



SDRUŽENÍ ASSOCIATION
PRO INTEGRACI FOR INTEGRATION
A MIGRACI AND MIGRATION

Stowarzyszenie Association
Interwencji For Legal
Prawnej Intervention

Implementation of the Employers` Sanctions Directive in the Czech Republic, Hungary, Poland, Romania and Slovakia



Warsaw 2014

Edited by: Katarzyna Słubik (Association For Legal Intervention)

Stowarzyszenie Interwencji Prawnej (Association For Legal Intervention)
Siedmiogrodzka 5/51, 01-204 Warsaw
POLAND
E-mail: biuro@interwencjaprawna.pl

Sdružení pro integraci a migraci (Association for Integration and Migration)
Senovážná 2, 110 00 Prague 1
CZECH REPUBLIC
E-mail: poradna@refug.cz

Menedék – Migránsokat Segítő Egyesület (Hungarian Association for Migrants)

Népszínház 16, 1081 Budapest
HUNGARY
E-mail: menedek@menedek.hu

Spoločnosť ľudí dobrej vôle (Society of Goodwill)
Mäsiarska 13, 040 01 Košice
SLOVAKIA
E-mail: migrants.employees@gmail.com

ARCA Forumul Român pentru Refugiați și Migranți (Romanian Forum for Refugees and Migrants)
Strada Austrului nr. 23, sector 2, 024071,
București
ROMANIA
E-mail: office@arca.org.ro



This paper is part of the project

For Undocumented Migrants` Rights in Central Europe

supported by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations

The sole responsibility for the content lies with the author(s) and the content may not necessarily reflect the positions of the Network of European Foundations, European Programme for Integration and Migration or the Partner Foundations.

The paper presents concisely the legislation implementing the Directive 2009/52/EC (Employers' Sanctions Directive) in five Central European countries.

INTRODUCTION

The European Union Employers' Sanctions Directive¹ (hereinafter "Directive" or "ESD") establishes minimum standards across the EU on sanctions and measures regarding employers of irregularly-staying third-country nationals. The Directive was adopted on 18 July 2009 with the deadline for transposition set for 20 July 2011. The aim of the Directive, as stipulated in Preamble (2), is to combat illegal immigration to the European Union through reducing what is defined as a major "pull factor": the possibility of obtaining work without the required legal status. Therefore, the measures introduced in the Directive focus mainly on prohibiting the employment of third-country nationals who do not hold residence permits and sanctioning employers who infringe the said prohibition with sanctions ranging from fines to criminal liability in the most serious cases. It also obliges Member States to carry out effective and adequate inspections on their territory to control the employment of illegally staying third-country nationals (Article 11).

The Directive's goals are to be achieved by obligations imposed on the employers of migrant workers, e.g. to verify the legal status of the worker before employing a third-country national and notify competent authorities of the initiation of the working relationship (Article 4(1)). Complying with these responsibilities may release the employer from criminal liability or financial sanctions. The Directive also strives to establish measures aimed at reinforcing undocumented migrants' rights. It explicitly states that the employer is obliged to pay any outstanding remuneration for work which the employee has performed, and any outstanding taxes and social security contributions. In addition the employer should cover the costs of transferring money to the country where the employee returned or was returned to (Article 6). To facilitate the recovery of this remuneration, the Directive establishes a presumption of existence of at least the minimum wage and a working relationship of at least three months if this is not proved otherwise. The Directive emphasises the necessity of securing the recovery of any back payments even after the employee has left the territory of the Member State. This is also a consequence of the fundamental limitation of the Directive that any of its provisions may not be implemented with the result of facilitating the irregular stay of third-country nationals on the territory of a Member State.

This is the reason why the Directive emphasises the employees' right to remuneration for their work on the one hand, but on the other fails to provide for the possibility of granting residence permits to undocumented migrant workers with the aim of recovering their outstanding remuneration or filing a

¹Directive 2009/52/EC of the European parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0052:EN:NOT>

complaint against their employers. According to the Directive, residence permits may only be granted on a case-by case basis to the victims of the most serious offences committed by the employer. These offences include employment in particularly exploitative conditions and the employment of a minor (Article 13 (4)); and even then only under the condition of employee’s involvement in the criminal proceedings initiated against the employer. Only third-country nationals holding the said residence permit may be granted an extension of legal residence for the sole aim of facilitating the recovery of any outstanding remuneration (Article 6(5)).

