

Pitfalls of (Un)Employment of Foreigners in the Czech Republic

Organization for Aid to Refugees, o. s., Prague 2011

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Dear readers,

you just got in your hands publication Pitfalls of (Un)Employment of Foreigners in the Czech Republic, which has been created within the project “Professional social consultancy to foreigners – assistance in integration in the labour market” that was financed by the funds from the Operational Programme Human Resources and Employment financed by the European Social Fund and the national budget of the Czech Republic through the Ministry of Labour and Social Affairs.

The aim of this publication is to create a basic summary of the problems related to the employment and unemployment of foreigners in the Czech Republic. Employment belongs among the most important factors having impact on successful integration of foreign citizens in the host country. And at the same time there are also some significant legal and structural obstacles in the area of integration in the labour market of the Czech Republic.

The publication contains substantial information about these issues. It is not the brochure’s ambition to impress professionals in the given area, but rather to outline and clarify the basic legal and social facts, formal and informal procedures of the persons acting in the labour market, the specific features of distribution of foreigners in the labour market and the risks related to the (un)employment and search for an economically appealing occupation in the host country.

The text is designed, in particular, for students of secondary schools, higher specialized schools and universities focusing on social and legal issues. It should also serve to beginners among social workers who will focus in their activities right on the work with migrants but also to social workers who work with a different target group but who would like to broaden their professional horizons.

The publication is divided in seven chapters. The first chapter focuses on the **Legal framework for employment of foreigners in the Czech Republic**. This part is followed by chapter called **Unemployment and its specificities in foreigners in CR**. The third chapter describes the **Human trafficking for the purposes of forced labour in CR**. The remaining chapters deal with the **European Social Fund**, outline project “**Professional Social Consultancy – Assistance in Integration in the Labour Market**”, within which the whole publication was created, and bring the **directory of organizations** that focus their activities on social-legal, assistance and other services to foreigners. In the very end of the publication you will find **summary of used bibliography and other sources**.

In addition to the Czech version, the publication was also translated to the English and Russian language.

The publication can be downloaded free of charge as a PDF document at <http://www.opu.cz>

Petr Krejčíř

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1. Legal Framework for Employment of Foreigners in CR

1.1 Introduction

The aim of the contribution is to provide a basic summary about the rights and obligations of foreigners employed in the territory of the Czech Republic and to describe briefly the administrative procedure leading to the legal employment. Therefore, the following text will outline three fundamental areas with respect to three fundamental legal regulations related to the issue of employment of foreigners. This includes regulation of employment under the Employment Act (EA), the area of residence permits under the Act on Residence of Foreign Citizens (RA) or the Act on Asylum, as the case may be, and finally the area of labour conditions regulated the Labour Code. All these areas are mutually overlapping, yet it is necessary to keep in mind their fundamentally different approach depending on whether they are a part of the private law (the Labour Code – LC) or the public law (the Act on Employment and the Act on Residence of Foreign Citizens). With the effect from 1 January 2011, an extensive amendment of the Act on Residence of Foreign Citizens and the Act on Employment, above all, has been passed, which has influence on other regulations¹; a brief description of the changes is incorporated in this text. The following chapters will outline some of the “trends” in the area of employment of foreigners, namely the agency employment and business activity of foreigners based on trade licenses. Among the entire scope of possible labour-law relations with a foreign entity the article focuses on the situations where the employee is a foreign natural person.²

In the introduction it is necessary to define the term “**foreigner**”. In general, the citizenship is the crucial criterion for defining a foreigner³. However, each of the above mentioned Acts

¹ Act No. 427/2010 Coll. dated 21 December 2010.

² In addition to that, the labour-law relationship with a foreign element means both a relationship between an employee – Czech citizen and a foreign employer, and assignment of an employee – foreigner, to carry out work in the territory of Czech Republic under a foreign employer; none of these situations – save for express references – will not be taken into account in the following text. The seat is crucial for determination of a legal entity as a foreign legal entity, see Section 21(2) of the Commercial Code, as amended.

³ See Section 33(1) of Act on International Private and Procedural Law (“A IPL”); a person without state citizenship will be viewed by the Czech law as a foreigner if his/her last known domicile or residence was in the territory of the Czech Republic.

elaborates this definition further and makes it more narrow in a certain extent. Category of foreigners specified by the state citizenship can be further divided into the EU citizens and their family relatives⁴ and the foreigners from third countries. In principle, the EU citizens and their family members are given a more advantageous position than the citizens of third countries. The foreigners with permanent residence in the Czech Republic also receive similar advantages.

The second reference point is represented by the **reason for application of the Czech legal regulation**. Unless the choice of law⁵ applies, the place of performance of the work is the relevant collision determining factor for the labour-law relation, i.e. the application of the Labour Code. Therefore, the article builds on the premise that employment relation between a foreigner and a Czech employer in the Czech Republic will be governed by the Czech law, in accordance with the general principles of application of the EU legal standards. The European law determines, mainly in the form of directives, the minimum standards with the aim to eliminate social dumping and to balance the working conditions substantial for functioning of a unified market with respect to the economic competition. The territorial standpoint, applying basically to the whole territory of the Czech Republic, is crucial for application of the Act on Employment as the public-law standard.

1.2 Sources of Legal Regulation and Principles of Labour Law

The labour law can be divided into the **individual** labour law – regulating the relationship between the employee and employer, the central regulation of which is covered in the Labour Code, and into the area of **legal regulation of employment**, which regulates the relationships

4 Under Section 15a of the Act on Residence of Foreign Citizens, the family relative of an EU citizen means his/her wife/husband, parent, child under 21 years and such child of the spouse, dependant direct relative and such relative of the spouse, and a person who has with the EU citizen a permanent relationship similar to family relation and lives with him/her in the common household.

5 See Section 16 of AIPL; the employment relation is basically governed by the law of the country where the work is carried out, which is an important requisite of contract of employment; unless the parties agree otherwise, so-called choice of law with stipulated limit in the form of reservation of the public order under Section 36 of AIPL. In employees assigned for work abroad the employment relation is governed by the law of the country where the employer has its seat, unless the employee is a person with residence in the country where he/she carries out the work. Exceptions from application of the Czech law apply also e.g. to workers in the field of transport.

created in exercise of the right to employment, under Art. 26 of the Charter of Fundamental Rights and Freedoms, among natural persons, state authorities (particularly the Ministry of Labour and Social Affairs and the Labour Office) and employers, with the regulation contained in the Act on Employment⁶. The labour law has, above all, a protective function, i.e. it protects the weaker party to a contractual relation, and it has also an organizing function, i.e. it establishes the framework and conditions for efficient relations under the labour-law. The key difference in the very core of those two areas of the labour law results from the fact that they are incorporated in the private law, respective in the public law. The individual labour law has its origins in the civil law, therefore, it is based on the principle of equality of entities and the principle of contractual freedom. Thus, the Labour Code contains, despite its private-law essence, a number of fundamental interventions in the contractual freed for the benefit of the weaker party. This is reached by the form of mandatory regulation of the minimum working conditions allowing neither to deviate from the wording of the law not to stipulate a legal regulation for the employee more disadvantageous than as stipulated by the law. This type of regulation is based on the fact of unequal negotiating power in negotiating an employment relation and is applied e.g. in regulation of termination of employment relation, determination of the maximum working hours, periods for rest etc. A different system relates to EA: it is a public-law norm where entities are not in equal positions, on the contrary – the state authority has been entrusted with the superior authority to decide in the form of an official decision on the rights and obligations of the other entity. By the methods of regulation and the character of entities it is close to the administrative law; as a subsidiary solution the rules of administrative procedure will apply to the proceedings. Thus, EA is the logical introduction into the subject of foreigners' employment.

1.2.1 Act on Employment

Along with the Residency Act, the Employment Act constitutes the basic legal framework of the specific regulation of foreigners' employment. The system is based on the principle of permissions and the principle of protection of the labour market, while respecting the

⁶ For the sake of completeness it is necessary to add that the collective labour law is the third and non-ignorable area of labour law. It includes relations between entities representing associated employers and representing employees, e.g. trade unions; the legal regulation is included in the Labour Code and in the Act on Collective Bargaining. A fundamental principle consists in restricting the individual will beyond the Labour Code by a collective will expressed in collective contracts. This area of law is not reflected in this text.

principle of unrestricted mobility of labour force within the EU. Therefore, distinguishing between the EU foreigners and the foreigners from third countries has a significant impact within the EA. Although EA builds on the presumption that all foreigners need, among other things, the work permit, at the same time the Act does not consider as foreigners the persons with the citizenship of another country of the European Union or their family relatives⁷. However, even in the situation where the employment relation is governed by a foreign law, either based on the choice of such law in accordance with the seat of the employer, i.e. regardless of the fact that within the individual labour law the Czech legal regulations do not apply, such foreigner needs the work permit; provided that, of course, he cannot be subordinated under some of the categories of exceptions contained in EA. In addition to that, under EA employment also means performance of tasks arising from the scope of business of a legal entity and thus the condition of the work permit also applies to the members and statutory bodies of a foreign legal entity⁸. Briefly summarized, the legal regulation stated in this chapter is relevant, save for the exceptions, only for foreigners from third countries, unless they are family members of an EU citizen.

As stated above, so-called **European foreigners** have the same legal position, i.e. the same rights and obligations, as citizens of the Czech Republic, unless the EA stipulates explicitly otherwise. This expressly different regulation consists in the **employer's obligation to keep records** on these categories of employees under Section 102(2) of the EA and the **employer's obligation to inform** under Section 87 of the EA. This obligation means a duty to provide the labour office with written information about, above all, commencement of employment of an EU citizen or his/her family relative, and a citizen who does not need the work permit, which information must be provided on the day the employee comes to begin his employment, at the latest⁹. The provided information contains data as e.g. the foreigner's identification data, his address in the Czech Republic and passport number, type and place of execution of the work and the expected daily working hours or the data on the highest education achieved¹⁰. Any

⁷ See Section 85 of EA; and also Section 3(2) and (3) of EA.

⁸ See Section 89 of EA

⁹ This obligation does not apply to certain selected categories of employees, namely to members of rescue units, employees in international transport, accredited journalists and military and civil personnel of armed forces.

¹⁰ See the reference in Section 102(2) to Section 91(1)(a), (b), (c) and (e) of EA.

change in such data must be reported by the employer within 10 calendar days from the date the change occurred or the date the employer learnt about.

It is a rule for the foreigners from third countries that for employment in the territory of the Czech Republic they need the **work permit** and the residence permit or they must be holders of the green or blue card. Similar obligation to have a work permit apply to an employee of a foreign employer sending this employee out to work in the territory of the Czech Republic¹¹. The permit is also required for seasonal works¹². Moreover, other legal regulations can also establish restrictions in the form of the Czech citizenship as a precondition for execution of work/position¹³.

The permit is issued by the labour office based on a direct application filed by the foreigner or application filed through the employer. The relevant labour office is the LO having the competence in the place of performance of the employment¹⁴. The application is filed using the prescribed form with annexes constituted by the employer's statement certifying that the employer will employ the employee; the certificate of professional qualification of the foreigner and, as the case may be, other documents, if the character of the employment requires so.¹⁵

The labour office decides based on the assessment whether: firstly the job has been reported as a vacancy, and secondly, whether such vacancy, with respect to the requested qualification or the lack of available labour force cannot be filled in otherwise. The third aspect is the situation on the labour market, which the labour office, while issuing the permits, must take into consideration. Available jobs – either newly created or vacancies, including their

¹¹ See Section 95 of EA.

¹² See Section 96 of EA; this applies to foreigners carrying out activities depending on seasons for a period of 6 months, in maximum, within one calendar year and the pause between the individual employments must be at least 6 months as well.

¹³ For example, the position of judge under Section 60 of Act No. 6/2002 Coll., on courts and judges.

¹⁴ See Section 7(3) of EA.

¹⁵ The application form, including the annexes required, can be downloaded from the website of the MWSA at http://portal.mpsv.cz/sz/zahr_zam/zz_zamest_cizincu/zz_zamest_ciz, which is available from 15 January 2011. The administrative fee payable in fee stamps in filing the application is CZK 500 for the first application and CZK 250 for application for extension.

descriptions, must be announced by employer to LO within 10 calendar days¹⁶. Work permits can be subsequently issued to foreigners only for the jobs announced previously in the above manner.

It is important to mention that labour office is an administrative authority and in the proceedings it proceeds, save for express exceptions¹⁷, in accordance with the Code of Administrative Procedure. The labour office issues decisions on grant/rejection/extension of validity of the work permit. The period for issuance of the work permit under Section 71 of the CAP is either immediately or within 30 days, at the latest, from the date of application. In particularly difficult cases such period can be extended. The **obligation to inform** is imposed on employers employing foreigners with the work permit regarding the foreigner's failure to commence the work or termination of the employment prior to the lapse of the term, for which the work permit has been issued, which information must be provided basically within 10 calendar days from the crucial event¹⁸.

The work permit can be issued for up to 2 years and can also be extended repeatedly upon request, always for 2 year in maximum. However, in practice the work permits are usually issued for period of 6 months to one year; the labour office justifies such procedure by the need to revise whether meanwhile the situation on the labour market has not changed. The application for extension of the work permit must be filed 30 days prior to the expiry of validity of the original permit, at the latest; the application's particulars are the same.

Section 97 of the EA enlists the **exceptions from requirements for issuance of the work permit**. In assessing whether the work permit will be issued, the labour office in certain cases stipulated by the law does not insist on meeting the three conditions stated above: announcement of the job vacancy that cannot be filled in otherwise, and without considering the labour market situation. Thus, the persons entitled to such privileged procedure, provided that they meet the formal requisites of the application, has legal entitlement to obtain the work permit. This category includes, above all, the applicants for grant of international protection¹⁹,

¹⁶ See Section 35 of EA.

¹⁷ See Section 142 *et seq.* of EA.

¹⁸ See Section 88 of EA; in reference to such announcement the LO is obliged to inform the Ministry of Interior.

¹⁹ The law basically distinguishes 2 forms of international protection – asylum and additional protection – both under the Act on Asylum. Applicant for international protection is a person, on whose application effective

including the persons with granted visa for the purpose of toleration under the Act on Asylum (in the course of the proceedings on cassation appeal), provided that their application for the international protection was filed at least 12 months ago. It also includes the persons with granted tolerance visa under the Foreigners Act, persons under 26 years employed at occasional and time-limited works within school exchanges or under the programmes for youth and foreigners within so-called fellowship etc.²⁰ We should stress the period of one year from filing of the application for international protection, when such applicant has not possibility to be employed at all, i.e. he/she will not be issued the work permit. Once this period lapses in vain, he/she will be entitled to have his/her application assessed within the privileged procedure as stated above²¹.

In addition to the above exceptions from the requirements for issuance of the permit, Section 98 of the EA also enlists the **exceptions from the obligation to have the work permit** for employment in the Czech Republic. The foreigners who can work in the Czech Republic without any work permit, i.e. in this respect they fall under the procedures applying to EU citizens, can be divided in several groups. Firstly, the foreigners who have been granted asylum, additional protection or permanent residence permit can work in the Czech Republic without the permit as well as the foreigners with the long-term residence permit granted for the purpose of family's living together, if the holder of the permit for unification is any of the above mentioned foreigners.²² In practice, such foreigner can be e.g. the spouse of the foreigner who has been granted the permanent residence in the Czech Republic.

The second important group exempted from the obligation to have the work permit includes full-time students at secondary and higher vocational schools or universities, including the time during holidays, and graduates from such/accredited schools and also teachers or academic workers at universities and researchers, scholars and scientists working at public

decision has not been issued so far. Although the Act assumes the period of 90 days for the decision, in practice such proceedings last several years.

²⁰ Fellowship means an employment for a timely limited period for the purpose of improving the skills and qualifications, for the period of one year, in the maximum, with the possibility of extension.

²¹ The declared reason for the year-long period is to prevent from the foreigner's integration in CR that could represent an obstacle in the foreigner's return to the country of origin after a disapproving decision on his/her application.

²² See Section 98(a), (c), (l) of EA.

research organizations, provided that they carry out this activity in the Czech Republic steadily.²³ Another group includes foreigners – performing artists, sportsmen and pupils/students under 26 years etc., whose period of work does not exceed 7 consecutive calendar days or the total of 30 days in a calendar year. Provided that this time-limit condition is met, this exception also applies to the persons securing in the Czech Republic a delivery of goods or services, carrying out assembly or repair works under a business contract²⁴ and others²⁵.

The permit expires under Section 100 of the EA by expiration of the period for which it was issued, however, above all by termination of the employment for which it was issued. Here, it is necessary to emphasize that the work permit applies to one specific job with a specific employer. The work permit is not a general permit and without changing the work permit it is not possible to change employers, not even if the same work activity is carried out. The work permit is tied to the permit of residence in the territory of the Czech Republic. This binding relation does not apply vice versa²⁶. Therefore, if the validity of the residence permit expires or if the residence permit is lawfully terminated, the validity of the work permit will also expire. In this way, the permit expires directly pursuant to the provisions of the EA and no administrative proceeding at the labour office is required for its termination. In addition to the expiration of the work permit *ex lege*, the permit can also be revoked.

The labour office may **revoke** a granted work permit under the statutory conditions stipulated in Section 100(2). An administrative proceeding must be conducted on the revocation; however, appeal against such decision does not have a suspensory effect, i.e. the foreigner loses the possibility to continue in legal employment even upon a decision on revocation of the permit that has not become effective yet. There is a reason for revocation of the permit if

²³ See Section 98(j) in connection to Section 5(d), and also Section 98(o) and Section 98(n) of EA.

²⁴ See Section 98(d) of EA.

²⁵ Neither is the work permit required for an employer sent out by employer seated within the EU and a special regulation applies to residents of another EU member countries and their family members. The last group includes the already mentioned rescue rangers, workers in international transport, journalists and armed forces personnel, including family relatives of members of diplomatic missions, consular offices or employees of international government organizations or the foreigners named in international treaties; see Section 98(k),(m) and (p), Section 98(b), (e), (f), (g), (h) and (i) of EA.

²⁶ See the reasons for revocation of visa/residence permit under Section 37 and Section 46(8) of RA.

the employment is performed contrary to the issued permit, e.g. if the foreigner carries out for the employer a different type of work than for which the permit was issued, or the fact that the permit was issued based on untrue data.

By failure to meet the obligations stipulated by the law the person can commit a **administrative offence**. The authority having the jurisdiction to decide on such issues is the relevant LO in the place of performance of the work. Section 139 and Section 140 of EA stipulate the cases when an individual commits an offence or a legal entity or natural person – entrepreneur commits an administrative offence. This basically includes, in addition to violation of the obligation to keep evidence on the facts or data stipulated by the law or to report such facts or data to the labour office²⁷, a performance of illegal work or allowing to perform illegal work²⁸. Administrative offence, in reference to the legal regulation of agency employment, is also committed if a person brokers an employment without the permit, breaches the law or good morals in brokering employment in a different manner or if a person violates the ban on discrimination or fails to secure an equal treatment²⁹. Natural person carrying out an illegal work is sanctioned by the penalty in the amount up to CZK 10,000. Here, it is necessary to emphasize that in addition to EA illegal work is also regulated by RA.

In this respect there is a significant **obligation to report imposed on certain authorities of state administration** under Section 106 and 107 of RA. Therefore, the labour office will promptly report in writing to the Ministry of Interior any employment of a foreigner without the work permit or residence permit or the fact that a foreigner did not commence the employment under the granted permit or the employment was terminated prematurely. The labour office will also send to the Police copies of the decisions on (rejection to) grant, extension (rejection to extend) and revocation of the work permit.

The Foreign Police (hereinafter only the Police) is authorized to carry out the **residence inspection** of both the foreigners, with the aim to ascertain whether they dwell in the territory lawfully and whether they meet the conditions for residence or other obligations stipulated by RA, and also other persons with respect to the obligations mentioned in the last place. Within

²⁷ See Section 139(2)(d) or Section 140(2)(d) of EA.

²⁸ Under Section 139(1)(b) of EA, any person who brokers employment without a permit, carries out illegal work under par. (c) or enables performance of such work under par. (d), is committing an offence.

²⁹ See Section 139(1)(a) and (b) or Section 140(1)(a) and (b) of EA.

these inspection authorizations the Foreign Police may enter employer's workplaces regardless of the working, selling or operating hours, provided that the Police has a well-founded suspicion that there are foreigners in such place³⁰.

Newly, with the effect from 1 January 2011, Section 86 of EA introduces obligation of the employer who is interested in employing foreigners to report in advance and consult such intent with the labour office, including the identifications and numbers of foreigners, their intended occupations and the planned periods of performance of the work³¹. Such procedure is not required in the case of a foreigner entitled to be employed without the work permit or a foreigner, with respect to whom no situation on the labour market is regarded, or in the event of extension of the permit. Neither this obligation applies to the employers employing foreigners with the green or blue card. The provision does not stipulate expressly that the labour office has already at this stage the competence to reject the employer with its request to employ the foreigner. Nonetheless, there is no doubt that this new obligation has made the foreigners' access to the labour market more difficult, at least in the form of another administrative barrier for the employers. And the question is whether such approach is not too much contrary to the current tendency to employ foreigners through entities specialized in employment of foreigners, i.e. the labour agencies, and/or whether such trend is desirable (see below).

1.2.2 Act on Residence of Foreigners in the Territory of the Czech Republic

For more complex understanding to the issue of employment of foreigners this chapter briefly summarizes what possibilities of obtaining the resident status a foreigner, who wants to work in the Czech Republic, has in relation to employment. It also mentions the residence permits in the form of the green and blue cards. The conclusion deals with the impacts and problems related to illegal work.

RA builds on the principle of distinguishing among the short-term visa – a visa for residence up to 90 days, the long-term visa – for residence exceeding 90 days, the long-term residence

³⁰ See Section 167(2) in connection to Section 167(d) of RA.

³¹ Section 86(1) of EA reads: "Employers may recruit foreigners for vacancies (Section 35) that cannot be occupied otherwise, if they announce and consult with the labour office in advance their intent to employ foreigners, including the particulars about their number, type of work that they are going to perform and the expected time period of the employment."

permit and the permanent residence permit³². One may not be employed in the Czech Republic based on the short-term visa. It is prerequisite for grant of the long-term visa or a residence permit to define the purpose of residence. RA distinguishes as the purpose of residence e.g. the employment, entrepreneurship, joint family living, study, scientific research etc. The Act presumes, above all, the gradual development in the residence permissions, i.e. the advancement from the long-term visa to the residence permit, while basically preserving the same purpose of the residence; repeated extension might lead to the permanent residence.

The first step is to file the **application for the long-term visa for the purpose of employment**, i.e. the visa above 90 days. The visa is granted by the Ministry of Interior for the maximum period of 6 months; such visa cannot be granted to an EU citizen and there is no legal title to the grant of the long-term visa.³³ The application is filed at the embassy of CR in the country of origin or the country where the foreigner has been given permanent or long-term residence³⁴. Requirements include the filled in official form of the application and payment of the administrative fee³⁵, submission of a travel document, two photographs and the document on accommodation secured in CR.³⁶ This document is e.g. the agreement on lease of apartment with notarized signature of the apartment's owner. If, under EA, the foreigner is obliged to have permission for employment in the Czech Republic, he/she also submits the already issued work permit or the statement that the application for issuance of the work permit has already been filed, i.e. the foreigner will state the ref. no. and the labour office where the application was filed..³⁷ Foreigners do not have to prove, prior to sticking the

³² For simplification, the institute of exit order is disregarded here. Different rules of the temporary and permanent residence apply to the EU citizens and their family members; (see 1.2.1 of the publication)

³³ See Section 30, Section 51(4) and Section 51(2) of RA.

³⁴ See Section 53(1), save for foreigners from the countries expressly stated in Decree No. 429/2009 Coll. stipulating the exceptions from the obligation to apply for visa or residence permit at the relevant embassy.

³⁵ The fee amount is stipulated by Act No. 634/2004 Coll., on administrative charges; pursuant to item 117a(a) of the tariff: acceptance of application for visa above 90 days – CZK 1,000.

³⁶ See Section 53(2), Section 31(1) and (2) of RA, Section 31(1)(e) – this does not apply if foreigner's photograph is taken

³⁷ The Ministry may ask the foreigner to attach, in addition to the above particulars, a document similar to the extract from the criminal register of his/her country. Only if there is a well-founded suspicion that the foreigner

visa in the travel document, the paid travel health insurance, because as a future employee the foreigner is obliged to pay insurance contributions within the general health insurance, doing so in cooperation with the employer.³⁸ In the event that visa is not granted, the foreigner may apply within 15 days from the notice of refusal to grant the visa for a new assessment of the reasons for the refusal. The application is filed through the body that refused to grant the visa, i.e. most often through embassy of the Czech Republic.³⁹

The term of residence under the visa can be extended upon request⁴⁰, in maximum for a period, for which the visa is valid; the foreigner must attach the decision on extension of the work permit. The validity period of the visa itself cannot be extended for the purpose of employment. If the foreigner wants to continue in the employment, he/she must apply at the Ministry for the long-term residence permit.

The term of the **residence permit** will correspond to the term, for which the work permit has been issued⁴¹. The term of validity of the long-term permit can be extended, even repeatedly, upon the foreigner's request. Such application must be filed at the Ministry within 90 and 14 days prior to the expiration of the term, for which it was issued⁴²; the term, for which the permit can be extended, is limited by the term of employment⁴³. Basically, it is possible to apply for **issuance of a new residence permit for another reason** and e.g. to “switch” from the residence for purpose of study to the residence for purpose of employment. The procedure regarding the application for residence permit is substantially different from the procedure applying to visa application. Administrative proceedings are conducted on application for the residence permit and thus the standard review of the decision shall apply.

suffers from a serious disease, the Ministry may request a medical report in this respect. The Ministry must specifically invite the foreigner to submit any of the above documents beyond the standard procedure.

³⁸ See Section 180j (4), first sentence, of RA.

³⁹ See Section 180e of RA.

⁴⁰ See Section 35 of RA.

⁴¹ See Section 44(3)(e) of RA.

⁴² See Section 47(1) of RA, with the exception in the form of reasons independent on the foreigner's will.

⁴³ See Section 44a (1)(e) of RA.

The Ministry of Interior can **revoke the visa/permit issued** for the purpose of employment if, above all, the foreigner ceased to meet any of the conditions for grant of the visa/permit or if he/she does not fulfil the purpose for which the visa/permit was granted. In practice, such situation occurs if the labour office cancelled the foreigner's work permit or if the foreigner is not actually employed, although formally he/she has a document on the work permit; e.g. if the employer failed to report termination of the employment to the relevant labour office. The permit is cancelled through administrative proceedings.

Section 46(8) of RA is the special provision on residence for the purpose of employment. Here, foreigners are guaranteed 60-day period from termination of the employment relation. During this period, based on the legal reasons stipulated by the law, the Ministry of Interior will not cancel the foreigner's residence permit. This is a protection of employee, whose employment was terminated by unilateral legal action by the employer, above all for organizational reasons, or where the employment was terminated by the employee's immediate termination because of the employer's failure to meet the fundamental obligations⁴⁴. The Act provides this period for finding a new employment and obtaining the work permit for the new job⁴⁵.

A special reason for residence in the territory of the Czech Republic is represented by the long-term residence permit for the purpose of employment in the form of the **green or blue card**. This residence permit already includes a permit for the work, for which the card has

⁴⁴ For more details on the reasons for termination of employment see chapter 1.2.3 The Labour Code – selected provisions.

⁴⁵ Section 46(8) of RA: The Police shall revoke the validity of the long-term residence permit for the purpose of employment issued to the foreigner together with the work permit under a special legal regulation^{8e}), whose employment has been terminated for any of the reasons stated in Section 52(a) through (e) of the Labour Code or by agreement for the same reasons and/or upon an immediate termination under Section 56 of the Labour Code, and the foreigner has been living in the country as of the date of termination of the employment for the purpose of employment a) for the period of at least 1 year, provided that such period immediately preceded the termination of the employment, or b) for the period shorter than 1 year, provided that as of the date of termination of the employment the foreigner has been living in the country continuously for the period of at least 3 years, unless the foreigner has been issued a new work permit within the period of 60 days from the day following the date of termination of the employment; for the purposes hereof the period of continuous residence is composed of the period of residence under the residence visa issued for period above 90 days and under the long-term residence permit.

been issued⁴⁶. This system is based on a special “*central database of the job vacancies available for holders of the green/blue card*” by the Ministry of Labour and Social Affairs⁴⁷. The database contains job vacancies that could not be filled in within 30 days from their announcement to the labour office or that the Ministry of Industry and Trade marked as key vacancies and the employer agreed to such categorization. In addition to that, the vacancies marked as suitable for the blue card holders require a high qualification. Such qualification means a completed university or higher professional school education, where the study lasts at least 3 years. The green card can be issued for occupations with various qualifications from the lowest up to the university education, while the blue card is limited right by the high qualification and one of the application’s requirements is confirmation of the gross income in the amount of at least 1.5 multiple of the average gross yearly wage published by the Ministry of Labour of Social Affairs⁴⁸. The green card can be issued only to the citizens of explicitly stated countries⁴⁹.

The application for issuance of the card for such job is filed usually at the Czech embassy⁵⁰. As well as the other residence permits the card is issued by the Ministry of Interior. When granting the permit, the embassy actually sticks in the foreigner’s passport the long-term visa allowing to residence for period of 6 days for the purpose of takeover of the residence permit in the form of the card after entering the country; this is conditioned by taking out a travel health insurance till the date of commencement of the employment⁵¹.

⁴⁶ See Section 42g(9) and Section 42i(4) of RA.

⁴⁷ See Section 37a and Section 37b of EA; the database is available at the website of the Ministry of Labour and Social Affairs http://portal.mpsv.cz/sz/zahr_zam/zelka/vm a http://portal.mpsv.cz/sz/zahr_zam/modka/vm.

⁴⁸ It is necessary to submit an employment contract for the period of at least one year, with stipulated gross wage.

⁴⁹ This includes foreigners from the following countries: Australian commonwealth, Monte Negro, Croatia, Japan, Canada, Korea, New Zealand, Bosnia and Herzegovina, Macedonia, USA, Serbia, Ukraine; see Section 182(1)(e) of RA.

⁵⁰ The application for issuance of the card can also be filed in the territory of the Czech Republic, at the Ministry, provided that the conditions are met with respect to the minimum previous period of residence in the country and prove on obtainment of an employment regarding a position stated in the central database under Section 42g (2) of RA for the green card and under Section 42i (3) of RA for the blue card.

⁵¹ See Section 30(2) and 3 of RA and Section 42j of the same.

The validity term of the green card is limited by the term of employment and by the maximum possible period under the qualification. The blue card is issued with the validity exceeding by 3 months the term of employment, however, for 2 years in maximum.⁵² The validity of both cards can be extended⁵³. Similarly as the separate work permit, these cards refer to a specific employment with a specific employer. A change of both the employer and the job position is possible for the blue card, however, it is subject to the Ministry's approval for period of 2 years⁵⁴.

