening national sovereignty and ensuring national security, by combating trafficking in human beings (Burčíková, 2009).

The *Palermo Protocol*³ of 2000 (see below) can be regarded as the key international document on preventing and combating trafficking in human beings. The *Council of Europe Convention on Action against Trafficking in Human Beings*⁴ provides a European-level framework. The relevant EU documents are: *Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities* (hereinafter the Residence Permit Directive)⁵, *Council Framework Decision of 19 July 2002 on combating trafficking in*

3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, accessible at: <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>.

4 Council of Europe Convention on Action against Trafficking in Human Beings, accessible at: http://www.coe.int/t/dg2/trafficking/campaign/Docs/Convntn/CETS197_en.asp#TopOfPage; Convention No. 197 of the Council on Europe Treaty Series.

5 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, accessible at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?>

human beings (hereinafter the Framework Decision)^{6 7} and Council Framework Decision on the standing of victims in criminal proceedings.

The *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, issued by the UN High Commissioner for Human Rights in 2002, is a non-binding, if internationally respected, document⁸.

The rights of trafficked persons can also be inferred from general human rights instruments such as the *Convention for the Protection of Human Rights and Fundamental Freedoms*⁹.

In this context, attention needs to be drawn to a crucial case in the field of preventing and combating trafficking in human beings: the European Court of Human Rights ruling in *Rantsev v. Cyprus and Russia*. As pointed out by the European Commission Experts Group on Trafficking in Human Beings, as well as Dr. Prasad of Ban Ying, Berlin, it is apparent from the ruling that, amongst others:

- ▷ Trafficking in human beings is prohibited under Article 4 of the European Convention on Human Rights;
- ▷ States have a positive obligation to investigate trafficking in human beings;
- ▷ States need to adopt not only appropriate and effective measures to prohibit and punish trafficking in human beings, but also to take protective measures where it has already occurred;
- ▷ States are required to adopt measures to protect victims or potential victims of trafficking where circumstances give rise to suspicion of trafficking (Prasad, 2010) (Group of Experts on THB of EC, 2010).

A table summarising the international documents most commonly referred to in the relevant literature (Burčiková, 2009; Dottridge, 2007; Evropská Komise, 2005a; Myslíková, 2009; AIM, 2010) can be found in Annex 1, along with information on the Czech Republic.

6 Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA), accessible at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>.

7 Intensive negotiations on the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing the Framework Decision of 2002 took place in 2009. Due to the entry in force of the Lisbon Treaty, however, the document will have to take the form of a directive. As at the date of the present report, the negotiations are continuing.

8 UN HCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1, ECOSOC 20 May 2002), 2002, accessible at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument).

9 The current version, as amended by the adopted protocols, is accessible at: <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+TextsThe+European+Convention+on+Human+Rights+and+its+Protocols/>.

5.2 INTERNATIONAL DEFINITIONS OF TRAFFICKING IN HUMAN BEINGS

Trafficking in human beings is a phenomenon that, in practice, can cross borders not only of individual countries but of whole continents, and the UN was well aware of this. A single definition of the phenomenon, acceptable to most nations, was necessary to harmonise efforts to combat it. The UN sought consensus on the content of the term *trafficking in human beings*, while drawing up one of the protocols supplementing the Convention against Transnational Organized Crime.

Since the Protocol supplementing the Convention against Transnational Organized Crime was presented in Palermo in 2000, nearly all relevant publications, including studies, action plans of international organizations and other documents discussing trafficking in people in one aspect or another, have referred to what has come to be known as the Palermo Definition, which states the following:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs¹⁰

The main benefit of the Palermo Protocol is its internationally acceptable definition of trafficking in human beings. The definition has paved the way for discourse on combating trafficking in human beings, as well as for activities in this field while, at the same time, serving as a model for national legislation and, by extension, providing opportunities for enhancing international co-operation (Burčiková, 2009). Another reason why the Palermo Definition has been a welcome instrument for harmonising practices is that it is the result of negotiations by more than a hundred nations (Factsheet 3: UN Trafficking Protocol, 2010).

The benefits of the internationally recognised definition are beyond dispute. Yet, the Palermo Protocol has also been subject to criticism in several respects.

- ▷ Let us merely recall that the definition of trafficking in human beings as contained in the Palermo Protocol consists of three different, albeit intertwined, constituent elements: transfer (the *action*), coercion (the *means*) and exploitation (the *purpose*). The European Commission Experts Group on Trafficking in Human Beings and other stakeholders have been criticising the Protocol exactly for this very construction of the definition, which they see as *focusing on the means* by which people are brought into the situation of exploitation, rather than on the actual *act of exploitation*.

10 Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, accessible at: http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf.

- ▷ For some time there have been voices calling attention to the fact that the element of transfer should not be regarded as a defining criterion, as it does not occur in all cases (cf. Evropská komise, 2005 p. 71).
- ▷ With regard to the measures aimed at protecting people in terms of human rights, there is no reason to make any distinction between a trafficked person, a transferred person, or a person without valid documents, as opposed to a citizen, providing that these all face a situation of forced labour and conditions similar to slavery or servitude (Factsheet 3: UN Trafficking Protocol, 2010 p. 4).
- ▷ The Protocol has also been criticised for its failure to offer a manual for identifying trafficked persons (Burčíková, 2009).
- ▷ The UN Convention against Transnational Organized Crime and the Protocol are primarily concerned with the aspects of trafficking relevant to criminal law.

For a document that is primarily concerned with human rights, one has to turn to the Council of Europe Convention on Action against Trafficking in Human Beings.¹¹ The Convention adopted the definition of trafficking in human beings from the Palermo Protocol. However, the Convention is the first among its kind to introduce a definition of the term *victim*, which is often referred to in this document. (Other documents also use the term, but they do not provide its definition.) Under Article 4(e) of the Convention, a victim is “*any natural person who is subject to trafficking in human beings*”.

Documents applicable to the EU use a definition which, in essence, corresponds to the Protocol in terms of content. The differences chiefly amount to differences in structure, the most substantial one being that the definition used in the Council Framework Decision does not include the *removal of organs* as a purpose of trafficking.

However, the European Commission seems to expect problems to arise from the use of the definition. Although it uses the actual definition of trafficking in human beings, it prefers to fall back on the wording “*offences related to the trafficking in human beings*” (the Residence Permit Directive) or “*criminal offences and sanctions in the area of trafficking in human beings*” (Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA¹²), where access to rights for trafficked persons is concerned.

Investigative and academic studies mention the existence of other definitions of trafficking in human beings. They employ these not only to formulate the problem, but also to demonstrate the shifts in emphasis concerning various aspects of the topic. Davies, for instance, illustrates the definitions’ varied stress, with reference to the definitions coined by the US Department of State and to the definition used by the UN Special Rapporteur on violence against women. He shows how a definition can emphasise illegal immigration or other types of activity, including prostitution in a given country or focus on, for instance, the various ways of coercing people into slave-like conditions and forced labour (Davies, 2009 p. 29).

However, it is the definitions of national legislation that play a key role in the prosecution and punishment of trafficking in human beings, as well as in the provision of assistance and protection. The national definitions are, for the most part, based on the Palermo Definition and, consequently, need to be interpreted in the context of this definition.

It can be reasonably assumed that the problems outlined above will somehow manifest themselves in Czech national practice, as the definition of the crime of trafficking in human beings in Czech criminal law has also been modelled on the Palermo Definition.

5.3 HUMAN RIGHTS STANDARDS IN THE FIELD OF TRAFFICKING IN HUMAN BEINGS

Excerpts from human rights standards in the field of preventing and combating trafficking in human beings have also played a role in developing the HRTT. This chapter offers a selection of standards relevant to the identification of trafficked persons. Given the limited space, only two of the standards are quoted in detail.

It is the following standards in particular that are relevant to the main topic of the present study – identification as the prerequisite for access to rights and services dedicated to trafficked persons (Factsheet 6: Human rights standards for preventing and combating trafficking and the protection of the rights of trafficked persons, 2010 p. 3):

- ▷ Obligation to actively identify trafficked persons;
- ▷ Obligation to criminalise all forms of trafficking in human beings.

Obligation to actively identify victims of trafficking¹³

Standards:

- ▷ Guidelines and procedures for the relevant state authorities and officials are in place to permit the rapid and accurate identification of trafficked persons (UN HCHR Guidelines no. 2.1; CoE CAT art. 10)
- ▷ The relevant state authorities and officials have been trained in correct identification procedures (UN HCHR Guidelines no. 2.2; CoE CAT art. 10)
- ▷ Law enforcement officials work together with NGOs to facilitate identification and assistance of trafficked persons (UN HCHR Guidelines no. 2.3; CoE CAT art. 14)
- ▷ Migrants and other groups that might be vulnerable for trafficking receive information that enables them to seek assistance when needed (UN HCHR Guidelines, no. 2.4)

(Factsheet 6: Human rights standards for preventing and combating trafficking and the protection of the rights of trafficked persons, 2010 p. 3).

11 Accessible at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage.

12 The Proposal is dated 29/3/2010.

13 States have a duty to properly identify trafficked persons, as a failure to do so is likely to result in a further denial of that person’s rights. This is confirmed in the Guidelines of the UN HCHR and Art. 10 and 14 CoE CAT.

Obligation to criminalise all forms of trafficking¹⁴

Standards:

- ▷ Trafficking is a criminal offence under national law (UN Traf Prot, CoE CAT, EU FD THB)
- ▷ Trafficking is defined in accordance with the UN Trafficking Protocol (UN Traf Prot, CoE CAT, EU FD THB)
- ▷ Law enforcement officials understand the definition of trafficking
- ▷ The component acts, meaning: slavery and servitude, forced labour, the worst forms of child labour, forced marriage, debt bondage, and forced prostitution/sexual servitude, are criminalised under national law (Forced labour & slavery conventions, ICCPR, ECHR, UN HCHR Guidelines, principle 12)
- ▷ Proportionate penalties are applicable to these offences and are applied (UN Traf Prot, CoE CAT, EU FD THB) (Factsheet 6: Human rights standards for preventing and combating trafficking and the protection of the rights of trafficked persons, 2010).

The following chapters which discuss the measures taken in the field, including those spelled out in theory as well as those available in practice, have been drawn up with regard to the above standards.

The *identification of trafficked persons* standard has been selected in view of its direct link to the main subject of the present study; the *obligation to criminalise all forms of trafficking* standard, discussing instances of exploitation outside the sex industry, has been selected due to its relation to the issue of exploitation outside the sex industry examined in the present study.

The present study regards the identification of trafficked persons as a prerequisite for facilitating the access of such persons to their rights and the services aimed at them. The standards established regarding the fulfilment of these rights relate in particular to the following areas, which are only mentioned here briefly:

- ▷ Obligation to assist and protect the victims of trafficking in human beings, including their standing as witnesses;
- ▷ Obligation to investigate and prosecute cases of trafficking in human beings;
- ▷ Obligation to prevent the detention of trafficked persons and to ensure their impunity from acts committed in relation to their trafficking;

14 “According to Art. 5 of the UN Trafficking Protocol, all State parties to the Protocol must criminalise trafficking and provide for appropriate penalties. The European Convention on Action against Trafficking in Human Beings (hereafter CoE CAT) spells out a similar obligation, as does the EU Framework Decision on Combating Trafficking. All three instruments do not oblige the criminalisation of forced labour and slavery as the outcomes of trafficking. However, these are prohibited under the Forced Labour and Slavery Conventions, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Also the Guidelines of the UN HCHR hold that States are required to criminalise trafficking as well as its component acts and related conduct.”

Obligation to provide adequate remedy to trafficked persons (Factsheet 6: Human rights standards for preventing and combating trafficking and the protection of the rights of trafficked persons, 2010 pp. 3-5).

Apart from the above standards, policy measures should reflect the following cross-cutting principles:

- ▷ Participation and access to information;
- ▷ Non-discrimination;
- ▷ *Gender equality*;
- ▷ Access to effective remedy.

These are not just cross-cutting principles to be applied to all measures, but also rights in their own right (Factsheet 7: cross-cutting principles, 2010).

The principles of *participation and access to information* and gender equality have been reflected in the analyses of the individual measures. The assertion of the access to *effective remedy* is similarly problematic, as is access to other rights (see below). *Non-discrimination* has not been analysed.

When discussing international legal instruments and the standards for policy development that they underpin, the frequent role of the standards as a model for national policies needs to be taken into account. In the Czech Republic and in other countries, measures are developed based on international standards. The above standards should, however, serve not only as models for the formal wording of policies but, first and foremost, as signposts indicating the methods by which the measures are supposed to work in practice.

5.4 THE CZECH REPUBLIC'S INTERNATIONAL COMMITMENTS

Unfortunately, the Czech Republic's approach to the implementation of international commitments in the field of preventing and combating trafficking in human beings seems to be quite a controversial one.

The Czech Republic is one of the few European countries not to have ratified either the Palermo Protocol or the Convention against Transnational Organized Crime.

Furthermore, the Czech Republic has long been facing international criticism¹⁵ for not having signed the Council of Europe Convention on Action against Trafficking in Human Beings. The main reason for the criticism is that legal entities cannot be made liable for offence. Although the Czech Republic has been aware of the problem since 2005 (cf. Národní strategie boje proti obchodování s lidmi /pro období 2005–2007/, 2005) and has, since at least the beginning of 2008, been demonstrably declaring its efforts to review its legislation in order to be able to ratify the Convention (cf.

15 For instance, in 2007 at a seminar entitled “Seminar on Trafficking in Human Beings – Measures Aimed at the Protection of Victims' Rights” held on 19 to 20 April 2007 by the Council of Europe and the Konrad Adenauer Stiftung in Berlin (Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008 p. 14).

Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008), there is, as of yet, no real prospect of this happening in the near future. As a result, to date, the Czech Republic, Lichtenstein, Monaco and Russia remain the only countries not to have signed the Convention.¹⁶

However, the relevant strategic documents, such as the national strategies (Národní strategie boje proti obchodování s lidmi za účelem sexuálního vykořisťování v České republice, 2003; Národní strategie boje proti obchodování s lidmi /pro období 2005–2007/, 2005; Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008), as well as reports on the situation in the field of trafficking in human beings (MVČR, 2009) seem to indicate that the Czech Republic is, apart from the above failure to make legal entities liable for offence, meeting the requirements of the Convention and the Protocol. This failure is mentioned as the only deficiency in the documents.

Unfortunately, the Czech Republic has joined other developed nations targeted by migrant workers¹⁷ in refusing to sign certain other documents such as the ILO and UN documents on migrants' rights (cf. Burčíková, 2009).

The Czech Republic, through its strategic documents, has embraced, at least in theory, the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the UN High Commissioner for Human Rights (Národní strategie boje proti obchodování s lidmi za účelem sexuálního vykořisťování v České republice, 2003).

Also, European Union membership allows for reliance on the commitments arising from political memoranda, such as the 2002 Brussels Declaration¹⁸.

Although the Czech Republic has not ratified all the international documents underpinning the above human rights standards, these standards can be relied on in practice. Largely, the standards are, as will be shown below, complied with formally: the measures exist or their theoretical existence is spelled out in national political documents.

16 As of 3/6/2010 based on <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG>.

17 See Annex 2 for further details.

18 Adopted at the European Conference on Preventing and Combating Trafficking in Human Beings. The Report of the Experts Group on Trafficking in Human Beings has called this document, despite its origin outside the EU decision-making institutions, a milestone in combating trafficking in human beings (Report of the Experts Group on Trafficking in Human Beings 2004).



6

6. CONCEPTUALISATION OF TRAFFICKING IN HUMAN BEINGS

Trafficking in human beings is a criminal offence under the criminal law of the Czech Republic. The definition of the offence laid down in the Czech legislation has been gradually shaped by the commitments made by the Czech Republic to the international community, especially through its becoming a Member State of the EU. The influence of the Palermo Definition is apparent, both in the current and the older provisions.

In public discourse, the term *trafficking in human beings* itself has been interpreted in many ways. These range from strict definitions based on criminal law, under which the constituent elements correspond to those of the offence laid down in the legislation, to understanding trafficking in human beings as a negative social phenomenon, corresponding in its nature to other forms of modern slavery.

The identification of trafficked persons essentially amounts to an operationalisation of the definition of trafficking in human beings carried out by the various stakeholders. The following chapter will show that operationalisations vary greatly from stakeholder to stakeholder. When divergent conceptualisations directly prevent trafficked persons from accessing justice, this becomes a problem.

6.1 DEVELOPMENT AND DEFINITION OF THE CRIMINAL OFFENCE OF TRAFFICKING IN HUMAN BEINGS

Czech criminal law had included provisions against the criminal offence of trafficking in women long before 1993, when major references were made, apparently for the first time just after the revolution of 1989, to measures that can be regarded as falling within the field of preventing and combating trafficking in human beings (Kutálková, 2008).

Only whosoever “has lured, hired or transported a woman abroad with the intent of her being used for the purposes of sexual intercourse with someone else” (Section 246 of Act 140/1961 Coll., the Criminal Code) was liable for punishment.