The following brief summary provides a comparison of the implementation of the Employers' Sanctions' Directive in national legislation of five Central European countries: the Czech Republic, Hungary, Poland, Romania and Slovakia. Emphasis is put on the main measures introduced by the Directive: criminal liability of employers, financial sanctions imposed on employers, recovery of outstanding remuneration, an effective complaint mechanism, information regarding employee’s rights and the possibility of granting special residence permits to specified groups of undocumented migrant workers.

1. FINANCIAL SANCTIONS AGAINST EMPLOYERS

As stipulated in Article 5 of the Directive, infringements regarding the prohibition of employment of illegally staying third-country nationals shall be subject to **effective, proportionate and dissuasive sanctions** against the employer.

Sanctions shall include:

- **financial sanctions** which shall increase in amount according to the number of illegally employed third-country nationals;
- and
- **payments of the costs of return** of illegally employed third-country nationals in those cases where return procedures are carried out.

Member States may provide **reduced financial sanctions** where the employer is a **natural person** who employs an illegally staying third-country national **for his or her private purposes** and where **no particularly exploitative working conditions are involved**.

Country	National law
Czech Republic	Delegating work to an illegally staying third-country national is punishable with: <ul style="list-style-type: none"> - a fine of up to 200 000 EUR for natural persons delegating work to third- country nationals for private purposes; - a fine from 100 000 EUR to 400 000 EUR for employers who are legal entities. - payment of the costs of return of the illegally staying third-country national. No explicit increase of sanctions in relation to the number of the employees is

	established, general rules of proportional punishment shall be applicable.
Hungary	<p>Delegating work to a third-country national without the required work permit is punishable with:</p> <ul style="list-style-type: none"> - a fine from 650 EUR to 1300 EUR for natural persons delegating work to third-country nationals for private purposes; - a fine from 2500 EUR to 5000 EUR for employers who are legal entities <p>No explicit increase of sanctions in relation to the number of the employees is established, general rules of proportional punishment shall be applicable. The law does not explicitly emphasise the prohibition of employing illegally staying third-country nationals nor does it impose an obligation on the employer of covering the third-country national`s return costs.</p>
Poland	<p>Sanctions for delegating work to an illegally staying third-country national include:</p> <ul style="list-style-type: none"> - a fine from 720 EUR to 1200 EUR for employers delegating work to illegally staying third-country nationals; - a fine from 5 EUR to 2500 EUR for natural persons employing persistently illegally staying third-country nationals for private purposes; - payment of the costs of return of the illegally staying third-country national. <p>No explicit increase of sanctions in relation to the number of the employees is established, general rules of proportional punishment shall be applicable.</p>
Romania	<p>Sanctions for delegating work to an illegally third-country national include:</p> <ul style="list-style-type: none"> - a fine from 340 to 1350 EUR for each illegally staying third-country national employed (dependent on the number of employees and the gravity of the violation); the total amount of the fine cannot exceed 22 500 EUR; - a payment of the costs of return of the illegally staying third-country national. <p>The amount of sanction is related to the particular situation of the illegally staying third – country national. The legal framework makes no distinction between an employer as a legal entity and a natural person.</p>
Slovakia	<p>Delegating work to an illegally staying third-country national is punishable with:</p> <ul style="list-style-type: none"> - a fine from 2 000 to 200 000 EUR; - payment of the costs of return of the third-country national. <p>The sanctions depend on the gravity of infringements. In case of persistent employment of illegally staying third-country nationals, the fine shall also depend on the number of illegally employed individuals.</p>

2. CRIMINAL LIABILITY OF EMPLOYERS

Articles 9 and 10 of the Directive establish that the infringement of the prohibition of employment of illegally staying third-country nationals **constitutes a criminal offence** when committed **intentionally** and:

- the infringement **continues or is persistently repeated**;
- the infringement regards the simultaneous employment of **a significant number of illegally staying third-country nationals**;
- the infringement is accompanied by **particularly exploitative working conditions**;
- the infringement is committed by an employer who, while not having been charged with or convicted of human trafficking offences², uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a **victim of trafficking in human beings**;
- the infringement relates to the illegal employment of a **minor**.

Inciting, aiding and abetting the above-mentioned infringements should also be punishable as a criminal offence.

