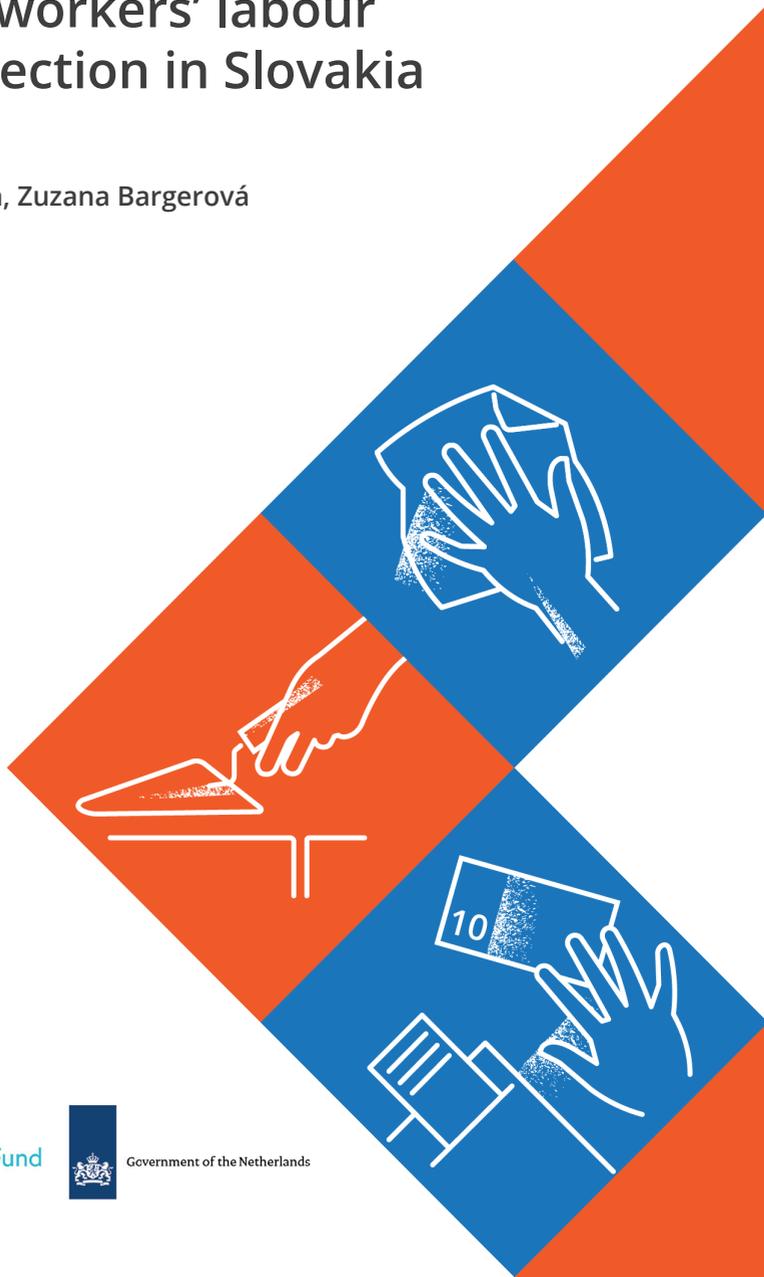


# Victims of labour exploitation or “illegal” migrants? Ukrainian workers’ labour rights protection in Slovakia

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# About project

“Towards stronger transnational labour enforcement cooperation on labour migration” (STRONGLAB) project is funded by the International Visegrad Fund and the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

STRONGLAB’s activities analyse patterns of labour migration and rights violations of migrant workers in the V4 countries with a focus on Ukraine as a sending country. We aim to provide up-to-date information on labour rights violations and intermediary practices and suggest possible remedies. Furthermore, the project aims to strengthen cooperation and experience sharing among labour inspections, NGOs and other actors providing assistance to migrant workers to strengthen protection and enforcement of labour rights.

The project consortium includes Multicultural Center Prague (Czech Republic), Fundacja „Nasz Wybór“ (Poland), Centrum pre výskum etnicity a kultúry (Slovakia), Anblokk Kultúra- és Társadalomtudományi Egyesület (Hungary) and Charitable Foundation „Zaporuka“ (Ukraine).

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## Executive summary

According to previous research and this study, violations of Ukrainian workers' labour rights are a severely understated and yet a highly serious and prevalent issue in Slovakia. The number of Ukrainian workers continues to grow, and as the economy strengthens and employers call for any kind of skilled or unskilled labour force<sup>1</sup> it is likely it will continue to rise. Given its geographical proximity, linguistic closeness and perceived cultural similarity, Ukraine seems to be the natural choice for labour force recruiters from Slovakia.

Previous research<sup>2</sup> has revealed that Ukrainian workers often *do not have labour contracts* or have them only in Slovak (or, even worse, in Czech or Polish) which prevents them from fully understanding the terms and conditions of their employment. They are often asked to perform tasks in conflict with their labour contracts and to work for *less than minimum wages*. *Extremely long working hours* of more than 48 hours a week on average appear to be the most frequent violation of Ukrainian workers' labour rights. Based on our data, it seems that for some Ukrainian migrants, their recruitment agency/intermediary is also their employer in Slovakia. Our research unveiled several cases of Ukrainians working as cleaners but with *unclear legal status*. Such situations are rendered difficult by employers' unwillingness to employ migrant workers officially, i.e. with a work contract, which would allow them to apply for temporary residence for the purpose of employment. The uncertainty of their legal status thus contributes to their vulnerability. Migrant workers seem to be more reluctant to report labour rights violations and/or exploitation to law enforcement bodies. The main reason is their fear of expulsion. This is because virtually no measures exist to protect victims of labour exploitation. Instead, they are usually treated as illegal workers, and expulsion from the country follows.

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<sup>1</sup> See for instance [www.teraz.sk/ekonomika/zaujeme-firiem-o-zahranicnych-zamestnani/198337-clanok.html](http://www.teraz.sk/ekonomika/zaujeme-firiem-o-zahranicnych-zamestnani/198337-clanok.html)

<sup>2</sup> Blažek, M. et al. (2013). Skúsenosti migrantov a migrantiek s násilím. Bratislava: IOM.

# Introduction

The present report intends to shed some light on the practices of employing Ukrainian nationals in Slovakia in the recent period of 2013-2017. Attention is focused on emerging trends and employment patterns among Ukrainians working in low skilled professions. The report is based on desk research using existing studies and statistical data, plus qualitative interviews conducted with Ukrainian nationals living in Slovakia, with a representative of the labour inspectorate, the National Union of Employers, Employment Institute, the Institute of Economic and Social Studies and an intergovernmental organization providing support services to migrants.

The research, as well as previous work in the field of violations of migrant workers' labour rights, points to exploitation as an understated yet widespread issue in Slovakia. The report uses the concept of labour exploitation as defined by the EU Agency for Fundamental Rights (FRA). According to FRA<sup>3</sup>, at least four aspects need to be taken into consideration when speaking about labour exploitation of migrant workers:

1. social policies
2. freedom of movement
3. migration policies
4. criminal justice and the rights of victims of crime

Given the scope of the research, it focuses mainly on the perspective of migrant workers' rights linked to social policies, i.e. working conditions and protection of social rights. Marginally the report is also concerned with migration policies, since migrant workers' uncertain residence status often increases their vulnerability to labour exploitation.