The following years saw two amendments to the constituent elements of the offence. The first one, in 2002, brought about a change in terms of who can be considered a trafficked person: women ceased to be regarded as the only victims of the crime. The wording of the offence thus became gender-neutral. Furthermore, the scope of the offence was expanded to cover the specific aspects of the luring, hiring or transporting of another person with the intent of him or her being used for sexual intercourse both abroad and from abroad.

As of 2004, probably in the context of the Czech Republic’s accession to the EU, the Criminal Code was amended to address the issue of exploitation outside of the sex industry. Generally, the provisions of Section 232, effective until 2009, were identical in content to the Palermo Definition: they allowed punitive measures to be taken against anyone using or threatening violence, employing deception or abusing the error, duress or dependence of another person in order to tempt, arrange for, hire, lure, transport, hide, detain or surrender said person for the purposes of sexual intercourse or any other forms of sexual

harassment or abuse, or for the purposes of slavery, servitude, forced labour or other exploitation. Acts involving the trafficking in human beings within the Czech Republic, in order to force an individual into prostitution or to be exploited in other ways, now also qualified as trafficking in human beings. In short, the definition of trafficking under the provisions of Section 232, was no longer limited to the crossing of a State frontier.

In so far as the present study is concerned, the provisions of the legislation currently in force are in many ways similar to those of previous provisions. *Seduction* has been included in Subsection 1 as an additional infringement. Whoever profits from the acts included in the provisions is also liable to prosecution for a criminal offence. According to the new provisions, preparation for the offence in itself now also constitutes an offence. The official list of specific purposes of trafficking in human beings has also been expanded to include: the production of pornographic materials; the procurement of cells, tissues or organs; for military service.

There have been no clarifications, additions or deletions with regard to the other problematic constituent elements discussed further below.

The definition of the criminal offence of trafficking in human beings is currently provided for in Section 168 of Act 40/2009 Coll., the Criminal Code:

- (1) Whoever tempts, arranges for, hires, lures, seduces, transports, hides, detains or surrenders a child for the purposes of use by another for:
 - (a) sexual intercourse or other forms of sexual abuse, harassment or the production of pornographic materials;
 - b) procurement of tissues, cells or organs from the child's body;
 - c) military service;
 - d) slavery or servitude, or
 - e) forced labour or other forms of exploitation, or whoever profits from such acts, shall be sentenced to imprisonment for two to ten years.
- (2) The same penalty shall be applicable to whoever uses violence, the threat of violence or of grievous injury, or employs deception or abuses the error, duress or dependence of a person not falling within Subsection 1, to tempt, arrange for, hire, lure, seduce, transport, hide, detain or surrender said person for the purposes of use by another for:
 - a) sexual intercourse or other forms of sexual abuse, harassment or the production of pornographic materials;
 - b) procurement of tissues, cells or organs from the person's body;
 - c) military service;
 - d) slavery or servitude, or
 - e) forced labour or other forms of exploitation, or whoever profits from such acts.
- (3) Imprisonment for five to twelve years or confiscation of property shall be applicable to whoever
 - a) commits any such act as mentioned in Subsection 1 or 2 as a member of an organised group;

- b) exposes through such act another person to the danger of grievous bodily injury or death;
 - c) commits such an act with the intent of gaining significant benefit for herself/himself or for another person, or
 - d) commits such an act with the intent of procuring the use of another person for prostitution.
- (4) Imprisonment for eight to fifteen years or confiscation of property shall be applicable to whoever
 - a) causes grievous bodily injury by any such act as mentioned in Subsection 1 or 2;
 - b) commits such an act with the intent of gaining benefit of significant scope for herself/himself or for another, or
 - c) commits such an act while being connected to an international group active in several States.
 - (5) Imprisonment for ten to sixteen years or confiscation of property shall be applicable to whoever causes death by any such act as mentioned in Subsection 1 or 2.
 - (6) Preparation for any such offence in itself constitutes an offence.

The current definition of the offence of trafficking in human beings reflects all the requirements of the relevant international documents (especially of the Framework Decision, Palermo Protocol and Recommendation No. R (2000) 11 of the Committee of Ministers to Member States on action against trafficking in human beings for the purpose of sexual exploitation (Důvodová zpráva k návrhu zákona trestní zákoník, 2009).

That is one of the reasons why the Czech definition of the offence suffers from the same flaws as the Palermo Definition. It has now become clear that legislation in certain other countries, in connection with good implementation practice, is more efficient in punishing this type of crime.¹⁹

6.2 PROBLEMS RELATED TO THE CONSTRUCTION AND APPLICATION OF THE DEFINITION OF TRAFFICKING IN HUMAN BEINGS

The definition of *trafficking in human beings*, its practical applicability and its interpretations by various stakeholders have been the subject of ongoing discussions – and not only in the context of specific examples from practice.

This section aims to examine the problems related to the construction and application of the existing definition of trafficking in human beings. It also aims to examine whether sufficient background clues for interpretation are available and to offer an overview

19 JUDr. Věra Linhartová, Ph. D., amongst others, called attention to this fact in her presentation on 13/5/2010. Her presentation examined, amongst others, the difference in the wording of the relevant provisions of the Spanish Criminal Code and about 50 rulings by Spain's Supreme Court on forced labour (Linhartová, 2010).

of the existing interpretations, because the insufficient or lacking understanding/interpretation of the terms used in the definition is often used to explain the low number (or rather the absolute absence) of sentences for the crime of trafficking in human beings outside the sex industry in the Czech Republic.

In Czech legislation, the definition of the criminal offence of trafficking in human beings suffers from similar flaws as its model included in the Palermo Protocol. There are also problems concerning its application in practice. According to Burčíková, there are three levels of problems related to the definition:

- ▷ the definition itself, its wording and structure;
- ▷ the interpretation of the definition and the understanding of its terms;
- ▷ the application of the definition in practice (Burčíková, 2008 p. 2).²⁰
- ▷ The next section discusses the weak parts of the definition itself. Problems related to the application of the definition will be discussed in the following chapter.

6.2.1 Wording and structure of the Definition

In her analysis, Burčíková examines the structure of the definition. She does so, based on internationally recognised frameworks. According to the frameworks, trafficking in human beings has three constituent elements: the *action*, the *means* (which need to be used if the affected person is an adult) and the *purpose* (the end). With regard to the definition itself, Burčíková sees the following problem: most actions falling under the action element (i. e. tempting, arranging for, hiring, luring, transporting, hiding, detaining or surrendering²¹) do not constitute acts liable to sanction. Actions falling under the means element (the use of violence, the threat of violence, or the employment of deception or the abuse of error, duress or dependence) are usually prosecuted or, as the case may be, defined as independent criminal offences (e. g. injury, fraud, illegal restraint).

In keeping with the criticism of the Palermo Definition by the Experts Group (Evropská komise, 2005), Burčíková calls attention to the fact that, in terms of danger (and the need for sanction), the third constituent element, the purpose of trafficking, is the most important one. She goes on to say that it is through the various forms of exploitation that the rights, and, in many respects, even the lives and dignity of the exploited persons are placed in jeopardy (Burčíková, p. 3).

In criminal law practice, all three of the above constituent elements need to be present in an offence for it to meet the definition. As a result, there is a considerable risk of failure to prove the offence due to a failure to prove one of its constituent elements.²²

20 The analysis of Burčíková still offers relevant insights into the issue, as the wording of the offence has not seen substantial changes to address the problem outlined here, since the time her analysis was conducted.

21 The new Criminal Code has added *seducing*.

22 It is by no means exceptional that prosecutions which have been initiated for trafficking in human beings end up as cases of procuring for prostitution precisely due to the failure to prove all the constituent elements of the criminal offence of trafficking in human beings (cf., for instance, Burčíková, 2008).

In the complexity of practice, the PEJA very probably fail to identify instances of trafficking in human beings and only conduct prosecution at the *means* level.

As a result, aggravated forms of acts such as forced labour or labour exploitation may sometimes go unpunished.

6.2.2 Interpretation and understanding of the terms

The definition of trafficking in human beings includes a number of terms at the levels of *action*, *means* and *purpose* (end). Practical experience and sporadic theoretical studies (e. g. Myslíková, 2009) have shown problems arising in particular from the various interpretations of the terms *duress* and *dependence* at the *means* level and of the term *other forms of exploitation* at the *purpose* level. At a cursory glance, the available background for the interpretation of these concepts seems insufficient. For this reason, the present author has focused on identifying, comparing and assessing the relevant sources that could serve as background clues for interpretation.

Abusing duress or dependence

Practice has shown that the understanding of what is included under the definition of *abusing duress*²³ or *dependence* can vary significantly. NGOs have identified many cases where access to the assistance system for trafficked persons could, to a considerable extent, depend on whether the situation of the individual at the time of his being hired for or lured into a certain type of employment is considered as acting under duress. The question therefore arises as to what the legislators and competent authorities mean by these terms and whether the available sources are sufficient for practical purposes.

The parts of the CC Explanatory Memorandum concerning the criminal offence of trafficking in human beings provide no information on the situations involving “*abusing duress or dependence*” (Důvodová zpráva k návrhu zákona trestní zákoník, 2009). However, an interpretation of the term *duress* can be found in the most commonly used commentary on the Criminal Code:

“Duress is a transient situation caused by adverse circumstances resulting in restrictions to the freedom to decide. The adverse circumstances may concern personal or familial situations of the person subject to duress or other circumstances, which result in the said person experiencing difficulties or distress” (Šámal, 2010 p. 1522).

In this context, Šámal refers to a similar interpretation of the constituent element of duress in the crime of usury: “*duress means an exceptionally difficult situation for the victim (or for another person whose duress the victim perceives as his own) caused by the inability on the part of the victim to satisfy a definite or transient need. Usually the need in question relates to an economic difficulty, such as the maturity of a debt, the non-payment of which may seriously endanger the social status or the financial situation of the victim. The need in question may also relate to other difficulties, such as the interest in obtaining an apartment to resolve a difficult situation in the family, or distress caused by the victim’s personal or social situation (such as the situation following a natural*

23 The Czech term *tíseň* implies no real alternative to subjecting to the abuse involved, which might perhaps not be as obvious from its English translation *duress*.

disaster which has affected the victim.) The victim may be acting under duress even if he has sufficient means to overcome it, but these are not readily available: for instance if the victim has had a car accident or has had his money stolen far away from home“ (Šámal, 2010 p. 1956).

Šámal goes on to say that “the dependence relationship in itself does not constitute a situation of duress on the part of the dependent person; dependence can, however, combine with other secondary circumstances to create a situation of duress. It is irrelevant whether the situation of duress has been caused by the victim himself or whether it has resulted from circumstances independent victim” (Šámal, 2010 p. tamtéž).

The Security Policy Department at the Ministry of the Interior (the SPD) has issued specialised opinions that give a lead to the interpretation of the term *duress*. The SPD seems to have expected that the understanding of the individual terms could have raised questions, even at the time when the old Criminal Code was still effective. Its first opinion (OBP, 2005) defines the term *duress* in a way similar to the commentary quoted above. Insofar as the present study is concerned, the last remark in the opinion on the nature of the victim’s potential economic situation seems to be especially relevant. *Duress* is described as being “usually... an economic difficulty (such as the maturity of a debt, the non-payment of which can seriously endanger the victim’s social status or financial situation) or a difficult personal or family situation (such as the interest in obtaining an apartment to resolve a difficult situation in the family or the situation following a natural disaster or a difficult situation related to residing in the Czech Republic illegally)” (OBP, 2005 p. 4). With regard to duress, the 2006 opinion adds the following: “The employer then takes advantage of the foreign national’s fear of extradition or duress and threatens to report him to the Immigration Police if he is demanding his wages” (OBP, 2006 p. 3).

Other authors (Prouza, 2010; Jelínek, et al., 2009) do not discuss the crime of trafficking in human beings at all.

As mentioned above, the Czech Republic has so far not seen a sentencing become effective for the crime of trafficking in human beings outside the sex industry. Such a sentence could then shed some light on which type of situation is to be considered as *duress* in Court. However, the Regional Court in Ústí nad Labem found three men guilty of trafficking in human beings into other forms of exploitation (but not into forced labour!). In her Statement of Reasons, Justice Elsnerová stated that the duress consisted, among others, in the fact that the victims were in a foreign country, without documents or knowledge of the language, and would not have known, even if they had been provided with the appropriate means of communication (a mobile phone), how and where to ask for help²⁴. The ruling has, however, not become effective as of yet.²⁵

The interpretation of similar concepts can perhaps provide some inspiration for the practical understanding of the content of the term *duress*. The Palermo Definition of trafficking in human beings does not mention *duress* as one of the *means*; but it – and other documents as well – uses another concept similar in content, namely that of an

abuse of a position of vulnerability. According to the Instructions for the Meeting of the European Council Working Party on Substantive Criminal Law (the Party participates in the negotiations on the final form of the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA), a “*position of vulnerability arises when the person concerned has no real or acceptable alternative but to submit to the abuse involved*”²⁶. The legislation of Luxembourg offers an inspiring and fairly clear-cut interpretation of what is to be considered as a *position of vulnerability*. It sees the victim’s illegal or insecure residential status as constituting a particularly vulnerable position which, if abused, results in a higher penalty (CEELI, 2005 p. 38).

In summary, the concept of *duress* includes situations where:

- ▷ the life of a human being is affected by circumstances resulting in restrictions of the freedom to decide;
- ▷ the circumstances can relate to economic difficulties (having to repay a debt which, if left unpaid, can seriously endanger the victim’s social status and financial position, or having no money readily available as a result of theft or a car accident far from the victim’s home), difficulties resulting from the social situation (such as difficulties resulting from the situation following floods, from not having valid documents or from staying in a foreign country with no knowledge of the circumstances and without access to help), or from the family situation of the victim or other circumstances;
- ▷ it is irrelevant whether the situation of *duress* has been caused by the victim herself/himself or whether it has resulted from circumstances independent of the victim;
- ▷ it is irrelevant whether the situation in question is a permanent or a temporary one;
- ▷ the victim does not have the means readily available to overcome the situation, although she/he might otherwise have them at her/his disposal.

As far as the *abuse of a position of dependence* is concerned, the same sources can be used as for the above discussion of *duress*.

In this context, Šámal, further developing the definition frameworks of trafficking, maintains that “*dependence is a position where the dependent person cannot freely decide as a result of being in a way reliant on the perpetrator (such as through the debtor/creditor or pupil/teacher relationship). The dependence need not result from a legal relationship: a de facto relationship is sufficient. However, situations where, for instance, a woman, having come to know the perpetrator by accident, walks with him through the woods alone... do not suffice to constitute a position of dependence. Nor is the position of a wife to be regarded as a position of dependence on her husband*” (Šámal, 2010 p. 1522).

As with duress, specific aspects of the abuse of a *position of dependence* have also been examined by the SPD, which concluded, among others, that a *position of dependence* may arise from a private law relationship, “*constituted by the conclusion of a contract meeting the formal requirements and conveying the impression of both parties having an equal standing. In reality, however, the exploited person enters the position of a certain dependence on*

24 The present author’s notes of the 15/6/2010 Court hearing in Ústí nad Labem.

25 As of 30/7/2010.

26 For the sitting on 15/4/2010.

the exploiter and is forced to provide her/his labour for an inadequately low remuneration. This position of dependence does not arise from the conclusion of the contract in itself, but only subsequently, for instance, by the instalment payment of the wages, under the promise that it will be wholly paid in future; by using the threat of reporting the illegal alien resident to the authorities or the threat of physical violence and the like" (OBP, 2006 p. 3).

Threats by the employer to use her/his alleged, but in fact non-existent, connections at the Immigration Police – currently a very relevant instrument for keeping exploited persons under control – or to cancel the exploited person's visa (which in fact he is not able to do) are to be regarded as abusing error on the part of the exploited person and not as abusing a *position of dependence* of the exploited person (ibid).

Other forms of exploitation

The practical meaning of the category *other form of exploitation* is not entirely clear as of yet. But certain leads exist.

Šámal's commentary on the Criminal Code, which is the most extensive, states the following: "*Other forms of exploitation are to be understood as any act on the part of the perpetrator resulting in his profit from the victim's action*" (Šámal, 2010 p. 1519). A similar definition is given in the interpretation of Section 232a (cf. Šámal, a další, 2004). Obtaining profit at the expense of another person is, after all, at the heart of the common understanding of exploitation as "*abusing the activity of a person or a group by another person, to obtain benefit without adequate or without any remuneration.*" (Velký sociologický slovník II, 1996 p. 1405).

The SPD sees a question of the superordination, co-ordination or subordination of the individual terms, arising from the definition of the terms *exploitation* and *other forms of exploitation*. It considers "*exploitation as the umbrella term, which includes both forced labour and other forms of abuse for labour*" (OBP, 2006 p. 2). It goes on to add that "*exploitation can be generally defined as an abuse of the dependence of another person in order to obtain any sort of unlawful profit from his action.*" (OBP, 2006 p. 2).

The difference between the instalment payment/wages received by a person and the value of the work performed by the person is also open to discussion. The SPD submits that "*regarding the term 'exploitation', it is irrelevant whether the remuneration provided should reach the level of the minimum wages set out in the relevant piece of legislation (in practice, the opposite opinion is fairly common): what is relevant is the striking disproportion between the work performed and the usual or normal remuneration provided for such work.*" (OBP, 2006 p. 2).

