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## Why is there a low number of prosecutions of THB for forced labour in Poland?

**Introductory note.** This study was prepared as part of the **CAPE** Project carried out by the Council of the Baltic Sea States. The basis for its preparation was a contract that I signed with the Ministry of Labor of Latvia, with the participation of the DA&MP of the Ministry of the Interior and Administration in Poland.<sup>1</sup>

### Executive Summary

Research commissioned by the Human Trafficking Studies Center of the University of Warsaw (HTSC) in December 2020 shows that 53% of Poles know nothing about forced labour or do not notice this problem. On the other hand, when asked who should deal with this matter, the respondents claimed that it is the task of the state (two-thirds). The same research shows that Poles are aware that the victims of forced labour are usually migrants/foreigners.

This is the starting point for considering why there are so few criminal cases related to forced labour in Poland. In fact, this question touches on the most important issue, which is the effectiveness of the entire state apparatus, and of law enforcement agencies and courts in particular. In order to put the considerations presented here in the right context, I referred to the "3Ps" international paradigm, which is a sort of fundamental framework used to describe combating human trafficking. These "3Ps" are *prevention*, *protection* and *prosecution*. The last "P" mentioned here concerns what interests me most in this report – the effective prosecution of perpetrators. Let me add, however, that there is also a fourth "P", which is little known in Poland – *partnership*. This "P" turned out to be crucial for the conclusions of this report.

This is why the thesis I put forward in this report is as follows: **in Poland, there are few criminal cases regarding forced labour because there is no system of joint actions covering all actors** (law enforcement agencies, prosecutor's offices, courts, NGOs, etc.) **responsible for prosecuting perpetrators of this crime**. All these entities do not operate in a **partnership** aimed at convicting the perpetrator. It is much more common for them to treat their functions as autonomous, not linked in any sense, compete with each other, not trust

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<sup>1</sup> This report is, in a sense, supplementary to the paper: J. Muraszkiwicz, New discussions on the complicated relationship between Poland and forced labour, Council of the Baltic Sea States (CBSS), CAPE, see: [https://cbss.org/wp-content/uploads/2020/09/CAPE\\_Poland.pdf](https://cbss.org/wp-content/uploads/2020/09/CAPE_Poland.pdf)

each other, not have reliable data, and try to shift responsibility to other participants in the social process. In such an institutional, social and mental climate, the number of criminal cases cannot be high.

Let us start with legislation. In my opinion, there are four important gaps in Polish law that significantly affect the low number of criminal cases. The first one is the lack of a constitutional norm that, apart from the principle of the freedom of labour, would prohibit forced labour (of course with standard exceptions). The second is that the Polish Labour Code does not make it clear at any point that forced labour is prohibited. Thirdly, there is no crime of forced labour in Polish criminal law, so the most-effective instrument for prosecuting perpetrators does not exist. And fourthly, the Polish legal system does not contain a definition of forced labour, apart from the definition incorporated from the ILO Convention of 1930. This would be extremely useful for law enforcement agencies and courts.

As far as institutional infrastructure is concerned, my research shows that none of the key institutions have introduced internal regulations and special procedures that would apply to the effective elimination of forced labour. Also, none of them refer to the existence in Poland of the OSCE National Referral Mechanism (NRM) recommended by the EU. On the other hand, all of the analysed institutions claim that this is why they modify their internal structure and conduct appropriate training – the Border Guard seems to be especially good at this. However, neither of these activities is subject to external and independent evaluation.

Official data submitted by law enforcement agencies and the Ministry of Justice show that the Police and Border Guard initiate very few forced labour cases (proceedings) – three or five per year is hardly a success, even 10 would not be a great result. This is especially true when one considers that the number of victims of various forms of enslavement in Poland is estimated to be 120,000. Simplifying the argument somewhat, I would risk saying that even if the prosecutor's office units initiate or conduct a significant number of cases (e.g. 135 in 2017), only a dozen or so indictments are brought to the courts every year.

Since we are talking about forced labour, the key role should be played by the National Labour Inspectorate (NLI), but this institution sees its role differently, focusing on the “employment rights of foreigners”. As a result, the NLI did not identify a single forced labour victim, while together with the Border Guard it conducts joint inspections (rather few looking at the needs) of the legality of the employment of migrants.

There are very few criminal court cases that concern forced labour in Poland, but analysing the existing judgments to look for reasons why there are not more similar cases does not seem to be a particularly fruitful activity. Nevertheless, a review of the content of selected judgments confirmed several statements made by other researchers. First of all, when it comes to the subject of the decisions, cases in which the allegations concerned sexual exploitation definitely dominate, while forced labour in its “pure form” appears incidentally. As I mainly examined final judgments, I can say that it is quite common for the court of appeals to change the legal qualification made by the court of first instance, and sometimes fundamentally change the assessment of the facts, which results in an acquittal or a discontinuation of the proceedings. A characteristic feature of the court decisions was also relatively lenient penalties, as well as the application of extraordinary leniency by the court of appeals. Only in one case the court of appeals upheld a sentence in which the first instance court sentenced the perpetrator to seven years of imprisonment. It should also be noted that two of the ten verdicts

had passed in cases that lasted for a very long time, in one case it was seven years, and in the other 13. Although it is incidental, because in only one judgment of the court of appeals the term human trafficking was used/written in quotation marks. This is surprising, because the court sentenced the perpetrator for this particular crime.

The report also includes comments based on a very preliminary analysis of nearly 400 publications that have appeared in Poland in recent years and that, at least nominally, concerned forced labour. Adequate and longer publications are still few and far between, especially those of a more analytical nature, or so-called critical reportage. Simple notes or short articles of a purely informative nature (e.g. reports on arrests and trials) dominate.

An integral, and I hope a very important part of the report is an analysis of the 25 interviews I conducted during this project. All respondents were asked to answer the main question of this report and provide the broadest justification for their beliefs. The reasons given by the respondents for the low effectiveness of the prosecution of forced labour in Poland can be divided into five categories: 1) causes attributable to the victims; their "fault" is that they are socially weak, do not know Polish law and are deprived of support; 2) reasons related to the functioning of the criminal process – here, the most popular were difficulties related to collecting evidence against the perpetrators; 3) reasons related to the activities of law enforcement agencies and the judiciary were mainly a lack of motivation of officers, but also a lack of proper coordination of activities; 4) reasons that are assigned to the state as a political organisation – in practice, this is one "meta" reason that respondents define as the lack of interest in and sensitivity to harm to others, mainly foreigners, and 5) general and social reasons that result from the kind of society we are – mainly our lack of empathy, low trust in strangers and a specific "bitter-sweet" attitude towards labour.

**There are many factors that have resulted in so few criminal cases related to forced labour in Poland.** As many cases come before the courts as the complex system of interconnected vessels of criminal justice in its broadest sense is able to “produce”. At the symbolic basis of this system, there is a conscious and empathetic society, slightly higher are efficient and honest non-governmental organisations as well as modern and sensitive media. There are also well-trained and determined law enforcement agencies, over which there stands a prosecutor's office, whose officers present indictments to the courts and are ready to defend their case. And finally, the courts, under the healthy pressure of knowledgeable media and informed citizens, would have to modify a number of judges' misconceptions about the nature of human trafficking, forced labour and human rights. **However, the key weakness of the described system is the shortage of three key attributes of those times: awareness, shared responsibility for important social tasks and true partnership.**

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## Introduction

In many countries, the use of terms such as "human trafficking", "slavery" and "forced labour" puts people on mental alert, because they associate them with something bad and dangerous. This is not so in Poland. The research I conducted recently showed that very few Poles notice this problem (I will discuss this further on), and even fewer perceive its

seriousness correctly. While human trafficking still appears here and there, Poles associate forced labour at most with ancient slavery or Nazi labour camps. "Forced labour" belongs to a category of terms that from the point of view of language is described as relative, which means that their content largely depends on the reference system, and they are not precisely defined by their designata. This inevitably leads to the fact that such concepts are subject to changes over time, but also strongly depend on cultural context. When I say that something is "small", until I indicate a point of reference, such a description is worthless. The Egyptian pyramids are small compared with Mount Everest. On the other hand, if I say that this tree is "small", there is the obvious assumption in the background that it was even smaller before, and when it comes to the future, we cannot be so certain if the tree has already reached its peak size. From this point of view, the correct definition of concepts is key to a precise description of reality. In this case, to a precise answer to the question asked in the title.

Can I, therefore, be certain that every time I ask a question, all respondents understand it in the same way? I doubt it. When I ask which day follows Sunday, irrespective of whether we like Mondays or not, we have no problem indicating this day. But when I ask, for example, how many murders occurred in November 2020, the matter becomes much more complicated. My question seems precise, but there may be a significant margin of discretion in its interpretation. For example, because I don't prejudge whether the answer should also include attempted murder or not.

When we ask why there are so few cases concerning forced labour, we assume that such cases do exist, but that there are not many, and we must determine why this is so. On the other hand, we assume that all terms used in this title are precise and have their designata. I get the impression that it is not so easy with the term "forced labour". Of course, we have a legal definition, but it is too simple, and quite aged. According to the definition contained in Convention No. 29 of the ILO of 1930, forced or compulsory labour means any work or service required from someone under threat of any punishment and to which the given individual did not voluntarily consent. Already at first glance it is clear that this is not a useful instrument to describe and evaluate the effectiveness of law enforcement agencies in a country such as Poland. I will return to this matter in the next part of this report.

The second important comment applies to the relationships between the phenomenon of forced labour and the phenomenon of human trafficking.<sup>2</sup> There is no risk of error in stating that these two phenomena are inextricably linked. It is a contentious issue whether forced labour is "only" one form of human trafficking or if forced labour is a general category and human trafficking is only one of its symptoms, or a demonstration of a state in which a person is forced into a specific behaviour. To complicate the matter even further, let us say that there is one more concept in circulation – "modern-day slavery", which is sometimes treated as the broadest term that contains others. However, let us say that such a view has very strong opposition from experts, who are of the opinion that the sense of the term "slavery" was exhausted in the second half of the nineteenth century and we shouldn't return to it, even adding the term "modern-day". In other words, what we are dealing with today has nothing in common with traditional slavery.

The question in the title is in fact a question about the effectiveness of prosecution. To correctly define the extent of the considerations included in this report, the matter of the number of criminal cases must be placed in the right context. In this regard, the most helpful model is the model of effective elimination of human trafficking based on the "3Ps" schema, which outlines the attributes describing how we eliminate human trafficking. The number of these "Ps" varies. At the outset, it was "3Ps" – prevention, protection and prosecution – and this is the canon; then, there were "4Ps", and at present, the popularity of "5Ps" is increasing. This happened because at one stage, "partnership" received the status of the fourth "P", while the matter of the fifth "P" is slightly more complicated. The view that this is "participation" dominates; however, there are also people who support that this is "policy", meaning the creation of an appropriate policy or policies. However, this issue, while interesting, remains on the sidelines of my deliberations.