In the conclusion, we can say that the institute of the green card was introduced in the law as of 1 January 2009, however, so far there has been a minimum use of it in practice. The EU blue card is a common project of the European Union EU⁵⁵ incorporated in the Czech law with the effect from 1 January 2011; with regard to the condition of the prescribed wage amount we cannot expect its wide usage.

The EA defines the term **illegal work** in Section 5(a) and specifies two alternatives. Firstly, there is the situation where a natural person (individual) – regardless of their citizenship – carries out a work for another person, however, without being in employment relation to such person and without doing so under any other agreement/contract, e.g. contract for work (i.e. without permission); with the exception of children and wife/husband of the natural person for whom the work is carried out. The second definition of illegal work applies exclusively to the natural persons – foreigners, who carry out work without the work permit or contrary to the issued permit or contrary to the residence permit in the form of a blue or green card. Among other things, this type of illegal work affects the residence status of the citizen in form of a possibility of administrative expulsion under Section 119(1)(b) 3) of RA. In such case the Foreign Police issues a decision on administrative expulsion for period up to 5 years, if the foreigner, to whom no exception under EA applies, is employed without the work permit. The authorization of the Foreign Police also applies to the persons who carry out a gainful activity in the Czech Republic without a relevant authorization. This includes activities basically equal

⁵² See Section 44 of RA.

⁵³ Save for the "C" type green card, which cannot be extended; see Section 44(7).

⁵⁴ See Section 42i (9)

⁵⁵ See the Council Directive No. 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

to the entrepreneur's activity, however e.g. without the trade license. The other party to the labour-law relation can be sanctioned too, as the same consequence in the form of expulsion is caused by employing a foreigner without the permit or brokering such employment, if the employer is also a foreigner. For the sake of completeness it is necessary to add in each case such decision can be issued only if its consequence is adequate to the intervention in the private or family life of the foreigner being expelled, and at the same time the Foreign Police must examine, whether there are not any reasons defined by the law that would prevent from expulsion of the foreigner⁵⁶.

Newly with the effect from 1 January 2011, there has been a change to the financial **liability for the costs related to the administrative expulsion of a foreigner who used to be employed in our territory**. Under Section 123 of RA, in the case of employment of a foreigner without the work permit or the valid residence permit, the first person charged with this liability is the employer of such foreigner, even before the foreigner himself, followed by the person, who employed the foreigner within a subcontractor's contract, or any person within a contractual business relation who was aware or should and could have been aware of the fact that the foreigner did not have the permit. Such employer or any other person as mentioned above can be released of this liability if they prove that they fulfilled their duties and that they did not know that the residence permit was a fake. If the costs of the administrative expulsion are not paid using the above procedure, then it is the foreigner who is liable to pay the costs or, as the case may be, to make the payment using the financial guarantee. If the costs are not paid this way by a given deadline, the obligation of liability passes to other persons, including the person who undertook to do so in the invitation certified by the Police, then the broker of the employment without the work permit; the employer who terminated employment relation with the foreigner prior to the lapse of the period, for which the employer was granted the permission to employ such person on the grounds expressly stated in RA, if the foreigner, after revocation of validity of the residence permit for the purpose of employment, did not leave the country⁵⁷. Such employer can be exempted from the

⁵⁶ See Section 119a(2) and Section 179 of RA.

⁵⁷ The grounds are specified by the provision of Section 52(a) through (e) of the Labour Code that describes some of the reasons for termination notice given by the employer or by agreement on the same grounds and also by immediate termination of the employment relation by the employee under Section 56 of the Labour Code; see chapter 1.4. the Labour Code.

obligation if it proves credibly that it secured for the foreigner the payment of the costs related to the departure from the country. In such cases the liability for the payment is borne by the brokering the employment, and lastly the carrier who failed to meet its obligations under RA. The amount of the payment is determined by decision made by the Foreign Police or the Ministry of Interior.⁵⁸

The amendment of RA in Section 107(8) also newly regulates the **obligation to pay the costs of the health care** provided to a foreigner during the period from termination of employment till the departure, unless such care is paid otherwise. Such obligation is imposed on the person who employed the foreigner and if the employment was terminated for the above reasons under Section 52(a) through (e), by agreement on the same grounds and under Section 56 of the Labour Code prior to the lapse of the term, for which the work permit, green or blue card was issued, and therefore the residence permit for the foreigner was or is supposed to be revoked.

1.2.3 Labour Code – Selected Provisions

The Labour Code is the fundamental legal norm regulating the labour-law relations, i.e. above all the relations between employees and employers. This norm applies to foreigners in the same manner as it applies to the citizens of the Czech Republic. Thus, in optimal situation once the foreigners get access to the Czech labour market, their legal position is not different from any other employee and the law prohibits any discrimination. However, in practice we can quite often see the situations that do not comply with the LC standards in some aspect. Certain practices are directly contrary to the LC provisions, some others represent circumvention of the law only. This chapter contains selection of some of the most frequently violated provisions, supplemented with short examples.

Here, it is necessary to emphasize once again the private-law basis of the LC and the rights and obligations stipulated therein. In the case of violation of the conditions stipulated in the Labour Code, the employer must enforce his rights on his own by legal proceedings. Thus, it significantly decreases the chance of a foreigner working without the work permit to

⁵⁸ No appeal is allowed to be filed against the decision on amount of the payment – Section 123(5); therefore, in the case of disagreement with the decision a judicial review of the administrative decision could follow directly.

discharge the burden of proof before the court⁵⁹. Inspection authorizations of the labour inspectorates⁶⁰ do not relate directly to these private-law claims and e.g. it is not possible to enforce an unpaid wage only by notifying the labour inspectorate of a violation of the conditions arising from the Labour Code by a specific employer (see below).

We must briefly mention the **principle of non-mandatory versus mandatory provisions of the Labour Code**. Section 2 anchors the principle of the liberty of contract in the area of labour-law relations, nonetheless, as already mentioned above, the non-mandatory character is modified by the mandatory or so-called relatively mandatory provisions. They apply where there is the biggest social interest in protection of the weaker contracting party. The non-mandatory character means the possibility to deviate from the regulation stated in the Labour Code or to agree on different rules in a contract. The mandatory character of norms means their imperativeness, where it is not possible to deviate from the LC regulation, not even upon an agreement between the parties; such stipulation or a legal action carried out under such stipulation would be sanctioned by its nullification. Relatively mandatory aspect then means the impossibility to decrease the protection standard, but it is possible to agree on a different regulation in one way, e.g. a longer paid holiday. However, in such cases it is necessary to observe the rule of the equality approach and prohibition of discrimination, i.e. the employer must then secure such more advantageous treatment to the other employees as well⁶¹.

A labour-law relation is established based on creating an employment relation, which is defined as a performance of dependent work within a superiority-inferiority relation. The depending character arises from the employer's authorization to determine the working

⁵⁹ It is possible to presume that regardless of fulfilment of the conditions for employing foreigners under EA, if an employment contract is entered into and the occupation is actually carried out, the Labour Code shall apply; i.e. the protective role of the labour law shall apply regardless of the fact that, as the case may be, the work is carried out by a foreigner without the relevant work permit or residence permit.

⁶⁰ The labour inspectorates examine observance of the obligations stated e.g. in the Labour Code, they can order measures to be taken to remedy the defects found in the inspection, conduct proceedings on administrative offences, impose fines. It is possible to file a written motion for inspection at the inspectorates. For more details see Act No. 251/2005 Coll., on Labour Inspection.

⁶¹ See Section 16 of the Labour Code; the provision refers to application of Act No. 198/2009 Coll., on equal treatment and legal means of protection against discrimination; Section 16(3) of the Labour Code also states the exceptions from such obligation.

conditions and from the employee's obligation to carry out the work in accordance with the employer's instructions. The labour-law relations also include relations based on agreements performed out of an employment relation (contract of services and contract for work) and the working relations between a cooperative and its members. This determination is essential for determination of so-called švarcsystem, where a dependent work is performed by formally independent entities (see below).

Employment relation is established by an **employment contract** entered into between the employer and employee. The requisites required for such contract include only: specification of type of the work, place of performance of the work and the date of commencement of the work. The **employment relation** is established as of such commencement date. The employer is obliged to enter into such contract in written form and to give one counterpart of such contract to the employee. If the contract has been entered into in oral form only, i.e. if the employer did not meet the condition of written form, such fact does not establish invalidity of such contract⁶². The employer is also obligated, if the contract does not contain the information about the rights and obligations of the employee, to provide the employee with such information in writing within one month. This information also includes e.g. information about the length of holiday, working hours, notice periods and the wage (see below).

The institute of **trial period** is a significant but in practice often misused institute. It is meant to provide both parties to the contractual relation with a space to verify that they are interested in such relation and if not, it enables its quick dissolution. Section 35 of the Labour Code stipulates that the trial period cannot exceed 3 months, must be stipulated in writing and as of the date of the agreed commencement of the work, at the latest; if the trial period is stipulated for a period shorter 3 months, it cannot be extended later. The employment relation can be terminated within the trial period without giving a reason⁶³. In practice, employment contracts

⁶² If both parties agree on the minimum necessary requisites in the form: what – what kind of work, where – the workplace, and from when – the date of commencement of the work, it is a valid employment contract; for invalidity see Section 21 of the Labour Code.

⁶³ See Section 66 of the Labour Code; employment can be terminated both by the employer and by the employee. Only limitation applies during the first 21 calendar days of employee's incapacity to work; during this time employer cannot terminate the employment. Also under subsection (2): "*written notice of termination of the employment must be delivered to the other party at least 3 days prior to the date the employment is supposed to terminate.*"

are entered into for (in)definite periods of time that are subsequently realized only for the maximum extent of the trial period. On the last day of the trial period the employer terminates the employment relation, although nearly at the same time the same parties enter into an employment contract with a new trial period. By circumventing the purpose of the trial period employees are exposed to uncertainty in the form of possible termination of the employment relation any time, without giving any reason.

The **employment relation** can be terminated, above all, upon an affirmative decision of both parties, i.e. by agreement, and also by termination notice given by one of the parties, upon immediate termination of the employment relation, by termination of the employment relation within the trial period and by lapse of the period, for which the employment was agreed⁶⁴. In addition to these general methods of termination of employment relation there are another three methods of termination that apply to employment of foreigners and that are stated in Section 48(3) of the Labour Code. The first two of them require a decision of state body, while the last method terminates the employment relation directly under the law. So, firstly: the employment relation is terminated as of the date of expiry of the residence in the territory of CR under an executable decision on revocation of the residence permit; secondly, as of the date when a verdict imposing the punishment of expulsion becomes effective; and thirdly, by expiry of the period for which the work permit or a special long-term residence permit for the purpose of employment, i.e. a green or blue card, was issued.

The **agreement** on termination of employment relation must be written (upon the sanction of invalidity) and, if the employee requests so, must also be reasoned⁶⁵. The employment relation will terminate on any date stated in the agreement.

The **notice** must always be written as well and it is necessary to deliver it to the other party. Employee may give the notice even without a reason, however, the employer is obliged to classify the reason for termination based on the classification of the reason expressly stated for termination of employment in the Labour Code. These reasons, under Section 52(a), (b)

⁶⁴ Another method of termination of employment is represented by court's decision or death of the natural person.

⁶⁵ It is, in particular, advisable to demand the reason if the employment relation is terminated in connection to the defined reasons for termination by employer under Section 52(a) through (d), as these reasons constitute the right to severance pay under Section 67 of the Labour Code.

and (c) are, above all, as follows: dissolution or relocation of the employer or when the employee becomes redundant. Employer may also give notice of termination to an employee who, in consequence of a job-related injury, occupational disease or a risk of such disease is not able to continue in performing the current work under lett. (d) or has lost such ability otherwise, under lett. (e). This is conditioned by issuance of the adequate health opinion by the employer's health care facility. The reasons under Section 52(a) through (d) establish the right to **severance pay**, in the case of a job-related injury or occupational disease at least in the amount of twelve average earnings.⁶⁶

The reasons for termination by notice also include the reasons for which the employment relation can be terminated by employer with an immediate effect⁶⁷. The employment relation is terminated by lapse of the notice period. The **notice period** is at least 2 months and begins on the first day of the month following the delivery of the notice to the other party. In practice, the employer should insist on confirmation that the employee received the notice.

Employees can **terminate employment relation with an immediate effect** for two reasons⁶⁸; if the employer failed to pay their wage, its substitute or any of their parts within 15 days from the due date. The other reason relates to the employer's obligation to transfer the employee to another work, e.g. if the employee lost his/her ability to carry out his/her work in a long term, or if a pregnant/nursing mother performs till the 9th month after a birth any work which she must not perform or which, under a medical assessment, endangers her pregnancy or maternity⁶⁹. If the employer fails to meet such obligation to transfer such employee, the

⁶⁶ Also under Section 52(f) and (g) the termination by employee can be reasoned by failure to meet the prerequisites for performance of the agreed work or by insufficient working results, provided that during the last year the employee has been demanded to remove them; also upon a serious breach of the obligations, continuous non-serious breach of obligations, provided that the employee has been notified of this fact within the last 6 months.

⁶⁷ The reasons for immediate termination of employment relation are regulated in Section 55 of the Labour Code and consist in a particularly gross breach of employee's obligations or in condemnation of the employee for a deliberate crime to unsuspended term of imprisonment exceeding 1 year or 6 months, as the case may be.

⁶⁸ See Section 56 of the Labour Code.

⁶⁹ See Section 41 of the Labour Code.

employee may terminate the employment relation immediately and he/she is entitled to the severance pay in the amount of at least triple of their average earning⁷⁰.

Moreover, for certain categories of employees the Labour Code stipulates a **protection period**⁷¹. Such period includes e.g. the period of temporary incapacity for work, pregnancy period of female employees, period of maternity or parental leave. During such period, save for expressly stated exceptions, the employer cannot terminate the employment relation by notice. However, the protection period shall apply, above all, to employment contracts entered into for an indefinite period of time, as this period does not prevent from termination of employment relation for another reason than the notice. In practice this means that a pregnant female employee can be given a notice of termination neither during her pregnancy, nor in the course of her maternity or parental leave. In the case where the notice was given earlier, the notice period does not continue and the employment relation will be terminated only after the lapse of the remaining part of the notice period once the woman returns back from the maternity or parental leave.

In practice, this situations can look much different. In connection to pregnancy, the female employee requests for transfer to a different work and the employer, disregarding the above protection period, will try to terminate the employment relation as soon as possible. Extreme examples include a misuse of the insufficient language skills of the foreign female employee, her lack of information about her rights and the overall uncertainty in a foreign environment, when only *ex post* she finds out what document she actually signed, e.g. an agreement on termination of employment relation without any right to severance pay and backdated before the beginning of her pregnancy instead of the document on the right to allowances when leaving for the maternity leave. Subsequently, enforcing nullification of such legal action by judicial proceedings in reality is often beyond the foreigner's reach.

Not rarely, the foreigners are also expressly assured, contrary to the legal regulation in force, that the employer is entitled to certain procedures (typically to terminate the employment with immediate effect), but will not do it because he cares about the foreigner. By a well-pointed pressure and disinformation about his rights and obligations the employer forces the foreigner to sign an agreement on termination of the employment relation without giving a reason,

⁷⁰ See Section 67 of the Labour Code.

⁷¹ See Section 53 of the Labour Code.

although otherwise the foreigner would be entitled to the severance pay in the amount of at least several monthly wages.

The last example regards relaying upon the foreigner's awareness of the fact that he/she is probably not able to enforce his/her rights at the court and upon his/her fear of being checked by the Foreign Police. With respect to the close connection between the employment and the residence permit the employer might offer as a counterbalance to termination of the employment relation that the employer will not report the foreigner to the labour office or the Foreign Police. Therefore, until the foreigner/employer is checked, no proceedings on termination of the residence will probably be commenced with the foreigner (thus the residence will not be terminated) and the foreigner can try to find another employer with whom he/she will apply for issuance of a new work permit before the "official date" of termination of the work permit, however its validity terminates under the law by virtue of termination of the employment for the specific employer. Or, as the case may be, the foreigner thus might get a time to apply for change in the purpose of residence, e.g. based on a trade license (see below) or just to obtain, from illegal work, financial means enabling him/her to leave the country.

As to the **remuneration for the work**, there is the principle of the same remuneration for the same work/work of the same value⁷². The remuneration amount is not a necessary part of the employment contract, however, the employer is obliged to inform the employee in writing about the wage, date of wage payment etc. within 1 month, at the latest, from the date of commencement of the work⁷³.

The **institute of minimum wage**⁷⁴ represents a restriction of the employee's and employer's liberty of contract, by which the Labour Code stipulates the minimum admissible remuneration for work, without taking into account any overtime or extra pay for work performed on national holidays etc. and without differentiating whether the remuneration is

⁷² See Section 110 of the Labour Code, incl. definition of the same work. The Labour Code distinguishes between a wage and salary – see Section 109.

⁷³ See Section 37(1)(f) of the Labour Code.

⁷⁴ See Section 111 of the Labour Code and the Governmental Decree No. 567/2006 Coll., on the minimum wage, on the lowest levels of the guaranteed wage, on definition of heavy work environment and on amount of extra pay for work in heavy work environment.

paid for work within an employment relation or a work carried out outside an employment relation. The up-to-date basic minimum remuneration for work (if taking into account a full-time employment with 40 hours per week) amounts to CZK 8,000 per month, i.e. CZK 48.10 per hour. Where the law restricts the weekly working hours, e.g. for a three-shift operation the maximum is 37.5 hour per week⁷⁵, the total minimum wage remains preserved, thus increasing the hourly rate proportionally. We talk here about the gross wage, i.e. the social and health insurance and the income tax is subsequently deducted from this amount.

A frequent example of violation of the Labour Code with respect to the remuneration for work is represented by **non-payment of wage**, non-payment of a part of the wage or deductions made beyond the scope of statutory contributions. First of all, it is necessary to say that many of the already outlined topics converge in the issue. If the foreigner has the work permit, a written employment contract was entered into with the foreigner and he/she has one counterpart in his/her possession, has regularly received the pay slip and has a document on the hours worked for the period, for which he/she did not receive the wage, it is very probable that in such case the foreigner will enforce his/her wage. However, in reality there are often many complicating facts intruding this optimal situation. For example, the foreigner's official wage is only in the amount of the minimum wage which was actually paid out. The agreement on paying a higher sum is not recorded and the employer denies it. Or the foreigner has neither got the employment contract in a written form nor is he able to prove that he/she has been working for the employer. This typically happens because the other co-workers are usually rather strongly indicated that should they be willing to confirm that the foreigner used to work with them, they can be certain minimally not to get paid as well and/or their employment relation will be terminated immediately; similar unpleasant situations occur in investigations of job-related injuries or loss of items/goods etc. of the employer at the workplace. In situation, where in addition to the above troubles the foreigner has not got a valid work permit from the labour office (thus exposed to the possibility of being sanctioned for an offence that could affect the residence status), the foreigner will prefer to voluntarily leave the employer or he might try to enforce the debt informally.

The obligation to pay the employee for the carried out work is the essential obligation arising from the employment relation and the very essence of the labour-law relation opposed to the employee's obligation to carry out in person the work in accordance with the employer's

⁷⁵ See Section 79 of the Labour Code.

instructions⁷⁶. If a foreigner did not get a wage⁷⁷, it is advisable to try to collect any and all the documents, to specify the claims in as many details as possible and to advise the employer in writing to pay the wage by the given deadline. If the employer still refuses to pay the owed amount, it is possible to turn to the regional labour inspectorates with a motion for inspection and also to enforce the claim within civil proceedings before the court (a legal action for payment of wage). After the lapse of 15 days from the due date the employee is entitled to termination of the employment relation with immediate effect and to the severance pay in the amount of at least a triple of his/her average earning⁷⁸.

1.3 Legal Framework for Agency Employment

Employment brokered by labour agencies constitutes a separate chapter within the issue of employment of foreigners. The legal regulation regarding labour agencies is contained, above all, in the Act on Employment and in the Labour Code, and also the Act on Residence of Foreigners refers to the labour agencies in connection to the financial liability for the costs related to the administrative expulsion of foreigners. The institute of labour agencies itself is not limited under the law to the country of origin, i.e. the labour agencies may broker employment for natural persons regardless of their citizenship. Nonetheless, in practice most of the agencies focus right on the foreigners.⁷⁹

In principle, the agencies function in the way that they recruit a specific natural person for employment relation, thus becoming the employer, and subsequently they assign the person to a specific user. This user is either a legal entity or natural person different from the labour agency that assigns the work to the assigned employee and supervises its performance.

⁷⁶ See Section 38 of the Labour Code.

⁷⁷ The mentioned cases do not apply in situations where the employer is in insolvency proceedings, i.e. it has no financial means to pay the wages. It is advisable to solve such situations through the labour offices, for more details see e.g.: <http://portal.mpsv.cz/sz/obcane/insolvence>.

⁷⁸ Wage is payable and due during the calendar month following the month during which the work was performed. The wage is paid in Czech crowns, see Section 142 of the Labour Code.

⁷⁹ Under the Act on Employment, jobs are also brokered by labour offices in the form of searching for a suitable occupation for natural persons or searching for suitable employees for employers and in the form of consultancy and informative activities. Employment of natural persons for the purpose of performance of work for users is the privilege of the labour agencies, see Section 14(1) in connection to subsection (5) of EA.

Assignment of the same employee to the same user should not exceed in principle 12 months; the employee can expressly ask for a longer assignment⁸⁰. The requirements for the contract between the agency and the user are stipulated by the Labour Code; the contract must contain information about the wage and work conditions of user's comparable employees as the temporarily assigned agency employee⁸¹, i.e. the Labour Code requires equality of the agency and regular employees.

Under the Act on Employment the agency is defined as a legal entity or natural person having the permission to broker employment⁸². Such permission is granted upon request filed at the Ministry of Labour and Social Affairs that also keeps the database of all agencies⁸³. In addition to integrity and professional qualifications of the person applying for the permission, the grant of the permission is also conditioned by the approving binding standpoint of the Ministry of Interior that, *in processing the standpoint assesses the grant of the permission for brokering employment with regard to the public order, safety and observance of rights of third persons*; the Ministry has information available from the Police of the Czech Republic, intelligence services etc. If the standpoint is not issued within 15 days, it is understood as approved.⁸⁴ There is a condition going beyond the framework of the permission for brokering consisting in the obligation to take out an insurance covering the possible bankruptcy of the agency itself and the user in the amount of triple of the average monthly earnings of all the

⁸⁰ See Section 309(6) of the Labour Code.

⁸¹ See Section 308(1)(f) and, in particular, Section 309(5): "The labour agency and the user are obligated to secure that the working and wage conditions related to a temporarily assigned employee are not worse than are or would be the conditions related to a comparable employee. If, during the term of performance of the work for the user, the working or wage conditions related to a temporarily assigned employee are worse, the labour agency is obliged, upon request of the temporarily assigned employee or even without such request (should it learn of this fact otherwise), to secure an equal treatment; the temporarily assigned employee is entitled to claim at the labour agency the satisfaction of his/her rights created for the employee in this respect."

⁸² See Section 14(2)(b) of EA. (FN:; Section 14(4) – a person seated in another EU member country for the purpose of brokering employment may provide such service in the territory of the Czech Republic temporarily and sporadically, however, it must announce such activity and the defined data to the MLSA).

⁸³ See Section 60 of EA and the webpage of the MLSA: http://portal.mpsv.cz/sz/obcane/zpr_prace.

⁸⁴ See Section 60a of EA

temporarily assigned employees⁸⁵. Mere publication of job offers without a direct brokering activity between the possible employees and employers (e.g. in media or electronically) is expressly not considered an employment brokering, i.e. no permission from the Ministry of Labour and Social Affairs is required for such activity⁸⁶.

The Labour Code's limiting provision on employment relation for a definite period of time does not apply to the agency employees. This provision says that an employment relation for a definite period of time can be effected between the same parties for the period up to two years in maximum⁸⁷. However, agencies and their employees can chain employment contracts for definite periods of time even above this time frame.

In practice, there is often used a special provision in the employment contracts with agencies consisting in the contractual penalty in the case that the employee within the defined time horizon enters into an employment contract with the user, i.e. instead of a mere brokering of employment by the agency the person enters into a direct labour-law relation⁸⁸. In the author's opinion, such contractual provisions must be refused for many reasons: in brief, under the fundamental principles stated in Section 13(2) of the Labour Code the employer must, among other things, neither request nor effect any securing of the undertaking within a labour-law relation, save for a non-competition clause. The non-competition clause consists in obligation to refrain, after termination of the employment relation, from performance of the same or competitive gainful activity of the employee in relation to the activity of the former employer during the period of 1 year in maximum. However, there is also the condition of obligation of this former employer to pay an adequate financial compensation⁸⁹. The above example does

⁸⁵ See Section 58a of EA.

⁸⁶ See Section 16 of EA.

⁸⁷ See Section 39(5) of the Labour Code.

⁸⁸ E.g. an obligation of employee that he/she will not enter into any contract/agreement under the Labour Code or Commercial Code, as amended, with any business partner of the agency, not even through another labour agency, for the period of 5 years from conclusion hereof. In the case of breach of the above obligation the employee undertakes to pay a contractual penalty in the amount of CZK 50,000.

⁸⁹ Moreover, the institute of non-competition clause is used for know-how protection. The jobs offered by agencies are usually in various factory halls, e.g. assembly line operators, welders etc. and for the very nature of these jobs it is hard to imagine any reason for applicability of the non-competition clause.

not meet the statutory requirements for the non-competition clause, is not counterbalanced financially, it only unilaterally sanctions the employee, which is directly contrary to the mandatory prohibition stated in the Labour Code and such provision can be regarded as invalid.⁹⁰

Discussions and criticism with respect to the labour agencies concern the misusing of their actually strong position of the broker leading to frequent breach of protective limits stated in the Labour Code; e.g. non-payment of the agreed wage or deductions from wage beyond the statutory extent, non-observance of the limits stipulated by the law in relation to the work safety or determination of the maximum working hours or the minimum times for rest. In addition to the *švarc* system there is also a “clientelist system” that is historically older, but similar to the certain extent with respect to the principle of functioning. The system consists in the role of a “client” – the broker who has well established contacts in the place and secures the basic services for the foreigner: finds him a job, arranges the transport and accommodation, takes care of the work permit and residence permit, interprets, helps solve other situations and problems occurring in the course of time and deals with the authorities. For these services the client charges a fee. The problematic character of such relation consists, above all, in the absolute dependence of the foreigners on their client and *de facto* in no chance to have any influence on the client’s behaviour. If such relation is interrupted, the foreigners find themselves in a difficult situation. Often they have not got a number of documents as e.g. the work permit, and they do not even know whether the application has actually been filed for the permit. The administrative decisions are not sent to their addresses, so they cannot be certain whether the residence permit has not been revoked etc. The brokerage system also creates, in addition to the opportunity to misuse the foreigner’s dependence, an obstacle in foreigners’ attempts for integration and awareness that could subsequently prevent them from being abused. Often, the pressure from the client/employer is also supported by the adverse circumstances, under which the foreigner left his/her country, e.g. huge debts made in order to arrange the visa and the travel to the Czech Republic (as this is described below in the example from the Vietnamese community).

⁹⁰ Another method of additional financing of agency’s services and deepening of the dependency often used in practice consists in payment using a recognized undertaking to pay compensation for a fictive damage caused by the employee.

The Act on Employment also defines the ways of termination of the permission for brokering work and the recent amendment has also incorporated in Section 63 of EA another reason, for which the Ministry of Interior can by its decision withdraw this permission. This includes, above all, a situation where proceedings on withdrawal of the permission were commenced based on a motion from the Ministry of Interior and the Ministry issues a new disapproving standpoint, or if the agency *“has been brokering employments contrary to the issued permission for brokering employment or contrary to good morals or if it otherwise breaches the obligations arising from this Act”*⁹¹. Whatever benefits may result from such extension of sanctioning authorities of the Ministry of Labour and Social Affairs, in reality the agencies have already learnt how to avoid these consequences to a certain extent; prior to the prospective withdrawal of the permission the labour agency ceases brokering the employments and transfers its employees to a new entity.

Therefore, the question for the future is whether the newly amended rules for the activity of agencies will bring a better transparency in functioning of the Czech labour market and whether they will be for the benefit of foreigners. But not only the foreigners, as the lowering of the standards by circumvention or even violation of the Labour Code and other labour-law regulations with respect to foreigners has also an undoubted impact on the entire labour-law environment, i.e. it also affects the citizens of the Czech Republic or the European Union.

1.4 Look into the Trade-License Based Business Activities of Foreigners

The trade means: firstly a systematic activity, secondly this activity carried out independently, in one's own name and on their own responsibility, thirdly for the purpose of achieving an income and fourthly under the terms and conditions stipulated under the law⁹². Thus, this activity has the systematic feature, which, however, does not necessarily mean continuousness, and the independence as opposed to the dependence or, as the case may be, the hierarchic position in the labour-law relations.

The Trade License Act defines the foreign persons based on the residence of a natural person and the seat of a legal entity. If the person has a permanent residence outside the territory of the Czech Republic, he/she is considered a foreigner and as such a special legal regulation

⁹¹ See Section 63(2)(b) of EA.

⁹² See Section 2 of Act No. 455/1991 Coll., the Trade Licensing Act, hereinafter only the TLA.

applies to such person⁹³. E.g. in addition to the documents on fulfilment of the general conditions, a foreign natural person must also submit the document on granted long-term visa or the long-term residence permit. The following text deals only with the legal regulation regarding the trades subject to declaration.

Briefly it is possible to summarize that the procedure in practice is as follows: the foreign natural person above 18 years of age proves his/her integrity and at the same time with payment of the administrative fee he/she fills in the declaration of trade the requested data; in particular, the address of residence in the Czech Republic must be stated and if the trade is to be carried on in a leased place, the consent of the owner of the premises must be attached. The Trade Supervisory Office competent with respect to the place of conduct of the trade (the “TSO”) will certify fulfilment of the requirements for the purpose of the proceedings on the residence permit⁹⁴ and will issue the invitation for submitting the document on the permitted residence in the Czech Republic. Once this last requirement is substantiated the TSO issues the trade license; for foreign persons the trade authorization commences on the date of their registration in the Commercial Register at the Regional Court with the local jurisdiction (or in a similar) register⁹⁵. Similar procedure applies in extension of the permit, when the foreigner, upon the request of TSO, must substantiate the new permit. If it is not submitted, the authorization expires on the last day of the period stated in the call⁹⁶.

The trade authorization can be revoked not only for the general reasons but in the case of a foreigner also for the expiration and/or revocation of the permit for residence in the territory of the Czech Republic. Any performance of a trade activity without the relevant authorization constitutes an offence⁹⁷. The entrepreneur is obliged to designate visibly the place of business, if it differs from the place of residence. The entrepreneur is also obliged to report in writing any possible interruption of the trade, if such interruption exceed the period of 6 months⁹⁸. But here, till the regulation on entrepreneur’s authorization under the TLA – not to report the

⁹³ See Section 5(2) of TLA.

⁹⁴ See Section 47(7) of TLA.

⁹⁵ See Section 10(5) of TLA.

⁹⁶ See Section 57(2) of TLA.

⁹⁷ See Section 61(3)(a) of TLA.

