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Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia

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Foreword

The preparatory work for this project was initiated 8−9 May 2007, as I, on behalf of the Finnish National Council for Crime Prevention, participated in a meeting in Stockholm, organised by the Swedish Ministry of Labour together with the ILO, UNODC, and OSCE.[1] The meeting was entitled "Nordic expert seminar on trafficking for labour exploitation". Its purpose was to survey the state of knowledge concerning trafficking for labour exploitation.

A first plan for continuing the work was made already in June 2007 as I submitted, upon the request of the organisers of the Stockholm meeting, a research proposal envisaging a Nordic project based on the idea of establishing country report groups comprising a broad range of experts knowledgeable in the topic of trafficking for forced labour. This initiative did however not result in further action. It did nevertheless inspire me to try to see how such an approach could be applied at national level. As a first step, upon preparatory work in 2008, HEUNI organised in early 2009 the first Finnish national expert meeting with the logic inspired by the Stockholm 2007 seminar. This meeting eventually served as the first national expert meeting on the topic.

The second stage of the work was to plan and, upon successful application of EU co-funding, to launch the three-country EU project with Estonian and Polish partners, for which the current report is the outcome.

Trafficking for forced labour has been gradually acknowledged to be an issue that is relevant also in Europe, and indeed in any country. While trafficking for sexual exploitation has over the last decade or more been the target of extensive campaigning, awareness-raising and research, forced labour has come to the forefront only lately. This may be understandable, in the first place because it seems to be a rather recent phenomenon in its current forms, driven by new developments in the integrating European labour market. A further reason is that it is concealed within an existing legal labour market, and internal as well as external controls, including control by the relevant authorities, have been rather unprepared to cope with the multiple aspects of the problem. The low visibility of trafficking for forced labour is also due to an outdated public image of trafficking for forced labour, suffering from the belief that forced labour is equal to enslaving people to work at gunpoint and/or in chains, or imprisoned in sweatshops.

The present report is the first one of this extent in Finland, Estonia and Poland; indeed, to our knowledge among the first in all of Europe to apply a broad empirical approach to the topic, starting from the concrete event level and combining hidden knowledge from multiple information sources, rather than focusing on legal and theoretical definitions and administrative information

[1] See UNODC: Global Initiative to Fight Human Trafficking, Addressing a modern form of slavery. Concept Paper and Roadmap 13 March 2007.

sources. Definitions are of course essential for any discussion of the topic, but insufficient for the collection of relevant data in a situation in which data collection systems have not (yet) been developed to meet the need for concrete evidence of what is going on in real life. If crime data derived from administrative sources, such as police and other authority statistics and information sources, are accepted as the sole source of information on this aggravated crime, there would seem to be practically no problem at all – and this belief seems to continue to prevail: our results are concrete proof of the fact that administrative data sources have been highly ineffective in capturing trafficking for forced labour. Even at their best, they are currently only able to provide a very limited and biased overview of the phenomenon. This is because authority statistics and administrative data sources on any crime issue are in the first place reflecting what relevant authorities have been doing, rather than what happens at event level. This feature of administrative crime data is accentuated in the context of "new" forms of crime – "new" referring typically not so much to the genuine innovation the crime represents but to its novelty in terms of awareness and lack of systematic information – and, as in this case, the evasive nature of the phenomenon in question.

The present report demonstrates how hidden or latent information can be "mined" from existing sources and combined to the effect of creating a hitherto missing overview of the nature of the phenomenon. The basic idea is that for a weakly documented offence to be better identified, a first step is to study carefully the environment in which it takes place. With this logic in mind, it is necessary to start with a broad approach, identifying the general framework within which the crime is concealed. Once this has been done, there are better chances to identify also the serious and aggravated offences. This report, in particular its Finnish part, demonstrates the efficiency of this approach.

For the time being, the outcome is qualitative. However, if developed further, this approach can even be applied for gaining quantitative evidence. Furthermore, the report suggests, and provides guidelines as to how similar work could be carried out in other countries for improved country assessments and for improved comparisons. The initial objective of the project was indeed to develop a data collection solution that could be adopted for use in other countries. The description of the actual situation of trafficking for forced labour was expected to be a parallel outcome of the work, admitting that it could not be a comprehensive description but however much superior to what had been documented earlier. In fact, this report proved to be a success also in this respect, providing an abundance of direct observations of trafficking for forced labour and the dilemmas related to monitoring the phenomenon and to developing effective control measures.

Helsinki 28 February 2011

Kauko Aromaa

Director

Trafficking for Forced Labour and Labour Exploitation – Setting the Scene

Natalia Ollus & Anniina Jokinen

Introduction, project background and objectives

Free movement within the EU, competition in the market economy, and the pursuit of cost-effectiveness have increased the mobility of labour to and within Europe, including Estonia, Finland and Poland as concerned countries. One feature of the market economy is the search for cheaper labour. Labour costs are a dominant feature, particularly in labour intensive areas such as the cleaning and construction sectors and cause employers to look for cost-saving measures. In many of these sectors, migrant labour is a cheap alternative compared to domestic labour. Problems occur when cost-cutting creates unequal labour markets where working conditions of migrant labour differ from those of domestic labour. This may result in the exploitation of migrant workers, of which an extreme form may be trafficking for forced labour. Human trafficking may occur if the employee has been deceived, or if his/her dependent status and vulnerability has been abused in order to subject him/her to exploitation.

Given the hidden nature of the phenomenon (Kangaspunta 2007; Laczko 2007), there is only limited information available on trafficking for forced labour. Victims rarely report their experiences to authorities or other actors and these do not necessarily recognise and identify cases of trafficking. Furthermore, the distinction between trafficking and other types of exploitation is challenging. It is therefore in the public interest to foster an improved understanding of the human trafficking phenomenon. This publication thus provides new information about the phenomenon of trafficking for forced labour and labour exploitation in Estonia, Finland and Poland.[1]

The issue of trafficking for forced labour and labour exploitation is not a new phenomenon. Trafficking in human beings has sometimes been called "modern-day slavery" while others have defined trafficking as forming part of slavery (Bales et al. 2009). In any case, detailed information on trafficking for forced labour in contemporary European societies has been scarce. The need to collect specific information on this crime was raised at a Nordic Expert Seminar on trafficking for forced labour, organised in Stockholm in May 2007. General consensus was reached at the meeting as to the need to address the lack of knowledge and to enhance data collection and research on trafficking for forced labour (Regeringskansliet 2007). As a result, the European Institute for Crime

[1] The study does not include trafficking for sexual exploitation or trafficking in the context of prostitution.

Prevention and Control, affiliated with the United Nations (HEUNI) decided to launch a study on this topic. At the end of 2008, HEUNI began collecting media materials and newspaper articles on the issue of exploitation of migrant workers in Finland, and simultaneously began mapping potential data sources. HEUNI called a first national expert meeting in early 2009. The aim of the meeting was to discuss the issue of trafficking for forced labour and the exploitation of migrant workers in Finland, as well as to address the national and international definition of trafficking for labour exploitation. Following this initial meeting, HEUNI developed an international project to address trafficking for forced labour.

Estonia and Poland were selected as partner countries due to their geographical proximity to Finland, and, in addition, all three countries border the Baltic Sea. Both Estonia and Poland are countries of origin of migrant labour to various other European regions, including to Finland. The assumption was also that Estonia is primarily a country of origin, while Finland is a country of destination and Poland is a country of both origin and destination. The premise was that the study of these three different countries could create a broader understanding of trafficking for forced labour in the North-Eastern part of Europe and in the Baltic Sea region.

With the support of the Prevention of and Fight against Crime Programme of the Directorate General Freedom, Justice and Security of the European Commission, a joint project was launched at the end of 2009. The project entitled "Trafficking for Forced Labour and Labour Exploitation (FLEX) - towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland" was carried out in cooperation with the Faculty of Law of Tartu University (Estonia) and the Human Trafficking Studies Centre of Warsaw University (Poland). HEUNI acted as the overall project coordinator, implemented the project activities in Finland and prepared the national study on Finland. Tartu University and Warsaw University carried out corresponding national studies and project activities in their countries.

The project had three main objectives. The core objective was to develop a research methodology that can be used in the future to collect more systematic information on trafficking for forced labour and labour exploitation. The second objective was to describe the trafficking for forced labour that exists in the three countries. The third objective of the project was to improve the exchange of information and cooperation both at the national and international level.

As regards the development of the research methodology, the project aimed to increase the knowledge of trafficking for forced labour by using both a qualitative and quantitative approach to collect information. The strategic aim was to collect the information from various sources, including through thematic interviews with various experts as well as with victims of trafficking and/or labour exploitation. In addition, information was to be collected from police, prosecutor and court data, as well as data from various registries and media information, such as newspaper articles. The purpose of the varied data sources was to make it possible to describe trafficking for forced labour and labour

exploitation from a broad perspective in the three countries. As a result, the project aimed to increase the awareness of the phenomenon in the three countries, including through dissemination to experts, to media representatives and also to the general public. The detailed research methodology, developed under the auspices of this project, is presented in the concluding part of this book.

Furthermore, the project utilised a networking approach both to collect information and to disseminate information, as well as to enhance cooperation. In order to bring together people who work with human trafficking for forced labour and exploitation of immigrant labour, and to create a network of relevant experts both nationally and internationally several different meetings were organised.

The FLEX project's main research questions included:

- What kind of exploitative situations of labour exist in the three countries?
- Are there forced labour situations in the three countries and do these situations include elements of trafficking?
- Which economic sectors in the three countries are especially affected by labour exploitation (of EU-citizens and/or third country nationals)?
- What is being done to prevent such exploitation and how can the responses be improved?
- Do relevant actors and authorities recognise victims of trafficking for forced labour and are there sufficient mechanisms to assist the victims?

Next we present a brief overview of recent research on trafficking for forced labour.

Literature and data collection issues

According to the International Labour Organisation (ILO), globally at least 12.3 million people are victims of forced labour. Of these people, 9.8 million are exploited by private agents, including more than 2.4 million in forced labour as a result of human trafficking. (ILO 2005a, 10.) Of people trafficked into forced labour, the ILO distinguishes between people trafficked into forced labour for commercial sexual exploitation (43 per cent) and persons trafficked for economic exploitation (32 per cent). The remaining 25 % are trafficked for mixed or undetermined reasons. (ILO 2005a, 14.) According to the United Nations Office for Drugs and Crime (UNOCD), globally 18 percent of trafficking victims identified by state authorities have been victims of forced labour. In some European and Eastern and Central Asian countries, the percentage of identified victims of forced labour is higher: 35 % of all identified victims. (UNODC 2009, 50.)

In addition to human suffering, victims of forced labour suffer considerable financial losses. According to ILO's estimate, the global costs of coercion

amount to 21 billion dollars. This estimate comprises the total underpayment of wages and recruiting fees. (ILO 2009a, 30−32.)

For several years, the ILO has conducted research on the experiences of returned labour migrants in the source countries using a standard questionnaire. Such methodology has been applied in Albania, Moldova, Romania and Ukraine. Furthermore, the ILO has interviewed victims of forced labour for example in France, Germany, Hungary, Portugal and Turkey. Based on the research findings from 10 countries, the ILO maintains that migrants relying on unspecified intermediaries rather than their own family networks or formal recruitment structures are more likely to face exploitation during the recruitment process as well as in employment. Furthermore, the higher the constraints of migrants seeking employment abroad, the higher the probability that they are trafficked or exploited in other ways. Lack of money and social capital are therefore major risk factors. (Andrees 2009.) According to studies conducted by the ILO, employers control the migrant workers in many ways to make them to stay in exploitative situations. The pressure may not come directly from the employer but also criminal migration networks, corrupt police or immigration officials may be involved. The most common forms of exploitation include lack of freedom of movement and wage manipulation of some kind (e.g. underpayment, non-payment, withholding wages). The evidence suggests that forced labour has to be understood as a process and not as a static relationship between workers and employers. Moreover, trafficking, forced labour and exploitation form a complex continuum of coercion, with clear-cut forced labour cases at one end of the spectrum and more subtle forms of exploitation and coercion at the other end. (Andrees 2008.)

Similar findings were reported from a four-country study on trafficking for forced labour by Anti-Slavery International. The study concluded that cases of trafficking for forced labour occur in a wide range of industries and found four key factors of trafficking. The workers' poverty, their lack of awareness regarding their own rights, isolation, and multiple dependencies make them vulnerable to exploitation and trafficking. Complex migration and labour regulations reinforce the vulnerability of the workers, as they may have to resort to traffickers for "help". Demand for low cost and disposable labour further enables the traffickers to generate large profits. Finally, the threatening mechanism used to control the workers completes this pattern of the four key factors. According to Anti-Slavery International, tackling and eliminating trafficking for forced labour is only possible if all of these four factors are addressed. (Anti-Slavery International 2006, 19.)

In Sweden, an interdepartmental expert group on trafficking for labour exploitation concluded that cases of exploitation occur particularly in the restaurant and service sectors, in agriculture and seasonal work, as well as in domestic work and in the construction and transportation sectors (Arbertsmarknadsdepartementet 2009, 77). In 2009, the Stockholm District Court handed out a sentence for trafficking in persons in a case where a disabled Ukrainian man was forced by violence to beg. In addition, there have been

several suspected cases where English and Irish asphalt and stone layers have been exploited. (Polisen 2009.)

In Norway, the number of identified victims of labour trafficking has been growing in recent years. In 2007, the coordination centre for victims of trafficking identified 32 potential victims of trafficking for forced labour. The figure was 71 in 2008 and 80 in 2009. The most common forms of forced labour, in addition to forced marriage and begging, were domestic servitude, and exploitation in the health sector and in stone and asphalt laying. (KOM 2010; 2009.) In an Irish study, trafficking for forced labour was found in the restaurant sector, in agriculture, in domestic work, as well as in the construction and entertainment sectors. (MRCI 2006.)

The Organization for Security and Co-operation in Europe (OSCE) has reviewed trafficking for forced labour particularly within agriculture and domestic work. According to the OSCE, globalisation, migration, labour contracting and casualisation of labour (i.e. temporary, flexible, and often part-time modes of employment) are contemporary trends that have had an impact on agricultural workers particularly (OSCE 2009, 29−32). Human trafficking for the purpose of domestic servitude is a particularly invisible form of exploitation as it occurs in private households. The victims usually live together with their employers, and are thus constantly under the employers' supervision. The phenomenon is topical because to a growing degree migrant workers are women who travel abroad to work in private households as servants, nannies and caretakers. (OSCE 2011.)

An Australian study on labour trafficking utilised data from government sources, from the community sector, and other relevant agencies. According to the study, many possible labour trafficking cases are never reported to the authorities and other relevant actors. These cases of unreported or unrecognised labour trafficking exist in an environment that includes significant numbers of cases involving exploitation of migrant workers in Australia. This kind of environment is a potential breeding ground for more serious forms of exploitation (i.e. labour trafficking) and therefore the problem should be addressed in this wider context. (David 2010.)

In the Netherlands, an independent National Rapporteur on trafficking in persons has functioned for 10 years and published several reports on the national trafficking situation. The reports include for example relevant case studies (e.g. Bureau NRM 2009) and information on data collection methods (e.g. Bureau NRM 2010). In the Netherlands, human trafficking is divided into exploitation in the sex industry and exploitation in sectors other than the sex industry. In 2009, 12 % of the victims identified by the National Rapporteur were exploited in a sector other than the sex industry. While in 2007−2009, exploitation occurred especially in domestic work and the hospitality sector, after 2009 it has mainly taken place in agriculture and horticulture. (Bureau NRM 2010, 97−98.)

According to a Portuguese study, victims of trafficking for labour come to Portugal particularly from Brazil and Eastern European countries and they are victimised mainly in the construction sector, in the domestic services and the cleaning sector, as well as in the hotel and catering sector and in agriculture. In

addition, citizens of Portugal have become victims of trafficking for forced labour and exploitation for example in Spain, France, the UK and the Netherlands. (Pereira & Vasconcelos 2008.)

A Russian study concluded that trafficking for the purpose of exploitation of labour may very well be the most common form of human trafficking in Russia. Based on the figure that 10-30% of all illegal migrants in Russia, i.e. 3-5 million people, face some forms of trafficking for forced labour or labour exploitation, it is possible to estimate that the number of victims of such exploitation is close to 1 million. While not all of these people are permanent victims of trafficking, they form an at-risk group, whose position may near slavery. Based on an ILO survey, labour migrants working in the Moscow and Stavropol areas had faced forms of exploitation such as the confiscation of documents, isolation and the restriction of movement, physical and psychological abuse and work with no payment or vague terms of payment. (Tiurukanova 2006, 33−35.)

Accurate figures on trafficking in human beings are difficult to find because of the special nature of the crime. Problems of data collection have been discussed in studies on research methods (e.g. Aromaa 2007; Kangaspunta 2007; Laczko 2007). According to a study by the OSCE in 2005, it is difficult to collect data on the human trafficking phenomenon because of its criminal nature and its abstract definition, but also because countries are not collecting systematic information about the phenomenon and are not providing sufficient financing for research on the topic (OSCE 2006). Problems related to data collection have also been discussed in a recent UNOCD report (UNOCD 2009).

In recent years, however, several data collection projects have been carried out with the aim of enhancing information gathering on trafficking in human beings. The European Commission has worked towards developing a coherent framework for collecting statistical information on crime and criminal justice, including for developing guidelines for measuring trafficking in human beings (Commission of the European Communities 2006).

A working group established by the European Commission has been discussing the harmonization of operational indicators on trafficking (Bogers 2010). Furthermore, several data collection models have been developed with support from the EC. These include the joint ILO and EC project, which developed operational indicators on trafficking in human beings for improved identification, characterisation and data collection, using the so called Delphi-methodology (ILO 2009b). With EC support, the International Organization for Migration (IOM) and the Ministry of the Interior of Austria developed guidelines for collecting information on trafficking, including comparable statistical indicators (IOM & B.MI 2009). This joint project proposes models for detailed data collection on victims of trafficking, on perpetrators and on the trafficking process (ibid., 59–66). Similarly, the International Centre for Migration Policy Development (ICMPD) with EC support and together with the Czech Republic, Poland, Portugal and Slovakia developed a data collection model, with which one can collect victim-centred information as well as information on perpetrators and the functions of the criminal justice system (Surtees 2009). The

MONTRASEC model, developed by the University of Ghent, proposes a model database with which to collect information on trafficking in human beings and the sexual exploitation of children (Vermeulen & Paterson 2010).