It should be noted that our research does not aspire to describe the situation of Ukrainian labour migrants in Slovakia in all its complexity. It is merely a preliminary insight into the highly complex topic of the labour rights violation

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<sup>3</sup> FRA (2015). Severe Forms of Labour Exploitation: Workers Moving within or into the European Union. States' obligations and victims' rights. Vienna; EU Agency for Fundamental Rights.

of Ukrainian migrants, and many issues revealed here would merit separate research.

## Methodology

The interviews in the qualitative research were to have originally focused on newly-arrived Ukrainian migrants working in Slovakia, preferably in low skilled jobs. However, this proved very difficult to achieve. Despite the size of the Ukrainian population in Slovakia it seems to be fragmented, and conventional methods of interviewee recruitment (such as snowballing and gaining access via “gate keepers”) proved to function only to a limited extent. Ukrainian nationals with long-term residence did not seem to have connections to newly-arriving labour migrants, particularly those working in low skilled jobs, e.g. in construction or cleaning services. Newly-arrived labour migrants appear to live in a somewhat closed-off community of workers with few ties to the outside community (whether Ukrainian or majority society). Eventually we managed to interview eight Ukrainians who had been living and working in Slovakia for various periods of time ranging from 0-20 years. One of the interviewees was interviewed not as a worker herself, but rather as someone with deep insight into the Ukrainian community. The interviewees thus included Ukrainians who had been granted temporary residence for the purpose of economic activity, and settled Ukrainians with permanent residence.

*Table 1. Basic data on interviewed Ukrainians*

Current job	Age	Gender	Education level
IT programmer	30+	F	University degree
Business owner	30+	F	University degree
IT engineer	26	M	University degree
Sales assistant	44	F	University degree
Cleaner	30+	F	High School

Cleaner	30	M	High School
Currently no official job	45	M	High School
Construction worker	41	M	Vocational

With the interviewees' consent, all interviews were recorded and transcribed. Content analysis was then carried out using interview transcripts. Data used in the analysis were obtained from several statistical and professional organizations: the Statistical Office of the Slovak Republic (ŠÚ SR), the Ministry of the Interior of the SR, the Central Office of Labour, Social Affairs and Family and the Bureau of Border and Alien Police (BBAP).

The findings from the interviews were then complemented by existing literature on labour migration, particularly Ukrainian labour migration in Slovakia, legislation in force, judicial decisions and official websites of state institutions.

## Legislation and policies regulating the work and residence of labour migrants

### Legal framework

The main law regulating the entry and residence of foreigners in Slovakia is the Act No. 404/2011 Coll. on Residence of Foreigners<sup>4</sup> and Amendment and Supplementation of Certain Acts as amended (hereinafter only as "Act on Residence of Foreigners"). However, separate laws regulating the employment of foreigners and posting of migrant workers were taken into account when writing this

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<sup>4</sup> The word alien is usually used in the official translation of the Act, however, for the purpose of this report we will use the word foreigner.

report.<sup>5</sup> According to the above-mentioned Act on Residence of Foreigners a foreigner is deemed to be anyone who is not a Slovak citizen, including EU nationals.

Separate regimes apply to third-country nationals and EU nationals.<sup>6</sup> Third-country national may be granted one of the three types of residence: temporary, permanent or, in specific and rare cases, tolerated stay. Legal status is thus derived mainly from the Act on Residence of Foreigners. Most Ukrainians in Slovakia are temporary residence holders (generally from 90 days to 5 years of residence) because permanent residence can only be granted after 5 years of continuous lawful residence to already-settled foreigners.<sup>7</sup>

Pursuant to the Act on Residence of Foreigners a third country national must generally apply for temporary residence only if his/her planned stay is going to exceed 90 days. Moreover, temporary residence can only be granted for one of several recognized legal purposes, such as business, employment, study, research, special activities, family reunion, or to foreigners who have been recognized as “Slovaks living abroad” (i.e. members of the Slovak diaspora). The choice of legal purpose is likely to be affected by the complexity of the legal conditions as well as by the different rules for each type of stay. Foreigners also probably tend to choose a type of residence that gives them more freedom, a more stable legal status, or one which is easier to obtain. Generally, obtaining temporary residence is a difficult, lengthy and very expensive process.

The application must be usually submitted from abroad, at the Representative Office of the Slovak Republic. For Ukrainians, this is either in Kiev or at the General Consulate in Uzhgorod. Alternatively, the application can be submitted

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<sup>5</sup> Mainly Act No. 5/2004 Coll. on Employment Services as amended, Act No. 311/2001 the Labour Code as amended, Act No. 351/2015 Coll. on Cross-Border Cooperation in Posting Employees for Work in the Provision of Services and Act No. 125/2006 on Labour Inspections and on amendment and supplementation of Act No. 82/2005 Coll. On Illegal Work and Illegal Employment.

<sup>6</sup> Including nuclear family.

<sup>7</sup> There is no legal claim to permanent residence after fulfilling all the legal conditions, therefore general information on the number of temporary residence permits can be somewhat misleading.

on Slovak territory at the Foreign Police Department in the place of intended residence.

The application form must be submitted in person and it must be 100% complete at the moment of submission if it concerns business or family reunion. However, applications for temporary residence for the purpose of employment may be accepted even if they are incomplete, with the missing documents then being sent directly to the police. As well as a valid travel document, documents showing the applicant has no criminal record in the country of origin, sufficient finances to cover the stay, adequate accommodation and the purpose of residence must be submitted, all duly verified and translated into Slovak by a court-certified translator.

When it comes to the employment of third country nationals, separate laws regulate conditions for work, the labour rights of workers and the competences of state authorities responsible for their protection. The legal framework consists mainly of:

- Act no. 5/2004 Coll. on Employment Services as amended,
- Act no. 311/2001 the Labour Code as amended,
- Act no. 351/2015 Coll. on Cross-Border Cooperation in Posting Employees for Work Performance in Framework of Provision of Services (“Cross-Border Cooperation Act”),
- Act no. 125/2006 on Labour Inspections, amending and supplementing Act no. 82/2005 Coll. On Illegal Work and Illegal Employment.

The Act on Residence of Foreigners (Slovak migration policy) only allows residence to be obtained for one purpose, but some legal purposes allow other activities to be undertaken, for instance business and study at the same time.

Ukrainians who wish to work in Slovakia may generally do so if their legal status of either temporary or permanent residence allows it. They can also work as posted workers from other EU countries under the Cross-Border Cooperation Act or in special regimes under the Act on Residence of Foreigners for stays of under 90 days when a residence permit is not needed, as seasonal workers, and in the case of managers and trainees also as intracorporate transferees.

In practice, however, the regime for the posting of workers is sometimes abused by employers to avoid harsh immigration rules. This puts third country nationals at risk of illegal work and loss of residence.

## Slovak migration policy

According to the official governmental strategy, “Migration Policy of the Slovak Republic Perspective until the year 2020”, Slovakia wants to manage economic migration and to attract qualified foreigners from culturally-similar countries of origin. This makes Ukrainians likely candidates for obtaining residence in the Slovak Republic.<sup>8</sup> However, contrary to the Migration Policy’s declarations, recent trends show a greater need for workers in semi-skilled and low-skilled jobs, particularly in the automotive industry. Such positions are currently filled mainly by Serbs and Ukrainians. As indicated by the Minister of Labour, Social Affairs and Family, there were 8 500 Serbs working on the basis of “information cards” (see below; these were Slovaks living abroad, i.e. Serbian Slovaks) and 2 300 Serbs held a work permit as of 31 October 2017.<sup>9</sup> However, our own and previous research findings regarding the employment status of third country nationals suggests that the official data from the Labour Office presented below might well be severely understated.