⁹⁸ See Section 31(11) and ...

interruption of the trade-license-based entrepreneur's activity (if the interruption period does not exceed 6 months) – is substantially affected by the foreigner's obligations arising from the residence permit under RA. Save for the foreigners who have been granted the permanent residence, during the whole term of the residence permit the foreigner is obliged to meet the purpose of the residence specified in advance. If this purpose consists in the trade conduct, the foreigner is not allowed to interrupt his/her trade as such interruption could result in commencement of the proceedings on revocation of the residence permit under RA⁹⁹.

Under the amendment that became effective from 1 January 2011, RA now contains a limitation consisting in the possibility to apply for application for a new permit only in the course of a long-term residence following a preceding residence in the country for at least two years¹⁰⁰; i.e. it is not possible to apply for such new permit during residence in the territory based on the toleration visa – unless the administrative body extends the permit for another permit and a legal action was filed in the proceedings against the decision of the administrative body. And furthermore, the foreigner must have lived in the Czech Republic for at least 2 years based on the residence permit issued for a purpose different than the trade conduct. Newly, in extending the residence permit for the purpose of trade conduct the Ministry of Interior may request submission of the payment assessment regarding the income tax¹⁰¹.

Similarly as in the case of the already mentioned obligation of the labour office, the trade supervisory office is also obliged to report to the Ministry the residence-related facts, i.e. the situations where termination of the trade authorization might result in termination of the given residence permit on the grounds of failure to meet the purpose of residence¹⁰². Moreover, the court in charge of the Commercial Register or another authority registering the natural persons carrying on trades (entrepreneurs) reports to the Ministry a change or deletion of the

⁹⁹ See Section 37(1)(b)

¹⁰⁰ See Section 45(1), the last sentence, of RA: The foreigner who intends to stay in the country for the purpose of trade conduct may apply for such change if he/she is a holder of the valid long-term residence permit and has been residing in the country for at least 2 years.

¹⁰¹ See Section 46(7)(f) of RA.

¹⁰² See Section 106(2); this includes interruption, termination, expiration or revocation of the trade authorization for a foreigner with the long-term visa or long-term residence permit.

foreigner's entry in/from the Commercial Register; this does not apply in the case of EU citizens. Also the Social Security District Administration reports any interruption or termination of conduct of an independent gainful activity, save for the EU citizens.¹⁰³

Here, it is necessary to supplement the legal framework with a practical example: the foreigner has been staying in the country for a number of years; he/she came here originally based on the long-term visa for the purpose of employment and the visa was repeatedly extended. However, in the last application the work permit was not extended for the foreigner, reasoned by the economic crisis and the labour office's duty to prefer Czech or EU citizens. Therefore, the foreigner applied for a new residence permit for a different reason, the trade conduct. Many foreigners in similar situation, either on their own or more often through brokers, subsequently did not use the possibility of applying for extension of the work permit and applied directly for a change of the purpose of residence for the trade conduct. Nonetheless, in majority of the foreigners the actual employment has not changed, only the obligation to pay the health and social insurance was newly imposed on the foreigner (see so-called švarcsystem¹⁰⁴). When travelling to the country of origin to visit the family or only for financial reasons many foreigners deregistered from the records of the Social Security District Administration and thus they were not obliged during this period to pay the (advance) payments of insurance as they interrupted their trade, without obligation to notify of this fact the trade supervisory office because the period of interruption did not exceed 6 months. Since 2010, the Foreign Police has begun demanding information from the Social Security District Administration about whether the foreigner applying for extension of the permit for the purpose of trade conduct has ever, during the previous residence permit, deregistered from the records of the Social Security District Administration or whether the foreigner ever renewed his/her registration at the Social Security District Administration, i.e. re-registered for the insurance contributions and paid the penalty. Based on a non-payment for some time as well as a retroactive payment of the insurance contributions the Foreign Police deduced that the

¹⁰³ See Section 106(7) and (8) of RA.

¹⁰⁴ It is based on circumventing the employer's obligation under Section 74(1) of the Labour Code to "*secure performance of its tasks above all by employees within an employment relation*". It is fundamental for distinguishing between outsourcing and the above circumvention of the law to assess whether the activity arranged through independent suppliers constitutes the activity directly related to arranging the employer's scope of business itself.

foreigner has not met the purpose of residence during the entire period of residence and in such a case the police subsequently rejected the application for extension of the permit. In the author's opinion, the whole chain shows a number of legal faults, however, until 2010 it used to be rigidly applied.

1.5 Conclusion

In the contribution I tried to provide both theoretical bases relevant to the employment of foreigners and also examples of their consequences in practice. The scope of the matter and, in particular, the variability of practice do not allow to include all the topics that would deserve to be mentioned; thus, e.g. the chapter does not provide the analysis in relation to discrimination. Nonetheless, I believe that the text offers a sufficient introduction in the system and mutual relations among the Act on Employment, Act on Residence of Foreigners and the Labour Code. Yet, it is right the mentioned interconnections, extended by the amendment with a number of automatically set duties of administrative bodies to report to the Police or a Ministry, that might be viewed as a step back; see the issue of separation of the supervision over legality of the residence from the supervision over observance of the labour-law standards at workplaces¹⁰⁵. No doubt, the Czech Republic needs the foreign labour force for many reasons and for the purpose of bringing such foreigners in the country the state introduces e.g. the institute of the green and blue cards. However, in its consequence the statutory setup of the rights and obligations is made apparently in repressive manner and in addition to that not very clearly for individual foreigners, which reduces the probability that foreigners will fulfil their obligations. But supervision in relation to the structures above the framework of a specific foreigner does not seem to be effective and so far the circumvention of the law by some agencies or other brokers has not been attacking such attention as specific cases of misconducts on part of individuals.

¹⁰⁵ See Čaněk, M. *Kontrola dodržování pracovních práv migrantů a migrantek je v konfliktu s kontrolou jejich pobytového statusu*. May 2010, available at <http://www.migraceonline.cz/e-knihovna/?x=2230052>.

2. Unemployment and Its Specificities in Foreigners in CR

2.1 Introduction

This chapter focuses on problems of the unemployment in societies of a modern Western type and specific problems the unemployment raises in foreigners. The introduction of the text deals with historical relations on the labour market and briefly covers also the formation of the welfare state as an institution, which is to protect members of the society against adverse effects of the loss of employment. Further, the text tackles segmentation and labour market flexibilisation theories in connection with economic migration theories. This part is followed up by a passage on the impact of various types of capital (cultural, social and economic) on the status of an individual on the labour market. The whole introductory part of the text is concluded by a brief overview on the development of the labour market including the status of foreigners in the Czech Republic after 1989.

The second part of the chapter focuses on the impact of unemployment on an individual, his family and indirectly on the whole society. The text deals with problems of an individual perception of unemployment from the viewpoint of the loss of income and decline in the standard of living, covering issues of deprivation of an unemployed individual and his social isolation as well as a change in the perception of time and the individual structure of a day. Further, this part of the chapter is devoted to the impact of unemployment on an individual and his family by way of the change in social roles as well as the change of reproductive behaviour in the unemployed. The last issue presents a change in the status of the unemployed in the society which is demonstrated by a change of the social status, decline in the participation of the unemployed in community's life and it also deals with an unequal distribution of risks of unemployment in the population. The last part of this chapter is devoted to specificities of employment and unemployment in foreigners living in the Czech Republic. The text tackles problems of agency employment which has spread significantly in recent years in this country and mentions some aspects of irregular work of foreigners. The whole chapter is concluded by the summary of the presented knowledge focusing on the situation of foreigners on the labour market and their possible endangering at the loss of employment.

2.2 Unemployment – Phenomenon of (not only) the Modern Society

2.2.1 Historical Relations of Unemployment

We can talk about unemployment as such only where there are labour and labour relations, which are broadly based on the concept of employment, and work in the meaning of a paid employment as a product of the development of capitalist and economic relations. Only people working in return for earnings may freely terminate their employment based on their own decision and their employment may be at the same time terminated by somebody else, thus they may become unemployed in today's meaning of the word. However, the unemployment as a situation, where individuals find themselves without any income for activities performed by them, has been present in society for many centuries, although it was not termed this way. It is not essentially possible to refer unemployment in its present meaning of the word to pre-industrial societies, including slavery or serfdom, not even to centrally planned economies (including the idea of full employment). At that time the general term of poverty was used instead of the term of unemployment, thus unemployed individuals were considered to be part of the mass of the poor.

Social norms have made distinctions between situations leading to the absence of gainful employment in the life of a man; and new categories have been introduced to provide differentiation of such situations whether such a condition is the result of one's own will or consequences caused by external circumstances. Since Modern Times, we can find a certain categorization of individuals¹⁰⁶ who were out of work and made their living in various ways. For instance as early as 1531, the English Poor Law distinguished so called "sturdy beggars", who are physically fit and able to work but voluntarily decided not to work. However, this definition assumed (erroneously) that there was enough work for all healthy citizens in the country. These people were then punished because the Tudors that ruled at that time considered them to be dangerous to the public order. Poor Laws that were gradually "amended" until the 2nd part of 19th century were cancelled as care for poor citizens no sooner than by the National Assistance Act in 1948. They represented the first form of the central government aide to the poor by that time.

¹⁰⁶ With respect to the gender issue both feminine and masculine are used in some cases. However, only masculine is used in most parts here to enable better reading and understanding of the text.

Towards the end of the Middle Ages the poverty, due to structural and cyclical changes (wars, epidemics, production failure), began spreading from “traditional” categories of persons (widows, orphans, blind and lame persons) to an increasingly wider range of persons. Images of the poor in society became to be diversified – on one hand there were vagrants, able to work, but voluntarily not working, on the other hand there were the poor who were settled in a given place, wanting to work, but could not find any work. Institutionalised aid begins to aim only at the second group during the 16th century, while the first group of “the idle” ones is becoming the target of repressions. The Elizabethan Poor Act of 1601 was one of the first social programmes supported by the government, clearly distinguishing between individuals who were not able to work and those who did not want to work. During the 17th century alms-houses began to be established as well as later so-called workhouses, where people, who could not otherwise take care of themselves, could live and work. But life in workhouses was not totally voluntary. These institutions served to a certain extent as instruments of social control of the poor who were able to work and as safety measures to prevent potential social uprisings, which the ruling class was afraid of.

“Modern” unemployment, which we refer to a mass phenomenon connected with the existence of the market economy, appeared in relation with the first industrial revolution sometime around 1780. The industrial development along with the development of factories and the transfer of the great number of originally rural citizens to cities brought with itself a systematic division of work and gave cities a modern appearance. However, the number of individuals who did not find any work in cities or lost it there increased at the same time; this was caused by a sharp increase in the number of citizens, but also, besides others, by the use of cheap child labour¹⁰⁷.

The problem of mass unemployment has therefore become a stable and persistent phenomenon since the beginning of the industrial revolution. At the same time, first social security systems, which were to protect individuals against the impact of adverse life events excluding them from employment integration (disease, work injuries, disability), came into existence. The first system of compulsory social security was introduced by prince Otto von Bismarck in Prussia/Germany in 1878 – 1893; and the first insurance against unemployment was introduced by the aid of Lord William Henry Beveridge in Great Britain in 1911. Altogether with this (partial) transfer of responsibility for the loss of employment from

¹⁰⁷ First acts (Factory Acts) restricting child labour were adopted in 1833 and 1844 in Great Britain.

individuals and their families to the state institutions of so-called welfare state began to develop.

2.2.2. Welfare State and Social Policy

The term welfare state is connected with the name of William H. Beveridge who worked out the first complex scheme of social security in 1942. The term welfare state refers to the scope of ensured key public social services (particularly, health, education, housing, the ensuring of income and nursing services.) This involves a particular type of a state, a form of political environment or a specific type of society caring for the welfare of its citizens and charging itself partly with their individual responsibility for their lives. Thus the model of citizenship, the part of which is also a guarantee of so called social rights of citizens, has come into existence.

Forms of the welfare state vary depending on the context within which they were developed. There are several typologies of the welfare state; Gøsta Esping-Andersen, who based on the level of deco modification¹⁰⁸ and the way of social stratification made distinctions of three ideal types¹⁰⁹ of the welfare state, is the author of one the most famous typology:

Liberal (Anglo-Saxon) type – the level of deco modification is low here as well as the role of the state and family, on the contrary the market plays a significant role here and individuals are to take care of themselves in the first place. For instance the United States of America are an example of this type.

Conservative (continental, corporatist) type – the level of deco modification is higher here, the role of a state increases at the expense of the impact of market mechanisms, however, the stress is placed first of all on aid from the family and the employer in socially problematic situations. Germany is an example of this type.

Social democratic (Scandinavian) type – the level of deco modification is the highest here, with universal solidarity. The state will fully take care of an individual in a difficult situation. For instance Sweden is an example of this type.

¹⁰⁸ Deco modification is a social political term for freeing the life of individuals from their dependency on the market. People may to a certain extent freely decide not to take part in paid work, if they consider it necessary, and at the same time they do not have to be afraid of losing their position, income or living standards.

¹⁰⁹ These are copybook models of policies – they do not actually exist in they clear forms and a resulting regime of the welfare state is always a combination of more of these models.

The welfare state expanded after the Second World War and its greatest upswing took place during 50's and 60's of the last century due to economic growth. In 70's, in connection with the economic crisis the recession of the welfare state takes place as a result of limited finances, which may be spent on social area by individual states. Then since the end of 70's, in connection with changes on the job market, slow economic growth and an increasing drain on state budgets by pension and health care systems as well as the increase of unemployment the generosity of the welfare state has been on the retreat, aiming at the current more stringent alternative.

The idea of the welfare state is being subject to criticism from many parties. Essential arguments of these critical notes are based on the expensiveness of the whole system (the welfare state is expensive with a heavy drain on national budgets), low effectiveness (the bureaucratic apparatus required for the functioning of the whole system works non-transparently and ineffectively and a private sector would handle these tasks better) and, finally, on low legitimacy (the welfare state privileges only certain strata of citizens). In general, it may be stated that critics of the welfare state criticise the restriction of a free market and thus freedom of individuals (liberal criticism) on one hand, and on the other hand the welfare state is regarded as the instrument of power of the ruling class that only preserves the current social inequalities (criticism on the part of the left wing). All critics but also defendants of the welfare state, however, agree on the fact that it is necessary to change the system and adapt it to current economic and social conditions.

The welfare state and its social policy are, besides the family, the only significant mechanism protecting an individual in case of employment loss. The state provides the unemployed with a financial allowance which is either based on the amount of the previous income, or sometime its amount is uniformly determined for all unemployed (e.g. Great Britain). Job Centres are also being established providing informative, consultative and agency services, ensuring the re-qualification of job applicants, initiating the creation of new jobs and organizing publicly beneficial work. However, the stated social policy is usually regarded as "the protection net" in case a natural regulator, which the labour market is, regulating the labour supply and demand, fails.

The idea of the welfare state is based on the conception of a specific type of life careers of members of the society or citizens of a national state, which, besides others, includes living within borders of a given state and contributing to its tax or social system. An increasing cross border migration, where more and more people spend larger part of their lives in other states

than in that of which they are citizens, makes this idea problematic and reflection on new models of citizenship is required. The welfare state and its social policy namely protects citizens of a given national state against adverse effects of life situations, where earnings blackout with respect to a paid employment takes place. As a consequence of continual changes in global labour markets immigrants often find themselves in a vulnerable position on the labour market where social policy is exercised.

2.2.3 Labour Market

In the modern society the market economy and the labour market represent basic mechanism connecting the supply of labour force¹¹⁰ with its demand by way of interactions of employers and employees. The labour market therefore provides the system of production with the labour force structured in accordance with requirements for production processes and actions and at the same time it provides the labour force with financial and social means necessary for its survival in the society (wages and social status).

Not every person able to work within the labour market actually enters the market. Part of the population does not enter it voluntarily because the support on the part of a state (social benefits) or private institutions (family, charity) enables them to function within the society (or out of it) without being involved in the job market – i.e. without selling their labour force to employers. In this case they are individuals who are economically inactive and do not work as employees or do not get any remuneration for their work – i.e. pensioners, long-term patients, mentally or physically disabled individuals, students or housewives. The second category of persons outside the job market is represented by people who stay out of the job market forcefully because they either do not have an ability to assert themselves on the job market at all, or their customs or national institutions prevent them from entering the job market.

2.2.3.1 Labour Market Segmentation – Dual Labour Market

The Labour Market is not homogenous (there is not only one labour market) but it is segmented according to geographic regions, branches and professions. These partial labour markets are then relatively separated from one another and almost no competition occurs

¹¹⁰ Work is measure for activities performed by people in the economic theory. In this way it is referred to other factors of production such as land and capital.

between the labour demand and supply here. The dual labour market theory¹¹¹ divides the labour market in to primary and secondary sections.

The primary labour market is characterised first of all by high incomes, fringe benefits, job security and good prospects for upward mobility. Therefore one can find better and more advantageous job opportunities, employment with high prestige, providing good opportunities for the professional growth and good working conditions on the primary labour market. This part of the labour market may be further divided into higher primary sector, which includes long-term employees who advance their position as their years of service increase and lower primary sector including mainly blue collars¹¹² executing stable skilled job.

On the contrary, the *secondary labour market* is characterised by low wages, short-term employment, little job security, no or little prospects for career development and no fringe benefits. This segment of the labour market therefore offers less stable working opportunities, high fluctuation of workers and changing periods of employment and unemployment is typical for it. We find particularly non-skilled or low skilled job positions in this labour market segment, whether it concerns manual labour (building workers, waiters) or non-manual job positions (filing clerks). Entering and leaving the secondary labour market is easier and more rapid than in the primary sector. Transfer from the secondary sector to the primary one is rather difficult and the mobility between these two segments is very low.

This labour market division has several consequences. The existence of barriers preventing the movement of labour force between the two segments leads to the concentration of some types of workers in individual segments. Women, very young or, on the contrary, very old individuals, unskilled or handicapped persons and very often immigrants or members of ethnic minorities can be found in the secondary sector more often – the division of the primary and secondary labour market thus reflects the power structure of the society.

In studies on the migration the Dual Labour Market Theory presents that one of the main motors of the international migration is the continual demand for immigration labour force in developed societies. This demand then subsidizes the secondary labour sector. Michael Piore

¹¹¹ This theory was developed by Peter Doeringer and Michael Piore (Internal Labor Market and Manpower Analysis, 1970) in the USA in 1970's.

¹¹² "Blue collars" designate workers who perform manual labour for hourly-paid wages. They differ from "white collars" whose (mostly office) work is not considered to be manual.

presents three possible explanations of the demand for foreign labour force in modern industrial societies – general shortage of labour force on the labour market, the necessity to fill in “low” jobs in the hierarchy of job positions and finally, the shortage of labour force in the secondary labour market segment. The last explanation is also included in the previous two. The general shortage of jobs results in the creation of vacancies on the low level of the hierarchy of job positions. General shortage of labour is then additionally accompanied by other problems resulting from demographic and social changes in modern industrial societies (drop of natality, expansion of education, women emancipation) and problems with the motivation to take jobs on a low level of the job hierarchy. These positions are connected with low social status and rather limited opportunities for upward mobility. As a result of the shortage of “domestic” labour available for the low level of the hierarchy of job positions employers are then motivated or sometimes even forced to employ foreign workers willing to work under unfavourable working conditions.

2.2.3.2 Labour Market Segmentation – Formal and Informal Sectors

Besides the market division into primary and secondary segments, we may use another differentiation: formal and informal job markets. The term “informal economy” dates back to 70’ of the 20th century as the description of economic activities performed outside official corporations of the public or private sectors. This term originally responded to the expansion of self-employed gainful activities and occasional jobs in countries of the Third World. Later this term was used to generally describe economic activities performed out of control of social institutions serving for the regulation of economy (including the labour market) – tax offices typically.

The informal labour market is characterised by the fact it does not fall under control and regulation on the part of the above-mentioned institutions. It may for instance include self-supply, house-work and various forms of friendly help, but in particular, it includes various forms of irregular and illegal business, starting from evading occupational and tax regulations and finishing at activities of an apparently criminal nature. As for economic activities of migrants the use of “the clientelist system”¹¹³ or “švarcsystem”¹¹⁴ at their employment can be

¹¹³ The term clientelist system refers to the organised employing of immigrants (particularly, from Ukraine), the aim of which is to find jobs for immigrants on the local labour market. This system can be portrayed like a pyramid with hierarchy relations, where on its base there are foreign workers who submit part of their earnings for procuring a job and other services to actors being on a higher level of this system. On the top of this

included into the sphere of the informal market. We will cover this topic in detail in chapter 2.6.

2.2.3.3 Labour Market Flexibilisation

Approximately until the beginning of 70's of the last century, Western societies enjoyed a significant economic growth and consequently full employment, which was closely connected with the development of the welfare state. In connection with the oil crisis the unemployment began to grow in a more significant speed (not only) in this geographic region. Economy began to be gradually globalised¹¹⁵, placing increasing demands on the “knowledge adaptation” and permanent learning in the environment of the knowledge society. With regards to further technological innovations individual companies are then able to produce more and more within the globalised economy with the continually decreasing number of employees. The unemployment and instability of offered job positions are then consequences of inadequate adaptation of labour force to these processes. The overall volume of uncertain employments characterised by interrupted job careers, involuntary part-time jobs, work inadequate to one's skills, worsen working and wages conditions and involuntary non-standard forms of employment (subcontracting, informal employments) increases in such globalised economies.

The labour market flexibilisation therefore includes the preference of partial and short-time work contracts for indefinite periods as well as the preference of freer relations between companies and their formally independent sub-contractors of specific products and

pyramid there are actors who are engaged in structures of organised crime (mafia) and an intermediate stage consists of agents (“clients”) who in return for financial payments are protected by mafia and procure jobs for and collects money from workers-immigrants who are on the lowest level of the system.

¹¹⁴ The origin of the term “švarcsystem” is linked to an entrepreneur Miroslav Švarc. He, at the time it was not illegal (by the end of 1991), transformed statuses of all his employees’ to self-employed persons and significantly saved money on social security and health insurance payments. Other employers were inspired by this idea and therefore the Employment Act was amended as to 1 January 1992, under which the so called “švarcsystem” was almost banned.

¹¹⁵ Capital (money) is rather flexible and thanks to the chase to get the lowest production costs as possible it began to be moved to regions where requirements of the labour force on wages are substantially lower as compared to developed Western countries (Asian countries typically).

services¹¹⁶. High rates of fluctuation of employees and at the same time the transfer of increasing market uncertainty from companies to their employees or subcontractors are consequences of such trends. The flexibilised labour market may optically decrease the rate of unemployment by the transfer of individuals from the position of employees to the position of self-employed persons on one hand, however, the rate of risky job positions with low earnings increases in the flexibilised economy on the other.

The labour market flexibilisation is therefore strongly linked to its segmentation – the primary labour markets are generally more protected and less flexibilised, while the secondary segments face fully requirements for the flexibility. Differentiation of flexibilisation risks then takes place depending on qualities of the cultural capital¹¹⁷, as a consequence of its accumulation and transfer, as well as depending on qualities of the social capital¹¹⁸ we will deal with below.

2.2.4 Problems of Cultural, Social and Economic Capitals

The scope of the cultural capital, which is from the viewpoint of the labour market determined particularly based on achieved education and qualification, places individuals on the labour market in an advantageous or disadvantageous position and to a certain extent it predetermines them to fill in a position on the primary or secondary labour market. According to its own cultural capital an individual aspires to certain positions requiring specific forms of this capital. For instance, highly skilled positions require individuals with a specific form of education codified for instance by a university degree awarded based on studies of a specified field of study. However, this situation is applicable only in case this symbolic form of the capital is recognized in a given society. A problem occurs in a situation where an individual

¹¹⁶ For instance on-call work or zero working hours may be presented as the most extreme form of such contracts. Employees forced to work based on these types of contractual relations have to sit (often in the literal meaning of the word) at home without any payment and wait whether the employer calls and offers them some job.

¹¹⁷ Long-term preconditions of an individual or a group to achieve social goals It depends on the level of socialisation and education. Not only the level of education reached is essential but also the specialisation, and often the prestige of a given school too. The cultural capital brings its holder a profit that is demonstrated by a privileged social status (and benefits following from it).

¹¹⁸ Social capital is viewed as the summary of social relations, honesty and morals. It is actually the summary of social contacts of an individual.

disposes of a type of the cultural capital necessary for the execution of a certain profession, however, the deciding authority (state, Business Company) does not recognize this symbolic certification of his education or qualification. A typical example of this situation are foreigners for whom diplomas awarded by their universities are not sufficient but they must go through an administrative process of the nostrification¹¹⁹ of such diplomas so that their qualification would be recognized to a full extent. Since e.g. foreigners of the Third World who arrive in the Czech Republic to find jobs here, cannot often provide all documents needed for the nostrification, their qualification is not recognised and they are then forced to accept vacancies not corresponding with their received education or reached qualification. The cultural capital also involves several types of skills independent of an official certificate on formal education but important for getting specific jobs, often including cultural specifics (the way of communication with a potential employer, certain type of a language code, ability to “sell” one’s knowledge and skills, etc.)

The social capital, or its scope or rather “extent“, is another factor affecting one’s chance to succeed on the labour market. Individuals with rich social contacts of a suitable type have a better chance to get a favourable job position on the labour market than persons whose social capital is from the labour market viewpoint limited or is without a high potential needed for getting a favourable job position¹²⁰. The social capital is being created from the very early age through family networks, neighbourhood, classmates from primary, secondary schools and university, interest associations, etc. Social contacts are further developed within one’s employment, thus individuals with a more favourable “starting position” extend their social capital in a way it may help them in the future to acquire eventually other job positions with better characteristics. As opposed to that, people who get their job on the secondary market may often find other job positions through social contacts too but only within this labour market. Moving may have a significant impact on the volume and quality of the social capital – people who move to a place other than that they grew up in and received education may be disadvantaged in comparison with people whose social capital is suitably located from the point of view of one’s success on the labour market.

¹¹⁹ Nostrification is the recognition of foreign education (e.g. degrees such as doctor, professor) by Czech authorities.

¹²⁰ From this viewpoint it is more suitable to have contacts on classmates from one’s university than on one’s gang of friends from “a ghetto”.

The impact of the social capital on an opportunity to get a job position according to one's aspiration is particularly strongly reflected in immigrants in different ways, depending on the territory of their origin, their qualification and the number of compatriots who are already living in the target country, but also on the type of a job they intended to perform in the target country.

The economic capital is another type of the capital, which is significant for strategies on the labour market (particularly for foreigners). An option between various job positions or a decision whether to start one's own business depend to a certain extent on the volume of finances available. Foreigners (it mostly concerns a job on the secondary labour market requiring low qualification) who had to pay for agency services to get a job in the target country (visa, work permit), have to often make debts in the country of their origin so that they could accomplish their migration project at all. Therefore they are in an unfavourable situation after they arrive in the target country because they have to pay their debts first and only after that they can make and save money. While foreigners, who arrive abroad to work without any paid agents or at highly qualified job positions (often within multinational corporations), are in a more favourable position, (e.g. if a great deal of administrative procedures is handled by the human resources department of their employer).

Citizens of the Czech Republic as well as foreigners with a permanent residence are, as stated above, protected against earnings black-out from a paid employment by the social security system. Foreigners, who arrived on a working visa and are at earnings blackout or lost their job, are in a twofold awkward situation – earnings black-out is not compensated to them on the part of the welfare state and furthermore, their residence in the country is directly linked to a work permit, which is issued to a specific job with a specific employer. Therefore they are under an imminent threat of being deported. If foreigners finding themselves in such a situation have enough finances they have several options how to react. They may try to find any other job, either by themselves or through agents. It depends very much whether it is a job in the formal or informal labour market; informal job positions are in fact more easily available for foreigners through paid agents. However it also depends on a concrete situation and location – job positions are generally more accessible in bigger cities. Or foreigners may pay for a change of the purpose of their residence and arrange the issuance of a visa for the purposes of running one's business, whether real or fictitious, which was a favourite approach of agency employees in a situation when the economic crisis hit fully the Czech economy. However, all agency services cost not small financial means.

Opportunities for foreigners to succeed on the local labour market are always dependent, besides social characteristics of immigrants, on a current economic situation of the target country and with regards to a globalised character of economies in Western countries, also on the worldwide economic situation. We will cover briefly the development of the labour market in the Czech Republic in the following chapter.

2.3 Foreigners and the Labour Market in the Czech Republic after 1989

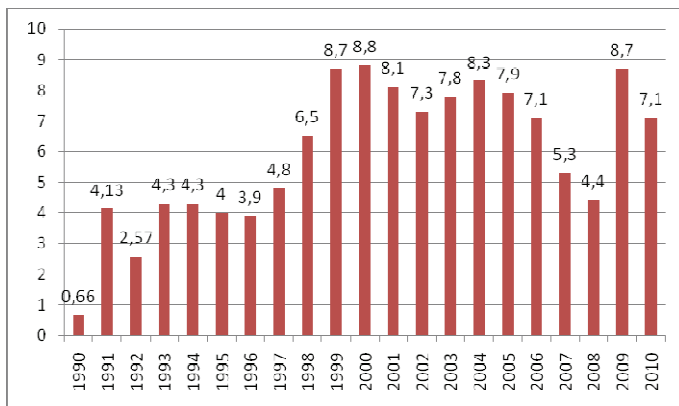
Centrally planned economy with its disadvantages but also with certain positive aspects was applied in the former Czechoslovakia before 1989. Economy was in a relatively low debt, there was a rich industrial tradition and citizens were on a generally relatively high qualification level. The former socialist regime barely knew the term unemployment – the status of full employment was declared and an unemployed person could be even imprisoned for so-called parasitism¹²¹. These positive aspects were, however, balanced by the overall ineffectiveness of economy along with an unsuitable branch structure, central planning, which could not respond flexibly to the demand of the market; the labour market was deformed, with excessive employment, unsuitable qualification structure and averaged wages. After the coup in 1990 the stabilisation took place and economic reforms directing economy towards the market economy were adopted. Between 1990 –1993 the number of job positions dropped in connection with the economic transformation and unemployment common to all market economies occurred in the Czech Republic. The rate of unemployment reached the level of “mere” 4.3 percent in 1993, which was, besides others, caused by the displacement of so called working pensioners out of the labour market. The development of an average unemployment rate in 1990 – 2010 may be followed in Chart 1.

¹²¹ As of 1965, Section 203 of the communist Penalty Act defined the parasitism as follows:

(1) Anyone who continues systematically failing attending working shifts without any serious reason or pretending being incapable to work despite he was found to have already committed such an act by a local people’s court or by a national committee shall be punished by a term of imprisonment of up to one year or by correctional measures.

(2) Anyone who systematically evades honest work and lives at the expense of someone else or gets means for one’s living by any other illegal manner, shall be sentenced to a term of imprisonment of up to three years.

Chart 1. Development of Average Unemployment Rate in the Czech Republic in 1990 – 2010.