In this respect, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, providing for minimum standards on sanctions and measures against employers of illegally residing third-country nationals, can serve as an inspiration. Its Article 2(i) reads: "*particularly exploitative working conditions' means working conditions, including those resulting from gender-based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity.*"

The category of the *other form of exploitation* may include various actions, and it will be very interesting to follow the process of designating its boundaries to the very end. In its own right, however, or rather in combination with the other elements of the definition of trafficking in human beings, it is already providing sufficient clues for interpretation.

Forced labour

Forced labour is one of the forms of exploitation that trafficked persons are subjected to. The Criminal Code, however, does not provide for the separate offence of forced labour.

Forced labour has been the subject of many studies, especially outside the Czech Republic. At the international level, the studies carried out by the ILO are of particular relevance (ILO, 2009a; ILO, 2009; ILO, 2007). In the Czech Republic, Petra Burčíková has been notable for conducting studies on *forced labour* (Burčíková, 2006; Burčíková, 2007). As her conclusions are still relevant, only limited space is devoted to the discussion of the term here.

An interpretation of the term *forced labour* is available in the C29 Forced Labour Convention of 1930. Article 2 of the Convention reads: "*For the purposes of this Convention, the term forced or compulsory labour shall mean 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.*" Šámal makes the following comment on the Convention: "*menace of penalty is to be understood not only as a penalty in the sense of criminal law, but as any detrimental action consisting of depriving the said person of any rights or privilege or restricting any of these*" (Šámal, 2010 p. 1519). He draws attention to a ruling of the Czech Constitutional Court which "*seems to indicate that the relationship in question is to be deemed a public law relationship including the threat of sanction resulting from the superior/subordinate relationship between the concerned legal entities*" (ibid).

Relying on the same ruling, the SPD (OBP, 2006) submits that "*as a result, activities which a person has committed herself/himself (even orally) to, for instance within the limits of civil and commercial law (such as through various contracts relating to work to be carried out for payment), do not formally fall under the concept of forced labour. Very often this is the case of foreign nationals who carry out, for instance, construction work for little or no wages and who are in various ways forced into such work*" (OBP, 2006 p. 2). According to the SPD, such activities fall within the concept of *other forms of exploitation* (ibid).

Nevertheless, as has been pointed out repeatedly, the Convention originated in a different historical context and was meant to address a different situation. The question, therefore, arises as to whether the available definitions are sufficient in practice²⁷. This is why a Working Group on Trafficking in Human Beings and Labour Exploitation was set up at the Ministry of the Interior.²⁸

27 Two rulings of the European Court of Human Rights are especially relevant for the issue of forced labour and, specifically, for the process of making the interpretation at the international level more accurate: *Mussele v. Belgium* and *Siliadin v. France*. In the first case, the Court endorsed the *forced labour* definition under the C29 Forced Labour Convention as the basis for interpreting Article 4 of the European Convention on Human Rights (Burčíková, 2009). In the second case, the Court provided an interpretation of *forced labour, slavery and servitude* (ibid). Both rulings have been reproduced in human rights literature.

28 The Working Group was set up by way of Czech Government Resolution No 67 of 23 January 2008 on the National Strategy on Combating Trafficking in Human Beings.

The Group concluded that the current demarcation of the concept of *forced labour* meets the needs of the PEJA²⁹.

This conclusion is acceptable with reservations, on condition that the Judiciary takes into account the present status in the field.

Practical application has seen instances where the term *forced labour* has been understood differently. In a trial held on 9 October 2008, Justice JUDr. Eva Brázdilová, President of the competent chamber of the Metropolitan Court in Prague, held: “*Forced labour is essentially to be understood as work which is offensive to human dignity or unduly hard or carried out under inadequate conditions or where acceptable conditions have not been ensured or, at any rate, work that is disproportionate in scope and does not allow for the employees to recuperate.*” Justice Brázdilová made no reference to the standard definition. The judgment is final.

6.3 APPLYING THE DEFINITION: THE REAL CONDITIONS

In her outline of the issue of the application of the definition, Burčíková, drawing on La Strada’s more than ten-year-long experience in the field and on the relevant literature, points out the risks arising from the continuous nature of trafficking in human beings. She quotes the International Labour Office as saying: “*forced labour needs to be understood as a process and not as a static relationship between worker and employer. The vulnerability of migrants increases over time as they are pressed to repay their debts, supervised by the Immigration authorities and blackmailed by criminal networks*”³⁰ (Burčíková, 2008 p. 6). She draws attention to the danger of losing sight of the less serious forms of trafficking in human beings, as a consequence of focusing on the prosecution of the most serious ones, arguing that the former might just be earlier stages of the latter (ibid). Real conditions are discussed throughout the present study, especially in the section devoted to the results of the expert group.

The previous chapter discussed the problems related to the construction, understanding, and content of the definition. Burčíková and others are correct in stating that the nature of the definition of trafficking in human beings can make the actual practical usage of the definition more complicated. The wording and structure of the definition are not very fortunate in terms of its practical application. Taking into account the context of the origin of the Palermo Protocol and the historical background of the trafficking issue, the question also arises of whether a definition thus construed meets current practical requirements.

29 The Working Group also requested the AGO to draw up a special report on criminal activity with regard to the usage of the definition of *forced labour* and *other forms of exploitation* and the other constituent elements of the definition pursuant to Section 232a of the Criminal Code, in particular concerning the practical usage of the terms: *violence, the threat of violence or of grievous injury, deception, abusing the error, duress and dependence*. The AGO declined, on the grounds that a new Criminal Code was being drawn up and it was therefore not possible for the AGO to take on any additional work. The Group then decided to suspend its activities until more final judgements were available. The next meeting of the Group was planned for June 2009 but there is no mention of any such meeting in the relevant Report (MVČR, 2010).

30 Andrees, B., *Forced labour and trafficking in Europe: how people are trapped in, live through and come out*, International Labour Office, Geneva, 2008, p. 22.

The current status of theory in the Czech Republic seems to provide enough clues for the interpretation and understanding of the individual terms to rely on. Foreign legislation could also provide valuable inspiration for changing the content of the definition or for making it more accurate to meet practical requirements – if efforts are made. Still, based on the available sources, it can be assumed that there are sufficient theoretical clues for the definition and its constituent elements to be used in practice.

The present author submits that one of the reasons for the current unsatisfactory situation, i.e. the small number of people officially identified as trafficked persons, who as such could claim their rights and access to the services aimed at them and, last but not least, the small number of final Court rulings in the field, is the way the existing criminal law definition is operationalised. The next chapter will examine this assumption.

6.3.1 Identifying trafficking in human beings – the criminal law concept of the policy for preventing and combating trafficking

The identification (understood as a professional activity performed by the stakeholders) is profoundly influenced by the viewpoints and primary goals of the respective stakeholders. There is an obvious difference between determining whether the situation in question can be legally demonstrated to constitute an instance of trafficking in human beings and determining if a personal experience described by an individual has the characteristic traits or meets the indicator requirements of trafficking.

It is up to the PEJA, i.e. the Police, the Public Prosecution and the Courts, to determine whether the crime of trafficking has been committed.

The main task of the PEJA is “*to duly determine whether a crime has been committed and, if that is the case, identify the perpetrator, impose a lawful penalty or a protective measure and execute this decision or ensure its execution; to act towards strengthening the rule of Law, preventing and eliminating criminal activity and educating citizens.*” (Jelínek, 2007 p. 15).

In practice, it is most commonly a branch of the Police force that faces the decision of whether the situation in question constitutes an instance of trafficking in human beings.

The continued low number of identified instances of trafficking in human beings seems to support the assumption that this level is being affected by the above problems related to the definition of trafficking in human beings, specifically to its structure, interpretation and to the understanding of certain of its terms. As has already been mentioned, only ten instances of trafficking in human beings were identified in 2009, seven of which concerned *exploitation for prostitution* and three *other forms of exploitation* and *forced labour*. The Police registered 42 victims of trafficking.

Even if the Police consider the situation in question to be an instance of trafficking, they may still be taking into account, intentionally or unintentionally, the fact that they will not only have to assert the claim vis-à-vis the Prosecutors, but also obtain the necessary evidence³¹ and this may influence their official opinion.

31 The practical problems in identifying and proving trafficking in human beings are discussed in the section on the expert group results.

The Regional Prosecuting Attorney's Office in Brno seems to take into account the risk of prosecuting less serious offences when it requires that "*the Police assume from the outset the legal version asserting the qualification of the most severely punishable offence.*" (MVČR, 2010 p. 66).

It can be assumed – and there is practical evidence to support this – that in the assessment of the Police and in the decision whether the offence in question is to be regarded as trafficking in human beings, it is not just the above problems but also the awareness of the general conservatism and legal positivism of the Czech judicial system that weigh against trafficked persons³².

The narrow conceptualisation of the trafficking definition in criminal law, the emphasis on the objective presence of all the three constituent elements in a certain (higher) intensity over a certain period, the emphasis on the available evidence and the systematic limits of criminal legal justice in the Czech Republic result in a critical narrowing of the understanding of the trafficking issue and, by extension, of the formal identification. The minimal number of people who qualify for access to the system of rights and assistance is the consequence.

6.3.2 Identifying a trafficked person – applying the human rights concept of the policy for preventing and combating trafficking

The primary goal of the identification of a trafficked person, i. e. of an individual whose rights have been infringed in a specific way, is to offer her/him necessary assistance and enable her/him access to justice. Due to its different goal, the identification of trafficked persons, which is a task of specialised NGOs, does not need to conform to the legal classification of the crime of trafficking.

As the identification is human rights oriented, it is guided by the principle of *presumption of trafficking*³³ (cf., for instance, ICMPD, 2006). Human rights and recommended standards provide that if there is the slightest suspicion that the person in question has been trafficked, he/she should be guaranteed at least the basic assistance and a reflection period to decide for or against co-operation with the competent authorities (cf., for instance, Dottridge, 2007; Evropská komise, 2005; and others).

Specialised NGOs in the Czech Republic offer their services to various target groups: from consultation to persons at risk of exploitation and trafficking, to comprehensive services for trafficked and exploited persons, including, but not limited to, undisclosed

accommodation and legal representation.³⁴ Their activities are not limited by the narrow definition of criminal law. Legally, some of the instances would probably fall under the category *offences related to trafficking in human beings* or would not at all qualify for criminal proceedings due to a lack of evidence.

The focus of *La Strada* in identifying trafficked or exploited persons is not to identify the offence of trafficking in human beings. The goal of the process is to identify persons who are likely to have experienced trafficking in human beings or serious forms of exploitation. The identification takes place on the basis of what are called the direct and indirect indicators³⁵. These include indicators based on the internationally recognised definition of trafficking in human beings³⁶ and certain indirect indicators that can signify trafficking in human beings (cf., for instance, Kutáľková, 2007). The subjective perception of the situation by the presumed trafficked persons is also given emphasis. *La Strada* does not link access to rights and services for the trafficked and exploited persons to their testifying in criminal proceedings.

Integrating human rights discourse into combating trafficking in human beings, *La Strada* – as well as other international organizations – calls attention to the fact that the boundaries of trafficking in human beings as a social phenomenon are *continuous* and *blurred*. Practice shows, with regard to society as a whole and to the individual experiences of affected people, that the road to trafficking in human beings leads through very poor working conditions, through fraud, to exploitation and serious exploitation (Burčiková, 2008; Kutáľková, 2010).

Such a fuzzy conceptualisation of trafficking in human beings requires a great deal of experience and knowledge on the part of those who attempt to identify the instances of trafficking. Otherwise they run the risk of regarding simple violations of employment rules as instances of trafficking.

32 Experience of the perception of similar situations related to exploitation in the sex industry shows that there is ground for concern over the limited understanding of actions that may be regarded as constituting the offence of trafficking in human beings. The restrictive Court interpretations that prefer the offence of procuring for prostitution over trafficking in human beings have been the subject of a debate within the ICG with the majority of its members disagreeing with those interpretations (MVČR, 2010 p. 52).

33 The PEJA, by contrast, should be guided by the principle of the *presumed innocence* of the potential perpetrator.

34 Cf. <http://www.charita.cz/article.asp?nArticleID=325&nDepartmentID=184&nLanguageID=1> (cit. 16/7/2010); <http://www.strada.cz/cz/sluzby-pro-klientelu/214.html> (cit. 16/7/2010).

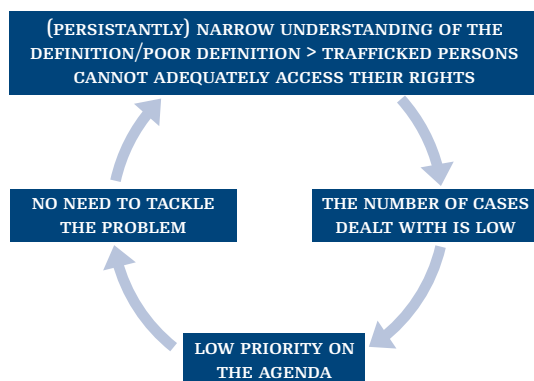
35 Direct indicators correspond to one of the constituent elements of the definition of trafficking in human beings. Indirect indicators are based on the current trends: data and information from actual cases and research and the like. Confer (Fomina, 2006).

36 In practice, identification of persons who have experienced trafficking is made more difficult by the fact that a duty to report trafficking to the PEJA has been applicable as from 1 January 2010 (pursuant to Section 367 and Section 368 of Act No 40/2009 Coll., the Criminal Code – failure to prevent a crime, failure to report a crime constitutes an offence in itself.) This can cause considerable problems, not only in terms of creating confidence in a potentially trafficked person, but also in terms of the staff of NGOs running the risk of violating criminal law. *La Strada* has therefore strictly adhered to a policy of the non-ascertainment of any facts potentially leading to the identification of the offence of trafficking in human beings. Other negative impacts of the duty to report are spelled out in *La Strada's* legal opinion on the subject at: <http://www.strada.cz/attachments/5/5d2ab2f1df3e14373fb40643639422f1.pdf>.

6.4 CONSEQUENCES OF DIFFERENT CONCEPTUALISATIONS OF TRAFFICKING FOR POLICY MEASURES

The practical consequences of the different conceptualisations by different stakeholders are quite obvious. If we consider the identification of a trafficked person as an operationalisation of the definition of trafficking in human beings, it becomes apparent that it is the operationalisation used by the PEJA (and frequently also by national institutions, see below) that offers the least scope for identification. The human rights conceptualisation, used chiefly by NGOs, allows for a broader scope of trafficked persons' access the relevant laws and services. This approach to trafficking in human beings, emphasising the essence of the issue, is sometimes also adopted in the reports of national institutions, although mostly only when the subject is treated theoretically (cf., for instance, Rada vlády ČR pro lidská práva, 2006, 2007, 2008; MVČR, 2009; MVČR, 2010). This is due to the fact that the reports tend to try to capture the phenomenon as fully as possible, sometimes even pointing out the discrepancy between the statistical data and the estimated scope of the issue.

Generally, however, the approach of national institutions to identifying trafficked persons or to dealing with trafficking-related criminal activity is based on a narrow view of the matter. This has consequences for the policy in terms of its concept and the scope of its potential impact. The low number of investigated cases then determines the priority of this issue on the agenda, thereby contributing to the vicious circle in which the national institutions are trapped.



This vicious circle, characterised by a low number of cases that are actually dealt with, also prevents the stakeholders in the system from gaining and effectively learning from experience. The low number of cases ending with equitable sentences (or the practical non-existence of such cases) undermines the motivation of the potential witnesses/victims to report their experiences to the PEJA. However, without the stimuli and co-operation from the victims, it is very difficult for the PEJA to identify this type of crime.³⁷

The differences in terms of what is to be understood and regarded as trafficking in human beings, what could be regarded as such and what could not, are reflected in the institutional background of the instruments that should enable access to the relevant rights and services for the trafficked persons.

37 Similar problems affect hate crime and usury.

7

7 INSTITUTIONAL AND LEGISLATIVE FRAMEWORK OF THE POLICY FOR PREVENTING AND COMBATING TRAFFICKING

7.1 MINISTRIES

In the Czech Republic, the policy for preventing and combating trafficking in human beings falls within the responsibility of the Ministry of the Interior. The Ministry itself dates the beginning of any formalised effort on this issue back to 2003, when it, in collaboration with other Ministries, drew up the National Strategy for Combating Trafficking in Human Beings into Sexual Exploitation (Národní strategie boje proti obchodování s lidmi /pro období let 2008-2011/, 2008 p. 3). The first incidental mentions of trafficking in women at the Ministry seem to have appeared ten years earlier, when trafficking in women was discussed as a criminal aspect of prostitution (Kutálková, 2008 p. 175).

Since 2003, the area has been systematically covered by national strategies. Strategic plans are adopted in cycles of approximately two-year duration, by way of Resolutions of the Czech Government. They include a description of the state of play at the national level, analyses of the relevant international legislation and measures, a task plan for the following period and, as the case may be, the assessment of the task plan for the preceding period.

