

**LABCIT
COUNTRY
REPORT**

SUMMARY OF CASES

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**SUBCONTRACTING
AND EU MOBILE WORKERS
IN THE CZECH REPUBLIC:**

**EXPLOITATION, LIABILITY,
AND INSTITUTIONAL GAPS**

“Testing EU Citizenship as Labour Citizenship: From Cases of Labour Rights Violations to a Strengthened Labour-Rights Regime” (LABCIT) project is co-funded by the Europe for Citizens Programme of the European Union. We start from the position that a decent wage and working conditions are necessary for promoting full citizenship and the democratic participation of all European Union citizens. As such, the project aims to “test” the ability of European citizenship to be extended to work, favouring the respect of social and labor rights which form labour citizenship. We perform the testing through analyzing “extreme” cases of labour violations and exploitation in several EU countries, aiming to understand which existing and new instruments can be used for strengthening the protection of workers’ labour rights.

As part of LABCIT’s activities, the Multicultural Center Prague organised two hearings with migrant workers, labour rights experts, and local stakeholders. This Country Report investigates migrant labour exploitation in subcontracting chains.

„We signed the contract in a car park, by the car, in Czech. We didn't understand it, but we were not in a position to be able to refuse to sign it, since we had already carried out the work.”

Romanian worker in the car industry

Short overview

Since the Czech Republic's entry into the global market after 1989, labour migration has been the most important type of migration flow into the country, with several fluctuations depending on the economic and political conditions. From the first half of the 1990s, the globalised labour market in the Czech Republic has included labour migrants from mostly Central and Eastern Europe and to a lesser degree from Asia. The eventual entry of the Czech Republic into the European Union in 2004 set the stage for the neoliberal turn in migration policies from 2005 onward (Kušniráková and Čížinský 2011). This contributed to further increasing the numbers of migrants at all skill levels but primarily for low-skilled jobs.

Importantly, in the years following the 2004 EU enlargement, the Czech economy with its comparatively low wages could not adequately compete for the workforce from new Central and Eastern European member states who found it more attractive to work in low-skilled jobs in western, northern and some southern EU states. Therefore, unlike in other more affluent EU countries of immigration, employers and intermediaries (cf. Čermáková and Nekorjak 2009) became active in recruiting workers from non-EU countries, including Ukraine and Vietnam.

The rise in labour migration was interrupted by the global financial and economic crisis starting in autumn of 2008 as companies let go of temporary agency workers and other auxiliary migrant workers. Significantly, the restrictions placed on immigration policies vis-à-vis non-EU workers implemented from 2008 onwards led to a partial replacement of non-EU by EU workers (Čaněk 2014). Intermediaries continue to play a key role in recruiting especially EU workers from Slovakia, Poland, Romania or Bulgaria, including organising their travel, accommodation or employment in various economic sectors as is the situation in the examined cases below.

At the end 2015 there was a total of 467 562 migrants registered in the Czech Republic, of which 261 553 had permanent residency. This accounts to less than 5 per cent of the

total population of the country. The largest migrant groups come from Ukraine (105 009), followed by Slovakia (101 589), Vietnam (56 958), Russia (34 972), Germany (20 464) and Poland (19 840) in that order. The current number of registered Romanian migrants is 6 428 persons (Český statistický úřad 2015a).

Many of the EU citizens do not register for residence in the Czech Republic, which explains their higher numbers in the labour statistics – 141 858 from Slovakia, 21 760 from Poland, 19 543 from Romania and 16 588 from Bulgaria in mid-2015 (Ministerstvo práce a sociálních věcí 2015). The total estimated numbers of registered workers in the Labour Offices were 224 475 (EU citizens) and 74 818 (non-EU citizens) as of mid-2015. Additionally, a total of 83 569 of migrants were self-employed at the end of 2014 (Český statistický úřad 2015b).

Most of migrant workers have been employed in manufacturing, construction, and services where they represent about 6, 13 and 5 per cent of the workforce respectively in these three sectors (Trlifajová 2014). Research and experience of non-governmental organisations assisting migrant workers confirm frequent incidents of high work intensity, long working hours, unsafe working environments, unpaid wages or other kinds of labour rights violations in the secondary labour market (Dobiášová and Hnilicová 2010; Leontiyeva and Tollarová 2011). Most recently there was a rising concern with the labour rights violations of EU workers in Czech Republic (Čaněk 2016, Jelínková and Trlifajová 2013, Krebs et al. 2014).

