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The current situation of migrants in the Pilsen Region

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Abstract:

The following text addresses the problems of migrants in the Czech Republic, more specifically of those living in the south-western Pilsen Region. It shows the consequences of various ill-advised decisions made by both the government and the Pilsen Foreign Police. The measures introduced in response to the so-called economic crisis have only strengthened the dependency on intermediaries (also called clients), weakened the rights of migrants, and exposed them to many absurd and very difficult situations. The study is based primarily on information received from foreign nationals through the Contact Centre for Foreigners in Pilsen.

Approximately two years have passed since the beginning of the so-called 2008 economic crisis, yet the situation of migrants in the Pilsen Region remains highly unsatisfactory. Migrants are forced to spend more and more resources and energy on retaining their legal status. The methods employed by the Foreign Police and the government actually support the client system and lead to the creation of new forms of intermediary agencies. This text highlights the main problems faced by foreigners in the Pilsen Region.

Compared to the situation two years ago, there are fewer foreigners in the region, as some migrants, especially those from countries closer to the Czech Republic, have left. In reality, however, the decrease in the number of foreigners is much less impressive than official statistics suggest. Information gathered from the field suggests that over a half of the foreigners currently residing in the region are not registered.

This is partly caused by the approach of the Foreign Police Inspectorate in Pilsen, as explained below. The current situation also greatly fuels foreigners' labour migration within the Czech Republic, yet the work is usually only short term and sporadic. To a large extent, the way of employing migrants has changed. While in the past the migrants worked for one employer throughout the whole year, nowadays they often work for one employer for a month

or two and then have to find a new job. Furthermore, these changes very often take place without the appropriate permits.

Change of the purpose of stay and visa extension

In the last year, on the instructions of the Czech Ministry of Labour and Social Affairs, the authorities stopped issuing extensions for third-country nationals' labour permits. Ironically this often happens even when migrants have a job of absolutely no interest to EU citizens. The foreigners who want to stay here legally, though, are forced to change their purpose of stay from that of employment to doing business. In contrast to employment permits, residence permits for doing business are issued more often.

In practice, however, these migrants keep working in the same positions, mostly in factories. Various intermediary companies try to legitimize their “doing business”; e.g. the migrants rent a certain part of an assembly line, etc. Also, companies are being founded, under which foreigners can work as self-employed businessmen. Usually, such companies are managed by the same agencies under which foreigners had worked as employees. To this company they must pay a share of their income. Thus, for foreign “businessmen”, a new form of agency employment has evolved.

The level of awareness of the legal requirements connected with being self-employed and the resulting obligations after changing the purpose of stay from employment to doing business varies enormously among foreigners. On one hand, many have been able to obtain the necessary information and know their obligations arising from doing business: They issue invoices, pay taxes and social security premiums, their contracts comply with the law, etc. On the other hand, many foreigners, especially those who changed their purpose of stay at the beginning of 2010, do not understand that they are businessmen now, nor do they understand the obligations arising from that.

Extension of stay for the purpose of doing business

In practice, huge problems arise for foreigners applying for an extension of their business visas. The Foreign Police Inspectorate in Pilsen holds the opinion that migrants residing in the Czech Republic for business purposes must prove that they have been fulfilling this purpose during the whole period for which their visa was issued. And since the Labour Code describes doing business as a “continuous activity”, the Foreign Police clings to the word *continuous*.

In life, however, situations occur in which it is quite logical to suspend even a well-established business for a while. For instance, the Contact Centre in Pilsen encountered the following case: A woman's father had died. She went back to Ukraine to arrange the funeral, take care of her mother, and arrange other necessities connected with his death. All in all, she spent about four months in Ukraine and temporarily discontinued the payment of her social security premiums. Then she returned and business continued as usual. In May 2010 she

applied for a visa extension. The Foreign Police contacted the District Social Security Administration (OSSZ) about whether she had paid her social security premiums during the whole period of doing business. The District Social Security Administration responded that she had paid throughout the whole period with the exception of four months during which she had deregistered. As a result, the Foreign Police did not extend the woman's visa on the grounds of failing to fulfill the purpose of stay; she was not continuously doing business. The woman has filed an appeal which is pending, and at present she is waiting for the outcome. She is even planning to file a complaint in the future, as she is convinced that her actions did not breach any law.

Does such an attitude of the Foreign Police mean that no reasonable circumstances for suspending the business for a moment may occur in the lives of migrant workers? It should be noted that if this woman owned a business in another region, her visa would probably have been extended, as every Foreign Police Inspectorate holds a different opinion regarding the interpretation of the expressions “doing business” and “fulfilling the purpose for which the visa has been granted”.