The best way to discuss the further course the State wants to take in addressing trafficking in human beings is to examine the task it assigns for implementing its strategies, since neither the National Strategy for Combating Trafficking in Human Beings for the 2008-2011 period nor its predecessors have spelled out any strategic targets that could be used as a benchmark for assessment. The assigned tasks and proposed measures show that the four following areas are regarded as crucial:

- ▷ co-ordination of activities and data collection;
- ▷ amendments to laws and related regulations;
- ▷ addressing prostitution;
- ▷ laying down the framework concept for preventing trafficking in human beings (2008 pp. 40-49).

Efforts towards making these activities more effective, within the limits given by the existing legislation, are to be continued with focus on the work of the Judiciary and the Police and co-operation between national authorities and NGOs (ibid, p. 4).

It should be noted that a new section within the UCOC was exclusively set up to address the issue of forced labour, i. e. instances of trafficking of human beings into exploitation outside the sex industry, in 2006, (Národní strategie boje proti obchodování s lidmi /pro období let 2008-2011/, 2008 p. 19).

The SPD of the Ministry of the Interior has been tasked to act as a National Rapporteur on this issue. The National Rapporteur is responsible for conducting analyses, as well as drawing up concepts for work in the field in question, such as reports, draft measures and national strategies (Národní strategie boje proti obchodování s lidmi /pro období let 2008-2011/, 2008 p. 15).

The SPD has, since 2008, drawn up two annual reports on the state of play in trafficking in human beings, which offer an overview of the situation and current trends in the field, as well as data provided by the individual Ministries and NGOs. A special section of these reports is devoted to the assistance provided to trafficked persons.

Although NGOs have long called for the creation of a National Rapporteur (*La Strada* ČR, 2003 p. 11), they have been drawing attention to the fact that entrusting this role to the Ministry responsible for policymaking is very unfortunate. There are certain benefits to this solution, in terms of information collection and the overall awareness of developments, but it would still have been much better if an independent body had been tasked with policy evaluation (Evropská komise, 2005 p. 109).

The other Ministries' involvement in addressing trafficking in human beings is based on the frameworks given in the task plan. These frameworks are not defined very clearly. Most tasks are the responsibility of the Ministry of the Interior, co-operation between various Ministries is alluded to in the phrase "*collaboration with other Ministries*" (Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008 p. 1) and sometimes the task is given to "*all Ministries*" (ibid).

The co-ordination of individual activities and the exchange of up-to-date information is ensured through the Inter-institutional Co-ordination Group for Combating Trafficking in Human Beings (the ICG). This Group was set up in 2008 by way of a Government Resolution³⁸. It consists of permanent representatives appointed by the individual authorities (Ministry of the Interior, including the Criminal Police and Investigation Service, the Unit for Combating Organized Crime, the Immigration Police and the Refugee Facility Administration; the Ministry of Justice, including the Attorney General's Office and the Institute for Criminology and Social Prevention; the Ministry of Education, Youth and Sports; the Ministry of Foreign Affairs; the Ministry of Labour and Social Affairs; the Government Council for National Minorities; the Government Council for Human Rights; and the Government Council for Equal Opportunities). Specialised non-governmental and intergovernmental organizations are also members of the Group. The Group is presided over by the Secretary (Director of the SPD) and meets once every six months.

Co-ordination and information exchange is ensured at co-ordination meetings on the Support and Protection Programme for Victims of Trafficking in Human Beings. In the last few years, the Crime Prevention Department has been holding these meetings about four to five times per year, to allow the *executive* officers to meet and discuss the ways of addressing practical issues.

The gender dimension of the issue has, however, not been given much attention in the strategies or in the reports issued by the National Rapporteur.

7.2 MEASURES AIMED AT IDENTIFYING TRAFFICKED PERSONS AND ENSURING THEIR ACCESS TO THE RELEVANT SERVICES AND RIGHTS

The documents issued by the MI do not address the identification of trafficked persons as a separate issue – neither in general nor with regard to the fact that it represents a prerequisite for access to other relevant rights and instruments.

Of all the public administration institutions, only the PEJA and the MI (see above) are concerned with the identification of trafficked persons.

Regarding the access of trafficked persons to the relevant rights, the following instruments are mentioned:

- ▷ Act No 108/2006 Coll., on Social Services;
- ▷ Support and Protection Programme for Victims of Trafficking in Human Beings;
- ▷ Long-term Residence for the Purpose of Protection (MVČR, 2010 p. 30f.).

7.2.1 Identification of trafficked persons

The content of the concept of *identification of trafficked persons* is vague, both at the Czech and international levels. As has been already mentioned, identification as such is, unlike the other measures aimed at enabling the trafficked persons access to their rights, not mentioned in the Czech policy concept: neither as a measure nor as a task.

Following on from the understanding (outlined above by the present author) of identification as a professional activity, which can facilitate a trafficked person's access to the relevant rights and to the services dedicated to the group in question, inclusion in the Support and Protection Programme or the issue of a Long-term Residence Permit for the Purpose of Protection can be regarded as the official ways of identifying a person as trafficked.

Despite the declared human rights dimension of the two tools, it is the criminal law perspective that guides their use. As can be seen from the internal documents related to the procedure and from the relevant legislation (see above), a formal identification, necessary for access to the relevant rights and services, is subject to an opinion by the PEJA.³⁹ The strategies for the policy for preventing and combating trafficking in human beings propose no measures to make the Support and Protection Programme more attractive and accessible to a greater number of trafficked persons⁴⁰.

As has been mentioned above, references to identification in the Strategy are rather sporadic and they tend to occur in passages primarily aimed at other implemented activities (such as RFA staff training or leaflet distribution). As far as the prepared measures are concerned, identification is given little attention, although it was obvious at the time when the Strategy was being drawn up that: "*the identification of persons*

39 An NGO opinion is only sufficient for the decision by the Director of the CPD or by the First Deputy Minister on the initial entry into the Programme, which is a prerequisite for imposing an expulsion order or making use of voluntary return.

40 Recommendations towards making the Programme more attractive were also made by the 2006 evaluation research, as of yet the only one of its kind (Štastná, et al., 2006).

38 Government Resolution No 1006 of 20 August 2008.

trafficked into forced labour remains a persistent problem. Undoubtedly, there is a link between the identification-related uncertainty and the lack of a clear definition of forced labour.” (Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008 p. 37). What are also lacking are common criteria that would clearly spell out who is to be regarded a trafficked person and who is not, making it easier for NGOs and other institutions to contribute to identification.

The measure addressing this problem was probably transformed in the task entitled “Analysing the situation and putting forward a criminal law definition of forced labour or of the offences: *serious forms of labour exploitation* and *serious violations of employment rules*” (ibid, p. 46), which later gave birth to the Working Group on Forced Labour (see above).

7.2.2 Act on Social Services

The main aim pursued with the Act on Social Services has been the creation of conditions for satisfying the rightful interests and needs of people whose position has been weakened too much for them to assert these. The Act is supposed to ensure a basic framework for providing support and assistance to those in need (Důvodová zpráva k návrhu zákona o sociálních službách, nedatováno). It lays down the conditions for providing assistance, through Care Allowances and Social Services, to individuals in adverse social situations. It includes criteria for issuing authorisations for the provision of Social Services, for the exercise of public authority in Social Services and for the inspection of Social Services provisions; it sets out the training and qualification requirements for Social Service workers and for financing frameworks.

According to MLSA data, 70 providers of Social Services are registered in the Czech Republic, providing 111 types of Social Services, aimed at *victims of trafficking in human beings* as one of the target groups (MVČR, 2010 p. 30). It should be noted, though, that the MI report states that most providers only target this group marginally (ibid, p. 31).

In practice, a trafficked person is very often a homeless one. However, a trafficked person may also fall within one or more of the following groups targeted by the providers according to MLSA: ethnic minorities, children and youths between 6 and 26 years of age at risk from socially undesirable phenomena, people with mental disabilities, immigrants and asylum holders, people with physical disabilities, victims of domestic violence, victims of crime, people in crisis, people living in socially excluded communities, people with a risky lifestyle or who are at risk of it, people at risk from substance abuse or people addicted to substances, etc.⁴¹

It remains a question whether the number of organizations or types of services provided in themselves are telling us something about the situation. Based on what has been said above, the assumption can be made that trafficked persons make use of services from different providers without being identified as such. It is not clear whether trafficked persons, if they have been identified as such, would be interested in specialised services.

41 Services provided by *La Strada* ČR have been used at least by one individual from each of the groups.

It should be noted that individuals with an illegal status do not fall within the category of entitled persons set out by the Act in its Section 4.

7.2.3 Support and Protection Programme for Victims of Trafficking in Human Beings

The *Support and Protection Programme for Victims of Trafficking in Human Beings* is an older measure aimed at providing assistance to trafficked persons. It represents an institutionalisation of assistance which takes into account the rights of trafficked persons. The Programme started in 2003⁴², it is part of the national strategies and it is further provided for and specified through internal procedural acts. According to the National Strategy (2008), the Programme aims to:

- ▷ “provide support to victims of trafficking and ensure their dignity and rights are protected;
- ▷ motivate victims to act as witnesses and assist the Prosecution, Law Enforcement and Judicial authorities in detecting, prosecuting, proving the cases and punishing the perpetrators of crimes related to trafficking;
- ▷ provide a Programme for the voluntary return to the Czech Republic of Czech victims of trafficking, who may then decide to take part in the Programme (but need not do so)” (Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008 p. 2 of Annex 2).

In 2006, an evaluation study was carried out, aimed at establishing the evaluation criteria and conducting an evaluation of the Programme. This study underlined the undisputed benefit brought about by creating and operating the Programme. With regard to the approach to the victims’ exercise of their rights, the study states that Goal 2 (Cooperation with the PEJA) has been dominating the Programme, sometimes even to the detriment of Goal 1 (Human Rights and Protection) (Štastná, et al., 2006 p. 36).

The Programme targets “all citizens of the Czech Republic and foreign nationals reasonably claiming to be victims of trafficking in the Czech Republic or abroad” (Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008 p. 2 of Annex 2).

The Annex to the National Strategy (2008) further sets out the following conditions for the inclusion in the Programme: voluntariness and the demonstration of interest along with the signing of the joining declarations, the severance of relations with the underworld and the agreement to accommodation in an NGO shelter for a period of at least two months (ibid, p. 3 of Annex 2).

A range of services is available to trafficked persons joining the Programme. These services are provided by NGOs, which are contractual partners of the CPD. However, some of the NGOs, such as *La Strada*, provide similar services even to people who are not interested in joining the Programme. *La Strada*’s experience shows the Programme to be a suitable option for trafficked third-country nationals who have lost their travel documents as a result of trafficking or in other ways and have no valid visas or residence permits. Another significant benefit of the Programme is the option of voluntary

42 Formerly the Support and Protection Model for Victims of Trafficking of Human beings into Sexual Exploitation in the Czech Republic.

return for people who wish to or have to return to their country of origin. The return is administered by an IOM mission. The services offered by the Programme also include a two-month reflection period, in which the victim decides whether she/he “wishes to co-operate with the Police” (Národní strategie boje proti obchodování s lidmi /pro období let 2008–2011/, 2008 p. 2 of Annex 2). This reflection period, offered within the framework of the Programme, was extended to 60 days as from 26 October 2007, through internal procedural acts.⁴³ However, the newly introduced duty to report has made the use of the reflection period virtually impossible in practice.⁴⁴

One of the strengths of the Programme was its focus on the essence of trafficking and, by extension, on the groups of victims of crimes related to trafficking in human beings. It therefore enabled the provision of assistance, even where the PEJA had not been able to gather enough evidence in order for the act in question to qualify as trafficking in human beings under the criminal law in force, or where the PEJA applied a different offence qualification. As from June 2010, the Methodological Guideline of the First Deputy Minister narrowed the target group of the Programme down to victims of trafficking in human beings as defined in Section 168 of the Criminal Code. Such a reduction goes against, for instance, the measures of the EU policy for preventing and combating trafficking in human beings, which uses the category of victims of trafficking-related crime (see above).

7.2.4 Long-term Residence for the Purpose of Protection

As far as the rights of trafficked persons declared by the EU are concerned, the transposition of the Residence Permit Directive was of crucial importance. In 2006, the Directive brought about an amendment to the legislation on the residence of third-country nationals.

The amendment includes provisions (namely Section 42e of Act No 326/1999 Coll., on the Residence of Aliens in the Territory of the Czech Republic; hereinafter the Aliens Act) which allow for a Long-term Residence Permit to be granted for the Purpose of Protection (the PRP).

Long-Term Residence Permit for the Purpose of Receiving Protection in the Territory

- (1) A Long-term Residence Permit for the Purpose of receiving Protection in the Territory⁴⁵ shall be granted by the Ministry to an alien upon her/his application, providing she/he is:

43 Methodological Guideline of the First Deputy Minister of 26 October 2007 on the functioning of the Support and Protection Programme for Victims of Trafficking in Human Beings and its institutional back-up.

44 The crimes of trafficking in human beings and deprivation of liberty (Sections 168 and 170 of Act No 40/2009 Coll., the Criminal Code) have newly been included in the exhaustive list of offences subject to the duty to report and (pursuant to Section 367 – Failure to prevent a crime – Section 368 – Failure to report a crime) prevent a criminal offence.

45 Council Directive 2004/81/EC of 29 April 2004 on the Residence Permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities.

- (a) the probable victim of the criminal act of trafficking in human beings,⁴⁶ or
 - (b) a person for whom an illegal crossing of the State border has been arranged or enabled,⁴⁷ or for whom an illegal residence in the Territory has been facilitated, if her/his testimony is significant for revealing the perpetrator or the organized groups involved in organizing or enabling an illegal crossing of the State borders or facilitating an illegal residence in the Territory, on condition that the said person co-operates with the Prosecution, Law Enforcement and Judicial authorities in the course of the prosecution conducted on grounds of the suspected commission of such a criminal act and does not co-operate with the suspect(s).
- (2) The Prosecution, Law Enforcement and Judicial authorities or the Ministry shall inform an alien meeting the criteria set out in Subsection (1), without undue delay and in a language that she/he is able to understand and make herself/himself understood in, of her/his right to submit an Application for a Long-term Residence Permit for the Purpose of Receiving Protection in the Territory and of the conditions of such residence. The alien has a period of one month as from the date she/he has been informed, pursuant to the previous sentence, to decide whether she/he will co-operate with the Prosecution, Law Enforcement and Judicial authorities; the validity of the period may be terminated if the alien no longer meets a criterion of Subsection 1, if the termination is necessary in order to ensure the protection of public order or State security or if the alien has so applied. For the duration of the period, the alien may not be deported and her/his stay in the Territory may not be terminated in any other way, while procedure on granting the alien international protection pursuant to a special law⁴⁸ may be entertained. The course of the period has no impact on the procedure to deport the alien or her/his transfer pursuant to an international treaty, which has become part of the Czech Republic’s legislation.
 - (3) The alien shall submit her/his Application for a Long-term Residence Permit for the Purpose of Receiving Protection in the Territory to the Ministry and the application shall contain a certificate of conformity with the criteria pursuant to Subsection 1 issued by the competent Prosecution, Law Enforcement or Judicial authority. Applicants for international protection may also submit an Application for a Long-term Residence Permit for the Purpose of Receiving Protection in the Territory⁴⁹.
 - (4) The Application for a Long-term Residence Permit for the Purpose of Receiving Protection in the Territory shall include the alien’s travel document, if she/he is a holder of such a document and even if it has expired, proof of accommodation for the duration of her/his residence in the Territory, and photographs.

46 Section 232a of the Criminal Code (the old CC – P. K.).

47 Sections 171a and 171d of the Criminal Code (the old CC – P. K.).

48 Act No 325/1999 Coll., on Asylum and the Amendment to Act No 283/1991 Coll., on the Police of the Czech Republic, as amended, (the Asylum Act), as amended.

49 Act No 325/1999 Coll., on Asylum and the Amendment to Act No 283/1991 Coll., on the Police of the Czech Republic, as amended, (the Asylum Act), as amended.

- (5) The Ministry may further issue a Long-term Residence Permit for the Purpose of Receiving Protection in the Territory to an alien upon her/his application, providing
- a) he/she is a spouse of the alien under Subsection 1,
 - b) he/she is a dependent child of the alien under Subsection 1, regardless if minor or adult, or
 - c) custody of her/him has, on grounds of his/her legal incapacity, been granted to an alien under Subsection 1 if, at the time of the Application submission, the former resided in the Territory on grounds of family reunification. The Application for a Long-term Residence Permit for the Purpose of Receiving Protection in the Territory shall include the proof of the respective relationship set out in paragraphs (a), (b) or (c) above, the alien's travel document, if she/he is a holder of such a document (even if it has expired), and photographs.
- (6) If an alien who has been given a reflection period to decide whether she/he will co-operate with the Prosecution, Law Enforcement and Judicial authorities pursuant to Subsection 2, or an applicant for a Long-term Residence Permit for the Purpose of Receiving Protection in the Territory is unable to secure her/his accommodation, the accommodation shall be provided by the Ministry or by a legal entity. Following the conclusion of a written Contract, the Ministry may award the legal entity in question a contribution to help cover the costs of the alien's accommodation.

In practice, an individual applying for a PRP is also required to apply for the Support and Protection Programme for Victims of Trafficking in Human Beings. The reasons behind this can only be guessed at.