Country	National law
Czech Republic	<p>A person commits a criminal offence when he/she:</p> <ul style="list-style-type: none"> - repeatedly, consistently, to a large extent and under exploitative conditions employs third-country nationals or facilitates employment of third-country nationals who stay illegally in the Czech Republic or do not possess a work permit; - employs or facilitates employment of a minor illegally staying third-country national. <p>The crime is punishable with imprisonment up to 6 months.</p> <p>The crime is committed if the employment of undocumented migrants is committed “to a large extent”. This notion is interpreted as a period longer than 6 months. The personal scope of the criminal liability is rather broad, not only referring to direct employers but also facilitators of employment, i.e. any person involved in the criminal action. Higher sanctions apply in case this crime was committed for profit, repeatedly or in an organized group (imprisonment up to one year) or when the profit is significant (imprisonment of six months up to three years).</p>

² Offences established pursuant to Council Framework Decision [2002/629/JHA](#) of 19 July 2002 on combating trafficking in human beings

<p>Hungary</p>	<p>A person commits a criminal offence when he/she:</p> <ul style="list-style-type: none"> - permanently or regularly employs a third-country national without official authorisation for income generating activity; - simultaneously employs a significant number of third-country nationals without official authorisation for income generating activity at the same time <p>The crime is punishable with imprisonment up to two years.</p> <p>A person also commits a criminal offence when he/she employs:</p> <ul style="list-style-type: none"> - a third-country national without an authorization for income generating activity under particularly exploitative working conditions, - a minor being a third-country national without an authorization for income generating activity, - a third-country national without an authorization for income generating activity, who has been a victim of human trafficking <p>The criminal offence is punishable with imprisonment up to three years.</p> <p>The criminal provisions do not introduce a notion of an “illegally staying third-country national”, but the abovementioned criminal offences cover also to the employment of such persons.</p>
<p>Poland</p>	<p>A person commits a criminal offence when he/she :</p> <ul style="list-style-type: none"> - simultaneously employs a significant number of illegally staying third-country nationals - employs a minor (illegally staying third-country national) - persists in employing an illegally staying third-country national, with employment being related to business activity <p>The criminal offence is punishable with a fine from 25 to 260 000 EUR or the custodial sentence of 1-12 months.</p> <p>A person also commits a criminal offence when he/she:</p> <ul style="list-style-type: none"> - employs an illegally staying third-country national in the conditions of particular exploitation - employs an illegally staying third-country national being the victim of human trafficking. <p>The criminal offence is punishable with imprisonment from 1 month to 3 years.</p> <p>Persistent employment of a illegally staying third-country national constitutes a misdemeanor, not a criminal offence.</p>
<p>Romania</p>	<p>The following acts constitute criminal offences:</p> <ul style="list-style-type: none"> - simultaneous employment of more than 5 illegally staying third-country nationals, punishable with imprisonment from one to two years - employment of an illegally staying third-country national under particularly exploitative conditions, punishable with imprisonment from 1 to to 3 years - employment of a minor, punishable with imprisonment from one to three years; - employment of an illegally staying third-country national being the victim of

	<p>human trafficking with the knowledge that he or she is a victim of trafficking in human beings, punishable with imprisonment from 6 months to 3 years (unless the act does not constitute a more serious offence) or a fine.</p>
<p>Slovakia</p>	<p>The following acts constitute criminal offences:</p> <ul style="list-style-type: none"> - persistent unlawful employment- committed if an employer has repeatedly* employed illegally staying third-country nationals, subject to imprisonment of up to 2 years; - unlawful employment of a ‘vulnerable person’ punishable with imprisonment from six months to three years. A ‘vulnerable person’ means a minor, a pregnant woman, an elderly person etc.; - unlawful employment committed in a serious manner (i.e. by deception, by taking advantage of another person’s helplessness, inexperience, dependency or subordination), punishable with imprisonment from 6 months to 3 years; - unlawful employment under particularly exploitative working conditions, including working conditions which are considerably worse than those of legally employed persons and which affect human health and security and are in conflict with human dignity, or unlawful employment of a victim of human trafficking - punishable with imprisonment from 6 months to 3 years. <p>*‘Repeatedly’ means that the employer has already been convicted for a similar offence during the previous 24 months in an administrative or judicial procedure.</p>

3. BACK PAYMENTS

According to Article 6 of the ESD, the employer shall be liable to pay:

- **any outstanding remuneration to the illegally employed third-country national.** The agreed level of remuneration shall be presumed to have been **at least as high as the wage provided for by the applicable laws on minimum wages**, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages;
- **any costs arising from sending back payments to the country to which the third-country national has returned or has been returned;**
- **an amount equal to any taxes and social security contributions** that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines.