At present, mainly due to the attitude of the Pilsen Foreign Police, a large number of migrants are confronted with the problem of not having their business visas extended. The Foreign Police does not take into account at all the fact that the Act on Pension Insurance (No. 155/1995 Coll., § 10, section 6 a)) stipulates that the termination of self-employment is a suspension that lasted at least six consecutive months. The Foreign Police Inspectorate in Pilsen (unlike other foreign police inspectorates), does not take this provision into account and the foreigners who for whatever reason suspend their business activities do not have their visas extended. According to the Inspectorate's interpretation, these migrants have not fulfilled their purpose of stay.

In this context it is particularly striking that such non-extensions of stay due to suspended payments of social security premiums concern mainly the foreigners who apply for an extension themselves. If it is a client, an intermediary who arranges the visa extension for the migrant, it is very unusual not to have the visa renewed. In other words – the cases in which visas are not extended concern mainly those who choose not to be represented by a client and arrange everything themselves.

Statutory declaration preceding the extension of stay

Equally striking is the fact that the Foreign Police in Pilsen began to require that foreigners applying for a change in their purpose of residence sign a special statutory declaration. In this declaration, the migrants agree that if the Foreign Police does not manage to issue a new residence permit within sixty days, following the expiry of their visa, they will leave the country. They can return to the country when invited to do so. After that, they may continue with the residence permit application. For changing the purpose of stay, the Foreign Police in

Pilsen sets the time period of 60 to 90 days. Yet cases are known when processing an application for a long-term residence permit took over 100 days.

Let's look at a specific example: A migrant's visa is about to expire on October 30th; on September 1st, he applies for an extension. While submitting his application, he has to sign the statutory declaration, since otherwise he is immediately invited to an interview and begins to have problems. The Foreign Police does not manage to extend his visa in two months and the alien, as written in the declaration submitted by him, must leave the country. Although it is expensive and troublesome, leaving the country is possible for people from Ukraine for instance. For people from far-away countries such as Vietnam and Mongolia, it is almost impossible to leave, mainly because of the travel costs and the potential need to obtain transit visas. Many nationals of these countries who have not left the Czech Republic have received administrative expulsion and a ban on residing in the CR for six months, although they have met all legal requirements for a visa extension or change of purpose.

On top of that, the approach adopted by the Foreign Police Inspectorate in Pilsen is unfounded in law. The Administration Procedure Code (500/2004 Coll., § 6, section 1) clearly refers to the fact that the decision on residence permit extension or change has to be issued within a reasonable time period. Nevertheless, there are cases of foreigners who applied for a visa extension in April 2010 and received their residence permits only towards the end of August 2010. The Foreign Police explains such huge delays by saying that these applications require more time; e.g. the District Social Security Administration (OSSZ) has to be inquired regarding the payment of social security, and that it takes up to six weeks for the OSSZ to reply. The Foreign Police views this information as necessary for making a decision on visa extension. In one case, however, the authors of this article inquired in writing to the District Social Security Administration (OSSZ) whether it had received an inquiry from the Foreign Police. It so happens that the Foreign Police turned to the OSSZ six weeks after the submission of the application. One can therefore assume that the delays related to visa extensions are often caused by the inactivity of the Foreign Police.

Unfortunately, all this has only encouraged dependency on the client system in the Pilsen Region. It is only logical that migrants began to officially register in Brno, the Central Bohemia or Ústí Region, and elsewhere, where a more appropriate approach of the Foreign Police can be seen. The attitude of the Foreign Police in Pilsen, which by its actions ardently defends its existence, only makes life unnecessarily difficult for migrants.

One of the primary causes of the complications accompanying the changing of the purpose of stay as described above is the government policy on the employment of foreigners; specifically, the above-mentioned instructions not to issue or to significantly reduce the number of employment permits issued to foreigners, which the labour offices had received after the onset of the economic crisis. This poorly thought-out and badly implemented policy ultimately led to the great and also – in practice – unnecessary increase in the number of self-employed foreigners. The current approach of the Foreign Police in Pilsen is an inadequate

response to the increase in the applications for the change of the purpose of stay. Nevertheless, these applications are only a reaction to the lack of concept regarding the policy of employing foreigners.

Single female migrant workers in Pilsen are not allowed to get pregnant!?

Problems with visa extension, unfortunately, do not stop at the above-mentioned cases. In the Pilsen Region, many different groups of foreigners, who – due to various circumstances – find themselves in less standard situations, are in troubles. One such example is the situation of single female migrant workers.