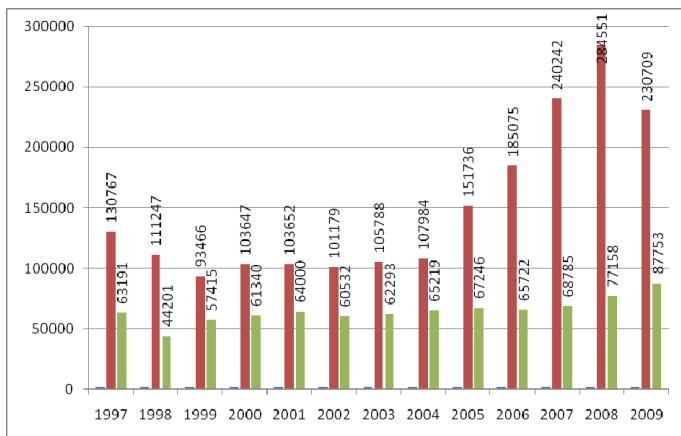


Source: CSO (Czech Statistical Office)

Economic development in an independent Czech Republic was accompanied by the increase of an unemployment rate. Between 1996 – 1999 the recession came about and the average unemployment rate reached almost the limit of 9 percent. At that time there were about 150 – 190 thousand foreign workers in the Czech Republic, about two thirds of them were in the position of employees and one third of them were sole traders. During 1993-2002 a relative representation of foreigners with a permanent residence¹²² increased and nowadays the Czech Republic ceases to exist only as a transit country but it is becoming to be a target country for immigration in a certain part of foreigners. We can follow the development of the number of foreign workers in the Czech Republic on Chart 2. The greatest share of immigration consisted of Slovak citizens (the immigration from Slovakia made 41 percent of the total migration growth until 2002). Share of foreigners with on the total employment in the Czech Republic was about 3.5 percent up to 2004.

¹²² The share of foreigners with permanent residence in the number of the CR population in the period from the end of 1993 to the end of 2002 increased from 0.26 per cent to 0.73 per cent.

Chart 2. The employment of foreigners according to their employment status in 1997 – 2009 (the first column – the number of foreigners registered with LO (Labour Offices), the second column – the number of sole traders)



Source: CSO (Czech Statistical Office)

A rapid increase in a year-to-year GDP growth occurred in the period from 1999 – 2006 as a result of government incentives for the purposes of the entry of foreign capital, reaching almost 7 percent at its peak in 2006. The foreign capital brought with itself the overall revitalisation of economy and greater demand for labour force, especially in some sectors. With respect to the shortage of suitable candidates for filling some vacancies and/or these vacancies had characteristics unsatisfactory to the domestic labour, companies began to recruit foreign labour to fill these jobs. From investigative interviews carried out by the author of this text with employers of foreign employees during the period of the economic boom, it is apparent that companies suffered from an acute shortage of workers at that time and the domestic labour force was not willing to accept working conditions offered to them. Employers therefore had to solve their situation in a relatively complicated way¹²³, by “importing” labour force from abroad. This fact, however, was not reflected in approaches of the public who regarded the employment of foreign workers as threat to the domestic labour market. It follows from results of the Public Opinion Research Centre that opinions of the

¹²³ Conditions of employing foreign workers have been rather strict in the Czech Republic and a bureaucratic process proceeding to the performance of work itself by foreigners in CR is rather lengthy and complicated.

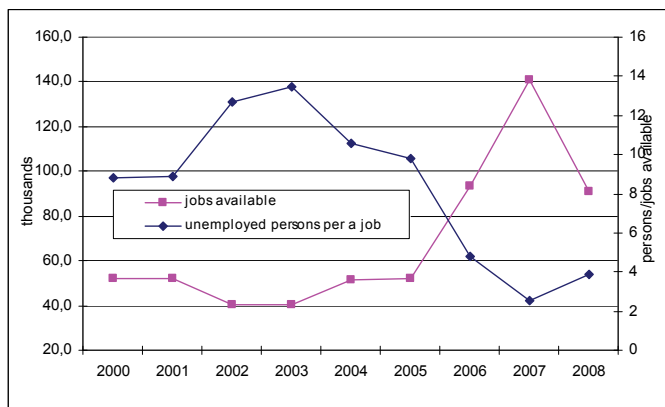
domestic population on the employing of foreigners are not too positive and this fact has not changed much within the period of time (see Table 1)¹²⁴. Czechs are rather reserved as for their relation to foreigners on the labour market and in spite of their contrary experience with the employing of foreigners, they are afraid that “foreigners are going to take jobs from them”.

Table No.1 Opinions on Employment of Foreigners since 2003 - Column Percentage.				
	2003	2007	2008	2009
It is correct to prefer foreigners from EU countries to other foreigners at recruiting.				
Agree	28.7	40.9	37.1	40.4
Don't agree	54.7	47.7	49.1	45.1
Don't know	16.6	11.5	13.8	14.5
Cheap labour force is a threat to the current employment of Czech citizens				
Agree	82.3	67.8	66.2	77.9
Don't agree	12.3	29.1	27.8	17
Don't know	5.3	3.2	6	5.1
Foreigners should be employed only in occupations Czech citizens are not interested in				
Agree	62.6	66.3	62.5	65.9
Don't agree	28	28.8	29.7	26.3
Don't know	9.5	4.9	7.8	7.8
Employment of foreigners should be restricted in regions with high unemployment rate				
Agree	81.1	74.9	62.9	78.2
Don't agree	11.5	18.4	19.9	14.1
Don't know	7.4	6.7	10.9	7.6
CVVM source, May 2003 (N= 1,047), May 2007 (N=1,131), March 2008 (N=1,028), March 2009 (N=1,139)				

¹²⁴ Surveys of attitudes of Czech citizens towards foreigners on the labour market had been conducted by international researches such as the European Social Survey and International Social Survey Programme too. Results of these surveys confirmed results of domestic surveys. Czech citizens place with their unfavourable attitude to the employing of foreigners to other countries of the former Eastern Block, and also to less economically developed countries such as Portugal and Greece. Citizens of other Western countries have significantly more positive attitude to foreigners and their employment on domestic labour markets.

The economic recession, which started in the second half of 2007 and continued in 2008, stroke the Czech economy most severely at the beginning of 2009. As a consequence of adverse internal and external investment environments and the weakening of a foreign demand investment activities of companies on the territory of the Czech Republic significantly dropped, which was reflected subsequently on the labour market too. The unemployment strongly increased (from 4.4 percent in 2008 to 7.1 percent in the 3rd quarter of 2010) and its growth was the most rapid since 1990. A structural imbalance dominated the labour market on a long-term basis, and starting from 2004 foreigners began gradually filling labour market jobs, which the domestic labour force found unsatisfying due to professional reasons or level of wages, however, the total employment was continuously on the rise. Due to the structure of the offered vacancies the unemployed did not fill them and therefore the total unemployment did not decrease proportionally with respect to the number of these vacancies, the volume of which continued to grow any further. In 2009 consequences of the worldwide economic crisis hit fully the Czech economy and relations on the labour market changed completely. By the end of 2009 the number of the unemployed increased by approximately 150 thousand persons even in spite of the number of the employed foreigners decreased by approximately 50 thousand. The number of vacancies fell by about 60 thousand on a year-to-year basis (see Chart 3) and the previous structural unbalance on the labour market changed in to a total unbalance.

Chart 3. Vacancies and share of applicants on 1 vacancy



Source: MLSA (Ministry of Labour and Social Affairs)

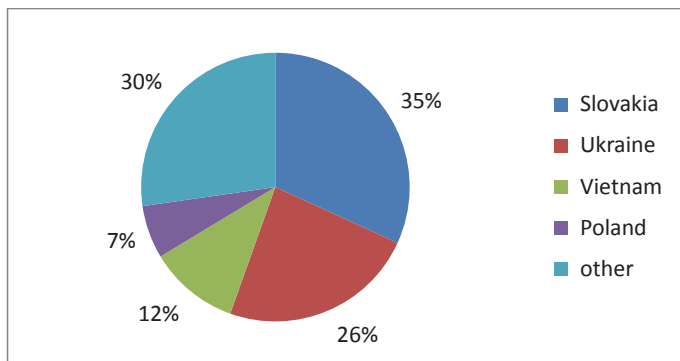
Impacts of the economic crisis were particularly adverse to foreigners registered with labour offices in positions of employees. We will cover this topic in detail in Chapter 3.

2.4 Foreigners on the Labour Market in CR

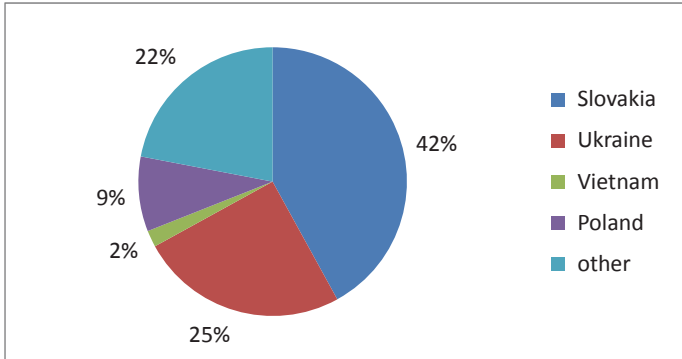
Based on data of the Czech Statistical Office the total number of foreigners employed in the Czech Republic was 318,462 persons, 67.3 percent of that were men and 32.7 percent were women. Of the total number of foreigners working in Czech Republic 72.4 percent (i.e. 230,709 persons) were registered with labour offices, which includes foreigners in the position of employees and also foreigners working as partners of business companies, members of cooperatives or members of statutory bodies of business companies and cooperatives who, besides being involved in the management of companies, fulfilled so called day to day tasks. The remaining 27.6 percent (87, 753 persons) were holders of a valid Trade Permit Certificate. Chart 4 shows the distribution of foreigners working in the Czech Republic as to 31 December 2009 according to the type of economic activity and the country of origin. Most foreigners in the position of employees working in the Czech Republic come from Slovakia, most foreigners-businessmen come from Vietnam.

Chart 4: Employment of foreigners in CR according to the country of origin and type of economic activity

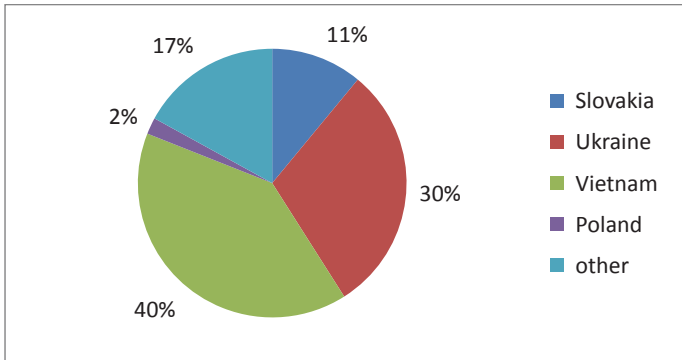
Total Employment of Foreigners



Foreigners Registered in Labour Offices



Foreigners with a Trade Permit Certificate



Source: CSO

Foreigners coming from the European Union are mostly in the position of employees on the labour market in Czech Republic, as against to citizens from the Third World who are more often found to be in the position of entrepreneurs. It may be partially caused by easier entry to the Czech labour market through a Trade Permit Certificate than through the institute a work permit.

The strongest migration flow to domestic labour market is coming constantly from Slovakia. The absolute number of Slovaks on the Czech labour market has increased, however, their share on the total employment of foreigners dropped from 40 percent in 2004 to 30 percent in 2008. According to CSO, the citizens of Slovakia are mainly employed in manufacturing industries (40 percent), and further they work in real estates, construction industry and trade. As opposed to immigrants from other significant source countries they do not work

exclusively on lower job positions. Approximately one quarter of them work as senior executives or specialists and they also work in healthcare industry, as technicians or officers. In spite of that their representation in auxiliary and unqualified positions is significant (about one fifth). The number of working migrants (again particularly workers) from the second significant source country, Ukraine, has increased. It is also reflected in the growth of a share in the total employment of immigrants, rising from 24 percent to 28 percent. Ukrainians work particularly in construction industry with more than one half of Ukrainian employees. 60 percent of Ukrainians work in auxiliary and unqualified positions, one quarter of them as skilled workmen. The position of Vietnam as the third most powerful source country as far as working immigration is concerned has been strengthened too. Vietnamese participated in the Czech labour market mainly in the position of entrepreneurs by 2004. Their share in the total employment of foreigners – entrepreneurs grew from 34 percent in 2004 to 40 percent in 2009.

2.5 Impact Of Unemployment On Foreigners

The exclusion of a man from employment has many after effects that are connected with the central role of work and employment in Western culture. The loss of employment is a very stressful and burdensome existential experience even in spite of the functioning of the social security system, which partially compensates acute after-effects of earnings blackouts. Not only a financial side of one's employment is significant for a working individual, i.e. an opportunity to take part in consumption, but also a social side, i.e. participation in social status¹²⁵. Employment is also the means of social mobility, so by the loss of employment an individual loses not only one's actual status but also an opportunity how to improve it. Generally speaking, in our Western culture the employment plays a role of somewhat of a central institution serving for the identification of ourselves – our life goals, our social status and social networks are determined through the employment that also structures our life through time and space. Paid work within the occupation has become a central part of the social role of a man as a breadwinner and in the process of the emancipation of women and their entry to the public sphere it has become a significant part of women's life projects in

¹²⁵ The social status is based on a status of an individual within a social structure. The status determines rights and duties of an individual with respect to other individuals and at the same time it forms expectations, which the community may have in specific situations with respect to the holder of the status. It concerns prestige, which an individual or a group may have in the eye of the society.

Western societies in the twentieth century. Today's society is set in a way that it expects from an individual able to work¹²⁶ to make one's living by working, in particular, or by activities connected with it. Along with this the society sets mechanisms, which make work a dominant and necessary source of incomes for members of this society.

Moving due to work to another state is one of crucial reasons of the international migration¹²⁷. Migration is even an inseparable part of global capitalism, where job opportunities are often localised in places with shortage of local labour force qualified or willing to work in given positions, while there are shortages of requested job opportunities in other regions. According to many migration theories job opportunities in a target country are one of the dominant motives of the international migration. And furthermore, migration is often a risky and money-consuming project, in which expectations play a significant role. To make it simple¹²⁸ – migrants try to maximise their benefit, by means of the amount of their income. They decide to migrate in case their expectations as to job opportunities and expected amount of their earnings exceed their current or presumably expected conditions in the country of their origin. Therefore the employment¹²⁹ in the target country is a totally crucial issue for migrants, and it may be stated that its importance is often higher (from the beginning, at least) as opposed to the domestic population. It is mainly due to a large initial investment into the migration project (journey, work and residence permit, etc.), a legal opportunity of one's residence being conditioned by one's work performance (visa is mostly conditioned by a work permit,

¹²⁶ We naturally consider individuals who are able to perform paid work. Persons who are in any way handicapped have in this respect a special status in the society.

¹²⁷ Issues such as security, political or religious freedom, the environment conditions, opportunities of education, or general conditions for living in the country of origin are other significant factors. This list is not complete because the motivation of each immigrant to move to another country is always individual, being a complex of many factors at many levels.

¹²⁸ It is the view of the economic theory and as mentioned above it is only a small segment of complex considerations concerning the start-up of a migration project. However, it is a very substantial segment because the migration is always a financially demanding process, which must be rewarding for an individual in its result so that he could even think about it at all.

¹²⁹ Here we mean only foreigners in the position of employees. Immigrants who arrive in the target country based on a business visa are in a rather different situation, although they are in fact often in the position of employees.

which is then conditioned by a concrete job) and impossibility to get benefits from the social system in case of the loss of employment. Therefore the migrant finds himself essentially in a very dependant position in the initial phase, which prevents him to apply more flexible life strategy. The loss of an employment position therefore may have rather fatal after-effects for the immigrant because in majority of cases it is connected also with the loss of an opportunity to stay legally in the target country¹³⁰. The employment, on which depends immigrants' opportunity to live legally on the territory of a given state at the beginning and to get a recognised status within a broader social community in case of a long-term stay, is therefore an important means for immigrants' integration into a new society.

2.5.1 Individual Perception of Foreigner's Unemployment

The loss employment is often a critical life situation with a significantly individual impact on individuals and the range of ways people cope with unemployment vary too. The way an individual copes with the loss of employment depends on general life situation of an individual and a character of his personality. Overall financial situation of an individual (or his family), support provided by his family and broader social environment, the rate of his physical and psychological resistance with respect to stressful situations and an opportunity to take advantage of his qualification play a significant role in this process. Further, age, sex, ethnicity, flexibility of an individual or his personal motivation to work play a significant role too.

¹³⁰ In immigrants from the Third World, i.e. outside EU, we essentially differentiate a short-term stay (visa for up to 90 days), long-term stay (visa for over 90 days and a long-term residence permit), permanent residence (may be awarded after fulfilling conditions determined and after 5 years of an uninterrupted stay) asylum and extra protection. As for a long-term residence permit a key piece of information is that in such a case it is necessary also to comply with a specific purpose of one's stay (e.g. employment, business, family union, studies), which may place special conditions on the person concerned, resulting in the necessity to repeatedly prolong one's residence permit. For instance, in case of the loss of employment normally a period of 60 days starts running for finding a new job (effective as of 1st January 2009), for which a new work permit is required. If a foreigner does not find a job within this period his residence permit terminates as well and he has to leave the country or change the purpose of his stay. Major difficulties linked to the economic drop affect persons whose stay in CR is limited in time, i.e. they are under a constant threat of losing their legal stay if their life situation is changed.

As it can be followed from classic studies on unemployment¹³¹, experiencing unemployment may be divided into several phases. After overcoming the first stage of an initial shock caused by a radical change in the organisation of one's life, the mobilisation of strength takes place, where the unemployed try actively and rapidly go back to work process. In case they are not successful in a short-time period, a stage of apathy takes place, where the unemployed become resigned to active search for working opportunities and they rely on a labour office or somebody among their relatives for finding a job for them. The breaking of a daily routine structure, change in the perception of time in general and relating deprivation out of the absence of regular activities, the loss of sense of everyday activities, social isolation, loss of interest in participating in activities and goals of broader social groups, loss of self-confidence and social status, conflicts in common social relations, worsened psychological and physical health, worsened family relations and last but not least the loss of values and respect to public authorities is a long-term consequence of this condition.

Adverse impact of unemployment may be overcome provided there is intensive moral and emotional support on the part of the closest family and a sufficient amount of savings. Persons of higher age with relatively lower chances to be reemployed bear the unemployment situation with great difficulties. In case of an involuntary loss of employment people above 50 experience serious problems with self-confidence and self-esteem, which may even proceed to inferiority complexes. This concerns mainly older men who bear the loss of their traditionally perceived role of a breadwinner with great difficulties. With particularly great difficulties they bear the loss of social contacts, the necessity to limit themselves in consumption as well as the loss of status, authority and prestige. As for health condition, both psychological and somatic aspects may be worsened.

Rather different consequences of unemployment, although being of the same relevance, are found in the youngest group of the unemployed, who, in case of a long-term unemployment,

¹³¹ Jahoda, Lazarsfeld, Ziesel 1933, 1974; Jahoda 1982, etc. Although these studies bring significant and in many aspects still valid knowledge on the unemployment perception, they do not reflect fundamental changes in the labour market in connection with the globalisation and flexibilisation (see above) and they are to a certain extent based on experience of white men of the middle class in Western societies. It is increasingly difficult to accomplish the standard of a steady job carrier in conditions of today's labour market due to a rising number of members of society; and additionally, members of the lower class, women and ethnic minorities may experience unemployment in a completely different way.

gradually lose their motivation to work along with the sense for working morale, duties and responsibility. At first glance they may seem to bear unemployment easier than the older group of the unemployed, however, activities regarded by the society as problematic may be demonstrated more easily in them (alcoholism, drug addiction, passion for gambling). If they worked relatively for a short time before they lost their employment their work habits are lost soon.

Individual consequences arising from unemployment effecting an individual, his family and the whole society will be covered in detail in the following chapter, also with the focus on specific impact of the loss of employment on foreigners¹³² in the Czech Republic. The situation of foreigners in relation with social security, which is to compensate adverse life events, depends on a type of their residence (visa/permanent residence) and the scope of social benefits they are entitled to.

2.5.1.1 Loss of Income and Fall in the Living Standards

The loss of employment, which is accompanied with earnings blackout, represents a breaking point, which to a certain extent affects the existing living standards of an unemployed man or a woman and his or her family. Sometimes a financial “pillow” created in the period of employment may temporarily compensate this situation, sometimes it is a family that may provide an individual with help in this situation. In any way, financial difficulties after the loss of employment are severe. The welfare state with its social security and unemployment benefits is to compensate the loss of employment to a certain extent, however, entitlement to this support is not automatic. The entitlement to unemployment benefits in the Czech Republic arises if a person performs work or any other gainful activity at least 12 months within the last 3 years before an application for such benefits is submitted. This activity had to give rise to duty to pay retirement pension insurance and contribution to the state unemployment policy and an employer had to pay duly such insurance payment. An application for an unemployment benefit is required to be submitted with a relevant labour

¹³² We will deal only with foreigners with a permanent residence in the Czech Republic in the following chapter. In case of stay on a working visa the foreigner along with the loss of employment loses also the entitlement to permanent residence in the country and therefore he has to solve totally essential existential issues. We will cover this topic in detail in Chapter 3.

office and the applicant must not draw any retirement or full disability pension as to the date such an unemployment benefit is to be awarded.

The amount of an unemployment benefit is relatively low¹³³ and its purpose is to motivate the unemployed to search actively for a new employment. In addition to that, an unemployment benefit is awarded only for a limited period depending on the age of an applicant¹³⁴. The amount of this benefit is determined as a proportion of average net monthly earnings obtained in the last employment, i.e. 65 percent in the first two months, 50 percent in the third and fourth months and 45 percent out of the previous earnings for the remaining period awarded. In case an unemployed person fails to succeed in finding a job by the end of this benefit period, he proceeds to the regime of social allowances, the amount of which is derived from his concrete financial and family situation.

The unemployed have to mostly change the structure of their consumption – so called “consumption basket”¹³⁵. Purchasing cheaper and less quality food comes into place along with the limited changing of one’s wardrobe. This situation is problematic mainly in persons who require a specific type of diet or who take care of a physically or mentally handicapped person. With respect to the fact that various studies show that activities connected with consumption (consumerism) such as the planning of shopping and searching for a concrete type of goods or services involve a great deal of their free time, the limitation of consumption possibilities is essential life experience of the unemployed. They cannot compensate eventual boredom and frustration by consumption and they cannot confirm their social status by the regular changing of their assets. Fall in the living standards is therefore reflected in various situations depending on the volume of savings an unemployed person has available.

¹³³ The maximum amount of benefits after providing evidence of previous incomes was CZK 13,280 in CR in 2010 and CZK 14,883 if requalification courses were attended. The maximum amount of benefits without providing evidence of previous incomes while attending requalification courses was CZK 3,206.

¹³⁴ Unemployment benefits are awarded to persons under 50 years of age for the period of 5 months, to persons between 50 – 55 for the period of 8 months and for 11 months to persons above 55 years of age. The period, for which benefits are awarded, thus reflects a gradual growth of difficulties in seeking a new job depending on the increasing age.

¹³⁵ The consumption basket includes a combination of consumer items. The consumer determines his preferences for individual types of consumption baskets, i.e. for types of goods he is interested in buying them.

2.5.1.2 Deprivation and Social Isolation of the Unemployed

The unemployment influences the social life of unemployed individuals and their families to a significant extent. In this connection we talk about deprivation¹³⁶ of the unemployed, which is linked with their exclusion from consumption on one hand (as stated above), but also with their exclusion from their social relations on the other. Relative deprivation experienced by the unemployed nowadays due to the luxury of the middle and higher classes publicised in the media maybe a source of many tensions and discontent with regards to the impossibility to satisfy one's aspiration to this type of consumption. This discontent may be additionally strengthened also by the community, which expects from an unemployed individual and his family to keep the living standards the individual (family) had before the loss of employment. Impossibility to take part in some common consumer-oriented activities (for instance going to the cinema, vacations, some types of sports activities, etc.) may then lead to the limitation of social contacts and towards social isolation of the unemployed.

Social isolation at unemployment is reflected on a dual level. The loss of employment leads to the interruption of social relations with (the former) fellow workers but it also leads to the interruption of a range of contacts not directly connected with such an employment. Some studies show that the limitation of social contacts occurs also within the families of the unemployed. The reason for reducing contacts is a physical absence of an individual at the premises where common life experience is shared on one hand (it concerns mainly the former fellow workers) but also the feeling of stigmatisation of the unemployed due to the loss of employment on the other. An unemployed individual falls gradually in an increasingly deeper isolation from its community and his increasingly passive attitude to life is also connected with it.

¹³⁶ Deprivation refers to insufficient content important for psychological or physical needs of an individual. It is most often described as "emotional deprivation" in the Czech language – any deficit of affection and emotions experienced by an individual. Deprivation is divided into the absolute deprivation (i.e. a specific existential threat) and the relative deprivation (rather psychical deprivation caused by comparing one's living standard and relations with one's community). While the absolute deprivation had endangered lives of citizens before the welfare state was formed, it is the relative deprivation that is by far intense these days with respect to the middle class living standards generally presented through the media that may be regarded as a certain norm of the public's aspiration.

In foreigners who lost their job this situation may be even more complicated. If they do not have their own family here, which would serve as their psychological mainstay and which often involves them into further social contacts (for instance through children) they usually have very limited social contacts already in their employment and after they lose it their social life may almost completely disappear. In case of foreigners the knowledge of a language of the target country has a significant impact on the scope of their social contacts and extent of social networks. It is apparent that the knowledge of a language makes substantially easy to arrange and keep social contacts with the major population and also the type of work a foreigner previously performed plays its role here too. Foreign employees of multinational corporations who act in multinational environment have rather contacts with their compatriots or any other foreigners. Mostly foreigners participating in the secondary labour market have greater difficulties in entering into relations with the domestic population because their social interactions outside the group of their own compatriots are rather limited.

In general, foreigners do not actively participate in formal associations and societies of compatriots, which represent potential opportunities to develop social contacts, they prefer rather informal networks of compatriots. The existence of this type of networks has a dual effect – on one hand it supports the integration of foreigners into the target country by providing them needed information and enabling them to orientate in a new environment. On the other hand, these networks, however, contribute to partial isolation or minimally slowdown the process of the integration into social networks of the majority, if they are concentrated on compatriots only.

2.5.1.3 Change of Time Perception and Structure of Day

As stated above, unemployment does not influence only the living standards and social life of the unemployed, but it deeply affects also the structure of their everyday life and perception of time. By their loss of work the unemployed were deprived of their income but they acquired a great deal of “free time”. The way how they budget with the shortage of money and surplus of free time then determines their life strategies.

The unemployed suffer from psychological stressful changes in the perception of time and these are altogether with the breaking of regular time routine of a day (determined by employment) regarded by specialist as one of the most significant impact of unemployment on a man’s psyche. Time ceases to be important for an individual and passes by more slowly than in work, after a certain time an unemployed does not distinguish weekdays from a

weekend. Thus a long-term unemployment to a certain extent decompose the structure of the personality of the unemployed and as scientific studies show only a small part of people is able to keep one's time structure. The majority of people is not able to handle this and for keeping a certain daily structure it has to be forced by external social standards forming the mainstay of our daily regime. The daily structure is mainly determined by the beginning and end of working hours in employed individuals and it is being implanted into the personality of the majority of people during the process of socialisation¹³⁷.

The meaningful use of time at unemployment is problematic, and it is important for an unemployed to keep some system of spending one's time, a certain stereotype which may help him to overcome a passive life style and boredom. According to results of various sociological researches oriented on spending spare time by the unemployed the contacting of potential employers and searching for job opportunities are dominant activities of individuals without employment. Further, they devote themselves to self-education, requalification and their hobbies.

For foreigners who do not have any job it is important within this context, whether they are alone or with their family in the target country, or whether they have social relations, which could help them fill their spare time. For instance, looking after children may be an important activity taking up a great deal of a day of the unemployed. Individuals who are alone in the target country may, with respect to the lack of social contacts and thus only an individual experiencing of spare time, give way to gloomy thoughts and depressions more easily. In countries with a long tradition of immigration there are already formed communities and enclaves of foreigners, where a long-term unemployment is experienced collectively and spare time may be spent for instance by mutual meetings, drinking tea or coffee in the streets. Any mutual activity may be even better than an individual passivity (although it does not have to apply to everybody). A family or a group of friends thus may be a good prevention against psychological problems that may arise from the solitary spending of one's spare time, although spending the whole spare time in a close circle of persons may be psychologically

¹³⁷ Socialisation is a process of the integration of a person into society during which he acquires social standards, values and social roles. The primary socialisation takes place in early age within the family and continues to be developed approximately up to the third year of age when the individualisation of a person is completed. The secondary socialisation then takes place within the family, school and contacts with peers and prepares a person for his place in the society.

demanding and potentially confrontational. Social relations may be the source of information on working opportunities and strategies for the consumption with limited finances, however, at the same the unemployed may mutually support each other in a given situation and do not motivate each other to get out of their unemployment.

2.5.2 Impact of Unemployment on a Foreigner's Family

The loss of employment with its consequences affects not only an unemployed individual himself or herself but directly or indirectly also his or her family. The loss of income and other above-mentioned aspects of unemployment are reflected in the general situation of a family – limited finances and increased emotional tension may lead to the violation of family relations that under normal circumstances are to support an unemployed and assist him in his self-assertion on the labour market. In studying consequences of unemployment on a human life it is therefore also necessary to draw attention, besides an individual perception of such a situation, to configurations created by the unemployment in families and households as compact entities with their own systems of values, norms and priorities, the keeping of which is required by their members.

Unemployment in a family life becomes evident through the decrease in incomes and subsequently in its living standards as well as through the violation of a daily routine and the whole family system as a consequence of changed social relations. Not only an unemployed individual himself gets into a social isolation by being excluded from the labour market, but it is also his family, which participation in social relations is weakened. Due to the loss of income the status of an unemployed person in his family system is being changed and a change in the division of responsibilities for performing household chores mostly takes place in connection with it too. The former valid family rules are being violated, division of work and content of social roles are being changed and thus family relations and bonds may be essentially violated and sometimes they may be even completely broken.

The migration project is very often motivated by efforts to improve the living standards of a migrant and his family. Earnings black-out is thus a basic problem seriously endangering the whole project. The role of a migrant as a breadwinner of the whole family is thus violated and the future of his family becomes uncertain. Due to this reason the earnings black-out represents a particularly adverse life event for a foreigner comparing with the domestic population. However, the family should be (and often is) a recourse and the mainstay for an unemployed person in a difficult life situation. Therefore it is important for an individual not

to experience unemployment alone but to have his family around. Foreigners, whose families stayed in a country of their origin and cannot be close by them, have a great disadvantage here in this case. But in foreigners who have their families around, their inability to financially support their families after they lost their income is often a more significant fact.

2.5.2.1 Changes in Social Roles

Social roles of an individual are changed due to his unemployment too. It is obviously apparent in families where a traditional division of male and female roles is still preserved (mainly in families from the lower class), i.e. the role of a man as a breadwinner, which may be frequent also in families of migrants depending on what country, domicile type (city/country) and social strata he comes from. Although the model of a man as an exclusive breadwinner does not apply any more in a substantial part of the population and women significantly contribute to family budgets there are many families where a man as a breadwinner is regarded as the main carrier of financial means to secure his relatives. Therefore the loss of a professional role and thus the role of the main breadwinner is especially difficult for men in such families. For a man it may represent the loss of his dominant position as well as his status, prestige and authority. In addition to that, the loss of employment in the family is connected with the loss of legitimacy of an unequal division of work because an unemployed man all of a sudden has enough time to take over some household duties so far performed by a woman and a man “bought himself out” of them by bringing earnings home from his employment.