Member States are obliged to enact mechanisms to ensure that illegally employed third-country nationals:

- may **introduce a claim**, subject to a limitation period defined in national law, **against their employer** and eventually **enforce a judgment against the employer** for any outstanding remuneration, **including in cases in which they have, or have been, returned;**
or
- when provided for by national legislation, may **call on the competent authority** of the Member State **to start procedures to recover outstanding remuneration** without the need for them to introduce a claim in that case.

Member States shall provide that an **employment relationship of at least three months duration be presumed** unless, among others, the employer or the employee can prove otherwise.

Member States shall ensure that the **necessary mechanisms** are in place to ensure that illegally employed third-country nationals are able to **receive any back payment of remuneration** which is recovered including in cases in which they have, or have been, returned.

Country	National law
Czech Republic	<p>An employer is obliged to pay the outstanding remuneration in case it was established with the administrative decision of the labour inspectorate, that the employer committed an offence of illegal employment and an enforceable decision imposing the penalty for the offence was issued. The sanctioned employer is liable to pay back a three months minimum wage. The requirement of enforceable decision goes beyond the scope of the Directive and limits access of employees to their wages.</p> <p>Similarly, upon an enforceable decision of the administrative authority, an employer is liable to pay the same payments including penalties into the tax system, system of public health insurance and social security insurance as required if an employee is employed legally.</p> <p>The employer has to bear costs of sending back payments to the employee to the country of origin. However, there are no practical mechanisms and tools implemented to facilitate the process of sending back payments.</p> <p>Undocumented migrants have access to justice as they may be represented by NGOs active in the field of the protection of the rights of foreigners in labour disputes. However, there are no policy measures ensuring access of NGOs to finances for this legal representation. Thus, in practice, the protection of rights of migrants is not ensured and an effective mechanism is non-existent.</p>
Hungary	<p>The employee may pursue a claim before the court with the presumption of the employment relationship lasting for three months. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages. The law also states that, where appropriate, the employer, jointly with the subcontractors, shall be liable to pay any cost arising from</p>

	<p>sending back payments to the country to which the third-country national has returned or has been returned.</p> <p>No effective mechanism exists for facilitating a claim neither in the case when the third-country national is in Hungary, nor after he or she has been returned. If a case of a third-country national's work relationship without the required work permit is reported to the labour inspectorate, they are obliged by law to report the case to the immigration police who may immediately order expulsion. In theory, with the written consent of the third-country national, an advocate may represent his or her case before the court.</p>
Poland	<p>Labour inspectors may order the employer to pay the outstanding remuneration and also any other benefits due to the employee. The orders are subject to immediate enforcement.</p> <p>The employee may also pursue a claim before a court with the presumption of the employment relationship lasting for three months in case of labour law contracts. This is also true for civil law contracts with the presumption of agreed remuneration amounting to three times the minimum pay.</p> <p>No effective mechanism is in place to facilitate a claim when an employee returned or has been returned, unless written consent was obtained before the employee left the country.</p> <p>In the case of an employee returned or was returned to the country of origin the case may be pursued in court by a non-governmental organisation, provided it has obtained the written consent of the employee. However, if the court does not decide to (or cannot) hear the employee with the help of the institutions in his/her country of origin, the case may be dismissed due to the lack of evidence.</p>
Romania	<p>Based on a written complaint of the illegally staying third-country national, the labour inspectorate may order the employer to pay:</p> <ul style="list-style-type: none"> - any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration is assumed to be equal to the national average wage unless either the employer or the employee can prove otherwise; - the amount of all taxes and social security contributions that the employer would have paid if the alien was legally employed, including penalty payments and relevant administrative fines and any cost arising from transfer payments to the country in which the alien has returned or has been returned <p>No presumption as to the length of the employment relation has been introduced.</p> <p>A claim may be lodged in court directly by the third-country national prior to voluntary or forced return to the country of origin or by a third party (lawyer) based on his/her written consent obtained prior or after his/her departure from Romania.</p>
Slovakia	<p>There are two ways of recovering outstanding remuneration from the employer, through administrative and civil procedure:</p> <ul style="list-style-type: none"> - administrative obligation of paying outstanding remuneration and any additional costs (e.g. income tax, social security contribution etc), may be