Needless to say, the Migration Policy does not reflect these new developments. In comparison to other neighbouring countries Slovakia is not explicitly and proactively trying to attract Ukrainians, despite the above-described strategy and the long term needs of the labour market and the whole of the Slovak economy.

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<sup>8</sup> Buchtová, K. et al. (2016). Migration from Ukraine to V4 in the time od crisis. Bratislava: Human Rights League. Available at [www.hrl.sk/sites/default/files/publications/hrl\\_ukrajnav4\\_jul2016\\_webcorr\\_0.pdf](http://www.hrl.sk/sites/default/files/publications/hrl_ukrajnav4_jul2016_webcorr_0.pdf)

<sup>9</sup> SME Daily (2017). Srbi pracujúci na Slovensku dostanú viac informácií o svojich právach. 13 November 2017. Available at <https://ekonomika.sme.sk/c/20695223/srbi-pracujuci-na-slovensku-dostanu-viac-informacii-o-svojich-pravach.html>

We have also consulted the needs of Slovak employers with a representative of the National Union of Employers (*Republiková únia zamestnávateľov*) who is of the opinion that the Slovak labour market is currently experiencing a general shortage of labour: *“There is a lack of workers, not only qualified but also low skilled and semi skilled and in all sectors of the economy. Everywhere.”*

Despite the declarations of the political strategy and the clear mismatch between the native workforce and demand from employers, no effective strategy to help the Slovak labour market by accepting even a limited number of foreign workers has been adopted recently. Moreover, the political elites continue to show a negative perception of international migration to Slovakia by political elites, persisting even after the turmoil associated with the 2015-2016 “migration crisis”. Such a combination of factors results in a very poor immigration policy that is not in anyone’s favour.

The Act on Residence of Foreigners, as the main tool of the Slovak migration policy, provides only one instrument that is available (also) to Ukrainians specifically, that of temporary residence for a foreigner who has the status of a Slovak living abroad (for more information see the chapter below.)

All of the above leads to a situation where foreign workers are still recruited and hired, but often under precarious circumstances in which they shoulder the burden of legal responsibility.

## Labour conditions of migrant workers in Slovakia

### Institutional setting

Institutions with competences in the field of combating migrant workers’ labour exploitation (although not defined as such, see below for more information) include:

- The National Labour Inspectorate (NIP), its specialized units responsible for the monitoring of illegal employment (Kobra), and 8 local labour inspec-

torates subordinated to the NIP,

- The Offices of Labour, Social Affairs and Family (“Labour offices”), in particular the control departments and professional advisory services departments, subordinated to the Centre for Labour, Social Affairs and Family of the Slovak Republic and to the Ministry of Labour, Social Affairs and Family of the Slovak Republic,
- The Border and Alien Police Bureau (BBAP), particularly its National Unit for Combating Illegal Migration and local foreigners’ police departments established under the Police Force Presidium (PPZ) and the Ministry of the Interior of the Slovak Republic.

Labour inspectorates and labour offices perform primarily monitoring and supervisory functions, while BBAP units perform police supervision and criminal law functions.<sup>10</sup>

## Labour exploitation or undeclared work?

It should be noted that the labour conditions of third country nationals are not clearly regulated and cannot be duly monitored in Slovakia. This is because the legislative and institutional framework is focused more on protecting the Slovak labour market and detection of illegal work than on protecting workers’ labour rights. The topic of labour exploitation has not yet been defined as such by state institutions. No institution has an explicitly defined mandate to tackle labour exploitation or the labour rights violations of migrant workers in Slovakia. Instead, labour exploitation is interpreted as an issue of illegal work and illegal employment. That means that even cases involving exploitative practices (e.g. long working hours, unfair or unpaid wages, lack of work contracts etc.) are qualified as cases of illegal work in which migrant workers are perceived as perpetrators rather than victims. The meaning of illegal work and labour exploitation thus

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<sup>10</sup> Bargerová, Z., Gallová Kriglerová, E., Chudžíková, A., Kadlečíková, J (2014). Severe Forms of Labour Exploitation. Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States. Report commissioned by the EU Agency for Fundamental Rights. Available at <http://fra.europa.eu/en/country-data/2015/country-reports-comparative-report-severe-labour-exploitation-workers-moving>

overlap to a large extent in Slovakia.<sup>11</sup>

Migrant workers without valid residence permits who are exposed during labour inspections are not viewed as potential victims of labour exploitation but primarily as illegal migrants, even though they may have worked under exploitative conditions. In other words, the foreign police examines the victims' residence status, and if it is irregular/undocumented, they launch deportation proceedings. Consequently, measures aimed at protecting workers are very seldom in their best interest.<sup>12</sup>

In October 2017, a major case showing this approach in Slovakia occurred when 62 migrant workers from Ukraine (27), Serbia (23), Macedonia (8) and Bosnia and Hercegovina (4) were detained by the Foreign Police. They worked for and were found in a Korean company operating in the town of Šaľa as a subcontractor for several other companies producing electronics. The police received information from the Nitra Labour Inspectorate on illicit work in the said company.<sup>13</sup> All workers were deported for residing unlawfully in the territory of the Slovak Republic.<sup>14</sup> The reports said nothing about the conditions in which they worked. It was only mentioned that they had no contracts with the said company since they were employed by a temporary employment agency.

As ASTRA SOS Hotline stated in their press release on the case, labour exploitation and violation of the rights of migrant workers in Slovakia is not a new problem.

This NGO receives a large number of calls from Serbian workers coming to work in Slovakia: *"For the most part, these are manufacturing jobs in factories managed by big corporations - the manufacture and assembly of TV parts, the automobile industry and the food industry. Workers are recruited in different*

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> For more information please see [www.facebook.com/spravny.rtv/spravny.rtv/videos/1890694687858011/](https://www.facebook.com/spravny.rtv/spravny.rtv/videos/1890694687858011/)

<sup>14</sup> SME Daily (2017). Polícia vyhostila 62 cudzincov, na Slovensku boli nelegálne. 19 October 2017. Available at <https://domov.sme.sk/c/20676175/policia-po-zasahu-vyhostila-62-cudzincov-na-slovensku-boli-nelegalne.html>

*ways, but basically through advertisements published online, i.e. on Facebook or on various websites posted by individuals or agencies with or without a license for employment brokering from the [Serbian] Ministry of Labour, Employment, Veteran and Social Policy. (...) According to reports from workers who went to Slovakia, they usually work illegally - they do not have either an employment contract or a work permit. They have to work 12-14 hours a day and their wages – if paid at all - are far below what was promised and agreed. In the majority of cases, the workers are paid an amount of money that is sufficient only for their trip back to Serbia. The humiliation and punishment of workers by employers is far from rare.*<sup>15</sup>

ASTRA SOS Hotline contacted various relevant state agencies seeking remedies to the situation of Serbian workers in Slovakia, but the response rarely went beyond imposing fines or ordering non-licensed agencies to get a license. Failure to take specific measures is often justified by the fact that official reports from the workers do not exist and that there is no written evidence of workers' exploitation,<sup>16</sup> which was also corroborated by our research into the situation of Ukrainian labour migrants.