Subcontracting in the Czech Republic has been an important form of employment for migrant workers in low-skilled jobs, where labour rights violations have been common. The country report thus focuses on different types of indirect work through subcontracting instead of sector-specific aspects of migrant workers' labour. It provides cases of labour rights violations from the automobile, electronics and floral industries. The cases were collected through a number of public hearings with migrant workers as well as interviews and meetings with local stakeholders (NGOs, Labour Inspection, Ministry of Labour, the Ombudsman).

CASE 1

ROMANIAN WELDERS IN A CHAIN OF COMPANIES

From February to May 2015, eight Romanian citizens worked in northern Moravia in the manufacturing industry. They were hired by a Ukrainian intermediary to work as qualified welders in a factory producing steel components for the automotive industry. Their employer was at the lowest level of a subcontracting chain. The factory paid another

sub-contractor for the products made, who in turn hired another company for which the Romanian welders worked.

The workers found the job advertisement on a website in Romania. The advertisement promised a monthly wage of 1 200 EUR, as well as food and accommodation free of charge. At first, there was a meeting with an intermediary in Bucharest, who provided the workers with the contact details of other intermediaries in the Czech Republic. Some of the workers paid for their journey to the Czech Republic from their own expenses, others had the costs deducted from their pay later on. After they had been picked up at the railway station they were given one free day, and the next day were taken to their workplace. Once there, they orally negotiated the conditions of work with their employer.

All the workers confirmed serious cases of abuse and violation of their labour rights. They were not given a contract until the company was informed of a forthcoming control by labour inspectors. They then received only an Agreement to Perform Work (DPP) under which they are legally permitted to work for only 300 hours per year. They carried out dangerous tasks such as of welding, cutting, and grinding or filing metal without having health and social insurance. Not only did they not receive the wages originally promised, but there was also no free food or accommodation. In addition, their employer tried to avoid paying a large part of the wages owed. The working hours were long, surpassing 18 hours a day sometimes, and the remuneration system was deliberately left ambiguous, and so the workers had no way of proving the number of hours worked nor the number of pieces produced. One worker explained the conditions as follows:

“When we arrived at the factory, nobody told us what the usual production rate was. I think that was intentional. So we worked as hard as we could. E.g. there was one product, 2000 pieces of which were to be produced in 12 hours. And we produced about 4000 pieces. Thus, by exceeding the standards, it was shown that the expectations could be higher, and the factory began to raise them. This, in turn, was a nuisance to the regular staff. For instance, when one of us had reached the standard, the foreman in the factory said: ‘Do not work anymore, you have reached the limit.’ But then the representative of the [direct subcontractor to the factory] would come and say: ‘What are you looking at? Get back to work, or you’re going home.’”

When they signaled their disagreement to the employer, or made complaints, they received threatening reactions. They were told: “we’re sending you back to Romania with-

out pay". The workers tried approaching the police who instead directed them to file a legal case. Discouraged and desperate, they tried to reach the main subcontracting company in Prague with no success. At the Prague bus station they found by chance a contact to the local NGO Diaconia (Diakonie ČCE) who in turn initiated communication with the employer(s) as well as threatened to launch legal action (which was not a realistic option for the workers) and to make the case public. Diakonie established contact with the Director of the factory, who, despite rejecting responsibility for the subcontractors' conditions, presumably negotiated with the subcontractors who were forced to pay for at least a part of the wages owed. On the day of the hearing with the workers, they received the first part of their wage. The negotiations continue.

CASE 2

UNEQUAL PAY AND EMPLOYMENT CONDITIONS FOR SUBCONTRACTED WORKERS IN ELECTRONICS

Recruitment agencies hire workers in Bulgaria, Romania, Poland, Slovakia and other countries for largely low-qualified, monotonous work on the assembly line for a company in the electronics industry in central Bohemia. These agencies operate as subcontractors for the factory. This means, for example, that they rent out assembly lines in the factory and thus provide part of the final product.