There are many instances of women who had been running a business in the CR, gave birth to a child and for various reasons found themselves in the position of single mothers. In these cases, for several months they suspended their business, in compliance with the Pension Insurance Act. The Foreign Police in Pilsen, however, considers such a suspension a breach of the purpose of stay and does not extend visa to these women (even in the cases when the mother has successfully resumed her business). In practice, single mothers have only two options left: To return to their country of origin, or to stay in the Czech Republic without a residence permit.

According to a Foreign Police statement, a woman with a child should ask for a change of her purpose of stay, such as family reunification. The fact that a single mother usually does not have this option is not being taken into account by the Foreign Police in Pilsen. The consequences of this haphazard approach, however, are borne by the mother and her child. As in other cases, single mothers, too, face the unpleasant fact that if they had applied for their visa extension at another Foreign Police Inspectorate, there would be a good chance of their visa being granted.

The reporting of migrants by health-care facilities to the Foreign Police

Another area of concern is the access to health care. The Foreign Police in Pilsen took the initiative that it would be mutually beneficial for the Pilsen Region if the regional health care facilities inform the Foreign Police about migrant workers without valid health insurance.

Such cases are not rare, mainly due to the relatively recent change in legislation. Currently, only health insurance provided by insurance companies licensed to provide such insurance in the CR is considered valid. Yet some migrants still have past insurance contracts with foreign insurance companies. Today, such insurance is not considered valid anymore. This applies mostly to people who, for example, had to buy a two-year health insurance in the last months of 2009 due to a visa extension application. They arranged their insurance with a Ukrainian health insurance company and paid about 8000 CZK for it. Since the beginning of 2010, however, they are required to have their health insurance contracted through an insurance

company based in the CR. The cheapest version costs around 10 000 CZK for two years, but in practice it often covers just as little as the already-paid Ukrainian insurance.

The Regional Authority responded to this initiative of the Regional Inspectorate by addressing the regional health care facilities (which it helped institute) with a written recommendation to cooperate with the Foreign Police in this area. And even though this is in direct violation of the law (§ 55 section 2 point d) of Act No. 20/1966 Coll. on Public Health Care), pursuant to which a medical worker is obliged not to disclose the facts he or she has learned in the exercise of their profession. This applies also to the disclosure of whether the patient is insured or not. At present, if a migrant comes to the Faculty Hospital in Pilsen Lochotín or Bory, or if s/he calls an ambulance and fails to show a valid health insurance certificate, s/he is reported to the Foreign Police. Besides receiving a fine, he or she is threatened to have their residence permit withdrawn. Such a cooperation of regional health care facilities with the Foreign Police has led to the fact that foreigners try to avoid them if possible.

This measure also leads to an increased dependency on clients (intermediaries). These people currently identify doctors who are willing to treat migrants in case of a sudden illness or injury without asking for their health insurance certificate and without contacting the Foreign Police. As a result, the access of foreigners to health care has deteriorated significantly, and at the same time the cost of health care has risen for them. It is the client who pays the doctor for treating the migrant worker, yet then the migrant has to – in most cases with an additional charge – repay the bill.

A great number of foreigners living in the CR are dependent on commercial health insurance. This is a situation that is already highly discriminatory against foreigners, and it has even been exacerbated by this measure adopted by the Region.

Migrants from the EU

In the last year (2009/2010), the Pilsen Region also saw a significant increase in the number of foreigners from EU countries – particularly from Bulgaria and Romania. This is probably happening in response to the fact that in many third countries, issuing of visas to the CR has been suspended. Therefore, those who make a living by arranging work and visas, begin to focus on getting interested people from countries whose citizens do not need a visa to come to the Czech Republic. Citizens from other EU countries, though, while staying in the CR, experience problems very similar to those of third-country nationals.

EU citizens are obliged to register with the Foreign Police when staying in the CR for more than three months. The Foreign Police, however, refuses to register these migrants if they fail to produce a labour or rental contract. However, very often these people do not have a contract or their landlord does not want to issue a certificate of accommodation to them. Currently, the estimations of the Contact Centre suggest that there are about ten times more Bulgarians and Romanians in Pilsen than what official statistics say.

Nonpayment of wages

Furthermore, a huge number of cases have been recorded recently, where foreigners (both EU and third-country nationals) have worked for three or four months and have not been paid for their work. Nonpayment of wages for accomplished work can be seen both among foreigners who have labour and residence permits, and those who do not hold these permits. The current system offers nearly no options to them as to how to effectively defend themselves.