Several databases on trafficking in human beings already exist. For more than ten years, IOM has collected information on victims of trafficking in human beings. At the end of 2009, the database included details on more than 14,000 trafficking victims from more than 85 countries of origin and 100 countries of destination (IOM Global human trafficking database). The UNODC database, based on open-source information, includes data on victims and perpetrators of trafficking (UNODC 2006). The UN.GIFT project, implemented by UNODC, has furthermore collected statistics and estimates from Member States on trafficking in human beings (UNODC 2009). Some countries, such as Portugal, have developed their own detailed trafficking databases (Observatory on trafficking in human beings). In Finland and in the Netherlands, the National Rapporteur on trafficking in human beings collects comprehensive information on the phenomenon and publishes regular reports (e.g. National Rapporteur 2010; Bureau NRM 2010).

Even with the above-mentioned data collection efforts it is only possible to collect information on known or suspected cases of trafficking. The information in the various databases is usually based on cases that have come to the attention of the authorities, NGOs or other actors. However, the majority of cases of trafficking in human beings never come to the attention of any authorities or NGOs (see e.g. IOM & B.MI 2009, 49). If the phenomenon of trafficking is unknown, and if relevant actors do not identify cases of trafficking, it is very difficult to collect information on the phenomenon using the above-mentioned models and guidelines. The existing data on trafficking thus describe existing knowledge rather than provide a comprehensive picture of the phenomenon of trafficking in human beings. The FLEX project aimed at broadening existing data collection measures.

Next we present some key international instruments on trafficking for forced labour.

A brief overview of key international instruments concerning trafficking in human beings and forced labour

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

In the late 1990s, the international community awakened to the threat posed by international organised crime and as a result of this discussion, trafficking in human beings was criminalised internationally. A specific protocol on

trafficking in persons was prepared to supplement the UN Convention against Transnational Organized Crime. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the so-called "Palermo Protocol") provides the first overarching, international definition of trafficking in human beings. According to the Palermo Protocol (Art. 3a):

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

In line with this definition, trafficking in persons consists of three elements: the act, the means and the purpose. Forced labour is defined as one of the forms of exploitation in trafficking. However, the Protocol does not provide a definition of forced labour. The consent of the victim to the intended exploitation is considered irrelevant when any of the listed means have been used (Art. 3b). The Protocol applies to offences that are transnational in nature and involve an organized criminal group (Art. 4). The Protocol obliges its Parties to prevent and combat trafficking in persons (Art. 9), assist and protect victims (Art. 6) and promote cooperation and information exchange (Art. 10). Estonia, Finland and Poland have all ratified or accepted the Palermo Protocol.[2]

ILO Conventions concerning forced labour

ILO Convention No. 29 of 1930 is the key international instrument concerning forced labour. It criminalises the illegal exaction of forced or compulsory labour. The Convention came about at a time when slavery had officially ended, but exploitation of labour in overseas colonies and forced movement of people for labour purposes continued in practice (ILO 2005b, 3). According to the ILO Forced Labour Convention "forced or compulsory labour" (Art. 2):

> shall mean 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.

According to the Convention, forced or compulsory labour shall not include work under compulsory military service laws for work of a purely military

[2] See the status of ratification at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

character, work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country, any work or service exacted from any person as a consequence of a conviction in a court of law, any work or service exacted in cases of emergency and minor communal services (Art. 2).

ILO Convention No. 105 concerning the Abolition of Forced Labour of 1957 complements the earlier instrument. It obliges parties to suppress any form of forced or compulsory labour, for instance, as a means of political coercion or a means of racial discrimination (Art. 1). Estonia, Finland and Poland have ratified both Conventions (ILOLEX database).

According to ILO Convention No. 182 of 1999 concerning the Worst Forms of Child Labour, the sale and trafficking of children, as well as forced or compulsory (child) labour are included in the worst forms of child labour (art 3). The conventions of the International Labour Organization do not specifically criminalise trafficking in human beings but there are two ILO Conventions concerning the rights of migrant workers, which deal with issues of exploitation of migrant labour: ILO Convention No. 97 concerning Migration for Employment and ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. While the Convention on the Worst Forms of Child Labour has been ratified by all three countries, neither Estonia, Finland nor Poland has ratified ILO Conventions No. 97 and No. 143.

Other UN Conventions concerning trafficking, slavery, forced labour and migration

At the beginning of the 20th century the international community developed several agreements for the prohibition of the so-called white slave trade (1904 International Agreement for the Suppression of the White Slave Traffic; 1910 International Convention for the Suppression of the White Slave Trade; 1921 International Convention for the Suppression of the Traffic in Women and Children, and; 1933 International Convention for the Suppression of the Traffic in Women of the Full Age). At the time, this referred specifically to the trafficking in European women and the aim of the agreements was to curb increasing prostitution. In 1949, the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted. The Convention criminalised the benefiting and exploitation of the prostitution of another person, even when that person consented to the prostitution. (Schloenhardt 2009; Roth 2010; National Rapporteur 2010.)

The instruments mentioned above only cover trafficking and slavery for the purposes of sexual exploitation. During the same period, several instruments concerning slavery were developed. The Universal Declaration of Human Rights of 1948 states that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (Art. 4). The International Covenant on Civil and Political Rights of 1966 prohibits slavery as well as

forced or compulsory labour (Art. 8). The 1965 International Convention on the Elimination of All Forms of Racial Discrimination guarantees, among other issues, the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration (Art. 5).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force internationally in 2003. The Convention aims at strengthening the human rights of migrant workers and also states that no migrant workers shall be held in slavery or forced labour (Art. 11). Neither Estonia, Finland nor Poland has signed the Convention and most of the signatories are from countries of origin or migrant labour.

EU law

The Council Framework Decision of 2002 on combating trafficking in human beings obliges Member States to adopt a common definition of trafficking and to undertake measures to combat the crime. The Framework Decision criminalises trafficking in human beings for the purposes of both labour exploitation and sexual exploitation. The definition is in line with the Palermo Protocol with the exception of trafficking for the removal of organs.

> Each Member State shall take the necessary measures to ensure that the following acts are punishable: the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:
> (a) use is made of coercion, force or threat, including abduction, or
> (b) use is made of deceit or fraud, or
> (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.
> (d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography. (Art. 1.1)

As in the Palermo Protocol, the consent of the victim to the exploitation is irrelevant where any of the means set forth in paragraph 1 have been used (Art. 1.2).

Since 2010, a new EU Directive on preventing and combating trafficking in human beings, and protecting victims, has been in preparation. The Directive will repeal the 2002 Framework Decision and proposes some amendments to the

existing criminal law provisions (such as non-application of penalties to the victim), as well as the enhancement of victim assistance and support, and improved protection of victims in criminal proceedings. As regards prevention efforts, the Directive suggests the criminalisation of users of services exacted from a person, when the user knows that the person has been trafficked. The Directive also suggests the establishment of a National Rapporteur or equivalent mechanism in all Member States.

The Directive's definition of trafficking is the following (Art. 2.1):

> The recruitment, transportation, transfer, harbouring or receipt of persons, including exchange or transfer of control over that person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The Directive clarifies the meaning of a position of vulnerability, which "occurs when the person has no real or acceptable alternative but to submit to the abuse involved" (Art. 2.2). The definition of exploitation is amended to "include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs" (Art. 2.3).

In December 2010, the first EU Anti-Trafficking Coordinator was appointed. The Coordinator will improve coordination and coherence between EU institutions, EU agencies, Member States, third countries and international actors.[3]

The combating of trafficking in human beings is also a central feature of EU police and judicial cooperation. Trafficking in persons is mentioned as well in the Treaty on the European Union (Art. 29) in conjunction with police and judicial cooperation in criminal matters.

The Council of Europe Convention

The Council of Europe Convention on Action against Trafficking in Human Beings of 2005 provides a broad approach to trafficking. It highlights specifically the status and identification of victims. Contrary to the Palermo Protocol, the Council of Europe Convention can be applied to all forms of trafficking in human beings, including when it is national in nature and also when there is no organised crime involved (Art. 2). The Convention aims at preventing trafficking, protecting the victims of trafficking, and promoting international cooperation on action against trafficking in human beings (Art. 1).

[3] http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1715

A special monitoring body, GRETA, has been set up to monitor the implementation of the Convention. The Convention defines trafficking in a largely similar manner to the Palermo Protocol.

The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force in 1953, prohibits slavery and forced labour (Art. 4) and guarantees everyone's right to life (Art. 2) as well as liberty and security (Art. 5). The European Court of Human Rights was established to ensure the observance of engagements under the Convention. Individual applications can be submitted to the Court, and its decisions are final and binding. The European Court of Human Rights has so far given two decisions concerning trafficking in human beings (Siliadin v. France 26.7.2005; Rantsev v. Cyprus and Russia 7.1.2010).

Definition of forced labour and the ILO indicators

In the context of the FLEX project, particular attention has been paid to the definition of forced labour as one of the forms of exploitation of the crime of trafficking. The definition of forced labour as outlined in ILO Convention No. 29 consists of three key elements: work or service; menace of any penalty; and, voluntary offer. First, the definition covers all work or services, with the exception of the work and services listed in Article 2. Furthermore, the exaction of work or service may be distinguished from situations in which an obligation is imposed to undergo education or training. Second, the exaction of work or services under the menace of any penalty does not only refer to legal penalties, but also to the loss of rights or privileges. (ILO 2007, 19–20.) The ILO (2005b) has listed six elements that describe the loss of rights or privileges that point to a forced labour situation. These include (ILO 2005b, 20–21):

- Physical or sexual violence or the threat of such violence.
- Restriction of movement of the worker e.g. through confinement or through preventing contact with the host community.
- Debt bondage or bonded labour e.g. rising from the process of recruitment and transportation.
- Withholding wages or refusing to pay the worker at all.
- Retention of passports and identity documents.
- Threat of denunciation to the authorities.

The third element of the definition of forced labour here states that the worker must have offered him/herself to the work voluntarily. If the consent has been given using any of the penalties listed above, the worker cannot have offered him/herself voluntarily. The ILO states that there cannot be any "voluntary offer" under threat. (ILO 2007, 19–20.) The worker should also have the right of free choice of employment and the right to freely terminate the employment. Therefore a restriction on leaving a job, even when the worker freely agreed to enter it, can be considered forced labour (ILO 2005b, 23).

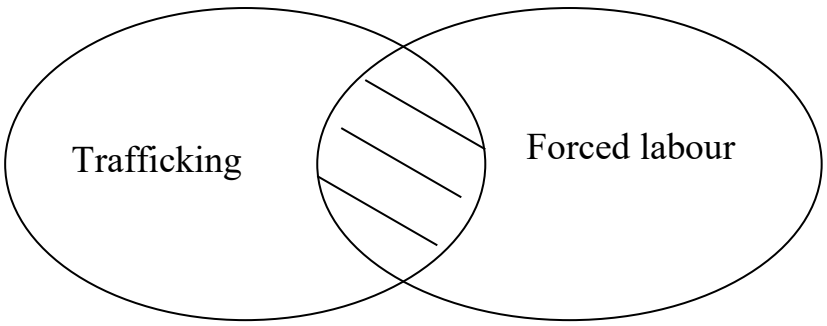
The ILO operational indicators on trafficking in human beings for improved identification, characterisation and data collection (ILO 2009b) provide a more detailed aid for identifying and recognising cases of trafficking. These indicators enable an analysis of whether a specific case shows signs of trafficking or whether it is merely a case of poor working conditions. The operational indicators illustrate and streamline the terminology used in the Palermo Protocol, especially what is meant by the terms coercion, deception, fraud, abuse of power or of a position of vulnerability, control over another person, and exploitation (ibid.). The process of trafficking can be assessed through six dimensions:

- deceptive recruitment or transportation (10 indicators),
- coercive recruitment or transportation (10 indicators),
- recruitment by abuse of vulnerability (16 indicators),
- exploitative conditions at work (9 indicators),
- coercion at destination (15 indicators),
- abuse of vulnerability at destination (7 indicators).

Based on these indicators migrants can be qualified according to how many dimensions and indicators are present in any given situation. Thus a worker who has been deceived, exploited and coerced may be a victim of trafficking for forced labour (ILO 2009b).

Forced labour does not necessarily entail trafficking. However, according to the Palermo Protocol forced labour is one of the forms of exploitation in the crime of trafficking. Forced labour may therefore exist without the crime of trafficking, but many jurisdictions (including Finland) require that for the crime of labour trafficking to be fulfilled, there must be exploitation that amounts to forced labour (or equivalent exploitation). Trafficking for forced labour hence exists where trafficking in human beings and forced labour overlap (see Figure 1).

Figure 1. Trafficking in human beings and forced labour (Hauchère 2010).



In preparing the FLEX project, the ILO indicators on “menace of penalty” played a key role in understanding the concrete elements of trafficking for forced labour and labour exploitation. Especially in the Finnish report, the ILO indicators have been used as a key guiding tool.

The three country reports

This publication presents country reports on Finland, Poland and Estonia. Although the reports have been written under the auspices of the joint FLEX project, each country report is different and raises the issue of trafficking for forced labour from its own, national perspective. This reflects the fact that the situation of trafficking for forced labour is different in each country, and that the awareness of the phenomenon differs. The aim of the FLEX project was not to produce identical reports but to allow for the unique situation in each country to be portrayed. The reports were originally published in the local languages to ensure that the information was accessible to all the relevant national actors working in different levels. For the purposes of this joint report, the Finnish[4] and the Polish[5] reports were translated into English and shortened. The Estonian partners wrote their report in English and then translated it into Estonian[6].

The national reports have been subject to some editing and are slightly different in how they use references (footnotes vs. references in brackets). The authors of each report are responsible for their findings.

The three countries are different in terms of existing legal practice. Of the three countries, Finland had a comprehensive and specific penal provision on trafficking in human beings at the time of commencing the research and data collection.

Poland included the crime of human trafficking in its Penal Code already in 1997, but the provision lacked a definition of trafficking in human beings. A new regulation, including definitions of human trafficking and slavery, entered into force in Poland in September 2010. Estonia does not yet have a specific provision that criminalises trafficking in human beings, although the elements of trafficking have been criminalised separately (e.g. enslavement). The reports take a slightly diverging approach as to how deeply the issue of trafficking is contextualised: the Polish report includes a rather detailed description of the development of national legislation, whereas the Finnish and Estonian reports provide a brief overview of only the most important provisions.[7]

The data and materials used in the three reports also show some specific traits. Poland is the only country of the three where criminal convictions on trafficking

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[4] Jokinen, Anniina, Ollus, Natalia & Viuhko, Minna (2011): Ehdoilla millä hyvänsä. Työperäinen ihmiskauppa ja ulkomaalaisten työntekijöiden hyväksikäyttö Suomessa. HEUNI Reports no. 67. Helsinki: HEUNI.

[5] Lasocik, Zbigniew & Wieczorek, Łukasz (2011): Handel ludźmi do pracy przymusowej – raport z badań. Warszawa: Zakład Graficzny Uniwersytet Warszawski.

[6] Kask, Maris & Markina, Anna (2011): Sunniviisilise töö ja tööjõu ärakasutamise eesmärgil viljeletav inimkaubandus Eestis. Tallinn: Tartu Ülikooli kirjastus.

[7] The original Finnish version of the Finnish country report includes a detailed description and analysis of current Finnish legal provisions on trafficking in human beings and related crimes (see Jokinen et al. 2011, 32–52).

for forced labour have occurred. The focus of the present study in Poland has thus been on a detailed analysis of the existing criminal cases, the court verdicts and the pre-trial investigation materials of the police. The Polish report also presents an analysis of the existing mechanisms to prevent, prosecute and punish trafficking, as well as on victim identification and assistance.

In preparing the FLEX project, the notion of trafficking for forced labour was approached from a broad perspective. Forced labour was seen to represent the most severe form of exploitation of labour while more subtle forms of coercion were seen to represent less serious forms of exploitation (see Andrees 2008). Especially in the Finnish report, one key goal was thus to describe the different forms of exploitation encountered by migrant workers in Finland. Based on this broad description, those cases that showed traits of trafficking for forced labour could be singled out. Moreover, the Finnish report attempts to provide some guidance as to how to make the distinction between trafficking for forced labour and other forms of labour exploitation.

In Estonia, the researchers struggled to find information on trafficking for forced labour. No relevant court cases could be found, and the Estonian researchers were denied access to relevant pre-trial investigation materials. The Estonian report however gives valuable information about labour migration and such underlying factors which make people seek employment abroad. As Estonia is mainly a country of origin, the national report describes the exploitation that Estonians face abroad. The report also describes the Estonian system of counteracting trafficking.

We hope the three reports will provide valuable new information on the phenomenon of trafficking for forced labour in the three countries and also in the context of the Baltic Sea region. We hope our findings will assist practitioners, authorities and others to find additional measures for preventing the crime of trafficking, for identifying and assisting victims, for prosecuting cases and for enhancing both national and international cooperation.

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Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland

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Chapter 1: Introduction and national legislation

Forced labour in the context of human trafficking has so far been examined on two occasions in Finnish courts. In spring 2007, two Finnish men of Indian origin were suspected of having forced a man of Indian nationality to work without remuneration in Finland in open-air markets and in the restaurant business. In the second case, a man of Vietnamese origin was suspected of subjecting his nephew to forced labour in his restaurant in Pietarsaari during the years 2004–2006. The nephew had been working long hours in the restaurant for only a nominal salary and the uncle was also suspected of having used various means of control against him. In both these cases the perpetrators were suspected of having used violence or threats, and in both instances they retained the passports of the victim. However, in both cases human trafficking charges were dismissed in the district court. (Vantaa District Court 13.7.2007; HS 14.4.2007; HS 14.7.2007; Österbotten District Court 30.4.2010; HS 17.3.2010; HS 30.4.2010.)

