



International
Labour Office

TRAFFICKING FOR LABOUR AND SEXUAL EXPLOITATION IN GERMANY

Norbert Cyrus

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International Labour Office
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FOREWORD

Increasing attention is being paid worldwide to trafficking in human beings and the effect this is having in the area of forced labour. In his 2001 Global Report on Stopping Forced Labour, the ILO Director General observed that trafficking in persons was a truly global problem; he called for more research into the labour market conditions that create opportunities for such abuse, and a consideration of ways to eliminate these.

In November 2001, the ILO Governing Body established the Special Action Programme to Combat Forced Labour (SAP-FL), as one of several measures taken to promote the 1998 Declaration on Fundamental Principles and Rights at Work and its follow-up. The Declaration reaffirms the obligation of all ILO member States to respect, promote and realize the principles concerning fundamental rights dealt with in core labour Conventions, including the two Conventions on the elimination of all forms of forced and compulsory labour. The Declaration and SAP-FL have allowed for a positive and promotional approach to the realization of these standards by offering research, technical assistance and advisory services to ILO member States and key partners.

In its research since that time, SAP-FL has given much attention to what we call the forced labour outcomes of trafficking and irregular migration. We have launched research projects in origin and destination countries of trafficked victims, examining the causes of such trafficking, the main geographical areas of origin, the recruitment mechanisms, and the trafficking routes. But we have been equally concerned to analyse the demand factors in some key destination countries. In which economic sectors are coercive conditions of recruitment and employment to be found? What are the main forms of coercion? Who tend to be the main victims of trafficking, for either labour or sexual exploitation? What is being done about this, in either law or practice? What

lessons of good practice can be learned from the experiences of individual countries? And what more can be done by the ILO's principal social partners to eradicate the scourge of modern forced labour and human trafficking?

These studies have been carried out, or are in the process of being carried out, in a number of developed as well as transition countries including France, Germany, Hungary, Japan, Turkey, the Russian Federation, Albania, Moldova, Romania, Ukraine and Tajikistan. In Germany, a research project was initiated following a meeting of trade unions that took place in Geneva in February 2003. The research involved extensive interviews with government representatives, social partners, NGOs and victims. Throughout this period, there have been close consultations between ILO and relevant ministries, in particular the Federal Ministry for Family, Pensioners Women, and Youth (BMFSFJ), which is the main ministry concerned with this issue in Germany. Through the BMFSFJ, the ILO has also been requested to provide guidance on the concept of forced labour to assist Germany and other ILO member States in the implementation of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime. This can only be done on the basis of firm empirical evidence on the new forms of forced labour emerging as part of the "underside of globalisation" (ILO Report Stopping Forced Labour, 2001).

By increasing knowledge and awareness of the forced labour outcomes of trafficking and migration, the research programme is designed to prepare the ground for integrated programmes against forced labour and trafficking in origin and destination countries alike, with activities addressing all phases of the trafficking cycle. These integrated programmes seek to involve labour institutions (including labour ministries, labour inspection services, employment and job placement agencies and labour justice organisations) in the measures of prevention, victim identification, awareness-raising and law enforcement that are required for successful action against traffickers and improved protection of victims. Over the last year, the German Government has generously supported ILO pilot-initiatives in Romania on the monitoring of private recruitment agencies through GTZ (Gesellschaft für Technische Zusammenarbeit). GTZ is also a partner in a multi-country project of the ILO against human trafficking that recently received funding under the AGIS programme of the European Commission.

The results of the draft report were first discussed at a national workshop in November 2004, with members from the Federal Working Group on Trafficking in Women and other stakeholders. This event was followed by a

substantive review process that involved several ministries and independent experts. The study was undertaken over a limited time period and with limited resources, as part of a wider research project funded by the Government of the Netherlands on the demand aspects of human trafficking. We publish this first assessment study in the hopes that it will stimulate more in-depth investigations in Germany and other European countries where irregular migrants are at risk of forced labour exploitation. We also hope that it can prepare the ground for remedial action, involving labour institutions and employers' and workers' organizations in the action required to prevent and eradicate forced labour.

Roger Plant

Head, Special Action Programme
to Combat Forced Labour (SAP-FL)
International Labour Office, Geneva

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The forced labour of foreign migrant workers in Germany is a sensitive and under-researched topic. Research in such an area requires a high degree of collaboration and support. I would not have been able to prepare this report for the International Labour Office without the assistance of many people working to combat the trafficking in human beings. It was marvellous to meet representatives from organisations as diverse as crime control, public administration, trade unions and NGOs, who all agree on the necessity of tackling this atrocious problem more vigorously.

My particular gratitude goes to F. Schmidt-Hullmann (IG BAU) who was one of the first to raise the problem of forced labour in Germany at a national and international level, insisting on a systematic examination and providing the initial evidence which lead to further research. I also profited from conversations with S. Graf and in particular with B. Gabriel (both IG BAU). I learnt a great deal through intensive discussions with M. Dieterich (IG NGG), who took an active part in the investigation and ruling in a serious case of trafficking in labour exploitation. Among the representatives of crime control agencies, I would like to mention H. Rudat (LKA Berlin) and H. Rall (BKA Wiesbaden). Their insights on how forced labour conditions are imposed were complemented by accounts from labour inspectors - P. Rack (LAA NRW) and M. Hofmann (HZA Landshut) among others. The picture of forced labour was filled out with the assistance and detailed testimony of employees and representatives from several NGOs, among others A. Bode, J. Rosner, R. Heubach, C. Roth and B. Waldek. Many scholars, among them, D. Vogel, J. Alt, P. Anderson, M. Neske or S. Gomez-Schlaikier, provided important additional information.

Most of all, I would like to express my gratitude to all the migrant workers that spoke with me despite their serious reservations and fears. Victims

and witnesses offered to cooperate in the hope that their testimony would help to design measures that improve the situation of all migrant workers and prevent further abuse. It must have been difficult for them to imagine what a nosey scholar could do for them in practical terms and I am sure that in some situations, my interview partners felt that the exercise was a continuation of their exploitation. I hope the results of this research will prove them wrong.

Last but not least, I would like to express my gratitude to the ILO staff. With their pioneering contribution to the debate on trafficking into forced labour, R. Plant and P. Taran in particular led this entire project. Special thanks to B. Andrees who helped revise the report for final publication, and offered patience, encouragement and professional rigour. My thanks are also extended to N. Buck who edited the text. Special thanks also to W. Heller and his team from the ILO-Office in Berlin who helped organise a workshop and laid the groundwork for an intensive discussion within the federal working group on trafficking in human beings.

Responsibility for all shortcomings of the report lies with the author who would finally like to thank P. Koslowski for her - quite in accordance with ILO philosophy - continuous but sometimes unsuccessful efforts to prevent me from working day and night.

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LIST OF ACRONYMS

Agisra	Arbeitsgemeinschaft gegen international sexuelle und rassistische Ausbeutung
BGS	Bundesgrenzschutz
BKA	Bundeskriminalamt
BMI	Bundesministerium des Innern
CEE	Central and Eastern Europe
DGB	Deutscher Gewerkschaftsbund
EEA	European Economic Area
EU/EC	European Union / European Communities
FIM	Frauenrecht ist Menschenrecht e.V.
GDP	Gewerkschaft der Polizei
GTZ	Gesellschaft für technische Zusammenarbeit
IG BAU	Industriegewerkschaft Bauen, Agrar und Umwelt
ILO	International Labour Organization
IZA	Institut zur Zukunft der Arbeit
LAA NRW	Landesarbeitsamt Nordrhein- Westfalen
LKA	Landeskriminalamt
NGG	Gewerkschaft Nahrung, Genuss und Gaststätten
NGO	Non-governmental Organization
OECD	Organization for Economic Co-operation and Development
ONA	Arbeitsgemeinschaft zur Wahrung der Interessen von Frauen aus Mittel- und Osteuropa
SAP-FL/ILO	Special Action Program to Combat Forced Labour of the International Labour Organization
UN	United Nations
ZAPO	Zentrale integrierte Anlaufstelle für PendlerInnen aus Osteuropa

INTRODUCTION

I

1.1 AIMS OF THE STUDY

Germany is an important destination country for migrant workers from all over the world. They enter the country through clandestine channels or as asylum seekers, seasonal labour migrants, visitors or students. Although access to the labour market is restricted, experts estimate that roughly one million migrants are currently employed in Germany. Many of them work under sub-standard conditions on the basis of mutually beneficial agreements made with their employers. However, as this study aims to demonstrate, deception, threats, abuse, fraud and coercion are widely used to force migrant workers into submission and thus increase profit margins. This is most often the case in those labour-intensive economic sectors that are encountering ever more competition on global markets.

International Conventions call for equal treatment and the protection of human rights of all migrant workers. The Palermo Protocol on the Suppression and Prevention of Trafficking in Human Beings, especially Women and Children (henceforth Palermo Protocol) has now entered into force, supplementing the UN Convention against Transnational Organised Crime. As a result, more attention is being paid to the mainly irregular migrants who put themselves at the mercy of traffickers or smugglers in order to find employment abroad. While the UN Convention and its Protocols focus on the cross-border movement of people and the involvement of organised crime in international migration, other instruments, such as ILO Conventions, are primarily concerned with the subsequent exploitation of these people. Taken together, however, these instruments define the parameters within which organised crime in international migration and in particular human trafficking can be eliminated.

The implementation of these international standards into national laws must be based on solid empirical analysis of the problem. While research on trafficking for sexual exploitation has burgeoned in recent years, and the understanding of the supply and demand factors in the global sex industry improved, other forms of exploitation in the movement of people remain under-researched. The present report, the first of its kind in Germany, aims to fill this gap. It has three important objectives. First, by examining concrete cases of forced labour, it sheds light on the coercive practices of recruitment and employment that are being used to exercise control over migrant workers in highly competitive environments. Second, it examines the links between irregular migration, illegal employment and the vulnerability of migrant workers to forced labour exploitation. Third, it considers current responses against trafficking and forced labour, taking into account the roles of various institutional actors.

1.2 FORCED LABOUR AND HUMAN TRAFFICKING: DEFINITIONS AND APPROACHES

Throughout the 20th century, slavery was regarded as a feature of ancient, medieval or early capitalistic social formations; it was thought that it would disappear automatically with the development of human rights policy and democracy. But at the beginning of the third millennium, a form of international slavery still exists: human trafficking for the purpose of forced labour, slavery and slavery-like practices. Unlike slaves, forced labourers are not the property of their masters. Forced labour today is often a short-term coercive and exploitative relationship in which victims are highly dispensable due to the surplus of other vulnerable workers (Bales, 2000; Arlacchi, 1999; Massey, 1998).

Human trafficking, forced labour and child labour are practices of the global market economy that do not automatically disappear in the course of social and economic modernization. In the 2001 ILO Report 'Stopping Forced Labour', human trafficking was referred to as the 'underside of globalisation'. The report showed that forced labour is a problem in both developing and industrialised countries. This gross violation of workers' human rights is facilitated through increased international and internal migration and affects all countries. Due to weak protective mechanisms, foreign migrant workers become victims of unscrupulous employers who impose unlawful conditions of work and pay by means of fraud, threat, coercion, debt bondage and violence.

As a starting point, this analysis uses the broad definition of trafficking for the purpose of labour exploitation proposed by the European Commission in its Communication to the Council and the European Parliament on combating trafficking in human beings and combating the sexual exploitation of children and child pornography (European Commission, 2000). The Communication refers to the Palermo Protocol, which defines exploitation as the ultimate purpose of trafficking. While there is no agreed-upon definition of exploitation, the Palermo Protocol considers forced labour to be a form of exploitation. Forced labour is defined in the ILO Forced Labour Convention 1930 (No. 29) as:

“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Art. 2.1).

A conceptual distinction must be made between human trafficking, human smuggling and voluntary migration. It is generally understood that people who choose to migrate internally or across borders and are able to work free of exploitation are migrants. If the migration involves coercion or deception with the purpose of exploitation, it is called trafficking. Human smugglers operate where people who want to migrate cannot find the legal means to do so, either because such means do not exist or the smuggled people are not aware of them. People who are smuggled across a border and enjoy freedom upon arrival are considered to be party to a ‘voluntary’ agreement. A ‘voluntary’ agreement, however, may be the result of deception, or may involve an individual or family going into debt to pay for the trip, which in turn puts them at the mercy of the lender. This may result in physical confinement until the debt has been cleared off. It may also, directly or indirectly, result in forced labour. In these cases, the initial ‘voluntary’ agreement becomes a form of trafficking (ILO, 2003b: 2).

Combined with the Palermo Protocol’s definition of trafficking in human beings, the following definition will be applied in this study: trafficking into forced labour implies the recruitment, transportation, receipt or harbouring of persons into employment relationships that the person does not enter voluntarily or cannot leave due to menace and coercion. The consent that a migrant grants an intermediary or employer is irrelevant as long as the latter uses any of the following means: any form of coercion, abduction, fraud, deception, threats or abuse of power or a position of vulnerability, giving or receiving of payments or benefits to achieve consent of a person.

Trafficking has occupied a prominent place in the public spotlight in recent years. Definitions of trafficking are evolving and becoming more comprehensive. While the ILO definition of forced labour can help to clarify the concept of trafficking, research on contemporary forms of trafficking and the dimensions of forced labour is still in its infancy. This study aims to contribute to the existing knowledge by investigating these abusive practices in the German context.

1.3 RESEARCH METHODS AND SAMPLE

Due to the illicit nature of the subject, this study uses a combination of qualitative research methods to produce an initial account of forced labour in Germany. The main research methods employed were literature review, expert interviews and first-hand interviews with witnesses and victims of forced labour. In addition, statistical information published by public authorities was used. This study is by no means a comprehensive assessment of forced labour in Germany, but rather an attempt to situate the problem in the wider context of migration and illegal employment. Since the study was conceptualised as a preliminary brief assessment of the situation, no attempts were made to quantify the results. The interview sample is small and has not been collected randomly; therefore, the results are not representative. The interviews were carried out between April and September 2003.

Literature review: The available information on illegal employment of foreign migrant workers was collected and examined. Reports and statements of public authorities (courts, police, labour inspectors and others) provided information on the situation of illegal and irregular migrant workers in the German labour market as well as the general trend toward illegal employment. The 'grey literature' - reports from NGOs and trade unions, as well as scientific studies - offered a number of first-hand accounts of irregular migrant workers and contributed considerably to the understanding of how irregular migrant workers make sense of their situation.

Expert interviews: In order to assess the available information and to collect new data, experts in the field were contacted. If the initial telephone call suggested that the respondents were knowledgeable on the subject, they were selected for an expert interview. The expert interviews began with a general discussion of the context of research (entry-phase). Subsequently, interview partners were invited to talk about the most blatant cases of foreign migrant worker exploitation they were aware of. The interviewees were also asked about their general expertise in the area of forced labour and what measures they consider the most effective in countering it.

Interviews with witnesses and victims of forced labour: The third information source was victims and witnesses of forced labour. Victims and witnesses were asked about their own experiences. If they spoke openly, the interviewer asked for further details. Of the 42 cases reported, seven are based on in-depth interviews with victims.

Interview technique: Almost all in-depth interviews with experts, victims and witnesses were tape-recorded. Two respondents did not agree to be recorded and in these cases, notes were taken. All interviews were conducted as ‘problem-centred’ interviews (Witzel, 1985). Some topics were raised which the interviewees had not addressed themselves. Using this technique, the narrative principle dominated, with the result that the accounts reveal how interviewees structure their social reality (Lamnek, 1993: 75, Silverman, 1993: 100). For the purpose of this study, the analysis focussed on factual accounts of forced labour, the structural framework in which it took place, the actors involved and how the interviewee understood the situation.

1.4 STRUCTURE AND LIMITATIONS OF THE STUDY

Given the small sample, it is difficult to assess the situation in quantitative terms. Most of the cases in this study reflect the complexity of modern forced labour; interpretations by experts and victims varied. Some situations that observers called forced labour turned out to be ‘merely’ substandard work. On the other hand, those who adhered to the historical, relativist or current judicial definitions of forced labour did not characterise situations of forced labour as such.

In the short period of research, it was often difficult to gain access to victims and witnesses of forced labour. Undocumented migrant workers are reluctant to cooperate. First-hand information is difficult to obtain from the victims themselves. In general, it is only possible to gain access to victims of forced labour once the situation of forced labour has ended. Due to their irregular status, victims are treated as criminals by public authorities. After their release, they have no incentive to cooperate with an agency. They are suspicious and prefer not to talk about the conditions of their stay and employment in Germany.

Given the sensitivity of the subject and the methodological shortcomings, the data presented here cannot be considered to be representative. The objective was to explore the full range of manifestations of forced labour in Germany. The analysis is based on a compilation of cases. Although the reliability and validity of information on these cases vary greatly, they do serve to generate a first assessment of forced labour among migrant workers in Germany.

Trafficking for Labour and sexual exploitation in Germany

This report begins by explaining the legal and political context in Germany, thereby highlighting recent developments in combating and preventing human trafficking. Chapter 3 presents evidence for the existence of forced labour practices across various economic sectors that mainly affect irregular migrant workers. Chapter 4 analyses the research findings in the context of irregular migration and illegal employment. In Chapter 5, questions of law enforcement and its relationship with effective mechanisms for victim protection are discussed. The study concludes with some forward-looking remarks concerning the implementation of legislation to combat human trafficking.

LEGAL PROVISIONS AGAINST HUMAN TRAFFICKING AND FORCED LABOUR

II

2.1 HISTORICAL AND POLITICAL BACKGROUND

Germany has a unique history of labour and immigration policy. It is an advanced industrialised country with a strong welfare state where the legislative branch provides the legal framework for immigration and industrial relations. For a short period in early 2000, all political parties in Germany were endorsing a more liberal immigration policy: This changed after September 11, 2001 (Unabhängige Kommission Zuwanderung 2001). In October 2004, the “Expert Council on Immigration and Integration” presented a series of cautiously-worded recommendations for a liberalised immigration regime (Sachverständigenrat Zuwanderung und Integration 2004). The council had been appointed by the Federal Minister of the Interior and included high-ranking politicians, social partners and academics with diverse political backgrounds. Nonetheless, the conclusions reached by the council did not gain political acceptance. All leading political parties - with the exception of the Green Party - rejected the recommendations.

A considerable share of the German electorate is worried about issues of security and crime associated with immigration (Thränhardt 2001; Meier-Braun 2002) but immigration policies are becoming more pragmatic (Cyrus and Vogel 2003). Today, an estimated 30 percent of the population residing in Germany is born abroad or to immigrants who entered Germany after 1945 (Bade and Münz 2002: 11). Thus, the debates on illegal migration, trafficking and smuggling in human beings take place in a setting characterized by high de facto immigration and at the same time, strong anti-immigration sentiment.

Since the end of the 'guest worker programme' in the early 1970s, all governments have believed that the prevention of unwanted immigration is necessary to protect German labour markets and to make possible the integration of immigrants.

While the right of political refugees to asylum is still acknowledged, asylum hearings are only opened after illegal entry. Asylum applications are reviewed thoroughly and, due to the narrowness of the legislation; only about three percent are accepted (Marshall, 2000). However, rejected asylum seekers do not necessarily leave. The German law prohibits the expulsion of people with a founded fear of persecution in the country of origin; this applies mostly to people from areas of war who constitute a minority of illegal labour migrants. Tolerated resident foreigners contribute to a stock of foreign citizens who then participate in the shadow economy.

Judicial provisions to prevent illegal entry, stay and employment are closely interrelated and prevent foreign workers without required residence and work authorisation from being legally employed (Vogel, 2001). When they are discovered, illegal migrant workers are deported. The German government argues that firm legislation to combat illicit and illegal economic activities, illegal immigration and trafficking in persons is necessary to prevent the abuse of the social welfare system and to improve the integration of legal immigrant residents (Bundesministerium des Innern, 2001).

Investigating irregular migration and human trafficking in the context of forced labour poses terminological and conceptual challenges as the term 'forced labour' (Zwangsarbeit) in Germany is generally associated with Nazi practices during World War II. More than seven million foreign workers were recruited by force in the occupied countries and forced into slavery in German industries (Herbert, 1986: 120-178). The recent debate over compensation of forced workers from the Nazi era has meant that the term is commonly understood within this rather narrow frame of reference. It is rarely applied to the exploitative employment of foreign migrant workers in contemporary Germany. There are two basic positions on this terminological ambiguity:

- (1) Many commentators hesitate to use the term forced labour for any contemporary situation. Some believe that the harm the Nazi regime did to forcedworkers during Second World War prohibits the use of this term for contemporary situations. Others argue that the use of the term 'forced labour' is not appropriate in the contemporary German context given the situation in many developing countries. The use of the term 'forced labour' is seen to downplay bonded labour, child labour or slavery as it exists elsewhere. The situation is further com-

Legal provisions against human trafficking and forced labour

plicated by the fact that no national judicial definition exists German law does not identify 'forced labour' or 'slavery' as crimes. The main characteristics of forced labour addressed in the ILO definition are covered in various other provisions related to 'illegal employment' but do not constitute a separate provision for the crime of 'forced labour'.

- (2) On the other hand, as with 'trafficking', the term 'forced labour' is frequently used in trade union statements, media reports and everyday communication. In these contexts, 'forced labour' refers to any employment perceived to be unfair and exploitative. Sometimes the term 'slave work' is even used for employment that involves discrimination in the work place. Trade unions frequently designate any employment with substandard conditions of work and pay as forced labour or slave work. For example, the agricultural union states that the contemporary employment of foreign seasonal workers belongs to the 'times of slavery' (IG BAU, and NGG, 2001) and the hotel and food processing union recently publicised 3 500 cases of 'wage slavery' (NGG, press release from 13 November 2003).

2.2 INTERNATIONAL STANDARDS AND THE GERMAN LEGAL FRAMEWORK

In the absence of legal provisions on forced labour in Germany, a review of international standards and their application in German law is instrumental. As this report was being written, the German legislature was revising existing laws on human trafficking and illegal employment, which should pave the way for more coherent action against trafficking and exploitation of migrant workers.