Either way, from the point of view of this report, we may not stop at "3Ps", even though one of them – prosecution – relates to effective prosecution of perpetrators. Still, it must be noted that the fourth one – the uncontested "P" of "partnership" – is the element that strongly influences the effectiveness of the state in putting perpetrators of forced labour before courts. Therefore, it is worth delving into what this is about. Because the Polish definition of

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<sup>2</sup> See among others: Special Issue of *Anti Trafficking Review*, No. 5 (2015): *Forced Labour and Human Trafficking*, but especially Editorial: *What's in a Name? Distinguishing forced labour, trafficking and slavery*, N. Piper, M. Segrave, R Napier-Moore; also: *The Palgrave International Handbook of Human Trafficking*, J. Winterdyk, J. Jones (eds), Palgrave 2020, Cham; as well as Z. Lasocik, *Forced labour – well-hidden mechanisms of dependence and enslavement*, *Archives of Criminology* 2021, T. XLIII , No. 1.

partnership (according to Słownik Języka Polskiego) is quite modest – that it is *being a partner to someone, keeping someone company, joint participation in something* – let us look to a different source. Encyclopedia Britannica of 1990 states that partnership means *voluntary association of two or more persons for the purpose of managing a business enterprise and sharing its profits or losses*. Therefore, it is reasonable to ask: are all entities responsible for effective prosecution of perpetrators of modern-day slavery partnering in a committed and responsible manner? Moreover, are they ready to share successes, but are they also ready for losses? In my opinion, no. And this is the problem we start with.

That is why the argument put forward in this report is: **in Poland there are few criminal cases related to forced labour, because there is no joint action system covering all actors** (i.e. local social services, NGOs, NLI (National Labour Inspectorate), law enforcement agencies, the prosecutor's office and the courts, as well as experts and the media) **responsible for prosecuting perpetrators of this crime**. The above-mentioned entities do not operate in true partnership aimed at achieving successes in a matter as important as efficient elimination of forced labour by prosecuting perpetrators. It is much more common for them to see their functions as autonomous not complex, compete with each other, not trust each other, not have reliable data, and try to shift responsibility to other participants of the social process.<sup>3</sup> In such an institutional and social climate, the number of criminal cases cannot be high.

The methodology of gathering data for the needs of this report departed somewhat from the typical procedure. It is usually limited to so-called desk research and analysis of existing data. In the first dimension, the typical methods are dogmatic analysis and literature analysis, and in the second dimension, they are statistical analysis and case studies. In the light of the existence of other studies on the subject, it made little sense to duplicate content contained elsewhere. All the more so because the title of the study clearly defined the author's task. Taking the content of the contract referred to at the outset seriously, I decided to greatly expand the scope of the studies, and thus apply more research methods.

First, I carried out an analysis of media content over the last two years. At the request of the Faculty of Political Science and International Studies of the University of Warsaw, a professional company carried out a review of the press, seeking terms related to forced labour. Second, also at the request of the Faculty of Political Science and International Studies of the

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<sup>3</sup> In 2019, I was in the United States, where as part of a science scholarship of The Kosciuszko Foundation, I conducted a research project called *Effectiveness of the Systems to Combat Human Trafficking and Forced Labor. American-Polish Comparative Study*. What we can definitely learn from Americans is actual joint responsibility for important social tasks, and true partnership.

University of Warsaw, a social research laboratory – SW Research – conducted a public opinion survey on human trafficking and forced labour on a representative sample. Third, I conducted 25 interviews on the number of criminal cases with people who represent various professional environments. I actually asked them all only one question – the question in the title. I will write more on this topic further on in the report.

For reasons that after these comments about the methodology are obvious, the structure of the report, and more precisely the proportions between its parts, had to be modified slightly.

## **Legal regulations on forced labour**

From the point of view of the objective of this report, deliberations on law should begin with four initial statements that are confirmed in the data and in the literature on the topic:

1. Poland is required to abolish all forms of forced labour under the international conventions to which it is party.
2. In Poland, labour is protected by the Polish Constitution, and the provision of labour is regulated by many legal acts – the Polish Labour Code first and foremost.
3. The prosecution of forced labour in Poland occurs based on provisions related to human trafficking (Article 189(a) of the Polish Penal Code), because one of the objectives of exploiting a victim is labour of a forced nature (Article 115 § 22 of the Polish Penal Code).
4. Polish law does not contain provisions that penalise forced labour as a separate crime. In Poland there is also no definition of forced labour that would be helpful for law enforcement agencies and courts.

Poland is a party to numerous international agreements that contain a prohibition of forced labour. The following are key in this number: Convention No. 29 of the ILO of 1930 on forced or compulsory labour, Convention No. 105 of the ILO of 1957 on the abolition of forced labour, the European Convention on Human Rights and Fundamental Freedoms of 1950, and the International Covenant on Civil and Political Rights of 1966.

The constitutional protection of labour is confirmed in two legal provisions. The first is Article 24, which states that *Labour is protected by the Republic of Poland. The State shall exercise supervision over the conditions of labour.* If we add that it is found in Chapter I of the Polish Constitution, it becomes clear that labour protection is one of the main principles of

the Republic of Poland. It is also clear from the above-mentioned provision that it is up to the state to regulate labour relations and the conditions of its performance. That is all when it comes to the level of systemic foundations, because the Polish Constitution is silent when it comes to the details of labour protection and state supervision. However, it can be reasonably argued that this general formula implies an obligation to eliminate situations in which labour is used contrary to its essence, for example, as an instrument of control or human exploitation. On the other hand, it seems natural to expect that the state will protect all participants of the labour market.

In a sense, Article 65 of the Polish Constitution, which concerns *the freedom of choice and the freedom of profession and workplace*, builds on this constitutional principle. Point 1 of this article states: *All individuals are guaranteed the freedom to choose and perform a profession and to choose a workplace*; this makes numerous representatives of the doctrine of constitutional law believe that the provision of Article 65 of the Polish Constitution of the Republic of Poland contains three key rights: the right to choose and perform a profession, the right to choose the workplace, and the right to protection against forced labour. Such reasoning was also confirmed by the Constitutional Tribunal, for example, in the judgement of 26 April 1999 (case K 33/98). All this allows me to say that the Polish Constitution in some sense imposes a prohibition of forced labour, even though it is not formulated outright. Of course, it would be better if the Polish Constitution left no doubts in such an important matter. This is the first of several loopholes in Polish law that hinders the efficient prosecution of forced labour.

On the other hand, the provision of Article 65(2) of the Polish Constitution provides that *"An obligation to work may only be imposed by an act"*. This regulation gives rise to two important matters. The first: the Polish Constitution creates a legal basis for restrictions on the freedom of work, referred to in almost all of the above-mentioned acts of international law. In particularly justified cases, the state may impose on its citizens the obligation to perform certain actions or work (for example, defence needs, a state of natural disaster, etc.). The second: the Polish Constitution differentiates between forced labour and compulsory labour. In the above-mentioned provision, there is a clear mention of an "obligation", not forced labour. I will have to return to this problem when discussing the definition of forced labour.

The freedom to undertake work and employment is also guaranteed at the level of labour law. Similarly to the Polish Constitution, the Polish Labour Code also features a relevant provision among the key principles of this branch of law. Article 10 § 1 of the Polish Labour



Code states that *Everyone has the right to choose their work freely. Except for the cases specified in the act, no one may be prohibited from performing a profession.*

On the other hand, the provisions of Polish law guarantee recognition of the subjectivity of those who enter into relationships arising from the fact that they perform labour. That is how the provision of Article 11 of the Polish Labour Code should be interpreted – it specifies that *Establishing an employment relationship and determining work and remuneration conditions, irrespective of the legal basis of this relationship, requires a unanimous statement of intent from the employer and the employee.* The passive role of the state as a regulator of the relationships arising from work and employment raises some doubts. However, the legislator noticed one shortcoming, and partially corrected their mistake by introducing Article 11(1) of the Polish Labour Code, which states that *Employers are required to respect the dignity and other personal rights of employees.* The role of this provision grows if we realise that forced labour is almost always related to the violation of fundamental human rights, particularly dignity.

From the point of view of the objective of this report, several provisions should be noted that concern the elements of labour that are often taken advantage of by unfair employers as instruments of oppression and exploitation of the employee. Article 13 of the Polish Labour Code relates to the right to decent remuneration, Article 14 governs the right to rest, and Article 15 requires employers to provide safe and hygienic work conditions. In addition to being forced to perform specific activities, forced labour usually takes the form of an unjustified decrease in remuneration, forcing someone to work excessively, or disregarding the basic conditions of work safety.

As a result of these regulations, the Polish Labour Code also now regulates the matter of liability for violating employee rights – mainly those mentioned above. Relevant provisions were included together in the section of the Code that is conventionally described as criminal labour law. However, it must be highlighted that in the said provisions, the national legislator also referred to the matter of exploiting someone else's work or forcing people to work. What is more, the Polish Labour Code does not contain terms such as sweated labour and exploitation, i.e. situations and circumstances that are inherent elements of forced labour. As mentioned above, it should be noted with appreciation that the issues related to freedom of employment and the protection of employee dignity have been regulated; however, this does not change the fact that there is no provision that would directly formulate a prohibition of forcing people to work.

Since we are discussing matters of the labour market, I should mention the Polish Act of 15 June 2012 on the Effects of Entrusting Work to Foreigners Residing in the Territory of the Republic of Poland in Violation of the Regulations<sup>4</sup>. Pursuant to Article 10 of this act, it is forbidden to entrust the performance of "work to a foreigner who resides in the Territory of the Republic of Poland without a valid document under particularly exploitative working conditions". Such particularly exploitative working conditions mean, in practice, working conditions or other circumstances related to the provision of work that infringe upon human dignity. Therefore, we are once again dealing with a situation in which while not directly, the legislator refers to the matter of forced labour, unequivocally expressing their negative opinion on such practices. While this regulation refers only to foreigners, we must remain hopeful that it is a sign of change occurring in the awareness of lawmakers in Poland. It is a pity, however, that these changes are so slow.

I would like to make one terminological note at the end. When talking about forced labour with experts in various fields, I noticed that they struggle to differentiate between two phenomena – labour and employment. Broadly speaking, labour is effort comprising mental and physical activities undertaken by an individual to accomplish a purpose, which is often some specific good. On the other hand, employment is labour, but strictly in the legal sense, meaning that this is involvement of the said work, i.e. effort, in the activity of another entity (for example, an economic one) based on an agreement between two parties. Therefore, labour is a creative effort, and employment is a legal relationship. We should remember this, because a victim of forced labour can be both someone who is performing work as part of employment and someone who has been forced to perform certain activities by the power of tradition, or by force, threats or blackmail.

To summarise this part of the deliberations, I can clearly state that the provisions of the above-mentioned international legal acts to which Poland is party impose the obligation on our country to eliminate forced labour. The provisions of the Polish Constitution and the Polish Labour Code guarantee labour protection, freedom of work and appropriate working conditions, but the Polish Labour Code does not clearly state anywhere that forced labour is prohibited in Poland. This is the second loophole in Polish law.

Because the aim of this report is to answer the question concerning prosecution of crimes, the most important aspect are provisions in the field of criminal law. In the present case, this

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<sup>4</sup> Polish Journal of Laws of 2012, item 769.

is the Polish Penal Code adopted in 1997 (Polish Journal of Laws of 1997, No. 88, item 553), which has had a provision about human trafficking right from the outset. In the beginning, this was Article 253, and after the Polish Penal Code was amended, by way of the Polish Act of 20 May 2010<sup>5</sup>, this was Article 189(a)<sup>6</sup>.