	<p>imposed on the employer only after he or she has been sanctioned for illegal employment of a third-country national – which might be a lengthy process</p> <ul style="list-style-type: none"> - an employee may also independently pursue his or her claim in a civil court but it may be quite risky for an undocumented plaintiff since Slovak courts show interest in the residence status of the parties in the proceedings. <p>Unless the employee or the employer can prove the actual duration of employment relationship, it is presumed that illegally employed third-country nationals are entitled to three monthly wages which equal the amount agreed on or the minimum wage.</p> <p>In case the employee has returned or has been returned to the country of origin there are two mechanisms facilitating the pursuit of the claim but only on the condition that the plaintiff has filed a <i>lawsuit</i> against the employer before leaving Slovakia:</p> <ul style="list-style-type: none"> - in case the third-country national is represented by an lawyer or another person and returns to his/her country, his/her lawyer or representative shall continue to act in the proceeding as the departure of the illegally employed third-country national is not the reason to suspend the proceedings. - if he/she does not have an lawyer or a representative, in case of his/her departure the court shall appoint a trustee/custodian who shall defend the interests of the third-country national.
--	--

4. OBLIGATION OF NOTIFICATION

As stipulated in Article 6 (2) and Article 13 of the Directive - illegally employed third-country nationals shall be **systematically and objectively** informed about their rights to :

- **introduce a claim**, subject to a limitation period defined in national law, against their employer and eventually **enforce a judgment** against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned; or when provided for by national legislation
- **call on the competent authority of the Member State to start procedures to recover outstanding remuneration** without the need for them to introduce a claim in that case,
- **lodge complaints against their employers, directly or through third parties** designated by Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation.

Country	National law
Czech	Immigration police are required to inform illegally staying third-country nationals

Republic	regarding the procedure of administrative expulsion concerning the performing of illegal work. Police should inform a person subjected to expulsion of their right to obtain from the employer any unpaid wages including costs of sending it to the country of return and the possibility of filing a complaint against the employer to the labour inspectorate.
Hungary	In the law about labor inspection, the obligation of notification is not mentioned at all . According to the Act on Entry and stay of third-country nationals, third-country nationals need to be informed about their rights before the return decision. However this is not happening, based on interviews carried out with authorities and the experience of practicing lawyers. In case of a written consent, an advocate may represent cases after the return to the country of origin.
Poland	Information constitutes a part of the return decision. Once a third-country national obtains a decision it might be too late for them to undertake legal actions or sign a consent form. This means they often have to authorize NGOs to act on his/her behalf after the return to the country of origin.
Romania	The illegally staying (and working) third-country nationals are not informed about their rights to receive outstanding remuneration by labour inspectors. No information is provided in the expulsion decision. However, they may be informed by the immigration office at the moment of signing their return decision if they show proof that a written complaint has been lodged with the labour inspectorate beforehand. From the moment the illegally staying third-country national was informed about the return decision he/she is bound to leave the country within 30 days which is also the last moment to undertake legal action against the employer or sign a consent form for a third party to act on his/her behalf.
Slovakia	The labour inspectorate is obliged to provide information to illegally employed third-country nationals about their right to lodge complaints (if their agreed wage has not been paid). They also should offer advice regarding the recovery of outstanding remuneration and demand this to be transferred to the country where they returned or have been returned. This duty is not specified in detail, but will most likely be fulfilled during the labour inspectorate`s inspection at a workplace. But in case the illegal work/employment was not detected by the labour inspectorate, the person will be not informed.

5. COMPLAINT MECHANISM

According to Article 13 of the Directive, an **effective mechanism** should be put in place, through which third-country nationals in illegal employment may **lodge complaints against their employers**. **These**

complaints can be lodged directly or through third parties designated by Member States. These bodies can include trade unions, other associations or a competent authority of the Member State when provided for by national legislation.

