

TRAFFICKING IN HUMAN BEINGS

LABOUR EXPLOITATION IN THE CZECH REPUBLIC

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Introduction

Czech Republic has always been a strategic country for migration and business matters through the whole history. It is situated in the “heart” of Europe between Poland, Slovakia, Germany and Austria.

After the Velvet revolution and opening of its borders Czech citizens started to explore the outside world and some of them became victims of trafficking as a cheap labor in abroad, especially in the western countries. Also for its geographical location Czech Republic became attractive for migrants as a short – cut into the rich west. Through years as the economy of the Czech Republic started to grow, it became attractive also for people from poorer countries from Eastern Europe and Asia.

Now days we can say that Czech Republic is the country of origin, transit and also destination of victims of trafficking in human beings.

I. Legal framework:

The fundamental document for the Czech legislation on fighting trafficking in human beings is the **Palermo Protocol** from 2000 that was ratified by the Czech government in 2002 and the definition of criminal offence of Trafficking in human beings for sexual exploitation was implemented into the Czech legal system. In 2004 the definition was upgraded with the criminal act of Trafficking in human beings for the purpose of exploitation at work and other forms of slavery like treatment.

Other important document that influenced the Czech legislation is the **Convention of Council of Europe 2005**. Unfortunately it was not signed by the Czech government yet. So far there is no criminal liability of legal persons in the Czech law. In the case of exploitative working condition a legal persons (LP) as a employer or mediator of working place can be only awarded with a fine from 500.000 CZK (130.000 EUR) to 5.000.000. CZK (130.000.000 EUR) for violation of these areas : LP breaks the antidiscrimination law or wont stop dissimilar condition, mediates a working place without legal permission or brakes the Labor Code and Employer’s Directive in other ways or acts against good manners, or mediates illegal work.

The Czech Republic has also joined the **IOL convention no. 29** from 1930 that describes exploitative and forced work and binds the states to forbid and unlawful it in their legal regulations. In fact the definition and prohibition of exploitative work was not fully implemented into the Czech criminal system but it is only mentioned in the Czech

Constitution. There is no such criminal offence as exploitation at work. Therefore exploitation at work can be punished only when it is a part of a criminal act of Trafficking in human beings.

There are two national acts that regulate employment of foreigners. It is the **Labor Code** and the **Employer's Directive**. It has to be said that they do not contain regulation on protecting rights of migrant workers but only set conditions under which foreigners can be employed in the Czech Republic. It also sets regulation for employment agencies.

Among the national documents important for fighting THB in the Czech republic is the **National Strategy for combating Trafficking in Human Beings (2008-2011)** approved by governmental Resolution No. 67 of 23 January 2008 and the **Criminal Code no. 40/2009** effective from 1 January 2010 in **§168** formulates the definition of the criminal act of Trafficking in human beings corresponding with the definition from the Palermo Protocol and sets up the severity of the punishment from 5 to 18 years of imprisonment or confiscation of property.

Aggravating circumstances are:

- Committing the crime as a member of an organized group.
- By committing the crime exposing others to danger of health damage or death.
- Committing the crime in order to gain considerable benefit for himself/herself or other persons.
- By committing the crime causing serious health damage.
- Committing the crime in order to gain considerable benefit in large extent for himself/herself or other persons.
- Committing the crime as a member of an international organized group.
- By committing the crime causing death.

In the **Act no. 326/1999 on the Residence of Foreign Nationals in the Czech Republic** there is **§ 42e** that conditions legal stay for victims of THB in the Czech Republic. It grants the reflection period for victims of THB. After or during the reflection period a person can decide to cooperate with the police then he or she is granted a long term residence permit in the Czech Republic. To gain this type of residence permit potential victim needs to enter the National program of protection and support for victims of THB and needs to receive a statement from the law enforcement authorities, that he or she is a potential victim of trafficking in human beings based on the victim's testimony.