At the outset, it is important to highlight two matters. First, the crime of human trafficking is found in Chapter XXIII of the Polish Penal Code entitled *Crimes against freedom*. This is an important circumstance, particularly if we note that before the amendment, this crime was classified in the category *Crimes against the public order*. Second, the new version of the provision also penalises preparing to commit this crime (§ 2), which is a step in the right direction.

The second crime that is present in the Polish Penal Code that is somehow associated with human trafficking is so-called illegal adoption (in the previous version of the Penal Code, both of these crimes were regulated in one article – Article 253). Currently, the provision on adoption is found in Article 211(a)<sup>7</sup>, in the chapter on crimes against the family and guardianship. I will stop at this observation, due to the fact that this is not about detailed analyses.

In Polish penal law, there is one more provision related to the problem of human trafficking. This is Article 8<sup>8</sup> of the Provisions Implementing the Penal Code, which penalises slavery and the slave trade. For obvious reasons, I am leaving the matter of the scope of penalisation and the location of this provision to the side.

To summarise my deliberation on criminal law, I must state that in the Polish legal order, there are three provisions pertaining to the phenomenon that we collectively refer to as human trafficking, but none of them concerns forced labour. In other words, Polish criminal law does not include the crime of forced labour, and so the most effective instrument of prosecution does not exist. This is the third loophole in national legislation.

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<sup>5</sup> The Act of 20 May 2010 amending the Penal Code Act, the Act on the Police, the Act on regulations introducing the Penal Code, and the Code of Criminal Procedure Act (Polish Journal of Laws of 2010, No 98, item 626).

<sup>6</sup> §1 Whoever traffics in human beings shall be subject to the penalty of the deprivation of liberty for a minimum of three years. §2 Whoever makes preparations to commit the offence specified in §1 shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years.

<sup>7</sup> Whoever in order to gain material benefits, organises the adoption of children in violation of the act is subject to imprisonment of between three months and five years.

<sup>8</sup> Whoever causes a person to go into a state of slavery or keeps them in this state, or is involved in the slave trade is subject to imprisonment of not less than three years.

The original code regulation (prior to the amendment of 2010) had the weakness that despite the classification of human trafficking as a crime, there was no definition of this crime in the penal code. Because this state of affairs was assessed critically, a dozen or so years after the Code was adopted, it included two important definitions, i.e. human trafficking (Article 115(22))<sup>9</sup> and slavery (Article 115(23))<sup>10</sup> – both were introduced by the Act amending criminal law of May 2010.<sup>11</sup> I will leave the definition of slavery to the side, because it does not bring any benefit to these deliberations.

We must focus on the definition of human trafficking, but only insofar as it applies to forced labour.<sup>12</sup> First of all, it must be noted that it is based on the definition contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000<sup>13</sup>, also known as the Palermo Protocol. It is not identical to the international one, but it replicates the way that trafficking in human beings is defined through: 1. defining the methods that perpetrators use to "acquire" victims, 2. methods of enslaving victims, and 3. the purpose it is all designed to serve. Because the convention definition was meant to cover a fairly broad range of actions, one of the goals of the exploitation of a victim of this crime was also forced labour. In the English version of the Protocol, this is reflected in the use of the phrase "forced labour and services". However, for the purposes of creating a Polish version of the

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<sup>9</sup> Article 115(22) of the Polish Penal Code. "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of:

- 1) violence or unlawful threats,
- 2) abduction,
- 3) deception,
- 4) misleading, the exploitation of a person's mistake or their inability to properly comprehend the action being undertaken,
- 5) abuse of a relation of dependence, taking advantage of a critical situation or state of helplessness,
- 6) giving or receiving payments or benefits or a promise thereof to achieve the consent of a person having control over another person

– for the purpose of exploitation, even with the person's consent, in particular in prostitution, pornography, or other forms of sexual exploitation, labour or services of a forced nature, beggary, slavery or other forms of exploitation degrading human dignity, or for the removal of cells, tissues, or organs against the regulations of the article. Should the perpetrator's behaviour concern a minor, it shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in points 1-6."

<sup>10</sup> Article 115(23) "Slavery is a state of dependence in which a human is treated as an object of property."

<sup>11</sup> Polish Journal of Laws of 2010, No 98, item 626.

<sup>12</sup> Given the purpose of this report, I am avoiding an extensive discussion on the phrase, precision and legal dimension of this definition. Let us simply state that in the opinion of pundits, it is casuistic in relation to both the features of the act and the manner of its commission and its subjective side. It is easy to specify an act by a perpetrator that will constitute human trafficking, but in the light of this definition, it will not be classified as a crime under Article 189(a) (human trafficking), for example, if the perpetrator seduced the victim, and the definition is silent about such a *modus operandi*. On the other hand, other terms are either not very precise, or similar to each other – for example, deceptive conduct and misleading.

<sup>13</sup> Polish Journal of Laws of 2005, No 18, item 160.

Convention, this term was translated as *labour or services of a forced nature*. This peculiar "carelessness" of the translator had serious consequences for the shape of Polish law, because in the definition of the said Polish Penal Code, the phrase that appeared was the same as that in the translation of the Protocol: *labour or services of a forced nature*, not forced labour and services. And here, a very important terminological and linguistic issue appears, because this quite casual translation can fundamentally change the meaning of the phrase used. It is legitimate to ask: are the definitions that something is "forced" and that something is "of a forced nature" equivalent? Are they synonymous? It seems not.

The overall shape of the definition of human trafficking, and in particular the regulation of forced labour also raises other controversies and may have a negative effect on the case law of the courts. Because this report is devoted to this issue, a little more attention should be paid to it.

Let us begin with the most important matter, which is also the starting argument of these deliberations: despite the fact that forced labour appears in the definition of human trafficking as one of the goals of exploitation, the Polish legal order does not contain a definition of forced labour as such. And this is the fourth loophole in Polish law that hinders the prosecution and bringing to justice of perpetrators of this crime.

It must be admitted that the opposite claim also has numerous supporters. They argue that the definition of forced labour found in ILO Convention No. 29 of 1930 is part of Polish law. At first glance, this argument seems sound; however, the matter is more complicated than just the existence of two different points of view on the same issue. The problem is that the definition of forced labour in general raises serious doubts.

Let us start at the beginning. The title of the Convention of 1930 mentions that it concerns "forced or compulsory labour". Since this is the case, consequently, in Article 2(1) the international lawmaker states that *For the purposes of this convention, the expression "forced or compulsory labour" means any work or service required from someone under threat of any punishment and to which the given individual did not voluntarily consent*. I do not think there are any doubts that this is a definition concerning two quite different situations, i.e. "forced labour" and "compulsory labour", which the authors of the Convention confirm by using quotation marks. Therefore, let us take a look at the individual formulations comprising these expressions. According to the Polish dictionary Słownik Języka Polskiego, "forced" means *arising from necessity or imposed by circumstances*, and "force" is *pressure exerted on*

*someone or circumstances forcing someone to do something*. So, something is forced if it is irrevocably forced on an individual, often against their interests. On the other hand, "compulsory" means *belonging to someone's duties, arising from established laws, regulations or conventions*. Thus, there is a compulsion, because this is apparent in the law or in professional pragmatics or common decency. Even a cursory analysis of the dictionary "understanding" of these two concepts leaves no doubt that "forced" and "compulsory" are not synonymous. After all, something that is compulsory does not have to be forced, and something that is forced also becomes compulsory. A student is required to sit an exam, but you can't force them to do it. A prisoner of a labour camp must work, under the threat of death, but they are also required to work.

We can reach a similar conclusion by analysing the linguistic structure of this expression. Since the Convention mentions "forced" **or** "compulsory" labour, we must draw some conclusions from such a formulation. The key here is to use the conjunction "or" and not, for example, "and" or "as well as". The word "or" appearing here as a conjunction basically settles the matter, because this is the part of speech that signifies an alternative or an exclusive alternative. This means that logically speaking, forced labour and compulsory labour cannot be the same thing.

The next controversial matter is the formulation itself. Let us note that section 22 of Article 115 of the Polish Penal Code refers not to "forced labour", but to "labour of a forced nature". The question therefore arises – are these terms identical? However, because this trend of thought hardly appears in the scientific literature, we must follow our intuition, which suggests that the content of these terms varies. Of course, this is neither the time nor place for a detailed theoretical analysis, but it must be highlighted that this circumstance may have a significant influence on judicial decisions. First of all, because it is difficult to interpret, also for the courts. The expression used is imprecise and not very clear, and so it may result in serious interpretation problems, and what follows, also difficulties in the application of the provision that penalises the said behaviours. This may cause difficulties in determining criminal liability for this offence. After all, according to the principles of linguistic interpretation, Polish law prohibits a synonymous interpretation (Directive D9), which means that one may not assign the same meaning to passages in a legal text that are similar but differ from each other. An often-quoted example of this is the interpretation of two expressions – "public officer" and "person performing a public function" – they are certainly similar, but are definitely not identical. Again, it is regrettable that no one has studied this issue in detail, but

it seems legitimate to say that when adjudicating, judges may have a problem with this discrepancy. Whether this translates into their tendency to recognise certain facts as forced labour or not remains an open issue that should be studied further.

This is not where judges' problems end in regards to the dilemma of whether the facts contained in the indictment that they are analysing is a case of forced labour. If they wanted to look to other legal acts, they would face many difficulties, because there is a variety of formulations and grammatical structures. Therefore, I would like to perform a brief overview of the relevant expressions contained in all key legal acts. I have already mentioned the ILO Convention of 1930 – it contains the expression "*forced or compulsory labour*", with the questionable conjunction "or". In listing the forms of exploitation, the Palermo Protocol of 2000 in Article 3 states that one of them is *forced labour or services* – "services" appear here for the first time, but there is no more mention of compulsory labour. Although no longer in force, an important document was the framework decision of the European Union of 2002, which referred to *exploitation of that person's work or services, including in the form of, at least, forced or compulsory labour or services*. What is noteworthy in this formulation is the fact that there is some sort of gradation of the forms of exploitation of labour. The next act of international law is the Convention of the Council of Europe of 2005, which in Article 4 states that exploitation shall include, at a minimum, *forced labour or services* – again, here we are dealing with the alternative, but compulsory labour disappears. Next, Article 2 of **the Directive of the European Parliament and of the Council of 2011** allows the assumption that exploitation includes, inter alia, *forced labour or services*, the same as above. And finally, there is the Polish Penal Code, which mentions *labour or services of a forced nature*, with the above-mentioned consequences of the usage of this phrase. One could say a lot about this terminological "jumble", but not that it facilitates work for law enforcement agencies, the Prosecutor's Office, and most of all, the courts. A little bit of order would go a long way, but I will still return to this matter.