Country	National law
Czech Republic	<p>An illegally third-country national may lodge a complaint against their employer to the labour inspectorate. No specific provisions enabling the complaint mechanism and no possibility for undocumented migrant workers to complain through third parties are set. The body receiving the complaint (labour inspectorate) cooperates with the immigration police in detecting and denouncing undocumented migrants.</p>
Hungary	<p>According to the law, a complaint to the labour inspectorate is possible. There are two different kinds of complaints: an Individual complaint in case of personal infringement or violation and a public interest complaint in a cases where obeying the law is in the interest of the society/community.</p> <p>Anyone can lodge a written/oral individual/public interest complaint. It is possible to lodge these complaints anonymously; the authorities may not disclose a third-country national's data unless the person consents to it. A decision on the matter shall be issued within 30 days. However, if after the decision, it turns out that the third-country national did not possess a work permit, the labor inspectorate is obliged to report the case to the immigration police, who may immediately order expulsion.</p>
Poland	<p>Complaints against the employer should be made to the labour inspectorate. However, the complainant is not a party to the initiated proceedings. The labour inspectorate collaborates closely with the alien police with the aim of detecting illegally staying third-country nationals. This makes the filing of complaints quite risky for employees. Anonymous complaints are not admissible.</p> <p>A third party may also report the infringement once informed about it by an employee, but will also not become a party to the procedure.</p>
Romania	<p>Complaints against employers should be made to the labour inspectorate. Once a complaint has been lodged with the labour inspectorate by a third-country national, the former has the obligation to inform the Immigration department about the illegal status of the foreigner. This is based on a formal agreement between the two public agencies.</p> <p>However if a foreigner has left the country and decides to make a complaint against his/her former employer, a claim can be filed to the labour inspectorate. This claim must be made within 3 years of the event which gave rise to the complaint. There are no provisions in place in terms of a third party involvement in a complaint mechanism.</p>

<p>Slovakia</p>	<p>Complaints should be made to the labour inspectorate. This should result in an inspection at a workplace within the next 30 days. The results are then communicated to the complainant.</p> <p>Labour inspectorates can impose penalties, order back payments and notify competent authorities (social security Institutions, tax offices, and police departments) about the infringement of prohibition of illegal employment. If these bodies detect repeated infringements of illegal employment the labour inspectorate can file an initiative to start criminal proceedings against the employer.</p>
------------------------	--

6. THIRD PARTY ENGAGEMENT

As further stipulated in Article 13, Member States shall ensure **that third parties may engage either on behalf of or in support of an illegally employed third-country national**, with his or her approval, in any **administrative or civil proceedings** provided for with the objective of implementing the Directive.

<p>Country</p>	<p>National law</p>
<p>Czech Republic</p>	<p>Administrative proceedings: no special regime for third parties to act on behalf of the employee, but any person having obtained employee`s authorization may represent the employee in administrative proceedings.</p> <p>Civil (court) proceedings: NGOs whose subject of activity is the protection of rights and interests of third-country nationals, can, on the basis of a power of attorney (mandate), represent the third-country nationals in labour law disputes on their behalf.</p>
<p>Hungary</p>	<p>Administrative, civil and criminal proceedings are similar in this respect: A third party may represent the employee on his or her behalf after having obtained their authorization. However, a third party may be only a natural person of some sort (an advocate or a spouse, etc.).</p> <p>Exceptions are the followings:</p> <ul style="list-style-type: none"> - Trade unions may represent an employee if he or she is a member of their organization. - NGOs may represent a person in the court if the violation relates to the equal treatment law.

Poland	<p>Administrative proceedings: no facilitations for third parties to act on behalf of the employee, but any adult person, having obtained the employee`s authorization may represent the employee in administrative proceedings.</p> <p>Civil proceedings: a trade union representative, a labour inspector and an NGO may initiate proceedings on behalf of the employee and represent an employee when labour code employment disputes are concerned, after having obtained an employee`s written consent.</p> <p>Criminal proceedings: the labour inspectorate may act as a prosecutor in proceedings initiated against the employer in case of misdemeanors.</p>
Romania	NGOs or trade unions cannot represent the illegally staying third-country nationals or engage in any type of court proceedings , the right of representation in any type of proceedings is restricted only to legal professionals (advocates).
Slovakia	NGOs whose subject of activity is the protection of rights and interests of third-country nationals, can, on the basis of a power of attorney (mandate), represent the third-country national in any civil proceedings with the objective of protecting his/her interest.

7. RESIDENCE PERMITS

According to Article 13(4) in respect of criminal offences of **delegating work to illegally staying minors or under particularly exploitative conditions**, third-country national employees may be granted on a case-by-case basis of **permits of limited duration**, linked to the length of the **relevant national proceedings**, under arrangements comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC³.

In respect of cases where such residence permits have been granted, Member States shall define under national law the conditions, under which the **duration of these permits may be extended** until the third-country national has **received any back payment** of their remuneration (Article 6(5)).