In the factory the percentage of subcontracted staff is between 30% to 50% of the firm's assembly line workers. They have far less job security than the company's direct employees, and a difference in wages exists between directly hired staff and subcontracted staff, even though they may be performing the same exact task. The subcontracted workers are required to have a higher degree of flexibility, which places them under a considerable amount of stress. The company's flexible just-in-time regime stems from the fact that its production depends on the changing orders it receives, which is subject to customer demand.

The workers' income varies significantly as the number of hours worked per month change. It even occurred that after the costs of accommodation – which the subcontractors rent in dormitories – and a weekly advance payment for food have been deducted, a worker receives a "negative" wage, meaning that he/she is considered to owe the company a certain amount. If the employees fail to work a minimum number of hours (due to

low demand, or shortened shifts), they lose their entitlement to an allowance for accommodation. If they lose their job, they also lose their place at the dormitory. Alternatively, the number of hours worked per month may be very high at times of high production, to which, however, the worker may consent in order to earn more money in a shorter period.

The combination of indirect or subcontracted employment, together with the use of dormitories, in which the migrant workers wait to be assigned shifts, permits employers to control their employees, and places the costs of flexible employment on the workers. As one worker explains: “We stay here at our dormitory and await word from the factory. If there are orders, we go to work. If there are no orders, we stay here.” However, many of the workers find it convenient that they are provided with accommodation. Although the workers tend to complain about the low wages in the factory, some also said they appreciate that they at least have a job and are paid for each hour worked. Those who are dissatisfied opt for an exit and leave the job. The fluctuation of workers is high.

CASE 3

EXPLOITATION IN COOPERATIVES AND THE INEFFICIENCY OF REGULATORY BODIES

For several years, Diaconia NGO, via its Centre for Nationwide Programmes and Services, has been handling the case of a group of 15 Romanians who worked at a horticulture centre in Western Bohemia. They worked for its subcontractor, a cooperative based in Prague, for seasonal production of woven wreaths for the Christmas market which begins at the end of September. Typically, the workers are recruited in Romania through a local contact and internet advertisements with promises of big earnings for work in gardening. Those recruited work 12-14 hours a day for 2-3 months without leave, in return for the provision of transport, food and accommodation. It is likely that the cooperative, being a subcontractor, is paid by the horticulture centre per product made, therefore the more pieces they supply, the greater the cooperative's profit.

The 15 workers concerned reported problems with their working hours, contracts, and wage payments to Diaconia as well as to the Foreign police. They worked at the horticulture centre for 12 hours a day without a single day off. Their agreement with the cooperative had been that they would receive 75 CZK per hour (3 Euros), however, they did not have copies of their contracts which they had signed only after arrival. They did

not understand the contracts as they were only in Czech. The cooperative began exerting pressure on the workers when its representatives noticed that they were capable of filling up to three containers of decorations per day (the usual maximum being two containers). Subsequently, if the workers failed to fill three containers, the cooperative threatened them that their accommodation costs would not be covered. In addition, their work output was suddenly recalculated based on the increased targets. If the new target was not met, the employers deducted hours from the workers' records and decreased their wages accordingly, which meant that some "owed" money to the company.

The situation of these workers as well as new incoming ones was monitored for 5 years with interventions from various institutions. The particular case of the 15 Romanian workers has been under investigation by the Labour Inspection. The contact with the workers was mediated by Diaconia. The workers' account details, to which the missing wages should be paid, were verified and forwarded to the Labour Inspection – the amount owed had apparently been established during the inspection. Despite this, the workers have not received any money. Finally, after more pressure, some of the money owed was paid in the presence of the Foreign Police. However, the cooperative's representative brought a completely different list of hours worked and of the resulting remuneration than the one that had been presented to the workers a couple of days before: it was shorter and included reduced hours, and some people who had worked 12-hour shifts for 3 weeks were listed as being in debt to the cooperative. The employees refused to take any money or to sign any documents presented to them. All the institutions involved recommended that the workers launch a civil court action, however in practice that could take two years, and it is thus not an option that the workers could afford. Having no financial means and no immediate solution, the workers agreed eventually to receive at least the lower payment offered by the cooperative. The Police recommended that they sign a document stating that they had received that specific amount only.