II. Available case-law and data on labour exploitation:

There is only a little statistical evidence on trafficking in human beings for the purpose of labour exploitation in the Czech Republic. We were able to gather statistics for the year 2008. In 2008 police detected 29 crimes of trafficking in human beings. Out of this number 10 crimes were committed for the purpose of forced labour (3 offences were detected in 2007 – this might show growth of this crime). None of these 10 cases were solved. Until now there is no court decision on any case of trafficking for the forced labour purpose.

There are no detailed statistics on the sectors of labour exploitation and the country of origin. If we look at the cases of clients helped by our organization (the Charity of the Archdiocese in Prague – Magdala project) and La Strada Czech Republic the sectors are mainly construction works, agricultural sectors or manufactories. As for the country of origin it is mostly Ukraine and Vietnam.

If we look at the statistics of migration we could also suspect possible nationalities at risk and areas of work eligible for exploitation. Statistics available for the year 2008 shows that most frequent third country nationalities registered at the labour offices in the Czech Republic was Ukrainian, Vietnamese and Mongolian. As for the working areas the most non EU citizen workers were registered for Agriculture, forestry and fishing work, Manufacturing and Construction work.

Trend in the Czech Republic in employing aliens of third country nationalities is the Client system based on activities of intermediate work agencies cooperating internationally. They are abusing lack of knowledge of immigrant workers on the legal situation in the Czech Republic concerning working permission and working conditions.

Ways to exploitation:

- working permission

To gain a legal working permission for third country nationalities one has to find an employer who is willing to employ him/her and is entitled to do so. After that a person needs to apply for the working permission at the labour office concerning the place where the employer is based. But this can be only done from a person's country of origin. If he or she is given the

working permission, than he/she can apply for working permission visa. Only after that one can legally work and live in the country. The working permission is valid only for one year and only for this one employer. So if a worker loses his/her job, his/her stay in the country becomes illegal. The Labor Code as well says that an employer is entitled to immediately end the employment if the employee defies his/her duties ensuing from legal regulations. Because there is no specific definition on what the duties are, it puts the migrant worker into a very vulnerable position.

There is other way how they can stay legally in the country and work. A foreigner can work on special working permission for the purpose of business (working with the business licence). To receive this kind of visa is much easier but it puts the migrant worker into even more vulnerable position.

Agencies give false information about working permission and conditions under which foreigners can work in the Czech Republic. As a result many of them will find themselves illegal very short after their arrival into the country.

- dependency on intermediate work agencies

To hire an agency to find a job seems like the best way how to get working permission in the Czech Republic. On the other hand it creates a great dependency of the foreigner on the agency. It is the language barrier and lack of valid information that makes the dependency even bigger. For example foreigners do not know that agencies in the Czech Republic are banned from receiving any payments from personal entity for mediation of work neither the agencies can ask for payroll deduction or other fees paid by the job seeker.

Among the most frequent types of oppression from the intermediate work agencies is:

- Threatening by ending the employment and losing the work permission.
- Paying fees for mediation of work and other expenses connected with it.
- No refundation of overtime, holiday or sick leave.

III. Governmental response to the problem of trafficking in human beings

Responsible National Governmental institution

Since 2003 the Ministry of Interior (MoI) filled the main coordinating role in the fight against trafficking in human beings in the Czech Republic. The Crime Prevention Department is responsible for the support and protection of victims of trafficking in human beings. Every year it publishes a special subsidy program for NGOs under the title of „Prevention of Trafficking in Human Beings and Assistance for Victims of Trafficking“. It also has the role of the National Rapporteur.

Since 2008 there has been established the Interministerial Coordination Group for Combating Trafficking in Human Beings (IMCG) under the coordination of MoI. The first meeting of the IMCG was held on 16 December 2008 and since then the IMCG will convene at six-month intervals. The IMCG consists of permanent members who are the chair, the executive vicechair, and a secretary. The chair is the Minister of the Interior and the executive vice-chair is the Deputy Minister of the Interior for Internal Security, while the office of the secretary is held by the director of the Security Policy Department. Permanent members of the IMCG are representatives of individual ministries (the MoI – including representatives of the Office of the Criminal Police and Investigation Service, the Unit for Combating Organised Crime, the Alien Police Service, and the Refugee Facility Administration, the Ministry of Justice including a representative of the Supreme Public Prosecutor’s Office and the Institute for Criminal Sciences and Social Prevention, the Ministry of Education, Youth and Sports, the Ministry of Foreign Affairs, the Ministry of Labour and Social Affairs, the Ministry of Health, the Government Council for National Minorities, the Government Council for Human Rights, and the Government Council for Equal Opportunities) as well as representatives of non-governmental and non-profit making organisations dealing with the issue of trafficking in human beings - La Strada Czech Republic, o. p. s. and the Magdala Project of the Archdiocese Charity Prague and there is also a representative of the International Organisation for Migration Prague.