*“If we can get hold of their documents, their labour contracts, we can check it [observance of their labour rights]. But if not, if they don't give them to us, there is no way for us to do that.”* (representative of the labour inspectorate)

The only case in which migrant workers may be perceived as victims is in the case of human trafficking for the purpose of labour exploitation. It is also the only case in which the term 'labour exploitation' is usually used.<sup>17</sup>

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<sup>15</sup> ASTRA SOS Hotline, Press release regarding detention of Serbian workers in the Slovak Republic, 19 October 2017.

<sup>16</sup> Ibid.

<sup>17</sup> Bargerová, Z., Gallová Kriglerová, E., Chudžíková, A., Kadlečíková, J (2014). Severe Forms of Labour Exploitation. Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States. Report commissioned by the EU Agency for Fundamental Rights. Available at <http://fra.europa.eu/en/country-data/2015/country-reports-comparative-report-severe-labour-exploitation-workers-moving>

A 2014 report from the EU Fundamental Rights Agency (FRA)<sup>18</sup> revealed that stakeholders who claimed they had never encountered cases of the labour exploitation of migrant workers actually had encountered them, but it was considered illegal labour instead. They mentioned cases where there were signs of forced labour and labour exploitation, such as extremely long hours being worked for less than minimum wage or with wages withheld, migrants working for accommodation only, provided by the employer at non-residential premises, and lack of work contracts.

There is no precise legal definition of forced labour, labour exploitation, or particularly exploitative conditions in Slovakia. The only legal reference to exploitative working conditions is contained in Article 251a(2) of the Criminal Code.<sup>19</sup> Exploitative working conditions here include work conditions based on discrimination, which are significantly disproportionate when compared to the working conditions of legally employed persons and which affect human health and security and are in conflict with human dignity. The provision is, again, focused on “unlawful employment”. The problem with this definition lies in the distinction between “lawfully” and “unlawfully” employed persons, since exploitation may occur even in cases when migrant workers are employed lawfully (at least formally).<sup>20</sup>

The FRA research also revealed there was a dispute among stakeholders over voluntariness of work. Labour migrants who were not considered victims of human trafficking were considered voluntary. Stakeholders thought such migrants could always do something about their conditions (e.g. quit the job or find a new one), whereas victims of trafficking in human beings were seen as not having that chance. It seems that labour exploitation is not viewed so seriously because migrant workers’ decision to continue working (even in exploitative conditions)

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<sup>18</sup> Ibid.

<sup>19</sup> Act No. 300/2005 Coll. Criminal Code, Article 251a(c). Available at <http://www.zakonypreludi.sk/zz/2005-300>

<sup>20</sup> Bargerová, Z., Gallová Kriglerová, E., Chudžíková, A., Kadlečíková, J (2014). Severe Forms of Labour Exploitation. Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States. Report commissioned by the EU Agency for Fundamental Rights. Available at <http://fra.europa.eu/en/country-data/2015/country-reports-comparative-report-severe-labour-exploitation-workers-moving>

is considered voluntary and a matter of free will.

*“We also have to scrutinise closely whether somebody is truly a victim of labour exploitation or not. For all we know – given [the income difference between the Slovaks and third country nationals] – you may think that a third country national is a victim of labour exploitation, but when you eventually meet him you are likely to find out that he is glad to be able to work here for the money he receives...” (focus group, interviewee representing law enforcement institution)<sup>21</sup>*

An interviewee in the present research saw financial remuneration as a driver, and perceived as voluntary the decision of Ukrainian labour migrants to endure even working conditions that are in conflict with labour legislation:

*„They [the working conditions] are not entirely in line with the law but they [Ukrainians] get more they they would get at home.“ (representative of the labour inspectorate)*

However, as the ILO Casebook of Court Decisions<sup>22</sup> says, employment may be deemed to take place in conditions contrary to human dignity regardless of the consent of the worker.<sup>23</sup> This shows that the concept of negative protection is very strong in Slovakia, which means that the state (and its institutions in charge of protecting labour rights) assumes that it is the victims of labour exploitation who are the ones who should seek remedies to their situation. Such an interpretation of labour rights is problematic due to the vulnerability of migrant workers, which is caused by various factors.<sup>24</sup>

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<sup>21</sup> Ibid, p. 21

<sup>22</sup> International Labour Organisation (2009). Forced Labour and Human Trafficking. Casebook of Court Decisions. Geneva: ILO. Available at [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_106143.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106143.pdf)

<sup>23</sup> Bargerová, Z., Gallová Kriglerová, E., Chudžíková, A., Kadlečíková, J (2014). Severe Forms of Labour Exploitation. Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States. Report commissioned by the EU Agency for Fundamental Rights. Available at <http://fra.europa.eu/en/country-data/2015/country-reports-comparative-report-severe-labour-exploitation-workers-moving>

<sup>24</sup> Balch, A. (2012). Regulation and enforcement to tackle forced labour in the UK: a systematic response? York: Joseph Rowntree Foundation; and Berr (2008). Vulnerable Worker enforcement forum: final report and government conclusions. London: Department for Business, Enterprise and Regulatory Reform cited in Blažek, M. et al. (2013). Skúsenosti migrantov a migrantiek s násilím. Bratislava: IOM.

Media attention was also recently attracted by a final judgement of the Slovak Supreme Court<sup>25</sup> acquitting a group which recruited Ukrainians to work in Slovakia in 2007-2009. The groups had initially been accused of trafficking in human beings. At least 340 Ukrainian workers had worked for less than minimum wage, mainly in the construction sector, transportation, warehouses or bakeries in Žilina and Bratislava, their working hours ranging from 300 to 400 hours a month. All the workers affected by this case were deported from Slovakia for unauthorized residence almost immediately after their identification.

According to a previous judgment by a Specialized Criminal Court (2014), in this case allegations of plotting a criminal enterprise, organizing forced labour or money laundering activities were not proved beyond doubt. *“Workers were informed in advance of the length of their working time, their wages, or even portions of their wages that were to be deducted. Moreover, they agreed to the terms of employment, and the vast majority of them stated in their statements they wanted to work as many hours as possible for better earnings. None of those interviewed said they could not move freely in the workplace or outside, or that their passports had been withheld, and even some of them left when they were dissatisfied with the conditions.”*<sup>26</sup>

## Factors in the vulnerability of migrant workers in Slovakia

Migration studies (e.g. ILO, 2004<sup>27</sup>) define certain labour migrants as particularly vulnerable to exploitation – mainly due to the socio-economic situation of migrant workers, who often hail from countries plagued by poverty and therefore are willing to work under severely exploitative labour conditions. A generally low education status and poor command of the local language are direct causes of migrant workers’ poor legal awareness and their inability to defend

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<sup>25</sup> Aktuality (2017). Kauzu zamestnávania Ukrajincov uzavreli ako prevádzacstvo 16 June 2017. Available at: [www.aktuality.sk/clanok/496738/kauzu-zamestnavania-ukrajincov-uzavreli-ako-prevadzacstvo/](http://www.aktuality.sk/clanok/496738/kauzu-zamestnavania-ukrajincov-uzavreli-ako-prevadzacstvo/)

<sup>26</sup> Judgment of the Specialized Criminal Court in Banska Bystrica issued on March 11, 2014.

<sup>27</sup> International Labour Organisation (2004). Towards a fair deal for migrant workers in the global economy. Geneva: ILO

their rights in the workplace.<sup>28</sup> However, it is not only labour migrants with low educational levels who are victims of labour rights violations. For instance, labour migrants from Ukraine often have completed higher education, but still are deemed the most vulnerable migrant group in Slovakia.<sup>29</sup>

Labour migrants from third countries are generally vulnerable due to their uncertain legal status - if they lose their job, they must find another in 60 days,<sup>30</sup> otherwise their temporary residence permit becomes invalid and they are obliged to leave Slovakia.