Another doubt with the term "labour or services of a forced nature" is related to its legal context. The whole phrase of Article 115 where this term is used reads as follows: ... *labour or services of a forced nature, begging, slavery or other forms of exploitation degrading human dignity*... The question is whether the expression *exploitation degrading human dignity* refers to all the forms listed or just to *other forms* that degrade human dignity? In other words, is forced labour only such labour that degrades human dignity? A negative answer seems obvious and logical, but is it common? If we take the position that human trafficking

and forced labour are a violation of human rights, a situation in which we are dealing with forced labour that is not at the same time a violation of these rights, including the most important one – human dignity – is out of the question. Thus, we must assume that the expression *degrading human dignity* refers to other ways of exploiting humans. Let us put it this way: there are other forms of exploitation of humans than forced labour that have this negative trait that they violate human dignity. But is this matter equally obvious to the Prosecutor's Office and the courts?

There is no doubt that in Poland, the principle of freedom of work is in force, labour is protected by the state, key elements of labour, such as remuneration and leave, are legally protected, and there are laws that require employees to be treated with respect. On the other hand, there are provisions that punish human trafficking, and one of the forms of exploitation of the victims of this crime, which is forced labour. Does this mean that there is no forced labour in Poland? Nothing could be further from the truth. Estimates by one of the most professional institutions show that in Poland, there could be up to 120,000 people in this situation.<sup>14</sup> Does the state have instruments that allow an effective response to cases of forced labour? Definitely not, which is evidenced by the extremely modest number of convictions for forced labour. Another piece of proof of the indolence of the state can be seen in the National Labour Inspectorate, which long ago retreated from the front lines of the war against forced labour to the safe rear, where it can control documents about leave and provide detailed descriptions of OSH (*occupational safety and health*) conditions. I think that this matter is unjustly overlooked in the debate on modern-day slavery in Poland, because in many countries, it is the labour inspection services that are at the head of the crusade against forced labour.

Conclusion. As regards the law, two “therapeutic” recommendations are clear from this diagnosis. Firstly, due to the lack of creativity and the warped opportunism that characterises the broadly understood judiciary in Poland, it is necessary to develop a definition of forced labour. Second, given the existing regulations, provisions must be created that clearly penalise forced labour as a separate crime in its various forms. Therefore, we must remember that at present, behaviours involving exploitation of someone else's work are only penalised if it is

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<sup>14</sup> Global Slavery Index 2018.



performed by someone who is also a victim of human trafficking. Our knowledge clearly shows that not all victims of forced labour are victims of human trafficking.<sup>15</sup>

### **Analysis of official data**

For the purposes of this report, official data were provided by the National Labour Inspectorate, the Police, the Border Guard and the Ministry of Justice. When it comes to hard data about criminal cases, the most valuable information comes from the Prosecutor's Office. What the other institutions provided in this regard is definitely more modest. Nevertheless, all data and information provided by these institutions are very interesting in the sense that you can extract much more from them than is necessary for this report.

First, I would like to make a comment regarding methodology. I divided the data provided by all of the above-mentioned institutions into three categories. First, this is information about solutions and internal regulations that may have an impact on the effectiveness of actions taken by a given institution, and so on the number of criminal cases. Second, these data concern training, because it is indisputable that the level of competence of officers translates directly into their effectiveness in revealing crimes and prosecuting perpetrators, and this also directly impacts the effectiveness of punishment. And finally, there are data that illustrate the operational activities of each of these institutions, specific to their nature. Although these are apparently different data, they nevertheless prove the level of involvement of officers in revealing cases of forced labour and bringing the perpetrators before a court.

The second methodology-related comment concerns the quality of the data. It has long been known that one of the weakest links in the system for the elimination of human trafficking in Poland is the lack of a unified and credible database. Human Trafficking Studies Center has written about this weakness on many occasions, but first and foremost in a book published in 2011.<sup>16</sup> It is also mentioned in subsequent national action plans. Poland has been heavily criticised by Council of Europe GRETA<sup>17</sup> experts for not having a good database. It is also the absence of a database that was one of the reasons why the US Department of State in its Trafficking in Persons Report<sup>18</sup> degraded Poland from the first to the second category of

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<sup>15</sup> See footnote No. 2.

<sup>16</sup> *Eliminowanie handlu ludźmi w Polsce. Analiza systemu (Eliminating human trafficking in Poland. Analysis of the System)*, Zbigniew Lasocik (ed.), Warsaw 2011, Human Trafficking Studies Center of the University of Warsaw.

<sup>17</sup> See: <https://www.coe.int/en/web/anti-human-trafficking/greta> [25.09.2021].

<sup>18</sup> See: <https://www.state.gov/trafficking-in-persons-report/> [25.09.2021].

countries combating human trafficking.<sup>19</sup> Given this, no one would be surprised by the information that the data presented by the above-mentioned institutions are difficult to compare. Of course, they are an important source of information about a specific institution, but they do not make up a system.

The information gathered shows that none of the institutions have introduced internal regulations (guidelines, recommendations, special procedures) that concern effective elimination of human trafficking and forced labour. The Police are in a special situation, as the order of the Chief of Police on the detection of human trafficking has been in force since 2016.<sup>20</sup> Despite its brevity, the ordinance regulates the matter of the organisational structure of the Police and several procedural issues. Both the Border Guard and the Police refer to the use of the Algorithm of behaviour of officers in the event that a victim of human trafficking is revealed. In addition, both of these agencies use human trafficking indicators in their work, although it is not completely clear what these documents are and what their nature is.<sup>21</sup> In the case of the Border Guard, we only know that the indicators were introduced in 2013 by a letter of one of the boards (departments) of the Main Headquarters. On the other hand, the National Labour Inspectorate only has the 2010 handbook of the International Labour Organization in this regard. I would like to highlight the date, because in the elimination of human trafficking, a decade is an entire era. In the prosecutor's office, there are guidelines for handling human trafficking cases; however, I do not have the latest version of this document.

Therefore, it can be stated that when it comes to internal law, key public services are rather modestly equipped in this regard. This is even more surprising since at the statutory level, regulations are more than perfunctory. In reality, there are two or three provisions of the Polish Penal Code, several provisions in acts on foreigners, and two regulations in the Act on Social Assistance. Of course, the quantity does not necessarily have to reflect the quality, but merely by way of illustration, let us say that there are a dozen or so federal laws in the United

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<sup>19</sup> I do not believe I am overstepping to inform potential readers in a footnote that in 2020, the University of Warsaw, and more precisely the Human Trafficking Studies Center I head, in the Norway Grants competition submitted a project to build a professional database. The project was meant to be implemented by a group of competent experts from various institutions. The project was not appreciated by the evaluating bodies, which prioritised the routine activities of the Police.

<sup>20</sup> Order No. 14 of the Chief of Police of 22 September 2016 on the Police performing some tasks related to the detection of human trafficking, Official Journal 2016.61.

<sup>21</sup> I am mentioning this because many years ago, I headed a group of representatives of all non-governmental institutions and organisations involved in the elimination of human trafficking. The result of our work was a very good questionnaire for identifying victims for the Police and the Border Guard created based on these indicators.

States that regulate almost all aspects of combating human trafficking – several hundred pages in total.<sup>22</sup> Obviously, each state regulates this problem how it sees fit.

What we must note is the fact that when describing their structure and organisational solutions, none of the institutions referred to the existence of the National Referral Mechanism (NRM) in Poland, which was proposed by the OSCE (of which Poland is a Member State) and recommended by the European Union. However, it must be highlighted that it is only recommended, because in European Union law, there is no legal requirement for Member States to introduce this Mechanism. Because EU authorities attach importance to this instrument of the eradication of human trafficking, in the past year, at the request of the European Commission, an international research consortium of which the Human Trafficking Studies Center was a member, conducted research on the functioning of mechanisms in Member States of the European Union.<sup>23</sup> I must mention that the results did not inspire optimism. When it comes to, for example, the level of awareness of officials about this topic, Poland did not perform particularly well in these studies – many high-ranking state officials were unaware that it existed or of the sources of origin. And yet, the National Reference Mechanism is a key instrument whose goal is to optimise actions for the benefit of the victim, thereby increasing their involvement in the criminal proceedings and thus increasing the likelihood of bringing the perpetrators before a court.

When it comes to training, the information provided shows that only the Border Guard has a well organised training system, mainly thanks to the activity of the Border Guard Training Centre in Koszalin. The other institutions attempt to increase officials' knowledge, however, these attempts are not always successful. And so, over three years (2017-2019), the National Labour Inspectorate organised three two-day training courses in which a total of 81 people participated, which with the total number of employees at 2,500 does not seem to be particularly impressive. The very perfunctory information from the Police shows that in 2017-2019, no specialised training was carried out, while the problem of human trafficking featured in four training courses on other topics. I did not receive any information about training from the Prosecutor's Office.

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<sup>22</sup> See: <https://www.justice.gov/humantrafficking/key-legislation>.

<sup>23</sup> See: Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms, <https://op.europa.eu/en/publication-detail/-/publication/d5542e9c-0e92-11eb-bc07-01aa75ed71a1/language-en>

The matter of institutional infrastructure is also associated with the problem of training. All of the above-mentioned institutions have developed appropriate solutions, such as creating special positions or separate larger or smaller organisational units. Such a solution should be viewed positively. However, it is still being determined whether these structures are effective, but this should be the subject of a separate study.

The third category of selected data includes information on the two most important procedural effects of actions undertaken by individual agencies, i.e. the number of criminal cases initiated and the number of victims identified. It seems that these two numbers are the key measures of the effectiveness of the prosecution of each of the analysed services, but also of the effectiveness of the entire criminal justice system in this specific area. This is because it is clear that the more cases law enforcement agencies initiate, the better the chance that many of them will reach the courts. The level of judicial decisions and the number of convictions is a completely different matter that I will return to.

From the four key agencies, in these deliberations, only three need to be taken into consideration, because the National Labour Inspectorate almost by definition excludes its role in revealing cases of forced labour. Anyway, in the studied period, this institution proved that it consistently implements this “strategy” and has not identified a single victim of forced labour. Let us note that this fact was quite scrupulously noted also by the US Department of State, which wrote about this in the chapter on Poland in the international report on human trafficking around the world (Trafficking in Persons Report) published in June 2020.<sup>24</sup>

The other institutions provided relevant data, although the value of these data varied. Before commencing further analysis, I must make an important reservation: there is no uniform database of data on human trafficking and forced labour in Poland,<sup>25</sup> and existing collections of information are not adequate to the specific nature of these two crimes. On the other hand, this “diversity” means that the data are not comparable, and so analysis is a difficult task that is at risk of error. Particularly if the researcher is not aware of the backdrop of collecting and aggregating data. As a result, these difficulties in analysis and interpretation also contribute to lower effectiveness of the prosecution and punishment of perpetrators.

Data reporting should begin with the data provided by the Prosecutor's Office that are much richer and the most interesting; however, these data cover only two years instead of

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<sup>24</sup> Trafficking in Persons Report. 20th Edition, June 2020, p. 410.