The IMCG is responsible for coordinating activities in the area of combating trafficking in human beings and meeting tasks arising from relevant documents. The IMCG serves as a platform for the mutual exchange of information among members of the inter-ministerial group regarding the actual situation and current activities concerning trafficking in human

beings and for active submission of proposals and recommendations for measures to be adopted. IMCG is also responsible for submitting proposals for activities to be carried out at the inter-ministerial level in the fight against trafficking in human beings and it collects, analyses and evaluates data on trafficking in human beings. In addition to the IMCG a smaller group of experts meets approximately once a month at coordinating meetings. The group operatively solves actual problems concerning individual victims of trafficking in human beings and discuss the limits of the Program on protection of victims.

Since 2006 there has been established a special sub-unit within the Unit for Combating Organized Crime of the Criminal Police and Investigation Service of the Police of the Czech Republic specializing in trafficking in human beings for the purpose of forced labour. It is a unit with a republic-wide competence which works on and documents criminal groups of offenders who commit crimes in the field of trafficking in human beings. Further it gathers evidence for the criminal sanctioning of offenders and collects information on the distribution of criminal organizations operating in the area in question.

There is also a bilateral agreement between the Ministry of Labour and Social Affairs and Customs administration under which there have been established a control group to check on the labour sectors which are very likely to illegally employ foreigners.

Under the Czech government resolution no. 67 from January 2008 concerning the National strategy to combat trafficking in human beings a Working Group on Forced Labour and Other Forms of Exploitation was established. Its task was to analyze the situation and to submit a criminal law definition of forced labour or new constituent elements of offences such as ‘serious forms of labour exploitation’ and ‘serious forms of violations of labour law regulations. New constituent elements should define the punishment of ‘illegal employment’ including the different length of sentences according to the gravity of exploitation of a labourer by an employer”. The MoI became the principal responsible party. The working group consists of members of the Ministry of Interior, the Ministry of Labour and social Affairs, the Ministry of Justice, the Supreme Public Prosecutor’s Office, the *Unit for Combating Organized Crime of the Criminal Police* , and La Strada Czech Republic. The outcomes of this group for the year 2009 has not been published yet.

IV. Victim protection and assistance in practice

The National program of protection and support for victims of THB (Program) is run by the Ministry of Interior and offers its users 3 basic services: 1. legalization of their stay in the Czech Republic during the investigation and criminal proceedings, 2. crises intervention and additional support in resocialization (if they decide to cooperate with the police and receive long term residence permit), 3. safe return to the country of origin and arrange for them additional social service in their home country (if they decide not to cooperate or want to go back to their country of origin).

This service of the program is provided by NGOs (namely the Charity of the Archdiocese in Prague – Magdala project and La Strada Czech republic) which are registered under the Act no. 108/2006 Coll. on Social Services and are partners of the Program.

They provide support to the victims including social and psychological care, legal counseling, safe accommodation and financial support. They can also arrange other services for the victims that will correspond with their needs and will help them with the process of integration.

The Ministry of Interior also cooperates with intergovernmental organization International organization for Migration Czech Republic in order to organize safe returns for the victims to their country of origin. Any victim is entitled to this service anytime after entering the program of MoI. It covers travel expenses and transmission to a helping organization in the country of origin.

To enter the Program the victim has to be identify by a specialized NGO or by the police and needs their recommendation. There is also another reflection period of 60 days (apart from the residence permit under the Act. on Residence of Foreign Nationals in the Czech Republic) granted by the program when the victim can decide whether he or she is willing to cooperate with the law enforcement authorities or not.