Country	National law
----------------	---------------------

³Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>

<p>Czech Republic</p>	<p>The long-term residence permit for protection purposes under the pre-existing national regime implemented in accordance with Directive 2004/81/EC applies to the cases listed under article 13(4) ESD as well. This type of residence permit may be granted to a foreigner involved in criminal proceedings as a victim of trafficking in human beings and who cooperates with criminal authorities. However, the relevant provision remains unclear towards the employment of minor undocumented migrants and the employment under particularly exploitative conditions.</p> <p>Should the criminal proceedings be closed, any holder of a residence permit for protection may apply for prolongation of their residence in the Czech Republic. They can do this in the form of a long-term permit for tolerated stay provided the civil procedure against the employer for payment of the outstanding remuneration is still pending. Besides this, when applying for this residence permit, a foreigner has to prove they have sufficient financial resources for stay in the Czech Republic, this includes accommodation and health insurance. The residence permit will be issued only for the duration of the civil proceedings.</p>
<p>Hungary</p>	<p>In the absence of residence permits described by law, a humanitarian residence permit shall be granted by a court petition to the third-country national. This permit will be granted if they have experienced particularly exploitative working conditions. It will also be granted to minor third-country nationals, who have been employed without possessing a valid residence permit or other authorization for stay.</p> <p>The duration of the humanitarian residence permit shall be 6 months, which can be occasionally extended by six months – for the duration of court proceedings initiated by third-country nationals against their employer for receiving back payments and remuneration.</p>
<p>Poland</p>	<p>Residence permit (for up to 2 years) shall be granted to third-country nationals possessing injured party status in criminal proceedings against the employer in cases of:</p> <ul style="list-style-type: none"> - employment of an illegally staying third country national under particularly exploitative working conditions; - employment of a minor. <p>The circumstance preventing the use of this instrument is, however, primarily the need to prove the legality of stay in terms of the day of the issuance of the residence permit.⁴</p> <p>A person who would have obtained a residence permit in the above-mentioned cases, may apply for extension of the legal stay if they intend to continue staying in Poland until they recover the outstanding remuneration from the employer. This is dependent on whether it is supported by a particularly significant interest of the foreign national. The maximum period of the residence permit awarded is also 2 years. While applying for the residence permit, the applicant must prove, however, that they possess health insurance and a stable and regular source of income, sufficient to pay the costs of maintaining</p>

⁴ A new law on aliens entering into force as of 1 May 2014 lifts this requirement. Text available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001650>

	themselves and their dependent family members.
Romania	A residence permit of 6 months (with the possibility of extension) shall be granted to a third-country national possessing injured party status in the criminal proceedings against the employer at the request of the prosecutor or the court, in the following cases: <ul style="list-style-type: none"> - employment of an illegally staying third –country national under particularly exploitative working conditions; - employment of a minor.
Slovakia	A residence permit of 180 days is granted to a third-country national only upon the request of a prosecuting authority, if he /she was illegally employed under particularly exploitative working conditions or was employed as a minor. This permit is only granted if the presence of his third-country national in the Slovak Republic territory is necessary for the purpose of the criminal proceedings. A residence permit might be extended to the time of completion of criminal proceedings or to the time of the recovery of the outstanding remuneration. A person who was granted the abovementioned permit acquires a right to social housing.

CONCLUDING REMARKS

The labour markets of the discussed countries are characterised by extremely low, but slowly increasing levels of employment of undocumented migrant workers⁵. At the same time there is a quite widespread phenomenon of unregistered labour, which stands for performing work without complying to provisions of employment of foreign nationals or employment as such (e.g. failure to obtain work permits or pay social security contributions). The Directive’s provisions were implemented into the pre-existing sanction regimes of the referred to countries, all of them comprising mainly of financial sanctions for violations of labour provisions by employers such as the failure to sign a written job contract, non-observance of minimum wage provisions, failure to obtain necessary work permits or exploiting another person (the latter not necessarily limited to the context of employment relations). In all of the countries in the previous legal framework the employment of a third-country national staying illegally would be considered a violation against the provisions on the employment of aliens. The implementation of the Directive was the cause of the differentiation of the misdemeanors based on the type of the offender (a natural or legal person), followed by the differentiation of the maximum amount of financial sanctions applicable. The new addition in the majority of countries is the obligation of payment of the costs of return of the illegally staying third-country national imposed on the employer. Currently, after the implementation of the Directive, the maximum **financial sanctions** in the five countries vary significantly from 2 500 EUR in Poland to 400 000 EUR in the Czech Republic, which does not necessarily reflect the discrepancies in the states’ economies, but should be rather viewed as a result of a diverse understanding of what a “detering sanction” constitutes.