<sup>25</sup> This was also criticised by international institutions.

three. And so, in 2017, the Prosecutor's Office units recorded 135 cases under Article 189(a) of the Polish Penal Code, and in 2018 this number was 79 (a total of 214). If we were now to look at data concerning the nature of exploitation, in 2017, there was a total of 129. Thus, the Prosecutor's Office recorded 135 cases, but noted 129 cases of exploitation. The lack of coherence, and of such a bearing, is puzzling. The explanation is likely very simple, but in order to know it, we must know how the data are aggregated. The situation looked vastly different in 2018 – 247 cases (forms of exploitation) out of the 79 cases that were instituted. Interesting for the purposes of this report is the fact that in this first year, there were 34 cases of exploitation of a victim for forced labour, and in the second year, this rose to 142. However, I have to note that the Prosecutor's Office uses the descriptive category "nature of the exploitation", but does not report the number of actual victims. Again, the reason is likely very simple, but it is rather unclear to readers of these data.

In both of the years analysed, the number of accused individuals was identical – 47 people. Risking the objection of simplification, let us say that in 214 recorded cases, the Prosecutor's Office brought charges against a total of 94 people, among whom Poles were clearly dominant. Several were citizens of Bulgaria and Ukraine. In 2018, the Prosecutor's Office brought charges against eight people of Roma nationality (no data on their citizenship).

One of the most serious accusations against Poland by external institutions is the high percentage of discontinued cases and the relatively "mild" policy of the punishment of perpetrators. From this point of view, the data of the Prosecutor's Office is important, as it shows that in the studied period, the units of this agency filed 40 indictments (17 and 23 respectively). Taking account of all the objections to such inference, the disproportion between the number of cases recorded (214) and the number of indictments (40) is clearly visible. Of course, for a completely precise argument, it would be necessary to apply methods of long-term analysis or so-called rolling analysis; however, such a compilation of data is legitimate and the observed discrepancy is visible. We obviously do not expect for these values to be identical, or even similar, because in practice this is unlikely. At the level of working summaries, the "effectiveness" of prosecution, measured by the ratio of the number of indictments to the number of recorded cases at the level of 18% seems to be low. It would be very interesting to study the reasons for this situation, as well as, or perhaps even more importantly, what the fate of these 214 recorded cases was. Despite many attempts by the Human Trafficking Studies Center of the University of Warsaw to obtain a grant for such research, this has never been successful.

In 2017 and 2018, the Prosecutor's Office suspended a total of 26 proceedings (13 in each year) and discontinued 70 (28 and 42 respectively). Thanks to precise statistics, we know that this was usually when, in the opinion of the Prosecutor's Office, "the act was not committed or there are no data sufficient to justify the suspicion of its commission" (Article 17(1)(1) of the Polish Code of Criminal Procedure) or in a situation in which the act was committed, but "it did not possess the qualities of a prohibited act or the act states that the perpetrator has not committed a crime (Article 17(1)(2) of the Polish Code of Criminal Procedure). Here, the following question is necessary: how could it be that experienced and trained Police or Border Guard officers prepared evidence so poorly that the Prosecutor's Office could apply such basic grounds for discontinuation? I obviously do not know the answer to this crucial question, but I would like to find out by conducting research that we are unable to obtain funding for. I have no doubt that this is another on a long list of matters that have a strong influence on the low number of convictions for human trafficking and forced labour in Poland.

Moving on to the data presented by the Police and Border Guard, we are fundamentally changing the order of magnitude. In 2017-2019, the Border Guard initiated 14 proceedings (9, 2 and 3 respectively in subsequent years). What is important is the fact that these were cases "from the area of forced labour", or at least that is how the Border Guard describes them. Of course, it must be assumed that the Border Guard has its own system of recording cases and the nature of the exploitation, and so it is able to provide precisely presented data. However, readers or analysts from outside of the institution who do not have access to this database and do not have the right tool must rely on the data that was made available.

In total, in all 14 of these cases that were initiated, Border Guard officers identified 167 victims; these were mainly people from Ukraine, but also from Vietnam, Poland, Belarus, Uganda and the Philippines.

The data presented by the Main Police Headquarters are fairly similar, because in 2017-2019 the officers of this formation initiated 20 proceedings (5, 13 and 2 respectively in individual years). These are data about "the crime of human trafficking for the purpose of exploitation for labour of a forced nature", which means that the Police use a different term to the Border Guard. The number of revealed crimes is much higher – there were a total of 54 (18, 29 and 7), and when it comes to established crimes, this number was 76 (46, 15 and 15 respectively). The Police did not present any data on victims identified, but it did inform that the data related to revealed crimes and established crimes come from the KSIP (National

Police Information System) database. And here we face another difficulty. The Police separated cases related to forced labour, at the same time informing that it did so based on KSIP data, while in the ordinance on the KSIP<sup>26</sup>, there is no such category as forced labour or labour of a forced nature. This matter can likely also be explained easily, but this is not possible based on the available data. It turns out, however, that this is not the subject of my interest. At this stage, it is my goal to draw attention once again to the fact that the absence of a uniform database leads to ambiguities and serious confusion, and can also affect the effectiveness of prosecution.

As I already mentioned, the National Labour Inspectorate (NLI) did not identify a single victim of forced labour, and also provided a list of reasons why it does not do this. Because they are not convincing, I will leave this thread to the side and address the routine actions of this institution. One of the forms of such actions is controlling the lawfulness of employment. Because victims of forced labour are usually foreigners, the NLI carries out such inspections together with the Border Guard (BG). This initiative was born a dozen or so years ago and is implemented based on an agreement between these institutions. The last such agreement was signed in 2019. At the time when they began joint inspections of the lawfulness of employment, their indirect goal was to establish the mechanisms for enslavement at work and to identify potential victims of human trafficking for forced labour. As it turns out, this additional goal is no longer very important, and the inspections are aimed at "protecting the employment rights of foreigners".

As regards the numbers, in 2017-2019 the NLI and BG conducted a total of 598 joint inspections (approximately 200 per year). This number is not particularly high if you take into account the fact that the NLI carries out approximately 20,000 inspections annually. This means that the said inspections of the lawfulness of the employment of foreigners constituted approximately 1% of all such activities. If we were to assume that in terms of only Ukrainians, there are approximately one million working in Poland, and that there are approximately 1.2 million foreigners in Poland, 200 inspections per year is not particularly impressive. Even at the level of elementary common knowledge, it is known that among these people who are working in Poland there are many victims of forced labour; however, even a small percentage of them have not been identified.

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<sup>26</sup> Ordinance No. 14 the Chief of Police of 22 September 2016.

The National Labour Inspectorate also informs that in the studied period, as a result of these and other own inspections it transferred to the Border Guard over 2,000 notifications about cases of foreigners carrying out work illegally. As it should be assumed, none of these cases had any mention of potential slavery or violation of human rights.

Data on the case law of Polish courts are an important supplementation to information on the functioning of the system. For obvious reasons, the most appropriate source of data is the Ministry of Justice. However, already at the outset I must state that the Ministry did not provide the most-important data, which are data about the impact of the cases under Article 189(a) of the Polish Penal Code and the number of cases that ended with a final judgement. In a letter to the Ministry of the Interior and Administration, a representative of the department wrote "...statistical data about the evidence of cases divided into specific articles of the Polish Penal Code are not available". This information is surprising, because the court statistics are created divided into individual crimes.

The data provided show that in 2017, 18 people were convicted for the crime under Article 189(a), and in 2018, it was 9 people. The data for 2019 will be available in 2021. As regards 2019, the Ministry of Justice only has data concerning invalid convictions, of which there were 31 (convicted persons). Already now I would like to add that an analysis of the court decisions shows that courts of second instance often change the classification of the act adopted at first instance, and so it can be assumed that this number will also decrease.

The last stage of the administration of justice is the execution of the sentence imposed. Here, we are clearly interested in the most severe punishment, which is imprisonment. When it comes to human trafficking, as at 15 January 2021, 29 persons convicted of this crime were detained in penitentiary units, including 26 persons with a final judgement. There were 18 people under temporary arrest in penitentiary units in relation to a suspicion of having committed the crime of Article 189(a) of the Penal Code.

When it comes to conclusions, in the context of the data presented, it is reasonable to think that there is a positive correlation between the state of affairs described above and the low effectiveness of punishing perpetrators of forced labour. The mechanism of communicating vessels works in such a way that the effectiveness of prosecution strengthens the effectiveness of punishment. And if we look at the problem from a different angle, it seems certain that cases that do not go beyond the police, border guard and the prosecutor's office will never get to court.



In the said institutions, there are, in fact, no special internal regulations that would stimulate actions guaranteeing better effectiveness of the prosecution of perpetrators of forced labour. On the other hand, there are no decisions and rulings at the level of national policy that would endow such cases with special importance and place them on the list of priorities. Of course, this is a superficial conclusion, but despite the efforts of individuals, it can likely be argued that in these institutions there is no "climate" that is conducive to the full mobilisation of forces to combat forced labour. This "climate" is sometimes referred to as a "zero tolerance" policy for specific behaviours. There can be no talk of such a policy here.

Given the fact that the victims of forced labour are foreigners, the activity of the Border Guard, which only initiates several cases a year, must be considered as modest. All the more so since this is a formation that assures that it has created a good system of training and increasing the competences of officials, and of coordinating actions. The high level of training and good institutional infrastructure should translate into a much broader investigative activity of the Border Guard, but this is not the case. It is worth asking, "what are we missing?"

Despite the fact that we are discussing forced labour, which means "some sort of" labour, it turns out that the role of the National Labour Inspectorate in the prosecution of this crime is rather negligible. Of course, this is a matter of political decisions and of the choice of a specific policy or strategy for the operation of institutions. It should, however, be highlighted that there are countries in Europe in which it is the labour inspectorate that is the leading institution in the difficult task of eliminating forced labour (Finland and Norway).

The data on the court phase of the administration of justice show that the question posed in the title of this report is fully justified, because the number of convictions or persons serving a sentence for human trafficking and forced labour suggest that the phenomenon is marginal, if not unique. However, this is not the case, because according to the most cautious estimates, the number of victims of slavery in Poland exceeds 100,000<sup>27</sup>.

## **Analysis of selected court decisions**

Using the data contained in the portal of court decisions<sup>28</sup>, I selected cases that involved forced labour and that ended with a final judgement. More precisely, it must be said that these

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<sup>27</sup> Global Slavery Index 2018, p. 94.

<sup>28</sup> See: <http://orzeczenia.ms.gov.pl>.

were cases in which the term "forced labour" appeared, because in the strictest sense, this term does not function in the administration of justice. It turned out that there were 7 such cases in recent years, and to broaden the scope of the analysis, I also included three cases that contained the term "human trafficking". Thus, a collection of 10 criminal cases was created, which cases should be deemed to be a representative sample of criminal cases involving forced labour and human trafficking in Poland.

Already in the beginning it must be highlighted that seeking an answer to the question posed in the title in court decisions is not an easy task, but there are several matters that should be mentioned. Of course, from the point of view of the objective of this report, it would be much better to analyse all of the material used in court proceedings but for obvious reasons, this is not possible. Here, it is worth pointing out that the Human Trafficking Studies Center I head has several times attempted to obtain funding from the National Science Centre to review criminal cases; however, the problem of human trafficking is not a priority for this institution.

Eight of the decisions analysed were cases in which the rulings came from courts of appeals, while in two of the cases, it was district courts (second level) that adjudicated (in accordance with their jurisdiction).