Forced labour is proscribed as a violation of fundamental human rights in international law. There is considerable overlap and convergence between international labour law, contained in ILO Conventions, and international human rights law. The UN Convention on Migrant Workers¹ is the most comprehensive international standard dealing with migrant workers. The Convention does not break new ground, but rather brings together rights protection mechanisms - including for irregular workers - which have already been accepted by states in the International Covenant on Civil and Political Rights, ILO Conventions and other human rights treaties. Examples include

¹ The United Nations Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990.

the prohibition on forced labour, and of cruel or inhuman treatment of ‘all’ migrant workers, irrespective of immigration status. It creates an additional form of protection by making it unlawful for anyone other than a public official to confiscate or destroy identity documents.

The UN Convention has yet to be ratified by Germany or other EU member states. Germany has, however, ratified ILO Migration for Employment Convention (Revised), 1949 (No. 97) as well as the eight core Conventions of the ILO. These Conventions, which impose legal duties on ratifying countries, were reaffirmed and given universal application in 1998 through the ILO Declaration on Fundamental Principles and Rights at Work. The Declaration commits all members - even if they have not ratified the specific Conventions - to eliminate all forms of forced labour. The Forced Labour Convention (No. 29) requires governments to ‘suppress the use of forced labour in all its forms’.

While all forced labour involves poor working conditions, not all situations of unsatisfactory working conditions constitute forced labour. In the definition cited above, the term ‘penalty’ covers not only penal sanctions but also the loss of rights and privileges. Drawing on their lengthy experience, the ILO supervisory bodies have identified several component elements, which - together or individually - can indicate a situation of forced labour:²

- Threats of violence or actual physical harm to the worker;
- Restriction of movement and confinement to the workplace or to a limited area;
- Debt bondage;
- Withholding of wages or excessive wage reductions that violate previously made agreements;
- Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status;
- Threat of denunciation to the authorities, where the worker is in an irregular immigration situation, with the intention of forcing the person into involuntarily work or service.

Each of these acts, if committed intentionally or knowingly by an employer, should be a criminal offence under national law, and its various combinations may amount to forced labour.

The point of departure for the current debate on forced labour in Germany is the Palermo Protocol, which made trafficking in persons an international

² See ILO (2005): Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement, Geneva.

criminal offence. This new law reflects an international commitment to curb transnational organised crime. The Protocol was drafted to meet the need for a universal legal instrument that addressed all aspects of trafficking, whether for sexual or labour exploitation. The offence has three core elements: movement of a person, with deception or coercion, into a situation of exploitation. The Protocol's objectives are to prevent trafficking, punish traffickers, and protect victims, 'including protecting their internationally recognised human rights'.

Although no ILO Convention deals exclusively with trafficking, the elements that constitute or facilitate exploitative employment are well covered by existing ILO labour standards. In addition, the inclusion of trafficking for forced labour in the Protocol's definition of exploitation brings it within the existing obligations of States Parties under ILO labour standards. The Protocol also identifies the steps that must be taken by states to assist and protect victims, and identifies possibilities for assistance 'in appropriate cases', including the provision of housing, medical assistance, the possibility of compensation, and immigration measures to allow the individual to remain in the country either temporarily or permanently (Arts. 6 and 7).

Core elements of the Protocol have now been incorporated in European law. According to the Council Framework Decision of 19 July 2002, all European Union member states are to amend their domestic laws to criminalize trafficking in human beings, as defined in the Protocol, and to ensure that the offence is punishable by 'effective, proportionate and dissuasive criminal sanctions', in the case of both individuals and corporations.³

The German legislature responded to the development of new international standards regarding human trafficking by revising its existing legislation in 2004. The revision was based on the previous Art. 180b and 181 of the Penal Code which made trafficking for the purpose of sexual exploitation a criminal offence. No substantial adaptations have been introduced in the Labour and Social Codes or the Residence Act. However, the reform of the Penal Code introduced a new criminal offence: trafficking for the purpose of labour exploitation. Offenders can be punished with a prison sentence of between six months and ten years. The law also covers a range of aggravating circumstances regarding trafficking for both sexual and labour exploitation. In the case of trafficking for labour exploitation, everybody "who gets another person - by making use of a predicament or state of helplessness that is linked to the stay in a foreign country - into slavery, serfdom or debt bondage or gets the person to take up or proceed with an employment with him or a third person

³ Council Framework Decision on combating trafficking in human beings (2002/629/JHA).

that is in obvious discrepancy to the working conditions of a person that conducts the same or a similar employment [...] will be punished with a sentence of six months to ten years” (§233).

With this far-reaching reform of the Penal Code, the German legislature paved the way for the ratification of the UN Convention against Transnational Organized Crime and the Palermo Protocol against human trafficking. However, the legal reform did not include the introduction of a national referral mechanism for trafficked victims. Also, the responsibility for the protection of victims remains at the regional level and so far has not received further funding. It remains to be seen how the judiciary and law enforcement authorities will interpret the new provision.

With respect to trafficking for labour exploitation, several other legal and administrative provisions are relevant:

Illegal immigration: The German registration law requires that every foreign citizen who stays in Germany for more than two weeks register with the registration office (Bundesministerium des Innern, 2000). According to section 92 of the foreigners’ law (section 95 of the new residence act), immigrants who enter or stay illegally are committing a criminal offence. To facilitate an unauthorised entry or stay of foreign nationals is also a criminal offence. For the purpose of this report, ‘smuggling in human beings’ refers to the unspecified German judicial provision in sections 92a and b of the foreigners’ law, which defines the support of illegal entry and stay of an unauthorised immigrant as a criminal offence.

Illegal Employment: At the time that this research took place, German law contained no definition for ‘illegal employment’ (Marschall, 2003: 9; Bundesregierung, 2003). Illegal employment referred to any income-generating activity that violated legal requirements: the employment of foreign workers without the required work permit and the illicit, undeclared employment of native workers. It also covered tax evasion, evasion of social and unemployment payments and illegitimate receipt of social or unemployment benefits (Marschall, 2003: 12). It could further refer to job placement or recruitment of foreign workers from abroad without the required license and the discriminatory employment of foreign workers. In the interviews with experts from NGOs or law enforcement agencies and the case studies presented in this study, this former broad concept of illegal employment is still being used. After completion of the empirical investigation, a new Illegal Employment Act came into effect on 1 August 2004. The Act provides definitions for illegal employment and stipulates punishment accordingly. The main responsibility for combating illegal employment lies now with the Ministry of Finance. As a

general rule, the Act invests authorities with greater powers to control illegal employment and establishes more severe sanctions against people who employ illegal employees and the illegal employees themselves.

Organised crime: The support of illegal entry is considered a form of organised crime. In Germany, no legal definition of organised crime is available. In 1986, prosecutors and relevant ministries agreed on a definition for internal use (Kilchling, 2002: 86 footnote 13). The definition currently in use is:

“Organised crime is the planned commission of criminal offences determined by the pursuit of profit and power which, individually or as a whole, are of considerable importance and involve more than two persons, each with his/her own assigned tasks, who collaborate for a prolonged or definite period of time (a) by using commercial or business-like structures; (b) by using force or other means of intimidation or (c) by exerting influence on politics, the media, public administration, judicial authorities or the business sector. This definition does not cover terrorist offences” (Bundeskriminalamt Wiesbaden in cooperation with the State Criminal Police Offices, 2002: 29).

Finally, the following provisions may be relevant to forced labour in the more general sense: abandonment (section 221, Penal Code), manslaughter through culpable negligence (§222, Penal Code), bodily injury (§ 223 Penal Code), dangerous bodily injury (§ 224 Penal Code), serious bodily injury (§ 226 Penal Code), bodily injury with subsequent death (§227, Penal Code), wrongful deprivation of personal liberty (§ 239 Penal Code), coercion (§ 240 Penal Code), threatening (§ 241 Penal Code), robbery (§ 249 ff Penal Code), fraud (§ 263 Penal Code) or wage usury (§ 138 Civil Code; § 291 Penal Code). The punishment of these offences requires personal witness testimony of victims in court hearings.

3.1 FORCED LABOUR IN THE INFORMAL ECONOMY:
REVIEW OF EXISTING LITERATURE

Imposing forced labour is an illegal act. Because it occurs mainly within the informal economy, this is a logical starting point for the collection of empirical data towards an analysis of forced labour. Recent estimates state that productive activity in the German informal economy constitutes roughly 16 percent of the Gross National Product (Schneider and Enste, 2000). In spite of the increasing economic relevance of the informal economy, an intensive academic discussion and investigation of it have only recently begun. While studies conducted by economists (Schneider and Enste, 2000) or social scientists (Lamnek et.al, 2000) treat the informal economy as a phenomenon of increasing importance in advanced societies, they do not necessarily link it to immigration.

At present, the absorption of foreign migrant workers into the German informal labour market is treated marginally in research on the informal economy and is considered less relevant than the employment of residents working off the tax role (Bundesministerium für Bildung und Forschung, 2000). A director of the Ministry of Labour and Social Affairs stated that:

“The employment of foreigners in an irregular situation is just one feature of the overall issue of illegal employment. While other forms of illegal employment (such as illegal hiring out of workers, benefit fraud and moonlighting) are more extensive, the political debate often centres on the irregular employment of foreigners, especially citizens of non-EU/EEA countries who

take up employment in Germany despite regulations on residence and work permits" (Irlenkäufer, 2000: 151).

Illegal employment of foreign migrant workers is not perceived to be a central feature of the informal economy: "It is not illegal immigration, but rather the available employment opportunities in the informal economy that is the real problem" (IZA, 1999: 3; also IZA, 2002). Schneider (2003: 12) estimated that 87 % of workers working in the shadow economy are native workers. Most research does not address foreign workers or suggests that the participation rate of illegally employed foreign workers is low, while noting that the concentration in some industries (construction, agriculture, catering or domestic services) is higher (Schneider and Enste, 2000).

More information on illegal employment of foreign migrant workers can be found in research on illegal immigration although labour market issues are not treated centrally (Eichenhofer, 1999; Schönwalder et. al., 2004; Cyrus 2004a). As a rule, the majority of studies discuss illegal immigration either with a focus on (domestic) security issues (Bundesnachrichtendienst, 2000; Heckmann and Wunderlich, 2001; Lehngut, 1998; Welte, 2002), the human rights situation of refugees (Erzbischöfliches Ordinariat, 1997; Freudenberg Stiftung, 2000) or as a general indicator of failed immigration and labour market policies (Blaschke, 1998). Only explorative research deals with the illegal or irregular labour market of migrant workers (Lederer and Nickel, 1997). Further research focuses on the institutional and judicial framework (von Seggern, 1997), the consequences for the national economy (Jahn, 1999; Nienhäuser, 1999), for the receiving society (Blaschke, 1998) or for the immigrants (Cyrus, 2003a; Cyrus and Vogel, 2002b).

The hitherto most important qualitative-empirical investigations (Alt, 1999 and 2003) show that the involvement of illegal immigrants in the labour market encompasses a wide range of situations, from 'gainful participation' to 'harsh exploitation'. This broad spectrum is confirmed in all available studies of illegal and irregular immigrants on the German labour market (Blahusch, 1992; Lederer and Nickel, 1997; Wilpert, 1998; Cyrus, and Vogel, 2002b) as well as in additional information from public authorities involved in labour inspection (Bundesregierung, 2000), trade unions (Deutscher Gewerkschaftsbund Bundesvorstand - Referat Migration, 1996), welfare and immigrant organizations and churches (Erzbischöfliches Ordinariat, 1999).

Research shows that the majority of those illegally employed workers who are satisfied with the situation are embedded in a social network characterised by relative stable and mutually profitable relations. But it is likely that conditions are being imposed that the worker would not have agreed to in

advance (Alscher et al., 2001; Alt, 1999 and 2003; Anderson, 2003). “The closer one comes to the bottom of the informal hierarchy, the more exploitation and poverty one encounters - most affected is the illegal immigrant in the country of destination who has no language competence and does not know his rights.” (Alt, 2003: 367).

The following compilation of cases indicates that forced labour is not restricted to the illegal employment of foreign migrant workers. Migrant workers who have legal employment are also subject to a high degree of vulnerability and legal exclusion. Violations of minimum wage requirements, working time regulations and other statutory provisions are frequently reported even within the legal programmes for the temporary employment of contract and seasonal workers (IG BAU, 2001; Faist, 1995; Faist u.a, 1999; Treichler, 1999). Legal programmes for the temporary employment of foreign migrant workers are frequently used as a legal façade to hide the imposition of unfavourable conditions of work and pay. It is revealing that both the trade union officials and seasonal contract workers interviewed emphasised that the few enterprises that comply with the law have serious problems competing.

Researchers who reported cases of serious labour exploitation stressed that they do not consider these to be cases of forced labour. Jörg Alt, for example, does not use the term forced labour for the cases of harsh exploitation he encountered (personal communication). Similarly, the empirical studies on illegal immigrants in Berlin (Jordan u.a., 1997; Wilpert, 1998), Munich (Anderson, 2003; Alt, 2003) or Frankfurt/Main (Bode and Wache, 2000; Shinozaki, 2003) are not described as forced labour although many situations would most likely fall under the ILO definition of Convention No. 29.

3.2 A SECTOR-BASED ANALYSIS OF FORCED LABOUR

Sex industry

The first and most frequently mentioned arena of forced labour is the sex and entertainment industry. This sector is well researched and a number of public reports and critical studies describe the situation (Howe, 1998; Mentz, 2001; Niesner and Jones-Pauly, 2001; Niesner, 1997; Heine-Wiedenmann, 1992). It is generally acknowledged that sex workers are especially vulnerable to forced labour or service due to their personalised relationships with pimps and clients and the isolated nature of the business. This has been exacerbated by a recent trend to use private flats or hotels rather than brothels in response to increased monitoring by law enforcement authorities. The following presentation of

forced labour cases cannot give a comprehensive account of trafficking into sexual exploitation but attempts to illustrate various forms of coercion in the sex and entertainment industry.

CASE 1

A case that was presented in many public reports is that of women from Nigeria and Ghana who were trafficked in a highly organised way by an international gang. The women were recruited with the promise of legal work. They paid their traffickers €40-50,000 to arrange visas and flights. The victims were first accommodated in the Netherlands and had to pay an additional €400-500 for the temporary use of ID cards belonging to other African women legally residing in the EU. With these documents, the women applied for residence permits in Germany, initially for three months and then for five years. Instead of the promised jobs, the women had to work in German brothels to pay off their debts. Those who refused were forced physically. The perpetrators had a refined system of coercion: in their countries of origin, the victims had to take a 'voodoo' oath, agreeing that any violation of the code of conduct would result in punishment of their family members. This oath had traumatic consequences for the victims (Generalstaatsanwaltschaft Düsseldorf and Landeskriminalamt Nordrhein-Westfalen, 2001: 57).

CASE 2

This case involving a prominent politician drew much public interest. He was shown to have ordered prostitutes for sex parties and consumed drugs in luxury hotel suites. Some of them were supposedly trafficked from Ukraine. In the trial, three defendants were accused of instigating the illegal immigration of women from Poland and Ukraine. The victims had been promised jobs as seasonal or domestic workers and had had to pay €3,000 for their illegal transport across the Polish-German border by bus or taxi. Some women had swum across the River Oder. In Germany, the women were provided with false documentation and forced to pay off their debts with sexual services in hotels or brothels. Of the €75 that the customer was charged, the women received €25. Those who refused to work off the smuggling fees were threatened with death. At least one woman was raped in an attempt to make her comply (Der Tagesspiegel, 19 November 2003).

CASE 3

This extreme case involved sadism. Two close friends from an Eastern European country were recruited in their country of origin with the promise of restaurant jobs in Germany. In Berlin, they were both raped repeatedly and

forced to serve sadistic clients. In advertisements in daily papers, the victims were offered as 'slaves without borders'. The women were locked up in a flat and kept under permanent surveillance. While one woman met with a sadistic client in a hotel, the other was held back as a hostage. The perpetrators threatened to kill the hostage if the other woman did not return or informed the police. In this case the victims could not hope that a client would offer support because they too were criminal offenders. The women feared that they would be killed sooner or later. One of the victims managed to get rid of her guard while on the way to a client and was able to inform the police who then released the second victim (interview with Ban Ying, Berlin).

CASE 4

A man promised two Bulgarian women legal jobs in Germany. The women, 21 and 23 years old, were invited to accompany the man to a wedding in Germany. The employment was to be arranged afterwards. The two women trusted the man. The entry into Germany by car was no problem: the alleged attendance of a wedding was accepted by border patrol as reasonable grounds for a tourist entry and stay. At the border the man showed the required amount of money for the three tourists. But instead of going to a wedding party, the women were forced into prostitution. Their passports were taken away. The victims were separated and handed over to families who locked them up in flats with the intention of selling them to clients. The women refused and were beaten. After two weeks both victims managed to escape before the first clients arrived. One woman jumped out of a window in the first floor while her friend secretly took the key of the locked door and disappeared. They reported to the police and were sent to a counselling centre. As likely witnesses in a trafficking investigation, both women received shelter and the opportunity to remain in Germany for the duration of the investigation and court trial. Both women preferred to return home to Bulgaria but agreed to come back for the trial to serve as witnesses (interview with Agisra, Cologne).

CASE 5

A young Romanian woman was offered a job as a waitress and dancer in a club. She was recruited by a Romanian citizen who had been commissioned by a 50 year-old German who was looking for an attractive escort for his regular visits to swinger sex clubs. The woman entered visa-free. The customer covered the fees for the agent and transport and told the young woman she had to stay with him and have paid sexual intercourse. The woman reluctantly agreed. The customer also paid her to have pornographic pictures taken and to accompany him to swinger clubs. The man was annoyed that the woman was

reluctant; he was convinced that there was nothing wrong with having invited her under false pretences and expecting sexual services. Every three months, he brings in a new 'visitor'. Such arrangements seem common in the swinger scene (interview with retired social worker, Berlin; also Rügemer, 1997).

Most cases involve relatively little violence and organisational sophistication. Counselling centres report that the recruitment of forced sex workers is mainly organised by small groups of three to five persons. In eight of every ten cases, women are recruited by acquaintances, neighbours and in some cases even relatives. This contributes to the dependency and intimidation of victims; the perpetrators know the victim's place of residence and family and threaten to take revenge on them if she reports to the police (interview with Agisra, Cologne). While cases of abduction, accommodation in jail-like situations and the use of violence gain much more public attention than the less sensational cases, law enforcement and counselling centres report that the locking up of women is the exception, not the rule.

One counselling centre explained that "There are two categories of women from CEE countries who come to counselling centres. The first category consists of women who enter voluntarily to work in the sex industry. The other is of women forced into sex work. Nearly all women from this category are approached in their countries of origin and promised legal employment as a nanny or waitress. After crossing the border, the women find out the truth. Most submit because they cannot afford or do not want to return with empty pockets or they are forced to stay. The majority are already in debt when they enter Germany. Earning money through prostitution represents their only opportunity to pay off the debts for documentation and transport. Women often mention that once they have paid off their debts, they are able to work independently and for their own pocket" (Osiecki, 2001: 80).

A social worker estimated that roughly 90 percent of all trafficked women have access to a telephone, can leave their accommodation to shop on their own and have some social contact with others. The coercion is subtle and works on a psychological level. Perpetrators tell their victims that they will not get any support from public authorities, rather that they will be punished and expelled. Most victims are already wary of public authorities due to experiences in their home countries. This can be reinforced when the perpetrators hire men in police uniforms to threaten or abuse their victims (interview with LKA, Berlin).

In serious cases of forced labour, the victim's passport is removed and she fears that she or her relatives will be killed. She may also be concerned that her engagement in prostitution will be reported to her family and neighbours

back home and that she will be expelled from the local community or, in the case of women from Islamic countries, be killed. The victims feel at the mercy of their perpetrators; they have little contact to trustworthy parties. According to one counsellor, many victims reach the conclusion that: “They beat me, and they hand over only 30 per cent of the income. But that is better than nothing. If I go, I have no chance of returning to Germany” (interview with Agisra, Cologne).

While most victims seem to be recruited by friends or relatives, hiring agencies also play a role. Marriage agencies, for example, advertise women from all over the world on the Internet. The agencies sometimes offer a ‘test run’ with the women. Social workers complain that some men use the service to ‘order’ women with the prospect of marriage and then send her back after the ‘test’ period. In another variant of trafficking for marriage, the man marries the woman and expects her to accept every demand he makes. The woman knows that if she refuses, the marriage will be dissolved and she will be forced to leave the country. A recent reform of the legislation means that women can now claim independent entitlement to stay after one year. Until that point, she is required to leave the country in the event of divorce. The problem is that victims may not be aware that they can report to the police after one year without fear of deportation (Agisra e.V. et al., 2003).

Domestic service

Trafficking for servile marriages or for the purpose of sexual exploitation often overlaps with trafficking for domestic service. Like sex work, domestic work tends to be isolated and unregulated by labour law and the relationship between worker and employer is highly personalised (Anderson O’Connell Davidson, 2003). Recruitment is often organised through family networks, informal contacts or through au pair and other agencies.

While an estimated four million households in Germany use domestic helpers, most for a few hours a week, only 39,800 domestic workers are registered with the social insurance institutions (Schupp, 2002). Most domestic workers are unregistered and employed on the basis of part-time occupation for several customers. Many domestic workers are foreign migrants who consider themselves self-employed (Heubach, 2002). All counselling centres contacted for the purpose of this study reported that extreme exploitation is the exception and not the rule in domestic service.