Nowadays women are generally more endangered by the loss of unemployment than men. As far as social standards and often reality are concern their role is connected with the role of a minder (looking after children, men or other relatives) and the community and they themselves often perceive their unemployment differently than it is in men. The loss of employment does not have to be so stressful and stigmatising for a woman in traditionally oriented families as it is in men. The role of a minder may thus provide an unemployed woman with an alternative fulfilment of her role (as oppose to a man). The traditional role of a woman is perceived as the role of a mother looking after her children and household and thus a woman may feel her role is full-valued even without a permanent income from employment. Pregnancy and maternity/parent’s leave may be one of strategies at the loss of employment in younger women. It, however, does not mean that women would not perceive the loss of employment as a problem. On the one hand the model of a family with two

incomes (which is the necessity with respect to the amount of salaries) has already been established in today's Western society, so the black-out of one income is perceived as a problem, on the other hand women, especially from the middle class, are socialised to professional aspirations.

In foreigners who come from the environment, which culturally prefers this traditional model of family relations, the above stated attributes of problems connected with a change in their roles at the loss of employment apply without exceptions. Researches in families of migrants show that there is the violation of this distribution of roles in families due to the migration even in migrant groups which may be from the viewpoint of configurations of family roles perceived as traditional, and for instance the actual change of a woman's role into the role of a breadwinner takes place here. For instance, the working migration of women from Ukraine to Italy where women work as home help and support financially their families in Ukraine may serve as an example.

2.5.2.2 Impact of Unemployment on Reproductive Behaviour

The loss of employment influences also the broader context of reproductive behaviour of individuals thus affected. Researches in historical sources from critical 30's of the last century, for instance confirmed the drop of the number of marriages and the drop of natality in Britain and Australia as well as the analogous situation in 80's. It was confirmed that pregnancy and subsequent motherhood may be an escape strategy from unemployment for a certain part of women. A child thus may fulfil the time a woman has when being unemployed and above all it is also a significant value the society recognizes (almost universally). The status of a mother is then more advantageous than the status of an unemployed woman without children also with respect to benefits provided by the welfare state.

No study on reproductive behaviour of foreigners after the loss of their employment has been worked out in the Czech Republic so far, however, certain conclusions may be derived from demographic events recorded by the Czech Statistical Office. The fertility rate of women immigrants seems to be on a very low level so far in this country. It is significantly different only in women with the Vietnamese citizenship whose aggregate fertility rate is slightly higher than in women of the Czech population. The low fertility rate in women immigrants here is often caused by the nature of their stay, temporary working immigration still prevails. For certain, a range of uncertainties and complications, which are connected with the arrival and life of a foreigner here and which do not create any favourable conditions for establishing

one's family has impact on this. The fact that children of foreigners born here are not awarded a Czech citizenship and their future is not therefore totally ensured may play its role as well. These facts may therefore indicate that foreigners will tend less to "solve" the loss of employment by the conception of a child as oppose to the domestic population. However, no quality data are available so far to confirm or to disconfirm this hypothesis, so it may be only regarded as an assumption at present.

2.5.3 The Status of Unemployed Foreigners in Society

We dealt with the impact of the loss of employment on an individual suffering from unemployment and his family so far. However, unemployment has also a significant impact on how an individual concerned is perceived by the society. As already said in the introduction here, modern Western societies tend to differentiate their poor and needed between those who are entitled to draw benefits from public resources and those "undeserved" who themselves are the cause of their situation and do not actively try to change it. It is therefore expected from the unemployed to continue to fulfil their social obligations and actively try hard to change their situation. Further, the unemployed are expected to regard their situation as undesirable and to devote maximum efforts and time to find their employment. Official definitions of unemployment differ in each country, but usually a man defined as unemployed is a person without a paid employment, registered with a labour office and looking for a job and able and willing to take it immediately. Individuals without any job and not looking for any are defined as non-working persons and are regarded as persons not deserving any institutional support from the welfare state.

2.5.3.1 The Change of Social Status

Employment is a significant aspect defining to a certain extent the status of an individual in the modern Western society. According to a kind of a job a man performs one can tell what "kind of a man he is". This social status acquired by an individual for the duration of his job career is one of the basic characteristics determining the position of an individual in the society. This position is redefined by the loss of employment as well as by the acceptance of a new status of an "unemployed" person. This status is opposed to the status of an "employed" person regarded as inferior in the society and certain unpleasant connotations are linked to it. The loss of income leading to the decrease in the participation in consumption results in the limitation of opportunities to reveal one's own identity, develop and keep social contacts and to structure one's time. The unemployed try to maintain their living standards as long as

possible, or rather their visible consumer aspects so that they would not “fall down” in the eye of their community.

The performance of a paid job enables a man to get a relatively respected position in the society and the income from such a job enables him to take part in consumption regarded as standard. The change of social status connected with the loss of unemployment is reflected in immigrants similarly as in the domestic population, however, some aspects are rather specific. As said above, the majority of population in the Czech Republic does not favour the unlimited employment of foreigners. However, Czechs are willing to “tolerate” foreigners in jobs they themselves would not want to perform. The general attitude of the Czech population towards foreigners could be characterised based on results of researches made as not too favourable to disapproving. With respect to foreigners in the Czech society being perceived mostly as labour force, after they lose their job they find themselves in a situation where their perception of legitimacy of their residence in the country may be endangered. An unemployed foreigner may therefore feel as *persona non grata* regardless whether he is entitled to the financial support from the social system – foreigners are aware of the fact that the majority society takes a resentment view on the situation where foreigners would be “a burden” to the social system. The status of an unemployed foreigner is thus especially disadvantaging in the public sphere.

2.5.3.2 The Problem of Participation of the Unemployed in the Life of Society

Considering the present situation on the labour market, it may be stated that the unemployed who don't have a suitable cultural capital nor a social capital to find quickly a new job are in danger of a long-term unemployment. This risk, as stated above already, rests, among others, in the change of attitudes and values of an individual. After a certain time, part of the unemployed may regard their negative attitudes, inadequate way of conduct and adverse life circumstances as permanent and unchangeable. They accept a submissive position and accept easily what others plan for them. They have problems with communication, which often leads to the sense of helplessness and strong inhibitions negatively affecting them in applying for a job, particularly, in the first contact (job interview).

This limitation is connected also with the loss of interest in the participation in further social life. In the modern Western society the full-fledged citizenship is connected with work ethic and the status of an employed person . As a matter of fact, the right to vote was long connected with the payment of taxes and thus with a certain living standard based on

earnings. Unemployment to a certain extent limits an individual in his civil participation too. The unemployed are excluded from professional associations and membership in trade unions. Besides that, the system of social security, which essentially excludes any opportunity to make money during the provision of the unemployment support, forces them to be in a passive role. Searching for a new job is then the only activity of the unemployed. However, individuals unemployed for a long-term period are not able to sell themselves well as quality labour force and when it comes to searching for and accepting a new job, an unemployed individual often faces a problem of a frequent necessity to change his life style in many aspects. The unemployed lose their interest in the participation in the public and community life, they are isolated and this isolation weakens their relation to the place of their residence and neighbourhood.

The society often perceives unemployment negatively, as a consequence of personal insufficiency of individuals. These are then excluded from the main stream of the society, in a better case as clients of the welfare state. However, as for foreigners, they are often excluded even out of the social system. Limited knowledge of the local environment often prevents them from taking advantage of social services available to them. In addition to that, part of foreigners due to their lack of language facility and legal environment takes use of agency services, which isolates them even more from an opportunity to integrate into institutions of the major society. The participation of foreigners in life of the major society, which is generally lower as opposed to the domestic population, therefore mostly decreases to a complete minimum.

2.5.3.3 Unequal Distribution of Risk from Employment Loss in the Population

Researches and expert studies show that success on the labour market is not distributed at random but it is based on specific characteristics affecting an individual in a way whether and how he will succeed. Besides cultural and social capitals, they are especially the age, health condition, but also sex, nationality and ethnicity. Some social categories are therefore under the threat of unemployment more than the others and they are in danger of a repeated unemployment as well. The type of employment and whether it belongs to the primary or secondary labour market are factors further affecting possibilities of the loss of employment.

Unemployment and its long-term character thus endanger more individuals with lower level of achieved education, low qualification, low age, women more often, members of ethnic groups and newly arrived migrants. These groups lose employment more often and they find

new jobs eventually on the secondary labour market in job positions with worse wages and uncertain future. It is therefore apparent that from the viewpoint of the potential loss of employment foreigners are one of the most endangered social groups. In times of the decrease of economic production and the need to reduce numbers of employees foreign workers are mostly “in the first row” when it comes to redundancies. The following chapter will be devoted to some other specificities of employment and unemployment in foreigners.

2.6 Specificities of Employment of Foreigners

One of specificities of the labour market is its asymmetry – on the part of the labour force supply opportunities of strategic options and the decision-making are rather limited in comparison with the demand on the part of employers. Workers offering their labour force on the labour market have more limited room for manoeuvre than employers. Their position on the labour market may be disadvantaged even from the beginning by the above-mentioned cultural or social characteristics, which may predetermine an individual into unfavourable job positions on the secondary labour market. Strategic opportunities of persons offering their labour on the labour market in terms of how to improve their positions or prospects are in essence limited to two alternatives. First of them is mobility in terms of space, which means moving due to one’s work or regular commuting, the second one is mobility in terms of profession, i.e. further education (requalification), as adaptation of one’s supply to a current structure of the labour force demand. In case of migrants working in the Czech Republic it means efforts made to improve their position on the global labour market from the economic point of view. Some specificities of employment in foreigners and their consequences for foreigners after the loss of employment are presented in the following text.

2.6.1 Agency Employment

The labour market in the Czech Republic has been of an increasingly global character, marked by employers’ effort to maintain competitiveness, which reflects in options of concrete corporate human resources strategies. Corporations more frequently choose strategies enabling them more flexible attitudes and employment through an agency is one of them¹³⁸. This type of employment was introduced in the legal order of the Czech Republic in 2004.

¹³⁸ The principle of agency employment is a temporary staffing of an agency’s employees with a company requiring filling vacancies. The company does not accept employees based on an employment contract this way but it only “hires” them from a job agency.

According to researches carried out on this topic employers take use of this type of staffing particularly due to the possibility to hire labour force for specific time-limited projects, further for the purposes of flexibilisation of the personnel policy and also due to the reduction of fixed costs on labour force. Agency employment has a range of undisputed advantages for an employer – he may freely hire and release employees upon his current needs, he does not have to pay social security and health insurance payments, etc. However, it represents many problems for individuals who are employed this way. It is not only general uncertainty concerning unemployment but (particularly in foreigners) the violation of labour-law regulations by agencies.

The present development of agency employment in the Czech Republic confirmed many years of experience abroad with this type of labour relations. Economic crisis, which hit the Czech Republic in the last years, affected employees employed through agencies first. Corporations, which took use of employees from agencies, began terminating contracts with such agencies as first in case of redundancies. Thus they temporarily protected their own employees, but with respect to the fact that the majority of agency employees involved mostly foreigners who arrived in Czech Republic to work here, they to a certain extent complicated lives of these foreigners. Because at the loss of a job they were under the threat of deportation in many cases due to the termination of the validity of their work permit.

The number of employment agencies acting in the Czech Republic is about 2,150. This (considering a relatively small Czech market) enormous number is caused first of all by a great demand for this type of services and also by the fact that this type of agency employment was under almost no control for a relatively long time and attitude to it was rather liberal. It was caused, in particular, by a benevolent approach of the Ministry of Industry and Commerce, which wanted to open the Czech labour market more for both the domestic population and especially for foreigners. Indifference of controlling bodies was then the cause of the increase of very problematic practices of employment agencies in this sector. The great number of employees from employment agencies was from Vietnam, and because the migration from this country to the Czech Republic has its specificities and the author of this text participated in research in this immigrant group, we will point out some problematic moments of agency employment on the example of Vietnamese.

2.6.1.1 Problems with Agency Employment in Vietnamese

Vietnamese, who in the period of the Czech economic growth arrived in Czech Republic to work here had to take use of services of employment agencies or unofficial agents in the majority of cases. In order to get a Czech visa and work permit they had to pay high illegal fees¹³⁹ to these entities. After they arrived in Czech Republic these workers often did not received any work contract nor any placement agency agreement, which is a statutory requirement relating to agency employment. If they ever received any contracts, they were only in the Czech language whom newly arrived immigrants did not understand. Agency employees through than received false information regarding the amount of earnings, and agencies often evaded the Health Insurance Act too. Newly arrived immigrants were with respect to their zero knowledge of the language and Czech legal regulations totally dependent on agents and interpreters recruited from employees of employment agencies.

Researches carried out among Vietnamese employees employed through agencies pointed out the violation of contracts and the payment of lower earnings as opposed to employees of corporations for which these people worked. Agency workers also had to pay for board and lodging as well as for their commuting to work, these payments were deducted from their already low earnings, so their vision of the fast payment of debts made for getting a job through an agency and of subsequent income disappeared quickly. Vietnamese did not have mostly any information on their options regarding the protection of employees in case of illegal conduct on the part of their employer. They had no idea of an actual amount of fees for the issuance of a work permit and they did not know whom to contact in case they found out their agency did not fulfil its promises.

In a situation when the economic crisis fully hit the Czech Republic agencies abandoned their employees and left them to their own fate. In this period, however, some agencies continued to hire new workers in Vietnam, although they knew there would be no job for them after they arrive in CR. They profited from the fact that their job ends by “dispatching” workers to Czech Republic, they kept their money for agency services to get bureaucratic formalities and further only referred workers to agencies or agents in Czech Republic. Newly arrived Vietnamese than did not start working and ended up in labourers’ homes rented from agents.

¹³⁹ Sums for these agency services reached up to USD 14,000. An individual who wanted to arrive in CR to work here had to mortgage in many cases real property of his wide family with a bank to get this sum.

Vietnamese who arrived in Czech Republic to make quick money thus found themselves in a situation where there was no promised work for them, they were indebted and couldn't go back to Vietnam because they would never make such big sums of money they paid for agency services there. At this moment, fortunately, solidarity of a Vietnamese community revealed itself in having organised a humanitarian aid for these compatriots and enabled 7,000 people to survive the winter. Vietnamese workers postponed the purchase of winter clothes to the moment they make enough money for it in their jobs here and did not expect any loss of earnings.

One of the factors which contributed to this situation is a total absence of responsibility on the part of Czech companies, which in the interest of economic goals used these workers thanks to agency employment as flexible and cheap labour force without solving their life, working and income conditions and without being responsibility for them from the legal point of view.

From the viewpoint of their social position agency employees represent a stratum of foreigners living in the hardest circumstances here. It concerns mainly those who arrive as new immigrants here without having any background in Czech Republic. They do not arrive here through nets of their relatives or friends, their migration is organised by agencies. The knowledge of language as well as of local environment is on a zero level at the beginning and they do not have any contacts to communities of their compatriots settled here already for a longer period.

2.6.2 Problems of Irregular Work

The labour force supply and the demand for work performed by immigrants hit the state regulation of the market, which refers to the protection of the domestic labour force. And this very tension between strong economic motives of social actors (immigrants and employers) and formal obstacles (on the part of the state) is one of the main causes of irregular¹⁴⁰ work of immigrants. Restrictions of a free access to the labour market is solved by a part of immigrants in a way of applying strategies in contradiction with restrictive regulations and they perform jobs without any appropriate permission.

One of consequences of the flexibilisation of the current labour market is also the growth of the volume of “uncertain” employments, which are not sufficiently protected from the

¹⁴⁰ The term irregular work means a situation when work is performed outside the legal framework determined by the state. Sometimes the term illegal work is used.

legislation point of view. The importance of the informal sector and illegal practices of employers, non-standard forms of employment such as subcontracting, self-employment or informal employment are on the rise. First of all it is the secondary labour market where irregular migration (as part of the dynamism of international migration processes) meets with grey economy (which is linked to the postmodern changes on the labour market).

In the Czech Republic, reasons for the existence of irregular employment of foreigners from the Third World who need a work permit are similar to those in other economically developed countries. Characteristics of offered job positions are the cause of the fact that employers do not find suitable workers among Czech citizens and therefore they are motivated to employ immigrants willing to accept these offered jobs to ensure the maintaining of their production capacities.

The motivation to employ immigrants irregularly has several sources. Irregular employment cuts costs of an employer on the labour force by saving finances spent on the tax payment of social and health insurance. Employers monitor the prosperity of their companies mainly from the viewpoint of the profit reached and rightfully they try to cut costs on the labour force which are often a decisive item. Excessive increase in price of the labour force may jeopardize the existence of small and medium enterprises facing strong competitors. Additionally, an employer is not forced to comply with regulations following from the Labour Code thanks to the non-existence of a work contract. Risks connected with detection can be avoided by the use of outsourcing and transferring responsibility for irregular work to immigrants' companies.

Although immigrants have certain advantages from irregular work (for instance not paying any taxes), main reasons of their conduct can be seen in the fact that it is the way how to solve their access to the labour market restricted from the legislation point of view as well as their own ability to be employed because the structure of opportunities direct them to the sphere of grey economy.

Irregular working migration shows discrepancy between essentially unlimited source of the immigrant labour force, employers' permanent interest in the (irregular) immigrant labour force and restrictions applied by receiving countries with respect to certain groups of immigrants. Immigrants with a valid residence permit, however, working within grey economy take use of disparity between conditions required for obtaining a work permit and a Trade Licence Certificate. A work permit is subject to regulatory measures and control by labour offices, while the obtaining of the Trade Licence Certificate is disproportionately

easier. As a result of this is the occurrence of a numbered group of foreigners-traders who are in fact in the positions of employers and who integrate into economy on the principle of subcontracting.

Generally, subcontracting means entrusting other entities with tasks and activities of an entrepreneur who does not want to perform them by himself. Subcontracting may be of a legal form (so called outsourcing) and of an illegal form (so called “švarcsystem“). In fact a border line between the illegal “švarcsystem” and the legal outsourcing is very thin and if a contract is suitably made between entrepreneurs, than the “švarcsystem” may be passed for the outsourcing.

The problem of the “švarcsystem” is that instead of an equal relation between two independent entrepreneurs it is in fact an employment relation, where one entity is subject to the other and depends on it (set working hours, the use of working devices, energy, raw materials or tools of an employer, the performance of work only at the workplace of an employer, etc.)

If the motivation of immigrants is to make their access to the labour market easier the motivation of an employer for applying the “švarcsystem” is his efforts to simplify his wage and accounting administration and first of all his efforts to cut costs (it is not necessary to pay statutory tax payments for an employee.) The motivation is given by efforts to exclude the application of the Labour Code, which protects an employer much more than contracts made between “entrepreneurs”.

Although one of the forms of subcontracting – the “švarcsystem” – is illegal by the law, the second form - outsourcing – is in accordance with the law. Therefore some employers protect themselves from being sanctioned by transferring the responsibility for irregular immigrant employment to other companies that subsequently hire within the legal outsourcing. These hired agency companies – often in the ownership of immigrants – operate rather as personnel agencies than as real production companies. This trend was applied in a large extent in the United States for the first time in the connection with the introduction of strict sanctions for employers who hire immigrants contrary to regulations. They reacted this way to the risk of detection and thus repressive measures in its essence fell flat.

Almost all Vietnamese and the majority of Ukrainians in the Czech Republic take advantage of a strategy for obtaining a Trade Licence Certificate and possibly they are thus involved in

the system of subcontracting. In case of Vietnamese it concerns work within one's own immigration group, while Ukrainians are employed with Czech entities too.

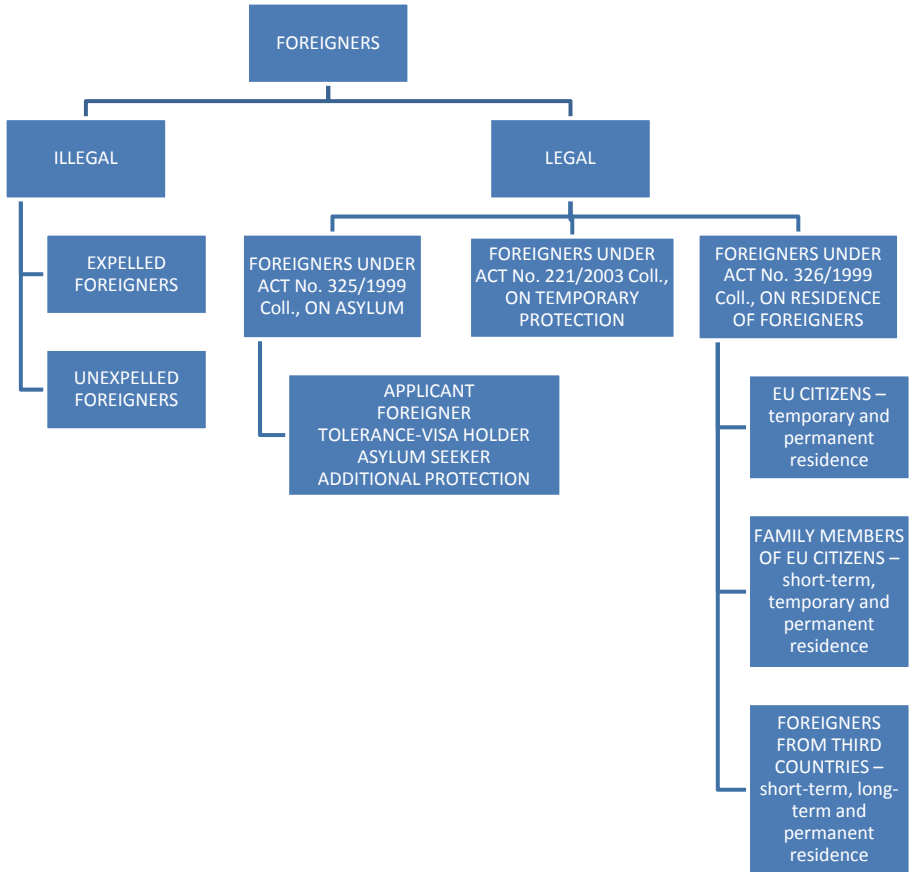
In case of controls and subsequent detection of irregular work irregularly employed foreigners, or foreigners with terminated employment, are always severely sanctioned by immediate deportation. It is then very difficult for him to solve for instance a problem with a validity of the termination of employment, or to claim other rights resulting from employment, and the state itself has no interest in solving it.

In conclusion it is necessary to draw attention to the fact that the status of an immigrant from the viewpoint of its (ir)regularity is not unchangeable, on the contrary foreigners actively opt for different strategies in the course of time. In individual life careers we may meet with foreigners who even repeatedly pass from the category of an irregular immigrant to the category of a regular immigrant and vice versa.

2.7 Summary

In conclusion it is necessary to stress that foreigners living in the Czech Republic are rather a heterogeneous group. There are many categories of foreigners and in connection to it also many alternatives of their strategies and opportunities. In this text we tried to provide a certain simplification and generalisation of the situation of foreigners in Czech Republic, which clearly represents a certain risk that not all pieces of information included in the text are necessarily applicable to all groups of foreigners living in the Czech Republic. A certain extent of simplification we use here was, however, necessary, because in the opposite case if we would deal in detail with each group of foreigners separately the text would be confusing on one hand and on the other hand there is no detailed information enabling us to make such a detailed analysis available at the moment Basic Overview of the Distribution of Categories of Foreigners in the following Chart 5.

Chart 5: Categories of foreigners living in the Czech Republic (simplified)



Foreigners in the Czech Republic are a relatively endangered group and this endangering follows first of all from the lack of knowledge of the Czech language, legal norms and from generally lower number of rights awarded to them based on the fact they are not citizens of this country. Endangering foreigners is based on the existence of the number of entities connected with working migration, which may take advantage of this process for their own benefit (from agents, interpreters, employers to the state itself). Their endangering is also based on the fact that foreigners who arrive in the Czech Republic to work here must accumulate a certain amount of capital before their journey, which becomes a target of interest of many agents and helpers. After their arrival in the country they expect that their participation in the local labour market enables them to return these finances back to family

budgets and that their general economic situation will improve, which is after all mostly the main sense of their migration project. However, after their arrival they are often dependent on other agents, interpreters and other entities profiting from the international migration.

In case of the loss of employment for which they arrived here the whole migration project collapses. In case they stay here on the basis of a long-term residence on a working visa they cannot be registered as unemployed, i.e. on files of a labour office. This option is reserved only for foreigners with a permanent residence and asylum seekers. They may be unemployed and take support from the welfare state. There is certainly a chance for a foreigner to find a new job, but if his residence permit based on a work permit terminates he is under an imminent threat of losing the legality of his residence in the country. But even in case his residence is not based on a work contract, it is not easy for him. Czechs are generally rather reserved in their relations towards foreigners and, above all, employers are imposed on a statutory duty to protect the local market by offering vacancies preferentially to the domestic population. Therefore unemployment is even more acute problem for foreigners as opposed to the domestic population.

Foreigners who make efforts to enter the Czech labour market have to overcome various obstacles of a legislation and administration character as opposed to Czech citizens. Therefore they opt for a form of entry to the labour market different to a classical employment relationship more often than the domestic Czech population – business activities, work at home or irregular work. In such cases they are in no way protected by the state against the loss of a job position and in case they lose their job for any reason it is completely up to them how they cope with such a situation. Nor their family as a traditional protective net in the domestic population cannot help them much because the lack of finances connected with the loss of employment does not enable them to use other strategies common in the domestic population, such as attending educational courses. The lack of social contacts in the target country does not even enable them to take advantage of such contacts when looking for a new job, and that is why foreigners are often dependent on paid agency services, which not in many cases have the best motivation to find them a steady job.

Generally, it may be stated that the loss of income for a foreigner is a more fatal life event than it is in the domestic population. Foreigners mostly cannot rely on institutions of the welfare state, nor on help of their own families on many occasions. Weak bonds to the target country including insufficient knowledge of the local language, legal environment and the

existence of aid providing non-profit organisations then lead foreigners in such a situation essentially into isolation and they have to manage by themselves.

3. Human trafficking for the purposes of forced labour in CR

3.1 Introduction

Human trafficking related problems are an inseparable part of the work portfolio of a social worker working with immigrants and asylum seekers. It is just them who are very often endangered by this criminal activity in our territory. And it is the social worker who based on relevant knowledge and experience should be able to detect victims of this crime and offer them aid along with other institutions engaged in this area. This publication is focused mainly on problems connected with the labour market because it is just the labour market where human trafficking takes place very often in a form of forced labour and other forms of exploitation. Therefore this chapter will try to explain particularly problems connected with human trafficking for the purposes of forced labour, although we do not forget to mention other forms of human trafficking to preserve the integrity of this issue. In contact with a victim of trafficking a social worker should not only understand well this issue, i.e. for instance to be able to identify individual circumstantial evidence indicating possible working exploitation, but he should also know causes of this worldwide problem including institutions, which may offer help, i.e. their programmes. Therefore the following lines will be devoted to defining problems, causes of origin of this phenomenon as well as to governmental and non-governmental organisations offering help to victims of this crime.

3.2. Defining Problems

Human trafficking is one the most severe interferences with fundamental human rights and freedoms. Health or even life of victims is directly exposed to danger at trafficking. It is a problem of a human and legal nature. It is not only the interference towards victims but also the interference with victims' whole families, which are often used as a source of the offender's blackmail. International human trafficking is in terms of its profitability often compared with drug and arms trade, two most profitable organised international trades at all. Crimes connected with human trafficking take place under cover and therefore the numbers of victims, at an international level as well as in the Czech Republic, are only estimated¹⁴¹.

141 The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminálníta [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at:

Human trafficking is sometimes called “modern-day slavery”, whereas non-voluntariness of victims in this phenomenon is needed to be aware of.¹⁴²

3.2.1 Forms of Human Trafficking and the Number of Victims Worldwide

There are 5 basic forms of human trafficking, such as follows:

forced labour, practices similar to slavery, forced services, labour and other exploitation

sexual exploitation/forced prostitution

exploitation for the purposes of the removal of human organs and tissues,

forced marriages,

forced beggary or forcing to commit minor crimes.¹⁴³

The total number of trafficked people worldwide is estimated (the lowest estimate) to 2,450,000, whereas 32% of this number belongs to forced labour and other economic exploitation.¹⁴⁴ The most frequent form of human trafficking is sexual exploitation followed by forced labour. Women and girls are victims in 79% of cases¹⁴⁵.

3.2.2 Human Trafficking Process

<http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>. Národní strategie boje proti obchodování s lidmi (2008-2011).

¹⁴² CR Ministry of Interior. Human trafficking – Help to the victims. In *Dokumenty - kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at: *<<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.*

¹⁴³ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In *Kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: *<http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>. Národní strategie boje proti obchodování s lidmi (2008-2011).*

¹⁴⁴ CR Ministry of Interior. Educational Materials – Human trafficking for the purposes of forced labour – Ways of monitoring the recruitment of migrating workers. In *Další zahraniční dokumenty – Obchod s lidmi – Archiv – červen 2008* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2010-01-19]. Available at: *<http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/vyuk-material-obchod3508.pdf>.*

¹⁴⁵ Blog.cz. EU Parliament Report. In *Archiv* [online]. Prague: Blog.cz, the last update on 7.7.2010 [cit. 2010-11-19]. Available at: *<<http://eldred.blog.cz/1007/zprava-eu-parlamentu>>.*

The process of human trafficking is a cycle. First, it starts with recruitment, followed by transport and finally, trafficking takes place for the above-mentioned purposes. It is necessary to state that all these stages do not have to show signs of human trafficking, because recruitment or transport may take place under totally voluntary conditions and human trafficking may be started in a country only after a foreigner's arrival there. Many trafficked persons travelled to a particular country voluntarily without accomplishing elements of human trafficking. This takes place mostly after the arrival in a place, sometimes already during the journey.¹⁴⁶ To reveal human trafficking at present is more difficult than it used to be, mainly because of the fact concerning direct body injuries. At present offenders take advantage of psychological coercive means, which are very difficult to be proved. Another fact connected with producing evidence is that investigative bodies cannot rely only on testimonies of witnesses, i.e. victims, because they do not necessarily regard their status as trafficking and therefore they do not contact the police at all¹⁴⁷.

3.2.3 Human Trafficking Definition

Legislative definitions of the Czech as well as the international law are most frequently used to define the term. As for the Czech legislation, human trafficking is determined in Act N. 40/2009 Sb., Criminal Code, as amended, defining the term human trafficking in a section 168. Under this provision anyone who makes, procures, hires, allures, induces, transports, hides, retains or exposes a child to be exploited by another

for sexual intercourse or any other forms of sexual abuse or harassment or the production of pornography

for the removal of tissues, cells or organs from his body

¹⁴⁶ CR Ministry of Interior. Educational Materials – Human trafficking for the purposes of forced labour – Ways of monitoring the recruitment of migrating workers. In *Další zahraniční dokumenty – Obchod s lidmi* – Archiv - červen 2008 [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2010-01-19]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/vyuk-material-obchod3508.pdf>.