Very often, when migrants do not get paid for their work and contact the appropriate authorities (mainly the Labour Office) and if their situation is addressed, the investigation is later aborted because of the lack of evidence. The employers usually claim that they have never seen the migrant or that the person has not been working for them for a long time. Migrant workers often do not receive labour contracts, and if they do, these contracts do not fulfill all legal requirements and are deemed invalid. Very often, the employer or the intermediary agency keeps double documentation. One documentation complies with the Czech law and the other is given to the migrant. When an inspection comes, the employer or the intermediary agency naturally presents the documents that comply with Czech legal standards. Migrants, however, do not receive these and when they need to defend themselves, all they have are worthless scraps of paper.

Very often, they do not even know the fundamentals about their residence and employment situation. Every day they go to work, but their employer may have the practice of dismissing them every three months, at the end of their trial period, and then reemploying them a few weeks later. When the time comes for migrant workers to extend their visas for another year, it turns out to be impossible, for example because they have arrears in their health insurance for the time period during which they were not employed officially. Unfortunately, it is not only migrants with short-term residence in the Czech Republic who encounter these problems, but they are experienced also by foreigners with permanent residence. The position of migrants in the labour market is difficult in many other ways, such as when a female migrant becomes pregnant: Such an unfair employer will immediately dismiss her, regardless of the Labour Code. Her chances of defending herself are virtually non-existent.

Furthermore, it has become a widespread practice for employers or clients (intermediaries) to legally employ foreigners for minimum wage. Then, however, foreigners are forced (often by the use of various threats: mainly that if they do not accept these terms, they will have their legal residence withdrawn) to agree with additional salary deductions. Usually, these are highly inflated fees for services such as accommodation, transport, interpretation, etc. After these costs are deducted, foreigners often have no resources left for their daily lives and are forced to look for another job (in addition to this “minimum wage” one), mostly illegal, to be able to support themselves.

The continuously deteriorating housing conditions

During the past two years, the housing situation of foreigners in Pilsen has changed as well. In workers' dormitories, Foreign Police inspections are very frequent. During these inspections foreigners keep getting fined for various offenses, and these fines are at the maximum possible amount of CZK 3000. The offenses, most often, consist of not having their health insurance cards on them during the inspection or not being registered at the given dormitory. Yet the owners of the dormitories often charge fees for the residence registration, these fees change frequently and are also ridiculously overpriced. What is surprising is that although the registration obligation lies also with the landlord (see § 102 of the Alien Act), it is mostly foreigners who are fined.

As a result, many foreigners have moved into privately rented accommodation, as it is much more difficult to carry out inspections there. The accommodation, though, often does not comply with hygienic standards, and there are cases of ten foreigners living in a small apartment consisting of one bedroom and a kitchen. Migrants, however, feel safer here. The workers' dormitories have become – because of the approach of the Foreign Police – the places of last resort to live in.

Conclusion – further aggravation of an already bad situation

When one asks migrants in Pilsen what has changed for them in the past two years, one learns that nothing has changed or that the situation has only worsened.

The system has driven migrants into changing their purpose of stay into doing business, yet they are still working in the same positions as they were two years ago. The difference, however, is that it is more difficult for them to extend their visas now, and the Labour Code does not cover them anymore. They work long hours overtime which often remain unpaid, and they are not entitled to being given protective equipment. Also, they have no holidays, and they must keep a more complex documentation. It seems that people work illegally more than ever. The housing situation can also be considered as highly problematic. When it comes to health insurance, self-employed migrants today rely mainly on Czech commercial health insurance companies. These are more expensive when compared to the insurance companies based abroad which had provided health insurance in the past. Still, most of the time migrants have to pay for health care in cash, and after that they have to claim the reimbursement of medical expenses from their insurance companies' assistants. Insurance companies, however, often refuse to reimburse them and in the end migrants pay for their health care themselves.

The measures adopted in response to the economic crisis struck foreigners with a previously unknown force, notwithstanding the fact that many of the jobs they had or have continue operation and that Czechs had never been interested in them. Rather than suffering from the economic crisis, migrants are worse off because of the change in the attitude of the Labour Offices and the Foreign Police. It seems that migrant workers only came in handy when the

demand for labour was high. The fact that they have significantly helped and are also currently helping the Czech economy to grow has been overlooked.

A Note: This case study was written on the basis of information obtained from the field and from interviews with foreigners, thanks to the work of Martina Hánová in the Pilsen Contact Centre for Foreigners. The Centre focuses on counselling people from third countries, the core of its work takes place directly in the natural environment of migrants, in the field or by providing assistance when dealing with the authorities. The Centre was established in response to the demand expressed by migrants. Migrants with experience in social work or with legal education are themselves working in the Centre. If you would like to contribute to its activities, you can contact kc.plzen@gmail.com.

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