Domestic helpers who live in the house of the employer (“live-ins”) are particularly vulnerable to labour exploitation. It is well documented that the au pair arrangement is often presented as an opportunity for cultural exchange but

is in fact a legal façade for the employment of cheap foreign nannies (Hess and Lenz, 2001). The situation in the labour market for live-in domestic workers has deteriorated recently with the liberalisation of licensing regulations. Counselling centres complain that the recent admission of commercial agencies for au pair placements has resulted in increased fraud, menace and violence (interview with In Via, Berlin). The following compilation of cases illustrates a range of highly exploitative situations:

CASE 6

A young woman from Morocco had dreamed of pursuing education abroad and, against her brother's will, spent her inheritance of roughly €3'000 to emigrate to Germany. Another Moroccan woman who was married to a German citizen agreed, in exchange for payment, to assist with the immigration and education arrangements in Germany. The entry was made possible with false documents. In Germany, no education was provided. Instead, the young woman had to work in a family household. When she complained, the host reminded her of her irregular immigration status: "You are here illegally. If you want to do something different, I will go to the police and you will be deported". This situation lasted for two years. Then the host tried to force the victim into sex work and brought some clients to the flat. The woman refused and the host informed the police. She was arrested and placed in a detention centre. There, she met a social worker who realised that the young woman would risk death if she returned to her Islamic country. Not only had she left Morocco against her family's will, the host in Germany had informed the family that the victim was a prostitute. A court hearing was held. The circumstances were accepted as grounds to waive deportation and the young woman received residence status. The social worker asked the victim to report the perpetrators to the police but the victim was scared and refused to do so (interview with Agisra, Cologne).

CASE 7

In May 2003, the author met the 40-year old Colombian domestic worker Maria D. in the counselling centre Agisra in Frankfurt/Main. For four years, Maria D. had been held captive in Germany. In Colombia she had worked as a domestic worker; her last employer had offered her a job in domestic service in Germany. The travel expenses were to be covered by the future employer, the monthly salary was to be €300. This offer was very tempting to a woman who was earning only €75 and who dreamt of buying a house. She used the visa-free entry to come to Germany. Someone picked her up at the airport, a service she had to pay for. Her employer was a Colombian citizen with two children. The family had no resident permits but lived with a relative who was a legal resident. The

employer worked in the sex industry and needed someone to take care of her children. Maria D. was told that the agreed wage of €300 would not be paid on the basis that she had to pay back the costs of residence, work permit application and flight. The employer offered to send €150 a month to her 18-year-old son in Colombia while she worked off her debts. She also had to forfeit her passport for the application procedure. She was kept under surveillance and her phone calls to her son were supervised.

In time, she realised that no money was being sent to Colombia. The employer started to intimidate her: “You are illegal. You cannot go to the police. The police will send you to prison. For one year illegal stay you will face three months prison.” Maria D. thought of the prison in Colombia and kept silent. In order to make Maria D. feel insecure, the employer required her to hide in the car or even the trunk when driving, claiming that the police could detect and imprison her. The intimidation proved effective; she did not try to escape. The situation lasted four years until acquaintances of the family interfered. They informed the victim about a counselling centre. The escape of Maria D. was a joint effort. She secretly took back her passport and disappeared in the night. The information and support provided by the counselling centre offered her a way out of this situation of forced labour. Fearing that the perpetrators would kill her or her son, she refused to inform the police. Maria D. returned to Colombia a few days after the interview (interview with the victim).

CASE 8

In December 2002, the 21-year old Romanian au pair Ramona R. committed suicide. The police suspected serious maltreatment and investigated. She had been recruited in the summer of 2002 by a Romanian Internet agency. The agency charged the young woman’s family a fee that was the equivalent of a month’s salary. The family expected the young woman to pay off the fee with her earnings in Germany. The ‘guest’ family of Ramona R. maltreated and did not pay her. The host did not register her with the German authorities and after her visa expired, she became illegal. The knowledge that she would not be able to pay off her debts probably fuelled her despair and drove her to suicide. In January 2004, the ‘guest-parents’ were sentenced to prison (AZ Amtsgericht Ansbach).

CASE 9

While most of the forced labour victims in domestic service are women, the following case illustrates that men too can be victims. A young African was provided with falsified documents by an acquaintance who claimed this was the easiest way to get into Germany; in fact, a visitor’s visa would have been

granted. He was told that once in Germany, applying for legal status would be no problem. The victim was smuggled to Berlin via Paris. Upon arrival in Berlin, the host explained to the victim that he was illegal and would have to work for him in gardening, flat renovation and domestic work. He threatened to report the victim to the police if he objected. The young African was kept under surveillance until he managed to escape with the support of an acquaintance (interview with a retired social worker, Berlin).

The following three cases illustrate how trafficking for labour exploitation can have serious implications for the health and safety of the victims.

CASE 10

A tragic case of a domestic worker was documented by FIM, a counselling centre in Frankfurt/Main in which an odyssey of twelve years ended in the death of the immigrant. In 1988, the then 28-year old Isabella V. came to Germany from the Philippines as a tourist, hoping to earn some money. A former neighbour who had moved to Germany invited her and sent her a flight ticket. Isabella V. found work as a live-in domestic worker for an Arabian family: six days a week she cleaned the flat and office of her employers, two physicians. She received €500 monthly and sent €300 to the Philippines. In 1996, she started to feel tired and weak. The employers examined her, gave her some tablets and finally fired her. Not knowing where to turn, Isabella V. was found in a park, confused and seriously ill. The hospital diagnosed her with typhus and meningitis. The former employers denied the employment relationship. Isabella V. died on August 14, 1996 (Ökumenische Asien Gruppe, 2000).

CASE 11

The Polish citizen Barbara S. answered a job advertisement in a Polish magazine and was recruited for domestic work. A salary of €600 was promised for employment on a legal basis. When Barbara S. arrived, the employer informed her that the wage was only €100, arguing that he had to pay the fees for the application procedure, for residency and the work permit. Believing that she had no choice, Barbara S. agreed, in part because the employer promised to arrange some additional cleaning jobs. In her breaks she hurried to these customers. After four weeks and 248 working hours, Barbara S. injured her finger while working. Her employer, a physician, denied her medical treatment and the wound became infected. Barbara S. was fired. She turned to a counselling centre for support and pleaded her case at the local industrial tribunal.

The employer insisted that the claims were not substantiated and that there had never been an employment relationship but rather that Barbara S. had been

taken in out of pity. Her activities in the household were only her share of household work. The industrial tribunal rejected this excuse and ruled that the employer pay €1'400 in withheld wages and sick pay. Because the employer contested the judgement, the decision has not yet been settled. If the judgement is confirmed, the victim will be entitled to receive benefits from the trade association responsible for labour accidents. The victim's fingertip had to be amputated. According to the counselling centre, the family had been employing Eastern European domestic helpers on a rotating basis every three months (interview with ZAPO, Berlin and review of documents).

CASE 12

A Moroccan young woman came to the counselling centre after her residence status had expired. Her employer, a Moroccan immigrant, had raped her. She had escaped after six months and found refuge with another au pair from France. Finally she reported the case to the police. Due to an agreement between authorities and counselling centres in Cologne in cases of rape, she received toleration and was able to take legal measures. The court hearing was successful; the family had to pay full wages going back 12 months but the rape case was dismissed on lack of evidence (interview with Agisra, Cologne).

The employment of domestic workers accompanying diplomatic employees raised a controversy recently in Germany. After the British NGO Kalayaan exposed several cases, the NGO Ban Ying in Berlin followed suit, confirming that the exploitation and abuse of domestic workers accompanying diplomatic staff is also commonplace in Germany. Roughly 80 percent of the 1 700 domestic helpers registered with diplomats come from the Philippines (Ban Ying, 2002). During the research period of this study, the case of a Saudi Arabian diplomat who had imposed forced labour on a Philippine domestic was made public (Der Tagesspiegel, 17 May, 2003).

CASE 13

Esmeralda E. had already worked as a domestic worker in Hong Kong, Riad and Taiwan when she applied for a new job via a private job placement agency in her town in the Philippines in 2001. In order to be able to pay the \$US 3,000 fee, she pawned her house and was placed with a Saudi Arabian diplomat. "They promised me a salary of \$US 200 per month. In the Philippines, I earned 3,000 Pesos monthly, this is about \$US 20. I accepted. If you work hard you will increase your salary: that was the promise. The contract was valid for two years without specification of holidays and working time." The employer promised to arrange work and residence permits. On arrival, Esmeralda E. did not get her passport back. She was locked up in the family's private flat. She

had to work 16 hours a day for seven days a week. Esmeralda E. reported having been called in the night to pick up a handkerchief that her employer had deliberately thrown on the floor of the bathroom. She learnt from another domestic worker in the household that wages were regularly withheld and that the maids had to serve the employer's sexual needs. The employer claimed that the wages were being sent to the Philippines, but Esmeralda E. found a letter from her husband in the garbage asking why she was not sending him any money. Esmeralda E. demanded payment of her wages.

When she realised that the employer was not going to keep his agreement, she decided to escape. Three months after her arrival in Germany, in October 2001, she noticed that a family member had forgotten to lock the door. She escaped, went to the police and received her passport back. She was allowed to spend one night in the police station. After, not knowing where to go, she contacted a compatriot who offered her shelter. Her new host asked her to obtain proper residence status. When she applied at the foreigners' office, she was placed in a detention centre and prepared for deportation. Only with the assistance of a lawyer was she able to explain her case. She was released and received toleration status in order to take legal steps against the diplomat. She initiated an investigation for the payment of back-wages and compensation of €13,000. Esmeralda E. was convinced that she should stay in Germany but the toleration status, which had to be renewed regularly, prohibited her from seeking employment. She received no social support and was at the mercy of her host. The victim found the application procedure for a work permit intimidating and humiliating and she was turned down. The case against the diplomat did not progress. In May 2003, 22 months after her entry, her situation remained uncertain. The private placement agency in the Philippines had closed in the meantime (interview with the victim).

Agriculture and food processing industry

The agricultural sector employs more than 300,000 seasonal workers who mainly come from Poland and generally stay for a period of three months. Work permits cannot be extended by the individual worker, but a company is permitted to employ seasonal workers over a period of seven months, and in some cases up to a year. Seasonal workers are not integrated into the labour market system and depend very much on their employers. The German trade union IG BAU, and counselling centres specialized in Eastern European migrant workers report that some employers impose unlawful conditions of work and pay (IG BAU, 2001; Ehrenfort, 2003). Employment obtained by fraud, menace or the use of violence is a problem both in the informal econo-

my and in officially registered seasonal work. In 2002, labour authorities placed 318,549 seasonal workers, mainly in agricultural jobs. The employers are obliged to pay according to the local wage levels and to provide appropriate accommodation but in praxis, statutory standards are regularly disregarded. Double contracts, piece rates, unpaid overwork, tax evasion and employment without the required work permit are widespread practices. The cases suggest that seasonal labour schemes serve as a legal façade for the imposition of irregular conditions. However, the majority of foreign migrant workers accept unfavourable conditions for as long as possible. The State Labour Office of North Rhine Westphalia reported that 40 percent of the foreign workers checked had been employed without the required labour permit (State Labour Office North Rhine-Westphalia, No. 46/02, 6 November 2001).

CASE 14

In July 2003, 18 seasonal workers from Romania succeeded in getting compensation for withheld wages from their employer, an asparagus farmer. The ruling was made by the industrial tribunal. By law, the farmer had to cover their travel costs, to provide accommodation for a maximum daily charge of € 1.55 and food for no more than € 1.51. According to the contract between labour authorities in Germany and Romania, the workers were to be employed for six-hour days and five-day weeks for a period of three months. The actual conditions deviated considerably. The grower charged €8 for food and €6.22 for accommodation. The Romanian workers described their situation in a letter to the counselling centre: “Every worker covered the costs for his or her own transport: €65 each way between Germany and Romania. The employer did not cover the costs. (...) But we do not know the correct deduction for social benefits nor how much the employer is entitled to charge for accommodation. Initially we were twenty people, but two went back due to the stress. Between eight and ten women were accommodated in two rooms. The rooms had no bath or toilets. There was only one bath for everyone in the yard, but in the night we could not make use of the toilet because two huge dogs were put off their leads. The water supplies were defective, the water ran all the time and it was impossible to use electric light for fear of an electric shock. When we entered the rooms the stink was unbearable. (...) Even some German citizens felt badly about the working conditions” (original letter by the workers).

After one month of work, the farmer dismissed the workers and sent them home, paying them for one month although they were entitled by contract to their wages for the whole period. In addition to the excessive deduction for food and accommodation, the farmer deducted contributions for social insurance and did not remunerate the overtime work. The monthly wage of the

Romanian harvest workers was on average €350. Instead of the statutory €5.25, the wage per hour was about €2.10. The workers were left with €220 after a month of hard work. The foreigners' law requires that foreign migrant workers leave the country when a work contract finishes. Before departure, they notified a counselling centre, which in turn reported the case to the local labour office, which refused to investigate on the basis that the workers had already left the country. The following season, the farmer again received licence to employ seasonal workers. The counselling centre contacted the social insurance office and found out that the farmer had not paid social contributions since 1999 even though he had deducted the contribution from the wages. The Romanians took their case to the local industrial tribunal and finally received partial payment of their back-wages (interview with ZAPO, Berlin and review of documents).

CASE 15

In the summer of 1998, a Bavarian cucumber farmer employed over 350 Polish seasonal workers. The contract specified that employees work six-hour days and five-day weeks for €4.60 per hour. In practice, the employees were asked to work longer without overtime compensation. Tension escalated when the grower tried to impose even more unfavourable conditions: instead of the hourly wage, he offered a piece rate of 2 - 3 cents per glass cucumber at the bottling plant. This arrangement meant that workers were not paid during rainy weather or when the bottling plant, which often broke down, was not in operation. The workers started a strike and informed a counselling centre. The grower fired the workers he suspected of having lead the strike. With the support of the counselling centre and the agricultural workers' union, 25 workers took legal action in order to obtain the withheld wages from the contractual period. The court hearing ended with a settlement. The grower agreed to pay 50 percent of the claims (interview with ZAPO, Berlin and review of documents).

CASE 16

A Polish citizen had worked for eight years as a seasonal worker on a small farm in southern Germany. He as the only foreign worker had been employed to organise the apple picking carried out by resident workers. In 2002 he suffered an accident on the job. Because he was registered, he received health care and his professional organisation paid his insurance. The respondent was satisfied with the conditions of work, living and pay. While he had earned €250 a month in Poland, he received €600 from the seasonal work in Germany. He admitted that his work contract was not being respected; instead of work-

ing six hours daily five days a week, he worked 10-12 hour days, seven days a week. Given these working hours, the wage of €600 was considerably below the statutory minimum wage but the seasonal worker didn't complain, as he had established friendly relations with the employer, who had even visited him in Poland. He calculated his wage as a total and not on an hourly basis, following the logic of target working (Piore, 1979: 95). He was aware of cases where Polish seasonal workers felt exploited and were organising strikes: where accommodation was not appropriate, food was poor, living and payment arrangements were being violated. He felt such situations were unique to large enterprises. He also mentioned that some placement agents act as gang masters in larger farming operations and take a 10-15 % cut of the wages of the seasonal workers (interview with a Polish seasonal worker).

While the following case may not constitute forced labour, it is an example of the sometimes blurred boundaries between coerced work and work under highly insecure and exploitative conditions.

CASE 17

A Polish seasonal worker suffered a leg injury after one week at a mushroom farm. She had been working 12 rather than the agreed-upon eight hours a day. The industrial safety conditions were not being met. The worker requested medical treatment but her employer refused and took her instead to a bus leaving for Poland (letter of the victim, 30 July, 2003; ZAPO, Berlin). The dismissal of injured or sick workers is not uncommon.

Forced labour is often hidden behind the legal façade of contracts for services. In 2000, an average of 44,000 contract workers from 13 countries were employed as contract workers (Beauftragte der Bundesregierung für Migration, 2003: 39f and 65). By law, contract workers are regular employees of the enterprises that send them. According to bilateral agreements, employment companies are obliged to pay a wage equivalent to comparable German employers. In practice, statutory wages are regularly undercut and minimum standards not met. Trade unions and some law enforcement officials have been demanding the abolition of the contract for services system for a long time.

CASE 18

3,500 Romanian contract workers had been recruited in Romania to work in a slaughterhouse. The workers had each paid a fee of €800 for the jobs and had been promised a monthly wage of €1,200 for a one-year period. Instead, they received €900 for ten to 14 hours work daily, with two breaks of 15 minutes. The overtime work was not paid. The employer took deductions from

their wages for overcrowded accommodation and requisite tools such as knives and safety boots. The workers had to sign blank pay rolls and were instructed to give particular answers in the event of a workplace inspection. One butcher had his passport removed and received only a copy of it back. He worked the whole year of 2002 without a break; the employer refused to grant him vacation on the basis that his visa was not valid, a charge that the butcher could not counter as he had no passport. He remained in Germany until January 2003; it was “like a camp”.

The worker decided to go on strike to demand his wages. The German representatives of the contract for services company threatened to evict the workers and send them back to Romania. When the workers refused, a manager assaulted some workers, injuring them seriously. One man was taken to hospital with a broken leg. The workers reported to the police; the proceedings were ongoing at the time of this study. Three workers, supported by a trade union, claimed a total of €15,000 in back-wages. The industrial tribunal accepted no responsibility and the Romanian workers had to then appeal to a Romanian industrial court. The Romanian workers doubted that the Romanian courts would accept the German requirement that contract workers are entitled to the German wage levels. The workers turned to law enforcement and a trade union and investigations were initiated, which resulted in some German managers being placed in custody (Lorscheid, 2003a; Lorscheid, 2003b). The public prosecutor said: “The investigation was initiated in part because the Romanian contract workers had turned to the trade union. The trade union represents the workers and supported the investigation with valuable information” (letter of the public prosecutor from 12 November 2003, in NGG, 2003).

CASE 19

In June 2000, ten Polish butchers working under the same contract scheme complained to a counselling centre about withheld wages. They had been recruited by a North German slaughterhouse. The employers had informed the licensing authority that the statutory wage of €6.67 would be paid. When the recruited butchers were presented with a contract for €1.77, they assembled with 70 other workers to discuss; the workers accepted a wage total of €1,000-1,500. The conditions of their contracts were not being met. The workers had to work unpaid overtime and sign blank payroll-lists. One worker took legal action but the employer used his signature to disprove his claim. The German court dismissed the case on the basis that it belonged with the Polish industrial tribunals.

According to the Posting-of-Workers Act (Arbeitnehmerentsendegesetz) of 1996, posted workers have the right to appeal to German industrial tribunals. According to the reservation, contract workers in the meat processing industry were denied access to the German industrial tribunal (interview ZAPO, Berlin and review of documents).

Construction industry

According to the German trade union IG BAU, the construction sector employs around 800,000 workers with formal contracts (including contract workers from abroad), and between 300,000 and 400,000 undocumented migrant workers. The trade union succeeded in introducing protective regulations. The Posting-of-Workers Act passed in 1996 stipulates that German collective agreements on minimum wages and holidays are generally binding, regardless of the nationality of workers or companies working in the construction industry. While the main contractor can be made responsible for violations of labour law, sanctioning main contractors is difficult in practice. Foreign companies have to report every activity on German construction sites to the authority responsible and German industrial tribunals are responsible for foreign workers who have been hired for construction work. In spite of this special legal framework, experts attest that the industry is rife with illegal employment and cases of forced labour.

CASE 20

Polish contract workers responded to an advertisement for well-paid jobs in Germany. The payment of transport and accommodation was not mentioned, but the applicants expected this to be covered by the hiring enterprise - the usual procedure under Polish law. They were sent to Hagen and employed on the construction site of the new town hall, a public building project. On arrival, each worker received €100 as an advance payment to buy food. The employer told the workers that they had to pay for their transport and accommodation. Eight people had to share a single-room flat and they had limited access to the sanitary and kitchen facilities. They worked 12-14 hours a day, 60 to 70 hours a week. According to their work contract from March 6, 2002, the workers should have received a basic wage of €2.05 plus bonus, bringing their hourly wage to €5.24. Although the minimum wage was €5.48, the German authorities authorised this reduced wage. But due to the unpaid overtime work, the hourly wage they received was in fact €2.05. The worker's income was further reduced by irregular deductions: each of them had to pay €100 in rent. The company was paying a rent of €300 and making an additional profit of €500. For transport the workers were charged €20 for each direction.

All these deductions were off the record. To hide the irregularities, the company manipulated the documents. The workers were required to sign for the receipt of the wages paid plus a blank sheet: “There were two lists. The one list was for tax authorities. The other list was for internal documentation (...). And the situation was as such: You signed that you received €2,000. But in reality you received only €1,000. And why did you sign? If you did not sign they would have fired you. Had you tried to refuse the signature, you would have been off. Go back to Poland! This is what they said” (interview with contract worker).

Workers who resisted were threatened with dismissal. Furthermore, the employer used any minor incident to blackmail the worker into signing a blank document stating that the worker agreed to his dismissal. When the interviewee lost a hammer, his gang master made the man sign something, claiming this would save him from dismissal. He signed. “The contact with Germans was minimal. The construction company management was not interested in how long we worked or if we got the money. We worked 12, 15 hours instead of eight. And nobody said: I don’t go to work, my head aches, because then you’ll be sacked immediately. And at home the wife and children cry because the husband is unemployed. And they exploit this situation. This is slavery! That was the situation” (interview with contract worker). In time, some workers realised that the conditions of work and pay were even worse than in Poland.