Courts from five cities – Gdańsk, Łódź, Poznań, Warsaw and Wrocław – issued decisions, with the majority coming from the last city. It can be assumed that all of them are in some sense representative for the country, because they are located in all its parts. However, it is clear that there are far fewer decisions issued by courts in Eastern Poland.

The subject of the judgements analysed clearly reflects the problem that gave rise to the CAPE research project and this report. Out of ten cases, in six the subject of the ruling of the court was the phenomenon of the provision of sex services, but this involved Polish women exploited abroad, as well as the female citizens of other countries exploited in Poland. Two cases were about forcing Poles to commit crimes in France and Sweden. One case involved the phenomenon of surrogacy, which is surrogate motherhood. And finally, in one case, the perpetrators were accused of classic forced labour. But even in this one case, forced labour was treated by the perpetrators in a way as an auxiliary tool, because their main goal was

forcing victims into committing crimes. If the victims refused, the perpetrators moved to forced labour and refusing remuneration.

This cursory overview of the cases clearly shows that judgements concerning forced labour are in the minority, while there are many more cases involving sexual exploitation. This is quite an interesting phenomenon that also appears globally and is worth devoting some attention to. According to all global estimates, the number of victims of forced labour is much greater than the number of victims of sexual exploitation, while when it comes to the identification of victims, and even more so to convictions, there are much more people associated with the sex business. I have devoted much more attention to explaining this phenomenon elsewhere<sup>29</sup>, and so here I will limit myself to only the most important thought. The matter seems quite obvious – it is much easier to identify a victim of forced prostitution than an enslaved and exploited worker. All police forces around the world, including Polish police, monitor the sex business, because it is a useful source of intelligence. And since this is so, it is not particularly difficult to determine the details of people who provide sex services, including of those individuals who do this against their will. Where prostitution is illegal, it is even easier, because all one needs to do is arrest such persons from time to time to obtain useful information. Pimp informers also continue to be a source of information. Thus, identifying a victim of sexual exploitation is not a problem for the police, provided that the police are willing. Identifying a forced labour victim, unless they are in, for example, a labour camp, is much more difficult, because there is no operational control of the labour market. Particularly when the labour inspection services are as weak as they are in Poland.

On the other hand, a system of interests in which a migrant residing in Poland in violation of the law is interested in earning money, and a dishonest employer is interested in taking advantage of the cheap labour of the migrant, results in a situation in which no one has any interest in violating this agreement. It is also the case that migrants know that the price they have to pay for their status is dependence on other people or having almost no influence on working conditions. The problem of identification of forced labour also concerns the fact that the police and border guard have poor competences in prosecuting this crime, while labour inspection services in many countries, including Poland, are not as effective as they should be.

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<sup>29</sup> Z. Lasocik, Forced labour – well-hidden mechanisms of dependence and enslavement (Praca przymusowa – ukryte mechanizmy zależności i zniewolenia), *Archiwum Kryminologii (Archives of Criminology)* 2021, 43(1), DOI 10.7420/AK2021.05.

As I already mentioned, based on court decisions it is difficult to say why Polish courts are so rare to adjudicate in case involving forced labour. However, there is a range of factors that make the system of elimination of human trafficking in Poland not work properly. Its main weakness is tensions that, on the one hand occur between the Police and Border Guard and the Prosecutor's Office, and on the other between the Prosecutor's Office and the courts. This problem has been discussed in detail elsewhere<sup>30</sup>, and so I will limit myself here to just several comments.

In order to see the said problem in the right context, we must look at the history of the introduction of the definition of human trafficking into Polish criminal law. Of course, such a definition existed in the legal order because Poland had ratified international agreements that contained such a definition; however, what needed to happen was for it to be transposed directly into Polish law. This is mainly so that it would be easier to access by law enforcement. For many years, the authorities promised that they would make this important change to the Polish Penal Code, and yet, no such change was made. It was typical, and at the same time paradoxical, that the staunchest supporters of the introduction of the definition were the uniformed services, i.e. the Police and the Border Guard. What is more, both of these services had very strong support of the Ministry of the Interior also as a coordinator of the problem of human trafficking in Poland. The main opponent to the changes, which at the time we referred to as the "braking mechanism" was the Ministry of Justice, which, as we know, recruits its staff from among prosecutors and judges. The main issue of the dispute was the effectiveness of the system. The Police and the Border Guard were determined to effectively prosecute perpetrators, and to this end needed a definition, because without a definition, they often encountered resistance from prosecutors, who in the material gathered to be used in court proceedings did not see any evidence that would allow the perpetrators to be unambiguously accused of human trafficking. The blocking of changes by the Ministry of Justice was not purely opportunistic. For example, prosecutors had their own serious reasons. Their reluctance stemmed from the fear that without a precise definition they would not be able to "uphold" the charges in the courts. This is mainly because for many years (and to some extent still) judges were the worst trained law enforcement officers in the matter of human trafficking, and they did not understand the arguments made by prosecutors. It was often the case that prosecutors avoided allegations of human trafficking out of simple caution.

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<sup>30</sup> Eliminating ... *op. cit.*, *passim*.

There is much empirical evidence that proves that some judges did not understand and still do not understand the essence of human trafficking,<sup>31</sup> and how much their perception of this crime was impacted by purely legal thinking in which trafficking is a sale, i.e. a transaction, and the essence of the transaction is a contract.<sup>32</sup> That is why we sometimes saw justifications of judgements in which the judges stated that since there was no transaction and there was no contract, it is difficult to talk about trafficking. In this state of affairs, prosecutors do not want to risk annulment or a change of the legal classification that would place their professional qualifications in doubt. As a result, a deadlock occurs, in which we are dealing with the determination of Police and Border Guard officials, who accuse the Prosecutor's Office of excessive opportunism and even procrastination, and real caution or even restraint of the Prosecutor's Office and, finally, the conservative and even "orthodox" thinking of the judges. On the other hand, two systemic points of tension have arisen between the uniformed services and the Prosecutor's Office, and between the Prosecutor's Office and the court. However you look at it, this is a very unhealthy state of affairs that had to result in few criminal cases.

As we know, the effectiveness of the prosecution of human trafficking in Poland is subject to the scrutiny of at least two foreign bodies that have already been mentioned: the GRETA Group of Experts of the Council of Europe, and the US Department of State. Both of these bodies criticise Poland for having a mild criminal policy, including for annulling cases and suspending the execution of sentences. And so, in this small sample, we come across a case in which the Court of Appeals in Wrocław extraordinarily mitigated the sentence on the basis of Article 60 of the Polish Penal Code to two years' imprisonment and conditionally suspended its enforcement. It is worth noting that the matter concerned serious violations of the law – forcing Poles to commit crimes, and if they refused, to perform forced labour.

Another relatively mild sentence was the one the District Court in Siedlce (second level) imposed on a perpetrator who recruited four female Ukrainians and then handed them over to other people in order to benefit from the sex services they offered. The perpetrator was arrested on the Polish-Ukrainian border only because one of the women started cooperating with the Ukrainian Security Service. A similar sentence was issued in the case involving the

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<sup>31</sup> Barbara Namysłowska-Gabrysiak, *Handel ludźmi w celu wykorzystania seksualnego. Zagadnienia karnoprawne i kryminologiczne* (Trafficking in Human Beings for the Purpose of Sexual Exploitation. Criminal Law and Criminological Issues), Warsaw 2018, Ed. CH Beck.

<sup>32</sup> *Ibid.*, p. 285.

recruitment and exploitation of women from Bulgaria, which was adjudicated by the Court of Appeals in Łódź.

In a way, the evidence for the earlier claim of the "restraint" of the courts in resorting to decisive penal measures is the judgement of the Court of Appeals in Poznań, in which the Court found that it is only from 8 September 2010, which is the date of entry into force of the act amending the penal code and introducing the definition, that the term "human trafficking" should be interpreted in accordance with this definition. While this seems to be a completely correct position, let us not forget that in the Polish legal order, there existed an almost identical definition in the so-called Palermo Protocol<sup>33</sup>, which Poland ratified in 2003.

The case that ended in a decision of the Court of Appeals in Gdańsk in a way draws attention to a different aspect of the weakness of the Polish system for eliminating human trafficking – the excessive length of the proceedings. The events covered by the judgement took place in 2005, while the final judgement in this case was issued on 29 March 2018. I dare say that such a lengthy process and reliving negative experiences from 13 years earlier would be only slightly less traumatic for victims than the exploitation itself.

The proceedings for an accused who recruited Polish women and transferred them for sums of approximately EUR 650 to Bulgarian traffickers were much shorter, but still very long – seven years. An important circumstance in this case was the fact that one of these victims was a child. In this case, the Court of Appeals in Warsaw upheld the judgement of the court of first instance (total punishment of seven years imprisonment).

The discrepancies between the legal classification of acts covered by the indictment between different courts is a phenomenon that is fairly typical in the Polish judiciary. In November 2020, the Court of Appeals in Wrocław adjudicated a case in which the female accused, taking advantage of the difficult situation of workers from Ukraine (18 individuals) exploited them, confiscated their passports, punished them severely for minor violations and reduced their remuneration to zero. The court of first instance rejected the application of the Prosecutor's Office expressed in the indictment and found that this was not forced labour, but a violation of employee rights. The Court of Appeals disagreed with this view and found the woman guilty of the crime of Article 189(a) of the Polish Penal Code.

An example of a case in which there was a cumulation of several negative elements that could be interpreted as signs of weakness of the judicial decision was the case before the

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<sup>33</sup> See footnote No. 13.

Court of Appeals in Wrocław in 2013. While this took place several years ago, it seems that some of the problems outlined are still current. The court of first instance found the two accused guilty of human trafficking. The court of appeals, in principle, agreed with the opinion of the court of first instance, but made some minor changes to the description of the acts and applied an extraordinary mitigation of the punishment. However, for reasons that I do not understand, in the justification, the court of appeals used the term "so-called human trafficking", and in one case even »so-called "human trafficking"«. I wonder, how is it possible to convict someone of a crime and use its term, as mentioned in the code, in inverted commas, even twice. I am trying to remember all the criminal cases I have ever analysed, and I do not think that I have ever seen something like this before.

The analysis of the factual circumstances includes arguments of the Court of Appeals allowing questions as to whether the court is aware of the etiology, and even more so of the phenomenology of the crime of human trafficking. One such issue is, for example, the fact that payments (prices) were made for the victims, which the court questioned without providing proof. In another place, the court wrote that the accused did not conduct any economic activity, and thus was unable to employ the victim. But of course this does not concern employment mentioned in the Labour Code or civil law.

What is the most surprising in this judgement is the punishment. As I mentioned above, in reference to both of the accused, the Court of Appeals applied an extraordinary mitigation of the punishment and sentenced them to one year and three months imprisonment. It must be added that one of the victims was particularly vulnerable to exploitation, because she had intellectual ability on the borderline of the norm (confirmed by tests). The judgement shows that the court even considered acquittal. As it admits, it could not proceed in such a manner, because the perpetrators clearly treated their victims as "objects".