In practice, this “protection period” is too short, because any new employer who wishes to employ a third country national must advertise the vacancy with the local labour office for at least 30 days (15 days in case of seasonal work)<sup>31</sup> otherwise the change in employer will not be approved by the Foreign Police. Basically, only a very few days remain to actually find a new job.

But the key legislative risk factor is the absence of provisions classifying labour migrants whose labour rights have been violated as victims of crime, not only as witnesses or perpetrators.<sup>32</sup> As mentioned above, Slovak legislation contains no definition of forced labour or labour exploitation, and thus the very concept of “victimhood” is lacking in this regard. Consequently, employers exploiting labour migrants are literally given no criminal sanctions for doing so. Only fines for illegal employment can be imposed, while labour migrants whose work is found to be illegal (undocumented) face deportation and a ban on entry. As sug-

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<sup>28</sup> Blažek, M. et al. (2013). *Skúsenosti migrantov a migrantiek s násilím*. Bratislava: IOM; and Bargerová, Z., Gallová Kriglerová, E., Chudžíková, A., Kadlečíková, J (2014). *Severe Forms of Labour Exploitation. Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States*. Report commissioned by the EU Agency for Fundamental Rights. Available at <http://fra.europa.eu/en/country-data/2015/country-reports-comparative-report-severe-labour-exploitation-workers-moving>

<sup>29</sup> Blažek, M. et al. (2013). *Skúsenosti migrantov a migrantiek s násilím*. Bratislava: IOM

<sup>30</sup> Recent legislation change in Article 36(3)(a) of Act on Residence of Foreigners, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2011/404/20170901.html](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2011/404/20170901.html)

<sup>31</sup> Ibid.

<sup>32</sup> Blažek, M. et al. (2013). *Skúsenosti migrantov a migrantiek s násilím*. Bratislava: IOM

gested below, employers often prefer to pay the fines - they still gain more from employing undocumented workers (due to low wages and the number of hours such workers put in) than they lose by paying an occasional fine.

## Ukrainians in Slovakia

### Statistical data and general overview

Ukrainians in Slovakia consist of two main communities – an autochthonous national minority and Ukrainian immigrants, including Ukrainians resettled from the Chernobyl area who are now also naturalized. In the 2011 census approximately 7000 Slovak citizens declared Ukrainian nationality. 4035 Ukrainians were granted Slovak citizenship between 1993 and 2014.

Up to 2014 the Czech community was the most numerous, but since 2015 Ukrainians have gained the lead. A significant role in the faster rate of growth of this community was played not only by the “Ukrainian crisis” in 2013 but also the termination of the Slovak-Ukrainian bilateral Treaty on mutual employment in 2008. Pursuant to this treaty (in force between 1998-2008) the number of Ukrainians who could be employed in Slovakia was very small. It was limited to a maximum of 200 persons per year, while a maximum of 300 Ukrainians could be employed as seasonal workers. If the job was related to executing business contracts between countries and their companies, the limit was 1,800 employees. However, the restriction was not in line with the needs of the Slovak labour market and could have resulted in higher numbers of Ukrainians living in Slovakia without a residence permit (their vulnerability could then also result in increased labour exploitation).

Since June 2017 a visa-free regime allows Ukrainians who have a biometric passport to stay and travel within the Schengen area for 90 days during a 180-day period, but the impact of this measure has not yet been reflected in practice.

The number of Ukrainian migrants is increasing continuously, as summarized in Table 2. However, in comparison with other EU countries, the numbers of Ukrainians in Slovakia are still very low. In 2015, 19.2% (499,992 first residence

permits) of newly-arriving immigrants to EU were citizens of Ukraine.<sup>33</sup> In Poland alone, 430,081 new residence permits were granted to Ukrainians in 2015.

*Table 2. Number of Ukrainian nationals with valid residence (as of 31 December)*

Year	2013	2014	2015	2016	2017*
Temporary residence	4,021	4,955	7,297	8,018	10,023
Permanent residence	2,838	3,040	3,365	3,459	3,758
Tolerated residence	39	38	44	40	46
Total number	6,898	8,033	10,706	11,517	13,827 <sup>34</sup>

\*As of 30 June 2017. Source:  
Bureau of Border and Alien Police

## Employment statistics

Work is the dominant motivation of Ukrainian migrants throughout Europe, including in Slovakia, and this can be seen in the rising numbers of residence permits for the purpose of employment or business issued to Ukrainian nationals (see Table 3). A remarkable increase in residence permits granted to “Slovaks living abroad” (with the right to work) could also be observed from 2013 (despite the legislation change and tightening of this status in 2012).

<sup>33</sup> Residence permits statistics, Eurostat (2016). Available at: <http://ec.europa.eu/eurostat/documents/2995521/7715617/3-27102016-BP-EN.pdf/ca706fa0-14fc-4b71-a2e2-46b2b933f8f8>

<sup>34</sup> In 2007, 10 years ago, only 3,833 Ukrainians were granted residence in Slovakia.

**Table 3. Number of 3 main types of temporary residence permits issued to Ukrainians (as of 31 December)**

	2013	2014	2015	2016	2017
Temporary residence for the purpose of					
business	699	662	1,275	1,408	1,510
employment	645	399	644	923	1,041
Slovak living abroad	1,771	1,912	1,852	1,953	N/A

\*As of August 2017

Source: Bureau of Border and Alien Police

The number of valid work permits and information cards<sup>35</sup> issued to Ukrainian nationals has grown almost threefold since 2014.

**Table 4. Number of valid work permits and information cards issued to Ukrainian nationals**

	2014	2015	2016	2017*
Valid work permits	634	921	1388	1845
Valid information cards	348	541	869	1477

\*As of August 2017

Source: Central Office of Labour, Social Affairs and Family

According to official data gathered by Labour Offices, Ukrainian nationals were mostly employed through work permits in the transportation sector (677 work permits as of August 2017) and health care (404 residence permits as of August 2017). Information cards for Ukrainian nationals were most often associated with small businesses (161 information cards as of August 2017), building construction (107 information cards as of August 2017), restaurants (62 informa-

<sup>35</sup> An information card is a mechanism by which employers notify their local labour office that they are hiring a foreigner who does not need a work permit.

tion cards as of August 2017) and health care (105 information cards as of August 2017).<sup>36</sup>

Ukrainian workers in low qualified jobs are usually 30-50 years old with high school education, and their motivation for coming is to improve their socio-economic situation, according to our interviewees. Earnings in Slovakia, even if the wages are lower in the case of Ukrainian workers, are still greater than in Ukraine. This motivates workers to endure exploitative conditions (see below). There is also a new trend emerging in Slovakia of young IT specialists from Ukraine coming to work for (not only) international corporations. They represent a generation with good language skills and social capital, and although they sometimes need assistance with the bureaucracy relating to taxes, social and health insurance they are usually quite independent, as our interviewees revealed.

## Coming to Slovakia<sup>37</sup>

### Individual decisions to migrate

Generally, most Ukrainians come from the western regions of Ukraine and already understand Slovak quite well upon their arrival. Many of them come on their own, with some help from their friends and relatives. Several respondents stated that their decision to migrate was not influenced by any third persons except for their families. Instead, the choice to move was voluntary, informed and free.