In Finland thus far, research on human trafficking has been rather scarce, with the bulk of research focusing on human trafficking for the purpose of prostitution and sexual exploitation (see Viuhko & Jokinen 2009; Lehti & Aromaa 2002; Roth 2007a; 2010a; 2010b). Furthermore, trafficking for forced labour has received relatively little attention in the Finnish debate on human trafficking. The use of migrant labour has, however, increased in Finland during recent years, with a simultaneous increase in the volume of cases of exploitation of migrant workers. So far, no court verdicts have been passed concerning human trafficking for forced labour, but the number of sentences given for extortionate work discrimination increased towards the end of the last decade.

The scarcity of information on trafficking for forced labour is also caused by problems related to the application of the definitions of the crime of human

[1] Special thanks to Kauko Aromaa for the initial translation and to Marita Boe for editing and revising the English language version.

trafficking and crimes resembling human trafficking[2]. It is difficult to draw a line between different degrees of labour exploitation. Furthermore, awareness of human trafficking seems to continue to be low, and authorities and other actors in the field do not always recognise cases of human trafficking. This is also influenced by the hidden nature of human trafficking and the exploitation of migrant labour. We know from experience in other countries that human trafficking cases often remain hidden, meaning that the proportion of unrecorded crime is large (Kangaspunta 2007; Laczko 2007).

The current report[3] aims to contribute to the improvement of the understanding of trafficking for forced labour, labour exploitation and related issues in Finland. This report presents the different forms of exploitation of migrant workers that exist in Finland. In so doing, we hope to help authorities and other actors improve their capacity to identify cases of human trafficking and crimes resembling human trafficking, and to take action in such cases.

The exploitation and abuse that the migrant workers face in Finland has to be understood in the overall context of Finnish society where the standard of living is very high and the labour market is strictly regulated. There are relatively few immigrants in Finland and even fewer irregular migrants. Their exploitation cannot be compared directly to forced labour cases in other countries; instead, their conditions of work are to be compared to the overall Finnish standard of work.

1.1 Terminology

In this research report, we use the concepts "work-related human trafficking", "trafficking for forced labour" and "exploitation of migrant workers/labour". We analyse human trafficking in the context of exploitation of migrant labour. The exploitation of migrant workers may be understood to form a continuum in which forced labour represents the most aggravated exploitation, while more subtle forms of coercion represent less serious exploitation (Andrees 2008, 39). According to the Finnish Penal Code, the crime of human trafficking requires a person to have been subjected to sexual abuse or exploitation, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial gain (Penal Code 25 3 §). Thus, in order to constitute human trafficking, the work-related exploitation must be defined as forced labour. However, the definition of forced labour is explicit neither in Finnish law nor in

[2] Crimes resembling human trafficking include aggravated pandering (Penal Code 20 9 a §), aggravated arrangement of illegal entry (Penal Code 17 8 a §), and extortionate work discrimination (Penal Code 47 3 a §).

[3] This is an English-language summary of a more extensive national report (254 pages), published by HEUNI under the auspices of the FLEX –project. Jokinen, Anniina Ollus, Natalia & Viuhko, Minna (2011): Ehdoilla millä hyvänsä. Työperäinen ihmiskauppa ja ulkomaalaisten työntekijöiden hyväksikäyttö Suomessa. Publication Series No. 67. Helsinki: HEUNI.

legal practice (Soukola 2009). This may partly explain why there have not been any court judgements on work-related human trafficking, despite the fact that numerous cases of different degrees of exploitation of migrant labour and work discrimination have been uncovered.

National borders need not be crossed for the crime of human trafficking to take place, and the victims need not be foreigners. Nevertheless, human trafficking is closely related to migrant labour, since the economic situation of the migrant and his/her vulnerability to exploitation and human trafficking are interrelated (Andrees 2008, 11). Our study was based on the assumption that the most serious labour exploitation cases in Finland would be found among migrant workers, and that the vast majority of victims of work-related human trafficking in Finland are foreigners.

At the outset, human trafficking for sexual exploitation and prostitution was excluded from the present study. However, in the course of the study, it became clear that the distinction between work-related exploitation and sexual exploitation is often vague, and not always appropriate, and therefore some cases in which sexual exploitation and work-related exploitation coincide were included. Nonetheless, this study does not deal with prostitution-related human trafficking[4].

In the study, the concepts of "exploitation of migrant labour" and "exploited migrant worker" are used. When reference is made to migrant workers in the empirical material, it is explicitly in reference to *exploited* migrant workers. Further, human trafficking is mentioned in reference to cases that have entered the courts under the label of human trafficking. When victims of human trafficking are discussed, reference is made in particular to those persons who have been defined as victims of human trafficking and crimes resembling human trafficking by the national system of assistance for victims of human trafficking.

1.2 National legislation

Trafficking in human beings was criminalised in Finland in 2004 (Penal Code 25 3 §, 3 a §). In addition to the crime of human trafficking, there are crimes resembling human trafficking. These include aggravated pandering (Penal Code 20 9 a §), aggravated arrangement of illegal entry (Penal Code 17 8 a §), and extortionate work discrimination (Penal Code 47 3 a §). The crime of extortionate work discrimination is particularly relevant for this study. The crime was introduced in 2004 and is a labour offence under the Penal Code. The crimes of work discrimination (Penal code 47 3 §), employment agency offence (Penal code 47 6 §), unauthorised use of foreign labour (Penal Code 47 6 a §), usury (Penal Code 36 6 §) and aggravated usury (Penal Code 36 7 §) are also relevant for the study of exploitation of migrant labour.

[4] HEUNI has analysed human trafficking for the purpose of sexual exploitation in an earlier study (see Viuhko & Jokinen 2009).

1.2.1 Trafficking in human beings

The definition of the crime of trafficking in human beings in Finnish law is based on the definition of the Palermo Protocol and the EU Framework Decision.

Penal Code 25 3 § (650/2004)

Trafficking in human beings

A person who
(1) by abusing the dependent status or insecure state of another person,
(2) by deceiving another person or by abusing the error of that person,
(3) by paying remuneration to a person who has control over another person or
(4) by accepting such remuneration takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20(9)(1)(1) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial gain shall be sentenced for trafficking in human beings to imprisonment for a minimum of four months and a maximum of six years.
A person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1 – 4) have been used.

An attempt shall be punished.

Penal Code 25 3 a § (650/2004)

Aggravated trafficking in human beings

(1) If, in trafficking in human beings,
(1) violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3,
(2) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is deliberately or through gross negligence inflicted on another person,
(3) the offence has been committed against a child younger than 18 years of age or against a person whose capacity to defend himself/herself has been substantially diminished or
(4) the offence has been committed within the framework of a criminal organisation referred to in chapter 17(1a)(4) and the offence is aggravated also when considered as whole, the offender shall be sentenced for aggravated trafficking in human beings to imprisonment for a minimum of two years and a maximum of ten years.
A person who enslaves or keeps another person in servitude, transports or trades in slaves shall also be sentenced for aggravated trafficking in human beings if the act is aggravated when assessed as a whole.

An attempt shall be punished

The crime of human trafficking requires that all three elements be fulfilled: the means, the act and the purpose. In order to be able to analyse whether the crime of trafficking in human beings is present in cases of exploitation of migrant workers in Finland, it is necessary to examine briefly some of the key terms that are used in the three elements that constitute the crime. In the background documents of the law that criminalises trafficking in human beings the meaning and interpretation of the terminology used are elaborated upon. Here, the focus is specifically on the terms "abusing the dependent status or insecure state of another person" and "forced labour", as these have proven to be the most challenging in discussing the definition of trafficking in human beings in the Finnish context (see e.g. Soukola 2009).

As concerns the means of the crime, it is important to specify what is meant by "abusing the dependent status or insecure state of another person". According to the preparatory documents, a dependent status refers to a power imbalance between the victim and the perpetrator. This imbalance can be caused by several circumstances or factors, including (see HE 34/2004, 93; Vähemmistövaltuutettu 2010, 123):

- family circumstances or personal relationships,
- employment relationship,
- being a tenant,
- debt,
- residence in an institution,
- a drug addict's dependency on the drug dealer/provider,
- threat of denouncing an illegally residing victim to the authorities,
- retention of travel documents, and
- exploiting the dependent status of a close family member.

The insecure state of another person refers to the overall circumstances in a person's life, such as: (HE 34/2004, 93–94; Vähemmistövaltuutettu 2010, 123):

- young age,
- serious illness,
- substance dependency,
- serious illness or substance dependency of a close family member,
- difficult economic situation,
- homelessness,
- psychological state,
- handicap,
- previous traumatic experiences, e.g. previous sexual exploitation or prostitution, and
- status of being a foreigner or a refugee.

The background documents emphasise that the position of the victim should be assessed in its totality. Thus, in assessing the dependent status or insecure state of another person, the victim's personal characteristics, his/her background as

well as the relationship between the victim and the perpetrator need to be taken into account (HE 34/2004).

In Finnish law, the terms fraud and deception (used in the UN Palermo Protocol) correspond to "deceiving another person or by abusing the error of that person". The background documents highlight that a minor deviation from the promised salary does not necessarily mean that a person has been deceived and thus that the elements of the crime of trafficking in human beings are fulfilled (HE 34/2004, 94).

It is important to note that the use of violence and threats is included in the crime of aggravated trafficking in human beings. Thus, any use of violence in the commission of the crime would indicate that it is an aggravated form of trafficking.

According to Finnish legislation, in order to be defined as trafficking, the exploitation that a victim of work-related trafficking is subjected to has to amount to forced labour or other demeaning circumstances. The "demeaning circumstances" depend on the situation, but include at least debt bondage (velkaorjuus) and serfdom (maaorjuus) (HE 34/2004, 97). However, forced labour has not explicitly been defined in Finnish law, although ILO recommends that "given the broad potential scope of the concept of forced labour, it is recommended to specify specific offences, which – individually or in a cumulative manner – add up to a criminal offence of forced labour" (ILO 2005b, 18). In the background documents to the law, a reference is made to the provisions on fundamental rights, which are generally regarded to unequivocally forbid forced labour and slavery (HE 179/1999). As for the definition of forced labour, the background documents refer to ILO Conventions No. 29 and No. 105 on Forced Labour, article 8 of the International Covenant on Civil and Political Rights as well as article 4 of the European Convention on Human Rights. According to article 2 of ILO Convention No. 29, "forced or compulsory labour shall mean 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". This has been interpreted in the background documents to refer to a permanent condition, in which the employee does not have his or her usual rights to refuse tasks, resign and receive remuneration (HE 94/1993).

Forced labour has so far only once been explicitly examined in a court of law in Finland in the case of the man of Indian nationality working without remuneration in open-air markets and in the restaurant business. In its verdict, the District Court of Vantaa discussed the definition of forced labour and referred to various international agreements and stated that the "expressions used in international agreements have varied and the terminology has been somewhat unclear" (Vantaa District Court 13.7.2007, 9[5]). The court ruled that since there was no evidence that the victim was forced or obliged to work, the essential elements of forced labour were not fulfilled (ibid.). Soukola argues that the lack

[5] Translation from Finnish by the authors.

of a more detailed definition of forced labour in the background documents to the law "may mislead those applying the law to think that the definition of forced labour itself is unclear in some way" (Soukola 2009, 281–282; translation by the authors). It therefore seems important to give special attention to the interpretation of the definition of forced labour, in particular the clarification and guidance provided by the ILO (see Ollus & Jokinen 2011, 22–23).

1.2.2 Extortionate work discrimination

The crime of extortionate work discrimination was introduced in 2004 after a case of exploitation of Chinese stone workers was made public. The criminalisation is meant to target the grey or informal economy and to secure the legality of the conditions of work of migrant workers (HE 151/2003, 8).

Penal Code 47 3 a § (302/2004)

Extortionate work discrimination

If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years.

The crime of extortionate work discrimination includes the same grounds for discrimination as the crime of work discrimination (Penal Code 47 3 §). These include race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference or state of health, religion, political opinion, political or industrial activity or a comparable circumstance (ibid.). The crime of extortionate work discrimination is to be applied to situations where the position and the lack of awareness or knowledge of a foreigner have been exploited in setting the conditions of work (HE 151/2003, 1).

The "considerably inferior position" refers to paying a considerably lower salary than to other employees or demanding inappropriate working hours (HE 151/2003, 17). A comparison is therefore needed in order to assess the extent of the discrimination. The comparison can be made vis-à-vis other employees of the same employer, other employees of other employers, or the overall standard conditions of employment (HE 34/1994; Nuutila & Melander 2008, 1278–1279).

It is important to note that the use of a person's "economic or other distress" can be seen to correspond to the abuse of the "insecure state" of another person as outlined in the crime of trafficking in human beings. Similarly, the "dependent position" covers the same reasons of dependency as in the crime of trafficking.

The crime of extortionate work discrimination refers to a situation where the employee receives a salary below the minimum wage and where the conditions of work are generally poor. However, at worst, extortionate work discrimination

resembles trafficking if the employee performs the work in inhumane conditions or without regard for work safety (Nuutila & Melander 2008, 1279; NBI website 2011). The crime of extortionate work discrimination is considered to be a crime that resembles trafficking. In difficult cases, where the distinction between the two crimes is difficult to assess, there might be a tendency to interpret the situation as extortionate work discrimination rather than trafficking in human beings for forced labour (Kaikkonen 2008, 88–89).

Next we present the Finnish context relevant to the issue of trafficking for forced labour and exploitation of migrant workers.

Chapter 2: The Finnish context

2.1 Institutional framework and data collection

Until recently the discussion on trafficking in human beings in Finland focused primarily on trafficking for sexual exploitation. The overall awareness of the trafficking phenomenon arose quite late. It was only at the beginning of the new millennium that there was a realisation that prostitution from other countries into Finland was tied to transnational organised crime and that there were indications that trafficking was involved (Lehti & Aromaa 2002; Leskinen 2003). Once the law which criminalised trafficking in human beings entered into force in 2004, a working group was established to develop Finland's activities to counteract trafficking. The Government approved the National Plan of Action against Trafficking in Human Beings in August 2005 (Ulkoasiainministeriö 2005). The steering group, which was appointed to monitor the implementation of the Plan of Action was tasked to assess the success of the measures taken and draw up a revised Plan of Action. The Government adopted the Revised National Plan of Action against Trafficking in Human Beings in June 2008. (Sisäasiainministeriö 2008.) A cross-disciplinary steering group, of which HEUNI is a member, is responsible for the follow-up and monitoring of the Plan of Action. The mandate of the steering group ends in March 2011.

In 2006, Finland established a national system of assistance for victims of human trafficking. The system of assistance is coordinated by two state reception centres for asylum seekers: the Joutseno reception centre is responsible for assisting adult victims of human trafficking, families and groups, and the Oulu reception centre assists minor victims. The assistance given to human trafficking victims is based on a law amendment concerning the integration of immigrants and the reception of asylum seekers (1269/2006). In practice, the assistance is comprised of services and support measures, such as legal advice, crisis support, social and health services, and interpreter services. Furthermore, the victims are offered accommodation, subsistence support and other necessary help, as well as their safe return to the home country. When providing assistance, attention is paid to the victim's age, safety, and special needs, such as his/her physical and mental state and vulnerable position. (1269/2006; 4 a; 25 a.)

An important improvement regarding Finland's efforts against trafficking took place at the end of 2008 when the Ombudsman for Minorities was appointed as the Finnish National Rapporteur on Trafficking in Human Beings. The National Rapporteur monitors phenomena relating to human trafficking, the fulfilment of international obligations and the effectiveness of national legislation. She also gives legal and other advice, issues statements and recommendations concerning the combating of human trafficking and how to secure the rights of victims. The National Rapporteur has the right, notwithstanding secrecy provisions, to obtain information from the authorities and from the providers of services and support measures for victims of trafficking. (Ombudsman for Minorities -website.) The

National Rapporteur collects information on trafficking in human beings and reports to the Government and Parliament. In her first report in June 2010, the National Rapporteur presents an evaluation of the system of assistance to victims of trafficking in human beings, the procedures related to the victims' residence in Finland and their removal from the country, the criminal procedure, and the application and interpretation of the penal provisions on trafficking in human beings (Vähemmistövaltuutettu 2010). The report also describes human trafficking situation in Finland and presents several recommendations.

The National Rapporteur is the only body in Finland who collects systematic and comprehensive information on trafficking in human beings. However, this information is not publicly available, with the exception of the information published in the annual report. In addition, the project of the National Bureau of Investigation on trafficking in human beings (IHKA) collects data on the phenomenon. As concerns public information, on the whole, it is available from criminal justice statistics as well as from the system of assistance to victims of trafficking.

2.2 Previous research in Finland

This study utilises previous research carried out both in the field of working life and of migration. However, when analysing work-related human trafficking and the exploitation of migrant workers, our perspective is mainly criminological, and while the study is not jurisprudential it looks at human trafficking from the perspective of the sociology of law.

In Finland, there is only limited empirical research with regard to work-related human trafficking. The major part of the research that has been carried out has focused on trafficking for sexual exploitation and trafficking in the context of prostitution (see e.g. Lehti & Aromaa 2002; Leskinen 2003; Roth 2007; 2010a; Kimpimäki 2009; Viuhko & Jokinen 2009). In her research on prostitution-related trafficking in human beings, Roth argues that the penal provision on trafficking has been applied and interpreted in too restrictive a fashion. As a result, the threshold for the application of the penal provisions on trafficking and identifying victims as trafficking victims has become higher, and thus cases that resemble trafficking have been dealt with as cases of pandering instead. Roth points out that the high threshold of the trafficking provision may also influence the identification of work-related trafficking and the interpretation of forced labour. (Ibid., 290, 299.)