Type and duration of residence permit and access to the medical and psychological care assistance

According to the Act no. 326/1999 Coll. of the Czech law which regulates residency permit of foreigners in the Czech Republic there is a special long term residency permit granted to the

victims of trafficking in human beings under the paragraph 42e – *Long term residence for the purpose of protection in the country*.

This permit grants stay for at least six months and it is possible to renew it as many times as it is needed. Even though it says in the paragraph that the victim has a right to the reflection period of one month this permit is only for those victims who are willing to cooperate with the police. In practice to gain this permit they have to be already cooperating with the police and be recognized by it as victims of THB on the basis of their testimony.

With this permit the victim has an access to the medical care with the same rights as Czech residents and the state pays for his/her medical insurance. Also the person can legally work in the Czech Republic without working permit.

There are two other possible types of short term residence permit that are given to the victims of trafficking to cover the two months reflection period within the frame of the Program although they have not been primarily designed for this purpose.

It is the *Exit visa* under the §50 of the Act no. 326/1999 which allows its holder to stay for maximum of 60 days (usually given to those whose personal documents were lost or taken away during the trafficking, or his/her visa is invalid, or have status of expulsion). If the victim is willing to cooperate his/her stay is prolonged with the long term residence permit mentioned above. With this type of visa, there is no access to the medical care. The assisting organization has to pay all fees for any medical treatment a person needs.

The second permit is the *Visa of residence for the purpose of endurance* (§33 section b). It allows its holder to stay for more than 90 days. With this permit the victim has an access to the medical care. If he/she decides to cooperate with the police the visa is changed for the long term residency permit for the purpose of protection in the country.

V. Civil society: identification and assistance

Identification of victims

Victim of trafficking of human beings for forced and exploitative labour are usually identified either by an NGO or police through an investigation or the victim him/her self turns to the police or NGO.

There are several nongovernmental and governmental Organizations in the Czech Republic that provide services to potential victims of trafficking – centers for migrants and asylum

seekers – that can possibly suspect a person in danger of trafficking or exploitation at work. They can arrange contact with an organization specializing in providing service to the victims of trafficking.

Assistance and activities of NGO

There are three nongovernmental organizations which are active in the fight against trafficking in human beings and cooperating with the Governmental program of MoI on support and protection of victims of trafficking in human beings.

Among those organizations are La Strada Czech Republic, the Archdiocese of the Charity in Prague – Magdala project and IOM Czech Republic.

None of these organizations are specializing only in the fight of labour exploitation, but covers all areas of trafficking and exploitation.

La Strada and Magdala project offer counseling, legal assistance and representation, psychological and social assistance, mediate legalization of residence in the Czech Republic during the investigation proceedings, mediate medical help and medical treatment and other services in order to help its clients with integration into the Czech society. Magdala project and La Strada also run street work programs where they can also identified possible victims of THB. Among their activities are also preventive activities and advocacy in favour of victims and their human rights with the government. They also focus on informing the public sector on the issue of trafficking in human beings.

IOM plays also very important role in negotiating with the state representatives and in reporting on the subject in the Czech Republic. In the National program on support and protection of victims of THB, IOM organizes safe returns to the countries of origin and additional services for the victims in their home land.

Conclusion

Czech Republic has been active in fighting Trafficking in human beings for almost ten years now. During this time a lot has been done in improving legislation and cooperation between the state and civil organization. Nevertheless there are still some gaps that need to be filled. According to what has been written above the criminal offence of Trafficking in human beings for the purpose of force labor is very difficult to prove. Its victims usually step onto grounds of the Czech Republic legally but here are being abused by the Client system through

the job mediation agencies. Therefore it is clear that we need to take steps further in making changes in our legislation and some other in the protection of victims as well.

The recommendations are:

- 1.) Clarify the definition of reflection period within the frame of a permit on staying in the Czech Republic for victims of trafficking in human beings.
- 2.) Include the criminal offence of forced labour and exploitation at work into the Criminal Code of the Czech Republic.
- 3.) Implement the legal responsibility of legal entity into the legal system of the Czech Republic.

List of Contacts

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Sources:

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