### Services of intermediaries

Even though (as mentioned above) Ukrainian migrants decide to come to Slovakia voluntarily, many of them use the services of informal intermediaries.<sup>38</sup>

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<sup>36</sup> Information provided by the Central Office of Labour, Social Affairs and Family upon request.

<sup>37</sup> The following sections draw mainly on the present research.

<sup>38</sup> Blažek, M. et al. (2013). *Skúsenosti migrantov a migrantiek s násilím*. Bratislava: IOM.

According to one of our interviewees, the situation changed around a year ago when the need for foreign labour grew significantly, and employers started to look for workers outside the European Union. Ukraine was a natural choice due to its proximity and language similarity. Companies from various sectors, but often from the construction field or cleaning companies, started searching for options to hire groups of Ukrainians. On the other hand, companies able to recruit Ukrainian workers also emerged. This growth of informal services might be due to the lack of official policy responses that would have created a framework and viable ways for Ukrainians to come to Slovakia.

Our interviewee no. 1 had experiences with companies that operated legally; for instance a Slovak construction company would hire Ukrainian builders, arrange their transportation and even go to the border to pick them up and see to it that everything was all right with their entry into the country.

However, there are also other ways that intermediaries work, although the nature of intermediaries' work remains rather unclear. Some of our interviewees suggested these intermediaries were Ukrainian individuals with ties to Slovak employers, while some indicated they were companies who brought them to Slovakia and their relationship continued even after their "client" had been relocated and started working.

We could not identify all the possible forms of hiring or mechanisms with which intermediaries operate, nor could we explore in our interviews how chain companies operate. However, there are many different forms of operation that take place at the same time.

*"Well, I was given a phone number so I called him. He would give me a job and would do the paperwork. I had to pay 200 euros into a bank account. That was included in the price. And the rest that he paid out of his own pocket, some 1200 euros or so, we had to pay in installments later when we got here." (interviewee no. 3)*

Intermediaries often also operate as the employers of Ukrainian workers in Slovakia, i.e. they employ them (even though it is not always official employment)

and lease their work to other companies with whom the intermediary has a contract. This model applies to the cleaning sector, for instance.

However, Ukrainian workers do not have contracts with the intermediary. They receive cash payments and the intermediary keeps a significant proportion of their wages. We encountered cases when the salary of the cleaners was 4.50 euros, but they received 2 euros an hour and the intermediary kept 2.50 euros out of every person hour. The Ukrainian workers thus received less than half of what was actually paid for their work.

Ukrainians often come as organized groups to a specific workplace that is agreed beforehand. The real working conditions are then often different from what was agreed. However, their need for a job and income is often so strong they are willing to endure even exploitative working conditions (men in particular) and accept a job far below their qualifications.<sup>39</sup>

## Use of Polish visas in the past

Our research revealed a few cases when Ukrainian workers came with Polish visas and started working as cleaners or other low qualified jobs. Although the mechanism that the intermediaries use (and how they persuade workers to apply for Polish visas) is not clear from the interviews and our interviewees could not explain the process, we are of the opinion that Polish visas sometimes represented the only way of entering the Schengen area lawfully,<sup>40</sup> given that obtaining a Slovak temporary residence for low-qualified migrants was/is in practice very difficult.

Such action is, however, considered an abuse of the right or a serious violation of the law if the person starts working and is always punished if uncovered by labour inspection and the police:

*“I was trying to explain to them [cleaners who were looking to legalize their*

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<sup>39</sup> Ibid.

<sup>40</sup> European Union approved visa-free travel for Ukrainian citizens with effect from June 2017.

*residence in Slovakia] they could not work if they only had D visas, the Polish ones. She only had a tourist visa. (...) One of them came through Poland, she got the national D visa as an employee in Poland. They were trying to put this right. They were scared something could happen to them, of course, a ban on entry, those are serious things.” (interviewee No. 1)*

Migrant workers’ fears are caused by the insecurity of their status (see below).

In comparison to other neighbouring countries a study on Ukrainian migration in European Union indicated that Poland was a special case. It has established 13 visa centres to improve “visa services”. Ukrainians thus do not have to travel too far to apply for visas, and have easier access to application facilities. Obtaining a visa for Poland is facilitated by the Polish state. A representative of the Polish embassy in Kyiv stated unambiguously that they ‘are interested in [...] migrants from Ukraine, [...] migrants from Ukraine are really needed.’<sup>41</sup> With the introduction of the visa free regime, however, this practice ended in June 2017.

## Ukrainian workers’ experience of labour rights violations

Given their strong motivation to earn as much money as possible, many labour migrants are “willing” to accept even undignified working and living conditions. This was also corroborated by several interviewees in our research when they expressed their satisfaction with their wages. It also corresponds to the findings of Thörnqvist and Bernhardsson,<sup>42</sup> who argue that the concept of fairness is subjective. The research into the experiences of Polish construction workers posted in Sweden found that Polish workers would often accept that Swedish workers were better paid since they had to cope with Sweden’s higher living costs.

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<sup>41</sup> Vollmer, B. A. (2015). *Ukrainian Migration and the European Union: Dynamics, Subjectivity, and Politics*. London: Palgrave Macmillan.

<sup>42</sup> Thörnqvist, Ch., Bernhardsson, S. (2015). Their own stories – how Polish construction workers posted to Sweden experience their job situation, or resistance versus life projects. *Transfer*, 21(1), 23-36.

This was due to the temporary nature of the Polish workers' stay in Sweden and their intention to only earn as much money as was needed to complete a life project back home (i.e. build a house, raise a family etc.)<sup>43</sup>. However, this does not change the fact that objectively such conditions are unjust, even if workers themselves are "willing" to temporarily endure them. Their earnings were relatively good only because they could work extremely long hours. The number of hours worked thus compensated for the low hourly wages (cca. 2 euros/hour in the capital).

IOM research revealed that almost 24 % of Ukrainian workers in Slovakia experienced forced labour and almost 44 % were at high risk of being exploited at work. Up to 20% received lower wages than agreed or did not receive any wages for more than two months, and 12.5 % experienced being "detained" at the workplace. Further experiences included being indebted to the employer, being threatened by the employer, receiving threats that they would be reported to the authorities and having their passport withheld. Labour migrants from Ukraine also reported the following experiences of labour rights violations:

- Not signing a Slovak version of the labour contract or its annexes (30.8% of men and 15.2 % of women)
- Not understanding the Slovak version of the labour contract or its annexes (29.2% of men and 24.2% of women)
- Being asked to perform tasks in conflict with their labour contract (44.4% of men and 13.9 % of women)
- Wages below the legal minimum wage (3.7% of men and 2.9 % of women)
- Working more than 48 hours a week on average (82.1% of men and 47.2% of women)
- Injuries in the workplace (33.3% of men and 7.9 % of women)
- Not being allowed to have a day off or a sick day (37.0% of men and 16.2 % of women)<sup>44</sup>

Migrant workers from Ukraine are often employed in flexible manual labour

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

sectors with low wages, such as construction (men), storage and restaurants. According to our research, Ukrainians (particularly women) are also often employed in the cleaning business, which is prone to labour rights violations. In the above-mentioned professions bogus employment may play a major role, which explains why there is such a big difference between the official data provided by Labour Offices and our research findings.