From a legal perspective, Kaikkonen has studied where to draw the line between the crimes of trafficking for forced labour, extortionate work discrimination and aggravated usury. She argues that due to the lack of clarity in the interpretation of the definition of these crimes it might be easier to investigate cases of exploitation as extortionate work discrimination rather than as trafficking in human beings. (Kaikkonen 2008, 88.) Roth (2010b) has looked at two recent court verdicts, one in which the verdict was for extortionate work discrimination

and the other in which the verdict was for work discrimination. Roth argues that both cases showed several characteristics of trafficking for forced labour. Instead of applying and interpreting these offences in a restricted fashion, it is important to assess the totality of the situation and pay attention to the conditions and terms of work. Furthermore, one should also assess whether or not the victim has any free time, what his/her living conditions are, as well as other factors that increase the victim's vulnerability and dependency. (Roth 2010b, 282, 287.)

The National Rapporteur on Trafficking in Human Beings published her first report in June 2010. She states that "sectors in which human trafficking and the associated exploitation of labour may occur include at least the construction, restaurant, cleaning and horticultural sectors as well as berry-picking" (National Rapporteur 2010, 7).

Until now work-related human trafficking and forced labour has not been the subject of empirical study in Finland, but research and news articles on migrant workers show that exploitation does happen. Research undertaken on work and migration has examined the situation and experiences of migrant workers in the Finnish labour market. Kontula (2010) carried out ethnographic research at the Olkiluoto nuclear power construction site and in her study describes the everyday life of the migrant construction workers, as well as the broader context of migrant labour in Finland. According to Kontula, the migrant workers are victims of structural discrimination and their rights are trampled. According to the study, the migrant workers do not receive any communal services, but are nevertheless expected to pay taxes in Finland and provide cheap labour. (Ibid.) In Eskola and Alvesalo's (2010) study on investigating the misuse of migrant labour in Finland, they showed that a special unit (PUT) of the National Bureau of Investigation, which was supposed to investigate cases related to exploitation of migrant workers, was actually more interested in investigating economic and tax-related crimes. According to the study carried out by von Herzen-Oosi et al. (2009) on temporary work performed by migrant workers in Finland, these workers are given worse terms and conditions of employment than Finnish workers. Additionally, the resources allocated for monitoring migrant labour in Finland have not increased at the same rate as the number of migrant workers. (Ibid.)

The issue of migrant workers has been studied in relation to the activities of the Finnish labour movement. Alho, who studied immigrants in the Finnish labour union movement, observes that an ethnic underclass is forming within private service sectors, such as in ethnic restaurants. These people work under poor conditions and they are not professionally organised. (Alho 2008, 320.) Forsander (2008) studied how migrant labour and the Construction Union's supervision of employees' rights meet in the construction sector. Paananen argues that labour unions have a key role as gatekeepers in the labour market, as they can defend both the rights of Finnish workers against foreigners, and the rights of migrant workers themselves (Paananen 199, 86–87).

Below, we present some statistics on the cases that have come to the attention of the police, and on court verdicts, as well as information on persons who are provided for within the system of assistance to victims, and information on migrant workers in Finland.

2.3 Reported crimes and court judgements

By the end of 2010, only three court judgements for human trafficking had been passed in Finland; each of these cases concerned sexual exploitation and prostitution. The volume of disclosed human trafficking cases is very small. During the period 2004–2007, a total of 15 criminal investigations with the label of human trafficking were initiated (Sisäisen turvallisuuden ohjelma 2008). According to the National Bureau of Investigation, there were nine reported human trafficking offences (both human trafficking and aggravated human trafficking) in 2008, and one in 2009. According to information gathered from a prosecutor, the police opened one new case of human trafficking, while the border guard authority opened two cases of aggravated human trafficking in 2009. All of these cases were connected to labour exploitation. (Mantila 2010, 10.)

Table 1. Human trafficking and offences resembling human trafficking recorded by the police during the period 2004–2010 (up to 26.4.2010).

Year	Human trafficking	Aggravated human trafficking	Aggravated pandering	Aggravated arrangement of illegal immigration	Extortionate work discrimination	Total
2004	-	-	9	-	2	11
2005	4	3	2	8	7	24
2006	2	4	5	27	16	54
2007	2	-	-	13	14	29
2008	7	2	6	8	14	37
2009	1	-	8	16	22	47
2010	1	1	-	5	5	12

Source: Poliisiasiantietojärjestelmä/NBI.

Overall, the police recorded 177 offences resembling human trafficking in 2004−2009 (see table 1). According to the Police Administration, the police and border guard investigated 11 trafficking offences and 2 aggravated trafficking offences in 2010 (Polstat 2011). In addition, 36 cases of extortionate work discrimination were investigated (ibid.).

Two cases of exploitation of migrant labour have been dealt with as cases of trafficking in human beings in Finnish courts of law. In both cases, the charges of trafficking in human beings were laid down (Vantaa District Court 13.7.2007; Österbotten District Court 30.4.2010). The next table gives details of the number of persons sentenced for trafficking or extortionate work discrimination.

Table 2. Persons sentenced for trafficking or extortionate work discrimination in 2005−2008.

Year	Human trafficking	Aggravated human trafficking	Extortionate work discrimination	Total
2005	-	-	-	-
2006	-	7[6]	4	11
2007	-	-	-	-
2008	-	5	3	8
Total	-	12	7	19

Source: Eskola & Alvesalo 2010, 39.

The number of convictions is significantly lower than the number of cases reported to the police. In 2009, seven persons were sentenced for extortionate work discrimination in three different cases and two persons were sentenced for trafficking in one case.

2.4 The assistance system for victims of human trafficking

The Joutseno reception centre has accepted a total of 80 persons since the assistance system began to exist.[7] Of these, 53 were women, and 27 were men. The victims have come from different parts of the world, in particular from China, as well as from some other countries of Southern and South-Eastern Asia. Some of the victims have been citizens of EU countries and some have come from African countries. Negative decisions concerning acceptance into the system of assistance have only been recorded systematically since 2009. In total, 29 written decisions that are subject to appeal have been made between January

[6] In 2006, seven persons were sentenced for aggravated human trafficking (for sexual exploitation) in one large case (Helsinki District court 20.7.2006).

[7] The data given in this chapter are based on statistics of the Joutseno reception centre. Thus, they do not comprise possible under-aged victims who have been clients of the Oulu reception centre. Overall, under-aged victims have been identified much less often than adult victims. In Finland, there is no information on work-related human trafficking cases, in which the victims would have been minors.

2009 and December 2010. Most of these decisions were related to cases of labour exploitation. (Joutseno reception centre 2010.)

Three out of four victims accepted into the system of assistance have been victims of work-related human trafficking. The cases have been related to, e.g., cleaning, restaurant, garden, and domestic work. In some of the cases, the economic sector is not known. In December 2010, 29 victims of work-related human trafficking/exploitation were within the system.[8] A large proportion of the victims taken into the system of assistance have had a valid residence permit based on work, studies, or family relations. A number of these persons have eventually been granted a residence permit on grounds defined in § 52a of the Aliens Act, work, or on individual humanitarian grounds. (Joutseno reception centre 2010.)

2.5 The number of migrant workers in Finland

According to the Finnish Immigration Service, there were a total of 155,700 foreign citizens in Finland it the end of 2009 including 56,100 EU citizens, and 31,500 CIS[9] citizens. The two largest groups were Russians, totalling 28,200 persons, and Estonians, totalling 25,400 persons. (Maahanmuuttovirasto 2010, 2−3.)

However, there is no accurate information on how many migrant workers are employed in Finland on a given date. There are many reasons for this: the information can be missing or is spread out in different registers (Ruotsalainen 2009). According to registry information, there are 35,000−45,000 temporary migrant workers in Finland, but the estimate does not include, for example, foreign berry pickers. According to some estimates, there were up to 30,000−40,000 temporary migrant workers in Finland in 2008 (von Herzen-Oosi et al. 2009). This estimate includes seasonal workers and posted workers. The following section presents some statistics on these different groups of workers.

Work permits

There is reliable statistical information on the volume of citizens of third countries[10] working in Finland.

[8] Some of the victims of labour exploitation have already exited the system of assistance. About half of them have returned to their home country (as a voluntary return).

[9] Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

[10] Apart from EU, ETA and Swiss citizens, foreigners must apply for a worker's residence permit in order to work in Finland.

Table 3. Decisions dealt by work permit units concerning work permits 2005−2009.

Year	First permits	Extended permits	Total
2005	3268	2474	5742
2006	3656	3290	6946
2007	6241	3870	10111
2008	7598	6411	14009
2009	3863	6162	10025

The trend concerning first permits spiked in 2006−2008, but turned downwards in 2009 due to the economic recession.

Seasonal workers

A foreign person may come to Finland with a visa to be employed in seasonal work. That person is then allowed to work for a maximum of three months to pick or harvest berries, fruit, specialty crops, root vegetables or other vegetables or to work on a fur farm (Aliens Act 81 §). Traditionally, those arriving in the country on a visa have also been allowed to pick forest berries. As of 2010, in order to receive a visa, persons who come to pick wild forest berries are required to present an invitation and a commitment from the enterprise (Ulkoasiainministeriö 2010). In its report the Ministry of Labour estimated that, for example in 2006, approximately 14,000 persons worked in Finland with a visa or free of visa, most of who worked as berry pickers. The figure also includes an estimated 3,000 forest berry pickers. (Työlupatyöryhmä 2007.) According to the Ministry of Agriculture and Forestry, Finnish farms and gardens employ more than 15,000 persons of foreign origin every year. (Työsuojeluhallinto 2010, 8).

Posted workers

A posted worker denotes a person who is usually employed in some other country than Finland, but whose employer posts him/her for a limited period of time to carry out his or her work in the territory of an EU Member State other than the State in which he or she normally works. Usually, when posted workers are sent, for instance, to carry out a piece of construction work in Finland, this is based on a contract between a Finnish and a foreign company or on a labour leasing/rental contract. In practice, posted workers may include workers, such as agency workers who have been sent by a temporary work or recruitment agency for the use of another company, or persons who are sent to work in a Finnish workplace belonging to the same company. The status of posted workers is regulated by the directive concerning the posting of workers in the framework of

the provision of services in another member state (96/71/EY). The work contract of the posted worker must apply certain provisions of Finnish law if they are more advantageous from the worker's perspective than regulations that would otherwise be applied. The law on posted workers provides, for example, a minimum salary protection which is determined by the binding collective labour agreement

There are no reliable statistics on the number of posted workers in Finland as workers sent by companies registered abroad may remain completely unrecorded by official statistics. For example, the Finnish Construction Trade Union estimates that there are as many as 20,000 posted workers in the construction sector in Finland (Kansan uutiset -verkkolehti 6.6.2010). According to the statistics gathered by the Finnish Centre for Pensions on E101 certificates of posted workers[11], there were 10,800 posted workers in Finland in 2007, most of whom came from Estonia (6,500) and Poland (2,300). The actual number of posted workers is probably a lot larger. (Ruotsalainen 2009; see also von Herzen-Oosi et al. 2009, 29–30.)

Monitoring the use of migrant labour

In the Occupational Safety and Health Inspectorates of the Regional State Administrative Agencies, there are a total of 9 labour inspectors specialised in monitoring the use of migrant labour. The monitoring is based on three laws: the Aliens Act, the Posted Workers Act, and Act on the Supervision of Occupational Safety and Health and Appeal in Occupational Safety and Health Matters. When making the inspection, the migrant labour inspector checks the following issues: the basis of the worker's right of employment, the recording and storage of information concerning foreign workers, and whether necessary information is provided to the appointed representative of the workers, the failure of which the inspector is obliged to report to the police. (Linna 2006, 15–18.)

In addition to this, the inspector checks whether the migrant worker has been made sufficiently aware of his/her tasks, whether the minimum conditions of his/her employment are fulfilled and whether the working conditions are acceptable. The inspection also controls that the occupational health services have been organised adequately, that there is an acceptable record of working hours and that the accident insurance is covered as regulated. (Ibid.) The labour inspectorate is obliged to report the matter to the police, if there is sufficient reason to suspect that any of the following have taken place: a violation of the Aliens Act (185 §); an employer's violation of the Aliens Act (186 §); unauthorised use of migrant labour (Penal Code 47 6 a §); work discrimination

[11] The E101 certificate proves to the authorities of a country where a worker is posted to work that he/she is attached to the social security system of another EU country. Workers posted to Finland should have this certificate issued by the authority of their country of origin. There are, however, many problems regarding this, as many do not have the certificate, it is fake or expired, or otherwise faulty or simply not given to proper authorities.

(Penal Code 47 3 §), or a case of extortionate work discrimination (Penal Code 47 3 a §).

In 2010, the five labour inspectors who belong to the Regional State Administrative Agency in Southern Finland and who are specialised in monitoring the use of migrant labour performed some 450 inspections (Rajamäki 2010). Based on the annual reports of the labour inspectors in the Uusimaa province in Southern Finland, there has been a significant increase in the number of such inspections in the recent years (Ulti-tiimin raportti 2010; 2009; 2008).

Chapter 3: Data and methods

3.1 The research questions

The present study aims to provide new information on trafficking for forced labour and labour exploitation. The study analyses the forms of work-related human trafficking, as well as phenomena of a similar nature that exist in Finland. It also focuses on identifying the differences between human trafficking and other crimes closely related to it. Finally, the study develops enhanced data collection methods that can be used in the future in order to collect better information about human trafficking and labour exploitation.

The study answers the following questions:

- What kinds of situations of work-related exploitation exist in Finland?
- In what economic sectors do human trafficking for forced labour and crimes resembling trafficking exist?
- From which countries do the exploited migrant workers/victims come?
- What are the forms of exploitation and the different stages of the human trafficking process?
- What is the distinction between trafficking for forced labour and exploitation of migrant workers?
- Is exploitation of migrant workers linked to human trafficking?
- Can situations of forced labour or situations resembling forced labour be found in Finland?
- What does forced labour entail in practice in Finnish society and in Finnish working life?
- How can exploitation be prevented?
- Are authorities and other actors able to identify victims of work-related human trafficking, and are victims provided with the necessary support services?

The focus of our analysis is on a thorough understanding and comprehensive description of work-related human trafficking and similar phenomena. For this reason, the study relies on several different kinds of data and data collection methods, with particular focus on qualitative research methods.

The final data of the study comprise:

1) expert interviews (15 interviews with a total of 19 interviewees),
2) victim interviews (5 interviews, with a total of 7 interviewees),
3) court judgements (27 cases in total),
4) pre-trial investigation materials from the police (4 cases in total),
5) media material (56 referenced newspaper articles and 6 TV programmes), and

6) material from national and international expert meetings (5 meetings in total).

3.2 Expert interviews

The expert interviews were carried out in April−June 2010[12]. In these the qualitative thematic interview was used as the interview method. The experts who were interviewed represented different sectors. The objective was to interview, as comprehensively as possible, sector representatives who are in contact with victims of human trafficking, migrant labour, human trafficking offences and offenders through their work or who otherwise deal with matters related to human trafficking or migrant labour. In addition, the objective was to interview in particular persons who have a close connection to the human trafficking phenomenon, have concrete knowledge and are also aware of practical examples of trafficking and labour exploitation.

A total of 15 interviews were carried out, with 19 interviewees.[13] These represented police (both local police and the central administration (two interviewees), the border guard authority (one interviewee), the prosecution authority (two interviewees), the labour inspectorates (two interviewees), permit authorities (one interviewee), trade unions (two interviewees), employers (two interviewees), and metal industry employees (two interviewees). Furthermore, we interviewed representatives of victim support agencies (both from the public sector and the third sector; three interviewees in total) as well as one representative of the Evangelic-Lutheran church and one lawyer.

At the beginning of each interview, the interviewee was given a handout about the project (Annex 2), and the project and its objectives were explained orally. All interviews were recorded.[14] In preparation for the expert interviews, a relatively extensive interview template was developed (Annex 3) but the questions were presented to the interviewees only where applicable. Furthermore, each interviewee was asked about topics related to their individual expertise and work profile; these questions were not included in the interview template.

The anonymity of the interviewees is protected by different means throughout the report. The interviewee's name, or his/her accurate professional title or place of employment is not disclosed. In the following chapters, direct citations from the interviews are presented. However, these have been modified so that names of persons and exact locations, colloquial expressions and other features that

[12] With the exception of one interview with two experts that was carried out in February 2009. The experts subsequently gave their agreement for the interview to be used as part of this study.

[13] Four interviews were made with two respondents who were simultaneously present.

[14] The length of the interviews ranged from 40 minutes to almost three hours. All interviews were transcribed. The volume of transcribed expert interviews amounted to about 350 pages.

might help to identify the speaker have been deleted or changed. Otherwise, the interview excerpts have been kept as authentic as possible when translating them from Finnish into English[15]. The interviewed experts were divided into six categories in order to prevent the identification of the individual interviewee by combining interview excerpts.[16] The categories are 1) *criminal investigation authorities* (three interviewees), 2) *prosecutors* (two interviewees) 3) *labour inspection and permit authorities* (three interviewees), 4) *representatives of trade unions* (four interviewees), 5) *victim support providers* (five interviewees), and 6) representatives of *employers' organisations* (two interviewees). In the report, interviewees are referred to by these categories, e.g. "trade union representative".

While all relevant agencies and persons could not be interviewed, the expert interview data is nevertheless rather comprehensive. The interviewees represent a cross-section of the various relevant sectors, and comprise several central actors who work with questions related to human trafficking and labour exploitation. Many of these are persons who meet victims of exploitation, and also perpetrators in their work, and thus were able to describe concrete cases of exploitation (including cases that have not entered or proceeded in the criminal justice system or that have not come to the knowledge of the media). The interviewees were highly motivated to speak about the phenomenon, and made numerous suggestions for improvements. They deemed the phenomenon to be important and were of the opinion that there was a clear need to counter it and also thought that this study was very much needed. Consequently, one can say that the experts who participated in the interviews had been selected in a successful manner in view of the richness and diversity of the interview data.