¹⁴⁷ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, no. 67. In *Kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>. *Národní strategie boje proti obchodování s lidmi (2008-2011)*.

for service in armed forces

for slavery or servitude

for forced labour or any other forms of exploitation, or who profits from such conduct shall be punished for committing human trafficking. The use of violence or threat of violence, deception or misuse of one's mistake, duress or dependence is required additionally in an adult¹⁴⁸. This definition of human trafficking became effective for the first time in 2004, until then human trafficking was related only to trafficking for the purposes of sexual industry and exploitation. Forced labour, slavery, servitude and other forms of exploitation were included in the definition of human trafficking in 2004.¹⁴⁹

The international legislation uses a general definition of human trafficking as it was defined for the first time by the United Nations in 2000, in the Convention against Transnational Organised Crime, part of which is the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (so called Palermo Protocol). The Czech Republic ratified this Protocol in 2002.¹⁵⁰ The Protocol defines the human trafficking as: *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another, for the purpose of exploitation.”* Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁵¹ However, neither Czech nor

¹⁴⁸ Section 168 of Act NO. 40/2009 Coll., Criminal Code, as amended.

¹⁴⁹ CR Ministry of Interior. Educational Materials – Human trafficking for the purposes of forced labour – Ways of monitoring the recruitment of migrating workers. In *Další zahraniční dokumenty – Obchod s lidmi – Archiv – červen 2008* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2010-01-19]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/vyuk-material-obchod3508.pdf>.

¹⁵⁰ CR Ministry of Interior. Human trafficking – Definition. In *Dokumenty - kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2009 [cit. 2009-11-29]. Available at: <<http://www.mvcr.cz/clanek/obchod-s-lidmi-definice.aspx>>.

¹⁵¹ UN Convention and other documents related to organised crime. In *Archiv MV ČR červen 2008* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2009-12-01]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/konvence_osn.pdf>.

international determination of the definition includes any criteria according to which a crime could be distinguished. It is then common practice that is used for such distinguishing, indicating several circumstantial evidence and a list of elements of conduct, which come under the human trafficking definition. Circumstantial evidence includes for instance situations where a foreigner is working or is retained at some place against his own will, cannot move from a place and is guarded everywhere, he has no documents, he is deprived of health care, of food and sleep, is exposed to physical or psychic blackmail in case of his disobedience, he is afraid of talking about his situation within vicinity of his employer or “his man”, he has extremely low earnings as compare to prices on the market, he has to deduct a part of his earnings to his employer. All these facts may be indications.¹⁵² The list of elements of conduct includes the following terms - anyone who makes, procures, hires, allures, transports, hides, retains or exposes another under the threat of force, under the threat of violence or by means of deception or the misuse of a mistake, distress or dependency of another. Making means taking advantage of a certain relationship between a victim and an offender who forces the victim to perform some action. Procuring means making a contract or agreement between an offender and a victim. Hiring means making a contract or agreement the subject matter of which is employment or any similar relation. Both procuring and hiring aim to concluded for the purposes of forced labour or any other forms of exploitation. By alluring we mean some form of benefit in favour of victims enticed by an offender to perform some action. Transport means replacing victims from one place to another regardless of country borders, it is connected with hiding when victims are hidden to prevent their easy finding. Retaining means restricting personal freedom, i.e. victims cannot move freely and consciously. Exposing means handing over a victim to another offender for an agreed purpose. Offenders frequently use direct violence or the threat of violence, it involves direct physical violence caused to victims, or abuse of victims’ distress by an offender (i.e. in case he is responsible for an illegal residence of a foreigner). The misuse of one’s mistake means for instance threatening victims with the cancellation of their work permit, or even their residence in the territory through friends at foreign police (threatening with the dismissal from work is often used by offenders). The abuse of dependency is typical

¹⁵² CR Ministry of Interior. Human trafficking – Help to victims. In Dokumenty - kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at: <<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.

for employment agencies which charge high sums for their services foreigners do not have money for and therefore they get indebted in them already in their country and this debt is then mostly misused for their exploitation in the Czech Republic.¹⁵³ Human trafficking includes also a human aspect. It significantly interferes with human rights of victims. People are forced to some action under coercion, by means of humiliation, threats, fraud, lies, etc. They cannot from their own will abandon activities they are engaged in, thus becoming a commodity in a situation they cannot influence.¹⁵⁴ When tortured and enslaved (part of the human trafficking related issue) a person is subject to economic, political or other goals. Human dignity is out of consideration because a person becomes a means. Every human being across cultures is free from the moment he is born and equal in dignity and rights, which represents the basis of freedom, justice and peace in the world.¹⁵⁵ And therefore the battle to main them is necessary.

Regarding this publication's special focus on the labour market, I am going to define two terms most connected with this issue, i.e. forced labour and other forms of exploitation.

3.2.4 Forced Labour Definition

The term “forced labour” is not directly defined in the Czech legislation. However, it is included in the Charter of Fundamental Rights and Freedoms.¹⁵⁶ Article 9 of the Charter of Fundamental Rights and Freedom reads as follows: “No one may be subjected to forced labour or services.”¹⁵⁷ The definition of the term “forced labour” is only included in the

¹⁵³ MAZEL, M. Stanovisko OBP k trestnému činu obchodování s lidmi podle § 232a trestního zákona ve vztahu k pojmům nucené práce a jiné formy vykořisťování. In Archiv [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2009-12-20]. Available at:

<http://web.mvcr.cz/archiv2008/rs_atlantic/data/files/nucena-prace-stand.pdf>.

¹⁵⁴ CR Ministry of Interior. Human trafficking – Help to victims. In Dokumenty - kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at:<<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.

¹⁵⁵ Všeobecná deklarace lidských práv po padesáti letech / Prohlášení Ramseyova kolokvia. In HANUŠ, J. Křesťanství a lidská práva. Brno: CDK, 2002, pp. 58-59.

¹⁵⁶ BURČÍKOVÁ, P. Jak dále? In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2008 [cit. 2010-01-09]. Available at: <<http://www.strada.cz/attachments/f/f6c6b34a76e6b4fbc9536f60b453d15f.pdf>>.

¹⁵⁷ Charter of Fundamental Rights and Freedoms.

international document of the Convention No. 29 concerning Forced or Compulsory Labour of 1930, which was ratified by the Czech Republic and published under number 506/1990 Sb. This Convention belongs to key documents of the International Labour Organisation.¹⁵⁸

The Convention defines the term forced labour as follows: “forced work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹⁵⁹ Based on this definition the term forced labour always refers to an employer who uses threats, physical and psychological violence for the purposes to keep a worker at his workplace. In case an employee believes he cannot leave his employment due to harm (physical or psychological) incurred, then he faces forced labour too. Retaining passports or other personal documents as a means of threats is also regarded as a sign of forced labour.¹⁶⁰ Instructions how to interpret the term “forced labour” are presented by the International Labour Organisation that issued the Convention. Two conditions have to be fulfilled for labour to be referred to as forced labour. The first condition is the threat of violence and the second one is non-voluntariness. The first condition includes six identifiers, which do not have to appear at a time in connection with forced labour, they may be combined in different ways, also depending on the context, i.e. knowledge of the environment. They are physical or sexual violence or the threat with it, restriction of one’s freedom of movement, debt bondage, retaining wages for work performed or refusing to pay wages, retaining passports or other identity documents, threatening to report against them at appropriate authorities. This first condition overlaps the second one, or it is combined with it in many cases, although the International Organisation also provides guidelines here such as fraud or false promises regarding a type and conditions of work, indebtedness, psychological

¹⁵⁸ BURČÍKOVÁ, P. Jak dál? In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2008 [cit. 2010-01-09]. Available at: <<http://www.strada.cz/attachments/f/f6cfb34a76e6b4fbc9536f60b453d15f.pdf>>.

¹⁵⁹ Convention No. 29 concerning Forced or Compulsory Labour. In Texty ratifikovaných úmluv [online]. Prague: Ministry of Labour and Social Affairs of the Czech Republic, the last update in 2009 [cit. 2009-12-08]. Available at: <<http://www.mpsv.cz/files/clanky/1171/029.pdf>>.

¹⁶⁰ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, no. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>. Národní strategie boje proti obchodování s lidmi (2008-2011).

pressure, deprivation of personal freedom or confinement at the workplace, retained or unpaid wages, retained documents, selling a person into the ownership of another person.¹⁶¹

Apart from the Convention No. 29 of 1930 concerning Forced Labour, in 1957 the International Labour Organisation adopted the Convention No. 105 concerning Abolition of Forced Labour ratified by the Czech Republic in 1957, which came into force in 1959 with amendments regarding some recommendations with respect to the term “forced labour”.¹⁶²

Work itself includes a personal moral value. This moral value is tightly linked to a person who performs such work. So a person himself imparts a specific dignity to work. It is a specific expression of a person who is not subordinated to the summary of activities, sources, means and technologies serving him to production. Work arises from a person and at the same time is directed towards him, it should always be oriented to an entity, i.e. a person who is performing it.¹⁶³ We talk about the so-called subjective value of work, which is directly given by a person. In case we start using work only as a profit and start overlooking a person himself as it happens in forced labour or other forms of exploitation, then human work is regarded merely as a commodity and a person himself is then also a commodity which can be bought, sold or exchanged. In the light of work human dignity is then being lost.¹⁶⁴ The development of a person himself is jeopardised here because a person is perceived only as a mere means for achieving goals of an economic character. Work is then more important here, whereas human dignity is being violated.¹⁶⁵

¹⁶¹ BURČÍKOVÁ, P. Obchod s lidmi a nucená či vykořisťující práce v České republice. In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2006 [cit. 2010-01-05]. Available at: <<http://www.strada.cz/attachments/4/49e174d7497e3c855dd453b6f6045e72.pdf>>.

¹⁶² The International Labour Organisation Convention concerning Abolition of Forced Labour. In Zaměstnání [online]. Prague: Czech Helsinki Committee, the last update in 2008 [cit. 2009-12-08]. Available at: <<http://www.helcom.cz/view.php?cisloclanku=2004011902>>.

¹⁶³ Kompendium sociální nauky církve / Papežská rada pro spravedlnost a mír. Translation: Ctirad Václav Pospíšil. Kostelní Vydří: Karmelitánské nakladatelství, 2008, pages 182-185.

¹⁶⁴ Život z víry: Překlad 2. dílu katolického katechismu pro dospělé. Translation: Jindřich Šrajcr, Marta Rynešová, Vladimír Feldmann. 2. vyd. České Budějovice : Teologická fakulta Jihočeské univerzity v Českých Budějovicích, 2005, pages 291-295.

¹⁶⁵ Kompendium sociální nauky církve / Papežská rada pro spravedlnost a mír. Translation: Ctirad Václav Pospíšil. Kostelní Vydří: Karmelitánské nakladatelství, 2008, pages 93-95.

3.2.5 Defining Other Forms of Exploitation

The term “other forms of exploitation” can be found in s. 168(1)e) of the Criminal Code as part of a crime defined as trafficking in persons.¹⁶⁶ It is necessary to determine this term with respect to labour force. The term “other forms of exploitation” includes a contract, either written or oral, within the intentions of the Civil or Commercial Codes. This vicious circle makes an seeming impression that both parties are in equal positions, but dependency of a person on his exploiter is developed subsequently, for instance by unpaid wages, wages paid only in a form of advance payments, or very low wages compare to wages common in the society, threatening with reporting to the police, physical force, etc. Exploitation can be defined as the abuse of dependency of another to illegally enrich oneself based on work of another¹⁶⁷, whereas directors, owners of companies and entrepreneurs abuse a person for the economic enrichment of their companies and improvement of their living standards. They deliberately concentrate on economic goals of their efforts, thus violating their own finest capital in their enterprise, i.e. a human being as a person who is the main asset.¹⁶⁸

3.3 The Most Frequent Causes of Human Trafficking in CR

3.3.1 Major Causes of Human Trafficking in General

Globalisation is considered to be a major factor contributing to the mass development of the phenomenon of “human trafficking”. Thanks to the extension of telecommunication networks offenders of such crimes may easily communicate with one another and organise criminal activities more easily. Travelling within borders of individual states is very easy. As for richness, the massive deepening of differences not only between individual countries but also within their borders, takes place as well. Besides others, competitive pressures leading to cuts of costs by recruiting subcontractors, pressures on cutting wages and hiring foreign companies, are known causes of the origin of human trafficking, Consumers call for products

¹⁶⁶ compare Section 168 of Act No. 40/2009 Coll., Criminal Code.

¹⁶⁷ MAZEL., M.. Stanovisko OBP k trestnému činu obchodování s lidmi podle § 232a trestního zákona ve vztahu k pojmům nucené práce a jiné formy vykořisťování. In Archiv [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2009-12-20]. Available at:

<web.mvcr.cz/archiv2008/rs_atlantic/data/files/nucena-prace-stand.pdf>.

¹⁶⁸ Kompendium sociální nauky církve / Papežská rada pro spravedlnost a mír. Translation: Ctirad Václav Pospíšil. Kostelní Vydří: Karmelitánské nakladatelství, 2008, pages 218-223.

at low prices with fast delivery; we can see deficiencies in the law enforceability and insufficient regulation, lack of information, high revenues of agents trafficking in persons, violation of human rights and the lack of respect to them and frequent corruption of customs officers, foreign police or other state officials.¹⁶⁹ Besides the above-mentioned causes, also insufficient legal awareness, the vision of easy life in a receiving county, tolerance with respect to the violation of human rights, changed values in the society, various forms of discrimination and demand for cheap labour force as well as the individuality of a person take their share in this phenomenon.¹⁷⁰

3.3.2 The Most Frequent Causes of Trafficking in Foreigners in CR

I would like to state that it is very problematic to define causes contributing to the origin of human trafficking in CR because, for instance many victims assess their situation from an objective point of view or causes of its origin undergo changes in the course of time¹⁷¹; therefore let me state only the causes I meet most frequently with in my work for the Refugee Aid Organisation and which are typical for the Czech Republic. Causes are as follows: the world crisis, illegal residence of foreigners in our territory or a work permit tied to one type of work in case of a visa for the purposes of work. The lack of knowledge of the Czech language, of legal information concerning conditions for employment, of means of defence against exploitation or of institutions offering assistance to trafficked persons is also problematic. Efforts of companies to reach the highest profitability, customs and tradition of

¹⁶⁹ CR Ministry of Interior. Educational Materials – Human trafficking for the purposes of forced labour – Ways of monitoring the recruitment of migrating workers. In *Další zahraniční dokumenty – Obchod s lidmi – Archiv – červen 2008* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2010-01-19]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/vyuk-material-obchod3508.pdf>.

¹⁷⁰ BALÁŽOVÁ, J. Obchod s lidmi nabývá na síle. In *Český rozhlas 6 > Studio STOP* [online]. Prague: Český rozhlas, the last update on 5. 3. 2008 [cit. 2009-12-17]. Available at: <http://www.rozhlas.cz/cro6/stop/_zprava/431233>.

¹⁷¹ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, no. 67. In *Kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>. *Národní strategie boje proti obchodování s lidmi (2008-2011)*.

the major society different from those of foreigners', hostility of the Czech population to minorities are another factor.

3.4. Practices in Employment of Foreigners – the Clientelist System

The so called clientelist system prevails among employers not only in the period of economic crisis but it also prevailed in the past.

Nowadays, the clientelist system has a touch of negativity and is linked mainly to foreigners. Its concept was not meant only negatively in the past. It used to be a social institution acting between a patron and his dependent client. The patron provided protection to a client who by his loyalty increased his influence in return.¹⁷² The clientelist system is derived from the word "client". The word "client" itself has essentially a negative connotation. It means brokering employment, assisting in the communication with an employer, accompanying a foreigner until his departure, including e.g. seeking an accommodation for him, where a word agent would be more suitable here, but it also means connections with mafia that takes advantage of this system for the exploitation of workers.¹⁷³ Foreigners from the former Soviet Union and Vietnamese resort to the brokerage of employment through the clientelist system most frequently, whereas the greatest number of foreigners using this system consists of Ukrainians.¹⁷⁴ The origin of this system traces back to Transcarpathian Ukraine. 3 stages can be followed as for the development of the clientelist system in the Czech Republic. The first stage is called the spontaneous period (from the beginning of 1990s of 20th century to 1996) and is characterised by a liberal attitude of government bodies to the influx of workers from abroad. This anarchy brought about the need of the management of working migration. At this time, first informal organised relations are being developed. The second stage called the

¹⁷² ECKHARDTOVÁ, D. Klientelismus – přirozenost nebo nemorálnost?. In *Teorie pro všechny* [online]. Prague: SOCIOweb.cz – Department of Sociology of the Academy of Sciences of the Czech Republic, v.v.i., the last update in 2009 [cit. 2009-12-29]. Available at: <www.socioweb.cz/index.php?disp=teorie&shw=133&lst=103>.

¹⁷³ NEKORJAK, M. Klientelnský systém a ukrajinská pracovní migrace do České republiky. In *Pracovní migrace* [online]. Prague: Multikulturní centrum Praha. Migraceonline.cz, the last update in 2009 [cit. 2009-12-27]. Available at: <<http://migraceonline.cz/e-knihovna/?x=2197596>>.

¹⁷⁴ Intermundia, o.p.s. Výzkum obchodu s lidmi především za účelem nucené práce. In *Komerční sexuální zneužívání dětí, obchod s lidmi – Archiv červen 2008* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2010-01-06]. Available at: <<http://aplikace.mvcr.cz/archiv2008/2003/odbor/obp/intermundia.pdf>>.

transformational period (1996 – 2000) was characterised by worsening conditions of the Czech economy, which resulted in employers' efforts to cut costs on their production. Concurrently, government bodies used restrictive measures against working migration. These facts along with massive thieving committed to workers going back to the country of their origin resulted in the consolidation of the clientelist system. This stage is also marked with the access of an organised crime to the market with cheap labour force, which included various forms of organisation of working migration (labour agencies, cooperatives, etc.) With respect to a worsening economic situation, employers started to use cheap labour force through agents to cut their costs. At the same, the number of illegally unemployed foreigners was found out to not to drop in connection with restrictive measures but it was the number of legally employed foreigners that decreased. As for employment of foreigners, the clientelist system has dominated the last period described, which is called the period of stabilisation (the present). The development of the clientelist system has been brought to completion.¹⁷⁵ The clientelist system regards a human being as a commodity, as an economical profit. A foreigner must be obliged to his agent for his help in finding work for him, thus an unequal relation is being formed. This unequal situation then also causes inequality in enforcing one's rights. A foreigner becomes a hostage of his agent. It is inconsistent with the ideal of equality of all people (the client is on a lower level than the patron), which is in contradiction with the principles human rights are built upon.

A client, employers and a foreigner who wants to get employment brokered are actors of the clientelist system. By the client we mean a person (man or woman) from the Czech Republic or any other foreign country who is very efficient in terms of organising, is capable of managing a team, which is strengthened by his familiarity with Czech rules and legal regulations based on which he is able to handle administratively residence and ensure employment. In addition, this aspect is intensified by the payment of the so-called "tax" off a worker's wage in favour of the client, which is usually about 30% to 50%.¹⁷⁶ Apart from

¹⁷⁵ ČERNÍK, J. Co znamená organizovaný zločin v prostředí pracovní migrace v České republice. In Pilotní výzkum prostředí obchodu s lidmi na území České republiky [online]. Prague: International Organization for Migration, the last update on 07/2005 [cit. 2009-12-30]. Available at: <<http://www.iom.cz/rubrik.php?headline=8&publikace=4>>.

¹⁷⁶ ČERNÍK, J. Co znamená organizovaný zločin v prostředí pracovní migrace v České republice. In Pilotní výzkum prostředí obchodu s lidmi na území České republiky [online]. Prague: Organization for Migration, the

residence and employment the client provides other services such as ensuring accommodation, transport from the country of origin or protection against mafia gangs.¹⁷⁷ This clientelist system is facilitated or even supported by employers. They hire companies owned by clients, not individual workers, thus they get rid of responsibility for an individual, they do not have to comply with the Labour Code, they have employees willing to work even 12 hours a day for low wages, they do not pay any advance payments on health insurance and social security and they do not have to manage administration related to handling work permits for workers. Companies of clients should follow rules resulting from the Labour Code, but apparently they apply informal rules of their own.¹⁷⁸ Work of these people is cheap and also flexible because these workers have almost no statutory protection.¹⁷⁹

Many companies owned by clients have been established as employment agencies in the Czech Republic, i.e. duly registered recruitment companies, ensuring a work permit for foreigners. Foreigners also received work permits by way of being registered in cooperatives sometimes with many thousands of members involved.¹⁸⁰

It is necessary to state that profits of the clients are high and therefore they make efforts not to lose them. There are many cases where an employee is not satisfied with services of the client who then tries to prevent an employee from leaving, for instance by retaining his wages, not

last update on 07/2005 [cit. 2009-12-30]. Available at:

<<http://www.iom.cz/rubrik.php?headline=8&publikace=4>>.

¹⁷⁷ ČERNÍK, J. Klientický systém jako quasi-feudalismus v Česku. In Články [online]. Prague: Multikulturní centrum Praha : Migraceonline.cz, the last update in 2009 [cit. 2009-12-30]. Available at:

<<http://www.migraceonline.cz/e-knihovna/?x=1955294>>.

¹⁷⁸ ČERNÍK, J. Co znamená organizovaný zločin v prostředí pracovní migrace v České republice. In Pilotní výzkum prostředí obchodu s lidmi na území České republiky [online]. Prague: Organization for Migration, the last update on 07/2005 [cit. 2009-12-30]. Available at:

<<http://www.iom.cz/rubrik.php?headline=8&publikace=4>>.

¹⁷⁹ ČERVINKA, O. Novodobí otrokáři vydělávají na bídě. In Migrace [online]. Prague: Infoservis společnosti Člověk v tísni při České televizi, o.p.s., the last update in 2009 [cit. 2009-12-21]. Available at:

<www.infoservis.net/art.php?id=1069233772>.

¹⁸⁰ ČERNÍK, J. Klientický systém jako quasi-feudalismus v Česku. In Články [online]. Prague: Multikulturní centrum Praha. Migraceonline.cz, the last update in 2009 [cit. 2009-12-30]. Available at:

<<http://www.migraceonline.cz/e-knihovna/?x=1955294>>.

paying health insurance and social security payments for him, by threats or even physical violence.¹⁸¹ In case the client does not prevent an employee from leaving, other difficulties may arise. These are often connected with the fact that clients have not provided foreigners with complete or true information. Foreigners do not know that upon the termination of employment the purpose of their residence in our territory is immediately terminated as well in case their residence in our territory is based on a working visa. If they do not appear at the foreign police as soon as possible their residence becomes illegal here and their subsequent dependency on the client continues. It is common that the client reports against “disobedient” employees to the Foreign Police.¹⁸² It is necessary to be said that as for efforts made by foreigners to find a job in the Czech Republic there is only a small number of alternatives to employment agencies and therefore foreigners use them in plenty.¹⁸³

3.5 The Illegality of Residence and Employment

The world economic crisis caused large-scale redundancies among foreigners, or their unemployment. In many cases everything ended up in an illegal residence because if employment terminates then a foreigner’s residence based on a working visa terminates as well. Foreigners with a long-term residence are entitled to 60 days to find a new job.¹⁸⁴ The practice shows that many foreigners who are to leave the country do not leave it for many private reasons and stay here illegally in spite of being exposed to various dangers of illegal zone, which in its consequences is more bearable to them than what would they have to undergo after their arrival home. The illegality of residence is regarded as one of the major causes of the origin of human trafficking and is based on particularly almost no option for these people when it comes to their defence against practices of the trafficking because they

¹⁸¹ ČERVINKA, O. Novodobí otrokáři vydělávají na bídě. In *Migrace* [online]. Prague: Infoservis společnosti Člověk v tísní při České televizi, o.p.s., the last update in 2009 [cit. 2009-12-21]. Available at: <www.infoservis.net/art.php?id=1069233772>.

¹⁸² GÜNTER, V. Pracovní migranti v kruhu klientského systému. In *Veřejná správa číslo 14/2006 – Archiv – červen 2008* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2008 [cit. 2010-01-04]. Available at: <<http://aplikace.mvcr.cz/archiv2008/casopisy/s/2006/14/konz.html>>.

¹⁸³ GAC spol. s r. o. Analýzy přístupu žen imigrantek a mužů imigrantů ke vzdělávání a na trh práce v České republice. In *Zakázky 2005-2009* [online]. Prague: GAC spol. s r. o., the last update in 2010 [cit. 2010-01-07]. Available at: <http://www.gac.cz/html/index.php?action=show_content&content_id=41&lang=cs>.

¹⁸⁴ Sections 35, 46 (9) Act No. 326/1999 Coll., providing for the residence of foreigners

have only a minimum chance to defend their rights. The illegality of residence is not only a cause of the human trafficking but also its eventual consequence.¹⁸⁵ These people are aware of their situation but they have only a few means enabling them to effectively defend themselves against the deprivation of their basic rights. Many of them have become trafficked persons for these reasons.¹⁸⁶ The enforceability of basic rights including, besides others, prohibition of torture, of humiliating, inhuman or any other form of exploitation treatment, can be exerted in a form of judicial or constitutional protection.¹⁸⁷ However, a foreigner has to prove his legal competence, which is not possible in case of the illegality of his residence.¹⁸⁸ Persons staying illegally on this territory are held in slave conditions, they do not have many opportunities to seek the judicial protection of their basic rights because their free movement is mostly restricted to them. In addition, they would have to prove their identification by valid documents relating to their residence, which would reveal their illegality, and on the part of the state they would be punished by detention and the imposition of administrative banishment for the period of several years and deportation from CR. A foreigner thus becomes a hostage of the system without having any option. A foreigner is not protected because he himself breached duties dictated by the state and this has priority to observing his rights. Many foreigners cannot find any legal employment due to the crisis and therefore they are often satisfied with accepting an under the counter job, which is plentifully utilised by many employers. The illegality of employment means to have a job without valid permits pursuant to the Employment Act. The Ministry of Labour and Social Affairs in CR admits there are up to 37% foreigners working illegally here. It concerns mainly cooperatives that can be set by foreigners very easily. Proving that foreigners work in cooperatives is not

¹⁸⁵ La Strada Česká republika, o. p. s. I v ČR se obchoduje s lidmi [online]. Prague: Ministry of Labour and Social Affairs of the Czech Republic, the last update on 26.11. 2008 [cit. 2009-12-16]. Available at: <<http://www.mpsv.cz/cs/5921>>.

¹⁸⁶ BURDOVÁ HRADEČNÁ, P. Červené karty pro cizince bez pobytového oprávnění aneb regularizace zůstává velkým strašákem české migrační politiky. In Komentáře [online]. Prague: Multikulturní centrum Praha. Migraceonline.cz, the last update in 2009 [cit. 2009-12-09]. Available at: <<http://www.migraceonline.cz/e-knihovna/?x=2069732>>.

¹⁸⁷ LINHART, J. Základní lidská práva a svobody a jejich procesní ochrana. Brno. 2008. Thesis. Masaryk University. Faculty of Law. Department of Legal Theory. JUDr. Jaromír Harvánek, CSc..

¹⁸⁸ Act No. 150/2002 Coll., Code of Civil Procedure, as amended.

very easy in these cases.¹⁸⁹ Cooperatives are legal entities set up for the purposes to run business or ensure needs of their members. A new cooperative can be set up within 2 to 3 weeks with assistance of specialised firms.¹⁹⁰ Another area characterised by illegal conduct in area of employment is business in trade a licence for which a foreigner acquires more easily than a work permit. Building industry is a sector with the majority of illegal employees.¹⁹¹

3.6 Residence Tied to Employment

As I already mentioned, in foreigners staying legally in the Czech Republic based on a visa for the purposes of employment or a longer-term residence for the purposes of employment the loss of a resident permit may possibly result in trafficking. They are cases of the termination of employment in foreigners staying in the Czech Republic based on a working visa because this is tied to a work permit issued by a labour office. This situation facilitates exploitation of foreigners on the part of employers and therefore it is one of possible causes of trafficking in persons.¹⁹² The state created an opportunity for foreigners staying here on a long-term residence permit for the purposes of employment in a form of a two-month period for finding a new job.¹⁹³

This is a dignified measure for a human being. But an opposite situation occurs in a foreigner with a visa for the purposes of work whose residence is terminated as on the day his employment terminates. Thus there is only one possibility to opt for – finding a job before a visa expires, which is rather complicated these days and in addition, many foreigners do not have these pieces of information. Then returning to the country of their origin or illegal

¹⁸⁹ ŠKODOVÁ, L. Nelegální zaměstnávání má stále zelenou [online]. Měšec.cz, the last update on 26.11. 2008 [cit. 2010-01-05]. Available at: <<http://www.mesec.cz/clanky/nelegalni-zamestnavani-ma-stale-zelenou/>>.

¹⁹⁰ CHAMR & PARTNERS s.r.o. Družstvo [online]. Prague: CHAMR & PARTNERS s.r.o., the last update in 2007 [cit. 2009-12-13]. Available at: <<http://www.prodej-ready-made-spolecnosti.cz/zakladani-obchodnich-spolecnosti/druzstvo.htm>>.

¹⁹¹ ŠKODOVÁ, L. Nelegální zaměstnávání má stále zelenou [online]. Měšec.cz, the last update on 26.11. 2008 [cit. 2010-01-05]. Available at: <<http://www.mesec.cz/clanky/nelegalni-zamestnavani-ma-stale-zelenou/>>.

¹⁹² BURČÍKOVÁ, P. Obchod s lidmi a nucená či vykořisťující práce v České republice. In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2006 [cit. 2010-01-05]. Available at: <<http://www.strada.cz/attachments/4/49e174d7497e3c855dd453b6f6045e72.pdf>>.

¹⁹³ Section 46(9) of Act No. 326/1999 Coll., providing for the residence of foreigners

residence in CR are only options for them. Freedom and dignity of an individual is thus violated in this case.

3.7 The Lack of Knowledge of the Czech Language and Legal Regulations

With a potential option of an illegal residence there is another cause related to it – the lack of Czech language proficiency. It makes foreigners dependent on their employment agents or acquaintances or other persons they trust. At the beginning, foreigners are not able, nor willing to verify information because they trust these people limitlessly. Thus they may receive false information regarding types of stay, opportunities within employment relations or the legality of their stay, etc. In essence, they are become potentially exploitable persons. The lack of information is considered to be one of very significant risk factors causing people to become victims of human trafficking. Providing information on the legality of stay, employment relations, rights and duties of employers as well as employees, etc. is required to be provided in the language a foreigner understands, to be free of charge, for instance in a form of handouts or social services. This information is to be accessible to foreigners regardless of their type of stay.¹⁹⁴ The Ministry of Labour and Social Affairs of CR states that the lack of Czech language knowledge causes the lack of information on rights related to employment relations and their insufficient enforcement.¹⁹⁵ Apart from the dependency on agents, the insufficient knowledge of the Czech language causes also the lack of knowledge of legal regulations or possibilities to address the state administration or non-profit organisations for assistance.¹⁹⁶

¹⁹⁴ BURČÍKOVÁ, P. Jak dál? In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2008 [cit. 2010-01-09]. Available at: <<http://www.strada.cz/attachments/f/f6cfb34a76e6b4fbc9536f60b453d15f.pdf>>.