The German construction workers’ union went on strike. After speaking with a trade union secretary, the Polish workers stopped working. The trade union activist convinced some workers to report the unlawful conditions of their work and pay to the local labour office. The employer became aware of this initiative and threatened that the workers would lose their residence and work permits and be expelled by German authorities. “We worked eight hours officially for the tax authority, the holiday scheme and so on. But in reality we worked at least ten hours, often 12, 14 hours, also Saturdays sometimes even Sundays. Everybody knew that. I went to the local labour inspectors with some colleagues. We reported that we work much longer. At the beginning the labour inspectors said: Thank you for the information. But nothing happened. The inspectors had the opportunity to go into the office and to examine the two lists. But nothing happened. Only after the trade union applied pressure was a check conducted. But everybody knew that it was going to take place. The documents had been prepared accordingly for the labour office. The labour inspectors examined the documents and left. (...) We expected the control to be on behalf of the Polish workers. We wanted to take the check as an opportunity to deal with the injustice. But this did not happen. On the contrary! The check was not conducted to find out what irregularities the company was committing, but to send workers

back! They found irregularities among the workers, not on the part of the company. Checks are conducted at the expense of the workers. All in all, we were told by the employer: 'In the event of a check you should remember that you earn €11 per hour. Remember that! And concerning the working time: Respond 42 or 39 or 40 hours, but not more! We have no overtime work here! Remember, you are not working longer.' They told us that we would be dismissed and sent back to Poland if we said that we worked longer" (interview with Polish construction worker).

When labour inspection controlled the construction site, the intimidated workers answered that the conditions of work and pay met the required standards. The interviewee was the only one to give truthful answers and he was dismissed soon thereafter. The blank dismissal form he had signed was used. With the support of the German trade union he claimed wrongful dismissal and withheld wages at the industrial tribunal. Although German law stipulates that German industrial tribunals handle the complaints of posted construction workers, the industrial tribunal in Hagen denied responsibility, arguing that the complaint should be handled where the firm has its seat (Berlin in this case) and not their place of work. The industrial tribunal in Berlin denied responsibility and asked the Federal industrial tribunal to clarify the question of responsibility. At the time of writing, this procedure was ongoing (interview with contract worker; interview with IG BAU Hamm).

CASE 21

A construction company from Bosnia had a core staff of one hundred workers for a period of ten years. About twenty were employed as contract workers on the construction sites of two regular customers. The workers were grateful for the chance to earn more than the average income in Bosnia and accepted an hourly wage of € 4.85-5.00 for their 260-280 hours of work a month. By neglecting statutory wage requirements, the company was earning a sixty percent profit on their contracts. The employees complied while the business violated minimum wage requirements, falsified documents and hired workers illegally behind the façade of service contracts. The recruitment and irregular employment of foreign migrant workers was investigated and finally reported to the public prosecutor as human smuggling (interview with local office of Federal Customs, Landshut). This case shows that violations of the human smuggling provision (§92 a and b, Foreigners' Act; turned into § 96 of the new Residence Act) and investigations into "organized crime" should not be confused with forced labour.

CASE 22

A group of Italians organised a large-scale illegal construction business. The organisation focussed on a particular segment of the construction market and hired about 200 irregular workers and front men to run letterbox companies. The group organized orders and coordinated the employment of the workers. The letterbox companies provided invoices and were liquidated before the first tax audit. Their profits arose from tax evasion, not from the exploitation of the workers. According to the police investigators, the workers participated voluntarily and profited from the activities. They received the wages that had been agreed to. “The organisation was smart enough not to cheat the workers and thus produce victims willing to cooperate with law enforcement.” The police officer wondered how the company had managed to cooperate repeatedly with a few customers using tenders from allegedly different and frequently changing sub-contractors. Asked about this, the customers claimed not to be involved in the practice (State Criminal Police Office, North Rhine-Westphalia).

These two cases show that situations classified as organized crime do not necessarily involve the coercion or enslavement of workers; in many cases, irregular employment takes place with the compliance of personnel. There is a high fluctuation of workers in the construction industry, and employers have difficulty retaining workers. However, testimonies suggest that the harsh exploitation of illegally employed foreign migrant workers is widespread in the sector.

CASE 23

An employer asked a Polish citizen to recruit workers for irregular employment. The recruiter found among his acquaintances 42 persons interested in working in Germany, providing the employment was legal. The labour broker confirmed that the work was legal and distributed application forms for work permits. The acquaintances trusted the recruiter and took up employment in Germany. For the first two months, their salaries were paid. From the third month on, payment was withheld. One day the workplace was inspected and the workers were deported without any wages (Alt, 2003: 329, footnote 19).

CASE 24

The Labour Office of North Rhine-Westphalia reported a case in which irregularly employed foreign workers were not aware of their unlawful situation: “On the site of a factory, demolition work was being carried out. The employees had to work 12 hours a day (including Saturdays and Sundays). They were not aware of the illegal situation. Since the site was chaotic, they could have easily escaped. But they didn’t. The workers were accommodated in degrading condi-

tions. Eight persons had to live in a caravan located on an outdoor camping site. During the entire period of employment, no wages were paid. Instead, they received a small amount to cover their basic costs” (LAA NRW, internal Report 2001).

CASE 25

A Turkish illegal worker reported a comparable experience: “Normally they don’t pay because they know very well that you are illegal. And they let you work. And you slave away the whole time. 10, 11 hours daily and then they don’t pay the salary that was agreed to. €5 was agreed to. But they never give you the whole amount. If the sum is €250 or €500, they give you an advance payment of €100 and the rest will never be paid. And there is no opportunity to make demands because you are illegal. And they exploit the situation” (Alscher u.a., 2001: 56).

CASE 26

An African asylum seeker had worked illegally on a construction site of a public contractor. As usual in construction, a number of sub-contractors were involved. The man had been recruited by the last link of the subcontracting chain, a small construction company in founding. None of the 19 illegally employed workers received the wages that had been agreed to. Altogether €13,500 in wages were withheld. The man demanded his wage often but with no success. The last time he attempted to collect his back-wages, the employer asked the worker to wait a moment, he would soon return. Then two other men appeared and beat the man with sticks. The worker was seriously injured. The perpetrators disappeared. The man reported to the police but then waived the case, realizing that he would in fact expose himself while the perpetrators would probably not be prosecuted due to lack of evidence. A group of human rights activists took on the case, organised a rally and publicised the incident. In order to avoid further victimisation of undocumented foreign workers, the supporters informed all employees that a political action would be taking place that would draw the attention of the public and law enforcement to the construction site. According to the supporters, the contract was designed to exploit the workers. The main contractor denied responsibility, arguing that the sub-contractor was responsible for the wage payments, but at the same time, promised to ensure the payment of wages (Press release of Flüchtlingsinitiative Brandenburg, 11 June 2003). The workers did receive their wages but on October 24, 2003, the group of supporters organized a second rally because another group of illegally employed workers had been denied payment again. The main contractor again agreed to pay the back-wages (www.umbruch/bildarchiv/ereignis/241003lohnbetrug-wbm.html).

CASE 27

An alarming example of the abuses that take place in the construction industry was provided by a Polish Catholic priest who had worked 'undercover' as an illegal worker in the industry. He encountered many foreign migrant workers who arrived for work without the required documents. "There are a few who work for €1 per hour. But this is the exception. The rule is €5, but part of the total wage is often withheld. Instead of the agreed upon €1,500 for three or four weeks employment, the workers get only €250 or €400. I even met people who worked three months and received nothing. One of the workers was a Polish citizen from Danzig. He has three children; his wife is unemployed in Poland. He is an engineer and former pilot. He worked three weeks with a Turkish sub-contractor. He got €250 instead of the €1,500 that was agreed to. He demanded his wage from the subcontractor. Some men beat him up. He had no choice but to return home." Referring to the naïveté of some workers, he said: "They come here and hope that everything will turn out well. And then they get only one third of the salary. But even then they are satisfied. There is so much poverty in Eastern Europe and the people urgently need the money." The priest reported that another group of irregular workers are ethnic Germans from Eastern Europe. "On a large construction site, a group of ten Russian-Germans was working for a Turkish or German sub-contractor but they received their money. The sub-contractors were scared of the Russian mafia. About €1,000 was promised for two weeks of work. And the Russian-Germans knew that their wages would be withheld. And they offered the mafia €250 from their salaries so that the mafia would ensure that their entire wages be paid. And the mafia is tough concerning money. I personally witnessed how mafia collected money, but I will not talk about, it is too dangerous" (Lewandowski, 1999: 44-45). This testimony illustrates need for better law enforcement on German construction sites (Krassmann and Lehne, 1997). Recent research on organized trafficking suggests that such mafia-type "gangs of enforcers" are not integrated into a vertical structure of organized crime but rather form small groups that are only loosely associated with their clients and act independently (Chin, 1997).

CASE 28

A Brazilian construction worker described his experiences: "It is easy to get a job. There is lots of work to do. But it is difficult to find work that is paid. You find illegal work by talking to other illegal workers on construction sites. Everybody knows of at least one construction site where help is needed. But at these places, wages are often withheld. It is difficult to find a construction site where you can be sure that the money will be paid. (...) The companies pay

between €5 and €12.50. We demand weekly payment, but this is rarely paid. Normally we get our money every two or four weeks. As a rule, eight out of ten workers are not paid. But most are scared of denunciation and do not resist. If you put the employer under pressure, he will be scared and pay. For instance, we take away their cars or beat them a little bit and threaten: 'If you do not pay we will kill you.' The last that refused to pay was an English sub-contractor. We met him with his wife and his two-year-old daughter. I walked alongside and played with the daughter while my colleagues informed the boss that if he didn't pay, I would take the daughter. He paid immediately. I would never ask police for help. That's no use. There are no provisions that protect a foreign worker who is illegally employed. If he goes to the police, they first check documents and work permits. And if the workers have no documents, the police will not investigate the employer but rather the foreign worker. He is the one who will be immediately arrested" (Aus and Hartmann, 2000: 47-48).

CASE 29

An officer of the Berlin Criminal Police Office described an exceptional case: "We had a case where an Italian business man residing here in Berlin was abducted by three Russians, brought to a flat and kept there for two days. He was beaten and tortured. The perpetrators forced the man to climb on a chair, put a cable around his neck and pretended to kick the chair out from under his feet. At the same time the perpetrators drank vodka and finally fell asleep. The victim escaped. The three perpetrators were sentenced for abduction with the intention of blackmailing. At the same time we investigated the background of this incident. We found out that the Italian businessman employed a considerable number of illegal foreign workers. The problem with such cases is that all persons involved are criminal offenders and therefore nobody reports to the police. This Italian was almost dead and had to go to the hospital. He had no other chance. But normally such incidents are not reported to the police because everybody who reports incriminates himself as well" (Bernsee, quoted in Lucht, 2002: 77f).

CASE 30

The 49-year-old Kazakh citizen Vassili J. worked illegally for a demolition contractor in Germany. He was recruited in Kazakhstan by an agency that arranged the tourist visa for him for a fee of €70. The visa was obtained on a fraudulent basis; the agent pretended that Vasilli J. would be trading second-hand cars. After arrival in Cologne, Vassili J. was picked up, shown accommodation and employed by the sub-contractor Jakob D. Together with about thirty compatriots he was illegally employed in the demolition of a nuclear plant in Kalkar (which had been abandoned before ever going into operation). The

undocumented workers had to demolish the building for € 2.50 per hour. Contrary to legal requirements, the authorities were not informed about the ongoing work. Industrial safety was neglected. The work was extremely hard, the working hours extended and night shifts required in order to meet the expectations of the main contractor who regularly visited the construction site. Law enforcement conducted some controls in the area but did not detect the illegally employed workers. The situation changed after Vassili J. was killed in an accident during a night shift. Initially the police had problems identifying the corpse. The employer sent all undocumented workers back to Kazakhstan immediately and pretended not to know the dead person. When the widow and the Kazakh authorities reported a missing person to the German police, his identity was revealed. The sub-contractor responsible, Jakob D., was investigated and reported to court. The district court Kleve ruled that industrial security had been neglected and fined the sub-contractor €2,250. The fine was low because it was calculated according to the income of the defendant and not the seriousness of the offence. In another proceeding, the lower district court Duisburg tried Jakob D. for human smuggling. The number of workers that had been smuggled could not be ascertained; 250 persons were suspected. The court sentenced Jakob D. to a suspended sentence of one year and nine months imprisonment. Although the contractor and the main contractor are known, they were not prosecuted (Härpfer, 2003).

Restaurant, hotel and catering business

Abuse of the seasonal work scheme is also documented in the restaurant, hotel and catering industries. Businesses run entirely by migrant communities were also mentioned as places of dubious employment relations, but information is scarce. Turkish coffee bars are often reported to violate working standards. According to one illegal Turkish immigrant working in a coffee bar, “Illegal immigrants have to work long shifts, often 12 hours daily, and receive only half the wage a German worker would earn for the same job. But you must accept in order to get a job” (Alscher u.a., 2001: 70).

CASE 31

A Polish-Italian student looking for seasonal employment in Germany paid a German placement agency € 300 to arrange a job for her in an Italian ice-cream parlour. The three months contract was for 36 hours a week. The monthly wage offered was €1,431.62. On request of the employer, she began working ten days prior to what the work permit had stipulated. She worked much longer days than agreed to: 344 rather than 170 hours a month. The employer

refused to pay for overtime. When the worker demanded payment after two months she was called a liar, slapped in the face and dismissed without notice. She had to leave her accommodation immediately; the employer threw her belongings out on the street. The student reported, “I went to the police station to describe the incident. I wore a T-shirt with the emblem of the ice-cream parlour. I trembled. The police officer responded with a smile that he could not speak Polish. Although I showed him my passport and the T-shirt and tried to explain with my few German words what happened, he did not make any effort to grasp my concern. I believe I would be able to identify him. He did not help me” (letter by the worker, ZAPO, Berlin).

She decided to return to Poland, where she informed a counselling centre, which took legal action against the employer. The employer had to pay her € 3,000. The job placement agency did not support the worker. She had friends who had paid fees to job placement agencies but never received contracts. But because they are not willing to testify, law enforcement agencies refused to investigate.

CASE 32

A German citizen and her Czech husband ran a private job placement agency, which recruited workers mainly for hotel- and restaurant businesses in the Czech Republic. An investigation revealed that each of the 170 placed workers had to pay €300 for the service. The workers were first ‘tested’ without the required work permit. After one month of illegal employment, the agency arranged the residence and work permit application. This agency was involved in the illegal placement and employment of foreign migrant workers and human smuggling. The final report of the investigation did not mention the conditions of work and pay: “The accused (labour broker, the auth.) aided and abetted or incited illegal stay. Without his involvement the employment would not have taken place. In a telephone conversation, he encouraged the foreign citizen to enter Germany with the promise of a job. This promise was the main reason for entry. The accused lived from the fees that foreign citizens had to pay him.” In the course of the investigation, five workers without a required visa were discovered: “The five workers in illegal employment were arrested and handed over to the police department for further investigation. In agreement with the foreigners office, they were required to make a security deposit and then leave the country” (final investigation report, Federal Customs Police).

CASE 33

A Turkish immigrant reported debt bondage within the family network: “Ali

came to Germany with the support of smugglers who got him a visa for Hungary and brought him there. From Hungary he, together with ten other migrants, was brought to Austria. He proceeded from Austria to Germany by train. For two years he lived illegally in Germany and then applied for asylum. Three months after the asylum application he married a German in order to receive legal status. During the two years of illegal stay he had worked for an uncle who owned a snack bar, receiving no wage, only food and accommodation” (Alscher et al., 2001: 72).

CASE 34

A social worker who works with Portuguese irregular migrant workers in restaurants reported that most workers only received an advance payment. When they ask for their back-wages, they are fired or threatened. The social worker had once tried to settle a conflict for a client, who had been recruited in Portugal and only received €75 for five months of work. When the social worker approached the employer, he was invited to come into the back office alone. There he was assaulted and seriously injured. The victim managed to escape. The perpetrator went unpunished for lack of witnesses and evidence. According to the informant, such exploitation is still going on. An Armenian client had recently reported that he works illegally in a restaurant kitchen 14 hours a day, seven days a week, for a wage of €1 per hour (interview with social worker, Erfurt).

CASE 35

According to one social worker, there is at least one Asian ethnic community that has begun to traffic children between 8 and 12 years of age for employment in private households and restaurant kitchens. In the country of origin, it is common for poor parents to send children to other families for education and work. Host families in Germany make use of this pattern and promise to take care of the education of children, who are then given forged documents and enter the country under false pretences. In Germany they are initially registered as refugee minors. The informant suspects that the employees of visa authorities of both countries are involved in the smuggling and exploitation of child labour (interview with social worker of NGO). In one federal state in Germany, evidence of child smuggling has been reported by the police. In March 2003, 8 minors without proper documents from Asian countries were found in a flat (Polizeipräsident Berlin and Staatsanwaltschaft Berlin, 2003).

CASE 36

A further serious case of human smuggling from Asia was reported in a press

release from November 3, 2003 by the state criminal police of Berlin. Three suspects - one Chinese and two German citizens - were taken into custody for human smuggling in at least thirty cases. The suspects are thought to have arranged bogus marriages for about one hundred Chinese citizens. The Chinese suspect had looked for German citizens willing to take part in bogus marriages, for payment of €4,000 to €6,000. A flight to China was paid, where in most cases the marriage took place. Contact with authorities in China was made discretely. The German citizens were aware that the marriages were only for the purpose of human smuggling. The German citizens were offered an incentive for recruiting further partners for bogus marriages: €1,000 for men and €1,500 for women: “The Chinese smuggled in by this channel had to pay at least €20,000 for a fake marriage. The money had to be paid in instalments to the human smugglers. Furthermore, they were obliged to work after arrival in Chinese restaurants for very low or no wages. The investigations are still going on” (state criminal police office Berlin, press release from 3 November 2003).

A further inquiry into this case revealed that trafficking into forced labour could not be proven. The investigating police officer was not able to explain the particular circumstances of employment and stressed that the victims were not willing to cooperate: “They are scared and don’t describe the circumstances of employment. We do not have many insights into this particular area of employment.” As a rule, illegal immigrants, once detected, are scared that their families back home may be attacked. Police cannot ascertain whether an illegal immigrant has relatives in China or not. “As a rule, victims don’t cooperate... We can see that these persons have to work and live under conditions that are not acceptable by German standards. Sometimes eight or more persons are crowded in one room, but they don’t care” (telephone interview with LKA Berlin). The Berlin police department indicated that the implication of the press release - that people are physically forced to slave away the fee for illegal immigration - is an allegation, not a fact. In this particular case, it seems that authorities were too quick to assert a connection between trafficking and forced labour.

Small sweatshop production

Sweatshop production is a common feature of the textile and garment industry and other labour-intensive forms of production. It is found in OECD countries such as France, Italy or the United States where the textile industry, reliant on cheap labour, still thrives. Migrant communities, such as the Chinese in France or Italy, often control the sub-contracting chains and provide their co-nation-

als with mostly irregular employment. (Kwong, 1997; Iskander, 2000; Jourmarin, 1999). In Germany, this production pattern seems to be of minor importance; nonetheless, one case of forced labour exploitation was documented for the purpose of this report.

CASE 37

The labour office in Frankfurt/Main reported a case of the exploitative employment of four Lithuanian women in an underground tailoring operation. On April 10, 2001, a hidden sweatshop was found. The building was protected with video cameras and iron doors. The labour inspectors, posing as clients, obtained access and found 15-20 sewing machines four intimidated Lithuanian women in the sweatshop. In the course of a long interview, the women described the circumstances of their employment. They had to work 12-15 hours daily for a salary of €400 for six weeks: an hourly wage of €1.25- €1.50. The women were locked up in the workshop. Once every two weeks they were allowed to go shopping without a guard. They claimed to be afraid of their employer, a Jordanian citizen. The sweatshop had been running for several years with 10-12 illegal employees who changed regularly. The total value of the production amounted to €1 million; not one employee was registered. The labour inspector said this was one of the most shocking incidents he had encountered in his seven years of professional experience and that it was rare for victims to be so cooperative with labour inspectors. Nonetheless, the victims had to leave the country (interview with labour office, Frankfurt/Main).

Entertainment industry

Forced labour has also been documented among the seasonal labourers hired in the fun fair trade. This industry is allowed to employ seasonal workers for up to nine months, which broadens the available labour force. In 2001, the Central Agency for Job Placement placed 9,002 workers in the fun fair trade. The migrant workers are extremely dependent on their employers, having to travel with them and being at their disposal 24 hours a day. A counselling centre reported that the workers complained about poor food, extremely long working hours and violence in the workplace (interview with ZAPO, Berlin).

CASE 38

A Polish seasonal worker in the fun-fair trade complained that his employer had not paid 442 hours of overtime for the period from April to August 2001. The seasonal worker took legal measures but the industrial tribunal rejected the complaint because the plaintiff could not prove that his employer had

demanded the overtime work (interview with ZAPO, Berlin and review of documents).

CASE 39

In another case, four Polish workers were recruited to sell sweets and fast food at fun fairs. The workers said: “The employer informed us that we had to work longer than the work contract said. In return he promised a weekly bonus of € 200.” The employer ordered them to work from 10 a.m. to 11 p.m. The accommodation was poor. “Every day, the working hours were longer. Several times I begged the employer to reduce the working time. He laughed and recommended that we learn to sleep faster. He demonstrated what he meant and amused himself at our expense. (...) Due to the scarcity of food, the lack of sleep and the poor hygiene, we were in a bad mood (...) He paid only €100 after one week and gave no reasonable explanation for withholding our wages. Finally he announced that he would not pay.” The workers demanded their wages and thought about informing the police. “When the employer heard the word police he made a proposal. He would pay us, provided that we leave Germany immediately.” The employer urged the workers to sign a paper stating that all debts were paid off. Without money and in a foreign country, the workers needed the payment and signed. Back home in Poland they took legal steps to demand the back-wages. But the German industrial tribunal ruled that the signed waiver was valid and the workers could not make further claims (interview with ZAPO, Berlin and reviewed documents).