Some interviewees felt the topic (in particular human trafficking/forced labour) was quite difficult, at least when discussing the accurate definition of the phenomenon. Since not all interviewees were specifically experts on human trafficking issues but were rather experts on migrant labour and related matters, during their interviews discussions centred largely around issues related to the exploitation of migrant labour on a more general level, not just human trafficking and forced labour. This may be seen to constitute both strengths and weaknesses of the research data. Human trafficking and related topics are also challenging and delicate matters, and this was highlighted in the interviews. For example, persons who work with victims had to weigh carefully what information about the victims and the cases overall they could and dared to disclose in the interviews. The same was true for the authorities investigating the crimes. For this reason, when collecting and analysing the data and reporting the

[15] All three researchers carried out interviews. In the excerpts, I refers to interviewee, while AJ refers to Anniina Jokinen and MV to Minna Viuhko. All interview excerpts have been translated from Finnish into English.

[16] It is however important in our opinion that the reader knows what sector is represented by the persons cited in the excerpts. For this reason, the sector and/or occupation of the respondent have not been hidden totally.

results, we have paid particular attention to issues related to research ethics and the protection of the anonymity of the interviewees.

3.3 Victim interviews

One further objective of the study was to interview victims of trafficking for forced labour and/or migrant workers who had personally experienced exploitation in Finland. Regarding the victim interviews, we paid particularly attention to the ethical issues related to the interviews, such as how the potential victims are contacted (after they have been identified), how and where the interviews are carried out (the safety of the victims, a neutral environment), what can be asked from the interviewees, and how the interview data can be utilised. Human trafficking and similar exploitation is a very delicate matter, and the researcher must be particularly sensitive when interviewing victims. It may be very difficult and even traumatic for a person to discuss experiences related to exploitation, and the research must not add to the suffering of the interviewee (Zimmerman & Watts 2003).

The victim data comprise interviews with seven human trafficking victims (five interviews in total).[17] The interviewees came from different parts of the world, and they were exploited in various situations and circumstances in many types of tasks, sectors and industries. All the interviewed victims had been accepted into the official system of assistance for victims of human trafficking in Finland. One of the reasons we are using the term "victim" when referring to these interviewees is that the official victim support system has defined them as victims of human trafficking (or crimes resembling human trafficking such as extortionate work discrimination). This official system made it possible for us to contact the victims.

Persons and agencies working with victims of human trafficking or similar exploitation were very helpful in identifying the interviewees and making arrangements for the interviews. Without their help, it would probably have been quite impossible to locate persons to be interviewed. We drafted an information hand-out about the victim interviews (see Annex 4), explaining the project and the interviews. The handout was then given to selected victim support actors, who informed their clients about our project and asked whether they would be interested to participate in the study. We were not given anybody's contact information before the person in question had given his/her consent to be interviewed. The victims contacted the researcher directly by telephone or e-

[17] Because of the small number of identified victims, the tight time schedule and limited resources available for the project, the initial target of 10−20 interviews could not be reached. The small amount of the victim interviews has been compensated with other material. Indirect information about victims has been retrieved from the expert interviews, the police and court data.

mail, or the researcher contacted the victim by telephone.[18] The persons approached were quite willing to be interviewed, and they did not need to be persuaded to participate.[19]

The interviews were carried out either at the HEUNI premises or in the offices of victim support agencies/actors. At the beginning of the interview, the researcher gave the respondent a hand-out about the project and explained orally what the project was about and what the objective of the interview was. The researcher emphasised the confidentiality and anonymity of the interviews, and assured that the interviews would be reported in a manner that would make it impossible to identify the interviewee. It was also explained to the interviewees that they did not have to answer all questions, and that they could interrupt the interview at any time. The interviewees were asked for their consent to have the interview recorded to which they all agreed. Some of the interviews were carried out in Finnish, others in English, and two were carried out through an interpreter. [20]

We prepared a separate interview template for the victim interviews (see Annex 5). The themes and the topics of the interviews focused on events and situations that the interviewees had experienced in Finland. The core themes of the interviews dealt with recruitment, work and its contents and circumstances, such as salary and work contract, housing, leisure time and whether help was received. The interview template which was drafted for the victim interviews was not applicable in practice in all cases because the interviewees had encountered such different and even unique situations that the same one could not simply apply to all of them.[21]

Furthermore, the volume and quality of the victim interviews are limited as it was not possible to carry them out in the respondent's own language (except for those interviews where an interpreter was present). However, when the interviewees were asked, they were of the opinion that the interview could be carried out without an interpreter, either in Finnish or in English. Considering that the issue of language was a challenge, it must be noted that the interviews ran smoothly and the respondents were able to express themselves relatively well. It is clear, however, that many nuances and details of the stories depended on the interviewer's interpretations, or possibly remained totally hidden.

The use of an interpreter in an interview can also present problems. When an interpreter is present, the interviewee can talk "more freely", without the

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[18] WHO recommendations concerning interviewing human trafficking victims emphasise that victims are best approached via a support actor/agency that the victims trust and that is able to explain what the interview is about (Zimmerman & Watts 2003).

[19] The interviewees were not paid for the interview, and nobody asked to be paid. The participants to one interview were compensated for their travel expenses.

[20] In three interviews, one interviewee was present, and in two interviews, two interviewees participated.

[21] In the interview situation, the researcher tried to apply the interview template where applicable, and ask necessary additional questions as needed, depending on what the interviewee related.

restrictions caused by language barriers, but what is said is filtered to the researcher through the interpreter, and, as a result, the interviewer is unable to understand all the nuances. It is also possible that the interpreter condenses and abridges what the interviewee is saying or misunderstands something. Zimmerman and Watts (2003, 14) comment that an interpreter who speaks the respondent's language may be able to make the respondent feel more comfortable, and help in building trust. However, the effect may also be the opposite, for example, if the presence of a person from the same cultural background renders the situation uncomfortable for the interviewee. (Ibid.) In our study, we relied on a Finnish interpreter who thus did not represent the same ethnic background/nationality as the respondents.

In this report, the victim interviews are cited with making reference to the "(interviewed) victim". The respondents have not been divided into subgroups by gender, age, country of origin, or any other characteristic. In order to protect the anonymity of the interviewees, such background information has not been revealed in the report. Due to the small number of interviewees (and overall, the small number of identified victims of work-related human trafficking in Finland), particular care has been taken when reporting the results. [22] The victim interviews are utilised in the report less extensively than are the expert interviews, since they contain an abundance of information that might jeopardise the anonymity of the interviewees.

3.4 Court data

We also collected court data on relevant court and appeal court judgements regarding trafficking for forced labour and exploitation of migrant workers. The court data we examined was limited to specified offenses and to the specific time period of 2004−2010. This was due to the fact that both human trafficking (Penal Code 25 3 §) and aggravated human trafficking (Penal Code 25 3 a §) as well as extortionate work discrimination (Penal Code 47 3 a §) were first criminalised in Finland in 2004.[23]

When the data collection began, only one case[24] (Vantaa District Court 13.7.2007) had been tried in a district court as human trafficking for the purpose of forced labour, and in this case, the charges for human trafficking were dismissed by the court. During the data collection period one more case proceeded to the district court as human trafficking for the purpose of forced labour, but in this case, as well, the charges for human trafficking were dismissed. (Österbotten District Court 30.4.2010). When considering the Finnish

[22] The volume of transcribed victim interviews amounts to about 75 pages.

[23] Because the study is part of a joint project with Poland and Estonia, a further coinciding argument for the selected time frame was that Poland and Estonia joined the European Union in 2004.

[24] Apart from human trafficking offences that were related to prostitution and sexual exploitation.

Penal Code, the offense entitled extortionate work discrimination (Penal Code 47 3 a §) is the most relevant regarding the exploitation of migrant labour. This offense has also officially been defined as a crime "resembling human trafficking". For this reason, we focused our data collection on these offences in particular. In view of the fact that there were so few human trafficking cases in court, we wanted to find out whether crimes investigated under other crime labels contained features or indications of human trafficking. For the purpose of this research, we therefore chose offences based on the crime labels found in newspaper articles on exploitation of migrant workers, discussions with experts and a brainstorming session among the researchers in which possible combinations of different crime labels were discussed. Accordingly, having thus selected the offences, a search was carried out in the national research register of crimes and sanctions maintained by the National Research Institute of Legal Policy for judgements related to cases in which certain specified crime labels had been applied in Finland.

Consequently, the following crime labels and their combinations were requested from the national research register of crimes and sanctions[25]:

- extortionate work discrimination,
- instigation to extortionate work discrimination,
- work discrimination[26] + working hours protection offence,
- work discrimination + (aggravated) fraud,
- work discrimination + (aggravated) usury,
- work discrimination + (aggravated) arrangement of illegal immigration,
- unauthorised use of foreign labour (if many references to these, then use work discrimination + unauthorised use of foreign labour, and unauthorised use of foreign labour + arrangement of illegal immigration),
- work discrimination + employer's work permit offence/ violating the discrimination prohibition in the Employment contract Act/ attempted aggravated fraud/ employment exchange offence/ neglecting to provide labour health services.

According to the reseach register, there were only six final judgements[27] for extortionate work discrimination during the period 2004–2008, and these

[25] Because we already knew which cases had proceeded to court with the label of human trafficking, they were not included in the search.

[26] According to our "preliminary screening", work discrimination offences (Penal Code 47 3 §) as such did not usually seem to be connected with the exploitation of migrant labour (cases mostly concerned Finnish workers), or there were at least no features of human trafficking in the cases (with a few single exceptions). For this reason, the cases in which the judgement was only about work discrimination were excluded from the data. Our data does however contain three work discrimination cases that are relevant with regard to human trafficking (Vaasa District Court 29.2.2009; Hämeenlinna District Court 30.6.2006; Hyvinkää District Court 21.11.2008). These cases were selected on the basis of tips mentioned in the media and suggestions given by experts.

[27] The unit is the offence committed by the defendant.

concerned two separate cases. In the year 2009, the number of cases of extortionate work discrimination tried in courts increased, but their volume was still rather low. According to the research register, there were seven final court judgements, concerning three separate cases. In our data, we have four judgements of extortionate work discrimination for the year 2010.

According to our search from the national research register of crimes and sanctions, the bulk of the offences consisted in work permit crimes or unauthorised use of foreign labour. According to our information, during the period 2004–2009 a final judgement had been passed in a total of 31 offences of unauthorised use of foreign labour, in 20 separate cases (Penal Code 47 6 a §; as of the year 2004), and in 56 work permit offences, in 41 separate cases (Penal Code 47 6 a §; up to the year 2004)[28]. We read through several judgements concerning these crimes and despite our initial assumption, found that the judgements did not contain sufficient situational descriptions or background information on exploitation of migrant workers for them to be used in our analysis. As a result, we excluded these cases from the analysis because by this stage, we had already obtained quite a large volume of court data, and the time available for analysis was limited.

The objective of collecting court data was to obtain information about the nature and characteristics of the cases dealt with in courts. Furthermore, our aim was to find out how courts handle cases related to the exploitation of migrant labour, how the crimes and the related evidence are assessed, and what kind of sentences are passed for these offences. The data was analysed from a sociological perspective and not from a legal perspective[29] as such.

From the court data, we selected cases that seemed to be the most relevant for the purposes of this study for further analysis. The cases we therefore considered were the case of the Chinese restaurant in Savonlinna (Savonlinna District Court 20.2.2009, extortionate work discrimination), the case of the Vietnamese restaurant in Pietarsaari (Österbotten District Court 30.4.2010, the charges for human trafficking were dismissed) and the case of the Thai garden workers in the Vaasa region (Vaasa District Court 29.2.2009, work discrimination). Furthermore, the so-called case of the Indian market vendor (Vantaa District Court 13.7.2007, the charges for human trafficking were dismissed) was important in particular because it was the first case related to human trafficking for forced labour that was introduced at court level with the label of human trafficking, even if the charges for human trafficking were eventually dismissed.

[28] These offences had occurred in 2002–2004, and the judgements had been passed in 2004–2005.

[29] Neither is this a study in legal dogmatics.

The Chinese restaurant in Savonlinna

A couple of Chinese origin owned and operated a restaurant in the town of Savonlinna. Between the years 1997−2007, at least ten persons of Chinese origin worked at the restaurant where they worked very long hours and received a very low salary. In addition, the employer intervened in their leisure time and controlled them in various ways. The police investigated the case under the label of trafficking in human beings, but during the trial, the Savonlinna District Court decided that this was not a case of trafficking in human beings but of extortionate work discrimination at most. The couple who owned the restaurant was tried for extortionate work discrimination and were eventually handed down a nine months suspected sentence and a five year ban on running a business. (Savonlinna District Court 20.2.2009.)

The Vietnamese restaurant in Pietarsaari

The Österbotten District Court dealt with a case in April 2010 in which a man of Vietnamese origin was suspected of having held his nephew in forced labour in his restaurant in the town of Pietarsaari. The nephew stated he worked 12h days in the restaurant, seven days a week, for only a nominal salary. The uncle also controlled his bank account and kept his passport in his possession. In addition, the uncle was suspected of using violence against the nephew and threatening to kill him. The prosecutor demanded that the restaurant owner be sentenced for trafficking in human beings, assault, and deprivation of personal liberty and menace. The court did not find evidence of any control or coercion and all charges were dismissed. (Österbotten District Court 30.4.2010; HS 17.3.2010; HS 30.4.2010.)

The Thai garden workers

A gardening company hired workers from Thailand during the years 2006–2008. The company was owned by a couple and the wife was Thai herself. She recruited workers for the company among her own relatives and from her former home village in Thailand. The workers worked long hours, their ATM-cards were kept in the possession of the employer and they were paid a very low salary. Various costs related to accommodation, upkeep and airline tickets were deducted from the salary. (Vaasa District Court 29.2.2009.) The police initially investigated the case as trafficking in human beings and extortionate work discrimination, but the case entered the court labelled as work discrimination. This was apparently influenced by the fact that the labour inspection authorities were of the opinion that no work discrimination had taken place since the employer had not intentionally put the employees in an inferior position due to national origin. (Roth 2010b, 279.) The wife of Thai origin was sentenced by the Vaasa District Court to small fines for work discrimination and was obliged to pay the ten complainants 1000 euro each (including interest) for the suffering they had endured. Her husband died before the trial and thus could not be sentenced. (Vaasa District Court 29.2.2009.)

The Indian market vendor

In spring 2007, two Finnish men of Indian origin were suspected of having arranged for the illegal entry into Finland of a man of Indian nationality and forcing him to work without salary in Finland in open-air markets and in the restaurant business. The border guard authority suspected that the two men had taken the third man's passport and threatened him with violence. In Vantaa District Court the men were accused of aggravated trafficking in human beings and aggravated arrangement of illegal immigration. The court dismissed the human trafficking charges as it argued that it could not be proven that the third man had been deceived into coming to Finland or that his personal freedom had been restricted or that he had been forced to work by the use of threats. One of the men was handed a suspended sentence for arrangement of illegal immigration. (Vantaa District Court 13.7.2007; HS 14.4.2007; HS 14.7.2007.)

In addition to these cases, we also refer to the case of the Chinese stone workers (Hämeenlinna District Court 30.6.2004; Turku Appeal Court 13.6.2005). The crime of extortionate work discrimination was introduced into the Penal Code in 2004 largely due to this particular case. We therefore use the case of the Chinese stone workers as part of our research material, although the crime happened prior to 2004.

The Chinese stone workers

Between the years 2001 and 2003, a group of Chinese stone workers were employed by a stone company in Iittala. In order to come to Finland the men had paid 23,500 yuan or 2,350 euro in fees to a recruitment company in China. This amount was equal to four years' salary in China. Prior to coming to Finland the men received language and military training from the recruitment agency, with the aim of developing their discipline. In Finland, the accommodation provided to the men was poor. They lived in an industrial facility and prepared their own food there. Most of their time was spent at work and the working hours were as long as 14h per day. Their salary was tied to the amount of meters chiselled. In practice the stone company paid them 200 euro and kept 100 euro for food costs and the remainder of their salary, 150 dollars, increased or decreased depending on the amount of stone chiselled. This money was sent to China to the recruitment agency and placed in the personal account of the contact person, who gave some of the money to the men's families, but kept some of it as well. Together the workers earned a total of 10,000 euro for 2 years' worth of work. Out of this money they also had to pay their debts and other costs. (HS 18.6.2006.) The case was first tried in Hämeenlinna District Court and subsequently in the Turku Appeal Court. The stone company was sentenced for work discrimination and was obliged to compensate the due salaries of the 12 stone workers, amounting to tens of thousands of euros. (Hämeenlinna District Court 30.6.2004; Turku Appeal Court 13.6.2005.)

In addition to these main cases, the court material consists of 13 other cases of extortionate work discrimination, but these have not been analysed to the same level of detail.[30]

3.5 Pre-trial investigation materials

We also obtained the pre-trial investigation materials of a few significant court cases which had been selected on the basis of information found in the court data, in the media materials and in the interview data. These cases were: the case of the Chinese restaurant in Savonlinna (6700/R/2792/06), the Vietnamese restaurant in Pietarsaari (6570/R/3389/06), the Indian market vendor (9186/R/61172/06), and the case of the Thai garden workers (6800/R/4242/08; 6230/R/2570/08). The investigation was closed in all these cases, and so no written research permits were required for receiving the materials. The material comprised about two thousand pages, including a large volume of attachments and other documents. In the analysis, we focused on the police interrogation records. This material was examined keeping in mind in particular the indicators of forced labour as defined by the ILO (2005b; 2008) and the interview template we drafted to be used when interviewing the victims (see Annex 5).

While analysing the pre-trial investigation materials, we focused on what the victims had to say about the exploitation that they experienced, and their subjective perception of the situation. We also analysed how the perpetrators explain their behaviour, and how they describe the situation and the means they use. The materials have been very helpful in this respect because we had no possibility of interviewing the perpetrators themselves. A third focal point of our analysis was to find out what details and issues the police took note of and concentrated on during the criminal investigation and what kind of evidence they look for in general.