¹⁹⁵ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>. Národní strategie boje proti obchodování s lidmi (2008-2011).

¹⁹⁶ BALÁŽOVÁ, J. Obchod s lidmi nabývá na síle. In Český rozhlas 6 > Studio STOP [online]. Prague: Český rozhlas, the last update on 5. 3. 2008 [cit. 2009-12-17]. Available at: <http://www.rozhlas.cz/cro6/stop/_zprava/431233>.

3.8 Negative Acceptance of Immigrants by the Population

At present era struck by the economic crisis it is necessary to ask citizens of the Czech Republic about their attitudes to the employment of foreigners. For many of them this attitude is ambivalent or rather negative. There are opinions that they take up jobs, which at the current economic crisis may be a strong motive to further increase negative mood against foreigners.¹⁹⁷ According to Barša, the Czech society has been closed to foreigners so far. It can also be seen in employers' unwillingness to employ foreigners under equal conditions as compared to Czech citizens. Foreigners prefer the so called "agency employment", which is cheaper for entrepreneurs.¹⁹⁸ In times of the economic crisis when many citizens of the country get on worse than in former times the number of persons who feel responsibility for well being of others including marginal persons decreases. Solidarity with the poorer or with people otherwise different is on the decline. And thus the whole society is deteriorating as well. The loss of the sense for respect and service to a fellowman may even lead to exploitation or discrimination, which is the case of many employers who prefer to choose agencies or illegal employment. The solidarity involves particularly efforts to achieve general welfare, one of the tasks of which is to protect the society against antisocial impulses arising in these anti-alien moods.¹⁹⁹

3.9 Different Moral Awareness

The moral awareness is, besides others, influenced also by the culture and society, in which a person lives, or lived his parents. Based on the culture and society structures and preferences of moral values are differentiated in a human being. What one culture may regard as good may mean evil for the other and vice versa.²⁰⁰ Some comparative studies have showed that

¹⁹⁷ ČÍŽEK, T. Postoje k cizincům na trhu práce očima sociologického výzkumu. In *Témata* [online]. Prague: SOCIOweb.cz - Department of Sociology of the Academy of Sciences of the Czech Republic, v.v.i., the last update on 30.12. 2009 [cit. 2010-01-15]. Available at: <<http://www.socioweb.cz/index.php?disp=temata&shw=329&lst=113>>.

¹⁹⁸ DOLEŽELOVÁ, A. Záznam z diskuze „Vztah české společnosti k cizincům po 20 letech demokracie“. In *Integrace* [online]. Prague: Multikulturní centrum Praha. Migraceonline.cz, the last update on 30.12. 2009 [cit. 2010-01-11]. Available at: <<http://migraceonline.cz/e-knihovna/?x=2211154>>.

¹⁹⁹ PESCHKE, K.H. *Křesťanská etika*. Prague: Nakladatelství Vyšehrad, spol. s r.o., 2004. pages 458-461.

²⁰⁰ ÇAKIRPALOGLU, P. *Psychologie hodnot*. Vydavatelství Votobia, 2004. pp. 328-333.

moral categories, especially that of good and evil, are perceived differently in different cultures. Therefore it is necessary to state that each cultural group has its own specific morale affecting the life of a human being.²⁰¹ This difference is necessary to be respected in the interest of effective social work, by way of one's self-awareness of one's own value, one's prejudices and belief, as well as evaluation of oneself, one's communication capabilities and skills, one's racial and cultural heritage. It is essential to know culture, history, social and religious background of a client, including the current political and economic situation of a country. Respect towards another, which may ensure us his confidence, can be achieved by our recognition of differences that we subsequently appreciate and accept. This may ensure us a good relation between a counsellor and a client, which is a basis for successful help.²⁰²

3.10 Assistance and Support to Victims of Human Trafficking

3.10.1 Action of Government Bodies

The aim of government bodies is to provide victims of human trafficking with prevention, support, assistance and solution of their future as well as to ensure observing basic human rights and freedoms. Especially efforts to persuade a victim of trafficking to give witness statements serve for the achievement of the most effected detection, investigation and conviction of individual offenders.²⁰³ To prevent the occurrence of this phenomenon is the most important help. Their concentration on the prevention has been increasingly on the rise. Government bodies spend much more finances in this area as compared to past years.²⁰⁴ The Ministry of Interior of the Czech Republic is the main coordinator for combating the trafficking in persons. The Ministry of Interior, the Security Policy Department act in the position of the National Reporter, which involves the coordination of activities in combating

²⁰¹ PRŮCHA, J. Interkulturní psychologie. Prague: Portál, s.r.o., 2004. pages 90-94.

²⁰² LAUNIKARI, M., PUUKARI, S. Multikulturní poradenství. Prague : Dům zahraničních služeb MŠMT pro Centrum Euroguidance, 2009. pages 122-124.

²⁰³ CR Ministry of Interior. Human trafficking – Help to victims. In Dokumenty - kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at: <<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.

²⁰⁴ BALÁŽOVÁ, J. Obchod s lidmi nabývá na síle. In Český rozhlas 6 > Studio STOP [online]. Prague: Český rozhlas, the last update on 5. 3. 2008 [cit. 2009-12-17]. Available at: <http://www.rozhlas.cz/cro6/stop/_zprava/431233>.

the human trafficking, providing reports on the development of this issue and proposing new strategies for combating the trafficking.²⁰⁵

The Ministry of Interior of CR coordinates activities concerning the organisation of the so-called round tables for the implementation of the National Strategy, where representatives of the state and non-state spheres engaged in this issue meet. They evaluate accomplished tasks within the National Strategy to combat human trafficking, which is outlined for individual years (at present 2008 – 2011). At round tables they clarify difficulties in fulfilling tasks, inform one another about already accomplished tasks and coordinate other actions to prevent their duplication. After round tables devoted to the National Strategy are closed, the so-called interdisciplinary group holds a meeting to discuss trafficking in persons within the Programme to Support and Protect Victims of Human Trafficking. 1st Deputy to the Interior Minister is a chairman of the group²⁰⁶

Further, the Ministry of Interior of CR initiates extensive controls of the legality of residence of foreigners as well as the legality of their employment, it also specialises in mass controls of employment agencies.²⁰⁷ It is, however, very difficult to control working conditions of foreigners at homes or in areas normally not subject to control (for instance hidden work shops or agricultural farms).²⁰⁸ These controls are mostly carried out based on anonymously provided information. In case a foreigner, who is illegally employed or his residence is illegal

²⁰⁵ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at:

<http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

²⁰⁶ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 23.1.2008 [cit. 2009-11-29]. Available at:

<http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

²⁰⁷ SYNÁČOVÁ, J.; KEDROŇ, R. Letenka a eura na cestu. Stát hledá, jak se zbavit cizinců. In Cizinci v Česku [online]. Týden.cz, the last update in 2010 [cit. 2010-01-30]. Available at:

<http://www.tyden.cz/rubriky/domaci/cizinci-v-cesku/letenka-a-eura-na-cestu-stat-hleda-jak-se-zbavit-cizincu_102184.html>.

²⁰⁸ BURČÍKOVÁ, P. Jak dál? In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2008 [cit. 2010-01-09]. Available at: <<http://www.strada.cz/attachments/f/f6cfb34a76e6b4fbc9536f60b453d15f.pdf>>.

in CR, is found, he is in many cases immediately punished by the imposition of administrative banishment. Individual evaluation is carried out in case a victim of human trafficking or of other crime is identified. The Ministry of Interior responded to the EU Directive of 2004 that implemented an opportunity to get a resident permit for trafficked persons who cooperate with investigative bodies. The Act providing for the residence of foreigners thus includes an opportunity to get a resident visa in case of cooperation with the police in detecting an organised crime. The Czech Republic, however, responded to the EU Directive in a way significantly different from it. Victims are to dispose of information sufficiently useful for the police to issue a resident visa. Victims are to have an opportunity to get a permanent residence in case they additionally prove to be under the threat of repeated trafficking in the country of their origin.²⁰⁹

In 2003 a system to support and protect victims of human trafficking began to be developed. It was entitled *the Model to Support and Protect Victims of Human Trafficking for the Purposes of Sexual Exploitation*. This Model was renamed in 2004 to the Programme to Support and Protect Victims in Human Trafficking in the Czech Republic (hereinafter referred to as the Programme). It was linked with the amendment of the Criminal Code, where not only sexual exploitation but also other forms such as forced labour, slavery, labour exploitation, etc. started to be regarded as human trafficking. The Programme began to be funded from an annual funding programme of the Ministry of Interior of CR entitled the Prevention of Human Trafficking and Assistance to Victims. Further, since 2005 the Ministry of Interior of CR has implemented a programme of grants entitled the *Prevention of Human Trafficking and Assistance to Victims in financing the Programme to Support and Protect Victims of Human Trafficking within the Strategy of the Criminality Prevention*.²¹⁰ Civic

²⁰⁹ BURČÍKOVÁ, P. Jak dál? In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2008 [cit. 2010-01-09]. Available at: <<http://www.strada.cz/attachments/f/f6cfb34a76e6b4fbc9536f60b453d15f.pdf>>.

²¹⁰ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

associations, public service organisations and legal entities of churches engaged in this issue for more than one year may apply for this programme of grants.²¹¹

The programme was formalised and institutionalised in 2005 and the so-called National Coordination Mechanism was set up. Entities campaigning for the support and protection of these victims were selected. They were non-governmental organisations such as La Strada, the International Organisation for Migration (hereinafter referred to as IOM) and Charita CR.²¹² Following experience some changes have been made in the Programme to improve care of victims of human trafficking. In connection with operation of the Act N. 108/2006 Sb., providing for social services, as amended, other organisations may also provide social services to every victim regardless of his cooperation with prosecuting and adjudicating bodies. With this argument the Ministry of Interior of CR tries to be calm criticism arisen in connection with the necessity for victims to cooperate with prosecuting and adjudicating bodies otherwise no help will be provided to them.²¹³

The Programme offers victims an immediate release from the environment of trafficking, ensures crisis intervention, asylum accommodation, professional social and socio-psychological counselling, legal assistance, financial aid, retraining, legalisation of their residence (a long-term residence permit for the purposes of protection in the territory)²¹⁴,

²¹¹ CR Ministry of Interior. Call for the application for state funding to “the Prevention of Human Trafficking and Assistance to Victims of Human Trafficking” and “the Prevention of Domestic Abuse with Emphasis on Work with Offenders” for 2010 In Dotace a granty[online]. Prague: MV ČR, the last update on 30.11.2009 [cit. 2010-01-19]. Available at: <<http://mvr.cz/clanek/vyzva-k-zaslani-zadost-o-poskytnuti-statni-dotace-prevence-v-oblasti-obchodovani-s-lidmi-a-pomoc-obetem-obchodovani-s-lidmi-a-prevence-domaciho-nasili-s-durazem-na-praci-s-nasilnzmi-osobami-pro-rok-2010.aspx>>.

²¹² The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

²¹³ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

²¹⁴ Section 42e(1)(a) of Act No.326/1999, Coll., providing for the residence of foreigners, as amended.

permanent residence for a foreigner who applies for its issuance for specific cause²¹⁵), interpreting or assistance in case of their voluntary return to the country of their origin.²¹⁶

3.10.2 The Ministry of Labour and Social Affairs of CR

The Ministry of Labour and Social Affairs of CR establishes the Intergovernment Body to combat illegal employment of foreigners in the Czech Republic. The goal of this body is to coordinate action of institutions acting in area of combating illegal employment, coordinate proposals to make legislation changes, follow individual researches in this area and issue guidelines for control and preventive actions. There are efforts made to contribute to the solution of illegal employment of foreigners in our territory. As part of its coordination activities the Ministry of Labour and Social Affairs of CR issues regularly a report on the Evaluation of employment of foreign workers on the labour market in the Czech Republic. The violation of regulations was mostly found out in firms (limited liability companies) and cooperatives. These facts were controlled by labour offices. Labour inspectorates are in charge of observing employment and wage regulations, whereas employment relations are the most frequently violated, i.e. the commencement, changes and termination of employment, further it concerned areas of working hours, i.e. especially observing compulsory breaks, wages and vacations. It has been found out that employers employing foreigners legally do not significantly violate employment regulations. At the same time it is necessary to be said that illegal employment cannot be combated without sufficient information, therefore the Ministry has decided to issue handouts and update information available on the integrated website of the Ministry (MLSA of the CR).²¹⁷ Providing information to foreigners in their native language or in the language they can make themselves understood is a necessary part of the prevention because through knowledge of their rights and ways how to assert them

²¹⁵ Section 66(1)(b) of Act No.326/1999 Coll., providing for the residence of foreigners, as amended.

²¹⁶ CR Ministry of Interior. Human trafficking – Help to victims. In *Dokumenty - kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at: <<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.

²¹⁷ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, no. 67. In *Kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

they are enabled to fight for their rights in a larger extent and combat against human trafficking is made more effective.²¹⁸

3.10.3 Office of Service of Criminal Police and Investigation, Department for the Investigation of Organised Crime, Individual Regional Departments of Police CR

The Office of Service of Criminal Police and the Investigation Department, the Department for the Investigation of Organised Crime (UOOZ) and individual Regional Departments of Police CR take part in human trafficking no less. These administrations take part in detecting trafficking in person in the largest extent. Efforts of UOOZ to detect trafficking in persons are immense. UOOZ mentions a high latency in this crime with a high social tolerance, especially where the demand for a cheap labour force has strengthened in the period of the economic crisis. In addition, no radical changes are expected in the future.²¹⁹

3.10.4 Foreign and Border Police CR

The Foreign and Border Police of the Czech Republic is another participant taking part in combating human trafficking, it is mainly engaged in detecting and combating illegal employment and illegal residence of foreigners, eliminating criminality related to migration. It is engaged in investigating human trafficking and other crimes related to cross border criminal activities, in case it does not concern criminal conspiracy and the maximum term of imprisonment does not exceed three years. Within the *Programme to Support and Protect Victims of Human Trafficking* it concentrates on the legalisation of residence of foreigners who apply for this Programme and it is engaged their identification, motivation to cooperation with investigating and adjudicating bodies, reporting to non-profit organisations and handing victims over into their care.²²⁰

²¹⁸ BURČÍKOVÁ, P. Jak dál? In Publikace La Strada ČR [online]. La Strada ČR, o.p.s., the last update in 2008 [cit. 2010-01-09]. Available at: <<http://www.strada.cz/attachments/f/f6cfb34a76e6b4fbc9536f60b453d15f.pdf>>.

²¹⁹ Police of the Czech Republic. Report on ÚOOZ for 2008. In Útvary policie ČR [online]. Prague : Policie ČR, the last update in 2010 [cit. 2010-01-25]. Available at: <<http://www.policie.cz/clanek/zprava-o-cinnosti-uooz-zarok-2008.aspx?q=Y2hudW09Mw%3d%3d>>.

²²⁰ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

This government body executes mainly protective (“repressive”) activities, i.e. measures in forms of controls of residence. At the same time it helps victims get out of an exploitation environment through criminal prosecution of offenders. It rather acts as somewhat a “middleman” between a foreigner, i.e. a victim and other state or non-state bodies.

3.10.5 Non-Profit Organisation Actions

Non-profit organisations engaged in this issue are indispensable entities in combating human trafficking. They are mainly organisations such as La Strada, Charita CR of the Czech Republic and the International Organisation for Migration (IOM) that cooperate with government organisations, mainly within the Programme to Support and Protect Victims of Human Trafficking.²²¹ This issue is also covered by other non-profit organisations, e.g. the Refugee Aid Organisation with its project the “Prevention of Trafficking in Migrants and Foreigners Working in CR”.²²² Non-profit organisations pursue many preventive activities, which are to prevent human trafficking. It concerns mainly lectures given to the expert as well as lay public, printing handouts and distributing them to a target group, experts and the general public. They are engaged in direct aid too. Various projects (national as well as foreign), including counselling provided to potentially endangered groups come under their major activities.²²³

²²¹ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In *Kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

²²² CR Ministry of Interior. Results of tenders within programmes in area of human trafficking and domestic abuse. In *Dokumenty - kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at: <<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.

²²³ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In *Kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>

3.10.5.1 *Counselling*

The organisations provide particularly services in a form of basic social counselling, but also specialised counselling with the focus on help to specific social groups of persons.²²⁴ The offer of social work within specialised social counselling is very complex. It is based on the lack of foreigners' confidence in help of somebody not being part of their community and often a language barrier which is tried to be overcome by non-profit organisations through interpreters, mostly consisting of Czech students studying an appropriate language. Through social work it is necessary to get to know the given country, culture, history and to help reveal the complexity of communities, where deeper understanding may improve help provided to these people.²²⁵ Along with commonly provided services to persons already trafficked, the organisations take use of social work to identify victims of trafficking through empathy linked to mere moments from the life of a foreigner or through purposeful interviews with persons in whom trafficking is presumed.²²⁶

Along with their activities non-profit organisations provide individualised assistance to foreigners. They try to respect a human being as a unique person with human dignity, for instance through learning his personal story, using interpreters, knowledge of culture, habits and tradition of the country of their origin, etc.

3.10.5.2 *Some Local Projects*

The organisation La Strada, besides many years of its activities in area of sexual exploitation and forced prostitution, has been developing a programme for more than two years, where it informs vulnerable foreigners about danger in a form of human trafficking out of "sex business". It is street work, information in a form of handouts in several languages are

²²⁴ compare to Act No. 108/2006 Coll., providing for social services, as amended.

²²⁵ BALÁŽOVÁ, J. Obchod s lidmi nabývá na síle. In Český rozhlas 6 > Studio STOP [online]. Prague: Český rozhlas, the last update on 5. 3. 2008 [cit. 2009-12-17]. Available at: <http://www.rozhlas.cz/cro6/stop/_zprava/431233>.

²²⁶ KUTÁLKOVÁ, P. Identifikace obchodovaných osob jako součást sociální práce s marginalizovanými skupinami/ osobami žádajícími o mezinárodní ochranu [online]. La Strada ČR, o.p.s., the last update in 2010 [cit. 2010-02-01]. Available at: <<http://www.strada.cz/attachments/d/d2e71832954a86f52b3e78cdc5471992.pdf>>.

distributed.²²⁷ This is the way by the means of which they also inform about danger and possibilities how to help victims of trafficking for the purposes of sexual exploitation and forced prostitution. The charity organisation Charita CR is engaged in a long-term project Magdala within which it provides street services to women and girls who make their living by prostitution. They mostly aim at adult education and information activities, offering asylum accommodation.²²⁸ The non-governmental organisations (Charita CR, La Strada and IOM) are also implementors of the “Programme to Support and Protect Victims of Human Trafficking in CR”, with financial contribution from the Ministry of Interior of CR.²²⁹ The goal of the Programme is to provide support and help to victims of human trafficking and motivate victims to give witness statements about offenders which would significantly contribute to their capture. Victims are offered to receive crisis intervention²³⁰ for the period of 60 days as opposed to the former 30 days. Within this period victims are provided time to consider whether he will cooperate with investigating and adjudicating bodies.²³¹ In case he decides not to cooperate with the police or does not have enough information useful to the police, he is offered a voluntary return to the country of his origin. Voluntary returning is organised by the International Organisation for Migration. In case cooperation is set up the police grants him a long-term residence permit for the purposes of protection in the territory under s. 42e of the Act providing for foreigners’ stay, as amended. After the criminal

²²⁷ BALÁŽOVÁ, J. Obchod s lidmi nabývá na síle. In Český rozhlas 6 > Studio STOP [online]. Prague: Český rozhlas, the last update on 5. 3. 2008 [cit. 2009-12-17]. Available at: <http://www.rozhlas.cz/cro6/stop/_zprava/431233>.

²²⁸ <http://www.dchltm.cz/sluzby.php?id=t>

²²⁹ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

²³⁰ CR Ministry of Interior. Human trafficking – Help to victims. In Dokumenty - kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at: <<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.

²³¹ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In Kriminalita [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

investigation is closed a victim is offered voluntary returning to the country of his origin. For specific reasons, e.g. a victim would be exposed to the threat in the country of his origin, e.g. of repeated trafficking, the Ministry of Interior of CR may grant a permanent residence for specific reasons under s. 66(b) of the Act providing for foreigners' stay, as amended.²³² Within the operation of the Programme the discrimination was found out to happen in persons who with respect to their e.g. low intellect or psychological disorder are not able to give relevant information to the police. Therefore the Programme was amended for these people thus enabling them to join the Programme without the need to provide any relevant information, if they express their interested in joining it, or if they are identified by any non-profit organisation as probable victims of trafficking.²³³ Along with this Programme the Charity CR provides crisis intervention and subsequent support, that is immediate direct help, protected accommodation on a secret address, legal, social counselling, psychological help and personal assistance, support in taking care of a child, health care including first treatment, spiritual support, retraining and self-educational courses.²³⁴ Within the Programme La Strada offers victims crisis help (including accommodation, boarding, financial and material aid, legal counselling, health and psychological/psychiatric care, interpreting) and social counselling. Further, they offer a possibility to ensure the way back to the country of their origin and subsequent care in the country of their origin, arranging employment counselling and leisure time spending.²³⁵ The Refugee Aid Organisation has implemented the programme entitled the Prevention of Human Trafficking with Migrants in CR for victims of human

²³² CR Ministry of Interior. Human trafficking – Help to victims. In *Dokumenty - kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 7.12.2009 [cit. 2009-11-29]. Available at: <<http://www.mvcr.cz/clanek/obchod-s-lidmi-pomoc-obetem.aspx>>.

²³³ The National Strategy to combat human trafficking (for the period 2008-2011) – CR Government Resolution of 23 January 2008, No. 67. In *Kriminalita* [online]. Prague: Ministry of Interior of the Czech Republic, the last update on 19.1.2009 [cit. 2009-11-29]. Available at: <http://aplikace.mvcr.cz/archiv2008/rs_atlantic/data/files/strategie_08-114072.pdf>.

²³⁴ Charita CR. Ukraine. In *Kde Charita pomáhá* [online]. Prague: Ministry of Interior of the Czech Republic, the last update in 2010 [cit. 2010-02-10]. Available at: <<http://www.charita.cz/article.asp?nArticleID=354&nDepartmentID=207&nLanguageID=1>>.

²³⁵ La Strada ČR. Nabídka sociálních služeb. In *Služby pro klientelu* [online]. La Strada ČR, o.p.s., the last update in 2010 [cit. 2010-02-03]. Available at: <<http://www.strada.cz/cz/služby-pro-klientelu/nabidka-socialnich-sluzeb/264.html>>.

trafficking; its aim is to provide legal and socio-psychological counselling as well as information on the offer of the Programme to Support and Protect Victims of Human Trafficking.²³⁶

²³⁶ http://www.opu.cz/index.php?option=com_content&task=blogcategory&id=2&Itemid=25&lang=cs

4. European Social Fund (ESF) as a Tool to Combat Unemployment, Support Equal Opportunities and Sustainable Development

4.1 Introduction

This chapter deals with the purpose, principles, tools and historical development of the European Social Fund. Further, it also deals with ESF activities in the Czech Republic.

The ESF is a means for creating more and better jobs; it is one of the EU's Structural Funds, set up to reduce differences in prosperity and living standards across EU Member States and regions, and therefore promoting economic and social cohesion. The ESF is devoted to promoting employment in the EU. It helps Member States make Europe's workforce and companies better equipped to face new, global challenges. Funding is spread across Member States and regions. Finances are directed mainly to regions where economic development is less advanced. It is a key element of the EU's 2020 strategy for Growth and Jobs targeted at improving the lives of EU citizens by giving them better skills and better job prospects. Over the period of 2007 - 2013 about EUR 75 billion will be distributed to the EU Member States and regions to achieve these goals.

4.2 The ESF in Perspective

The strategy for Growth and Jobs is the main EU strategy for ensuring the current and future prosperity and well-being of Europe and Europeans. In this context, the European Employment Strategy brings together 27 Member States to work at increasing Europe's capacity to create more good jobs and to provide people with the skills to fill them. It guides the ESF which spends European money on achieving these goals.

4.3. The ESF in Partnership

The ESF strategy and budget is negotiated and decided between the EU Member States, the European Parliament and the Commission. On this basis, seven-year Operational Programmes are planned by Member States with the European Commission.

These Operational Programmes are then implemented through a wide range of organisations in the public and private sector. These organisations include national, regional and local authorities, educational and training institutions, non-government organisations (NGOs) and

the voluntary sector, as well as social partners, for example trade unions and works councils, industry and professional associations, and individual companies.

4.4. The ESF History

4.4.1 1950s: Dawn of the European Social Fund

In 1951, France, West Germany, Italy, Belgium, the Netherlands and Luxembourg signed the treaty of Paris to create the European Coal and Steel Community (ECSC). One outcome of the ECSC Treaty, the ECSC Fund for the Retraining and Resettlement of Workers, was the forerunner of the European Social Fund (ESF)

In 1957, the Treaty of Rome established the European Economic Community (EEC), and with it the ESF, to improve job opportunities in the Community by promoting employment and increasing the geographical and occupational mobility of workers.

In its early stages, the ESF was used as a means to “compensate” for job losses. It helped workers in sectors that were restructuring by providing them with retraining allowances. It also made available resettlement help for those out of work who left their region to seek jobs elsewhere. The ESF could be used more widely than the ECSC Fund as it covered all sectors except agriculture.

4.4.2 1960s: Unemployment and Migration

In its early years, in the absence of an overarching EU strategy the ESF was used to deal with problems at a national level.

Through 1950s and 1960s Europe’s economy was thriving and unemployment was regarded as exceptional. Italy, however accounted for nearly two-thirds of the EEC’s jobless with almost 1.7 million people out of work. Between 1955 to 1971, as many as 9 million workers from the south of Italy migrated to find jobs, either in the industrialising north of the country or further afield. Italians were therefore the major beneficiaries of the ESF for retraining and resettlement grants. West Germany on the other hand used the ESF to retrain people who had suffered accidents at work.

At this time, ESF funding already had to be matched with national funding and was challenged into projects operated by the public sector. Private companies did not participated in the ESF.

4.4.3 1970s: Tackling the Needs of Specific Groups

The ESF was reformed in 1971: its funding was targeted towards particular groups and categories of people whereas its budgets was increased. Farmers and farm workers leaving agriculture became eligible in 1972. In 1975 the ESF was opened up to the clothing industry.

The European Regional Development Fund (ERDF) was created in 1975: whereas it focused on developing the infrastructure of regions lagging behind, the ESF concentrated on helping people through Europe to gain new skills. The two funds were collectively referred to as “Structural Funds”.

By the end of 1970s youth unemployment had substantially increased and tackling it became a priority for the ESF. Responding to the growing role of women in the workplace, the ESF gave also greater support to women, whether they had lost their job, were joining the labour market for the first time or returning to work after a break. Other groups such as the disabled and older workers (aged 50 and over), were also beginning to be targeted by the Fund.

As the ESF targeted specific groups, it no longer worked solely with public organisations: employers and trade unions and indeed individual companies became involved. This led to a major change in the way the ESF worked: until then, Member States had implemented projects that had been refunded afterwards. Now a system of prior approval was put in place. This led to a process in which the Commission and Member States would define common priorities across the EU and allocate funding to them.

4.4.4 1980s: Transition from Industrial to Services Economy

The decline of traditional industries such as steel, manufacturing and shipbuilding combined with the emergence of new technologies, especially in the services sector, resulted in a high demand for skilled workers. Vocational training and training in the use of new technologies became the ESF priorities .

The ESF funding targeted young people with poor job prospects due to a lack of vocational training or inadequate training, as well as to the long-term unemployed. It was also extended to include early school-leavers. The ESF helped also women enter the labour market.

A major modification introduced in the 1983 – 1988 funding period removed the requirement that persons had to work in a job related to their training for at least six months following their training. This reflected the reality of a labour market influx and opened up the ESF to provide training across all areas of the economy.

In Greece, Portugal and Spain agriculture was still the dominant sector, and per capita income was considerably lower than the EU average. In 1983, it was decided that the ESF funding would be challenged towards particularly needy regions. In 1988 the ESF reformed to better assist the regions lagging furthest behind. By the end of the 1980s more than half of the ESF funding went to poorer regions and countries such as Andalucía, the Canary Islands, Greece, the French overseas departments, Ireland, the Mezzogiorno in the southern Italy, Northern Ireland and Portugal.

In 1988 a new reform of the ESF was launched. Until then the ESF contributed to policies that were largely in the national contexts of the Member States. For each ESF project however Member States had to make an application to the Commission which would then assess every single application and approve successful applications. This made the ESF increasingly cumbersome to handle, for both the Member States and the Commission. The reform was a move from (individual) projects pursued in a national context to a programmed multinational effort on a basis agreed in partnership between Member States and the Commission. In 1988 the EU moved from an annual budget to a medium-term budgetary perspective (1988/1989-93). Member States began exchanging employment data and strategies, so that the ESF could be integrated into the Member States' labour-market policies.

With the reform the ESF would concentrate its efforts more on the most needy, be they regions or groups of the population whereas the principle that Community funding came in addition to national actions was reinforced.

The ESF resources were also increased. More than 2 million people per year were gaining vocational qualifications or jobs with the help of the ESF.

4.4.5 1990s: Globalisation and Information Society

In response to growing unemployment the EU agreed to an Employment Strategy in 1994 and the Amsterdam Treaty led to a framework for employment guidelines and a joint strategy in 1997. The ESF shifted its emphasis from unemployment to employment, in particular to people in work, to helping them stay and advance in their jobs. Training, job creation, employment guidance and counselling were at the core of the ESF.

The ESF continued however to train young people, the unemployed and those excluded from the labour market. As Europe began to face an ageing population the ESF allocated also more funds to train older people in the workplace to allow them to stay in employment longer or

bring them back into the labour market. It also supported initiatives providing care for older people, in order to give family members the opportunity to stay in or return to work.

The ESF set aside 5% of its budget to finance innovative schemes; to look at the effectiveness of ESF – funded projects; and to help exchanges of experiences between Member States in order to spread innovation all over Europe. These initiatives led to the establishment of three major Community programmes:

EUROFORM, which experimented with new ways of vocational training and employment; HORIZON, which worked on training for people with disabilities; and NOW (New Opportunities for Women), which looked at ways in which women could more easily be brought into, or back into, the labour market.

New programmes were set up to target specific issues of the labour market and to promote transnational exchanges of ideas and approaches:

YOUTHSTART, to help young people without qualifications get a first job; INTEGRA, helping groups such as single parents, the homeless, refugees, prisoners and ex-prisoners get secure jobs, and fighting race or other discriminations in training or employment; and ADAPT, helping people adjust to changes in business and industry, such as training in information technology.

Structural Funds were almost doubled for the period of 1994 – 1999 compared to 1988 – 1993. Close to 70% of this aid was allocated to the regions most in need. In 1994 the Cohesion Fund was introduced alongside the Structural Funds, to help poorer EU countries develop environment and transport infrastructure projects.