CASE 40

The story of two other Polish citizens employed with a circus from December 12, 1998 until February 2, 1999 turned out better. They worked for an agreed-to monthly pay of €500. The workers received a weekly advance payment of €50 and on one occasion €500. They outlined the situation: “Unfortunately the back-wages were not paid. The circus owner pretended to have financial problems. He asked for our patience and promised to pay after the opening of the new season. We travelled to the place of the season opening and started pitching the circus tent. We worked until 1:30 in the morning. The van we had been accommodated in had remained in the winter quarters. In this location, only a container without heating and with a leaky roof was available. We decided to strike because of the poor accommodation. When we informed the employer, he responded: no work, no money. Then he demanded that we leave the circus. Our threat to go to the police caused a violent reaction. One of us was pushed down the stairs and got slapped in the face” (letter by two migrant workers in the circus trade). The two workers asked a counselling centre for

assistance. The employer responded to the inquiry: “It is not true that four Eastern European workers who did not receive the (full) wage were employed in the mentioned period. There were four Polish citizens in our winter quarters asking for a job in the fun fair business. But they disappeared after a short stay. In order to clarify, please send copies of work contracts and work permits of the four mentioned persons” (employer’s letter, 22 March 1999, ZAPO, Berlin).

The reference to the lack of written contracts and work permits did not save the employer from being charged by the industrial tribunal. The court held a hearing and the parties settled their conflict with a compromise: the employer paid €500. Given the initial response of the employer, the final arrangement is remarkable. The case indicates how employers respond to worker’s claims with allegations of their own illegality in an attempt to intimidate them. In this case, the strategy failed due to the involvement of a counselling centre. The victim’s account also indicates the role that violence may play - not necessarily in a calculated manner but rather as an attendant aspect of dismissal.

Other economic activities

Another industry affected by exploitative employment of foreign workers is the international transport of goods and persons. In recent years some transport enterprises have opened letterbox companies in CEE countries and begun cooperating with these companies. Officially, employees of the foreign company are only allowed to work in border-crossing transport. The centre-point of life and work has to remain in the country of origin. In reality, however, drivers are integrated into the German enterprise and work throughout the European Union. Because the labour law requires that such workers be paid according to German standards, forwarding company uses bogus contracts with letterbox companies to employ foreign drivers.

CASE 41

An international network of forwarding companies from Luxembourg, Germany and Austria, together with letterbox companies from Romania, Hungary, Slovakia and Turkey organised the illegal employment of drivers from non-EU countries. The investigation revealed that an official of the Ministry of Transport in Luxembourg was involved in these criminal activities. The official was accused of bribery. He is suspected of having accepted a bribe of € 250,000 from Austrian and Scandinavian forwarding companies in exchange for the granting of permits. The average monthly income of the

workers was €750. The drivers had to work day and night. “The wage when calculated per kilometre was poor, the deductions were considerable. The drivers had to deliver a very high monthly output in order to reach a level of income acceptable for Eastern European drivers. The drivers drove up to 25,000 kilometres per month: an equivalent of minimum of 450 hours driving time. The European requirements allow a weekly working time (including waiting in traffic jams, loading and unloading) of a maximum of 48 hours. Pay for holidays or in the event of sickness was withheld. The drivers constitute an increased risk on European roads; traffic experts point out that at least one of three accidents involving a lorry is caused by driver fatigue. Therefore irregularly employed Eastern European drivers are often called ‘rolling time bombs’ or ‘slaves of the country road’.”

Some of the drivers were aware that they were working in Europe without the required work permit. But as one witness stated: “All drivers naturally know that they were illegally employed. But they were told again and again that they would get a visa or a residence permit. This never happened”. The social insurance was insufficient: “The drivers were only insured against sickness in their countries of origin. Accordingly a Slovakian driver did not receive the medical treatment when he informed the employer about health problems in Austria. The manager sent the man back to his country of origin in spite of his bad health. The man died - according to his wife, due to delayed medical treatment - on April 21, 2001.” Due to the illegal practices of tax evasion, social contribution fraud and violation of minimum wage requirements, the consortium made a profit of €25.2 million within 32 months (final investigation report, Federal Customs Head Office, Cologne).

Forced labour and illegal employment of foreign workers is also common in the distribution of advertisement brochures. A check of eight persons distributing advertisement brochures in Berlin revealed that none possessed a work permit and seven were in Germany without the required residence permit (press release, State Labour Office Berlin-Brandenburg from 2001). Federal customs checked twenty foreign migrant workers on May 27, 2003 in Hamburg. Seventeen did not possess residence permits and were arrested. Ten workers were brought before the committing magistrate (press release, Oberfinanzdirektion Hamburg, 28 May 2003). The workers were deported without any consideration of whether their wages have been paid.

CASE 42

A social worker met a Bulgarian woman in a detention centre. After a while, the Bulgarian confided in the social worker and told her story. She had been

recruited in Bulgaria to distribute advertisement brochures for a monthly wage of €300. She had been told that she would have to pay €750 for travel to Germany within six months of her arrival. She believed this would be possible, not knowing that on arrival, she would have to pay €100 for accommodation, €50 for local transport and food. The woman had not expected such expenses. When she could not repay her debts, she was raped and the perpetrators intended to sell her to a brothel but she escaped, and turned to the police who took her to a detention centre (interview In Via, Berlin).

3.3 SUMMARY

The cases presented above involve victims of forced labour from all over the world: Africa (Cameroon, Morocco), Latin America (Colombia, Brazil), Central and Eastern Europe (Poland, Latvia, Ukraine, Bulgaria) and Asia (Vietnam, Philippines, China). Victims are recruited through different channels; however, without the involvement of intermediaries and instigators, many migrant workers would not have migrated in the first place.

The workers either enter Germany without a visa, as legal contract or seasonal workers or with a tourist visa obtained under false pretences, or illegally with the assistance of human smugglers or traffickers. The case studies indicate that forced labour is not necessarily connected to illegal entry. Forced labour is imposed on migrant workers with or without the direct involvement of traffickers. But even those making use of the visa-free entrance arrangement (Polish and Czech workers), the visitors or business visa (Kazakh and Ukrainian workers), or a temporary employment contract (from Poland, Turkey, Bosnia-Herzegovina, Yugoslavia or Romania) are exposed to forced labour practices. Thus, forced labour takes place both in the context of illegal employment and behind legal façades of regular contract or seasonal work.

The industries mentioned are: sex, domestic service including au pair, agriculture and meat processing, restaurant and catering, sweat shop production, fun fairs, construction, forwarding (transport) and advertisement leaflet distribution. It would be misleading to conclude that industries not mentioned are not affected by forced labour. The industries referred to are those that are focussed on by lobbying groups such as trade unions (as in the case of construction, meat processing, transport business) or NGOs (primarily prostitution and domestic service). Law enforcement also focuses on these industries and neglects other areas. Relevant information was most often obtained from counselling services, trade unions and welfare organisations that are specialised in particular economic sectors or that have a particular ethnic or national focus

(Central Eastern Europe-ZAPO, Latin America-AGISRA, or Asia-FIM and BAN YING). The violent treatment or death of a migrant worker or the involvement of celebrities may cause a wider media echo, which directs public attention to these industries. In using the information provided by trade unions, welfare organisations, public authorities and media, this study shares the bias of these information sources. Given the structural and systemic characteristics of forced labour, it is reasonable to assume that all industries with illegal employment of foreign workers may have a share of forced labour. And nearly all industries have problems with illegal employment (Irlenkäuser, 2000).

The industries highlighted here share some characteristics. The work is labour-intensive, often dirty, degrading and dangerous. The domestic work force is often not willing (and not compelled) to submit to the relatively poor conditions of work and pay. Effective control of these industries is difficult: private households are widely excluded from controls due to the legal protection of the private sphere. And the risk of inspection in public locations like construction sites or restaurants is low because the work sites are dispersed and numerous. One official estimated that only one out of several thousand cases of illegal employment is investigated in Germany (Marschall, 2003: 4). The risk of control varies because labour inspection focuses on particular industries and work sites; the visible presence of foreign workers increases the probability of a check (Cyrus and Vogel, 2002a). In industries where the trade union has influence and wage levels are controlled (construction, meat processing, transportation), a trend towards outsourcing and sub-contracting can be observed. In such branches, forced labour hides behind a legal façade of contract work in which the responsibility for forced labour is 'outsourced' to subcontractors. In the case of seasonal work, trade unions play a more minor role.

Trafficking for the purpose of labour exploitation is organised by a network of more or less closely interacting perpetrators. The number of foreign citizens working as recruiters, labour brokers or employers is strikingly high. In many cases, victims of forced labour are recruited by compatriots under false pretences. The common language and culture facilitate recruitment while ethnic or national distinctiveness from the host country contributes to the vulnerability of workers.

The cases compiled here indicate that the degree of imposition of forced labour corresponds to the probability of inspection. Slavery-like conditions involving restricted freedom of movement exist only in extreme cases of prostitution or in private households. In private households, where labour inspec-

tion is unlikely to take place, perpetrators can impose slave-like conditions on migrant workers more easily. In the sex industry, perpetrators retreat from frequently controlled places such as brothels or nightclubs to private flats or hotel rooms. Such hide-and-seek strategies are not possible in industries with public or permanent work sites that are easier to control. The level of social control and the risk of inspection are factors, which determine the potential for the imposition of forced labour.

To conclude, forced labour is a reality in modern Germany although its incidence cannot be quantified from this account. In addition to the 'classical' area of the sex industry, forced labour also occurs in the informal economy and in informalized employment relationships within the formal economy.

4.1 FORCED LABOUR AND IRREGULAR MIGRATION

This section looks into the various forms of irregular migration and their connection to possible forced labour outcomes. In particular, it investigates the manipulation of migration fees imposed by smugglers/traffickers with a view to subsequent exploitation. Public statements often imply such a direct connection between irregular migration and exploitative illegal employment. For example, the First Periodical Report on Security published by the Ministry of Interior states: “The first term of payment of the fee for trafficking is often extended. After successful trafficking, the illegal immigrants have to work off their outstanding debts with illegal employment. In such cases, the trafficking organization profits twice: they receive the fee for trafficking and they make an additional profit on the exploitation of the trafficked persons through illegal employment” (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001 : 331).

Empirical findings of this study and other research, however, draw a more complex picture of the relationship between (irregular) entry and the subsequent employment of migrant workers. As has been demonstrated in the preceding cases, victims of forced labour often enter countries of destination of their own volition using legal means, such as tourist visas. Few are deceived and exploited from the outset; the distinctions between legal migration, smuggling and trafficking are therefore not always clear. It can be argued that irregular migration is a much wider phenomenon of which trafficking and smuggling most likely constitute a smaller portion. Even though data based on border apprehensions only captures a certain portion of irregular migration flows,

it can be assumed that the majority of irregular migrants in Germany enter the country without the help of a smuggler or trafficker by simply overstaying a regular (tourist) visa. These people are nonetheless vulnerable to forced labour, as some of the empirical cases have demonstrated.

German authorities consider official entry with a falsely declared purpose of stay to be illegal entry and stay. Persons or agencies which supply visas with false information or use visa-free entry to recruit illegally employed workers are therefore categorised as smugglers, even if they only operate in the country of origin and never enter German territory. According to German authorities there are four patterns of smuggling in human beings: abuse of visa-free entry, entry with fraudulent or manipulated documents, entry with visa obtained by deception and entry without documents (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001: 333f). What follows is a list of possible methods of entry:

Abuse of visa-free tourist entry: Citizens of all neighbouring states, of OECD countries and of a few third-countries are exempted from visa requirements and are allowed to enter for tourist and visiting purposes. Visa-free entry does not permit engagement in income generating activity. However, private recruiters often abuse the privileges of visa-free entries: workers are recruited for employment in the shadow economy or in prostitution. Polish migration experts estimate that up to 200,000 Polish citizens use visa-free entry to take up illegal employment in Germany on a regular or occasional basis. The tourist-workers are mainly employed in agriculture, construction and domestic services (see also Cyrus and Vogel, 2002b). A survey of counselling centres revealed that 11 percent of clients without residence status were tourist-workers requesting an extension of their tourist visa (Sextro, 2003).

Entry with fraudulent or manipulated documents: The Federal Border Patrol reported 11,400 cases in which document fraud was suspected. Documents of foreign citizens possessing residence status are provided with a photo of the person to be smuggled. Visa stickers stolen from embassies are also used; Iraqi ID-cards, certificates from Azerbaijan and Italian ID-cards are most common (Bundesministerium des Innern, 2002:17). Another practice involves the use of valid documents belonging to a relative of the document-holder. The unauthorised use of valid documents is common among relatives of long-term residents, for example Croatian or Bosnian citizens during the civil war (Alt, 2003). The use of fraudulent or manipulated documents is common practice among refugees escaping perilous situations and seeking shelter in Germany. Polish migrant workers subjected to a re-entry ban often borrow passports from relatives in order to pass border checks.

Visa or documents obtained by deception: The use of original visas or documents obtained by deception seems common in the recruitment of forced labour victims from countries requiring a visa. Authorities sometimes consider the exploitation of officially recruited migrant workers behind the legal façade of contract for services employment or seasonal work as entry obtained by trickery. The residence and work permit is granted on condition that statutory standards concerning payment and working conditions and the legal status of the enterprise are being met. If a sending company of contract workers or an employer of seasonal workers violates statutory conditions, human smuggling may be suspected. Some law enforcement units refer to the human smuggling provision in order to initiate an investigation of sending enterprises. If the offence can be proven, the residence and work permits will be withdrawn and the employers will be charged with human smuggling.

In the following, the abuse of so-called “travel protection passports” (Reiseschutzpass or carnet de touriste) will be recounted as it has been used for the recruitment of foreign workers into illegal employment.⁴ A police officer in the Berlin criminal police office refers to the high degree of organisation: “As a rule, Ukrainian citizens enter the country by a visa obtained by deception. A real business sets up bogus enterprises and issues invitations for tourists, allegedly for private visits or faked business trips. A concrete example: The investigation of a Federal Customs office in southern Germany exposed three Ukrainian workers. It was discovered that each had been hired out by an enterprise in another German city; one of the cities was Berlin. Behind the companies stood a Russian citizen, and then it was discovered that these enterprises were only letterbox companies. And within half a year, the letterbox company in Berlin had issued over three hundred invitations for which the German embassy in Kiev had issued a visa” (Bernsee, in Lucht, 2002: 92).

In addition to the bogus invitation letter, Ukrainian citizens make use of the opportunity provided by the ‘carnet de touriste’. “This is a form of insurance that the German Automobile Association can issue in partnership with organisations in other countries. It is nothing more than insurance: all costs that the host would have to cover are covered by this insurance. If someone has bought this insurance and presents it on request, the German Embassy (until recently) would conduct no further investigation. Advertisements for such

⁴ The Office for Foreign Affairs responded to reported abuses of travel protection passports in 2002 and took measures to stop the described practices. Only three years later did the practice of visa granting raise a wider public interest. In February 2005, a parliamentary investigation committee was set up to explore the abuses and identify political responsibility. At the time of publication of this study, the investigations were ongoing.

insurance policies appear in the local media of sending countries; they don't refer to illicit work but rather offer to organise employment in Germany or other Western European countries. This is the basis of the first contact. The organisation of a visa is included for a set fee" (Bernsee, in Lucht, 2002: 73-74).

Private recruitment or travel agencies engaged in the organisation of visas for Ukrainian migrant workers under false pretences are violating immigration law and committing human smuggling offences. A public prosecutor working in the field found that the situation was made worse by an inconsistent visa policy. The Federal Ministry of the Interior had accepted the insurance scheme through which private German enterprises issued the travel protection passport. German diplomatic agencies in CEE countries have been instructed to accept such documents as an equivalent to an invitation. The senior public prosecutor commented: "The introduction of the 'protection passport' resulted in thousands of Eastern Europeans, mainly from Ukraine, entering Germany and other Shengen countries, namely Spain, Italy, France and Portugal as alleged tourists and then taking up employment. The men were placed in construction and the majority of women in prostitution" (Maus u.a., 2003). The irregular Ukrainian migrant workers recounted that they had entered Germany with valid visas and faced no problems at the checkpoint. If no legal violation can be proven, the entry of migrant workers from Ukraine is not registered as an offence. Only when authorities can prove the illegal involvement of travel agencies or intermediaries, is smuggling recorded.

Entry without valid documents: The last channel for the recruitment of illegal foreign migrant workers is illegal entry. In 2001, 28,560 unauthorised entrances were detected, 9,3 percent less than in 2000 (31,485). The decrease in the number of apprehensions is attributed to a reduction in unauthorised entries by citizens of Afghanistan, the Republic of Moldavia and Sri Lanka. The number of unauthorised citizens from Asian states has diminished. The highest numbers of unauthorised entries are among citizens from Romania (2,916), Yugoslavia (2,521), Iraq (2,216) and Turkey (2,184). These four nations account for one third of all unauthorised entrants (Bundesministerium des Innern, 2002: 13). The majority of these entries take place on foot across the so-called green border. In most cases the foreign citizens have no documents at all (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001: 333).

According to the data provided by German Border Patrol "it can be proven that about thirty percent of all foreign citizens illegally entering Germany were smuggled" (Bundesministerium des Innern and

Bundesministerium der Justiz, 2001: 331). A total of 9,194 persons were brought into Germany by human smugglers in 2001 (2000: 10,320; 1999: 11,101); of these, 1,298 citizens were from Afghanistan, 1,001 from Iraq, 895 from India, 840 from Romania and 620 from Yugoslavia (Bundesministerium des Innern, 2002: 14). The number of human smugglers apprehended at the German borders decreased by roughly ten percent from 2,740 in 2000 to 2,463 persons in 2001. In 1999, one quarter of the 3,410 apprehended human smugglers were former Yugoslavian citizens trying to smuggle compatriots. According to Alt, it is common for persons to try to bring their own relatives into Germany (Alt, 2003: 100, footnote 13).

In 2001 and the years before, human smugglers were predominantly citizens of the Czech Republic (325) and Germany (333). While the number of Czech human smugglers went down by 209, the number of human smugglers with Turkish citizenship increased by 224. The apprehension of 80 Afghan human smugglers (2000: 33) showed that that this group was getting more involved (Bundesministerium des Innern, 2002: 14). The number of investigations of human smugglers increased from 5,212 (1996) to 8,290 (1999) (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001: 332). The first security report prepared by an expert group suggests that the circumstances of human smuggling and trafficking vary and cannot be generalised as trafficking in persons: "The range of perpetrators extends from individuals who smuggle relatives across the border to huge criminal organizations with a highly differentiated labour structure and international sphere of operation" (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001:334). Such findings counter the assumption that the criminal offence of human smuggling is always connected to organized crime. According to the situation report by the Federal Criminal Office in 1990, only nine percent of the 816 investigations of human smuggling involved organized crime (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001: 334).

Officers from the Federal Border Patrol insist that the relationship between illegal border crossing and forced labour is not examined and thus cannot be proven. "The question of what happens to the people entering illegally is not the main concern of the Federal Border Patrol. We are active along the border. Our task is the prevention of illegal entries" (BGS Koblenz, telephone interview from 8 May 2003). This assertion was confirmed by a police officer in charge of trafficking for sexual exploitation: "At the moment [of border crossing - auth.], we cannot know if the women who enter illegally are being trafficked into sexual exploitation or not" (interview, LKA 23, Berlin).

NGO representatives also emphasised that when crossing the border, many women do not know what form their employment will take. They believe that the organization will keep its promises. NGOs confirm that it is often hard to distinguish between human smugglers and traffickers. One social worker reported of an organisation smuggling refugees from Poland into Germany, which kept the agreements made with its clients - with the exception of one woman who was sexually abused (personal communication, ONA Berlin). In this case the organisation was both a reliable commercial partner for the majority of its 'customers' and an exploitative culprit for a few others. It is difficult to know in advance what kind of an organization one is dealing with.

Alt (2003) emphasizes that the influence of criminal networks is overstated. Illegal immigrants may consider the process to be fair, provided agreements are kept. Illegal immigrants interviewed in Leipzig and Munich reported that while criminal and mafia-like groups do exist, their contact with illegal immigrants is minimal. According to Alt's estimates, ten to twenty percent of all smuggled persons are exploited and thus likely to be trafficked victims according to the new German law. The share of trafficked persons from CEE countries who are exploited is lower than those from Non-European countries. Law enforcement officers estimate informally that the share is about thirty percent (Alt, 2003: 331, 333) but, as in the case of Chinese citizens allegedly trafficked into labour exploitation, law enforcement is often unable to investigate illegal immigrants' intentions and the nature of their future employment.

The following example illustrates the link between smuggling/trafficking and employment, based on the account of a Turkish immigrant: "A Turkish citizen paid € 3,500 to a smuggler organisation in Turkey for transport to Germany. The organisation got him a visa for Bulgaria and brought him there by plane and then on to Albania. From Albania the group was shipped to Italy and after resting for 12 days in a small flat, the group was brought to Paris where the organization ended the service. The young Turk asked another compatriot he became acquainted with for support and he finally arrived in Germany after having travelled for 45 days. For the first month and a half, he lived with relatives. Then he applied for asylum and was accommodated in an asylum seeker home" (Alscher et al., 2001: 70). It is likely that the 'uncle' had paid an advance fee to the smugglers and the illegal immigrant was obliged to work off the debt. Such arrangements seem to be common within the Turkish community (Jordan and Düvell, 2002). They are reminiscent of Chinese immigrants in New York, where relatives pay smugglers' fees and expect the immigrant to work off the debt. In a number of cases, the gap between the debts and

the income is so great that the Chinese workers never work their way out of debt (Kwong, 1997). The Turkish man was free to leave after two years of unpaid work, having paid off the fee of €3,500 for the smugglers' services. But as in the case of illegal Chinese immigrants in New York, the debtors are often grateful to have immigrated and do not resent their creditors.

A recent study reviewed the application of judicial provisions in 2,666 court decisions on smuggling in human beings (§92 a and b, Foreigners Act) in 1999. It turned out that the offence most commonly combined with smuggling in human beings is document fraud (§ 267, Penal Code) with 79 applications (3%), followed by illegal employment of foreign workers with 73 applications (2.8%), driving without license (44 applications, 1.6%), pimping (33 applications, 1.2%), promotion of prostitution (24 applications, 0.9%), fraud (23 applications, 0.9%), serious trafficking in persons (18 applications, 0.7%), supplying false documents (17 applications, 0.6%), trafficking in persons (15 applications, 0.6%) (Steinbrenner, 2002: 130).