The wording of Section 42 has also been subject to criticism: Burčíková considers it too restrictive in many respects as against the Directive, for instance as far as the designation of the group of people in question is concerned. The Directive applies to citizens who are victims of crimes related to trafficking in human beings, while the definition of persons to which Section 42 of the above Law is applicable mentions an alien who is “the probable victim of the crime of trafficking in human beings on condition that she/he co-operates with the Prosecution, Law Enforcement and Judicial authorities regarding the prosecution of the perpetrator suspect of the crime and does not co-operate with the perpetrator“ (Burčíková, 2008 p. 18).

The practice of granting a reflection period has also been a subject of discussion. The problem seems to be the interpretation of the criteria a person needs or does not need to meet in order to be granted a reflection period. Also in dispute is the determination of the point where the Prosecution, Law Enforcement or Judicial authority should commence the process of establishing whether the co-operation on part of the trafficked person opens up an opportunity to initiate criminal proceedings. The failure of the Czech Republic to make the reflection period practically available has been pointed out in foreign studies (Hancilova, et al., 2009 p. 67).

Regarding the Support and Protection Programme for Victims of Trafficking in Human Beings, the application of the reflection period is also made more difficult by the duty to report, applicable to trafficking in human beings, currently in force under criminal law.

7.2.5 Evaluation of the institutional framework of state policy for preventing and combating trafficking in human beings

Generally, the existing institutional framework is considered formally adequate. Multi-disciplinary national strategies and a National Rapporteur have been put in place, and regular meetings of the stakeholders are held. Trafficked persons have recourse to various forms of assistance, including to assistance which, in theory, gives priority to the human rights dimension in addressing the problem.

As has been outlined above, the practical implementation, however, leaves a lot to be desired.

The policy for preventing and combating trafficking in human beings does not have a financial budget of its own that could be used for financing systematic steps and for their evaluation. The tasks proposed by the national strategies are very often only vaguely defined: fulfilling them very often depends on the individual initiatives of motivated workers at the Ministries. External evaluation of the results and impacts of the individual policy measures is lacking.

The measures implemented by the national authorities aimed at identifying trafficked persons and those to which trafficked persons have recourse seem to prioritise criminal law over the interests of specific individuals. Other measures are formally not accessible to those who would need to make use of them (e. g. Social Services for people with irregular status). The number of people who have joined the Programme or have been granted PRP is relatively low. The duty to report has a negative impact on the identification process and the rights formally conferred to trafficked persons (cf. *La Strada ČR*, 2009).

Despite the deficiencies of practical implementation, there is the hope of efforts being made to address them, in particular on the part of some of the MI departments, but also on the part of other institutions.

It seems positive that there are instruments in place in the Czech Republic that, if properly implemented in practice, would allow for the human rights standards to be met.

A welcome recent development, for instance, has been the teaming up of the MI's SPD and the Justice Academy with *La Strada* to become partners of the NGO's project aimed at combating trafficking of human beings into forced labour or other forms of exploitation⁵⁰.

50 More details are available at www.strada.cz under the heading *Projects*.

7.3 NON-GOVERNMENTAL AND INTERGOVERNMENTAL ORGANIZATIONS

The first, and so far only, organization specialising in the prevention of trafficking in human beings has been *La Strada Česká republika, o. p. s.* (since 1995). This NGO has been active not only as a provider of Social Services, but also in prevention, advocacy and lobbying.

In 1998, the *International Organization for Migration* (IOM) established a Mission in Prague. The Mission later took part in the activities aimed at preventing trafficking in human beings. Today, the Mission plays a key role in administering and arranging for returns of trafficked persons under the Support and Protection Programme.

The *Magdala* Project has been active within the Archdiocesan Charity Prague since 1998. It is chiefly a networking project linking shelters and helplines within *Charita ČR*. Its main focus is violence and trafficking in human beings (MVČR, 2010 p. 42f.).

Based on an Agreement on Co-operation with the MI, the above organizations are entitled to propose the inclusion of presumed trafficked persons in the Protection and Support Programme.

The last few years have seen the Organization for Aid to Refugees (OAR) and the Diocania of the Evangelical Church of Czech Brethren (DECCEB) join in some of the activities. DECCEB is planning to open up a new apartment shelter for trafficked and exploited men in the near future.

It is the following organizations in particular which carry out the identification of trafficked and exploited persons on a professional and continuous basis:

- ▷ Helplines – *HOTLINE* run by *La Strada ČR* and the *Magdala* hotline.
- ▷ Programmes on the ground or streetwork programmes – *La Strada ČR* has recently been joined by the DECCEB (these programmes are aimed at people at risk of exploitation outside the sex industry; the *Magdala* Project is aimed at women at risk of sexual exploitation).

A trafficked person may also be identified during the provision of consultancy and other Social Services.

However, the identification work carried out by NGOs is complicated by the duty to report the crimes of trafficking in human beings and the deprivation of liberty (which is very often a component act of trafficking). This has a negative impact on the practical implementation of the policy for preventing and combating trafficking in human beings and for assisting victims of this crime, especially where the identification of trafficked persons is concerned. Moreover, NGOs consider the new changes to the legislation as going against the possibility for trafficked persons to claim their rights as laid down in national as well as international documents⁵¹.

51 Following a suggestion from the non-governmental sector, the Ministry of the Interior has drawn up an advisory opinion on the procedures the PEJA should follow when applying the provisions mentioned above. This seems to be a positive and important step which, however, represents only a provisional solution and does not address the above issues.

*The duty to report*⁵²:

- ▷ creates a barrier for the establishment of contact with trafficked persons;
- ▷ puts NGO workers providing Social Services at risk of criminal prosecution;
- ▷ creates a barrier for the implementation of actions aimed at preventing trafficking in human beings and at providing social and health care to sex workers;
- ▷ can lead to re-victimisation or the deprivation of liberty of trafficked persons through criminal prosecution for having failed to report the crime of trafficking in human beings;
- ▷ can reduce the incentive to report trafficking for people who, for one reason or another, do not wish to engage with the Police, such as clients of sex workers, commoners who fear retaliation, etc. (*La Strada ČR*, 2009).

NGOs tend to show more flexibility than the State sector as far as adapting to changes in the situation on the ground is concerned. Nonetheless, NGOs should also evaluate their existing practices and adapt them to the current situation on the ground, given the continued low number of identified trafficked and exploited persons, especially outside the sex industry, and the predominance of men among them.

With view to the limited capacity for the provision of services, NGOs are also trying to demarcate the boundaries of situations which can be seen as instances of trafficking in human beings, and they need to limit the size of the group of people they work with, based on certain criteria. They, too, may narrow the reality down too much when identifying trafficked persons.

Theory as well as practice demonstrate that industries at risk of exploitation with a largely male workforce offer themselves more readily than “female” industries to prevention and information activities. This could explain why more men than women are using the services of specialised organisations. If exploitation occurs, the chances of being identified as a trafficked person should be equal for both women and men. Therefore, NGOs need to continue emphasising a gender-sensitive approach in their practice.

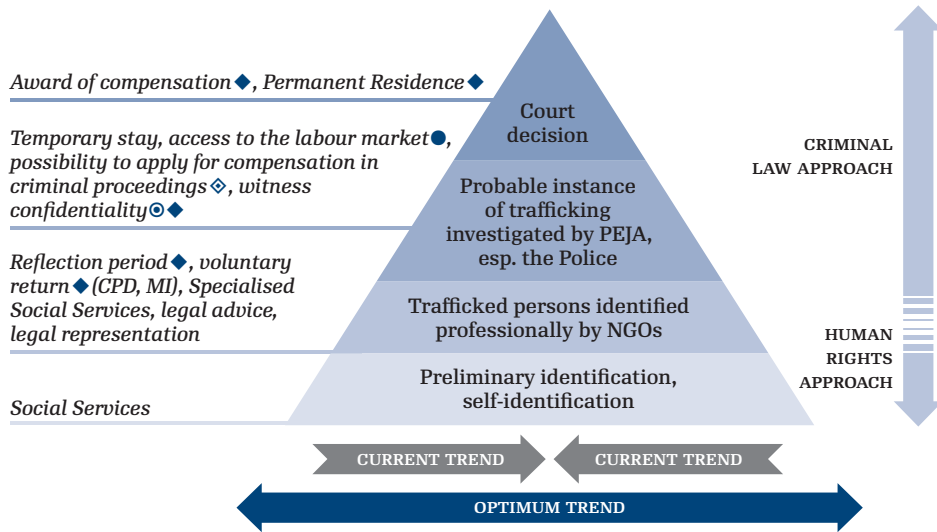
It should also be noted that the capacity of the above NGOs is limited. This gives rise to the question of whether the existing services aimed at the identification of trafficked persons are adequate.

7.4 THE INSTITUTIONAL FRAMEWORK FOR IDENTIFICATION IN PRACTICE

The diagram below shows, in a simplified way, that there are, as it were, different levels of identification of trafficked persons. These levels are in essence tied to the institutional frameworks that have been put in place in the Czech Republic. They represent the conceptually different approaches to trafficking in human beings used by the various stakeholders. The levels also represent symbolic thresholds, demarcating the rights and services that a trafficked person may access if identified by the respective stakeholder. As can be seen from the diagram, the size of the group of persons who can

52 Paraphrase of the text that is part of a more detailed analysis accessible at www.strada.cz in Czech as well as English.

access the respective rights/options gradually decreases towards the top of the pyramid (i.e. as the understanding of the concept of trafficking in human beings becomes narrower and narrower). In order for at least someone (so far, only one case is known where a woman forced into prostitution has been awarded compensation) to reach the options at the top of the pyramid (such as compensation) and for there to be at least something to prosecute/judge, the base of the pyramid needs to be extended as much as possible to allow for the maximum number of people to, for example, co-operate with the PEJA. However, the trend is, as has been pointed out, rather in the other direction.



Legend:

- for third-country nationals
- ◊ for everyone granted the status of an injured party in criminal proceedings, however without a competent attorney the chance of gaining compensation is small (cf. Šachová, et al., 2009)
- ⊙ for witnesses in criminal proceedings as set out in the CC
- ◆ not clear whether the option is actually available to the person in practice

8

8. ISSUES AND OBSTACLES IN IDENTIFICATION OF TRAFFICKED PERSONS – A PRACTICAL INSIGHT

8.1 IDENTIFICATION AS EXPERIENCED BY THE TRAFFICKED

Clients of specialised NGOs, who have been trafficked and exploited outside the sex industry and who have made use of NGO services from April to May 2010, were asked to share their experiences. Unfortunately, there was no woman among the five persons who agreed to an interview. All respondents were men, with Russian-speaking foreigners prevailing. The meeting with clients was aimed at gaining an insight into the situation, based on the experiences and opinions of actual people and at covering the issues they had to face before being offered adequate assistance.

The fact itself that these men availed themselves of the services of specialised organizations shows that they had been identified by these entities as trafficked or exploited. At the same time, they had decided independently to resolve their situation by co-operating with a Non-Governmental Organization.

At this point, the limited significance of the collected findings should be emphasised – the author interviewed only people who had eventually been identified and who reacted positively to the services offered.

In general, the interviews were conducted in compliance with the fundamental ethical standards of research (Hopf, 2000), as well as specific requirements associated with research into the issue of trafficking in human beings. The essential pillars of ethical deliberation and practice were to gain the informed consent of the interviewed person, security (esp. data anonymising and creating a safe environment for the interview⁵³), a non-threatening approach (including the option of a qualified intervention), and secure data processing.

Semi-structured interviews were conducted by the author of this text. Where necessary, a field worker interpreted.

8.1.1 Results

Before having obtained the information, for instance from a flyer, none of the men perceived their situation as an issue of trafficking in human beings. Like many other clients of *La Strada* whom the author has met, the interviewed men perceived their experiences in very different ways.

For example, one of the men was aware of the fact that he was a victim of a crime. However, he had not been considering contacting the Police – based on his previous experience, when the Immigration Police had inspected the hostel he had been staying at. At that time, no measures were taken, even in a situation where almost none of those accommodated had their documents on them. Moreover, he was informed that his em-

⁵³ For the sake of security, the format of individual interviews, not a focus group or other method, was selected.

ployers had their contacts with the Police. Therefore, contacting the Police again was not an option for him.

"I understood that [I'm a victim of a crime], because I'd already been in the CR for two months, and I had neither a work Contract nor a passport on me, only copies, not even Health Insurance or a Work Permit, nothing at all. I was working on a construction site in the city centre. At that time, any sort of inspection by an authority would have been enough [to reveal my status]... I'd always known, however, that if a foreigner worked without a Permit, he'd immediately be deported. No one would be looking into the fact of why he had no Permit or other documents. I was constantly afraid of this."

Another man was, on the contrary, surprised that what he had experienced may have been organized crime. Before his institutional identification, he had contacted the Police in the country in which he had been exploited. However, he was not identified as trafficked – the Police probably investigated the issue as theft or fraud. On his arrival in his home country, he did not consider any further contact with the PEJA.

"... I was fairly surprised that somebody was dealing with it here. I felt that there was somebody dealing with it, but I didn't know that they'd do it directly and [that the victims would] be like us ... I don't know ... like stupid people who'd been tricked into some opportunity or seeming aid, and we ended up like this, having been simply abused by them. They tried to use us for their benefit, not for ours. At the beginning, they said: 'We will help, we will help, we will do this and that,' but on the whole they did nothing."

The weak spot in the system for identifying trafficked persons is contact with the "common Police" (Public Order, Criminal, Immigration and Municipal Police). All the interviewees said they were not identified as trafficked persons by the "common Police" – not only in cases where the Police may have deduced this fact based on external indicators, but also in cases when they had described their own situation.

"... The Immigration Police came to inspect the hostel where I was staying, two weeks after my arrival ...early in the morning... at about 4 o'clock... to carry out a check-up. Approximately 60 people were accommodated there, and only 3 or 4 had their passports on them, the others only had copies, some didn't have anything, not even copies. I think that, in the Ukraine, somebody is always taken to the Police station in such a case and is interrogated as to why he has no documents, etc. Those Police officers took some notes and some photographs and left after a while."

"... We'd been waiting at the hostel for three days, for somebody to come and take us to work. No one came... I knew that I had to report to the Immigration Police in three, four days, where I had to indicate my Residence, otherwise I would become illegal. I'd been waiting for those three or four days, the passport was not returned to us, we didn't go to work. So I went to the Police... the Municipal Police. They looked at my documents and told me that, because I was a foreigner, they could not help me, but they gave me the address of the Immigration Police in [the town where he lived]. ... [At the Immigration Police] I showed them my document, they had a look and said that they could not help me either, and that I should contact the Director of the company and ask him to give me my passport back. ... Then I went to the Police again... the next day. There are the phone lines 156 and 158, so I

went to 158. I explained the situation to them and said: 'Do something about me. There are approximately 50 to 60 people at our hostel who had their passports taken away from them, including me; we don't have our passports.' They told me to go to the Immigration Police. I replied that I'd already been there and that they had not helped me either. So, they recommended that I go to the Consulate and say that I'd lost my passport. I replied I had not lost my passport, but it had been withdrawn from me. 'It doesn't matter,' they said, 'go there, say that you've lost the passport, and you'll be given a departure order and will be able to go back to the Ukraine.' They said that this was the quickest way of returning home."

The men who had experience with the UCOC mostly found it very positive.

"There is a big difference between how things take their course in the Ukraine and here. During the interrogation, the Police officers [of the UCOC] did not speak at all, they wanted me to speak for myself, so that I felt no pressure from them. They only asked me to think a little before speaking, in order to recall it well, because some time had passed already. They kept on asking me if I understood, and I always had a choice."

It can be said that acquiring/the lack of information plays an important role in the situation of trafficked persons. This was also the case of the men who were interviewed.

"When something happens to someone, they don't know the right procedure, for example, how to proceed correctly at all. For me, the language was a problem. I hadn't been here for a long time and I'd forgotten a lot. My colleagues and roommates spoke Russian or Ukrainian and there was also no time to study anything, I had a dictionary, but that is not enough at all. There is also no possibility of gaining any information if one works 12-13 hours, and then one has to add the commuting time. So I had no information. I'm used to reading a lot, newspapers, magazines, even though one understands almost nothing, one can at least find some information or an advertisement. From the very beginning, I needed information due to the problems I'd been confronted with. The information I received from the [assisting organisation] was perfect."

The key moment for the four men to "enter the system" was their own "self-identification". They examined their situation, which they regarded as problematic, with the help of indicators on the flyers of Non-Governmental Organizations.

"The flyer included questions I found important at that moment. For example: 'Was the passport taken away from you? Are you working without a Contract? Your employer has not paid you?' In my case, everything applied, therefore I called the Helpline. A woman replied, and then X called me back. We arranged a meeting at a station at the weekend, but I needed help during the week. So I called again and started to co-operate with the [assisting organisation]. ... I knew everything would end up badly, I had a "difficult" interview with those people, and I decided not to wait, I called X to help me."

Flyers and information disseminated in the newspapers and other media could enable a smoother (self-) identification of trafficked persons. PEJA's interest in the individual and her/his story could be an incentive for the trafficked persons to co-operate.

“... Thanks to these flyers, one can learn the truth, if one calls, they inform one. But when one does not even know where to call, one has a minimum amount of information, and it's hard to find a way.”