Throughout the analysis, the pre-trial investigation materials were used both as background information and as actual research data. The analytical chapters comprise some direct citations from the interrogations of the victims and the suspects. From these, all names have been deleted to protect the anonymity of the persons in question. Moreover, we did not consider it to be necessary to use direct citations in some contexts, for instance in the chapter on violence, because the topic is very delicate and private.

[30] For a list of the 13 cases, please see pages 65–66 of the full report in Finnish (Jokinen et al. 2011; available on www.heuni.fi).

3.6 Media material

Media material was collected throughout the project. In addition to the press media, we also kept track of relevant documentary and debate programmes on television. During the launching phase of the project, the media material was used to identify relevant cases, and on the basis of certain news items in the media, individual court judgements were ordered from district courts. At a later stage, we looked for additional information on certain specific cases we had identified.

The media material was limited to the years 2004–2010; however, concerning some relevant cases, we also included earlier material from the press, such as the case of the Chinese stone workers. The archives of the leading daily newspaper Helsingin Sanomat were searched systematically. In addition, cases were searched also from Iltalehti and Ilta-Sanomat, Taloussanomat, and provincial newspapers such as Aamulehti, Turun Sanomat, Hämeen Sanomat, and Savon Sanomat. We also searched through several newspapers published by trade unions in different sectors, such as PAM-lehti (published by the The Service Union United), Rakennus-lehti (published by the Finnish Construction Trade Union), and the paper Ahjo of the Finnish Metal workers' union. The reference words used in the search were put together in different kinds of combinations, such as:

- human trafficking + work,
- extortionate work discrimination,
- work discrimination + usury,
- immigrant + work discrimination,
- foreigner + work discrimination,
- foreigner + forced labour,
- guest worker + work discrimination,
- human trafficking + forced labour,
- migrant worker + exploitation, etc.

Moreover, with regard to the media material, our primary interest was to identify concrete cases of labour exploitation of migrant workers, and we did find in the media a very large number of case descriptions and examples of exploitation that migrant workers have faced in Finland. Journalists have interviewed exploited workers – both in the newspapers and on TV programmes (e.g. HS 18.6.2006; HS 20.6.2008b; MOT-programme 24.11.2008). These interviews have provided information that is not found in other sources (such as the court judgements) and this kind of first hand knowledge is particularly valuable. However, a weakness of the media material is that the media often simplifies matters, and emphasises certain features of the cases at the expense of other issues.

3.7 National expert meetings

In the framework of the FLEX project, two national expert meetings were organised. Their objective was to discuss the prevalence and characteristics of human trafficking for forced labour and similar offences in Finland. The first meeting was organised in February 2009 (19 participants), as part of the planning phase of the project, and the second meeting took place in February 2010 (21 participants). Invited experts represented, i.a., different regional labour inspectorates, labour unions, the city of Helsinki, the tax administration, agencies working with victims (victim service providers and NGOs), criminal investigation authorities and the immigration service. The participants were asked to prepare a brief presentation about their observations of human trafficking for labour exploitation and similar phenomena, descriptions of cases, views on victim support, sectors in which exploitation is particularly abundant, and possibilities of data collection from the perspective of the participants' own sector of work.

We also organised a small expert meeting for researchers from different universities and research institutes (5 participants). In addition to this, we organised a Nordic expert seminar on the misuse of migrant labour together with the Finnish Institute for Occupation Health with funding from the Scandinavian Research Council for Criminology. Furthermore, an international expert meeting on forced labour was organised in December 2010 (15 participants; see Jokinen & Ollus 2011, 313).

The materials from the expert meetings (the presentations and interventions by the participants, and the summary reports of the meetings) were used as background materials for the project, as well as for orienting the identification of relevant experts to be interviewed.

Chapter 4: Before arriving in Finland

International studies on human trafficking for forced labour often yield a similar pattern: the worker is looking for work through a seemingly official procedure, but the working conditions are worse than promised and instead the worker is subjected to exploitation, long working days and sub-standard poor wages (Surtees 2008). These elements of control may include force, violence, and threats of violence, restrictions of the freedom of movement, or the retention of the worker's passport (Dowling et al. 2007; MRCI 2006; Burčíková 2006). The following chapters deal with this process in the Finnish context – from recruitment to exploitation. The examples of exploitation found in this study may not always meet all criteria of human trafficking, but they are in any case illustrative of the context in which human trafficking for the purpose of labour exploitation is currently occurring in Finland.

4.1 Countries of origin and sectors

According to available statistics (see chapter 2.5), migrant workers come to Finland from many countries – from Estonia and Russia in particular. According to these statistics, the service sector is the dominant employment sector for migrants. In 2005, almost 80 per cent of employed migrants worked in this sector, and 20 per cent in the processing sector (Kauppa- ja teollisuusministeriö 2007, 20.)

The countries of origin of the exploited workers vary according to the data. They include Estonia[31] and other new EU Member States, such as Poland, Bulgaria, Romania, Latvia and Lithuania. The non-EU countries of origin include, in addition to Russia, Ukraine, Belarus, also Turkey, and the countries of former Yugoslavia such as Macedonia, Kosovo, Albania and Croatia. East and South-East Asian countries are also important source countries. These include China, Thailand, Pakistan, India, Vietnam, Bangladesh, Sri Lanka and the Philippines. In addition, some victims come from African and South-American countries.

According to experts who have been interviewed, men end up working mainly in the construction and metal work (shipyards) sectors. For several years, the two largest places of work for migrant labour in Finland have been the Olkiluoto nuclear plant construction site in Eurajoki, and the Turku shipyard, where the activity is currently at a stand-still because of a lack of orders (HS 27.10.2010). Women mostly work in garden and farm work, berry picking and other seasonal work, as well as in the cleaning and service sector. Persons coming from Asia end up working in particular in the cleaning and restaurant sectors and in different kinds of garden and seasonal work.

[31] People coming from Estonia include, in addition to Estonian citizens, also so-called grey passport bearers, or Estonian Russians, who have no Estonian nationality.

According to Andrees (2008), forced labour and human trafficking occur in particular in sectors of work that the locals are unwilling to do, where labour regulation is weak, and where the workplaces cannot be moved to countries with cheaper labour. Such sectors comprise, e.g., construction work, restaurant and cleaning work, transportation and garden and other seasonal work. According to our data, the cases of labour exploitation are often concentrated in these sectors.

The most serious cases of exploitation of migrant workers in Finland have been found in ethnic restaurants (e.g. Savonlinna District Court 20.2.2009). According to the Uusimaa labour inspectorate, many migrant workers in the restaurant sector are underpaid, and problems associated with working hours, working time records, and occupational health services have also been observed. (Uudenmaan työsuojelupiiri 1.9.2009). The Finnish National Rapporteur on Trafficking in Human Beings has paid attention to these problems in the context of the restaurant sector (Vähemmistövaltuutettu 2010, 137). The Service Union United (PAM)[32] receives daily phone calls and requests for help from migrant workers. Of the civil cases PAM is dealing with, nearly one-fifth are related to immigrant members of the union, while their share of membership is only 1.5 per cent. (PAM-lehti 28.3.2008.) In the restaurant sector, both sub-standard wages and undeclared cash payments have been observed. According to an estimate by Hirvonen et al. (2010, 3), of the approximate 670 million euro in undeclared turnover of restaurants in 2008, the sum of about 270 million euro was used to pay undeclared wages.

Irregularities and exploitation of migrant workers occur also in the construction sector. The proportion of migrant labour in the construction sector has remained at an almost unchanged level even during the recent recession; about 15 per cent of the total labour force of the house building industry is made up of foreigners. At least half of the migrant workers in the construction sector are not paying taxes in Finland for various reasons, and according to Hirvonen et al. (2010, 3), this corresponds to an annual minimum of 400 million euro of untaxed salaries. The Finnish Construction Trade Union inspected 50 facade renovation sites in the province of Uusimaa in the spring of 2010 discovering that the proportion of migrant workers was as high as 64 per cent on the worksites (Mestalla.fi 26.5.2010). The National Rapporteur maintains that the situation of migrant workers in the construction sector is often rather weak (Vähemmistövaltuutettu 2010, 135). The Uusimaa labour inspectorate found that the number of nationals of third countries (such as Estonian Russians) posted from another EU/EEA country was larger in 2009 as compared to earlier years, and that often the main contractor was not aware of the legal basis of their right to work in Finland. In the construction sector, migrant workers often experience irregularities and problems related in particular to the payment of wages and working hours. (Ulti-tiimin raportti 2010, 2.)

[32] PAM is a trade union for private service sector workers. It has over 228,000 members.

4.2 Victims and exploited workers

The victims of human trafficking for forced labour and labour exploitation comprise a diverse group of women and men of different ages, coming from different parts of the world[33], whose education, language skills and motives to work in Finland vary. This study is mainly focused on migrant workers who have come to Finland for work. In principle, most of them have volunteered to come, and have actively sought employment in Finland.

With regard to their exploitation, their initial consent to move and work is irrelevant. What is vital instead, is that they have been deceived, they are dependent and vulnerable, and that their work and leisure time have been under the control of others. In other words, they have been exploited by their employers or recruiters or other intermediaries.

This study shows that migrant workers who have been exploited in Finland have different legal statuses. Some may have workers' residence permits, others haveresidence permits, or still others may be asylum seekers, or posted workers. In the majority of cases found in this study, the persons have entered Finland legally. However, sometimes the legal status may shift into an irregular one. A person may remain in Finland, for example, after a tourist visa, a worker's residence permit, an entrepreneur's residence permit, or a student's residence permit has expired (so-called "overstaying"), or if that person receives a negative decision to his/her asylum application. Sometimes, persons also arrive in Finland without the necessary documents, for example with a passport that is forged or belongs to another person, or without any papers at all. It has also been observed that clandestine labour is increasingly arriving from non-EU countries not only within the region adjacent to Finland, but also from the Far East (Hirvonen et al. 2010, 70.) In some of the cases that were studied the person's legal status remained unclear.

Migrant workers come to Finland for different reasons. Some of them come explicitly to work, others for other reasons (such as to be united with their families). Some come to Finland on purpose, while others end up in Finland more or less by chance. In the majority of the known cases of exploitation, the persons have come to Finland on purpose and explicitly in order to be employed. Generally speaking, people go abroad in the hope of a better life and better wages (see e.g. Viuhko & Jokinen 2009, 43−46). The situation is rarely one where the person is actually forced to leave the home country. In most cases, people are escaping a weak economic situation and looking for a better life. To receive a permanent work permit is also a great attraction for many persons coming from outside of the EU. The persons leaving their home country want to earn money for their families, and they are prepared to invest a lot of money in travel and other expenses, as they expect to receive good wages (at least in

[33] In our data, no concrete cases were found where the exploitation victims were children (minors).

comparison to the local salary level). Moreover, “successful examples” motivate others to seek work abroad: the successful example refers to other people who have made money and return home displaying their success. Despite the possibility that the person in question has been working abroad for sub-standard wages and has been exploited, his experience may still be an example for others to follow suit.

According to the experts who were interviewed, the educational background of the migrant workers who have been exploited in Finland varies. In low-salary sectors, mostly there are no strict requirements as to education or language skills. In our data, cases were found where the persons worked in Finland without any knowledge of the Finnish language whatsoever, and with very poor knowledge of the English language. However, some migrant workers may have educational qualifications. The expert interviews also showed that some of the migrant workers may have a certain education on paper, but in practice these persons prove to be unskilled. On the other hand, migrant workers have experienced the problem that despite their education, they are not employed in Finland in occupations that would correspond to their education (notwithstanding possible promises).

Deceiving the migrant worker about the terms of employment and the contents of the job is relatively rare according to the interviewed experts. In general, the workers have been given a rosier picture of the work and the salary and the deceit has not necessarily been blatant. However, even a minor deception can be a sign of work-related exploitation if other indications of exploitation are also found (see ILO 2009b). These signs include excess fees for visas, providing the worker with fake travel documents, recruitment for a non-existent job, misrepresenting the work conditions, and making the worker indebted (ILO 2006, 21).

4.3 Perpetrators

There were different views among the interviewed experts as to whether the perpetrators (employers) are mainly of Finnish or of foreign origin. Some were of the opinion that the exploiters are mostly foreigners (or with a foreign background), while others thought that the majority of the exploiters were Finnish persons and representatives of Finnish enterprises. This emerged also in the court and media materials. It seems that employers with a foreign background usually recruit workers from their own native country and home region, and then exploit them economically, i.a. in the form of salary discrimination. A representative of the labour protection and permit authority who was interviewed emphasised that persons from the same country know best how to exploit their countrymen. The same idea was also expressed by a victim support provider, who said that an employer or contact person from the same country knows what kind of circumstances can be imposed on the victims, and how they can be controlled.

Our data indicate that the exploitation of migrant workers occurs in enterprises of all sizes – in small family businesses as well as in larger firms. Nonetheless, it seems that cases of exploitation are most common in smaller enterprises and in particular in the restaurant and construction sectors.

Exploiters may also be private persons who discriminate against their domestic servant, for example. Also, ex-victims may become exploiters if they start a business of their own and replicate the model of recruiting persons from their home country and subsequently exploit them.

In addition, the interviewed experts had different opinions as to the level of consciousness of the criminal employer in the undertaking of his/her activity. All of them thought it was clear to the Finnish employer that when he or she engages in labour exploitation, it is systematic and constitutes a criminal activity. The experts had however different opinions as concerns employers with a foreign background. Some of the experts maintained that foreign employers may not always be aware that they are breaking the law, and that their activity may not be entirely deliberate.

> I mean that the employer is not aware that he/she is committing a crime. So I think this is at least one reason that explains why these crimes are [more prevalent] among the foreigners, but it may also be that the employers do know about these, and I'm sure they do. This is just one kind of speculation that they don't know labour law. (Criminal investigation authority)

> AJ: Do you think that in those most glaring cases in which the countryman is being exploited, that the employer is also ignorant, or is he/she fully conscious that he/she is trampling on the terms of employment?
> I: I guess if it is the employer directly, so that there is no middleman in between, then the employer must know what he/she is doing. (Labour inspection and permit authority)

Many of our interviewed experts were not able to offer an opinion as to whether human trafficking for labour exploitation or the exploitation of migrant labour could possibly be related to organised crime; or at least they had no knowledge of indications pointing to organised crime. However, they did not completely exclude the possibility of involvement of organised crime, but the only sector which was explicitly mentioned in this context was construction.

4.4 Recruitment

In Finland, public debate on work-related immigration has been largely determined by the notion of the impending lack of labour force in sectors with low salaries, and of the need to recruit foreign labour to the construction, health care, transport, and cleaning sectors (Simola 2008, 26, 37).

Recruitment is the process of identifying a worker for employment. Recruitment channels may be divided into three categories: official sources of labour, direct contacts, and informal sources of labour (Raatikainen 2004, 21). This study confirms that these three channels are used in recruiting migrant labour to Finland.

In 2003, the most common recruitment channel of migrant labour to Finland consisted of direct contacts between employers and people seeking work, and the official employment office (Raatikainen 2004, 60). The reliance on private employment agencies has however become more common in recent years (Sisäasiainministeriö 2009). According to a study on the temporary employment of migrant workers' in Finland, private employment agencies and companies which act as brokers for agency workers play the biggest role in the recruitment process, as opposed to employment authorities. In the construction and metal industries, in particular, recruitment agencies play a leading role. (von Hertzen-Oosi et al. 2009.)

The further away the worker comes from, the more likely it is that there is a middleman behind the immigration. According to Valve, it is common that Chinese migrants come to Finland via recruitment agencies (Valve 2009, 13).

According to our study, the recruitment of migrant labour seems to be divided roughly into two categories: recruitment in which recruitment agencies serve as intermediaries[34], and a more small-scale recruitment that takes place via the family, relatives, or acquaintances.

> There has either been a middleman, some recruitment agent, or there has been some family relationship or some other acquaintance relationship. (Victim support provider)

Our interviewed experts only rarely mentioned official employment authorities as sources of recruitment. Instead, some of them mentioned, in addition to recruitment agencies and family members, different kinds of middlemen and unofficial intermediaries.

[34] This comprises both the recruitment of agency workers to be placed in the client business, and direct recruitment of workers to be directly employed by the client business.

4.4.1 Recruitment through private employment and recruitment agencies

In recent years, the role of official employment agencies has diminished all over the world, and an entire new industry of recruitment agencies and firms acting as brokers has emerged. In the recruitment business, one type of actor is the multi-national or national enterprise with offices in different countries. Operating in different sectors, such enterprises are brokering large numbers of workers and jobs. Simultaneously, there are also many smaller firms that tend to operate in only one area, industry, or occupation. (Martin 2006, 15.) As the demand for labour increases, the supply of migrant labour recruitment and agency worker services seems to be on the increase as well. This is the case also in Finland (INSITE 2010).

When asked about their views on the exploitation of migrant labour in Finland the experts explicitly made comments relating to the recruitment of exploited workers, and to the role of brokers and middlemen relevant in this particular context.[35] Some of the interviewed experts were not aware of the systematic recruitment of migrant labour or had only heard rumours of brokers and high fees. It is suspected that recruiters or middlemen may be behind migrant workers coming to Finland, but reliable knowledge about this does not always exist.

Several interviewed experts referred to the recruitment of Chinese workers and related problems. Indeed, the best known example regarding the use of recruitment agencies and firms acting as brokers is probably the case of the recruitment of workers from China by one Finnish cleaning company, and the problems that have been related to this (e.g. HS 20.6.2008a; HS 20.6.2008b; Hs 2.3.2009; HS 5.5.2010).