Main issues

■ INEQUALITY AND DIFFUSION OF RESPONSIBILITY IN SUBCONTRACTING CHAINS

First, the inequality between the position of direct employees and subcontracted staff originates in the subcontracting structure. For example, some temp agencies providing staff to the factory in electronics (case 2) do not provide workers within the usual tripartite relationship of ‘employee - temp agency – end user’, but rather a subcontracting relationship where the “real” employer distances himself (Merk 2011) from wage and working conditions of the subcontractor’s employees. In this sense, the factory exempts itself from the conditions applicable for regular temp agency employment, according to which the direct and indirect employees should work under comparable conditions and be provided with equal pay. Second, in complicated production chains, the workers often do not know who their employers are. This makes it difficult for them or for an NGO representing them to e.g. demand the wages owed because it is often not clear who the employer was in the first place. Generally, the lead firms on whose premises the work was carried out try to deny any relation with the subcontractors or refuse to provide contact information about them.

■ TRANSITION BETWEEN DIRECT AND INDIRECT EMPLOYMENT

The cases examined demonstrate a general trend towards labour market segmentation in the Czech Republic for many EU and non-EU migrant workers, who only have access to a limited part of the labour market, usually entailing unskilled and poorly paid positions. They are often employed through an intermediary and not directly. This is not always a temporary arrangement as some of the workers consulted have worked for subcontractors for several years. During this long period it happened that their contract was discontinued and reinstated a number of times depending on the production needs. Only certain chosen workers (based on their skills and qualifications) have the opportunity to transfer from indirect to core workforce. In this sense, indirect employment places a burden of uncertainty on the worker, and prevents them from receiving the benefits that come with direct employment and a proper contract. At the same time, some workers preferred at least temporarily to work through intermediaries who provided a wide set of services (accommodation, transport, etc.).

■ HOUSING AS MEANS OF CONTROL

Migrant workers are frequently promised paid accommodation along with the paid job. In the first case, the workers were housed in an isolated place in the mountains, making it difficult to contact any government authorities or to find any other assistance when they were seeking help. Further, the quality of accommodation is often inadequate and some em-

employers deduct rent costs from the workers' paycheck without prior agreement. Some also threaten workers' with expulsion from the dormitories if they do not meet certain targets at work. Thus, company-owned or controlled housing becomes a tool with which to threaten the employees and violate their labour rights.

If the migrant workers are housed in dormitories on the city's outskirts, then the prevailing temporariness of their employment, their high turnover as well as their ethnicisation, affect the local relationships in the neighborhoods. In the second case, the locals living near the migrant workers' dormitory had minimal relations with them, and negative views were present including at points very aggressive statements towards the migrant workers. Therefore, placing workers into separate housing units can work to further isolate them socially, and is an obstacle to their integration.

■ **CONTRACTS**

In the cases examined, many of the workers either worked without a contract, signed a contract that they did not understand, or were given an Agreement to Perform Work (DPP), which legally allows them to work for only 300 hours per year per employer and forces them to pay medical insurance on their own. In addition, working hours were not recorded in a correct manner and often exceeded the legal limit. The use of precarious kinds of contracts is thus another deliberate strategy through which to avoid paying workers their earned wages.

■ **REVENUE MANIPULATION AND "NEGATIVE" WAGES**

A frequently used pattern of exploitation is the reassignment of wages according to recalculated norms. This system is both simple and effective: the workers receive an hourly wage which is recalculated on the payout day on the basis of targets, which are impossible to meet, and which the worker is often not informed of. The wage amount due for the two or three months worked is thus immediately reduced to such an extent that once additional deductions are made (costs for transporting the migrant workers, accommodation, and advance payments for food) some workers even end up owing money to their employer or incurring a "negative wage". This situation traps the employees in debt and exploitation.

■ **COMMUNICATION BARRIERS**

In the cases examined, the employers used language barriers to their advantage, for example through not explaining to the workers what they were signing, tricking them into signing incorrect or incomplete contracts, and not addressing their complaints (claiming misunderstandings). However, as already noted, the difficulty of communication also manifests itself through unclear responsibilities in the chain of several subcontracting companies. For ex-

ample, in the first case, it was not always clear to whom the workers should complain, or who was responsible for what.