The experience of the men interviewed is similar to that which the present author knows from her professional experience as a Social Worker. It can thus be asserted that, to a certain extent, it is a model experience.

However, one must realise that there are, or were, many people in the Czech Republic who have not been identified as trafficked, either by the PEJA or an NGO, who have not had access to information which could enable their self-identification, or who have not asked for assistance, for one reason or another. Research, including interviews with these very people, which could detect additional obstacles, would be of real asset, because the feedback for the Czech Republic from the following quotation is not too encouraging.

“My mum told me: ‘Watch out so that you don’t get into trouble as well!’ I answered that I had worked in [another foreign country] four times and that I was now travelling to Europe. I was not going to Russia. My mum told me not to give my passport to anyone in any case... Well, and in a week or so I called her and said that they took it away from me.... I went to the Police and they told me that they could not help me I explained the situation to them and said: ‘Do something about me. There are many people at the hostel who had their passports taken away from them, I also have none’.”

8.2 IDENTIFICATION: AS SEEN BY THE EXPERTS⁵⁴

The meeting of the Work Group was basically aimed at identifying the issues linked to the practical application of the criminal law definition of trafficking in human beings. The aim was to concentrate especially on *other forms of exploitation* and *forced labour* outside the sex industry.

Potential improvements were proposed to address the issues identified in this way. Based on the preliminary output from the work of the Group, the decision was made that the proposed solutions should not go beyond the scope of the current legislation.

8.2.1 Methodology

The Work Group consisted of experts who deal with the issue of trafficking in human beings on both theoretical and practical levels.

A total of 14 persons from the following institutions/organizations were invited to join the group:

- ▷ Public Prosecution
- ▷ Attorney General’s Office
- ▷ SPD, MI

- ▷ CPD, MI
- ▷ AMPD, MI
- ▷ IOM Prague
- ▷ Magdala Project
- ▷ UCOC, Criminal Police and Investigation Service (CPIS), Forced Labour Department
- ▷ Organization for Aid to Refugees
- ▷ Filip Směja law firm (Attorneys for the victims)
- ▷ Independent consultant

The basic method was a directed debate and work in groups. Model cases, based on the experience of *La Strada Česká republika*, o. p. s., were used as background material for the debate.

The work of the Group was directed by two independent facilitators.

A total of 10 experts participated in the Work Group (Prosecuting Attorney’s Office, Attorney General’s Office, NGO, intergovernmental organisations, independent consultant, law firm, MI). Three experts apologised for their absence. The UCOC representatives could not participate, in view of urgent matters. The all-day meeting took place on 11 May, 2010.

The results were processed, based on notes of the Work Group put down on a flipchart, as well as the notes of the discussion. The Group was not recorded. The terminology and the masculine pronouns used in the following section correspond to the prevalent language used by the Work Group during the discussion.

8.2.2 Model cases – hypotheses

The discussion was based on three model cases, representing three different situations. The differences between the individual cases reflect the basic hypotheses and the range of extremes where, on the one hand, there is maximum consensus about the case being an instance of trafficking in human beings and, on the other hand, there is considerable disagreement between members of the Group.

In order to minimise the impact of gender stereotypes on the assessment, the protagonists of all three cases are men.

MODEL CASE 1

Mr. N. arrived in the CR with the assistance of a placement agency in Vietnam, which advertised worzhe formalities and finding employment was, however, very high – ten thousand Dollars. Mr. N. would have to pledge his house to a Bank and borrow some more money from his family. However, the agency officer personally explained to Mr. N. that he would pay off his debt in ten months at the latest. Mr. N. borrowed the money needed from a Bank and from his family. The Contract was concluded in compliance with the Vietnamese legislation and included the pledge of employment in a factory for three years.

54 The co-author of this chapter is Daniel Hůle.

Upon the arrival of Mr. N. and other Vietnamese workers in the Czech Republic, a Contract was submitted to them in Czech for signature. Mr. N. understood from the interpreter that this Contract was only for a year and that the monthly salary was much lower than what had been promised in Vietnam. When he asked about this, he was told that he of course did not have to sign the Contract. By not doing so, however, he would lose his Residence status and Work Permit, and he would be illegal in the Czech Republic. Dozens of others were allegedly waiting for his job. So Mr. N. signed the Contract, together with about other thirty Vietnamese workers. As he learned later, such a practice is usual by this agency. However, he still hoped to save something from the promised salary of CZK 8 000,- per month.

The work in the factory for electrical components was hard. However, it was harder for Mr. N. to come to terms with the fact that, for every mistake, money was deducted from his salary. By the end of the month, after deducting the costs for the hostel and food, he was left with no money to be sent to his family in Vietnam (to pay off the debt). He starved for several months in this manner; he ate only rice and tried to save some money at least. However, after some time, it became untenable and he tried to change his job. All his savings were swallowed up by the services of the Vietnamese mediators (“dich vu”) to whom he then had to pay CZK ten thousand for arranging another job for him. He also signed a Contract with them, which he did not understand. However, he had practically no other option, of which the mediators reminded him, of course. Furthermore, he also indebted himself because he had to “feed the papers” (pay the fees for the renewal of his Residence, Social Security and Health Insurance). In addition, at that time there was no work, and so he had to sit in the hostel for days on end. The debt kept growing. Mr. N. worked only for poor food and accommodation for several months. He says he owes money to the interpreters and mediators of both the Czech and Vietnamese agencies. He is trying to pay off his debt by working, as was promised to him. However, his debt keeps growing. In winter, he had to ask his family to send him some money. However, he has decided to stay in the CR to earn money for the debt incurred in Vietnam.

MODEL CASE 2

For a long time, Mr. V. had not been able to find work in his small hometown in the Ukraine. A friend told him about the possibility of working in the CR. He found an advertisement of an agency in the newspapers, which offered work abroad. He went to the agency in the spring. In June they called him to say that they had good employment for him in the CR. The annual visa allegedly cost € 500, which he paid to the agency. They offered him a salary of € 1000, with working hours of 50 hours per week (Saturdays and Sundays off). The accommodation, working clothes, and shoes would be paid for by the employer. He waited for the necessary documents for half a year. He himself paid the fee to the Embassy, as well as the costs of the journey to Prague. He obtained the visa in the autumn of that year and travelled to Prague after New Year. In Prague, a man was waiting for him at the station and took him to the hostel. He asked him for his passport, for

registration purposes. However, he only returned a copy of the passport to him. Then, the Head of the company came and said that another € 650 had to be paid for the visa. Mr. V. told him that he had already paid for the visa at the agency in the Ukraine and also a fee at the Embassy, as well as for the journey to the CR. He was told to pay a fee of €350, and then he would get his passport back. He had to pay CZK 3000 per month for the accommodation; he did not receive any working clothes or shoes. He had to go to work on the construction site in freezing temperatures without any working clothes or shoes. He worked altogether 52 days, 10–12 hours daily, most days with a thirty-minute break. He received a monthly salary of CZK 5000,-. His boss kept the rest of the money, allegedly to pay off the debt for the visa (€350). His passport was not returned to him. He then understood that he had been deceived in the Ukraine. On the day that he requested his boss to return his passport, the boss started threatening him severely. He assured him that he knew where his family lived. He also told him that he would have no work for two days, to have time to think about his behaviour. Mr V. started being afraid and decided to run away. It was not very easy because he felt that, ever since the time he had requested his passport, they were keeping an eye on him. He also heard that the boss had had several people beaten up brutally. However, he himself did not see anything. He managed to run away during a week when he was left locked up again in the hostel during the day.

MODEL CASE 3

Mr. F., from the Ukraine, had worked in a food packaging company for several months. The salary was very low; it was barely enough for food and accommodation. The work was very hard, protective equipment was lacking. After a certain time, he started to have health problems from the cold environment. In Brno, he met an acquaintance who offered to find him better employment with a client of hers in Prague. On arrival in Prague from Brno, Mr. F's documents were taken from him, on the grounds that the Permit had to be transferred from Company X, where he had worked before, to the new place of employment. He did not get his passport back, instead he was told that he first had to work off a debt of CZK 13 000, which had been the cost of arranging for the paperwork. If he refused, he could be reported to the Immigration Police who would deport him back home immediately. No one would believe that he wanted to work legally. Mr. F., without his documents, was in great fear of the Immigration Police. He did not know what to do, so he decided not to oppose the issue. He hoped that, a little later when he would have worked his debt off, he would receive his money. He worked at hypermarkets as an assistant in storage departments – seven days a week, night shifts from 7 p. m. to 2 a. m., and subsequently also day shifts from 6 a. m. to 2 p. m. Mr. F. did not receive the promised advances for food, and later not even his salary. The client of the acquaintance brought him and some other workers some food, but money was only promised. She dismissed repeated requests for his passport to be returned. After about two months, Mr. F. decided to run away, despite the fact that he did not have his passport on him.

8.2.3 Results of the discussion of the model cases

Based on the study of the model cases on the part of the individual members of the Work Group, the main issues linked to the identification of cases of trafficking in human beings were identified.

The UCOC officers were not directly represented in the Work Group. This may have been the reason why, in some cases, broad agreement resulted. However, the comment was passed that the Police might not assess the situations in this way and that they do not proceed this way in practice.

Individual participants pointed out the fact that it was difficult to assess cases based only on the available description, because important information which they would need in practice was lacking. Despite such reservations, however, the experts expressed their opinions.

There was a more distinct division of the Work Group only in the case of Model Case 1.

This case lacks the facts on which there is general agreement as being the indicators of human trafficking and on which the Group also mostly agreed during the discussion of Cases 2 and 3.

A list of indicators mentioned as present in Cases 2 and 3 follows:

- ▷ Fictitious debt;
- ▷ Withdrawal of documents;
- ▷ Threats (of Immigration Police, of harming the family);
- ▷ Retention of salaries, exploitation: the boss/ the agency keep the money;
- ▷ Monitoring of persons (subjective).

In Case 1, the most discussed issues were particularly “*abusing duress*” and voluntary exploitation/ consent to exploitation. The participants’ opinions differed particularly with regard to the following questions:

- ▷ Issue of voluntary decision to let oneself be exploited;
- ▷ Issues in terms of where a free decision ends and abuse of duress begins (when collecting evidence, it would have to be proven whether the duress of the victim was taken advantage of i.e. that the perpetrator knew about the victim’s duress);
- ▷ If and to what extent Mr. N. was able to leave the exploitative conditions (he was not monitored, vs he “got stuck” in the job due to the fact that he could not find an alternative – dependency on mediators, irredeemable debt in the country of origin and the CR, lacking knowledge of the language, visa, etc.);
- ▷ Whether the situation of people with illegal status can be considered as under duress if they are threatened with being reported to the Immigration Police (foreigners have experienced the Immigration Police as a real risk, either directly or through shared experiences of other foreigners). Note: Outside the Czech Republic, taking advantage of someone’s illegal residence is considered an abuse of an especially vulnerable situation arising from a subjective perception of reality and its description in words;

- ▷ Objective situation of a person – Is a person under duress, who could afford to have pledged a house (being the owner) and whose family can afford to send him money, and can he actually return home or not?

Despite the fact that it was assumed that there would be a higher degree of disagreement in assessing Case 3, there was agreement as well. This person was recruited within the country where he would later be exploited. In practice, in some cases especially of trafficking into prostitution, this has been regarded as an element which makes the qualification of the case as one of trafficking in human beings disputable.

The Group also discussed other important areas which affect the way in which the problem can be addressed:

- ▷ Phenomenon vs criminal law definition;
- ▷ The perception of the substance of the issue varies with various participants. There is disagreement, in particular regarding the distinction between the criminological context and the context of criminal law. The criminal law definition naturally requires that all of its elements feature in a situation, in order for the situation to qualify as trafficking in human beings. The understanding of the situation from the criminological point of view is broader (for instance, there are similar issues with regard to perceiving something as corruption vs identifying the situation as the crime of corruption). Differences in understanding thus affect the assessment of the situation. Regarding the Model Cases, one of the participants, for instance, indicated that, if it came to deciding, she herself would identify Case 1 as an instance of human trafficking. In practice, however, she knew that the PEJA would not assess it in that way;
- ▷ Addressing the problem by changes in criminal law or by using other mechanisms? In fact, the existing instruments outside criminal proceedings which could be used to combat trafficking in human beings are not fully employed (e. g. the work of the Labour Inspectorate, the fact that the participants in the procedure do not have to be present in person when filing the Application for Work Permit, addressing the situation regarding agency employment). Some issues which are linked to exploitation could/should be addressed within civil law. It would, for instance, be beneficial to enable foreigners to legalise their Residence during the time when they “begin the battle” against their oppressors. Co-operation of all the entities is also essential – after a Police raid, inspection by the Labour Office, the Tax Authority, the Labour Inspectorate and other entities should follow.

8.2.4 Identified problem areas

IDENTIFICATION

- ▷ **The procedure is at the beginning, case law is lacking.**

There are no guidelines for the practice. The criminal justice system needs a considerable amount of time to get anything done and we are practically at the beginning of the work on the issue. We need to wait for case law providing guidance for further practice.⁵⁵

- ▷ **Organized activity concealed by legal companies.**

Concerning trafficking in human beings for the purpose of prostitution, we have long expe-

rience; detection is also facilitated, due to the fact that the Police perceive prostitution as an environment which is associated with crime, and they already know this environment. Also, there are not so many entities linked to exploitation which are technically legal. The activity of entities actually operating on a legal basis makes the identification and investigation of trafficking in human beings outside the sex industry more difficult.

▷ **Education and methodology of the PCR (for both identification and investigation).**
In practice, the Police do not know how to identify and interrogate the witnesses/victims in cases of trafficking in human beings.

▷ **Self-identification: The victims often do not perceive themselves as victims of a crime.**

Most victims do not identify themselves as victims > the relevant entities, such as the Labour Office, the PCR, the Authority for Social and Legal Protection of Children (OSPOD), need to play a more active role in the identification. Flyers describing the basic indicators according to which the victims can identify themselves are also useful.

▷ **It is not clear which cases the Police will recognise as trafficking in human beings > self-censorship of NGOs.**

In practice, it is not clear which cases will be deemed trafficking in human beings by PEJA. This may lead to self-censorship of NGOs on the identification of trafficked persons.

▷ **Insufficient personnel capacity of the PCR.**

▷ **Inadequate Explanatory Memorandum on the Criminal Code, providing no guidelines for interpretation.**

▷ **Most victims do not even keep the first appointment > aid to the victim is to be separated from co-operation with PEJA (there are no field programmes or potential financial resources).**

▷ **Duty to report > deliberate lack of enquiry on the part of NGOs.**

The duty to report limits the NGO workers, as well as other entities, regarding an enquiry of the facts which could point to a crime of trafficking.

▷ **Low social sensitivity of the labour exploitation issue (people do not think that it is a problem).**

▷ **Less usual or new forms of trafficking in human beings tend to pass unnoticed in practice.**

Attention is not paid to indirect indicators which may point to the fact that something is wrong or that trafficking may be involved, e. g. regarding trafficking in children. The CR has seen cases of trafficking in Bulgarian children: a 14-year-old girl was known to run away from a facility for foreign children and to be repeatedly found at her relatives' home with 6 mobile phones in her pocket, but she had been regarded as an offender, not as a potential victim of trafficking in human beings. The "opposite direction" of trafficking – a Czech trafficked to the Ukraine, forced marriages, etc. – also does not receive the appropriate attention.

INVESTIGATION

▷ **Capacity of the PCR (UCOC and lacking capacities in other units).**

The issue is only more or less addressed by UCOC; no capacity has been made available at other Police units.

▷ **The attempts of victims to remain in the Programme may lead to affecting the testimony.**

The provision of services and granting Residence to trafficked persons is conditional upon their testifying in the criminal procedures. They may (unwittingly) feel indebted by the Residence and Programme provided. In testifying, they will therefore try to help the Police and testify in the manner they think is expected of them. > Services and Residence should not be conditional on co-operation with PEJA.

▷ **The PCR cannot guarantee a result (legal qualification, collection of sufficient evidence) > It is better not to link assistance to the victim with the opinion of the PCR.**

▷ **Definition of co-operation of the victim with the PCR vs informal practice.**

The meaning of the term "co-operation" in the provision of Section 42(e) of the Aliens Act in the Programme is unclear.

▷ **(In)ability to offer the victims employment.**

Victims are not motivated to co-operate/testify because they may be "cut off" from the source of income as a consequence of the investigation. > To offer victims employment.

▷ **Programme participation linked to co-operation with PEJA.**

Participation in the Programme is conditional on the requirement of co-operation with the Police, which reduces the number of potential witnesses.

▷ **The method of formulating and asking questions of witnesses/ victims.**

In the preparatory procedure, it is necessary to clarify which direction to take. The Prosecuting Attorney requires the Police to secure testimonies containing the information needed by the Prosecution. Inadequate methods of asking questions are also a problem. The issue of asking questions concerning duress came up several times. It is, for example, insufficient to ask: "Have you been under duress?" The question can be formulated indirectly, for example: "How did you imagine your situation upon arrival?" Also, cultural, gender, social, and economic determinants influencing the interrogated person should be taken into account.