The data reflects the complexity of court decisions and the impossibility of drawing a direct connection between smuggling/trafficking in human beings and subsequent exploitation. The Federal Criminal Office stresses that trafficking in sexual exploitation is difficult to substantiate. It seems that law enforcement authorities use the suspicion of organised crime or trafficking-in-sexual-exploitation to initiate investigations and then drop the provision, switching to offences that are easier to prove such as smuggling in human beings or pimping.

The reason for the trafficking bias is that police concentrate on criminality and organized crime. The overestimation of the extent of trafficking is traced back to an enforcement-related sampling strategy: "It is wrong to conclude from the findings of the police and other law enforcement agencies focussing on criminal networks that these are the most common structures in the migration business" (Alt 2003: 339). Labour enforcement, when confronted with illegal employment, is mainly interested in the aspect of smuggling in human beings (§ 92 a and b, Foreigners' Law). The situational reports on organized crime compile trafficking and illegal employment data separately, not considering the connection between them (Bundeskriminalamt, 2002a).

Given that trafficking into sexual exploitation is - according to present data - the main area of trafficking in persons, data can be seen as illustrative. In 2003, German authorities registered a total of 1,235 victims of trafficking for sexual exploitation, of which 1,108 were foreign nationals. Information on the entry status of victims is available for 993 cases. 413 women (41.6%) had crossed the border illegally while 580 victims (58.4%) had entered legally

(Bundeskriminalamt 2004: 12). Only 8.7 percent of all victims of trafficking for sexual exploitation were recruited by violent means. In 45 percent of the cases, the traffickers deceived their victims about the real purpose of recruitment. 30.3 percent of the victims were professionally recruited through artist agencies or newspaper ads. In 827 cases, the Federal Criminal Office ascertained the use of violence, both physical and mental, in forcing women to take up or proceed with work in prostitution: 437 women (52.8 %) of the trafficked victims encountered violence. This was an increase of 11.5 percent compared to 2002 (Bundeskriminalamt, 2004: 12). However, these figures refer mainly to women who were liberated from brothels. According to counselling centres specialized in trafficking into sexual exploitation, about 90 percent of foreign women working in prostitution or domestic services are not physically detained. The majority have access to telephones and can go shopping on their own (interview with Agisra, Cologne).

To conclude, forced labour, including forced prostitution, should be treated as phenomena in their own right and not be confused with illegal immigration. German women too can become victims of trafficking for sexual exploitation. According to the recent situational report on trafficking, ten percent of trafficking victims are German citizens (Bundeskriminalamt 2004: 5).

4.2 FORCED LABOUR AND ILLEGAL EMPLOYMENT

The previous sections have shown that forced labour can be an outcome of both regular as well as irregular migration. In some exceptional cases, mainly in the sex industry, it can also affect German nationals. A further conclusion drawn from the empirical research is that a basic distinction can be made between debt bondage, abduction and slavery as one grouping in which persons are sold directly to traffickers, and forced labour situations that evolve gradually over time. Even when a recruiter or employer recruits migrant workers with the intention of exploiting them, migrants often enter the relationship - although under false pretences - voluntarily. The exploitative conditions of work and pay are generally introduced gradually. The perpetrators 'test-out' - to use the term coined by an interviewed expert from IG BAU - the victims' ability to resist and then tighten the screw of intimidation. Thus, migrant workers are not simply victims of forced labour; they become victims. This section will analyse the gradual imposition of forced labour in the context of particular economic sectors, taking into account the perception of different actors, most importantly that of the migrant workers themselves.

The perspective of migrant workers

Provided that the informal agreements between employers and workers concerning pay and working conditions are honoured, illegal employment takes place with the mutual compliance of employers and workers. In this case, all parties to illegal employment profit. This compliancy of joint perpetrators is called “crime without victim” in criminology: none of the immediate actors suffer personal loss. Illegal employment on the basis of mutual compliance is a typical ‘control offence’ and many cases go undetected. The majority of illegal foreign workers interviewed emphasised the advantages of working in Germany. Foreign migrant workers do not have any moral problems participating in the informal economy. The legal violation is justified with the argument that the workers carry out legitimate work and receive fair wages, enabling them to support their families and satisfy legitimate needs. They emphasise that the poor economic situation in the home country forces them to work abroad.

Migrant workers argue that the German employer is required to respect German law. The employers are responsible for the evasion of taxes and benefits. Illegally employed workers argue that they are not entitled to social benefits and social security and that they personally bear the risks of illegal employment. Migrant workers emphasise that they do not oust native workers since the employer decides who gets the job and domestic workers are often considered unsuitable for the work they do. Unemployment among German workers is thus attributed to their unwillingness or inability to perform jobs as expected by employers. With this view, migrant workers develop strong self-esteem as entrepreneurs. However, the reality does often not correspond with this positive self-image; migrant workers must submit to conditions of work and pay they have not agreed to. In order to justify the acceptance of unfavourable conditions, workers refer to positive and negative incentives.

Migrant workers compare their conditions of work and pay with those in their country of origin. Due to considerable wage differentials, the income in Germany is attractive even if it is well below that earned by native workers. The differential in currency values means that wages increase in value when converted into the currency in the country of origin. Given these gains, workers do not object to the harsh working conditions and long working hours, which are seen as a chance to generate more income (Piore, 1979: 95).

The difficulties and degrading aspects of the work situation are downplayed for psychological reasons. Qualitative-empirical researchers on illegal immigration in Germany report that immigrants present themselves as entre-

preneurial and self-reliant in order to avoid cognitive dissonance⁵ (Cyrus and Vogel, 2002b). On the one hand, migrant workers know that they are likely to be cheated of payment or suffer some form of abuse; on the other hand, they know they have few viable alternatives. Migrants have to manage their daily affairs and will not waste time and energy on matters that offer no prospect of success. Qualitative research reveals that while most illegal migrant workers can tell stories of underpaid or withheld wages, they concentrate on the positive aspects of the migration project. In the present interview sample, many victims considered it futile to demand back-wages.

The claim that foreign migrant workers agree ‘voluntarily’ to unfavourable conditions has to be seen relative to the lack of alternatives in their country of origins. Illegally employed migrant workers are vulnerable. They are aware that detection and apprehension will lead to expulsion or deportation. They are convinced that they have no rights at all. The First Periodical Report notes the consequences of this legal framework for victims of trafficking in sexual exploitation:

“Only in exceptional cases do victims (of trafficking for sexual exploitation) report to the police because they are classified not only as victims of trafficking in sexual exploitation but also as perpetrators committing the crime of illegal entry, among others. Moreover, they are reluctant to report to the police because the traffickers threaten the women and their relatives with violence or reprisals after return to the country of origin” (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001: 105).

The legal exclusion produces a pattern of conduct in which migrant workers avoid contact with public authorities. In some cases of trafficking in sexual exploitation, perpetrators make use of men in police uniforms who beat or blackmail the victims (information by LKA Berlin). Perpetrators threaten that victims will face a severe penalty due to their illegal status if they contact authorities; they threaten to report victims to labour enforcement offices themselves and sometimes in fact do this.

Residence and work permit requirements bind migrant workers to their employers. Employers generally do the paperwork. The workers are not required to visit the labour office personally and they are not informed about their legal rights or the instruments that guarantee them. They have no contacts with German authorities and have to rely on information provided by employers. They are told that German authorities are hostile to migrant workers and

⁵ Cognitive dissonance occurs when a person holds two or more different, opposing views. Cognitive dissonance results in attempts to reconcile them.

often send foreign workers back home to protect resident workers. A Polish contract worker said: “But how can we put pressure on the employer? There is no law we can rely on. As a contract worker, you don’t have many rights. It is just like in the army. The gang master says: I’ll send you home” (interview with the author).

Encounters with enforcement officers during work site controls confirm this suspicion; they do not inform employees of their basic rights and entitlements. Migrant workers report that during such checks, their residence and work permits are scrutinised and they are asked to leave if there is evidence of any irregularity. The control procedure reinforces the threats of their employers. Their legal exclusion and dismissive treatment by law enforcement officers affirm worker’s perception of vulnerability and their submission to poor labour conditions.

Finally, victims of forced labour fear criminal action by their former employers. The sample includes several cases of victims who did not report their experiences after escape or release, even though their social counsellor encouraged them to do so. If a migrant worker notices that the employer will not pay the salary that was agreed upon, he may terminate the employment relationship (exit option). In many cases, however, the employer starts to deceive the workers after a period of fair treatment. In such cases, the workers realise only later that the back-wages will not be paid. There is no incentive to report maltreatment, menace or wage fraud. The only option is to leave the employer - and another migrant worker will quickly fill the vacancy.

Betrayed migrant workers fear the financial burden of legal proceedings, as demonstrated in the statement of a Polish migrant worker. His employer argued that never before had a migrant worker complained. The migrant worker replied: “The fear of high fees for court proceedings is decisive. Most Polish seasonal workers cannot afford them.” This consideration was confirmed by 18 Romanian seasonal workers who were considering taking legal action against their employer through a counselling centre but did not know whether they themselves would be charged and if so, how high the fees would be.

Foreign migrant workers who are trapped in exploitative situations may improve their situation over time. For instance, Polish women employed in domestic services may find economic niches in private households (Cyrus, 2003a; Cyrus and Vogel, 2002b). A migrant worker who is illegally employed may become a gang master (Alt, 1999: 149). But more often, a situation of gainful employment turns into one of exploitation in which the worker is trapped.

The cases of forced labour reported in this study share some common features. All situations involve sub-standard conditions, making the employment irregular and illegal. There are principally four categories of employment in sub-standard conditions on the basis of: (1) mutual compliance; (2) indirect threat; (3) direct threat and (4) direct restraint. The first two categories are more psychological in nature, the latter two more action-driven. In all cases, the victims feel that they have no alternative. The crucial issue is, however, to determine at which point an employment relationship becomes coercive and forced. In the following, it is argued that this point begins with the imposition of indirect threats which often involve fraud and deception. The following section will present typical examples from each category.

Sub-standard employment on the basis of mutual compliance

As a rule, workers are aware that they are not being worse than national workers, but they do not complain as long as their income remains profitable. Workers agree to work seven days a week without overtime (interview with ZAPO; interview with Polish seasonal worker). In a number of cases, however, workers recruited for jobs in the informal economy were surprised to discover on arrival that the terms of their contract would not be honoured but that they could potentially earn more if they worked longer hours or accepted piece rates. Most 'target' workers accept such offers; they have left their families to earn as much as possible in a fixed period of time (Piore, 1979: 95). But in other cases, workers discover that the workload is impossible to bear and resort to one of three options: leaving the job (exit), demanding fairer conditions (voice) or submitting to the conditions of work and pay (loyalty) (Hirschman, 1970). Workers may accept the situation if the employer promises compensation equal to or greater than what was originally arranged.

In other cases, workers consent unconsciously, believing that payment will be forthcoming. The undercover investigator Lewandowski provided an example: "A subcontractor didn't pay or paid very little, just enough for workers to survive and keep working. And he retained most of their wages. This happened for a while until the workers demanded their wages so forcefully that he called the police and informed them that 'here is a construction site and so-and-so many workers are undocumented'. And then the police came and sacked them all - and got rid of them" (Lewandowski, 1999: 50). Respondents from Federal Customs and Labour offices said that employers anonymously contacted them in order to get rid of workers demanding their pay. The example of the 42 Polish construction workers illustrates this. The men expected the payment of their wages but instead, the police arrived and all workers were

sent home without payment. The workers had not suspected wage fraud. Only the agent knew that the employer had intended to withhold the wages (Alt, 2003).

Thus, compliance may refer to an informed decision (in which workers are aware of the employment conditions in advance) or to a decision made because there is no alternative. In the latter case, workers cooperate because they are not aware that the agreement was designed to be violated at a later stage. This is a situation of fraud.

Employment under sub-standard conditions enforced by indirect threats

Workers often feel trapped after arriving in a foreign country. Lacking the means to return or to choose the 'voice option', they submit to the conditions imposed on them. The employer does not need to threaten openly; mounting debts, indirect and implicit threats, and a lack of viable alternatives suffice to guarantee the compliance of the worker. Submission is a slow process: workers gradually become aware of the real conditions of work and pay.

The case of the Polish construction workers is illustrative: they came to Germany expecting to find free accommodation and working conditions equivalent to those in Poland. At the beginning, the workers received an advance payment of €100 from the employer but were shocked by the poor accommodation and the fact that they were expected to pay for it and for transportation. When some workers complained, they were threatened with dismissal. This option was not viable from their point of view. Gradually they realised that the working conditions were much poorer than in Poland; they had to purchase their own tools and work much longer hours. But the workers accepted these conditions, expecting that their wages would be higher with overtime and compensation. When the workers received their first payments after six weeks, they realised that the employer was not paying overtime. The employer argued that the workers had not earned a bonus; they received minimum wage for eight hours of work, regardless of how long they had in fact worked. Their wages were further reduced by transport and accommodation costs. The majority of the workers accepted the situation, hoping that their net wages would be higher than their income in Poland (see case 20 in this study).

Employment under sub-standard conditions enforced by direct threats and restraint

The final technique is the use of direct, explicit threats or restraint. A Polish construction worker explained what happened to workers who did not con-

form. The enterprise, prepared for such a situation, had erected a legal façade. With dubious arguments and the threat of immediate dismissal, the employer had forced workers to sign a consent form for their dismissal. The dismissed workers had to leave their accommodation immediately. The employer informed the Foreigners Office that the employment relationship had been dissolved. The Foreigners' Law dictates that the workers must then receive their passports and a public order to leave the country. This procedure served as a warning to the remaining workers. In several cases, workers were threatened with violence or blackmailed. These direct threats can be used during recruitment, employment or at the end of the employment relationship in order to get rid of the workers.

It is rare for force to be used in the recruitment process. Foreign migrant workers wanting to work in Germany generally believe the (false) promises of traffickers, intermediaries or future employers. In 2003, only 8.7 percent of victims of trafficking for sexual exploitation were recruited by force. In most cases compiled in this study, victims were lured into labour or sexual exploitation by brokers who made false promises concerning the kind of work or the conditions of work and pay. Of all registered victims of trafficking in sexual exploitation, 45 percent had been deceived about the actual nature of employment (Bundeskriminalamt, 2004: 11).

When workers object to their working conditions, threats are often used to silence them, as was the case with the Colombian domestic worker whose employer told her that she would be imprisoned for her illegal status if she reported her case. In some forms of seasonal employment, employers threaten rebellious workers with physical violence. Such situations were reported by those employed in agriculture and the fun-fair trade. In the cases compiled, violence was occasionally used at the end of employment; for example, the Romanian contract workers who were forced to return to Romania. Violence may also be used to intimidate workers who demand the payment of back-wages, as was the case of the African asylum seeker, the social worker in an Eastern German city, and the seasonal worker in the ice-cream parlour.

The most serious manifestation of forced labour is the immediate use of coercion or violence in order to retain a worker. Although this pattern is usually hidden from the public eye, the sample of this study does include a few such cases. The locking up of forced labourers, however, is rare in Germany and evidence is difficult to obtain. In the sex industry and domestic service, it is known to take place. Women are locked up; their passports confiscated and physical violence is threatened or even deployed. For example, the Romanian au pair that committed suicide had been seriously beaten by her employers

(see case 8 in this study). Police and counselling centres reported several cases of raped and tortured women who are forced into prostitution. It is, revealing, however, that victims of overt violence did not turn to public authorities of their own accord. Only when victims received information from acquaintances about counselling centres, did they turn to these.

The role of private intermediaries

Victims of forced labour often turn to middlemen in a situation of crisis: unemployed young adults desperately seeking work, single mothers separated from their husbands or widowed, fathers who have lost their jobs and need to support their families. Economic desperation drives migrants to accept dubious offers. The effective recruitment process by intermediaries relies on the abuse of the economic plight of the victims.

A closer look at the compiled cases reveals the role of labour brokers or employers in the decision making process of migrant workers. In several cases the victims of forced labour were personally lured by the future employer, or by visa and labour brokers closely cooperating with interested employers. In many of the compiled cases, however, employers imposed forced labour without the use of an intermediary, for example by abusing temporary employment programmes.

As mentioned before, forced labour situations may evolve independent of illegal border crossing and smuggling. Some victims of forced labour did not know employers in advance and established contact after arrival. In some cases, recruiters found and contacted victims already residing in the country. In a recently reported case, recruiters for brothels looked for Russian-speaking young women without proper residence status in Berlin and offered them jobs in bars in Frankfurt/Main (personal communication with social counsellor). In another case, young African women awaiting asylum application rulings in Eisenhüttenstadt were recruited by a trafficker, taken to West German cities and forced to work in prostitution (Agrisra e.V. et al., 2003: 99f).

The legal framework for the monitoring of private recruitment agencies in Germany has changed over the past few years. In 1994, the legislature ended the state monopoly on recruitment, which had been in effect since 1931. According to the new legislation, private recruitment agencies were required to register and obtain permission from the public employment service (Bundesanstalt für Arbeit). Recruitment in and from countries outside the European Community and the European Economic Space remained with the Central Placement Office, with the exception of specialized agencies dealing in models, athletes or au pairs, which required special permission. This regu-

lation changed again in March 2002. Private recruitment agencies do not need permission anymore. The public monopoly on the recruitment of foreign workers has likewise been abolished. Private recruitment agents can also demand fees from jobseekers for successful placement.

Even prior to the reform, labour brokers were active players in the market. Insiders report that seasonal workers were often employed illegally and had to pay 10-15 percent of their total wage for this service. Other sources refer to a fee between €50 and €150 (ZAPO). Recruitment fees of 10-30 percent of the wage total are reported in the construction industry (Alt 2003: 329, Fn 10). The case of the seasonal worker in the ice-cream parlour indicates the involvement of fraudulent job brokers. Victims of forced labour are often assisted by a compatriot or co-ethnic who mediates between a perpetrator looking for forced labour and potential victims. In other cases, placement was arranged by a commercial agency acting behind a legal façade, serving as an unauthorised employment agency for contract-for-services enterprises or as a letterbox company in the country of origin or destination.

Understanding the demand side: Customers and employers

The starting point for every incidence of forced labour is a market for goods produced by unlawful exploitation or an immediate form of forced labour (sex work, domestic work, child care, etc.). Forced labour may also serve perverse demands for work or services that would not be available on the legal market (child pornography, sadism). Clients and customers use these illegal goods or services knowingly. At the same time, the 'rational' demand for the cheapest labour available generates a market for forced labour.

The majority of consumers are not concerned with production conditions, even when stable or dropping prices may suggest that a commodity has been produced under illegal conditions. Most buyers of meat are unaware of the unfavourable treatment of foreign migrant workers in the meat processing industry. A consumer of vegetables may not know that the asparagus is probably cheaper due to migrant workers who work under unlawful conditions. Employers of domestic servants acknowledge that while personnel should be entitled to statutory standards of work and pay, domestic workers are exempt from such entitlements, working as they do in the informal sector where statutory standards do not apply (Anderson and O'Connell Davidson, 2003).

Commercial customers are not asked to take responsibility for their contractor's decisions. Outsourcing allows for a reduction in production costs and a willed ignorance concerning the conditions of production. Managers of corporations argue that they have to reduce production costs in order to improve

competitiveness and to satisfy the expectations of consumers: “Not one single meat-processing enterprise can survive without contract workers” (Lebensmittelzeitung from 16 January 2004).

In sum, legal mechanisms do not force customers and employers to take responsibility for legal violations, even when investigations suggest that outsourcing has enabled an employer to profit from exploitation. For example, labour inspectors identified a huge automobile group in Bavaria as the main customer of a transport contractor who had been sentenced for human smuggling. When investigations against the contractor were discontinued, the automobile group contacted the investigators from Federal Customs and threatened to demand compensation for the economic loss due to the disturbances (information from Federal Customs).

In the example of the African asylum seekers forced into labour, the main contractor was a public housing association. On this construction site, 19 asylum seekers were illegally employed and their wages withheld. When a group of supporters organised a rally, the housing association negotiated with the supporters. All responsibility was denied but the workers were promised their withheld wages and were paid accordingly.

One police officer recounted that a letterbox company that organised the illegal employment of construction workers disappeared after six months. The police officer was convinced that the company’s customers were aware that the business, which had been operating under different names, was involved in criminal activity and the case was defined as organised crime. But the police could not prove that the main contractor was involved in tax evasion.

Employers can be grouped into three main categories:

- (1) A law-abiding employer will not make use of illegal employment and will ensure that subcontractors are law-abiding. However, the trans-nationalisation and de-regularisation of labour markets have contributed to increased competition. In order to satisfy customers’ expectations, an employer may look for illegitimate ways to reduce production costs in order to remain competitive (Nienhüser, 1999). For instance, law enforcement officers recounted that the owner of a transport company had contacted their office and complained that he could not stand the illegal competition any longer. If authorities would not stop the irregular employment of foreign drivers, he felt compelled to cooperate with transport companies from abroad and to dismiss domestic drivers (interview, local office of Federal customs, Landshut).

- (2) Unfair competition may lead employers to resort to illegal practices like tax evasion, irregular or illegal employment. Big enterprises, acting as contractors, reduce their permanent staff and outsource the risks of illegal employment to sub-contractors. The first category of such sub-contractors is bogus companies not registered in Germany and not paying taxes. In order to win contracts, these enterprises make use of a legal façade: they establish letterbox companies and claim to be based abroad. Some companies operate and vanish before the first tax declaration has to be delivered. Investigations in organised crime concentrate mainly on bogus enterprises, which organise forced labour. The second category concerns officially registered small and middle scale enterprises using a “mixed calculation”. In order to reduce costs, permanent staff is supplemented with irregularly or illegally employed workers (Nienhüser 1999).