Workers' Resistance and Interventions

The workers attempted to retrieve their owed wages through a number of channels (case 1 and 3), beginning with demanding their employers for payment and reaching a settlement through negotiation. Some faced threats of physical violence (case 1) which prompted them to contact the police on grounds of intimidation. The police was systematically ineffective, and adopted a policy of encouraging the workers to submit a legal case, without referring them to e.g. NGOs who could advise them on the process. In one case, the Foreign Police assisted in negotiations between the cooperative and the employees. The most common strategy of dissent by the workers was to leave the job, which, however, was more difficult for workers who were trapped due to wages owed to them. The workers in case 1 traveled to Prague in an attempt to meet with the lead firm for which their employer is a subcontractor; the attempt was unsuccessful. What is important to stress is that often workers try a variety of methods to regain their owed wages, to stop further violations, or to receive compensation. Crucially, not all protection mechanisms in place are effective. Despite the involvement of institutions such as Labour Inspection, NGOs and Police, case 3 points to repeated violations of workers' rights and non-payment of full owed wages. In order to better address these systemic violations and gaps in protection and regulation mechanisms, we propose the following recommendations.

Recommendations

When considering recommendations in the field of the protection of migrant workers' rights who are working in the Czech Republic, it is necessary to note that these persons are in a situation of mutually-reinforcing double vulnerability. This is due to their position as a) employees and b) foreigners; which means that they are generally less able to exercise their rights due to e.g. knowledge of Czech language, lack of social networks or precarious legal status for non-EU citizens. Given the above, it is pivotal to underline that supporting the exercising of migrant workers' rights is not only a civil matter, but also a matter of public concern. The suggested recommendations of both legislative and non-legislative character must draw on this principle.

1. Labour Inspection: The inspectorate should be able to impose the duty to pay the employees their debt claims either as part of the decision-making process concerning offenses committed by employers, or if not possible, then as part of measures imposed to remedy the shortcomings identified during a control. In addition, it is necessary to handle the complaints in a more flexible manner especially in the case of migrant workers who are always at risk of leaving the country. Notifying the employer about an inspection in advance must be thoroughly considered, and should be rather an exception, as in many cases it may compromise the purpose of inspection if the employer can get prepared for the inspection. The Labour Inspection should have inspectors and interpreters possessing the necessary language skills and must not rely on the interpreters provided by employers and intermediaries.

2. Police: Every claim by a foreigner that s/he has not been paid a due wage should lead to at least a basic investigation of the case by the police. Employees should *not* be punished for illegal work, because the decision that the work be performed illegally is usually made by the employer.

3. Justice and Courts: Currently there is no sufficient support for former employees who had to leave the territory of the Czech Republic and wish to sue an employer from abroad. Such proceedings should be simplified and assistance should be available to make court cases from abroad easier, so that employers face responsibility for their illegal activities also towards employees who had to leave the country. Collective actions need to be introduced into the Czech legal system, and a legal entity established for the purpose of defending the employees' rights (an NGO, a trade union, Ombudsman, etc.) should have the right to file a collective action.

4. Contracts and Indirect Employment: Agency employees should not be disadvantaged compared to other employees regarding labour contracts for a fixed term (Sect. 39 para. 6 of the Labour Code in relation to temporary agency workers should be repealed and Section 309 para. 2 of the Labour Code should be amended, so that work relation of a temporary agency employee cannot be disrupted by mere unilateral declaration of the main contractor without notice in advance). The workforce user must be liable towards third parties for damages caused by the workers made available to him or her, as defined in the first sentence of Section 2914 of the new Civil Code, and must also be liable for public law obligations towards employees, at least as a guarantor (such as paying their insurance, taxes etc.).

5. Raising awareness: Information on workers' rights and responsibilities, on complaint mechanisms to labour inspectorates or to other bodies caring for workers' rights should be made available to employees ideally before they leave their countries of origin, in their language and in a comprehensive manner.

6. Role of NGOs and Trade Unions: a structural cooperation between NGOs, trade unions and labour inspections should be instituted in the area of labour rights violations of EU and non-EU migrant workers. NGOs and Trade Unions should develop and extend their roles not only in the area of "extreme" labour rights violations (usually after the employment has ended) but also support of decent wage and working conditions of migrant workers at the time of their employment (e.g. integration into the trade unions).

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