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## **Report from a public debate. Inspecting the work of migrants in the Czech Republic: a focus on forest workers**

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### **Abstract:**

The debate "Inspecting the work of migrants in the Czech Republic: a focus on forest workers" took place on January 30 2011 in the United Nations Information Centre in Prague. For the hundreds of foreign workers exploited in the Czech forests (so-called "stromkaři" or "forest workers"), the conference concluded with a nearly hopeless feeling. Law enforcement officials are not advancing this case in even a minimally satisfactory way. Labour inspectorates have been struggling with inspection issues in unstable workplaces, such as work in the forests, for a long time. In addition, when the companies in question succeed in avoiding communication with labour inspectorates, they are not investigated at all.

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The aim of the debate was to address the theme of the labour inspection of foreign workers in the Czech Republic, discussed from the point of view of a specific case which concentrates on the long-term exploitation of foreign workers in the Czech forests (the so-called "forest workers' case"). The following persons took part in the debate: Rudolf Hahn, the Inspector General of the State Labour Inspection Office; Štěpánka Miková, a lawyer representing a group of the ill-treated persons; Nguyen Van Tuan, one of the victims in the case in question; Marek Čaněk, a PhD student of the Faculty of Philosophy and Arts of Charles University, who has been continuously monitoring the issue of exploitation of forest workers as well as the issue of labour inspection systems in Europe and in the US; Václav Jansa, a member of the Krkonoše Mountains National Park Administration, and Stanislav Beránek of Transparency International. The debate was prepared and moderated by Marie Jelínková from the Multicultural Center Prague.

At the beginning of the debate, the Inspector General of the State Labour Inspection Office, Mr. **Rudolf Hahn**, presented the current situation of the State Labour Inspection Office (herein referred to as the SLIO) and the way in which inspections on the work of foreign migrants are carried out. He described the fact that the SLIO governs eight regional labour

inspectories and that job health and safety and labour laws (in particular abiding by the Labour Code and the related Regulations) fall within its remit. At the end of each year, the SLIO drafts a plan outlining the main inspection tasks (i.e. areas to be inspected). The plan is forwarded to the most important trade union centers and employers' associations who give their opinions first. Then the draft is submitted to the Ministry of Labour and Social Affairs (MoLSA) for approval. In the last five years, job agencies, which are in many aspects connected to the forest worker issue, have been a part of this inspection plan. The Inspector General also stressed the conditions under which the inspectors work, as these can have a significant impact on what can be achieved. The SLIO has about 140 inspectors at its disposal and these are responsible for monitoring industrial relations in the Czech Republic. Apart from its assigned tasks, in the course of a regular calendar year, the SLIO receives nearly 5500 additional tips or referrals for inspection. About 1500 to 2000 of these, though, cannot be looked into due to a lack of time and capacity. Another thing which plays an essential role in the SLIO's work performance is the fact that there are more inspectors in the area of safety and health than in the area of labour conditions. Furthermore, the SLIO underwent a considerable reduction in funding and staffing. Most of the inspectors are women and, contrary to the police, who work in pairs and who the SLIO staff sometimes ask for assistance, the SLIO inspectors carry out inspections individually. Beginning January 1 2012, the SLIO will be subject to changes linked to the increased emphasis by the MoLSA on the fight against illegal employment. The remit of the SLIO will be extended to include such control activities which are currently being carried out by the labour offices (e.g. whether the permit issued relates to the work exercised by the third-country alien). SLIO staffing will be increased, as it will incorporate the staff of the labour offices which are at the moment carrying out this activity.

On having given this overview of the remit of the SLIO and of the planned changes, the Inspector General declared that labour inspectorates recognize their responsibility in this matter as well since many of the problems documented fall within their jurisdiction. However, he emphasized that forest work in general has been a long-term problem for labour inspectorates. It is indeed an unstable type of workplace, and it is in these workplaces where enforcing the requirements related to health and safety at work is unusually difficult. Another thing which plays a role is the fact that in the past, logging wood in the forests was carried out by employed staff. Today it is carried out by self-employed persons (external contractors) and despite the same requirements related to their safety at work, non-compliance is increasing. As regards the type of inspections concerning the labour of foreign workers, the Inspector General pointed out that not all foreign workers tend to be cleared in cooperation with the Foreign Police. Foreign Police tend to be asked to participate in such cases when the inspectors consider that their presence will be more than useful. This is mostly connected to individual areas of work (cooperation is rather normal for inspections in the construction industry, but it is only seldom used with foreign managers).