## Role of intermediaries in employing Ukrainians

The FRA report revealed that the various recruitment and temp agencies play a rather negative role in the process of employing migrant workers as they reduce employers' immediate feeling of responsibility for their employees, divide legal capacity in a non-transparent way between them and the employers and make it very difficult for the blame to be pinned on the agencies for irregular or exploitative labour conditions.<sup>45</sup> Intermediaries are able to secure the safe arrival of migrant workers in terms of the legality of their entrance and status. However, they do not guarantee that migrant workers' labour rights will be observed. As the IVO research revealed, migrant workers coming to Slovakia with the assistance of recruitment agencies complained about low wages and having to work too much for very little money.<sup>46</sup>

The extent to which recruitment agencies are active in labour migration from Ukraine to Slovakia is rather unclear. Half of our Ukrainian interviewees used intermediary services of some sort prior to coming to Slovakia. The interviewees, however, were quite reluctant to elaborate on this issue. It might have been the case that their relationship with the

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<sup>45</sup> Bargerová, Z., Gallová Kriglerová, E., Chudžíková, A., Kadlečíková, J (2014). Severe Forms of Labour Exploitation. Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States. Report commissioned by the EU Agency for Fundamental Rights. Available at <http://fra.europa.eu/en/country-data/2015/country-reports-comparative-report-severe-labour-exploitation-workers-moving>

<sup>46</sup> Filadelfiová, J., Gyárfášová, O., Sekulová, M., Hlinčíková, M. (2011). Migranti na slovenskom trhu práce: problémy a perspektívy. Ekonomické aspekty migrácie a integrácie migrantov. Bratislava: Inštitút pre verejné otázky.

intermediary was quite informal and had no standard rules, which would make it difficult to describe. Another option is that intermediaries do not do this job officially, and interviewees do not feel comfortable speaking out.

As mentioned above, it seems that for some Ukrainian workers, the recruitment agency/intermediary was then also their employer in Slovakia. Things then worked as if they were employed by a temporary employment agency, even though it is difficult to say whether the said intermediary was registered as a temp agency (most likely not). Migrant workers were often leased to other companies. For instance, they were sent to work as cleaners in hotels or in automotive factories. The intermediary/agency then kept a proportion of their hourly wages. Some of the interviewees described clearly irregular employment:

*I: “So ..he was your employer? Did he lease you out to other companies? You had a business licence and he worked with you in some way.”*

*R: “I don’t even know how it was. I just know...he paid our rent, and... then he arranged for us to pay everything ourselves. But how they did it so that they didn’t have to pay taxes and so on... It was that which got them caught.” (interviewee No. 3)*

Temp agencies provide another way of recruiting labour migrants for Slovak employers, and it seems that this area of business is growing.

## Legality of status

The legal status of Ukrainians working in low skilled professions was often unclear. The interviewees themselves could not (or were not willing to) to reveal details of their situations. Allegedly, some of them came to Slovakia on Polish visas which did not allow them to work. While working they were paid in cash. However, they were strongly motivated to put their residence status in order, which is why they sought assistance of a private

company specializing in assisting employers with employing foreign nationals.

The difficulties arising in such cases, however, involve the unwillingness of the employers to employ migrant workers properly, i.e. with a work contract, which would allow them to apply for a temporary residence permit for the purpose of employment. This would, however, involve a lot of bureaucracy and the employer would also be obliged to pay the employee's social security insurance.

According to some interviewees, “bogus employment” may play a significant role in hiring Ukrainian workers. Employers prefer it if the worker obtains a trade licence, but getting a temporary residence permit for the purpose of business is more difficult and not the correct approach. Such de facto “employees” are hired to perform jobs that would otherwise be done within a dependent employment relationship. Fewer labour rights are thus guaranteed. This practice is not in line with the Act on Residence of Foreigners and it can be understood as the violation of the law, with a direct impact on the involved third country national. It is hard to assess which sectors of the economy are most affected by this practice, but according to interviewees it affects the services sector (cleaning services) and construction work.

## Remuneration

According to our research, Ukrainian migrant workers in low-qualified jobs often experience various violations of their labour rights in relation to the payment of wages, such as salary cuts or delays. This is particularly so if they are employed by an intermediary who leases their work to other companies. Often a “service” contract is concluded between the intermediary and the end company whereby an intermediary provides accommodation, transports workers to Slovakia, transports them to work each day, interprets the workplace instructions for them and provides

basic assistance to workers. Wages in the form of remuneration for the services provided are sent to the intermediary, who then pays the salaries of the workers.

Based on our interviews it seems that Ukrainian workers often receive less than 50% of what is actually paid for their work by the hosting company.

*“He had a contract with the company that we worked for. They sent him money and then he gave us 2 euros. I don’t know how much they sent him. We didn’t know how much he had on us. But then the Foreign Police came, and our wages rose immediately. The company where we worked took us in and gave us 4.50 an hour straight away.” (interviewee No. 3)*

The Ukrainian workers interviewed also indicated they were sometimes afraid they would not get their wages at all. This actually happened in several cases, for instance when a worker wanted to quit his job. The employer then did not pay him his final monthly wages, arguing that he did not do his job properly and threatening him with expulsion from Slovakia. Hourly wages of 2 euros were sometimes promised in advance by the intermediaries so that Ukrainian migrant workers knew what they would earn. Some of them learned years later that the employer (intermediary) did not pay their social security insurance, even though it had been agreed and the worker had given him money to cover it.

## Long hours

Long working long hours were often mentioned by Ukrainian workers as being common practice. Some of the cleaners that took part in the research worked 12-15 hours a day. This applied mainly to those “employed“ by the intermediary and leased to other companies. However, some of them seemed satisfied with this arrangement since it allowed them to earn more, even with low hourly wages. Whatever the reason, such a procedure is contrary to the Labour Code.

*“Those cleaners worked more than eight hours a day, maybe 20. Well, some of them, I know that some of them did. They are being used. But Ukrainians don’t mind longer hours that much. What they mind is the feeling of insecurity that something might happen, they might get in trouble. They would like to solve it by getting a business licence.” (interviewee No. 1)*

One of the interviewees who worked as a cleaner revealed that she had worked 15-hour days even when she was pregnant. Her boss made it difficult for her to even take a day off to see a doctor. When she complained her boss threatened to call the criminal police, who would *“send her home.”* (interviewee No. 3).

## Seeking support

Very few (if any) migrant workers whose labour rights are violated report their situation to the authorities, e.g. police or labour inspectorates. One of the reasons is that they often lack basic knowledge of the country’s life and institutions and have no idea who they can turn to for help.

*“Perhaps they don’t even know what to do. It would certainly [help to] raise their awareness of what they can do about [their situation] and who they can turn to. If they are our clients, my colleagues always strive to help them. But if they are people without international [legal] protection and they are just illegal foreigners, or even legal ones, I believe they often don’t know what to do.” (interviewee representing law enforcement<sup>47</sup>)*

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<sup>47</sup> Bargerová, Z., Gallová Kriglerová, E., Chudžíková, A., Kadlečíková, J (2014). Severe Forms of Labour Exploitation. Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States. Report commissioned by the EU Agency for Fundamental Rights. Available at <http://fra.europa.eu/en/country-data/2015/country-reports-comparative-report-severe-labour-exploitation-workers-moving>

Migrant workers seem to be reluctant to report labour rights violations and/or exploitation to law enforcement bodies, but this is a very natural response to the insecurity they face from the moment of their arrival in Slovakia. Migrants' lack of trust in the police, vulnerability and fear of expulsion is a significant factor. Most migrant workers do not know whether they can be recognized as victims of human trafficking or labour exploitation and in fact, such tolerated residence is very rarely granted in Slovakia. Moreover, many migrant workers who are identified as undeclared workers are deported from the Schengen area for a period of 1 to 5 years.<sup>48</sup>

Our research indicated that Ukrainian workers, particularly those in low qualified jobs, “do not want to complain” as long as they get their hours paid. Uncertainty about the legality of their status may prevent them from contacting the authorities. They would more likely contact a private company providing assistance with legalization of their status than a state authority.