4.4.6 2000s: Supporting the Lisbon Strategy and the European Employment Strategy

In 2000, the EU adopted the Lisbon Strategy to make the EU the most advanced, knowledge-based economy by the year 2010. Among its aims were for the EU's overall employment rate to reach 70% and the female employment rate to reach more than 60%. Subsequently an additional target was added: to raise the employment rate for older workers to 50% by 2010.

In order to support the Lisbon Strategy the ESF adopted the following priorities in the 2000 – 2006 period: active labour market policies to combat and prevent unemployment, equal opportunities for all in accessing the labour market, improved training and education, as part of a lifelong learning policy to improve access to the labour market, maintain employability,

and promote job mobility, a skilled, trained and adaptable workforce and new forms of work organisation, entrepreneurship and conditions facilitating job creation.

In addition to positive actions in favour of women's participation in the labour market the ESF introduced a gender-mainstreaming approach and the EQUAL initiative was launched in 2000 as a laboratory to develop ways of tackling discrimination and inequality in the labour market and to promote a more inclusive work life through fighting discrimination and exclusion based on sex, racial or ethnic origin or belief, disability, age or sexual orientation.

During the current 2007 – 2013 period, the priority is to increase adaptability of workers, enterprises and entrepreneurs by improving the anticipation and positive management of economic change. Within this priority, the ESF supports the modernisation and strengthening of labour market institutions, on active labour market and lifelong learning actions, including within companies.

The ESF still addresses employment issues, ensuring accessibility to and promoting participation in the labour market. In addition, it also works to prevent social exclusion and combat discrimination by ensuring the access and inclusion of “disadvantaged workers”.

Since 2007 the ESF also strengthens the capacity of public institutions to develop and deliver policies and services. It also promotes partnerships between employers, trade unions, NGOs and public administrations to facilitate reforms in the field of employment and inclusion. Transnational cooperation and innovation are mainstreamed in all ESF actions.²³⁷

4.5 European Social Fund in CR

The amount of finances from the ESF for the Czech Republic for the programming period 2007 – 2013 amounts to EUR 3.8 billion. For the programming period 2004 – 2006, the Czech Republic was assigned EUR 456.98 million.

Objectives of the European Social Fund in CR: assistance to the unemployed when entering the labour market, equal opportunities for all in terms of access to the labour market, social integration, assistance to people from disadvantaged social groups when entering the labour

²³⁷ Information acquired from the website of the European Commission; 12 October 2010, http://ec.europa.eu/employment_social/esf/discover/esf_cs.htm

market, lifelong education, development of qualified and flexible workforce, implementation of modern methods of work organisation and enterprise, improved access and participation of women in the labour market, combat all forms of discrimination and inequality connected with the labour market

4.5.1 Basic Programmes of the European Social Fund in CR

Programming Period 2007 – 2013

Programmes that allow drawing finances from the ESF in the area of human resources in the period 2007 – 2013 in the Czech Republic and the capital Prague are as follows:

Human Resources and Employment OP (HREOP)

Education for Competitiveness OP (ECOP)

Prague Adaptability Operational Programme (PAOP)

Programming Period 2004 - 2006

Programmes that allowed drawing finances from the ESF in the area of human resources in the period 2004 – 2006 in the Czech Republic and the capital Prague were as follows:

Human Resources Development OP (HRD OP)

Single Programming Document for Objective 3 (SPD 3)

Community Initiative CIP EQUAL

Joint Regional Operation Programme (JROP)

4.5.2 Examples of Supported Projects

Projects of a non-investment nature are supported from the European Social Fund (ESF), for example: retraining of the unemployed, special programmes for disabled people, children, young people, ethnic minorities and other disadvantaged groups of citizens, creation of innovative education programmes for employees, support to self-employed people who are just starting out, development of employment services institutions, development of educational programmes, including distance forms of education, improvement of conditions for use ICT by pupils as well as teachers, improvement of qualification of school and educational institution managers in the area of management and personnel policy, implementation and modernisation of combined and distance forms of studies, short-term

attachments for students, pedagogues and research workers in the private and public sector, etc.

4.5.3 Managing Authority and Partners

The Ministry of Labour and Social Affairs is the authority responsible for the management of assistance from the ESF in CR and at the same time it is the managing authority of the Human Resources and Operational Programme – one of three Czech Operational Programmes for drawing financial assistance from the European Social Fund . The Ministry of Education, Youth and Sports is another managing authority in charge of the Competitiveness Operational Programme. The third Prague Adaptability Operational Programme is managed by the Municipal Council of the Capital City of Prague. The Ministry for Regional Development, Ministry of Environment, Ministry of Industry and Trade, CzechInvest, employment offices and local and regional government bodies.²³⁸

²³⁸ Information acquired from the website of the European Social Fund in the Czech Republic; 12 October 2010, <http://www.esfcr.cz/evropský-socialni-fond-v-cr>

5. An Example of a Project Supported from the ESF – Current Information on the Project

5.1 Project Identification:

Project Title: Professional Social Counselling to Foreigners – Assistance in their Integration in the Labour Market

Operational Programme number: CZ.1.04

Operational Programme title: Human Resources and Employment OP

Global Grant number: CZ.1.04/3.1.02

Global Grant title: Support to Social Integration and Social Services

Priority Axis number: 4.3

Priority Axis title: Social Integration and Equal Opportunities

Support Area number: 4.3.1

Support Area title: Support to Social Integration and Social Services

Call number: 21

Call title: Support to Social Integration and Social Services

Project Budget: CZK 6,029,012.80 (75% from ESF, 25% from the Czech national budget)

Implementation date: 1 May 2009 – 30 April 2011

5.2 Brief Description of the Project

The objective of the Project is to provide foreigners from the Third World, who find themselves in a difficult situation due to the loss of employment, bad social and economic orientation in a region, with assistance in handling arisen problems. The Project is implemented in three regions of CR, namely in the regions of Southern Moravia, Southern Bohemia and in the region of Pilsen.

Scopes of issues in which social workers assisted foreigners:

counselling and assistance in seeking a job

counselling and assistance in processing CVs and motivation letters

counselling and assistance in looking for educational actions – training, retraining, language and other courses, looking up school institutions – secondary schools, vocational schools, colleges and universities

counselling and assistance in the preparation for a job interview

counselling and assistance with addressing potential employers

counselling in legal issues relating to employment – individual sections of the Labour Code, formalities of an application for a work permit, conditions of employment of foreigners under the Employment Act No. 435/2004 Sb., conditions for setting up business in trade, outstanding payments of social security and health insurance, etc.

counselling and assistance in communication with labour offices, employment agencies, employers

counselling and assistance with drawing up applications for the recognition of qualifications acquired at schools abroad

counselling and assistance with basic orientation on the labour market in a region

counselling and assistance with acquiring new forms and ways in seeking a job

Our services were used by 409 foreigners from the Third World, for whom the total number of 1,752 interventions was performed for the duration of the Project.(up to 31 August 2010) We estimate to provide our services to approximately other 90 foreigners by the termination of the Project.

It mainly concerns foreigners from Ukraine, the Russian Federation, Belarus, Moldavia, Vietnam and Mongolia and Armenia (in total we provided our services to foreigners from 41 different countries worldwide).

Immigrants and asylum seekers are a target group of the Project. Under a definition they are groups of immigrants staying on the territory of CR based on a long-term or permanent residence, further they are foreigners whom a resident visa for over 90 days was awarded for the purposes to suffer a residence on the territory in accordance with the Act providing for foreigners' stay, or in accordance with the Asylum Act, foreigners awarded with an international protection in a form of extra protection and last but not least they are applicants asking for awarding international protection. As for the group of asylum seekers, they are

foreigners whom international protection was awarded in a form of asylum under the Asylum Act.

Project actions were balanced in terms of gender and proportion. 52% women and 48% men up to this day used services. With a great care social workers in individual regions create friendly and at the same time professionally and qualified environment so that participants of the Project would feel happy there. We have offered to provide our services in appropriate district cities to those who cannot afford to see us at our regional branches due to health or financial reasons. Further, during cooperation between the Project participant and a social worker from the organisation the emphasis is placed on a balanced form of cooperation, the creation of an individual plan of cooperation based on a mutual agreement, strengthening the participant's personal competences and developing his responsibility as well as the participant's understanding of his current situation .

We have informed also office workers of the state administration, government bodies and other institutions on our project actions. We have offered them professional aid and assistance in dealing with foreigners in offices, particularly in cases where misunderstanding due to a language barrier or cultural diversity of individual foreigners may occur.

Namely, they were departments of social support, departments for aid in material poverty, libraries, health institutions, school institutions, departments of foreign police and many others. These places were chosen intentionally because they may also serve as a possible source of information for a range of foreigners who are in a regular contact with these offices. Since at the beginning foreigners did not contact us in such an extent as was intended we had to opt for another form of addressing the target group such as purposeful addressing foreigners registered in labour offices as job applicants through labour offices in particular regions. Closer cooperation has been set up with Labour Offices in Brno, Blansko, Vyškov, Břeclav, Jindřichův Hradec, České Budějovice, Český Krumlov, Prachatice, Rokycany and Klatovy. We have organised information meetings in Labour Offices of these cities and we have offered counselling days, normally once in a three weeks, to those who were interested in our services.

We believe that the Project meets our expectations and especially expectations the Project participants. It is apparent from many interviews that if it not had been for relevant information provided by our workers a range of foreigners could have got into many troubles connected with illegality or even in extreme case in pathologic behaviour due to their

imperfect knowledge of the CR legal system. Following our interventions, many foreigners succeeded in getting a job or nostrification of their qualification received in the country of their origin. For the summary of the Project and its complete and particular results you may refer to a final Report on the Project on the website of the organisation after 1 May, 2011.

5.3 Stories of Participants in the Project

In this part we will try to present you closely life stories of participants in the Project . In each region we made one interview with a foreigner who's life story in our opinion shows similarities of lives of many others. Our interview focused on questions related to the reason of their arrival in the Czech Republic, how they get along in working relations, how they perceive the Czech Republic and how they see their further future, either in the Czech Republic or anywhere else.

5.3.1 Story of the Project Participant from the Region of Southern Moravia

Sex:	Male
Age:	35
Nationality:	Ukraine
Marital Status:	Single
Education:	Secondary education - metalworker
Stay:	Permanent

He arrived in the Czech Republic in 2003. In 2005 he went back to Ukraine for a certain period of time due to the loss of employment CR was his target destination. A “client” told him that there was a higher standard of living in CR and higher earnings than in Ukraine. The Czech Embassy handled a work permit and a resident visa for him. He had to pay for this service. He did not have enough money at that time and so he got into debt to the client. The client also procured work for him with a friend of his. He stayed at labourers’ home and shared a room with other 6 compatriots. He began working for a building company in the position – casual labourer. It included all kinds of skilled labour (bricklayer, roofer, woodworker, floor-layer, carpenter...). Working hours were between 12 to 16 hours daily, sometimes even 14 days without a day off. Minimum wages were determined in his contract. The remaining money he would get in cash. His pay was regularly a month or more in

arrears. Due to injury incurred at work, at hospital he found out that he had no health insurance and he was not registered with any health insurance company by the firm, and debts payable to the hospital reached the amount of thousands of crowns. When he tried to get any explanation from the client he only replied that if he did not like it he could go and work anywhere else, but he was still in debt to him for services he had provided to him. He decided to stay. Afterwards, the client helped him get a permanent residence. He managed to buy himself out of him thanks to his savings after all. He has not managed to learn Czech for the period of his residence in CR. He has been in a labour-Ukrainian community for the whole time. At present he is on files of a labour office as a job applicant. He is trying to get a language course and retraining. He has no friends in CR, only several acquaintances he had worked with at construction sites. He does not have anybody anymore in Ukraine. He connects his future with life in CR, he would like to find an occupation as an assembly worker or production operator. He does not want to be employed in the specialisation he studied, it is too challenging to him. His goal is to integrate well and set up a family here.

5.3.2 Story of the Project Participant from the Region of Southern Bohemia

Sex:	Female
Age:	48
Nationality:	Ukraine
Marital Status:	Divorced
Family:	2 children
Education:	Secondary education - construction and manufacture of clothes
Stay:	Permanent

Se arrived in the Czech Republic in 1996. She has been living here uninterruptedly since. She went to CR intentionally, she had information from friends who also worked in CR. She left alone originally, her children stayed in Ukraine with their grandparents, she was divorced, she had no contact with her ex-husband, nor he in no way helped her with the upbringing of her children, being under age at that time. Therefore she decided to improve her financial situation abroad. She got contacts to a “client” from her acquaintances who already worked in CR and had good experience with this agent. She evaluates cooperation positively, the agent

fulfilled everything he had promised She paid for his services in cash drawn from her savings. She always worked much and she used to have even more jobs at a time. The client helped her find a job and handle a necessary work permit and a resident visa on the territory of CR. First months of her residence in CR she stayed with her acquaintances, sharing a rent with them. She worked as a worker for the first 3 years in CR, subsequently she started her own business in trade. In the meantime she had various occasional jobs, she helped in households, she sew clothes for her friends at commission basis, etc. Ukrainian agencies, which she always contacted on a recommendation of her acquaintances, helped her with prolongation of her residence and a working visa. She has not had any major problems with their services. After she had managed to be financially stabilised, she brought her minor children to CR, they began attending a primary school, subsequently a secondary school and now they are studying at a university. From the very beginning she undertook steps to set up her own business in trade, she accomplished it no sooner than after 3 years of her residence in CR. She was involved in sewing at commission basis for boutiques and in clothes altering. At the beginning she did not have any major problems, these arrived along with the arrival of the economic crises. She suspended her business in trade in 2010, when she got into financial problems and subsequently she had to declare bankrupt. At present she is on files of a labour office as a job applicant. She is trying to find a job. As for the future, she would like to go back to her profession she enjoys and is skilled at. Her children are helping her out financially too; they began taking occasional jobs during their studies. She connects her future and the future of her children only with CR.

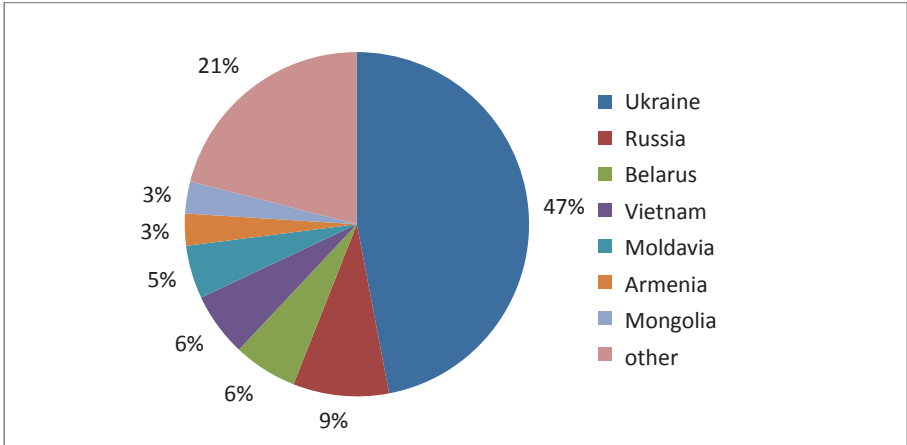
5.3.3 Story of the Project Participant from the Region of Pilsen

Sex:	Female
Age:	32
Nationality:	Ukraine
Marital Status:	Married
Family:	Husband, 2 children
Education:	University education - economy
Stay:	Permanent

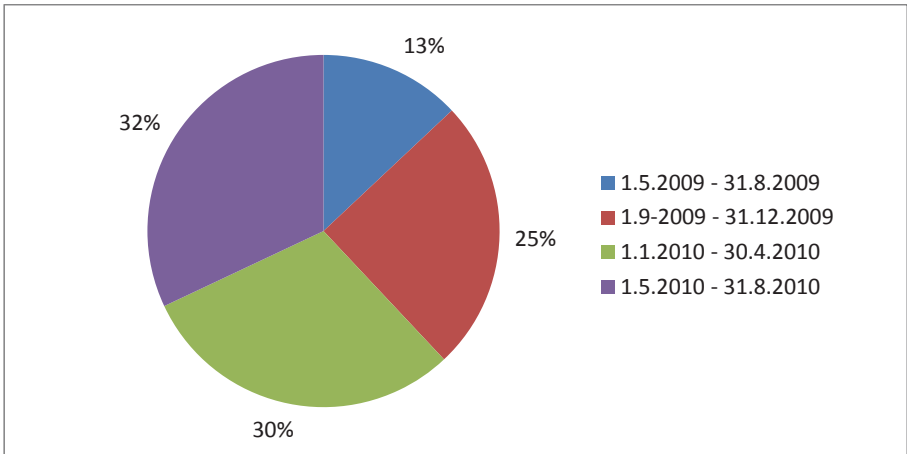
She and her family arrived in the Czech Republic about 10 years ago. They wanted to go to Italy originally, however, by chance she ended up with her family in the Czech Republic. She went to Europe to make money and to be able to buy what she needed, to make money for holidays and to find a good job. She got a work permit and resident visas through an acquaintance, who was in contact with a “client”. Subsequently in CR, some Ukrainian agency helped her with prolongation of a work and residence permit. She paid for the services of this agency. When she didn’t have enough money at the moment she needed their services, she made an agreement with them that they wait until she gets them. She had three jobs during her residence in CR. The reason she left was always due to clients who had not pay her agreed remunerations for performed work. At present she is on files of a labour office as a job applicant. She is trying to find a job or an occasional job through personnel agencies, internet and daily press. She has not faced any blackmailing or threatening on the part of clients since she is staying her, but she knows from her friends that threats and blackmailing on the part of clients take place very often. At present, with respect to the type of a residence she disposes of she does not take use of services of any Ukrainian agency, nor of anyone else. In her opinion, the supply of job opportunities is the same as it was before the economic crisis broke up, only requirements for individual job positions have increased. Her family and she live in a rented flat. She spends her spare time with her family in the countryside, she goes to the theatre and likes reading in the evening. She would like to spend the rest of her life with her family in CR. She does not want to go back to Ukraine because of her family any more, in addition, there is no place to go, they have already sold their house, there is a bad political situation and massive corruption prevails there. In general, she has no bad experience with offices of the state administration and local government; from time to time, if she meets somebody who experienced the year 1968, she is asked whether she is from Russia and this does make her feel good. She worries about a political situation in CR, which is becoming to resemble the situation in Ukraine, which they left, besides others, because of a political situation there.

5.4 Selected Statistical Data

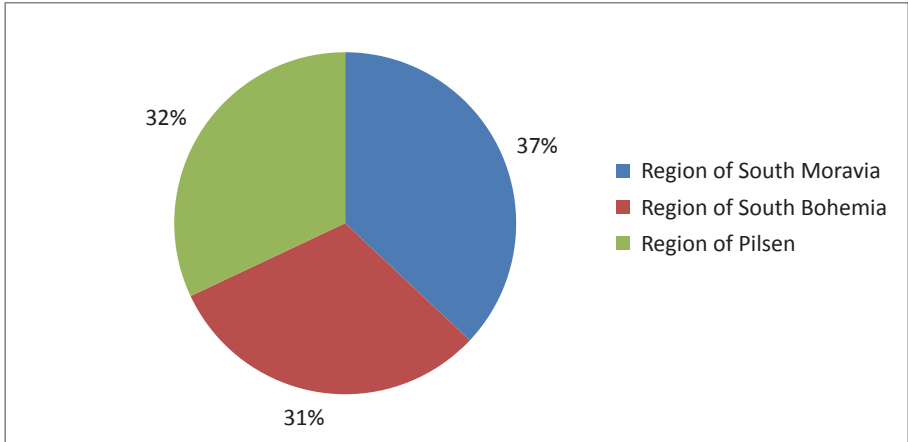
The greatest number of nationalities of foreigners who used services of the Project up to 31 August 2010 (N=409):



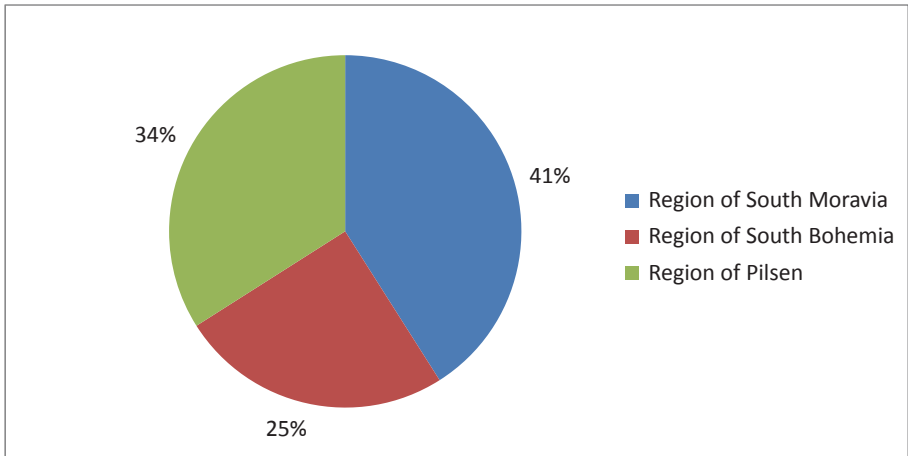
The increase in the project participants during the individual monitored periods as of 31 August 2010 (N= 409):



The percentage of project participants with residence in the individual regions
as of 31 August 2010 (N = 409)



The percentage of the individual branches in all interventions
as of 31 August 2010 (N = 1.752)



6. Directory of the Organizations Working with Immigrants

Berkat, Rumunská 24, 120 00 Prague 2, tel.: +420 222 519 427,
email: berkat@berkat.cz, web: <http://www.berkat.cz>

Berkat means happiness. In the Chechen and Ingush language BERKAT means “happiness” or “mercy”, in the legal language it is a title of civic association focusing above all on aid and support provided to self-help in the places destroyed by the war and humanitarian catastrophes.

Centrum pro integraci cizinců (CIC), Kubelíkova 55, 130 00 Prague 3,
tel.: +420 222 360 452, email: info@cicpraha.org, web: <http://www.cicpraha.org>

"Centre for Integration of Foreigners" is a civic association providing advice and assistance to immigrants, i.e. asylum seekers and foreigners with a long-term or permanent residence in the Czech Republic.

Branch CIC Kolín, Zahradní 46, 280 02 Kolín,
tel.: +420 312 310 322, email: michala.musilova@cicpraha.org

Sdružení pro integraci a migraci (SIMI), Senovážná 2, 110 00 Prague 1,
tel.: +420 224 224 379, email: poradna@refug.cz, web: <http://www.migrace.com>

Association for Integration and Migration is a new name for Poradna pro uprchlíky after its consolidation with Centrum pro otázky migrace. The fundamental activity of the Association remains in the legal and social consultancy provided to foreigners living in the Czech Republic.

Český helsinský výbor, Štefánikova 216/21, 150 00 Prague 5,
tel.: +420 220 515 188, email: sekr@helcom.cz, web: <http://www.helcom.cz>

The Czech Helsinki Committee monitors the legislative activities related to the human rights and rights of citizens, monitors the situation regarding the human rights in the Czech

Republic, provides a free-of-charge legal consultancy to the individuals, whose human rights have been violated.

Evropská kontaktní skupina, Žitná 45, 120 00 Prague 2,

tel.: +420 222 211 799, email: info@ekscr.cz, web: <http://www.ekscr.cz>

The European Contact Group is a non-profit organization promoting equal opportunities between men and women, fights against racism and discrimination of male and female foreign citizens and changes the rooted gender stereotypes and prejudices both in the Czech Republic and Europe.

INBÁZE – komunitní centrum, Legerova 50, 120 00 Prague 2,

tel.: +420 224 941 415, email: info@inbaze.cz, web: <http://www.inbaze.cz>

InBáze is a place opened for migrants, refugees and foreigners with all kinds of residence.

META o.s. – Sdružení pro příležitosti mladých migrantů, Rumunská 29, 120 00 Prague 2,

tel.: +420 222 521 446, email: info@meta-os.cz, web: <http://www.meta-os.cz>

META supports the personal development of young migrants in the area of education that is considered by the association as one of the conditions for a successful integration in the society. Through its activity the association wishes to contribute to the mutually beneficial and conflict-free cohabitation of foreigners and majority of society.

Most pro lidská práva, Třída 17. listopadu 216, 530 02 Pardubice,

tel.: +420 467 771 170, email: info@mostlp.org, web: <http://www.mostlp.org>

The association called “*The Bridge for Human Rights*” originally used to prepare and publish a magazine of the same name, focusing on the human rights. Since 2003 it has been specializing, above all, in the rights of foreigners and the educating, lecturing, exhibition and other service activities in the area. The fundamental activities of the association are represented by consultancy services and courses for foreigners, however, in addition to that the association also carries out a number of related activities, mainly in the area of support of multicultural environment.

Oberig – informační a vzdělávací středisko pro cizince, Horova 8, 400 21 Ústí nad Labem,
tel.: +420 475 205 721, email: oberig@email.cz, web: <http://www.oberig.cz>

The aim of *Oberig* is to achieve a full integration of foreigners living in the Czech Republic in all spheres of life. The association's activities focus, above all, on integration of foreigners from the Eastern Europe and Caucasia: Russia, Ukraine, Moldavia, Georgia, Kazakhstan etc.

Organizace pro pomoc uprchlíkům o. s. (OPU), Kovářská 939/4, 190 00 Prague 9,
tel.: +420 284 683 714, email: opu@opu.cz, web: <http://www.opu.cz>

The aim of *OPU (Organization for Aid to Refugees)* is to provide assistance to refugees and other foreigners in the Czech Republic and also to the persons who have already been granted the asylum status and/or temporary protection in the Czech Republic. OPU carries out its activities in the territory of the Czech Republic.

Branch OPU Brno, Leitnerova 682/9, 602 00 Brno,

tel.: +420 543 210 443, email: opu.brno@opu.cz

Branch OPU České Budějovice, Žižkova třída 1321/1, 370 01 České Budějovice,

tel.: +420 387 747 281, email: opu.cbudejovice@opu.cz

Branch OPU Plzeň, Tylova 2090/1, 301 00 Plzeň,

tel.: +420 377 222 098, email: opu.plzen@opu.cz

Poradna pro integraci (PPI), Senovážná 2, 110 00 Prague 1,

tel.: +420 224 233 034, email: paha@p-p-i.cz, web: <http://www.p-p-i.cz>

PPI (Counselling Centre for Integration) is a non-governmental, non-profit organization providing assistance to persons who have been granted the refugee status and to the foreigners with a long-term and permanent residence in the Czech Republic. The centre assists mainly in adaptation and subsequent integration of the refugees and other foreigners in the new environment.

Branch PPI Ústí nad Labem, Velká Hradební 33, 400 21 Ústí nad Labem,

tel.: +420 475 216 536, email: usti@p-p-i.cz

Poradna pro občanství, občanská a lidská práva (PPO), Ječná 7, 120 00 Prague 2,
tel.: +420 270 003 280, email: poradna@poradna-prava.cz,
web: <http://www.poradna-prava.cz>

PPO provides legal consultancy in the area of citizenship and integration of foreigners. Individuals turn to the centre mainly with problems related to the conditions for residence of foreigners in the Czech Republic and with respect to the requirements for obtaining the citizenship in the Czech Republic.

Branch PPO Děčín, Radniční 1/23, 405 01 Děčín, tel.: +420 412 517 942

Branch PPO Varnsdorf, Národní 3003, 407 47 Varnsdorf, tel.: +420 412 337 247

Sdružení občanů zabývajících se emigranty (SOZE), Mostecká 5, 614 00 Brno,
tel.: +420 545 213 643, email: soze@soze.cz, web: <http://www.soze.cz>

SOZE - "*Society of Citizens Assisting Migrants*" provides assistance to refugees and other categories of foreigners coming in the Czech Republic. This assistance consists in provision of free-of-charge legal, social and psychological consultancy services, organization of leisure and educational programmes and in the complex social-legal assistance to the long-term residence foreigners and the persons who have been granted the asylum seeker status.

Branch SOZE Olomouc, Ostružnická 28, 772 00 Olomouc,

tel.: +420 585 242 535, email: okraj@soze.cz

Branch SOZE Prostějov, Demlova 2, Prostějov,

tel.: +420 585 242 535, email: braunerova.soze@gmail.com

Slovo 21, Francouzská 2, 120 00 Prague 2,

tel.: +420 222 520 037, email: slovo21@centrum.cz, web: <http://www.slovo21.cz>

Slovo 21 is organization against racism active through media; other activities of the association include the area of education and integration of foreigners living in the Czech Republic.

Asociace pro právní otázky imigrace o. s. (ASIM), P.O.BOX 16, Moravská 9, 120 00 Prague 2, email: info@asimos.cz, web: <http://www.asimos.cz>

The aim of ASIM is to search for drawbacks in the legal regulation on the issues connected to immigration and to seek their rectification. To achieve this aim, ASIM uses, above all, the method of strategic litigation – i.e. representation and other assistance provided to foreigners in selected legal cases, the results of which could lead to enforcement of systemic changes. In addition to this activity ASIM also provides legal consultancy to foreigners and carries out analytical, informative and educational activities focused on both the professional and general public.

La Strada, P. O. BOX 305, 111 21 Prague 1, tel.: +420 222 717 171, email: lastrada@strada.cz, web: <http://www.strada.cz>

La Strada Czech Republic is a non-governmental, non-profit organization active in the area of solutions for the issue of human trafficking. The aim of the organization is to contribute to elimination of the human trafficking and exploitation and to provide support and protection to the exploited and trafficked persons and the persons endangered by these criminal activities.

Charita Česká republika, Vladislavova 1460/12, 110 00 Prague 1, tel.: +420 296 243 330, email: sekretariat@charita.cz, web: <http://www.charita.cz>

One of the areas where *Charita* finds its mission is help provided to foreigners in the Czech Republic who have found themselves in a difficult life situation.

Branch Litoměřice – Diecézní charita, Dómské náměstí 10, 412 01 Litoměřice, tel.:+420 416 733 487, email: migrace@dchltm.cz

Branch Česká Lípa – Farní charita, Dubická 2189, 470 01 Česká Lípa, tel.: +420 416 733 487, email: cizinci@fchcl.cz

Branch Hradec Králové – Diecézní charita, Velké náměstí 37, 500 01 Hradec Králové, tel.: +420 495 063 135, email: jan.koci@hk.caritas.cz

Branch Plzeň – Diecézní charita, Cukrovarská 16, 301 00 Plzeň, tel.: +420 377 441 736, email: poradna@dchp.cz

Branch České Budějovice – Diecézní charita, Kanovnická 16, 370 01 České Budějovice, tel.:+420 386 351 125, email: cizinci@charitacb.cz

Branch Prague – Arcidiecézní charita, Pernerova 20, 180 00 Prague 8,

tel.: +420 224 813 418, email: uprchlici@charita-adopce.cz

Branch Ostrava – Charita Sv. Alexandra, Jeremenkova 8, 703 00 Ostrava – Vítkovice,

tel.: +420 596 611 207, email: alexandr@charita.cz

Branch Brno – Diecézní charita, Šumavská 33, 602 00 Brno,

tel.: +420 549 133 494, email: migrace.dchbrno@caritas.cz

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