Of course, caution must be exercised in matters such as commenting or evaluating court decisions if you are not aware of the whole material in the proceedings. The fact is that there are few decisions, and this itself should already be a matter of concern to the authorities. Still, the work that state institutions have ahead of them is gigantic, because the system of revealing forced labour, identifying victims of this crime and reacting to them is not completely inefficient. This is indicated by the authors of numerous scientific papers and by external institutions. What we must start with is the awareness of citizens. As mentioned above in the introduction, here the neglect is enormous.

This can only be partially explained by the negligible "visibility" of the problem of forced labour to the average citizen. In times of such easy access to information, and not only online, the state should create a situation in which anyone who wishes to obtain relevant information is able to do so in a way that is accessible to their abilities and needs.

### **Other important empirical findings**

Research commissioned by the Human Trafficking Studies Center of the Faculty of Political Science and International Studies of the University of Warsaw in December 2020, (mentioned in the Introduction), shows that almost 40% of Poles know nothing about forced labour. If we were to add to this the approximately 13% of Poles who do not even notice this problem, it turns out that over half of Poland's population lives in complete unawareness. On the other hand, when Poles were asked who should deal with the problem of forced labour, almost two-thirds of respondents believe that this is the role of the state. And finally, as can be seen from the study, in the opinion of respondents, victims of forced labour are usually foreigners, and we know from elsewhere that the attitude of a part of Polish society towards migrants is far from ideal.<sup>34</sup>

In this state of affairs, using personification as a rhetorical procedure, the following line of reasoning can be presented: nominally, the state should deal with the problem of eliminating forced labour, but because so few people are interested in this problem, and more than half of the population knows nothing about it, the state tries to do only what is necessary. The state does not feel any pressure, because no one is exerting it as members of society are not aware that such a problem exists, there are few NGOs interested in this issue, and the matter concerns not mainly migrants, who in Poland are not welcomed with open arms. This cultural and political stalemate has been going on in Poland for some time, and, really, there seems to be no way to break it. It would be a mistake to assume that an inspiration for change will come from the media, which will transform our way of thinking about harm to people exploited at work.

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<sup>34</sup> See, inter alia: Stosunek Polaków do uchodźców (The Attitude of Poles to Refugees), Uchodźcy Info, see: <http://uchodzcy.info/infos/stosunek-polakow-do-uchodzcow/>



### **Press studies for the period from 1 January 2018 to 30 June 2020**

I decided to check this claim and that is why I resolved to carry out a simplified analysis of press content. In my introductory remarks, I also wrote that anticipating a relatively modest amount of official data (this turned out to be true) and court materials, I also decided to seek answers to the question posed in the title in the media. Obtaining a small amount of funding from my home Faculty of Political Science and International Studies, I ordered press monitoring for 2018-2020 (half of 2020) from a specialised company. In fact, my point was to investigate what media support the criminal justice system can count on in improving the effectiveness of the prosecution of forced labour. Already at the outset it must be said that the results are not optimistic; however, an interesting positive trend exists.

The result of the research carried out by the monitoring company was 379 publications that featured the terms stipulated as filters. Because the study is difficult and requires a high level of competence, not everything went as it should in the sense that the resources included publications that had nothing to do with the problem I was interested in. On the other hand, there were many historical articles, for example, about World War II and labour camps, or essays on contemporary regimes that readily use forced labour as a means of disciplining societies. Looking from the positive side, let us say that among the selected publications there were 38 related to human trafficking and forced labour *per se*, which results in approximately 10% of the total. Many of these publications are perfunctory notes about events (for example, the arrest of the perpetrator), almost exact repetitions of content from other media, or several publications on the same topic from different periods [for example, the so-called "Afera Podkarpacka" ("Podkarpacie Scandal")]. Therefore, we should view the results with great caution. It would be very interesting to see what percentage of all publications in Poland are those that actually concern the said problems and are informative and/or analytical. The Human Trafficking Studies Center I head applied for a small grant from the National Science Centre (Narodowe Centrum Nauki) also for such research; however, despite positive reviews, this attempt was also unsuccessful.

On the other hand, it can be argued that one in ten articles on human trafficking was devoted to forced labour. If we look at the absolute numbers, the picture is rather grey and black than black and white, because it can be said that 38 publications is a lot. However, we must remember that the studies covered two-and-a-half years, and so a fairly long period, but also the fact that thousands of publications appear in Poland.

If we adhere to bipolar comparisons, the content of selected publications is definitely bitter-sweet. Sweet because changes for the better can be observed. We have been monitoring the press from the very establishment of the HTSC, and from time to time we analyse media publications. The starting point was sad and quite embarrassing, because the level of what and how journalists wrote was very poor. With the passage of time, the quality of journalistic writing improved, to the point where every now and then an article with a solid factual basis and an interesting analytical layer appears. The fact that 10 years ago it was normal to see writing about "trafficking in live goods" speaks to the qualitative leap in the approach of the media. Currently, a journalist who respects the written word will not write in this way. Things are different with politicians and students.

To present at least a snippet of everything that can be said about such a vast amount of media data, I will present a brief description of a dozen or so selected articles and press releases. The first text concerns global companies that while promoting slogans about fair work take advantage of slave labour, including child labour. The title of the publication "Hipokrycy XXI w" features the term "Hypocrites of the 21st century". Several articles were written about an initiative of the Ministry of Development, where a group of experts from time to time discusses the problem of forced labour. The deliberations and publications address problems such as business and human rights associations, education and awareness raising, CSR (corporate social responsibility), and corporate reporting on human rights. Another publication discusses fundraising for victims of human trafficking and forced labour in Africa. There was also an article that covered a slightly different problem, although relating to the same continent – the forced labour market in Libya. The author of yet another article discussed the matter of public procurement, with the terms "fair trade" and "forced labour" appearing. This is a good example of a publication that "obscures" the picture because, after applying the filter keyword, it is included in the category of publications on the topic, while the content does not meet the criteria in any way.

Actually, only four of the selected publications concern forced labour *per se*. In fact, this should be three, because in one case, there were two very brief press notes of 18 December 2018 about the ongoing proceedings before the District Court in Bydgoszcz (second level) of three accused who forced a man to perform forced labour on a farm. This press release appeared in various newspapers.

The second publication – or, rather, again a very brief press release of 23 May 2018 – concerns the arrest in Nowy Ciechocinek of a resident of Włocławek who was wanted by the

European Arrest Warrant in connection with his participation in the crime of human trafficking involving the exploitation of Poles in forced labour in Great Britain. As a side note, British authorities deemed this case to be unique and the Polish criminal group to be the largest network of modern-day slavery in the history of Great Britain.<sup>35</sup>

The lengthy article in which journalists described the story of a Ukrainian man employed in Piaseczno, near Warsaw, must be included in the category of the most interesting and valuable pieces. This publication featured many facts and elements of forced labour, such as alleged debt, passport confiscation, the dishonesty of companies, suspension of payments, and also the indolence of the police. Incidentally, one observation on the quality of media publications – if at all, reports and articles published in weeklies and various types of magazines have the greatest value. I would like to make a rather obvious comment, but one that is still important for the description of media activity – reports and articles published in weeklies and various types of magazines have the greatest value.

In summary, it can be said that such a low quality of press journalism on the subject of forced labour certainly does not build the image of this problem in society, and does not stimulate public institution, including the Prosecutor's Office and the courts, to effective action.

### **Reasons for the ineffectiveness of the system and the indolence of the courts in the light of the interviews**

Everything that has been outlined to this moment casts a very bright light on the question posed in the title of this report. There are many systemic elements that do not function well, which means that there cannot and will not be many such cases in the near future. However, the answer to the question in the title is important, and it must be provided. Except that formulated only based on comments regarding the law, an analysis of official documents and court data, such an answer may be satisfactory, but I certainly do not expect it to be complete. This is because there is a range of factors that may affect the negligible activity of the broadly understood law enforcement apparatus, and the identification of which seems to be a condition for bringing about any type of change. Therefore, a supplement and development of the survey studies and press analyses was the idea of determining the reasons for the low

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<sup>35</sup> See, for example, <https://www.telegraph.co.uk/news/2019/07/05/uks-biggest-modern-slavery-ring-uncovered-victims-forced-wash/>.

number of convictions in the opinion of various people who, even if they do not know the answer to a specific question, may have an idea about it having general knowledge and astuteness. This is why I dare believe that these several pages are one of the most important parts of this report.

In order to gather these opinions, with the support of my colleagues,<sup>36</sup> I conducted 25 interviews with people who represent an extremely broad range of professions and areas of interest.<sup>37</sup> The respondents (12 women and 13 men) included a Police officer, Border Guard officer, prosecutor, judge, clergyman, mathematician, human rights activist, entrepreneur, political scientist, translation agency owner, professor of the law, employee of private media, high-ranking state officer, etc. There were also two individuals who are not Polish citizens, but are aware of the situation in our country well enough to provide competent answers. Even though the research interactions were sometimes extensive, it was the task of the respondents to provide answers to this one key question – the question posed in the title of this report.

At the outset, I must make an introductory comment. Two individuals in prominent positions in the social structure expressed surprise that the problem of forced labour exists in Poland at all. Therefore, the number of cases, whether it be low or high, was completely indifferent to these individuals. However, both of these people provided completely valuable, substantive answers to the supplementary questions. This is one of the most important results of this study – although negative in overtone – shows the real problem and relatively easy path to changing this terrible situation.

When analysing the reasons mentioned by the respondents regarding the low number of criminal proceedings concerning forced labour in Poland, I decided that they can be divided into five categories: 1) causes attributable to the victims and their "fault"; 2) reasons related to the functioning of the criminal process; 3) reasons related to the activities of law enforcement agencies and the judiciary; 4) general and social reasons that result from the kind of society we are and 5) reasons that are assigned to the state as a political organisation.

The respondents' answers show that most of the participants are ready to accept the fact that there are few criminal cases because there are few reports by victims. And there are few reports, because the victims are passive. However, the respondents did not stop at stating the obvious. Many answers featured interesting analyses of this passivity, which is seen as a

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<sup>36</sup> Dr Łukasz Wiczorek and mgr Barbara Gąsienica-Giewont from the Human Trafficking Studies Center of the Faculty of Political Science and International Studies of the University of Warsaw.

<sup>37</sup> The choice was not by chance.

rational reaction of victims to their social situation. In fact, no one had any doubts that these were mainly foreigners, and so their determination to act is limited by the perception of social reluctance. The respondents, in a way putting themselves in the victims' shoes, said that first, they are afraid of the state apparatus, second, they are scared of the employers, third, they are scared of some members of society, fourth, they are ashamed of the humiliation, fifth, they are aware that they cannot count on empathy and support in a country such as Poland.

The participants who knew slightly more about this topic noted that people experiencing forced labour are aware that they cannot count on strong support, for example, from trade unions, and that they will be left to fend for themselves in a conflict with the employer. On the one hand, they are afraid of the employer as an entity that is much stronger, but on the other, they are also afraid of the reaction of the state, which seems to take the side of the employer. This fear is particularly strong if there were any irregularities on the part of the employee victim, for example, an expired work permit. Many answers also included a reference to the specific pragmatism of the victims – respondents said that the victims do not report violations, because they know that this would mean the end of the given work, and perhaps also the end of the opportunity to earn money in Poland, or even deportation. They did not move to the country to win against anybody, but to make money.