The cleaning firm used a Finnish recruitment agency to recruit workers from China. The recruitment agency's Chinese partners undertook to find suitable workers at the local level in China. According to the police, the Finnish recruitment agency had three main partners in China, but these in turn had hundreds of local partners in different parts of China (Savon Sanomat 29.10.2009). One of the recruited Chinese workers said that a firm specialising in employee recruitment had persuaded him to come to Finland. This Chinese broker promised employment for several years, and the right to stay permanently in Finland after four years. (HS 20.6.2008b.) In China the workers signed work contracts in the Finnish language − even though the Chinese workers did not understand the language − in which the Finnish cleaning company was entered as the employer. Some of the workers also made an identical, but parallel Chinese contract with the Chinese broker in which they committed to pay a fee of about 8,000 euro to the Chinese party (fees of up to 13,000 euro have also

[35] The use of recruitment agencies for the recruitment of migrant labour is not as such a negative thing. Problems however emerge if oversized service or other fees are charged, or if the workers are deceived concerning the type of work and the employment opportunities.

been mentioned), and not to tell anyone about this parallel contract. (PAM 4.7.2008.)

Additionally, at least some of the workers paid a recruitment fee and language course fees in China (HS 20.6.2008b). When the workers arrived in Finland, the Finnish recruitment agency provided accommodation, organised training for them to become acquainted with the work, and courses in the Finnish language, and helped the workers in practical matters. The cleaning company had agreed with the recruitment agency that the fees charged from the Chinese workers would be reasonable. The workers paid the recruitment agency nearly 300 euro in rent and 250 euro for the language course each month. The language course was obligatory even when there was work to do. The owner of the Finnish recruitment agency also threatened the workers with termination of employment if they refused to pay the monthly language course fee. The workers earned about 1,000 euro per month from the cleaning work, half of which had to be paid to the recruitment agency in different fees. However, some of the workers did not receive any kind of work, and some of them were given notice during a probationary period. (PAM-lehti 4.7.2008; see also Helsinki District Court 31.12.2009.)

Police initiated a crime investigation into the case in 2008. The managing director of the Finnish recruitment agency and his wife were to be prosecuted for extortionate work discrimination. According to the prosecutor, they charged excessive service and training fees from nearly 60 Chinese persons. The Finnish cleaning company was not prosecuted since it could not be proven that it was responsible for the actions of its partner, or guilty of labour exploitation. (HS 5.5.2010.). The trial is set to begin in 2011.

In this case, the recruitment agency used Chinese subcontractors in China. A new feature which has emerged in the employment recruitment business is the linking of different tasks into chains, in which firms act as subcontractors to other firms. In this way it is possible for a Finnish recruitment company to buy services directly from a broker agency operating abroad (Lith 2009, 37). The use of subcontractors is problematic if the chains are extensive and thus the company buying the services cannot be certain of what the workers have been promised and whether they have been made to pay recruitment fees.

> There's the Finnish employer, and then there's the intermediary, and then there's the Finnish intermediary, and then there's still the intermediary in China. And the Chinese broker may have still something, like his own routes over there, so then this Finnish employer takes quite a big risk, in the sense that the information about the terms of employment − even from the last middlemen − is correctly transmitted to the employee. (Victim support provider)

The workers may not be fully aware of who the different parties involved in the recruitment process really are, and what their roles are. Some of the interviewed victims told the following about their recruitment:

> I1 & I2: We saw an ad in the local newspaper, and we went to an interview. There was the broker's agent and many people, very many people came there to be interviewed, there was also [X] from Finland. [Later] there was another employment interview, and [a few days later] we were told that (…) we have been accepted and we are to be employed. (Two victims)

4.4.2 Recruitment fees

The excessive and mostly illegal intermediation fees paid by the migrant workers are a global problem (Baruah 2006, 39). Many persons looking for employment are ready to pay large fees, if labour migration is cumbersome, and if there are more applicants than jobs (Martin 2006, 17).

ILO's Convention No. 181 on Private Employment Agencies of 1997 prohibits private employment agencies from charging fees or costs to workers (art. 7). According to the Finnish law on labour force services, employment services that directly aim at employment must not be charged to the client if the client is a natural person (Law on labour force services chapter 4 § 16). Charging a fee for employment agency services is also criminalised in the Finnish Penal Code (47 6 §: Employment agency offence).

In some countries, such as China, (certain) broker fees are legal (PAM-lehti 4.7.2008), and employment services are mainly provided by the State (HS 18.6.2006). In the case of the Chinese stone workers, the Finnish employer paid part of the salaries to China to a local recruitment agency that was to keep part of the salaries as recruitment fees. In reality, the money was paid to the bank account of a private person who transferred some of the money to the accounts of the stone workers' families, but kept the rest of it. The middlemen earned about as much as the stone workers themselves. (HS 18.6.2006.)

Recruitment fees are not only charged to Asians, but also to people coming from Estonia who may have paid for the recruitment. An NGO active in Estonia has identified about 70 recruitment agencies that charge fees for their services (Living for Tomorrow 2010). According to Estonian law, it is illegal to charge fees for employment services, but the firms are dodging the law by charging for the translation of CVs or for placing the CV in a labour force register they are maintaining (Kask & Markina 2011).

Some fees related to recruitment may be fully legitimate, but the real question is: where is the threshold of excessive (and illegal) fees? For example, some of our interviewed victims were made to pay different amounts in recruitment fees in order to come to work in Finland.

> MV: Had you paid some sort of recruitment fee [in the home country]?
> I: Yes.
> MV: How much?

> I: Including the air tickets and all necessary costs, it cost about [10,000 euro].
> MV: How did you get the money for this fee? Did you have savings or did you need to borrow?
> I: I have borrowed from outsiders, and that's how I got this money, and I still haven't paid it back. (Victim)

Our data reveal one case where a person dealing in recruiting migrant workers for Finnish employers has been sentenced for labour exploitation-related crimes (Helsinki District Court 22.11.2006). The recruitment agency marketed the students to Finnish employers as interns who were to be paid only a monthly salary of 510 euro for an internship related to their studies (ibid). According to newspaper sources, Bulgarian, Latvian and Polish students were persuaded to come to summer jobs corresponding to their own line of study in Finland in 2004. The students were sent to work on construction sites, in food manufacturing and industry as interns, even though the work had no connection to their studies. The students testified that they had been promised monthly earnings of 1,000−2,000 euro, but the real salary was 510 euro per month. After costs for board and lodging, they were left with no money at all. (HS 18.3.2006.) Furthermore, the foreign partners of the Finnish recruitment agency charged the students 600−800 euro for recruitment and employment service fees. Of this, the Finnish recruitment firms received 400−500 euro. In addition, the students did not have the required work permits. (Helsinki District Court 22.11.2006.) No language training or cultural programme that the Finnish recruitment agency had promised was organised, and the students were made to work long hours, as much as 15−16 hours a day (HS 18.3.2006). The director of the Finnish recruitment agency was handed down a three months suspended sentence for instigation to extortionate work discrimination, for employment agency offence and marketing offence (Helsinki District Court 22.11.2006).

According to the National Rapporteur, the students had borrowed money from their relatives and families in order to pay for their trip. Some students in the pre-trial investigation materials testified how they were unable to terminate their work in Finland because they had run into debt. The National Rapporteur also points out that the families of the students had been threatened, and that the students had been promised a work permit if the employers were satisfied with their input (Vähemmistövaltuutettu 2010, 137.) In this way, the worker can be put into a dependent situation and into a debt relationship already in the home country.

In addition to recruitment fees, migrant workers may need to pay different adjustment and education fees. According to a study of the activities of the member firms of the Private Employment Agencies Association, 38 per cent of the firms had also offered to workers recruited from abroad adjustment, education and/or training to acquaint the workers with the work. (INSITE 2010, 9). The author of the study emphasises that "well organised and successful adjustment services may be seen as one of the cornerstones of ethical recruitment: the employee must have the right to be taught the essentials of the

work and the right to adjustment, and in this way to successful integration" (ibid., 14; translation by the authors). At the other extreme we find situations where the services are nothing but a means of exploitation through the collection of excessive fees.

4.4.3 Family and acquaintances as recruiters

Relatives, family and acquaintances play a large role in many of the examples contained in our data. It is easy to be in contact with relatives, they are better trusted, and the networks already exist both in the home country and in Finland. It is not always clear whether there is a legitimate need for labour behind the person's coming to Finland, or whether coming to work in Finland is merely an attempt to get around the immigration regulations by arranging for a relative to get a worker's residence permit. The data show, for example, that some of the persons employed as domestic servants or restaurant workers are relatives of the employers. A situation where the person comes to Finland as a chef in an ethnic restaurant, but has no corresponding training or work experience, is an example of these kinds of arrangements.

In particular, in the case of ethnic restaurants, workers are recruited through the employer's acquaintances or relatives in the home country. One method that is used is where the employer asks a relative or acquaintance in the home country to identify a suitable worker in the region. The employer is then in contact with that person, and agrees on the salary and other benefits.

In many cases, there are also – naturally – relatives who are domestic workers and nannies employed in homes. According to one interviewed expert, it may not be a case of organised recruitment as such, but rather a way to organise bringing in relatives into the country under the camouflage of work. However, the question must be asked as to what degree work performed in households contains exploitation, especially as the family or other ties facilitate dependence and vulnerability. Our data has a couple of examples from cases where domestic servants working in private households have been exploited (Keskisuomalainen 9.4.2008). According to OSCE, this group is particularly vulnerable to exploitation (OSCE 2011, 11−16).

According to our data, the recruitment of foreigners residing in Finland seems to be a relatively marginal phenomenon in the context of exploitation of migrant labour. Asylum seekers have the right to work after they have spent three months in Finland. Many asylum seekers seek jobs and hope to find employment, since work gives them the chance of a more independent life as compared to the life they have in the asylum seeker's reception centre (Himanen and Könönen 2010, 57). Asylum seekers are, however, at particular risk of exploitation because of their status. The data contain at least two cases where the victims of exploitation have been asylum seekers.

In addition to relatives and acquaintances, our data also point to other kinds of persons who can be recruiters or facilitators of the recruitment. These are not

necessarily official actors or firms but different kinds of middlemen and intermediaries who help with the recruitment.

4.4.4 Responsibility and prevention

The regulation of employee broker activities is practically non-existent in Finland (Työministeriö 2007a, 23−26). The Private Employment Agencies Association has prepared guidelines concerning the recruitment of migrant workers ("Guidelines regarding the recruitment of migrant workers in the private employment agency sector"). The Association recommends direct recruitment instead of the use of subcontractors. The Association also requires that its member firms do not charge recruitment fees or other excessive costs to the workers. Furthermore, the guidelines stipulate that the member agencies should properly arrange work permits and accommodation and also provide support for the employees' integration in Finland. The workers are also to be paid wages that at the minimum correspond to the standards in the collective agreement. (ibid.) According to the interviewed experts, problems are caused in particular by foreign subcontractors whose activities cannot be controlled from Finland.

Furthermore, the Association recommends that migrant workers should be recruited directly in order to be employed by the Finnish employer. If a subcontractor is relied on, great care should be taken in the choice of partners. Furthermore, the partners should be required by contract to follow the guidelines of the Association (HPL 2009, 3). According to an interviewed expert, the responsibility of the employer should be defined more clearly so that the private employment and recruitment agencies are not able to exploit the worker. This may not be easy in practice, because it is difficult to oblige foreign firms to comply with Finnish rules.

> The legislation is not clear in terms of the responsibility of the employer. The real employer should clearly be responsible for the labour force and for ensuring that the recruitment company is not able to exploit it. (…) Since you cannot charge recruitment fees in Finland, it is quite strange that in China you may end up paying ten thousand for coming to work to Finland – that this would legal. (…) Perhaps the employer should be made responsible for the recruitment to be carried out in a correct manner. (Trade union representative)

According to the interviewed expert, the firm that is doing the employing should be clearly responsible for the terms of employment and for the integration of workers recruited from abroad. However, from the perspective of an employer looking for workers abroad, it is difficult to know what kind of recruitment agencies would be good partners, and which agencies are legitimate. One trade union representative who was interviewed suggested that, in order to diminish problems, only certain certified agencies or agencies officially accepted as partners should be used (see also ILO 2006, 39–42).

According to our data, it would seem particularly challenging to ensure that the recruitment activities in China and in some other Asian countries take place in a legitimate way. Better cooperation between the source and destination countries is therefore needed to prevent possible exploitation of migrant workers (see ILO 2009a).

4.5 Work permits

According to our data, it seems that in most cases the migrant workers who have been subjected to work-related exploitation in Finland have been in possession of the necessary workers' residence permits (subsequently work permits) and visas. Offences focusing on the employment of irregular migrants are rarely used, according to available statistics and our interview data. However, there are some irregularities regarding work permits, as authorities have found that a person can be employed in a different sector than for which their work permit is intended. Thus, for example, a person who has been given a work permit for the cleaning sector can in fact be working in an ethnic restaurant. It is also possible that a person who has received a work permit which is bound to a specific employer is in fact working for another employer. Another similar phenomenon concerns students: the student residence permit allows the person to work 25 hours a week, but some are in fact working on a full-time basis.

In the following section, we discuss the problems related to work permits in the context of the exploitation of migrant labour. We take a close look especially at what information the permit authorities inspect when granting work permits, how the worker may be given a wrong impression about the contents of the permits and, how issues related to the work permits may be exploited by employers (by giving misleading information to the employee, for example).

4.5.1 The first permits

A foreign citizen[36] can apply for a work permit abroad in a Finnish embassy after employment in Finland has been secured. Thus, a person cannot apply for a permit if they do not have a job already. According to current law, the employer files an attachment to the work permit application in which they commit to comply with certain terms of employment, and to pay wages that are in accordance with the collective agreement.

The decision is communicated in Finnish and English, but often the person concerned does not understand either of these languages. For this reason, the interviewed experts maintained that it is often completely up to the employer or

[36] EU/EEA-citizens or citizens of Switzerland do not need to apply for work permits to work in Finland.

the recruiter to decide how much information is given with regard to the promised terms of employment.

The first work permit is valid for one year. It is usually given for a specific sector only (Aliens Act 77 §), for example for the cleaning sector. This means that the worker has the right to change employment within the same sector. The worker may also change jobs and move to a different sector, but in such a case, a new work permit is required. Problems may arise because the experts we interviewed deem it possible that the workers may not be aware that the permit is tied to a specific sector and not to a given employer as they are often led to believe. The worker may thus think that he/she cannot change jobs and is tied to one employer although in fact this is not the case (see also Vähemmistövaltuutettu 2010, 134).

Such a situation may lead to a situation where the worker is extorted by means of the work permit. The person may decide to submit even to very bad circumstances, initially for the first year, because he/she wants to have an extension to the permit which will then be valid for several years (a maximum of four years). After this, the person will be "rewarded" with a continuous residence permit. There is at least one example in the data where a man was willing to "borrow" his salary from the employer (no financial remuneration for work – accommodation and food provided), so that he could stay in Finland and get a work permit (Lahti District Court 18.6.2010).

Work permits tied to a given employer are also granted. For example, work permits granted for posted workers are usually tied to a specified employer because of the temporary nature of their work. This makes the posted workers dependent on their employer (Kontula 2010).

4.5.2 Extension permits

According to current law, the work permit is initially granted for one year, after which the person must apply for an extension. The extension may be granted for a maximum of four years (Aliens Act 55 §), but in practice the length of the extension varies. When a migrant worker applies for the extension, the work permit authorities check that the terms of employment are in order on paper. If the worker has not been paid wages in accordance with the Finnish collective agreement or if they have not worked a sufficient amount of hours (i.a. if the employer has not given him/her enough working hours), the work permit authorities make a negative decision on the basis that the terms of employment are not met. In practice, the migrant worker in such a situation may just have to leave the country, and the exploitation that he/she has possibly experienced does not necessarily come to the attention of any authority. Accordingly, it is the worker who is being punished in this difficult situation, not the employer. The authorities admit that this is problematic.

> Sure, it is kind of sad, that for instance in the case of extensions, if these ambiguities and deficiencies and criteria for a negative decision

> are found to be the employer's doings, it is the worker who suffers. (Labour inspection and permit authority)

The interviewed experts pointed out that it would be important to improve the access to information of the work permit authority as it is currently limited, as well as the overall cooperation between different authorities, in order to be able to find out whether the terms of employment of migrant workers have been followed as promised when the extension of the permit is considered. Our data contain at least a few cases in which enterprises that have been found to have seriously exploited migrant labour have been able to renew the work permits of their employees anyway (e.g. Savonlinna District Court 20.2.2009). This illustrates that difficult questions do indeed exist with regard to supervision.

4.6 Travel arrangements

Generally speaking, the interviewed experts did not have much knowledge of how the exploited workers organise their travel in practice, and how they travel to Finland. The persons providing victim support services had the best information regarding this issue. Court judgements had only little information about how the exploited workers had travelled to Finland and what kind of travel arrangements they had made. It seems, though, that in most cases the exploited workers' travel documents have been in order upon their arrival in Finland.

Our data suggest that individual people who have not paid any recruitment fees are likely to organise their travel on their own. In contrast, persons who have been recruited as a group or in systematic fashion do not handle their own travel arrangements; instead these are taken care of by their employers, recruitment agencies or other intermediaries and facilitators. It seems that in both cases, the persons have paid their own travel costs (including the arrangement in which the price of the air ticket was subtracted from the pay the person earned in Finland, e.g. Vaasa District Court 29.2.2009).

Air tickets and other travel arrangements cost a lot of money especially for persons arriving from Asia, and they may need to borrow money from family, relatives, or from a bank. It must be noted that the price of the air ticket is not always included in the recruitment fees, even if they are very high. Interviewed victims said that the recruitment fees of about 2,000 euro that they paid did not include visa costs, for example. However, other interviewed victims said that their recruitment fee of 10,000 euro also covered the air tickets to Finland and "all necessary costs" (work permits etc.). In addition to this, the fee also included victims' travel costs from their home town to the airport.

> MV: Was it this [native] recruitment agency that acquired the air tickets, the visas and the work permits for you (…)?
> I: A [native] agency.
> MV: You mean you did not buy any air tickets or other travel documents on your own?