▷ **The issue of qualification/requalification of the crime during the investigation.**

Overlapping or narrow definitions of the offence or of its components may cause a problem (e. g. fraud, abduction abroad, oppression). The offence of trafficking in human beings is defined too broadly, and the Courts tend to interpret it too restrictively. Proving the crime of trafficking in human beings is difficult. Some cases either had to be requalified or the criminal prosecution had to be halted (what needs to be taken into account is the awareness of people of future conditions, as well as the extent to which the victim can prove that he had not known what was about to happen to him.)

▷ **Lack of specialised Prosecuting Attorneys.**

▷ **The investigation concentrates on the consent and situation of the victim, not on the actions of the perpetrator.**

Lessons can be drawn from the situation in Spain, where the actions of the perpetrator, not the consent and motivation of the victim, are examined during the investigation and collection of evidence.

(Foreign practice: support to the victim is not conditional upon co-operation with PEJA – the victim is later more willing to co-operate, based on his/ her own decision – the application of the definition of trafficking would then not be left to the PCR).

DEFINITION

- ▷ Difficulties with practical application > need for case law.
- ▷ A precedent can be helpful, but it can also result in narrowing the practice.
- ▷ Making the legislative definition more specific may narrow the space for prosecuting some crimes, e. g. forced beggary (an enumerative list of purposes vs the concept of *other forms of exploitation*).
- ▷ Extend the definition to *lacking experience*, as with the crime of usury.
- ▷ Resistance to change of the definition: trafficking in human beings makes labour cheaper (lobby of abusers of cheap labour).
- ▷ Support for change in the definition: trafficking in human beings distorts the labour market and increases official unemployment.
- ▷ *No defined crimes in the field of Labour Law (good practice in Spain).*

8.2.5 Proposed improvements not requiring a change in the existing legislation

Finally, the experts were divided in two groups to propose measures which could lead to a more frequent practical application of the legislation on trafficking in human beings. The goal was to propose measures not requiring a change in the legislation currently in force.

1. INFORMATION, EDUCATION	
GROUP 1	GROUP 2
Campaign aimed at the broader public, drawing attention to the security risks linked to this issue and to the cost to the national budget of the existing trafficking in human beings.	Need for greater awareness-raising through campaigns aimed both at the broader public and potential victims.
	Open up the topic of corporate social responsibility of companies tendering for public contracts.
	Employ the integrity test, as is stipulated in the Act on the Police. Possible use in the inspection of the functioning of the local Police.
Implement foreign practice and contexts in relation to the situation in the Czech setting (e. g. Spain).	
2. MULTI-DISCIPLINARITY	
A specialist for a greater number of issues in each of the Czech regions. The specialist should be in contact with a broader institutional environment, inspiration can be drawn from the institutional framework for combating extremism.	Link the investigation of the crime with Tax crime and ensure media coverage.

A specialist for a greater number of issues in each of the Czech regions. The specialist should be in contact with a broader institutional environment, inspiration can be drawn from the institutional framework for combating extremism.	Link the investigation of the crime with Tax crime and ensure media coverage.
Interconnectedness within the Criminal Police and Investigation Services—a combination of various areas of investigation (e. g. finance).	Involve the Labour Inspectorate more in the prevention and identification.
	Carry out more check-ups in the field of Social Security, Insurance, etc.
3. METHODS OF COMBATING TRAFFICKING IN HUMAN BEINGS	
Where the Police are concerned, practice should be more standardised, instructions should be in place to prevent great differences in practice.	
	Company audits.
4. PROTECTION OF VICTIMS AND PUNISHMENT OF PERPETRATORS	
More potential witnesses are required; therefore, the number of people participating in the Programme should be increased. This is, however, limited by legislation. A broader Programme or a change in the Residence status would address the problem.	Witnesses are required while, at the same time, their consistency needs to be ensured, however, always on a voluntary basis.
	Concentrate on the fact that victims are afraid to communicate with the Police, not make participation in the Programme conditional on co-operation with the Police.
Trafficking in human beings should be actively looked for by the Police, who should not only collect clues.	This crime should abandon the sphere of latency and be prosecuted more often. This depends on the education of specialists.
Markedly increase the rate of cases dealt with; this could lead to an overall increase in the importance of the issue and to a strengthening of the capacities and finance.	Increase the number of Police measures (raids).
Currently, the way the situation is dealt with resembles merely the cutting off of the tentacles of an octopus instead of killing it..	
	Assist witnesses in finding employment, as an instrument in the protection of children.
	Concentrate on the issue of alternative employment opportunities in a safer environment (for witnesses who testify in criminal procedures).

When comparing the proposals of both Work Groups, a high degree of agreement on the individual suggestions can be observed. These statements were divided into four areas, based on the analysis of the individual suggestions (information/education, multi-disciplinarity, methodology, and protection/sanction). Most suggestions were aimed at improvements in the area of protection. Here again, the absence of representatives from the Criminal Police and Investigation Services, who are mainly responsible for this area in practice, has probably had significant consequences.

8.2.6 Conclusions of the Work Group

The whole meeting of the Work Group was marked by the constructive approach of participating experts. From the outset, broad agreement on the majority of the discussed topics was obvious as well. The most significant shortcoming was the absence of the CPIS officers. Most participants think that success in tackling trafficking in human beings is determined by the ability to identify such an act. The role of the Police in this phase is crucial. At the same time, the testimonies of several NGO workers drew attention to self-censorship in reporting potential victims to the Police, in view of the expected Police dismissal of the suggestion on capacity grounds. Participation by the CPIS officers in this process is therefore absolutely essential for any subsequent activities linked to the definition of issues in tackling trafficking in human beings in practice.

During the directed debate, several proposals to amend legislation were made. At least partial modifications of the current legislation appear to be inevitable in the long run. Most suggested changes concerned making the definition more specific in order to provide more clarity on what can or cannot be considered as trafficking in human beings. Some participants objected to such a change, with the concern that sanctioning specific crimes such as forced beggary could be made more difficult. As a result, no agreement among individual participants about the suggested legislative amendments was reached. The Group worked with the existing legislation to find a solution which could be implemented in a relatively short time.

The main suggested solutions on which there was broader agreement included:

- ▷ Awareness-raising campaign aimed at informing the broader public about the issue of trafficking in human beings. At the same time, an awareness-raising campaign should also target the persons in danger of being trafficked.
- ▷ Emphasis on the use of a multi-disciplinary approach to address the issue of trafficking in human beings. Specifically, this means the presence of specialised officials, at least on the regional level, and intensive co-operation of the participating institutions.
- ▷ Effective combination of protection and sanction in order to enable the Police to get into contact with a greater number of persons in danger of being trafficked.
- ▷ Recommendation to consider the option of providing basic aid to victims who do not want to co-operate with the Police.



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9. ASSESSMENT OF MEETING HUMAN RIGHTS OBLIGATIONS BY THE CZECH REPUBLIC

The Czech Republic has at its disposal an extensive and relatively formally elaborate system of instruments for preventing and combating *trafficking in human beings*. Together with these instruments, some of which are exclusively intended for combating trafficking outside the sex industry (e. g. the UCOC), there are also instruments intended for the protection of and aid to trafficked persons. The Ministry of the Interior has formally concluded co-operation contracts with specialised Non-Governmental Organizations providing social and other services to trafficked persons.

However, effective identification instruments are lacking or are not implemented in practice and the understanding of the definition of trafficking in human beings is narrow. As a result, only a minimal number of trafficked persons can take advantage of the system of measures in place to assist trafficked persons and to enable them to access their rights. It can be asserted that women exploited in the sex industry are more likely to be able to use these instruments – as opposed to those persons who have been exploited in other labour sectors. It should be noted that vague and freely formulated frameworks of international documents often play their role in this respect.

Formally, the Czech Republic thus fulfils most human rights standards in the field of the identification of trafficked persons, as well as the obligation to criminalise all forms of trafficking in human beings. These measures are, however, not effectively met in practice.

The gender dimension in the area of identifying trafficked persons is absent. It can be deduced from the available data that the proportion of men among trafficked persons identified outside the sex industry is markedly lower than the proportion of women. Also cases which were investigated as trafficking in human beings outside the sex industry concerned settings in which men are employed more frequently (e. g. work in agriculture or manufacturing) or which is almost exclusively occupied by men (e. g. construction industry). None of the known cases concerned a setting which is more often occupied by women (e. g. work in households, cleaning, hotels, etc.). Therefore, the measures that have been designed and implemented cannot be regarded as gender-balanced.

The principles of the “participation and access to information” of the target group are not taken into account when constructing measures; on the contrary, some measures are directly conditional on the option of using the reflection period and other instruments using the sojourn services of the co-operating Non-Governmental Organization. However, exceptions can be negotiated in practice.

Due to the lack of adequate measures aimed at identification of trafficked persons and, to some extent, at the criminalisation of all forms of trafficking in human beings (which is to a degree related to identification), only a very limited number of people can actually make use of the system aimed at the provision of general assistance and at assistance in exercising their rights: the practical implementation of the available instruments is lacking.

The findings of the analysis are summarised in the following Table.

FULFILMENT OF THE STANDARDS	LEGALLY	PRACTICALLY
OBLIGATION TO CRIMINALISE ALL FORMS OF TRAFFICKING	YES	NO
Trafficking is a criminal offence under national law	Yes	×
Trafficking is defined in accordance with the UN Trafficking Protocol	Yes	×
Law enforcement officials understand the definition of trafficking	Yes	Rather no
The component acts, meaning slavery and servitude, forced labour, the worst forms of child labour, forced marriage, debt bondage, and forced prostitution/sexual servitude, are criminalised under national law	Yes	No
Proportionate penalties are applicable to these offences and are applied	It is possible	No
OBLIGATION TO ACTIVELY IDENTIFY VICTIMS OF TRAFFICKING	YES	NO
Guidelines and procedures for the relevant state authorities and officials are in place to permit the rapid and accurate identification of trafficked persons	Partially	No
The relevant state authorities and officials have been trained in correct identification procedures	Yes	Insufficiently
Law enforcement officials work together with NGOs to facilitate identification of and assistance to trafficked persons	Yes	No
Migrants and other groups that might be vulnerable to trafficking receive information that enables them to seek assistance when needed	Yes	Insufficiently



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10. CONCLUSIONS

The understanding of reality through the perspective of *trafficking in human beings* is, like any other perception of reality, necessarily limited, accentuating only some dimensions of the human experience. It is also obvious that the concept of *trafficking in human beings* is basically artificial and should be understood in the wider social context, in view of the historical genesis of its emergence. The question is whether there is currently another perspective for the solution to problems linked to trafficking in human beings, such as a perspective which would concentrate on the phenomenon of exploitation of persons in vulnerable situations.

However, these are mere considerations. Currently we are forced to work with the concept of trafficking in human beings, because international documents and policies of international communities are based on it. Individual States formulate some policy areas, based on their obligations in view of these documents and the influence of international frameworks. The policies concentrating on preventing and combating trafficking in human beings rank among those policies whose form is very closely linked to international frameworks. In theory, the human rights dimension is part of these policies.

In order to be able to utilise fully the instruments of the policy for preventing and combating trafficking in human beings, the people for whom these instruments are intended must be formally identified by some of the available and systemically acknowledged authorities.

The *identification of the trafficked person*, a widely used category in both strategic and theoretical documents, basically amounts to an operationalisation of the definition of trafficking in human beings performed by the individual stakeholders.

Both the identification of the trafficked person and the definition of *trafficking in human beings* as such are, however, conceptually very vague.

This study has investigated the possibility for trafficked persons of accessing the rights and services intended for them. The first part of the study summarises the international frameworks of the policy for preventing and combating trafficking in human beings, especially the relevant legislation, the definitions and human rights standards for the construction and application of the measures, as well as the obligations of the Czech Republic.

The second part of the study looks into the conceptualisation of *trafficking in human beings*, the development of the criminal law definition of trafficking, as well as problematic areas linked to its construction. The analysis shows that the construction and content of the individual terms complicate the practice. The author has also come to the conclusion that there are very different conceptualisations of trafficking in human beings, which directly affect the possibility of the trafficked persons to invoke their rights due to their narrow (criminal law) or contextual (human rights) perspective.

The third part of the study analyses the institutional background of the policy for preventing and combating trafficking in human beings, concentrating on the area of the

identification of trafficked persons. The analysis demonstrates that, formally, there is a relatively wide range of instruments concentrating on the protection and rights of trafficked persons. In practice, however, these can be utilised by a minimal number of people.

The fourth part deals with the practical problems of individual stakeholders in the field of the identification of trafficked persons and prosecution of the crime of trafficking in human beings outside the sex industry. The field findings support the conclusions of the theoretical chapters and point out individual problematic areas – the identification itself, the investigation and the definition of crime.

In the conclusion, the fulfilment of human rights obligations on the part of the Czech Republic is evaluated and recommendations to improve the current situation are made.

The following is a summary of the results of the analysis: The overall concept of trafficking in human beings is very vague and offers itself to markedly different interpretations. The definition of *trafficking in human beings* itself is problematic in terms of its practical usage.

- ▷ Both in the Czech Republic and internationally, the concept of trafficking in human beings is very vague and assumes many different practical contexts, especially regarding exploitation outside the sex industry. This would not have to be problematic in itself, if the rights of trafficked persons, in some cases, were not linked to the interpretation of trafficking in human beings.
- ▷ The definition itself of trafficking in human beings, has many deficiencies, both internationally and in national legislation, in particular concerning its construction and wording, the interpretations of the individual terms and its actual application.
- ▷ Although the interpretation of some terms, which are included in the definition of the offence of trafficking in human beings in the Czech criminal law, is absent in practice, it can be asserted that there is, on the whole, an adequate and well established basis for interpretation. This particularly concerns the interpretation of terms such as *abusing duress or dependence, other forms of exploitation, and forced labour*. However, the terminological clues are insufficiently (if at all) employed in practice.
- ▷ Examples of good practice can be found in other States where the construction (and application) of legislation enables the prosecution and punishment of trafficking in human beings in a more effective way.

There are many different conceptualisations of *trafficking in human beings* which affect the number of identified trafficked persons and dealt-with cases of this crime.

- ▷ The criminal law perspective of the PEJA is fairly limiting and based on the certainty of proof. It is also limited by the conservative interpretation of individual terms, as well as of the concept of trafficking in human beings in general. Here, the positivist orientation of the Czech Judiciary probably has a negative influence.
- ▷ The human rights perspective of Non-Governmental Organizations which identifies trafficked persons and their access to rights and services, offers services to a wider group of people. However, even these cannot invoke some rights, in view of the limitations of the criminal justice system and its influence on the measures

of the Government. The dynamic and relatively broad perception of the issue is, however, associated with the risks of diluting the concept in the case of an unprofessional evaluation.

- ▷ Also, the EU realises the problems that can ensue through the practical usage of the definition of trafficking in human beings as the definition of a criminal offence. Therefore, the EU uses the designation *offences related to the trafficking in human beings* when defining the group for which certain measures or activities in documents are constructed.
- ▷ Despite the fact that Government authorities probably realise the scope of the issue, it ranks low when defining the priorities of individual agendas, due to the low statistical figures. The measures taken are thus insufficient, with Government authorities finding themselves in a vicious circle.
- ▷ At least in some cases, the media, which work predominantly with the concept of modern or recent forms of slavery, can point out the wide scope of the problem of trafficking in human beings in the Czech Republic.

Theoretically, institutional frameworks facilitate access of trafficked persons to rights and services, however, practically, there are many obstacles.

- ▷ The Czech Republic has the instruments at its disposal which enable access to rights and services for trafficked persons; in practice, however, in view of the obstacles, these are utilised by only a small number of persons.
- ▷ There are no separate strategic and conceptual documents dealing with the identification of trafficked persons. The issues linked to the prosecution and punishment of the cases of trafficking in human beings outside the sex industry are discussed and addressed only in view of the contents of the definition of trafficking.
- ▷ Beside PEJA and MI, there are no other bodies of the Public Administration dealing with both the theoretical and practical identification of trafficked persons. The experience from abroad shows, however, that bodies in charge of inspecting the conditions of employment play an important role in identifying trafficked persons.
- ▷ No clear common identification criteria have been defined which could be used by a wide group of stakeholders.
- ▷ The capacity of Non-Governmental Organizations in the field of identification of trafficked persons is insufficient.
- ▷ The Support and Protection Programme for Victims of Trafficking in Human Beings is an asset to trafficked persons, especially to those who are in an irregular position or want to/must return to their country of origin. In fulfilling the goals of the Programme, however, the goals prioritising the interests of criminal law prevail over the goals aimed at the protection of human rights. The duty to report prevents the reflection period under the Programme being made use of by all trafficked persons. By mid-2010, the MI narrowed the group of persons able to apply for participation in the Programme to the victims of the crime of trafficking in human beings, pursuant to the provisions of Section 168. In the previous period, the Programme was open to a wider group of people – victims of the crime linked to the trafficking in human beings. Even in such a situation, the number of people participating in the Programme was low (fewer than 15 persons yearly).
- ▷ Long-term Residence for the Purpose of Protection is based on the transposition of the Directive on Residence. Both Non-Governmental Organizations and independent researchers criticise the fact that the transposition of some parts (target

group of the measure, reflection period) is limited, in comparison with the intentions of the Directive.