Another panelist – Mr. **Nguyen Van Tuan** – then specifically addressed his experience with the forest workers' case, drawing on the time when he was working for the Affumicata

company. In early 2009, Nguyen Van Tuan came from Vietnam to the Czech Republic without knowledge of either the language or the Czech cultural environment and habits. Following the onset of the economic crisis, he needed to get a job. With the help of certain Vietnamese intermediators, he got a job with Affumicata, a company that was recruiting in the Prague Vietnamese SAPA market. He paid 1500 CZK for the mediation, received work equipment, boots for rain, and a coat. He began to work in the Klatovy region and later he worked near Ústí nad Labem, but he did not get paid for his work at either of these places. The only thing he did receive, together with the other workers, were several pounds of rice each week and a few hens. The food, however, was not sufficient to feed them. The work was especially difficult and dangerous during a season of continuous rain. If during such weather the foreign workers refused to keep working and wanted to go back to the accommodation, they were forced to return and continue to work. For these reasons, Mr. Tuan left the work after a few months and began to look for another job. In the forests, he had worked together with 200 Ukrainians and 40 Romanians, who were in the same situation as he was. Contrary to them, he was lucky enough to have met a few Vietnamese and Czechs who helped him to file an action against Affumicata with the aim to receive the unpaid wages. In conclusion, Nguyen Van Tuan, who managed to find a stable job with a more honest employer, expressed the conviction that the companies concerned intentionally select thousands of foreigners who cannot speak Czech and do not know Czech law. Just as he had received, these foreigners receive contracts to be signed that are written in Czech and are given misleading information on facts such as how they will be trained for their work and the amount of wages they will receive. In fact, sadly, the contracts contain fabrications such as that the company will train them and that the foreign workers will even pay for it.

A similar picture of the whole case was also painted by the lawyer of the ill-treated forest workers, Ms. **Štěpánka Miková**. In the spring 2010, a colleague of hers and she herself were contacted by the first of the victims. Gradually, however, they started to reveal the true extent of the case. They found out that there are at least several hundred (but maybe up to two thousand) ill-treated foreign workers.

87 criminal complaints have already been filed so far. It is important to note that these foreign workers had worked for different companies with limited liability, in particular for: Affumicata, Wood Service or Madera Servicio. These companies were founded as shell companies by the same natural persons. Somehow, these persons play a part in all these companies and have always acted as subcontractors of the Less & Forest company, one of the largest timber companies in the Czech Republic and the winner of most of the tenders listed by the state company Lesy ČR. The ill-treated workers come in particular from Vietnam, Slovakia, Mongolia, Romania, Bulgaria and the former USSR countries. For their work in the forests, they never got the wages they were promised; only in some cases did they receive an advance to cover the expenses for the life in the forest. The jobs they were carrying out were in strong conflict with the Labour Code – for example the Vietnamese workers represented by the lawyer had never signed a contract of employment, but, as Mr. Tuan's story reveals, the only contracts signed were as regards training and on the basis of these contracts they actually would have to pay their employers for being trained for their jobs. The ill-treated workers had

to work six or seven days a week, 9–12 hours a day. Working conditions were absolutely unsatisfactory, the workers were threatened by their employers (sometimes at gunpoint), humiliated, suffered from hunger, and in some cases they were working under the supervision of guards. After having contacted the Organised Crime Detection Unit in an informal way, the lawyers representing the forest workers filed criminal complaints. From their point of view, the police were not proceeding fast enough. Štěpánka Miková then noted that in this case, the police have breached the Criminal Procedure Code and the case is not being properly investigated. It has been about a year and a half since the first criminal complaint was filed, and the police have still not yet launched criminal proceedings under the Criminal Procedure Code; the only investigation going on was initiated according to the Law on Police. All this despite the fact that the police have enough evidence to initiate not only criminal proceedings, but also criminal prosecution of persons (a large numbers of witnesses and victims were identified, documentary evidence proving that illegal work had taken place was produced, etc.). On top of that, many victims were victims of human labour trafficking. Attorney Miková stressed that the police split the case and forward it to other police units under the pretext of territorial jurisdiction, thus actually getting rid of the case and shelving it. The lawyers will have to file complaints regarding the police procedure and the actions of the supervising public prosecutors on behalf of the workers. Shall the lawyers not find success in this way, they will turn to the European Court of Human Rights, or to the courts of the EU.