The individuals who shared their thoughts with me were also aware that victims of human trafficking and forced labour are usually poorly educated and culturally inexperienced foreigners. They often sign contracts that are unfavourable to them, drawn up in a language they do not know, for example, Polish or English. They are people who do not know the international law and standards, or Polish law, and do not understand their legal situation. As one of the respondents aptly put it: "they do not report because they do not know they can".

The problem of the general awareness of victims is also associated with the matter of understanding their actual situation. The respondents said that many people who are exploited do not even realise that they are victims of a violation of the law and victims of the violation of human rights standards. They see improper behaviour of an intermediary, work organiser or employer as normal, and as something that accompanies the employment of every foreigner "looking for happiness at the other end of the world".

There was a surprisingly high number of respondents who were willing to blame Polish law and the model of organisation of the criminal process for the low number of criminal cases. To make things clear, this group did not include only frustrated representatives of

institutions related to the criminal justice system. It is probably not surprising to anyone that this category of reasons was strongly dominated by the matter of proof. Using different formulations, the interviewees said that it is difficult to gather evidence in such cases, and very difficult to prove that someone treated another person as a slave. On top of this, our law is not particularly helpful – they added – because there exists a phenomenon that one person phrased as "an intersection of administrative and criminal procedures". As a result, if an official or a police officer has a dilemma or is unsure about something, they are most likely to do nothing. Several people – experts in the field – said that the main problem is how much the legal classifications made by key institutions, such as law enforcement agencies, the Prosecutor's Office and the courts, differ. And this is a clear consequence of the fact that in Poland there is no clear definition of forced labour.

However, the group of those who believed that it is law enforcement agencies that bear full responsibility for the fact that we are unable to effectively help victims and prosecute perpetrators was much larger. Everything starts with knowledge. "Why don't they do this?" asked one person, and then quickly answered their own question: "Because they don't notice the problem". Why? Because "there is no good training". This problem also appears in different versions and formats. One person from outside of Poland also noticed this, highlighting the key nature of the problem of the low awareness and lack of professional knowledge of officers from all services.

The second group of problems is related to what we would call institutional support. Just like victims do not feel supported by anyone, in the opinion of many respondents, officers who would like to do something about the issue also remain alone. Their superiors do not always understand the problem, and so they do not support them. But two people noted a slightly broader context – the institutional dimension of this weakness, as one of them put it: the most important problem is the "lack of interministerial coordination". In a sense, this line of thought was followed by those who stated that law enforcement agencies do not gather intelligence, and if they do, they do not share it.

One of the respondents said that law enforcement agencies do not deal with forced labour, because they currently have other priorities, for example, "street crime", which are protests against the authorities. Another person drew attention to the extremely important matter of "priorities" at the mental level. The substance of this statement can be summarised as follows: for years, law enforcement agencies focused on forced prostitution and that is why they now

have trouble noticing the problem of forced labour, because this is how they have shaped their awareness.

The range of reasons that the respondents "self-critically" place on the part of society is also extensive. Many responses related to this topic are great material for a broader study of the condition of Polish society. Let us start at the beginning – knowledge and sensitivity. The respondents said that we do not know much about this topic. One of them, who is a professor, admitted that if they did not know that such a problem existed in Poland, people with a lower education are also likely to not be aware of it. However, in the opinion of the participants, much of the responsibility is borne by the authorities, which do not educate society, or make people aware of the dangers or sensitise them to harm being inflicted on others.

The second group of answers in this category relates to labour as such. "Labour is not worth much", said one of the respondents, and labour performed by foreigners even less! Because we do not pay attention to the work of these people, we do not wonder when labour becomes a crime. Of course, no one likes to be exploited at work, but to immediately resort to the term "slavery"? The respondents seemed to suggest that people think along a similar framework. Such an attitude to labour translates into the attitude of the state to this form of activity and the social climate around work. "That is why there are so few incidences of identification, investigation and cases", said one respondent.

The participants are also fairly critical of our (social) empathy, particularly towards "strangers", who are sometimes referred to as "that other sort". As one of the respondents put it, our attitude towards these people has "a lot of anger and aversion". In the awareness of Poles, "they" are foreign and that is why they are a threat to us. This is how they are portrayed by politicians and some media, so why should we care about them? One answer featured the term that when it comes to migrants, Poles have an "axiological defect".

Finally, there are matters related to the effectiveness of society. The respondents noted that if forced labour exists, it exists in "invisible places", for example, in farming, as well as in other closed contexts, for example, in restaurants. There is also the problem that we have not learnt to discuss matters related to labour, other than complaining about bosses and remuneration. On the other hand, we continue to think that it is us who are exploited abroad and that it is us who are victims, and we do not realise that these days, it is also us who force people to labour and it is us who exploit others.

The participants did not overlook the state as an entity responsible for omissions, and therefore for the low number of convictions. First and foremost, they highlighted the lack of interest in this problem by the authorities. This matter must also be known outside of Poland, because both foreign experts underlined this factor. This disinterest manifests itself, for example, in how forced labour is treated in the National Action Plan against Human Trafficking – according to the respondents it is treated marginally and "vaguely". But also visible in how poorly motivated the National Labour Inspectorate is to act. Second, the reason for this lack of interest of the state in the problem of forced labour is, according to the participants, the fact that the authorities simply do not understand the essence of the problem. Moreover, they do not see it as a contemporary problem. Third, the respondents indicated that the authorities are unable to deal with many other serious problems, and so they avoid getting involved in difficult, niche matters on top of this. The final group of comments refers to an issue that has already been discussed: the state has not ensured that Poland has adequate legislation, i.e. there is no satisfactory definition of forced labour and it is not a separate crime, so it is little wonder that there are negligible results. This is also true for prosecuting perpetrators and bringing them before courts.

## **Conclusion**

According to a Polish saying, "success has many fathers"; however, it is often difficult to find the parents of failure. There is no doubt that the low number of criminal cases related to forced labour is a failure of the Polish judiciary and the state authorities as a whole.

If we want to evaluate the quality of a high school, we look at the percentage of its graduates who got accepted into their dream university (first choice) or the best universities. We do not ask how many students are studying overall, because this does not prove anything. It is similar in this case: we are only interested in the cases that end in a fair conviction of forced labour to satisfy the victims. This number is a derivative of the effectiveness of public services at all of the earlier stages: operational recognition of perpetrators, identification of victims, gathering of evidence, formulating allegations and documenting them as well as possible. The success of a high school graduate is the best university, not just any tertiary institution. The success of law enforcement agencies is the conviction of a perpetrator, not annulment or acquittal. Of course, an important variable that interferes with the attractiveness



of this comparison is the good will of the courts and the knowledge of the judges. Even the best-prepared case can "end up in the justice bin". That is why the matter of the quality of judicial decisions is very important and should be examined as thoroughly and quickly as possible. Quite long ago, the Human Trafficking Studies Center of the University of Warsaw developed a methodology for such studies.

To summarise the presented facts, comments and analyses, it can be said that **there are many factors that have resulted in so few criminal cases involving forced labour in Poland**, and they can be divided into several categories.

The most important are political factors, which boil down to the claim that the Polish authorities have never been interested in the effective prosecution of human trafficking and forced labour, because they have never *de facto* defined this problem as being very important.

Second, institutional factors are significant, with the key one concerning the fact that in Poland there is no institution that would be a leader in this important social task. This applies to human trafficking, but even more so to forced labour. The National Labour Inspectorate, which should be such an institution, simply abdicated its role. On the other hand, the involvement of such institutions as trade unions and employers' organisations has never been more than just symbolic. Finally, initiatives by various ministries (conferences, expert debates, reports, etc.) are, of course, important, but in no way affect the overall level of efficient functioning of the state apparatus.

The third key factor is the law. As a country we have only done what is required of us in order for others to not bother us. In Poland there are individual provisions of criminal law and some rudimentary regulations regarding foreigners and the legal options for social welfare for victims. Polish law has also many substantive and procedural shortcomings that allow perpetrators to avoid justice. On the other hand, the actual implementation of European Union Directive 2011/36 never took place in Poland. Another thing is that the EU, busy with matters of "greater importance", does not monitor this issue sufficiently. As a result, there are countries that do almost nothing, but are doing well politically. The functioning of the EU Anti-trafficking Coordinator leaves no doubt that this is not a priority issue for Brussels.

Fourth, we must highlight factors that I would describe as related to mentality. I will capture this in a simplified way of thinking of officers and functionaries: since the state authorities are not particularly interested in the problem of forced labour, since the heads of my service (and of other public institutions) do not send clear messages about this issue, since

the attitude of society is what it is, why should I get involved and risk the consequences of overstepping?

Fifth, given the specifics of this report, it is worth mentioning the factors that could be described as related to volition and ambition. In many public institutions, a state of waiting, a type of intellectual stagnation, has developed; it manifests itself in the fact that taking actions that are challenging and therefore go beyond the usual, safe behaviours is not welcome. On the one hand, this is the anticipation of a lack of satisfaction of superiors, but it is also the feeling of the critical attitude of colleagues. The fight for potential decorations and awards gave way to the fight for peace, including at the institutional level.

Finally, there is a group of awareness-related factors. First of all, a society that for some reason rejected the problem of human trafficking, particularly forced labour. Obviously, in this regard it received significant “help” from the state authorities, which neglected two key duties, the first being introducing this issue in schools, and the second consisting of the continuous building of citizens' awareness. Let me be clear: occasional and incidental actions are not very valuable and do not make much sense, because they only disturb the perception of recipients as a dissonance. On the other hand, this awareness was not built correctly by the media, which are focused on promoting an easy and pleasant life, or "blowing this or that propaganda trumpet". In Poland, there are no media that would take on the responsibility of shaping the attitudes of a contemporary, empathetic and responsible citizen.

In summary, it can be said that the low number of criminal cases involving forced labour, which inspired the Council of the Baltic Sea States to conduct research, is, above all, the crowning proof of the low efficiency of the entire public sector in Poland in eliminating the modern-day slavery. What is more, it also proves the evident weakness of Polish society. As I tried to show in this report, as many cases come before the courts as the complex system of interconnected vessels of criminal justice in its broadest sense is able to “produce”. At the bottom of the ideal system is a conscious, well-educated and empathetic society, slightly higher is its "military arm", which is efficient and honest NGOs, and then there are well-educated and determined uniformed services overseen by an independent Prosecutor's Office, which includes sensitive and creative prosecutors who are ready to present the courts with very well prepared indictments and to fight tooth and nail to defend their arguments. If this ideal situation did, in fact, exist, the courts would consider many cases, and even judges who do not understand the essence of the crime of human trafficking, and even more so of forced

labour, with time and under intense pressure from wise media would have to go to the trouble of reflecting and verifying their misconceptions about the nature of these phenomena.

Thus, I will reiterate with conviction the statement that I formulated at the beginning, according to which **Poland has few criminal cases involving forced labour, because in practice, no joint action system exists that covers all actors responsible for prosecuting perpetrators of this crime, in true partnership for the common good.**