- ▷ In the Czech Republic, there are specialised Non-Governmental Organizations which identify trafficked and exploited persons and offer them social and other services. Although the services offered are available to a wider group of people, their capacity is limited. The statistics, showing that men clearly predominate in terms of the persons trafficked outside the sex industry, should lead to a critical consideration whether the instruments used for the dissemination of information and identification are sufficiently gender-sensitive (e. g. the setting where field work is done etc.).
- ▷ The *duty to report* the crime of trafficking in human beings is a significant obstacle to activities aimed at the identification of trafficked persons.
- ▷ In practice, there are various levels of identification of trafficked persons which are linked to the institutional frameworks of the policy for preventing and combating trafficking in human beings. These levels represent thresholds separating sets of rights/services which can be made use of by the person identified by the respective stakeholder (e. g. NGO, Police, Court). However, almost none of the trafficked persons can access the complete package of rights and services. This is, however, merely a consequence of the fact that only a small number of people have access to the system, in view of the narrow understanding of trafficking in human beings. The instruments which, in theory, should enable trafficked persons to access their rights are thus not implemented in practice.

The practical experience of persons who were identified as trafficked has shown that uniformed and Immigration Police have repeatedly failed in identifying trafficking in human beings. The trafficked men did not perceive themselves as the victims of trafficking, the flyers describing the elements of the situation they had experienced helped them to *self-identify* themselves. These also enabled them to ask for help. All of them decided, either immediately or after some consideration, to co-operate with the PEJA.

The Expert Group perceives identification, investigation, and definition as the issues behind the low number of perpetrators prosecuted and the zero number of perpetrators effectively sentenced for the crime of trafficking in human beings in cases of exploitation outside the sex industry. The Group consisted of experts from MI, Public Prosecution, Attorney General's Office, NGOs, as well as independent experts.

- ▷ Among the problems in the field of identification rank, for example, problems linked to lacking case law, insufficient staff, as well as expert capacities in the Police Corps, issues linked to the fact that the victims of this crime do not consider themselves victims, or differences in understanding of what can be perceived as trafficking in human beings. In practice, this organized activity is often very well masked as a legal business, which makes its identification even more difficult. A low social sensitivity to labour exploitation or the fact that less usual forms of trafficking in human beings are overlooked are also problems.
- ▷ The issues linked to investigation concern the method of working with witnesses, especially when asking questions aimed at proving the facts necessary to estab-

lish this crime, the risks linked to the fact that the investigation concentrates on the situation of the victims and not on the actions of the perpetrators, and a lack of Police capacities. The functioning and overall setup of the Support and Protection Programme for Victims of Trafficking in Human Beings, as well as the incentives for trafficked persons to participate in this Programme were also discussed, especially the option of staying in the Czech Republic, conditional on co-operation with the Police.

- ▷ Issues connected with the definition particularly concern the difficulties in its practical application. Possible changes which could result in making the definition more accurate were considered, in view of both possible assets and risks for the practice, as well as possible pressures to change/maintain the current status. Various interpretations of the term *abusing duress* were also discussed.



11. RECOMMENDATIONS

The following recommendations are made:

To analyse obstacles to the construction and application of the Czech definition of the crime of trafficking in human beings, and to eliminate these by a change in the wording of the definition.

- ▷ To analyse more carefully the difficulties regarding the construction and application of the definition in the practice of the individual PEJA authorities (Police, Public Prosecution, Courts);
- ▷ To analyse the foreign (e. g. Spain, Luxembourg) legal regulations of the crime of trafficking in human beings, as well as the Court practice, with the aim of learning what promotes the effective prosecution and punishment of trafficking;
- ▷ To use the information established by analysis to change the existing wording of the offence.

To adjust the measures of the policy for preventing and combating trafficking in human beings, in order to address the known problems linked to the construction and application of the definition of trafficking, so that the number of criminal offences of trafficking judged in Court increases and trafficked persons have access to the relevant rights and services.

- ▷ To evaluate the efficiency of available measures (esp. the Support and Protection Programme for Victims of Trafficking in Human Beings), in view of the specific features of trafficking in human beings outside the sex industry;
- ▷ To adjust the existing measures based on the evaluation, so that they are used in compliance with the declared goals by the greatest possible number of people;
- ▷ To use the category of *victims of offences related to the trafficking in human beings* for access to the rights and services in line with the orientation of the EU;
- ▷ To extend the category of persons who are able to obtain Long-term Residence for the Purpose of Protection pursuant to the provision of Section 42e of Act No 326/1999 Coll., on the Residence of Aliens in the Territory of the Czech Republic, in keeping with the Residence Permit Directive, to cover those persons who have been the victims of offences related to the trafficking in human beings;
- ▷ To base the identification of the trafficked persons on the starting point of human rights, to use the principle of the presumption of trafficking (in case of doubt in favour of the trafficked person).

To understand trafficking in human beings in the Police and Judicial practices in the broader social context and to work with the current knowledge of this phenomenon.

- ▷ To use the available interpretation of the terms included in the definition of trafficking (e. g. *duress, forced labour, other forms of exploitation*), whether it be from the legal literature and expert positions of the Public Administration (MI) or the non-governmental sector;
- ▷ To compile an overview of the available technical literature and resources suitable for the work of PEJA, to ensure the translation of selected publications;
- ▷ To draw on the available current resources in the Police and Judicial practice (e. g. handbooks for the work of the PEJA published by the UN International Centre for Migration Policy Development and many others);

- ▷ To adjust the methods of work to address the weak spots in the definition of the offence, when investigating and proving the crime of trafficking in human beings;
- ▷ To strive for a more frequent use of the provision of the crime of trafficking in human beings in the practice of the PEJA;
- ▷ To extend and deepen the education of the PEJA in the criminal procedure in terms of the options to combat trafficking in human beings, with the emphasis on exploitation outside the sex industry.

To elaborate and implement an instrument for the effective identification of trafficked persons in practice.

- ▷ To define clear rules for the identification of the trafficked person, including consensual identification criteria which will be the basis of the co-operation of the PEJA, NGOs and other institutions;
- ▷ To involve more bodies of the Public Administration in the identification of trafficked persons, so that they are obliged to concentrate on the identification of trafficked persons according to the defined criteria (e. g. Labour Offices, Labour inspectorates, Social Departments at Municipal authorities);
- ▷ To conduct an awareness-raising campaign for both the general public and the trafficked persons, aiming at informing them about the issue;
- ▷ To disseminate informative materials enabling self-identification among potentially trafficked persons, to select a gender-balanced setting where the materials are distributed;
- ▷ To strengthen the multi-disciplinary co-operation in the process of addressing the issue of trafficking in human beings (co-operation with NGOs, co-operation between the PEJA and labour inspectorates, linkage of investigation to Tax crime, extension of competences of specialists in the field);
- ▷ To identify other instruments which will enable a vast increase in the size of the group of potentially trafficked persons coming into contact with the PEJA and having the motivation to co-operate in criminal procedures;
- ▷ To ensure that the Immigration and uniformed Police pay attention to signals which may indicate that human beings are being trafficked.

To strive for the highest possible number of trafficked persons to have access to the relevant rights and services.

- ▷ To consider the option of unconditional aid to trafficked persons, as well to those who cannot or do not want to co-operate with the Police;
- ▷ To effectively employ the instruments of protection and sanction, with the aim of markedly extending the group of potentially trafficked persons who contact the Police;
- ▷ To abolish the *duty to report* the crime of trafficking in human beings resulting from the new Criminal Code;
- ▷ To understand the possible use of the measures to identify trafficked persons as the right, not as the duty of a person who is in an exploitative situation;
- ▷ To separate the measures for checking the legality of the Residence of migrants from the measures aimed at ensuring compliance with the law at the workplace;
- ▷ To enable trafficked persons and persons at risk of trafficking to access information on the available measures and the active participation in their fulfilment.

To continually evaluate the efficiency and impacts of the policy for preventing and combating trafficking in human beings.

- ▷ To safeguard the independence of the National Rapporteur;
- ▷ To always analyse the possible unintended negative impact of the policy on the rights of the trafficked persons and other groups of people (e. g. migrants, persons working in the sex industry), when conceiving new and evaluating existing measures;
- ▷ To consider the gender reality when conceiving measures and evaluating the current situation, so that the measures follow the principle of gender equality.

To fulfil international standards for preventing and combating trafficking in human beings in general and especially in the field of the identification of trafficked persons and their access to rights.

- ▷ To sign and ratify the *Council of Europe Convention on Action against Trafficking in Human Beings* and consequently to meet the resulting obligations;
- ▷ To ratify the Palermo Protocol;
- ▷ To fulfil human rights standards in practice ensuing from international documents, to continually evaluate their fulfilment;
- ▷ To consequently accentuate the imposed obligations, enabling a wider access to the rights of trafficked persons when transposing and implementing the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.



ANNEX 1 NAME LIST OF EXPERTS

Bradáčová, Lenka, JUDr. PhD., Regional Prosecuting Attorney's Office, Ústí nad Labem

Herdová, Tereza, IOM, Prague

Jarmak, Jelizaveta, independent expert

Kryska, David, Mgr., Organization for Aid to Refugees

Linhartová, Věra, JUDr., District Prosecuting Attorney's Office, Prague 8

Mazel, Michal, Mgr., Filip Směja Law Firm

Petra Kutálková, La Strada Czech Republic

Pomichálková, Karolína, Magdala Project

Šifferová, Olga, PhD., Crime Prevention Department, MI

Vondruška, František, JUDr., Attorney General's Office

Hůle, Daniel, facilitator, analyst

Moravec, Štěpán, facilitator



ANNEX 2 RELEVANT INTERNATIONAL DOCUMENTS

OSN	UN	SIGNED/RATIFIED
Všeobecná deklaráce lidských práv (1948, OSN)	Universal Declaration of Human Rights (1948)	*
Mezinárodní pakt o občanských a politických právech (1966, OSN), (120/1976 Sb.)	International Covenant on Civil and Political Rights (1966)	1968/1976 (ČR 1993)
Úmluva o odstranění všech forem diskriminace žen (1979, OSN), (62/1987 Sb.)	Convention on the Elimination of All Forms of Discrimination against Women (1979)	1980/1982 (ČR 1993)
Mezinárodní pakt o hospodářských, sociálních a kulturních právech (1966), (120/1976 Sb.)	International Covenant on Economic, Social and Cultural Rights (1966)	1968/1975 (ČR 1993)
Úmluva proti mučení a jinému krutému, nelidskému či ponižujícímu zacházení nebo trestání (1984, OSN), (143/1988 Sb.)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	1986/1988 (ČR 1993)
Mezinárodní úmluva o ochraně práv všech migrujících pracovníků a pracovníků a členů jejich rodin (1990, OSN)	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	-/-
Úmluva spojených národů proti mezinárodnímu organizovanému zločinu	Convention Against Transnational Organized Crime (2000)	2000/-
Protokol o prevenci, potlačování a trestání obchodu s lidmi, zvláště ženami a dětmi	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000; also called Palermo Protocol)	2002/-
MOP	ILO	
Úmluva o nucené práci	C no. 29: Forced Labour Convention (1930)	/1957 (ČR 1993)
Úmluva o odstranění nucené práce	C no. 105: Abolition of Forced Labour Convention (1957)	/1996



Úmluva o svobodě sdružování a ochraně práva organizovat se	C no. 87: Freedom of Association and Protection of the Right to Organise Convention (1948)	/1964 (ČR 1993)
Úmluva o právu organizovat a kolektivně vyjednávat	C no. 98: Right to Organise and Collective Bargaining Convention (1949)	/1964 (ČR 1993)
Úmluva o migrujících pracovnících	C no. 143: Convention on Migrant Workers, which specifically addresses the rights of undocumented migrant workers (1975)	-/-
Úmluva o migraci za prací	C no. 97 Migration for Employment Convention	-/-

RE	COE	
Úmluva o ochraně lidských práv a svobod	European Convention on Human Rights (1950)	1991/1992
Úmluva Rady Evropy o boji proti obchodování s lidmi	Council of Europe Convention on Action against Trafficking in Human Beings (2005)	-/-

EU		
Směrnice Rady 2004/81/ES ze dne 29.4.2004 o povolení k pobytu pro příslušníky třetích zemí, kteří jsou oběťmi obchodování s lidmi nebo kteří obdrželi pomoc k nedovolenému přistěhovalectví a kteří spolupracují s příslušnými orgány.	Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004)	
Rámcové rozhodnutí Rady 2002/629/JHA ze dne 19.7.2002 o boji proti obchodování s lidmi.	Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002).	
Rámcové rozhodnutí Rady 2001/220/JVV ze dne 15.3.2001 o postavení oběti v trestním řízení.	Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001).	
Směrnice Evropského parlamentu a Rady 2009/52/ES ze dne 18. června 2009 o minimálních normách pro sankce a opatření vůči zaměstnavatelům neoprávněně pobývajících státních příslušníků třetích zemí.	Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals ²	
Charta základních práv EU3 (2000)	European Bill of Rights	

As at 10/7/2010



ANNEX 3 MODERN FORMS OF SLAVERY – SELECTED MEDIA ACCOUNTS

We can perceive the media as an image or model of what the general public perceives as reality. A closer look into the largest dailies (*Lidové noviny*, *MF DNES*, *Právo*), as well as resources in the Annopress database for 2009 and January – May 2010, has shown that the topic of trafficking in human beings is generally, and in the context of the Czech Republic, not a topic which is extensively covered in the media or Press. On the contrary, there is a rather small number of articles investigating trafficking in human beings (especially articles on Police cases) or similar topics. There are even fewer articles investigating trafficking in human beings outside the sex industry. Unless we are searching for articles concerning specific Police cases (esp. *Právo*), it is more appropriate to look for articles under the keywords such as “slavery” or “exploitation”. The texts found, based on these keywords, include those describing the situation of foreigners in the Czech Republic in terms of labour exploitation.

“Hundreds of modern slaves are working in the Czech Republic, especially from Romania and Bulgaria. ... The system is as follows. Labour agencies find the foreigners work in the Czech Republic, they are paid for them by Czech companies, however, they only pay ridiculous amounts to the workers. ... Most victims are forced to toil in the fields or in the construction sector. Only a minimum number is forced into prostitution” (Novodobé otrokářství v Česku, Události, komentáře, 3/2/2010).

“They are not paid for their work and become more and more indebted. If they want to leave the enslaving job, they have to flee or buy themselves out at great cost. Hundreds of foreign workers are starving in the Czech Republic under appalling conditions. According to the findings of LN, various placement “agencies”, which are often managed by compatriots of the enslaved foreigners, profit from their suffering. Several years ago, local companies attracted cheap labour from the Ukraine, Vietnam and Mongolia to the Czech Republic, but the economic downturn has radically worsened the position of foreigners. The work mediators have never spared “Gastarbeiters”, but now they are exploiting them even more. Dmitrij, a 26-year-old Ukrainian, describes the practices of these agencies: ‘I could no longer bear it. I wanted to find work myself, but they caught me and dragged me into a flat. They tortured me for several hours.’ LN spoke to numerous other Gastarbeiters who no longer want to keep silent about the conditions in Czech companies. Humiliation, threats and beatings occur every day, with rape being no exception. The issue of the enslaving of foreigners will be discussed by representatives of several Czech Ministries in a Joint Meeting today” (Tisíce cizinců padly v Česku do otroctví. Lidové noviny. 6 August, 2009).

“Thousands of foreigners quickly end up outside the limits of the Law due to redundancies in Czech factories. By losing their jobs, they also lose their Work Permits and the possibility of residing in the Czech Republic; however, they often do not have the money to return home. They easily become modern slaves of the Mafia. According to recruitment agencies, Non-Governmental Organizations, and representatives of some cities with a large share of foreign workers, workers who have been made redundant are starting to become a serious problem which needs to be rapidly addressed. These people continue to stay in the Czech Republic, thousands become illegal aliens. ... These are mostly people who have taken on debt to be able to travel to the Czech Republic. But, after several months, they have lost the-

ir jobs and now they cannot even return. They keep staying and looking for work – in vain” (Cizinci nemají po ztrátě práce na letenky. Mladá fronta DNES. 21 November, 2008).

“They stand on scaffolding from the morning till the evening and work. Despite that, they have nothing to eat. And so they steal potatoes in the fields. Welcome to the EU of the 21st century. They work seven days a week, ten hours a day. In hot weather, in cold weather, in rain. Still they have nothing to eat. A group of workers from Poland, Slovakia, and the Czech Republic working on insulating houses in Pardubice has not seen their wages for several weeks. They are living like slaves in the 21st century. ‘We have no money to buy food. We have to steal potatoes in the fields and apples in orchards. In order to survive, we cook soup together in a big pot,’ says Leszek, a Polish worker. ‘We cannot send money home. We have unpaid rent there, we owe on leasing instalments. When we speak up, they start to blackmail us. If we stop working, they will not give us any money,’ complains Ladislav, who is Czech. According to experts, cases like Leszek and Ladislav are not the only ones. Employers often blackmail workers and foreign workers in particular.” (Novodobí otroci na stavbách, Sedmička Mladá Fronta, 1 September, 2009).

In most of these descriptions of actual situations and experiences, the indicators of trafficking in human beings can be identified. According to media estimates, there are hundreds of such cases, one estimate even mentions thousands.





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