When asked about the explanation of this unsatisfactory behavior regarding the investigation of the case by the police, Ms. Miková answered that a number of factors play a role here. The whole case is likely to have a background of corruption and therefore there is no will of those in senior positions to investigate this case properly. At the same time, given a case of such a nature and scale, no sufficiently capable police authorities were put in charge. Current legislation, however, certainly allows investigation and, where appropriate, also convictions to be handed down in this case; the case itself meets the merits of the criminal offense of human labour trafficking. The problem is that the police are not able to or do not want to apply these merits<sup>1</sup>.

Another panelist, **Václav Jansa** of the Krkonoše Mountains National Park Administration (KRNAP), explained how KRNAP reacted to the issue of the forest workers. At the beginning of his contribution, Mr. Jansa emphasized that possibly contrary to other entities, KRNAP was closely linked to the case of the forest workers because it is certified as a holder of the FSC certificate<sup>2</sup> and should thus pay even more attention to the compliance with health and

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<sup>1</sup> It could be heard in questions from the audience later on that since 2004, it is possible to punish human trafficking for the purpose of other forms of exploitation and forced labour in the Czech Republic. The fact that there is no judgment which has the force of *res judicata* shows that the Czech Republic is truly not able to approach this issue, or it has no will to do so.

<sup>2</sup> There are several types of Forest Stewardship Council (FSC) certificates. FSC is a non-governmental non-profit organization, and its purpose is to guarantee that the company holding the certificate (and undergoing an annual audit of compliance with the rules of the certificate) endorses a nature-friendly forest management and, where appropriate, also an approach friendly to the people or workers involved. More about the FSC certification system: <http://www.czechfsc.cz>.

safety regulations, qualification regulations, and the rights of workers and subcontractors on its territory. Contractors are therefore contractually bound to observe these obligations and they are monitored (in particular as to the necessary equipment and training of their staff). Since KRNAP mostly lists small-scale contracts in their procurement processes, it encountered the employment of foreign workers (who usually work for large firms, or rather their subcontractors) only relatively recently when a big public contract was procured. The winner was the Less & Forest company which received about fifty percent of the procurement. During the procurement process, though, the company stated that it will carry out the contract with its own staff. The contract was signed and the workplace was handed over in June 2010. It was only in December 2010, during a visit of a non-governmental organization, that the KRNAP staff learned that the forest workers delivering the actual work were employed by other subcontractors, were not receiving their wages, and were often kept working with the help of threats. On a direct inquiry by KRNAP, the Less & Forest company answered that, given their staff capacities, they were not able to carry out the contract with its own staff in the previous year only. Belatedly, Less & Forest informed KRNAP that the contract was fulfilled through a subcontracting company Madera Servicio. According to an independent legal analysis, in this situation, KRNAP did not have an opportunity to withdraw from the contract, as the condition of performance of the contract had been included in the procurement process, but no longer in the signed contract. KRNAP therefore created a leaflet that was distributed directly to forest workers and which informed them in 10 languages that in case of problems such as non-payment of wages, they shall contact KRNAP directly. More rigorous controls started being carried out to determine whether the persons reported actually work in the forest. Furthermore, new contracts contain provisions which allow easier withdrawal from the contract in cases of non-compliance with appropriate conditions of employment. In August 2011, an inspection aimed at foreign workers took place in KRNAP. It was carried out by the staff of the local labour inspectorate and the labour office in cooperation with Foreign and Criminal Police. During the inspection (because of bad weather, it took place in the workers' accommodation and not in the field), representatives of Madera Servicio were also on location and thus it was possible for the Regional Labour Inspectorate to launch a control of them as well. The fact that the conditions in KRNAP have most probably improved was also confirmed by the workers of non-governmental organizations during their visit in November 2011.