⁵ For details see: the final report of the „For Undocumented Migrants` Rights in Central Europe” project

The implementation of the Directive has led to the introduction of new **criminal offences** such as the simultaneous employment of a significant number of undocumented migrants or the delegation of work to undocumented minors. In some of the countries, Article 9 of the ESD was not implemented explicitly (Hungary, the Czech Republic), while in others the national lawmaker went even further in determining criminal liability. E.g. under Slovak law it is punishable as a criminal offence to unlawfully employ a 'protected person', which implies not only a minor or a victim of human trafficking but also an elderly person or a pregnant woman. In contrast in Poland, the persistent employment of an undocumented migrant committed by a natural person constitutes only a misdemeanor (an administrative offence) and not a crime, contrary to the article 9 (1)a of the Directive.

The employer`s obligation to pay any outstanding remuneration and other contributions (tax, social security contribution) has been either explicitly introduced to the national legal systems or derives from pre-existing labour regulations (e.g. Poland). In the majority of countries (with the exception of Hungary), two parallel mechanisms of recovering the back payment exist: through an order of a labour inspectorate and through civil /labour court proceedings. The risks associated with the employee`s disclosure to the labour inspectorate remain the same as in the case of the undocumented migrant lodging the complaint to this body (see below). Nevertheless in the Czech Republic an employee faces even more obstacles to the recovery of their remuneration: the obligation may be imposed on an employer only provided that an administrative authority had earlier discovered in the course of an administrative procedure that the employer has committed an offence regarding illegal employment. As regards the court procedures, civil judicial systems in the analysed countries are quite inefficient – the length of procedures and the risk associated with disclosing one`s irregular status result in foreign workers perceiving the pursuit of civil claims as an unconvincing option of recovering their remuneration. In some countries, as in Slovakia, the court may also take interest in the plaintiff`s legal residence status.

None of the countries has introduced a specific **mechanism facilitating the transfer of money due to the country where the employee returned or has been returned**, even though in each country such an obligation has been imposed on the employer. The practical application of these provisions will be dependent on the practice of the national bailiffs .

Third party engagement in the proceedings based on the Directive, as stipulated in Article 13(2), defined as *engaging either on behalf of or in support of an illegally employed third-country national, with his or her approval, in any administrative or civil proceedings with the objective of implementing the Directive* means in majority of countries the involvement of NGOs or trade unions in civil court proceedings through the procedural representation of the employee. In the Czech Republic, Poland and Slovakia, NGOs whose subject of activity is the protection of rights and interests of third-country nationals may represent an employee in the court proceedings initiated with the aim of recovering the due remuneration. However, in Poland the participation of NGOs is limited to disputes stemming only from labour code contracts. The engagement of the NGOs in Hungary consists in their involvement in the equal treatment cases. In Romania neither NGOs nor trade unions may engage in the civil proceedings on behalf of the employee.

The efficiency of the **complaint mechanism** in all of the analyzed countries is disputable. In each of the countries the agency responsible for the examination of the complaint against the employer also closely collaborates formally or informally with the immigration police regarding the detection and denouncement of undocumented migrants. The cooperation may assume the form of joint inspections (Poland, Slovakia) or the legal obligation of the labour inspectors of denouncing each case of the detected undocumented migrant worker. The lack of distinctive separation of these agencies` competencies and duties poses too great a risk for employees when it comes to filing a complaint against the employer - thus making this mechanism not effective.

The implementation of the Directive`s provisions on **residence permits** (Article 6(5) and 13(4)) has been conducted quite precisely) and similarly in all of the countries (with the exception of the Czech Republic). However a very narrow scope of the provisions will not allow for its practical application. A permit may be granted only to the victims of two of the criminal offences: employment under particularly exploitative conditions, and employment of a minor, provided they cooperate closely with the prosecution in the proceedings initiated against the employer.

The effectiveness of protection measures introduced by the Directive is largely dependent on employees' awareness of their existence. Even though Article 6(2) imposes on the Member States the **obligation of informing an employee** (at the latest before the enforcement of a return decision) of his or her rights deriving from the Directive, in Hungary and Romania the obligation is not implemented at all and in Poland and the Czech Republic the information is obtained simultaneously with the return decision. This could be too late to undertake legal actions against the employer. On the other hand, in Slovakia information is provided during inspections carried out by the labour inspectorates in the workplace but if there never comes to the inspection, he or she might not be properly informed at all.