*“They come to private companies like ours for information. Because they are afraid of the state institutions. They can never be sure that the state institution won’t send them home or they will find out they were doing something wrong.”* (interviewee No. 1)

Most interviewees did not know of the existence of the labour inspectorate, but would not contact it even if their rights at work had been severely violated. They reasoned that they did not trust state institutions as such. Even those who knew about labour inspectorates and labour offices chose not to contact them, even in cases when their rights were clearly violated.

***R: “I called one gentleman whom I knew from the time when the police caught our bosses, and I told him what my boss told me. And he said, you***

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<sup>48</sup> In 2011 a group of 29 Ukrainian women were employed through a subcontractor by a hospital in the centre of Bratislava. Because their work was undeclared, all of them were immediately deported and banned from entering the Schengen area for 5 years. Media article (2012) available at: [www.noviny.sk/krimi/105814-takmer-30-ukrajiniiek-upratovalo-na-kramaroch-nacierno](http://www.noviny.sk/krimi/105814-takmer-30-ukrajiniiek-upratovalo-na-kramaroch-nacierno)

*know what, go to the labour office and tell them they fired you when you were pregnant. ' But, you know, I didn't want to have to stress over this any more, because... "*

*I: "But the labour inspectorate ought to deal with this sort of thing. Did you think about contacting someone like that?"*

*R: "Well, I would have at that time, but it was right before Christmas, I just wanted to go home. They might want something from me,...and you know, the stress." (interviewee No. 3)*

The labour inspectorate itself would welcome if more migrant workers contacted it in cases where their labour rights have been violated, according to the interview. Currently, the inspectorate cannot investigate labour rights violations on its own initiative; the workers themselves need to provide them information and due documentation (e.g. work contracts if they exist). However, we are of the opinion that the capacity of the relevant state institutions to provide efficient help to individuals under the current circumstances is very limited:

*"I cannot prove that someone standing there is actually doing the job or how he got there. (...) And then documentation is hard to prove and communication with these people is difficult. (...) They should be getting at least minimum wage. But the employer either says they work less hours, even if they work officially. Or he pays cash. Our labour inspection law is limited by the provision that we act on the basis of documents submitted by the employer. So, if the employer submits a document saying that an employee works one hour a day, it doesn't make sense sometimes, it's illogical, but I can't prove he works more." (interviewee representing the labour inspectorate)*

As mentioned above, the current abilities of labour inspectorates to investigate labour rights violations are limited and, as the quote shows, this is because documents provided by the employers are the only source

of information they have. Without migrant workers coming forward and cooperating with labour inspectorates there is no other way to prove that labour contracts are often bogus. However, there is no system of protecting those migrant workers that might actually be willing to come forward and speak out against the employers who exploited them. If by doing so they would only face deportation and a ban on entry, then exploited migrant workers have actually nothing to gain from cooperating with the labour inspectorates.

The employer also has the option of paying a fine instead of submitting the documentation. Sometimes it is better for them to pay a fine of some 1000 euros than to deal with bureaucracy and potentially face worse repercussions. Having migrant workers themselves contacting the labour inspectorate would allow the labour inspectors access to more information about the nature of the work performed, which would enable them to carry out a thorough investigation of the situation. As indicated by an interviewee representing a labour inspectorate, Ukrainian (and other) migrant workers most likely do not have enough information on where to seek help. However, it seems that migrant workers are on their own if they wish to protect their labour rights (see more on negative protection above).

Despite the size of the community, Ukrainian migrants in Slovakia are not organized in formal communities or civic associations. Problematic labour situations are usually dealt with through personal networks or networks of expatriates (with the use of social media, for instance) or intermediaries.

## Recommendations

### Legislation and practice

The concept of labour exploitation should be defined in legislation, along with measures to protect victims, and applied in practice. Their rights

as victims and the extent of available support should also be clearly defined. This should apply to those working both legally and illegally – the critical indicator should be the exploitative nature of their work. In addition, exploitative working conditions should also be defined so as to avoid any confusion over (in)voluntariness. It is likely that such measures may encourage victims of labour exploitation to come forward and report the malpractice. Currently, there are no low-threshold forms of support provided to migrant workers whose labour rights have been violated or who have been exploited at work. However, this needs to go hand in hand with greater awareness among migrant workers of support resources, i.e. which organisations can provide them with support and under what conditions. According to the labour inspectorate’s representative, one reason why migrant workers do not contact them is the lack of information. One way of spreading information would be greater cooperation between migrant communities (e.g. cultural mediators) and public authorities. This might also increase trust of migrant workers in public authorities, since lack of trust is one of the factors preventing them from reporting cases of labour rights violations.

## Inspections

As we were able to observe during our research and from our previous work in Slovakia, state institutions and the police pay insufficient attention to the protection of victims. The linguistic skills of inspectors operating in the field are not sufficient, nor are instruments for identifying the victims of exploitation and assessing the situation. Inspections carried out by labour inspectorates usually cause panic among migrant workers at the workplace, and it is hard to imagine inspectors being able to provide information to workers during the inspection regarding workers’ right to file a complaint or their right to make a claim for outstanding wages.

Any information on rights and obligations provided to the migrant workers should be in writing, in a language they understand at an appropriate

time, when these instructions can be understood. A practical guide on how to proceed in order to claim compensation or file a complaint may be included. Cooperation and coordination between the police units fighting irregular migration and judicial/or police authorities should be enhanced, so that officers of first contact understand the responsibility to protect “undocumented migrants as possible victims” of labour exploitation and cooperate with other relevant authorities.

## Access to justice

Tolerated residence is rarely granted to undocumented migrants in Slovakia, either as victims of trafficking or in the case of labour exploitation, and most possible victims are immediately deported from Slovakia. There is a right to be remunerated from abroad, but in practice, according to our information, undocumented migrants very rarely or never demand back payment of salaries or taxes. Labour inspectorates cooperate with the Foreign Police Departments in joint inspections, and according to our findings this means that during detection of undocumented work less space remains for the detection of “forced labour” or rights of employees and priority is given to the “unlawful work” and “unlawful residence of a worker”.

Evaluation of soft instruments and soft law to improve the application practice is needed. Formally, legal mechanisms exist, but labour inspectorates, special police units and judicial authorities need to learn more about various aspects of labour exploitation and forced labour. We therefore recommend the organisation of training sessions for field officers of first contact, and the enhancement of cooperation between various state institutions in this field.

During inspections of workplaces with suspected illegal workers, the human rights of migrant workers should be taken into account, and the first priority should be to detect and identify possible victims of labour exploitation (or trafficking).

## Back payment of salaries

If a temp agency or business company goes bankrupt in order to avoid back payments or responsibility, the State should be liable for the claims of the damaged parties. We recommend introduction of a mechanism whereby if costs are not recoverable by an offender, the State should endeavour to provide financial compensation to the victims of labour exploitation.

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Webová stránka projektu STRONGLAB:

[www.migrationonline.cz/stronglab](http://www.migrationonline.cz/stronglab)