Another panelist, **Stanislav Beránek** of Transparency International, stressed that the whole case should also be seen from the perspective of how public procurement processes are set in the field of Czech forestry. According to him, the tendency to employ companies like Affumicata is inherent to the principle of so-called complex contracts. In these, no further conditions are set and the system is based on defined units. Forest operators compete with one another by stating how much they are willing to pay for the (extracted) timber and at the same time what price they will charge for the services (i.e. maintenance, mounting and other work). In these procurement procedures, therefore, a trend appears which is to offer the highest possible price for timber and the lowest possible price for services. As a result of that,

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workers are recruited in particular through job agencies and work in the forests under often unimaginable conditions – without protective equipment, in any weather etc. According to Stanislav Beránek, one of the possible ways of solving these issues would be to set a condition for the upcoming tenders that 40 % of a given contract must be implemented by the company's own staff, not through subcontractors. Similarly, standards in the forestry sector which would determine the minimum prices for services might also be established. This way, it would be clear, what is and what is not an acceptable, or speculative, price of services. Lesy ČR, according to Beránek, neglects the decommissioning of speculative and not reliable offers (i.e. those which offer either excessively high prices for timber, or too low prices for services). It is these offers which make room for companies like Affumicata.

The last panelist, a PhD student of the Faculty of Philosophy and Arts of Charles University **Marek Čaněk**, who has been actively following the case since its very beginning, highlighted the government policies which create migrant workers' vulnerable positions. Besides the above-mentioned policy in the forestry sector and the purely commercial position the state company Lesy ČR takes<sup>3</sup>, he mentioned also the migration policy of the Czech Republic, which on one hand transfers the costs and risks of employment to the migrants themselves and on the other hand does not take into account the fact that demand for low-cost migrant labour is being created. In the time of economic crisis, the government offered migrants the so-called Voluntary Returns Programme<sup>4</sup>, but for many migrants it did not mean a real solution to their difficult financial situation (caused especially by the high investments and ensuing high debt preceding to their journey to the Czech Republic). In times of the economic crisis, therefore, many migrants accepted such work, the conditions of which often resembled human labour trafficking. Marek Čaněk also emphasized that a lot of attention should be paid to the conditions of labour health and safety, including the manner in which conditions for the forestry sector are set, especially with respect to decent work and the unequal position of employees as regards relations between individual companies and subcontractors. He also pointed out a practice applied by the United States, which deserves a very positive evaluation. There, the separation of labour and stay permit inspections is applied, from which one can seek an inspiration to possible solutions. At the same time, the approach the US takes to Mexican staff planting trees can help us avoid making similar mistakes.

After the presentations, the following selected questions from the audience helped to give a fuller and more detailed picture of the issues connected to the case of forest workers as well as to the issue of labour inspections of foreign workers.

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<sup>3</sup> In the press release of March 24 2011, the Lesy ČR company states that they bear no responsibility for problematic issues associated with the work performance of foreign workers on its territory, because the responsibility lies with the subcontractors. Also, it states that it does not fall within their jurisdiction to carry out inspections on the labour conditions of the workers. For more details, see: <http://www.silvarium.cz/zpravy-z-oboru-lesnictvi/stanovisko-lesu-cr-k-problematice-zamestnavani-zahranicnich-pracovniku-tz-lcr>.

<sup>4</sup> The programme consisted of an offer to have the travels to the country of origin covered and to receive a one-off payment of 500 EUR.