Employers do not always admit to deviant behaviour. An employer who was charged with illegal employment of CEE-migrant workers defended himself with the argument that the market had forced him to hire illegal workers (Tagesspiegel, 20 August 1995). The owner of a small Turkish construction enterprise offered his view:

[Illegal workers] “work for €4.50 per hour. Who would not like to have such workers? I personally would like to have such workers too. Otherwise, you cannot survive the competition with other firms. The prices have fallen through the floor. For instance, if I pay €12.50 per hour, I have to add 40 percent benefits, then I have to pay €33.50 or €20. Look at the other enterprises with illegal workers or foreign migrant workers that are legally employed; they have to pay €5.50 maximum. And moreover, they do not pay VAT. (...) About ninety percent of all construction enterprises work with undeclared workers. (...) While illegal workers without papers make up about ten percent in construction, other forms of unauthorised work are common. There are many workers who are registered as unemployed or receive social benefits. (...) And then you have additional Polish cyclical migrants.” (Erzbischöfliches Ordinariat, 1999: 38).

Employers use the competition and frequency of illegal employment to justify deviant practices. Bogus companies and registered enterprises with mixed calculations compete for contracts. Forced labour seems to be more common among bogus companies than among registered enterprises.

- (3) A third category of employers consists of genuine traffickers. Police officers indicate that traffickers profit both from the smuggling of migrant workers and the subsequent exploitation of their labour. The

most blatant examples of this pattern are the trafficking of women for purposes of sexual exploitation and of Chinese workers, although the research suggests that transportation and subsequent exploitation is organised by separate gangs, which cooperate on an informal basis.

Legislation is designed to penalize those who profit economically from forced labour. In order to avoid being detected, perpetrators outsource risk to sub-contractors. Sub-contractors evade detection by erecting legal façades. The paperwork submitted to control agencies is manipulated or forged. Workers are intimidated or informed that contacting enforcement agencies will result in expulsion or deportation (for a comprehensive account of employers' measures to impose forced labour see table 1, annex). All in all, unscrupulous employers are aware of the legislation's weak points and exploit every judicial loophole available.

5.1 TENSIONS BETWEEN A CRIME-BASED AND HUMAN-RIGHTS BASED APPROACH

According to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, protecting victims' rights should take precedence over combating organized crime. In many countries, however, the main approach to human trafficking is crime control. The new act against illegal employment, introduced in August 2004, invests law enforcement authorities with more power to control illegal employment and establishes more severe sanctions against offenders: employers as well as illegal workers. According to the legislature, the objective of this new act is "to underline the detrimental effects of illicit work and the necessity of prosecution. The measures will have a preventive character, contribute to a broader awareness of the problem and decrease societal acceptance of illicit work" (Bundestag, 2003: 2).

The rationale behind the government's political line of a crime-control centred approach was characterised by a director of the Ministry of Labour and Social Affairs as follows:

"To protect foreign illegal workers against exploitation, Germany imposes a three-year maximum prison sentence or a fine on employers if working conditions deviate substantially from those of comparable German employees. A prison sentence of between six months and five years is possible in particularly serious cases. This provision is also intended to maintain order on the labour market" (Irlenkäuser, 2000: 153).

The recent judicial reforms in Germany followed this rationale and did not

include a substantial reform of relevant provisions in labour, social, penal and immigration law that effectively reinforce the rights of victims. Foreign workers still commit a criminal act when they stay and work without the required permits. This makes the enforcement of the new anti-trafficking law difficult, as victims of labour exploitation are not motivated to report exploitation. However, the recently revised “Ordinance amending the implementation of the Residence Act” that came into force on January 1, 2005, stipulates:

“If the concrete facts or evidence indicate that a person obliged to leave the country has been a victim of trafficking, a period of four weeks should be granted for the voluntary departure. The person should be informed about the opportunity of obtaining assistance and counselling from special counselling centres. Postponing the obligation to depart should offer the foreign national the opportunity to put his or her personal affairs in order” (BMI 2004: 211 - translation of author).

In accordance with the recent reform of the Penal Code, the provision concerning a suspension of the obligation to depart (“reflection delay”) is no longer restricted to victims of trafficking for sexual exploitation but covers also victims of trafficking for labour exploitation. However, trafficking victims are still required to leave the country after this reflection delay. When victims are needed as witnesses in court proceedings, their departure is postponed until the end of the court hearing.

Law enforcement authorities are now obliged to prosecute criminal offences of illegal entry, illegal stay and trafficking for sexual and labour exploitation simultaneously. The challenge is in the identification of trafficking victims. In the majority of cases, illegally employed foreign workers - including victims of forced labour - are treated as violators of the Foreigners’ Law. Considerations of crime prevention thus overshadow the protection of exploited migrant workers.

Some argue that granting illegal immigrants rights beyond the basic requirements of international human rights conventions would create incentives and counteract efforts to combat illegal immigration. At the same time, there is no empirical evidence to suggest that entitlement to legal security lures foreign migrant workers. The Federal Ministry of the Interior responded to a petition that demanded improved protection of illegal immigrants:

“Foreigners who enter Germany or stay here without a proper residence permit violate the law in force and are usually absolutely aware of the consequences this will have for their life circumstances in Germany. In a particular sense they are themselves responsible for their ‘illegality’. From such a position, no claims can be made of the German state or German society. In

addition, the federal states share the position that the rights of 'illegals' are sufficient and that these persons cannot make any demands of the state given the unlawful situation that they have put themselves in." (Bundesministerium des Innern, 2001:5).

This statement demonstrates that the two approaches which focus respectively on 'crimes against the state' and 'crimes against victims of traffickers' are perceived to be at odds with each other. But according to experts, the government position relies on selective reporting by enforcement agencies. Alt is aware of at least two case reports by front-line enforcement officers that were rejected by superiors because they did not conform to the dominant repressive approach. The final versions had little in common with the initial papers. Alt quotes one concerned officer: "Deviant facts are deliberately ignored" (Alt 2003: 332).

The main problem is that maximum fines and punitive measures against employers were not applied. At the same time, cases of blatant abuse and maltreatment of migrant workers (such as the Romanian contract workers in slaughterhouses) are considered to be "isolated cases" and perpetrators are termed "black sheep" (interview with NGG, Hamburg; Frankfurter Rundschau from 20 January 2004; also Lorscheid, 2003b). In this case alone, at least 3,500 Romanian workers were victims of forced labour in several meat processing plants (NGG, 2003).

Other experts point out that the conversion of 'illegal employment' from an administrative to a criminal offence will hamper investigations. In the past, labour inspection could decide how to proceed, penalizing most cases with administrative fines and trying to concentrate on the most serious cases. Now, every case has to be reported to the prosecutor. It remains to be seen whether this will improve investigation and prosecution.

While criminalization may give law enforcement authorities greater power in investigations, it may have unintended side effects. One lesson learned from the prosecution of traffickers under the previous Anti-trafficking Act is that a human rights based approach may actually enhance law enforcement responses. It helps to encourage victims to claim their rights instead of having them accept exploitation for fear of deportation. Hence, victim-protection is an important instrument for crime control.

5.2 THE ROLE OF LAW ENFORCEMENT AUTHORITIES AND THE JUDICIARY

The German government invests considerable resources in law enforcement in the areas of immigration control and labour inspection. The number of officers in migration control and labour inspection has increased steadily over the last decades. Roughly 20,500 officers are involved in border control and surveillance tasks. The budget of the Federal Border Patrol increased from €0.7 billion in 1995 to €1.6 billion in 2000, the personnel increased in this period from 25,187 to 38,928 officers (Cyrus und Alt 2002: 155), of which 13,200 officers work with immigration control at the borders or airports (Bundeskriminalamt, 2001c: 14). The Federal Labour Office increased the number of personnel working in labour inspection from 50 (1982) to 2,450 officers (2000) (Beauftragte der Bundesregierung für Ausländerfragen, 2000: 139). Federal Customs has conducted work site controls since 1992 and currently engages 2,900 officers to control labour markets (Bundesausländerbeauftragte 2002: 312). On January 1, 2004, the labour inspection units from Federal Labour merged with Federal Customs thus increasing the total number of labour inspectors to 7,000. This is an exceptionally high investment in law enforcement as compared with other advanced countries (Triandafyllidou, 2000; Vogel, 2000; Hjarno, 2003).

At the present time, the following approaches are applied by law enforcement:

Border controls are the exclusive responsibility of the Federal Border Patrol and focus on combating illegal entry and stay, including the smuggling and trafficking in human beings. Border patrol and police officers concede that while border controls aim to prevent illegal border crossings, they do not address subsequent exploitation. Trafficking into sexual or labour exploitation is not always connected with illegal entry. As already noted, about half of the victims of trafficking in women enter the country legally. Many illegally employed workers enter with a visa obtained by fraud. Moreover, the imposition of forced labour is masked behind the legal employment of seasonal workers and contracts for services. Likewise, entry as a bogus tourist with a secret intention of taking up illegal employment is difficult to detect. In 2001, border patrols refused 51,054 persons entry to Germany (Bundesministerium des Innern, 2002: 15). Qualitative research suggests that Polish touristworkers, when refused, turn to the next checkpoint and enter there (Cyrus and Vogel, 2002b). The concentration on policing the borders is furthermore very expensive (Kwong, 1997; Alt, 1999, Bhagwati, 2003).

Criminal investigation is the domain of specialized departments of the federal criminal police. Federal Customs units have recently begun investigating the recruitment of foreign migrant workers behind legal façades. The focus is on severe cases of illegal employment, where evasion of tax and benefits occur on a major scale. These investigations are effective but enormously expensive and personnel-intensive. The further problem with this approach is that it requires an initial suspicion. Federal Customs used the ‘smuggling of human beings’ provision as the basis of initial suspicion. Taking illegal immigration as a starting point, the agency can deploy criminal-tactical devices to collect further evidence. If the investigation is successful, suspects are interrogated and irregularly employed migrant workers are interviewed. Illegally employed workers are expelled and a re-entry ban is imposed. In the case of service employment contracts, Federal Customs officials assume that the workers have not violated the Foreigners’ Law intentionally; they are asked to leave the country but no re-entry ban is imposed. This strategy is only effective when third-country nationals are illegally employed. The recent EU-enlargement reduced the effectiveness of Residence Law as a weapon against illegal employment; the nationalities that contributed to illegal employment of foreign workers became EU-citizens.

Criminal investigation approaches are more effective in penalizing employers. Some enforcement agencies prefer to investigate crimes ‘more serious’ than illegal employment. Because the expenditure of personnel and financial resources is so high, only the most serious cases are prosecuted. As one customs officer stated: “We suspect that illegal practices are very common in the transport business but we cannot investigate every case. Therefore we decided to concentrate our investigations on big, leading enterprises in order to give a warning signal to all other companies” (interview, local office of Federal Customs, Landshut).

It is not clear to what extent deterrence works. Law enforcement officers are prepared to admit that the concentration on a few and serious offences means that less serious offences are ignored. In some cases, officers encounter migrant workers in objectionable situations but because the law requires that persons without proper residence status be deported, there is little opportunity to offer support. The new anti-trafficking legislation, if accompanied with effective protection mechanisms, could change this.

Work site controls are conducted mainly by specialized local agencies of the Federal Labour Office and local agencies of Federal Customs (Bundesregierung, 2000; Weber, 1999; Vogel, 2000; Vogel, 2001). While the Federal Labour Office focus on employees, Federal Customs examine docu-

ments that are required on the work site. Since January 1, 2004, responsibility for work site controls has passed from labour offices to Federal Customs offices; the latter has increased its staff accordingly by 7,000 officers. In addition, a considerable number of officers from the police, tax authorities, social security offices, pension funds, chambers of commerce and professional associations are involved in monitoring labour market relations. A main argument in favour of work site controls is that they are highly visible. Frequent media coverage and press releases inform the public about efforts to combat illegal employment and are intended to deter potential offenders. In addition to the general objective of prevention through work-site control, there is the need to apprehend employers, the “real culprits”. One labour inspector stated,

“The workers are interchangeable. And that is also our view of the work. What matters is getting the employer because he gains financial profit, and he is the one who - in my personal opinion - exerts negative influence on the labour markets, because the employer could have employed German workers without complications. And then, considering the contributions to the social systems and the taxes: he is the one who saves a lot” (quoted in Cyrus and Vogel, 2001: 47).

Work site controls begin with an examination of workers who, in general, are not willing to cooperate. They are instructed by their employers to give ‘proper’ answers. An enforcement inspector from the labour office explained the institutional and personal concern:

“The emphasis is on the apprehension of employers. That is the main task for us. The workers only serve as witnesses, but then we face the problem that the foreign workers say nothing or lie... It is well known that the employees are exploited unscrupulously, but there are legal norms that have to be obeyed by everybody. ... What really satisfies me is a proceeding against an employer that results in a criminal sentence” (quoted in Cyrus and Vogel, 2001: 47).

Detected illegal workers are reported to the foreigners’ office and then deported. Under the previous law, employers faced at most a modest fine. Migrant workers without required residence and work permits face more serious repercussions. An enforcement officer from a labour office pointed out this imbalance; foreign migrants are expelled or deported and a life-long entry ban is imposed as a result of the illegal stay, which is considered a criminal offence. And “on the other side, employers come off well with an administrative fine: this response is dubious at best” (quoted in Cyrus, and Vogel, 2002a).

The Police Trade Union (GdP) is also critical of the approach that focuses on work site and worker control. A GdP working group on the administrative reform of labour inspection responded to the announcement by the Federal Ministry of Finances that labour inspection will conduct large-scale controls within a particular industry every four to six weeks:

“The announcement that large-scale controls will be conducted scares the control units, not the industries. The question remains as to who should deal with the suspicious cases. All offices are working at full capacity and are no longer in a position to follow all leads or to investigate at their own instigation. Conducting large-scale controls binds personnel capacity. The subsequent processing requires further capacities. Before the results of one large-scale control can be assessed, the next large-scale control takes place. And information from other sources (public prosecutor, police, other labour inspection offices or citizens) remains unprocessed. The final result may be that the industries and work sites chosen for large-scale controls are only those in which irregularity is expected. This would be contrary to the initial intention” (GdP-Arbeitsgruppe Finanzkontrolle Schwarzarbeit, 2004).

Moreover, work site controls may draw personnel away from criminal investigations. A police officer described the consequences of defining illegal stay as a criminal offence and giving law enforcement no discretion in investigations:

“The police are not really interested in the illegally employed workers. They earn marginal wages. We are interested in detecting the employers who profit. But the state labour office conducts controls with 120 officers on construction sites. Day by day they apprehend a huge number of foreign workers. And the police are obliged to take up investigations. In 1996, more than 2,500 persons were apprehended. There are 60 police officers active in this area in Berlin. Police efforts are paralysed by the huge number of investigations. We didn't get around to investigating the men behind it. We worked almost exclusively for the public prosecutors' 'dismissal-of-cases-machine'. Roughly 98 percent of cases were dismissed as insignificant” (Bernsee, 1998: 21).

The statement confirms that treating illegal stay as a criminal offence means that enforcement authorities spend too much time on insignificant cases and neglect the more serious ones. Document checks have similar shortcomings. Customs officers explained “in a work site check, you find only those documents you should find” (personal interview, local Federal Customs Office). These documents may include bogus registrations of the business, false lists of work hours and payments. In some cases, businesses admitted to

these practices. The Federal Labour Office also reports these practices (Weber, 1999: 340). In the case of work site controls, only the most serious cases are reported.

Tax investigations are associated with criminal investigations. Even when a criminal offence has been proven, the actual extent of individual responsibility cannot be known. Fines are inadequate as tax authorities collect taxes according to declared assets, and the full extent of the operation can rarely be ascertained. According to German law, a taxpayer is bound to deliver proof if s/he feels that a tax requirement is inappropriate; the tax payer has to declare all sources of income. Tax investigations concentrate on those who profit from unauthorised economic activities and do not address the victimised employees (for a general account of tax search provisions see Ignor and Rixen, 2002: 397-421).

Victim protection programs are designed to ensure that victims are willing to serve as witnesses in court hearings against traffickers. Until recently, this applied only to victims of trafficking for sexual exploitation. Previous experience has shown that most victims enter such programmes after being apprehended by the police. The police are required to review the situation of women found in brothels. If it seems that the woman is a trafficking victim, she should be offered temporary status and brought to a counselling centre. Since October 9, 2000, the law provides a four-week reflection delay during which victims are cared for by qualified counsellors and can decide if they wish to serve as witnesses. If a woman decides to serve as a witness, she is allowed to stay for the duration of the court proceedings. Women are accommodated in special shelters and the government covers the costs of stay and repatriation. Police and counselling centres consider witness programs to be necessary and demand more generous treatment of victims. Organisations involved in this process complain that their funding is uncertain and that victims of trafficking in sexual exploitation are not always provided with adequate support (Agisra e.V. et al., 2003). The problem remains that local authorities are responsible for the implementation of federal laws without adequate funding allotments. As a result, local social benefit agencies may be reluctant to cooperate.

The introduction of a victim protection program for victims of trafficking into sexual exploitation was a first step in overcoming the tension between crime prevention and human rights based approaches. Some trade union representatives demand the introduction of a similar witness scheme for forced labour generally (Honsberg, 2004; von Seggern, 1997). As a result of the recent amendments to the penal law and the coming into force of the new

Residence Act, the witness protection program has been extended to victims of forced labour. It is not yet clear how the new framework will work.

To summarise, law enforcement uses several approaches to prevent illegal entry and employment. Although the main focus should be on employers, it is mainly the workers that are investigated. This repressive control approach has limited success in restricting the black market economy and controlling crime; at the same time, resources are detracted from the investigation of serious crimes and foreign workers without proper residence and work permits become victims. Enforcement officers, aware of this problem, propose structural reforms:

“Investigation on independent initiative is necessary, as well as analyses of industries and corporations. If white-collar crime depends on economic operational and commercial expertise, then investigators have to acquire this expertise too. On the other hand, victims have to be protected more effectively in order to win allies in the fight against organised crime and white-collar criminality. The witness protection programs for prostitutes willing to serve as witnesses are an important step in this direction” (Rügemer, 1997: 15).

The actual extent of criminal activities is difficult to ascertain in the absence of testimonial witnesses. There is a considerable gap between maximum fines and the fines actually imposed: these correspond to the profit that is demonstrated to have been gained through criminal activity and are therefore often low. The average fine of an employer is only €1500. Moreover, only about one fifth of the imposed fines are in fact paid. In 2002, the Federal Labour Office imposed €122.2 million in fines, but only €30.4 million were paid (Härpfer, 2003). Most offenders charged with high fines appealed and had the fine reduced. When companies are based abroad, they can evade charges.

An exemplary case in this context is that of the illegally employed Kazakh worker. The subcontractor was fined €2,250 for manslaughter through culpable negligence (see case 30 of this study). The fine was low because the accused maintained that he had no income and was a welfare recipient. His case was not investigated further even though it was clear that he had profited from the illegal employment of the Kazakh worker. In another case involving human smuggling, the accused received a suspended sentence of 21 months (Härpfer 2003). In the case of the Romanian au pair who committed suicide, a German couple was sentenced for fraud, human smuggling and bodily injury. The wife received a suspended sentence, the husband a prison sentence of 45 months. The judge emphasised, however, that the suicide was not subject of the sentence, because serious bodily injury could not be proven (Amtsgericht

Ansbach). Both examples show that when courts have difficulty penalizing offences against workers, they change the charge to human smuggling. This also occurs in the prosecution of trafficking into sexual exploitation: “The difficulty in presenting evidence in offences concerning trafficking into sexual exploitation often means that cases are dismissed, whereas offences of minor severity that are easier to prove are prosecuted” (Bundesministerium des Innern, and Bundesministerium der Justiz, 2001: 104).

To conclude, practitioners interviewed in the course of this study argued that investigations would be more successful if migrant workers would cooperate. But current laws prevent enforcement agencies from compelling illegally employed workers to act as witnesses. The power of law enforcement is limited. Officials concede that only one of thousands of cases of illegal employment is actually controlled. The crime control approach has obvious limitations. The combined introduction of a legal norm ‘forced labour’, the reduction of the criminal offence ‘illegal entry and stay’ to an administrative offence and a pro-active strategy to empower forced labour victims would encourage victims of forced labour to come forward and oppose the practice of forced labour.

5.3 ASSISTANCE PROVIDED TO VICTIMS: THE ROLE OF TRADE UNIONS AND CIVIL SOCIETY ORGANISATIONS

This final section will discuss current victim support structures in Germany. Since effective enforcement of anti-trafficking legislation ultimately depends on better cooperation with victims, it is imperative that migrants feel empowered to claim their rights, whether they are regular or irregular. Western European destination countries have highly developed support structures for migrant workers as compared to other regions of the world. Even though policy approaches to migration are restrictive, strong civil society networks have developed aimed at integrating migrant workers and protecting their rights. Workers’ organisations, though often reluctant to adopt an open-door-policy, are part of these networks.

Until recently, trade unions shared the idea that labour immigration is detrimental to German society and should only be allowed in exceptional cases. Today, the trade union umbrella organisation DGB accepts that immigration is necessary for demographic and economic reasons and, provided it is properly managed, benefits the receiving country. In order to protect the interests of domestic workers, unions insist that illegal immigration and employment be prevented. According to trade unions, the best way to protect workers

against unlawful employment is to prevent illegal and irregular employment. While there are sporadic calls for better measures to protect migrant workers (Honsberg, 2004), the member organisations of the DGB have not yet proposed a comprehensive programme to support foreign migrant workers.

Actual support of migrant workers depends on the individual decisions of trade union activists. Trade unions have trouble making contact with migrant workers (IG BAU, 2001), because migrant workers have often had bad experiences with trade unions in the past. At the same time, trade unions do not actively approach foreign migrant workers, preferring instead to cooperate with law enforcement. Some regional branches of the construction trade union even sent members out to screen construction sites and to report suspicious cases to law enforcement, indifferent to the consequences for the migrant workers. One trade union secretary explained that the subsequent expulsion or deportation of illegal foreign migrant workers is justified: 'Illegally employed foreigners know the rules of the game and if they deliberately take the risks of illegal employment, they cannot complain if they are deported' (interview with author).