One of the questions was aimed at Štěpánka Miková, the attorney: Why was the whole case split into a number of cases and how do the police explain why it is not investigated as a whole? The attorney explained that the whole case was originally assigned to only one worker from the Economic Crime Department in Prague. This policeman based his understanding of the criminal complaint on a list it contained, saying which merits of criminal offenses might have been met. The policeman then followed this list from the complaint of criminal offence and according to these various merits he assigned the case to different, and in his opinion, competent police departments. Also, since the contracts with the workers were signed in different places of the Czech Republic and the workers were exploited in different regions of the country, the policeman concluded that locally competent police departments should be assigned individual parts of the case. According to Ms. Miková, this procedure is against Criminal Procedure Code, because it is one act that is being dealt with and the perpetrators are the same as well as the way the deed was performed; therefore the case must be addressed as a whole. The attorney explained the procedure chosen by the policeman from the Economic Crime Department pointing out his incompetence in particular and has therefore filed a complaint saying that the police are not proceeding under the Criminal Procedure Code. Furthermore, Ms. Miková also filed a complaint about the procedure of the supervising public prosecutor. She is still waiting for an answer.

Further questions were aimed at the Inspector General and concerned mainly the inspections of Affumicata. The Inspector General said that, unlike other potentially problematic companies which often avoid any contact with the inspectorates<sup>5</sup>, the Prague Labour Inspectorate was able to start the inspection with this company. Instead of the documents requested, however, the company submitted only a confirmation of the theft of company documentation. Therefore, the investigation was deferred due to the lack of documentary evidence. Also the Labour Offices in Ústí nad Labem and in Liberec showed interest in the Affumicata company because of the suspected illegal employment. Despite the efforts these labour offices made in cooperation with the police, they were unsuccessful in contacting the company. After queries, as to whether or not it is possible in the Czech Republic to penalize an employer whom labour inspectorates are not able to get in contact with, the Inspector General admitted that in such cases the labour inspectorates can neither launch nor stop the inspection. In such cases, labour inspectorates turn to the Trade Licensing Authority with the proposal to consider whether or not the situation is ready for the removal of the authorisation to do business. To the Inspector General's knowledge, however, no such case of removal is known. According to him, the situation is additionally worsened by the phasing-out of administrative barriers for entrepreneurs. The easing of many regulations, which at first sight seems reasonable, can have rather negative repercussions in the field of labour law.

Following the debate on the ways and specificities of inspecting the work of foreign workers, the last cluster of questions touched the issue of so-called chaining. The main questions concerning chaining are, why and whether or not companies should be allowed to hire

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<sup>5</sup> Or rather, had avoided in the year 2009. At that time, companies in the Czech Republic had not yet been obliged to have data deposit boxes (a special state-run type of e-mail box).

subcontractors in such public procurements or whether or not they should carry out the contracts only, or overwhelmingly on their own. This request was, however, identified as problematic by several panelists, since this would directly play into the hand of large companies, which can offer all the necessary experts and equipment etc. Stanislav Beránek said that it is because of these reasons that Transparency International criticizes the nature of complex contracts in the forestry sector. They lead to a certain "cartelisation" of the market in the forestry sector and, in view of the outcomes of many tenders, they result also in some companies' concentration and tendency to monopolize. Václav Jansa then described what the situation in the Krkonoše National Park is like, since as a public contracting authority KRNP has to list tenders to comply with the law. According to Mr. Jansa, the exclusion of subcontractors would result in the exclusion of self-employed persons and smaller companies from the competition.

By the way of conclusion, it is to be noted that the public debate pointed out a broad spectrum of problems and shortcomings related to the inspection of the labour of foreign workers in the Czech Republic and specifically to the case of forest workers. It seems that the incompetent investigation of the forest worker's case, as seen in particular in the work of the Czech Police, will not bring any results in the foreseeable future. Despite the changes planned, labour inspectorates will continue to have more than limited options and the system of inspections they carry out does not reflect the more vulnerable status of foreign workers. On the contrary, the current system makes it relatively easy for those who grossly infringe the Labour Code to get away with it. It is easier for them to apply their unfair practices to those who do not know their way around in the Czech Republic, do not understand the language and are dependent on others: not only financially, but sometimes also when it comes to their legal status.

*Translation: Olga Richterová*

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### **About the author**

*Marie Jelinkova, Ph.D. graduated in sociology from the Faculty of Social Sciences at the Charles University in Prague. In her MA thesis she compared Czech and Australian integration policies. She currently pursues a PhD in public and social policy focussing on the quality of life among migrants to the Czech Republic. Ms. Jelínková presently teaches on social exclusion and inclusion.*