In order to prevent abuse of the service contract system, trade unions used to lobby for the cancellation of bilateral agreements. More recently, some trade unions (IG BAU, NGG) have accepted that authorised contract and seasonal workers need support and have offered them membership and legal aid (Honsberg, 2004; Cyrus, 2003b). But since foreign workers do not approach the trade unions, few trade union activists are aware of the conditions in which they work. At the moment, the construction trade union is establishing a membership service for contract workers from CEE countries. The trade union NGG, responsible for workers in the meat processing industry, is investigating Romanian forced contract workers. And finally, the DGB counselling centre in Berlin has opened its services to migrant workers. These measures signal a change in the trade unions' stance towards migrant workers: from a position of exclusion to one of inclusion.

Most counselling centres for immigrants rely on public funding and their mandates are significantly influenced by the state. Counselling centres in Germany have to promote the integration of immigrants who are lawfully residing in Germany while no services are offered to immigrants without lawful residency. Another explanation for the ignorance of counselling centres towards illegal and temporary migrant workers is the ambiguity of their legal status. Section 92 a of the Foreigners Act (§96 of the new Residence Act) states that the support of illegal entry and stay is a criminal offence while section 76 (§87 of the new Residence Act) states that public services are obliged

to report on illegal foreign residents. Furthermore, social workers are not familiar with the rights of the victims of forced labour and therefore do not offer counselling services for irregular migrant workers. The effect of these arrangements is clear: employees of the counselling centres emphasise that they are not entitled by public authorities and welfare organisations to work with irregular immigrants.

According to a survey conducted in 2002, most counselling centres for immigrants have very little contact with irregular migrant workers. Only specialized charity organisations demonstrate an interest in them. The survey indicated what forms of assistance irregular immigrants require; information on regularization (51%), referral to a lawyer (15%), financial support (10%), access to medical treatment (6%) or medical care for pregnant women (2%), financial support for legal proceedings (2%), counselling on emigration to another country (2%), support to find a school for children (2%) or accommodation (2%). Only one percent of the support is related to problems of employment (Sextro, 2003).

Most counselling centres have no contact with and little knowledge of foreign or temporary migrant workers. Even the trade union's counselling centre for resident foreign workers in Berlin has no contact with temporary migrant workers (personal communication with social counsellor). A few counselling centres with national or regional specialisations admitted to being aware of the abuse of migrant workers. One social worker explained that while the abuse of labourers from the former Yugoslavia is common knowledge, the problem does not get addressed as it is not part of his counselling centre's mandate. Migrant workers are often reluctant to complain for fear of deportation. Most social workers share this view and avoid the subject of labour exploitation.

Social workers are exposed to a basic dilemma, as demonstrated in the following case. A counsellor suspected that minors of an ethnic community were being brought into Germany illegally to work in private households and retail shops. This practice seemed to be embedded in the cultural practice of their country of origin. The advisor was caught in a dilemma: if she reported her victims, they would risk deportation by law enforcement and be forced to return to the conditions they sought to escape. The foreign employers and their families would also be penalized and sent back to their country of origin; innocent dependants born and raised in Germany would be affected as well.

Only the social workers for female migrants working in the sex-industry conduct visits to bars and brothels and attempt to understand the conditions in which their clients work. The other notable exception was a counselling centre for temporary migrant workers from CEE countries, which has since been

shut down. This centre had been founded on the principal that German law assures illegal and temporary migrant workers basic rights. A thorough analysis of the labour law reveals that that entitlement to wages and the right to appeal are independent of residence and work status and that furthermore, industrial tribunals are not obliged to investigate the residence status of plaintiffs. Given this legal framework, migrant workers can be encouraged to make legal claims through public channels. Several grass-roots groups that support immigrants have adopted this empowerment approach.

Given the extent of the violation of workers' human and social rights, more decisive steps should be taken to stop forced labour exploitation. In spite of the measures already in place, migrant workers in Germany are still at risk of becoming victims of extreme forms of exploitation, including forced labour. Though the German government has made headway in revising its laws against human trafficking and illegal employment, the present approach has relied heavily on criminal law. This, however, should only be the *ultima ratio*.

As the findings from this study suggest, properly implemented human rights policy would not jeopardise but rather increase public security and contribute to a reduction in criminality. The goals of improved victim protection, containment of the shadow economy and more efficient criminal investigations and penalties are not mutually exclusive. A rights-based approach to human trafficking would require a two-pronged strategy: protection of victims on the one hand and apprehension and penalising of perpetrators on the other. The introduction of such a double strategy requires a change in thinking. Current legislation suggests to irregular migrant workers: 'Regardless of what you have been through, we will punish and deport you'. This message should in fact be: 'Even if we can probably not allow you to stay, we will protect you and take care that your rights are respected'. By reassuring workers that they are entitled to legal rights, they will be more likely to resist the imposition of forced labour conditions and to cooperate with counselling centres and law enforcement authorities. The empowerment of abused workers would serve to prevent and help regulate abusive practices.

The following section will address the new legislation and make some suggestions of how best it can be implemented to gradually eliminate forced labour exploitation in Germany. As a first step, law enforcement agencies and other stakeholders require guidance on the German legal concept of "traffick-

ing for labour exploitation”. A useful starting point might be a focus on forced labour and in particular on the specific forms of coercion that are used to make workers accept discriminatory working conditions. Existing provisions in German criminal and civil law may be useful in this regard. A rigorous application of these provisions would be a first step towards more effective prosecution of abusive employers and intermediaries.

One example is the provisions against usury (§138 Civil Code and § 291, Penal Code). According to German jurisprudence, paying a worker less than two-thirds of the standard wage - local level or tariff agreement - can be punished as wage usury (Ignor and Rixen, 2002: 377-393). Industries or services that are not covered by such agreements, such as domestic service, should benefit from similar wage regulations and benchmarks for minimum work conditions. All forms of underpayment below a threshold defined as wage usury should be considered an abuse of a workers' vulnerability and thus punished as an administrative or criminal offence.

If workers are forced with violence or threats of dismissal when they refuse to submit to unlawful conditions of work and pay, the employment should be considered forced labour. Manifestations of menace include the threat of violence against the worker or his family or the threat with unlawful dismissal. The relevant provisions of the Penal Code are coercion (§240, Penal Code), threat (§241, Penal Code) or blackmail (§253, Penal Code). In the case of violence used to force workers to accept unfavourable conditions or withdraw legitimate claims, the relevant provisions of the Penal Code are bodily injury (§223, Penal Code), dangerous bodily injury (§226, Penal Code), and wrongful deprivation of personal liberty (§239, Penal Code). If employers exploit the dependency of workers in order to impose degrading and inhuman treatment - unworthy accommodation, bad food - this should fall under discriminatory employment. Most relevant provisions are codified in administrative circulars concerning the food supply and accommodation for migrant workers and relate to wage usury (§138, Civil Code and §291, Penal Code) and discriminatory employment (§ 406, Social Code, book three).

The law enforcement officers interviewed stressed that customers and main contractors deny responsibility for forced labour and pretend to be unaware of irregularities. It would be advisable to specify the liability of customers and main contractors in particular industries (for example, §5, 2 Posting-of-Workers Act covering construction workers and seafarers) (Ignor, and Rixen, 2002: 351-376). The liability of customers and main contractors deliberately using services or goods produced with forced labour should be generalised to cover all employment relationships.

The next challenge is to remove the barriers that impede victims of forced labour exploitation from cooperating with law enforcement authorities. For migrant workers, the main obstacles are the fear of reprisals, job loss and subsequent deportation. To change this perception, a new focus must be created in law enforcement and judicial activity. At present, rather than focussing on serious cases of forced labour exploitation, public attorneys are drowned in minor cases, such as illegal residence. To avoid this, unauthorised stay (§92, Foreigner Act; §95 of the new Residence Act) should be reduced from a criminal to an administrative offence. Such a reduction would mean a reversion to the situation before the 1990 Foreigners' Act reform, when illegal stay was an administrative offence.

The current provision for expulsion or deportation is not statutory: the Foreigners' Law stipulates that foreign migrant workers without a required work and residence permit may be expelled or deported. In minor cases, expulsion or deportation is not compulsory; nonetheless, migrant workers without required work permits are routinely expelled or deported. This practice is justified as a preventive measure. Victims of forced labour should be encouraged to serve as witnesses in investigations. The best way to achieve this goal would be to abstain from any regulation that criminalizes immigrants. Such a reform would not mean that foreign workers automatically remain in the country; their stay would still be considered unauthorised.

In addition to creating positive incentives for victims to cooperate with law enforcement authorities, victims should be compensated for unpaid income. Every employer should pay compensation equal to a six-months-income to a worker who lost his or her job on the basis of unauthorized stay. Migrant workers are entitled to remuneration for the work done, regardless of residence and work permit status. And foreign migrant workers - with the exception of particular contract workers - have access to industrial tribunals. However, the cases presented indicate that illegally employed workers are afraid to take legal action. Instead, some resort to mafia-like gangs or take criminal steps themselves to collect back wages. If workers knew they could apply to industrial tribunals without fearing deportation, fewer would resort to criminality. The obligation that public services report to foreigners' offices (§76, Foreigners' Law; since 1.1.2005: §87 Residence Act) should be lifted.

Legislation should also set new deadlines within which a claim must be made. In some industries, a claim can only be made within two weeks after finishing the work contract. This period is too short for migrant workers. Counselling centres need time to counsel victims of forced labour. In addition, the network of counselling centres for immigrants should extend the scope of

their services. The research presented here suggests that most counselling centres do not intervene when informed of forced labour cases because they have no mandate in labour market issues and little chance of effecting change. Trade union agencies would also profit from a legislative reform, as it would provide greater opportunity for cooperation between trade unions and irregularly employed foreign migrant workers.

At present, most counselling centres do not tackle the problem of forced labour of migrant workers for fear of being punished for aiding and abetting illegal residence. The legal consequences of advising illegal immigrants must therefore be clarified. Welfare organisations should prepare a manual for social workers with basic information on the rights of and legal instruments available to irregular migrant workers. Such initiatives require public support. A portion of paid fines should be applied to the funding of such services.

These proposed measures will increase the risks for those who profit from forced labour and may prompt such actors to take greater responsibility. A case study of Danish labour markets indicates that the irregular employment of foreign migrant workers is almost unknown in Denmark even though state authorities hardly ever conduct work site controls. The main reason is a consensus among social partners to accept and pass tariff agreements. Trade unions and employers' associations ensure that their members comply with regulations. Employers' associations should feel responsible for restraining employers from dealing with workers who work under sub-standard conditions or irregular conditions.

In addition, special protection measures are needed for workers who are particularly vulnerable to exploitation, such as contract workers. The hiring of contract workers is based on bilateral agreements between Germany and several countries of Eastern Europe. Even though regulations concerning contract workers stipulate that conditions of pay should not be lower than those of native workers, this is hardly enforced. In practice, contract workers face many problems appealing to industrial tribunals or civil courts in Germany. If they appeal to judicial authorities in their home countries, their claims are often either rejected or not enforced. The Posting-of-Workers-Act stipulates that standard working conditions are applicable to all foreigners working in Germany. Minimum wages, however, are only regulated in two sectors, namely construction and ocean shipping. Hence, an extension of the Posting-of-Workers-Act to cover other relevant industries would therefore be advisable. It would provide German industrial tribunals with the means to also enforce standards of pay.

The abuse of seasonal and contract workers programmes should be tackled through stricter monitoring and the empowerment of workers to report abuses. Work and residence permits should remain valid even if control authorities cancel a contract due to irregularities. The worker should be allowed to work for another employer as long as the work permit is valid. Workers should go personally to the office that issues residence or stay permits in order to reduce dependency on the employer. The authority should provide written information on rights and instruments in the worker's language, including the names, addresses and telephone numbers of a trade union office, a NGO and the responsible public authority.

The situation of domestic workers accompanying diplomatic staff raises special concerns. NGOs dealing with this issue demand that migrant workers employed by diplomats be entitled to basic rights like every other migrant worker. Given that the work site of domestic servants is the private accommodation of diplomats, diplomatic immunity should not pertain. Moreover, all employees of diplomatic staff should be permitted to appeal to the competent authorities in the country of employment.

Finally, strategies to combat forced labour of migrant workers must be developed in an international context. Cooperation between the agencies of affected countries should be reviewed and streamlined according to the dual approach outlined above. At the same time, it is important to expand legal work programmes as an effective means to prevent human smuggling and trafficking. This should be combined with targeted action in origin countries to reduce migration pressure. The anti-trafficking programme currently implemented by GTZ (Gesellschaft für Technische Zusammenarbeit) is an important initiative. Travel agencies and illegal recruitment agencies that provide migrant workers with visas or work and residence permits obtained under false pretences should be better monitored. Trade unions should be encouraged to improve the protection of migrant workers and to initiate a social dialogue on fair employment practice. Employers' associations need to take part in efforts to protect victims of forced labour as a prerequisite for stability and social justice. International organisations can play a crucial role in the training of actors who can help to prevent and eliminate all forms of forced labour exploitation.

EMPLOYERS' STRATEGIES TO ENFORCE AND DISGUISE THE IRREGULAR EMPLOYMENT OF FOREIGN MIGRANT WORKERS

Promises, putting off until later, withhold of information, false information, intimidation	
Promising a profitable wage	Keeping back of original documents
Promising a bonus	Threatening with wage deduction (withhold of bonus)
Misinformation and putting workers under stress	Threatening with dismissal
Refusal to inform about the principles of payroll accounting	Non payment of statutory holiday
Putting off until later after a small advance pay	Instruction how to respond in the case of controls
Withhold of statutory entitlements	
Underpayment of wage	Violation of statutory working time regulation
Non-granting of holidays	Documents like payroll accounts or employment contracts are not provided
Non-payment of work overtime	Medical care is not covered
Tools are not made available	
Work security means are not made available	Provision of accommodation insufficient
Manipulation of documents	
Double contracts	Backdating of dismissals
Demanding to sign blank payroll lists	Withhold of security contributions
Abduction of fictitious costs which are specified on the pay slip	False declaration of the working time in the pay slip
	Working days are declared as holidays
Direct measures against employees	
Dismissal after complaining of workers	Rotation of the personnel
Dismissal in the situation of sickness or accident	Wage reduction in order to discipline workers
Selection of workers without command of German	Threatening with violence
	Use of violence

ANNEX II

LIST OF INTERVIEWS

LIST OF INTERVIEWED EXPERTS

1. IG BAU, Bundesvorstand, Internationales - Construction, Frankfurt am Main, F. Schmidt-Hullmann [16.04.03]
2. FIM e.V. (Frauenrecht ist Menschenrecht e.V.), E. Niesner, Andrea Bode, Frankfurt am Main [16.04.03]
3. AGISRA Frankfurt am Main, J. Rosner, [16.05.2003]
4. LKA 23 Berlin (Criminal Investigation Department Berlin), Mr. S. and Mr. M. [29.04.2003]
5. IG BAU, Bundesvorstand, Internationales - Agriculture, Berlin, S. Graf [12.05.2003]
6. Bundeskriminalamt Wiesbaden, H. Rall [16.05.2003]
7. Jesuit Refugee Service, Berlin, J. Alt [02.05.03]
8. ZAPO Berlin, C. Roth, B. Waldek, [05.05.03]
9. IG BAU Hamm, B. Gabriel [03.06.03]
10. IG BAU Bremen, W. Jägers [11.06.2003]
11. Ban Ying Berlin, N. Prasad [16.06.2003]
12. In Via Berlin, victim protection programme, T. Ziener [17.06.2003]
13. In Via Berlin - au pair service, B. Eritt [19.06.2003]
14. Vietnamhaus Berlin, Fr. Nonnemacher [20.06.2003]
15. ONA Berlin, Mrs. D. and E. [23.06.2003]
16. Reistrommel e.V. Berlin, T. Hentschel [03.07.2003]
17. AGISRA Köln, B. Nadjavi [07. 07.2003]

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18. Respect-Germany, S. Schmidt and R. Heubach [03.07.2003]
19. Landesarbeitsamt Düsseldorf, P. Rack (08.07.2003]
20. NGG, Hauptverwaltung Hamburg, M. Dieterich [31.07.2003]
21. LKA NRW, Hr. Spröde [01.08.2003]
22. Federal Customs, Local Office Landshut, M. Hofmann [05.08.2003]
23. Federal Customs (InKo-BillBZ) Köln, Hr. Körfgen, Fr. Hartmann [11.08.2003]

LIST OF INTERVIEWED VICTIMS OR WITNESSES

1. Columbian Domestic Worker, interviewed in Frankfurt/Main [13.05.2003]
2. Polish Construction Worker (Poland) [28.06.2003]
3. Polish Seasonal Worker (Berlin), [03.07.2003]
4. Philippine Domestic Worker (Siegburg - Bonn) [07.07.2003]
5. African asylum seeker (Berlin) [24.7.2003]
6. Angolan social advisor Erfurt, Hr. P. [25.7.2003]
7. Social Advisor, K. J., Berlin [29.07.2003]

LIST OF TELEPHONE INTERVIEWS WITH EXPERTS

1. LKA 341 Berlin, Herr Bernsee
2. LKA 22 Berlin, Frau Rudat
3. Staatsanwaltschaft Düsseldorf
4. Bundesanstalt für Arbeit Nürnberg, Herr Wahl
5. Bundesgrenzschutzpräsidium Ost, Pressestelle, Herr Papenfuß
6. Bundesgrenzschutz Koblenz, Pressestelle, Herr Corneli
7. DGB-Beratungsstelle Berlin, Herr Cinar
8. Frauenzentrum SUSI Mitte
9. AWO-Beratungsstelle Wedding, Herr Doganay
10. Generalstaatsanwaltschaft Düsseldorf, Herr Neumann
11. Staatsanwaltschaft Düsseldorf, Herr Schwarzwald
12. Caritas Innenstadt Frankfurt/Main, Frau Bresic
13. Evangelischer Flüchtlingsdienst Frankfurt/Main, Herr Westerwick
14. Hauptzollamt "Großer Kurfürst" Berlin, Herr Unger

15. KrimZ, Hr. Steinbrenner
16. Caritas Migrationsdienst Berlin Frau Eisenstein
17. Arbeitsamt Frankfurt/Main, Herr Skottke
18. Landesarbeitsamt Hessen (Pressestelle).
19. Herr Anderson, München
20. Oberfinanzdirektion Nürnberg, Medienstelle Zoll

LIST OF DESCRIBED CASES

1. African Women trafficked in sexual exploitation (LKA NRW)
2. Forced prostitution from Ukraine (media reports)
3. Hotel prostitution (Ban Ying)
4. Two Bulgarian women recruited under false pretences for prostitution (Agisra, Cologne)
5. Romanian women recruited by private persons for swinger club (social advisor Berlin, personal communication)
6. A Moroccan young woman, exploited as domestic workers and attempt to force into prostitution (Agisra, Cologne)
7. Colombian domestic worker, intimidated (personal comm. with the victim)
8. Au Pair: Romanian girl suicide (Landsgericht, Ansbach)
9. Young African man (Social advisor, Berlin)
10. Philippine domestic workers, died after abandoning (documentation FIM, Frankfurt)
11. Polish domestic worker, successful industrial court proceeding (ZAPO, Berlin)
12. Moroccan Au Pair (Agisra, Cologne)
13. Philippine domestic worker, employed with a diplomat (personal communication with the victim)
14. Eighteen Romanian seasonal workers in agriculture (ZAPO, Berlin)
15. About 220 Polish seasonal workers in cucumber harvest and processing (ZAPO, Berlin)
16. Polish seasonal worker account on illegal placement (personal communication with the worker)
17. Polish seasonal worker after accident on work site (ZAPO, file documentation)

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18. 3,500 Romanian contract workers in meat processing (NGG, Hamburg, media reports, investigation files)
19. Polish contract workers in meat processing (ZAPO, Berlin, documentation file)
20. Polish Contract workers in construction (IG BAU, Hamm)
21. Bosnian contract workers in construction (Federal Customs, Landshut)
22. Irregularly employed Italian workers in construction enterprise perceived as organised crime (State Criminal Office, NRW, Report on organised crime NRW)
23. 42 Polish construction workers recruited under false pretences and deliberately betrayed (Alt 1998)
24. Illegal foreign workers unaware of an illegal situation (State Labour Office NRW, investigation report 2001).
25. Turkish worker involved in shadow economy (Alscher et.al. 2001)
26. African asylum seeker, betrayed as illegal construction worker and assaulted when demanding back-wages (personal communication with the victim, media reports)
27. Account of a Polish Catholic priest working undercover in construction (Lewandowski, 2000).
28. Brazilian construction worker threatening employers to get back-wages (Aus, 2000)
29. Abduction of employer (State Criminal Office; Bernsee, 2002)
30. Illegal Kasakhstan worker killed on worksite (Härpfer, 2003)
31. Polish Seasonal worker in ice-cream parlour, betrayed and maltreated (ZAPO, Berlin, file documentation)
32. Czech seasonal workers illegally placed in restaurants (Federal Customs, investigation file)
33. Turkish illegal immigrant, two years employment without wage (Alscher et. al., 2001)
34. Maltreated Portuguese workers, employed in restaurant and construction (Social advisor, Erfurt)
35. Trafficking of child workers in domestic service and business (social worker)
36. About 100 Chinese trafficked and employed in snack-bars (Landes Criminal Office, Berlin; press release and personal comm. with investigating officers)

37. Lithuanian illegal workers, employed in garment sweat shop production (Local Labour Office, Frankfurt/Main).
38. Polish seasonal worker in fun-fair trade (ZAPO, Berlin, documentation file)
39. Four Polish seasonal workers employed in fun fair (ZAPO, Berlin, documentation file)
40. Two Polish illegal workers employed with a circus (ZAPO, Berlin, documentation file)
41. Irregular employment of foreign drivers forwarding business (Federal Customs, investigation files)
42. Bulgarian women, indentured work of distribution of advertisement brochures (InVia, Berlin).

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