> I: They bought them on behalf of us and we gave them the money. (Victim)

With regard to posted workers, the experts explained that the employer usually takes care of all travel arrangements, and pays the air tickets. Persons from Estonia and Russia may arrive in Finland on a ferry, train or coach, or by air. Posted workers can travel back home for vacations every few months, and some employers also pay for and arrange these air tickets. In cases where the employer arranges for the tickets, the worker can only travel when the employer agrees to it. The situation is easiest for those living in near-by countries, for instance Estonians are able to visit home over the weekend.

Chapter 5: Forms of exploitation in Finland

This chapter deals with the forms of trafficking for forced labour and the exploitation of migrant labour that take place in Finland. By presenting concrete examples the objective is to illustrate different ways in which exploited workers and victims and their dependent status and vulnerability have been exploited. The chapter focuses on the methods applied in human trafficking, and the forms that they have taken, using the ILO forced labour indicators as a frame of reference. It is in part these same features that are also made reference to in the background documents to the law on trafficking in human beings (HE 34/2004) that describe indications of a dependent status or insecure state of a victim of trafficking.

While this chapter deals with different forms of exploitation by presenting concrete examples, not all exploitation presented here corresponds to the criminal law definition of human trafficking. The objective of this chapter is to describe the violence, control, exploitation and maltreatment that migrant workers have experienced when working in Finland, according to different information sources. The most serious instances of such cases may be trafficking for forced labour or exploitation resembling human trafficking.

5.1 Physical control

5.1.1 Violence

Perpetrators are able to control their victims by using threats and violence as a means of control. Violence may take many forms: physical, psychological and sexual (see also Andrees 2008, 29). The ILO (2008) lists the following indicators as examples or signals of violence (including sexual violence):

- Does the worker have any sign of maltreatment, such as bruises?
- Does the worker show signs of anxiety?
- Is there any other sign of mental confusion or traces of violence?
- Do supervisors/employers demonstrate violent behaviour?

Violence may be an indication of a situation of forced labour. In the Finnish Penal Code, violence and threats of violence have been defined as criteria for the aggravated form of human trafficking. According to the interviewed experts, it is uncommon in Finland that exploitation of migrant labour involves physical violence. The interviewees maintained that indications of physical violence are rarely observed; psychological violence and different kinds of threats have been used more often.

> But usually it [control] is a bit more subtle, and it is unusual to come across open and visible violence. (Victim support provider).

Two of the interviewed victims had experienced violence committed by their employer during the employment. In addition to these instances, a few cases which were dealt with in court and in the media had indications of violence. In the case of the Vietnamese restaurant in Pietarsaari, the male victim said the owner of the restaurant – his uncle – had assaulted him two to four times per month. According to the victim, the uncle had a hot temper and he had beaten the victim on the head and other places, kicked him in the stomach with his knee, and pinched his ears. As a consequence of the violence, the victim quit his job, but his friends advised him to return, after which the uncle took up beating him again. One day the uncle forced the victim into a van and threatened to kill him. The victim escaped and sought help from his friends. (Österbotten District Court 30.4.2010.)

The leading daily newspaper Helsingin Sanomat reported on 12 March 2010 on a case where a Vietnamese company recruited about 20 workers from Vietnam for a Finnish enterprise manufacturing plastics products. The workers were severely maltreated. They were forced to work 77-hour weeks without leave, they were isolated from the outside world, and they were threatened with being sent back to Vietnam. Furthermore, the Vietnamese men were not allowed to open their pay checks or other mail sent to them. According to Helsingin Sanomat, the case came to the knowledge of the authorities when one worker was beaten for being late for work. (HS 12.3.2010.)

Sometimes, indications of violent behaviour against migrant workers have also been observed in the construction sector and metal industry, but these were, according to the interviewees, mostly exceptional situations. The overall impression remains, though, that violence is a relatively rare phenomenon in the context of exploitation of migrant labour or work-related human trafficking.

5.1.2 Threats

The use of threats may have various forms in the context of labour exploitation. The ILO (2008) lists the following indicators as examples of threats related to forced labour:

- Does the worker make statements which are incoherent or show indoctrination by the employer?
- Do the workers report any threat against themselves, their co-workers or family members?
- Does the worker show anxious behaviour?
- Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse?
- Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities?

According to our data, threats and intimidation are clearly a more common method than physical violence used by the perpetrators to control the employees and the victims. Several interviewees had heard about threats, or at least some degree of intimidation targeting exploited workers and victims. Typically, the threats were targeted towards the employee's family in the home country, but the employees were also threatened with the police, with work permit authorities, or with being returned to the home country.

In some cases, the victims had also been threatened with termination of employment. For example, according to the police investigation in the case of the Chinese restaurant in Savonlinna, the fear of losing their jobs and being returned to the home country was a central reason of why the employees continued working in the restaurant for prolonged periods of time. One of the victims described his situation when interrogated by the police as follows:

> I was told several times by both employers that if I don't comply and do my job, they'll send me back to China right away. Because of these threats, I had to work all the time under pressure. In my opinion, I was in a very subordinated position. (…) In China, I would not have had any employment, and neither did I have the money to go back. I just worked day after day. My situation would have been very insecure if I would have been fired from the job, at least over the first couple of years, because I had no money then. (6700/R/2792/06, 37.)

One common method of controlling the employees is psychological pressure or other means of pressure, as described by the victims in the police interrogations and in their witness statements. A similar situation was revealed also in the pre-trial investigation materials regarding two victims in the case of the Thai garden workers:

> I thought that because we come from the same village [as the employer], I could not believe that I could be exploited in such a way. At first, I also had no clear idea about the Finnish standard of living. Later, when I realised that we had been treated in an unfair manner, I didn't dare to say anything to anybody. Everybody, who had complained about something or threatened to tell somebody, had gone back to Thailand and had not returned. I was afraid that this would happen to me too. (6800/R/4242/08, 39.)

> A relative of [the employer] had gone to my home in Thailand and said that I'll be sent to prison because I have done certain things, and if these things are not taken cared of… My oldest daughter had heard the story of this person and was deeply shocked. (6230/R/2570/08, 12.)

The fear of having to go back to the home country may be based on many reasons: for example, losing face because one has to return home earlier than planned, or the debts waiting in the home country may be the reason why it is difficult for the victims to return home. Victims may also continue working because they hope or have been told that the situation will improve in the future

(Pereira & Vasconcelos 2008, 89–90). One interviewed victim told about the anxiety-inducing atmosphere that the employer maintained by threats, accusations, and prohibitions to do different things.

From the perspective of the Finnish authorities, it is problematic that it may be difficult to find evidence of the verbal threats and the ensuing psychological pressure. Often, threats and pressure may be quite subtle so that the victim need not be told directly that he/she is going to be beaten if he/she refuses to do what the employer says. An expert working in crime investigation described a problem that had become apparent in one investigation:

> It is part of the Chinese culture that one does not say outright what is going to happen, but instead one is made to understand that something bad might happen… and it is not so easy to conceive this as a threat. (Criminal investigation authority)

Surtees (2008, 70) points out that psychological pressure creates certain dynamics in the victim's situation, and due to this kind of subtle control it may be difficult even for the victim to recognise that he/she is a victim of human trafficking.

The victim may also be threatened by dismissal. However, our data indicate that in some cases, the threats occur only after the victim has left the employment and has told his/her problems to the police, the labour inspectors, trade unions or lawyers. In such situations, the victim is made to understand by the ex-employer that it is not a good idea to pursue the case any further. Such threats are made by the employer personally, as well as by his/her friends or relatives. Sometimes, the families of the victims may also be threatened in the home country. In the pre-trial investigation material concerning the Thai garden workers, there is an example of such a case.

> Before my police interrogation, [the employer] said that she is going to know everything I say in the interrogation, and I am going to be made responsible for it, and it is going to be dangerous for me if I say something negative about her or the enterprise… The employer has intimidated my mother and my sister on the telephone, saying that she is going to raise charges against me and the other ex-employees in Thailand. (6800/R/4242/08, 13.)

Also the Finnish National Rapporteur on Trafficking in Human Beings maintains that the perpetrators exert pressure on the victims by threatening that they are going to use violence against victims' family members. (Vähemmistövaltuutettu 2010, 75). Some interviewees had experienced situations where the persons seeking their help had been very scared and did not want their employer to hear about their enquiries concerning salary issues, for example. Also, the Estonian focal point of the Finnish Construction Trade Union said in the TV programme A-studio 25.8.2010 that Estonian construction workers employed in Finland are being intimidated not to join the union, and, especially that the men have been severely threatened when seeking help.

5.1.3 Sexual violence

Sexual violence is a form of violence that is treated separately in this report. According to international research, victims of work-related human trafficking and exploitation may also be subjected to sexual violence and harassment (e.g. David 2010; Surtees 2008a; 2008b). Both men and women may be victims.

Most of the interviewed experts were not aware of cases where migrant workers subjected to labour exploitation have been sexually harassed or sexually exploited. We were told about two cases in which women employed in cleaning work had also been made to suffer some degree of sexual exploitation. In one of the cases, the "boss" of the woman had tried to force her to have sex with him, while in the second case, the employer had offered the woman an apartment, but also requested sexual services from her. Another interviewed expert had also heard of individual cases that had involved some degree of sexual harassment.

We found one serious violation of the employee's reproductive health and rights in the cases we studied. In this case, the employer forced the employee to have an abortion by letting the employee understand that the child and the pregnancy were an obstacle with regard to her employment.[37]

The interviewed experts had not heard of sexual violence or harassment against male employees in Finland. Surtees (2008a, 70–72), found, in a study concerning Belarusian men who were victims of forced labour, that sexual exploitation was found in about one per cent of the cases.

In the context of exploitation of migrant labour, sexual violence appears to be uncommon in Finland. However, it is presumed that sexual violence and harassment directed at migrant workers is a very delicate issue, and that the victims are not likely to tell authorities or even victim support providers if they are contacted for other reasons. It is a different matter entirely to request redress for undue wages in court than to disclose that one has been subjected to sexual exploitation.

5.2 Other means of control

5.2.1 Restriction of movement, and control over employees' free time

One indication of the subordinated position of the exploited employee or the victim is that his/her freedom of movement is restricted, and that he/she is not allowed to spend leisure time freely. According to ILO's (2008, 19) definition, restrictions of the employee's freedom of movement are one of the core

[37] In order to protect the anonymity of the victim we are not including the reference/source of this information

indicators of forced labour. ILO lists the following questions as examples of how the employee's freedom of movement may be restricted:

- Is the worker locked up at the workplace?
- Is the worker forced to sleep at the workplace?
- Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?
- Is the worker constrained to leave the workplace?

In practice, for example, shutting the employee in the workplace or restricting his/her movements to a certain area or in specific ways are indications of forced labour as explained by the ILO definition. Isolating the employee from the surrounding society is a means by which the employer or the exploiter attempts to maximise the benefit they get from their employees' work performance. (ILO 2005b, 20.) If the freedom of movement is restricted in different ways, the outcome may be that the employee is being subjected to total control, and is thus unable to refuse work, or to quit work. If the employee has no choice in terms of refusing to work, to quitting, or to being paid, this may be seen as an indication of human trafficking for the purpose of forced labour (see HE 94/1993).

The National Plan of Action against Trafficking in Human Beings of Finland also gives examples of what the restriction of the freedom of movement might involve: being locked up in the work or housing premises, and not being allowed to move about alone outside of the permanent place of work/residence (Työministeriö 2007b, 77). The employees' freedom of movement is indeed partly connected to their housing, since if the persons also live in the workplace it is difficult for them to do anything without the employer's knowledge. Equally, if the persons are living in an apartment provided by the employer, from where they are transported to the workplace, their freedom of movement during their leisure time may also be controlled in a comprehensive manner. One interviewed expert described a situation where the employer had controlled the employees' movements in a very concrete manner:

> The employer was controlling their movements, for example so, that if the person needed to go to a grocery store, he/she was made to show what is in their shopping bag, sort of to prove that he/she had really been shopping. So there was − not quite a doorman - but sort of anyway. These kinds of small things are used to control their movement. (Victim support provider)

In the expert interviews, no cases were mentioned where the employees were physically locked up in the workplace. Instead, other kinds of restrictions were applied to prevent/control employees' movement outside of the workplace. In the expert meeting organised by HEUNI in February 2010, one case was mentioned in which the employees had possibly been guarded at the workplace, but no further data of the case could be obtained.

Generally speaking, our data did not contain extreme cases in which the employees' freedom of movement had been restricted in an aggravated manner. The control used was often subtle and difficult to identify by any outside observers. However, subtle psychological control may be equally – or even more – threatening from the perspective of the victims than cruder means of control. When such a situation is combined with the employee's ignorance and unfamiliarity with Finnish society, the employer is able to keep the employee under his/her control with discreet methods that appear almost invisible to the outside observer.

> Concrete physical restriction of movement is not typical, rather people are being told to stay in given places. [The control] is more psychological. (Victim support provider)

Our data indicate that the employer may also minimise the length of employees' free time by demanding very long working hours. According to one expert interview, the consequence of this is that the workers use the little leisure time they have mainly for sleeping, and will often not have the energy, for example, to learn Finnish.

Furthermore, a long distance between the place of accommodation and the workplace may restrict both the use of the employee's leisure time and his/her freedom of movement. This issue has been discussed more extensively in the context of cleaning work, for instance. The problem is that the cleaners' jobs may be located all over the greater Helsinki region. Because of this, travel between different places consumes a disproportionate amount of time, while the pay received is only for the hours spent on the work itself.

In the HEUNI expert meeting of February 2010, some experts explained that they have received phone calls from employees who are not always even aware of where they are, geographically speaking. This, of course, hampers attempts to get help. Consequently, the persons concerned may not have any idea of where to find the nearest police station or the nearest bus stop if they are somewhere in the Finnish countryside.

Berry farms and gardens are often located in places where it is practically impossible to move around without a car, and therefore the workers may be unable to leave the vicinity of the workplace during their scarce leisure time. In the case of the Thai garden workers, the employees were in theory able to leave the workplace on the farm where they were also accommodated; not all of them however had a driver's licence, and they also lacked the local knowledge that would have made it possible for them to move around in the area at will. In the following, we cite the pre-trial investigation material where two victims described their situation:

> While I was on the farm, I had no freedom to go where I wanted. I think that the employer did not want us to meet other Thai people, and this is why the employer had prohibited us to leave the area. Once we have walked on the road the distance of about one kilometre. (6800/R/4242/08, 12.)

> Free time has in practice been spent by resting after the day at work. If I have for example worked in the field until 18 o'clock, I have then cooked dinner for all employees, and after that I also cleaned the place before bedtime. As I have told, there have been seven working days to the week, so that there hasn't even been a real day off (…) No leisure time activities have been organised. [The employer] forbade us to meet anybody from Thailand. I guess he/she was afraid that we would tell them about our working conditions, and that we on the other hand would have learned about their working conditions. (6239/R/2570/08, 28.)

The victims also explained that they thought that in particular their lack of knowledge of the Finnish language was a factor that strongly restricted their moving around. For this reason they felt that they could not move away from the employer to go and live in the city, for instance (6239/R/2570/08). One of the interviewed victims also explained that even if they had been able to move around in their leisure time, they felt that the lack of language skills and ignorance about the environment would in fact have isolated them from Finnish society. It is also conceivable that their difficult financial situation is in practice isolating the victims from society since they cannot afford to participate in, for example, language courses or other commercial leisure time activities.

In the case of the Chinese restaurant in Savonlinna, the victims had been forbidden to visit the other Chinese restaurant in town, or to have any kind of contact with its employees. Furthermore, the victims were discouraged from learning Finnish or talking with Finns. The victims suspected that the reason behind this was that the employer wanted to isolate them from Finnish society and keep them in a state of ignorance about their own rights as employees, for instance, and about the minimum wages in the restaurant sector. (6700/R/2792/06.) During the police investigation, one of the victims described the situation as follows:

> When I repeatedly asked if there was any school or other place of education where I could study Finnish, the owner couple always answered no. My impression is that I was effectively deceived regarding this matter. The couple disliked it when in some situations I tried to speak Finnish. They would always interrupt these situations. I was not even allowed to talk with the Finnish customers. They did not want me to learn Finnish. (6700/R/2792/06, 57.)

Prohibiting an employee from learning Finnish is a concrete method by which the employer is able to control the victim's communications with other people (both at the workplace and during leisure time). For example, there is a continuous flow of Finnish customers in ethnic restaurants, but due to the lack of a common language, the communication remains at a level where information exchange is difficult or even impossible. The same problem occurs when labour inspectors inspect ethnic restaurants. If the only person who can act as an interpreter in the situation is the employer, the inspector is unable to tell to what

extent the communication with the employees is truthful. The employer may translate what the employees are saying in any way he/she wants, advise them to say that the salary is a given size, or even threaten them not to tell anything.

Kaikkonen (2008) takes up the case of the European Court of Human Rights (Siliadin vs. France) as an example of a case where the situation may be defined as forced labour even if the victim's freedom of movement has been restricted by other means than locking him/her up in the workplace. In this case, a girl from Togo was allowed to leave the apartment where she was working as a domestic servant, for example, when she took the children to school; she was also allowed to go alone to church on exceptional days. The European Court of Human Rights however argued that her age, her vulnerability, lack of resources and fear prevented her from going to the authorities and asking for help when she departed from the house. In a similar vein, the Court concluded that, because of the length of her workdays she had no freedom of movement and no free time during which she could have left the house. (European Court of Human Rights 2005.) Kaikkonen observes that based on this example the case may constitute forced labour also if the person is allowed to move freely, and thus would – in principle – be able to seek outside help. (Kaikkonen 2008, 47−48.)

5.2.2 Accommodation

Sub-standard housing conditions may be seen as an indicator of exploitation of migrant labour, or as an indication of a dependent status. The Government law proposal (HE 34/2004) states that the dependent status may result from being a tenant or being in debt. Kaikkonen (2008, 48) maintains that issues related to accommodation may also be considered to be linked to the restriction of free movement. In her opinion, it is necessary to take account of cultural factors when assessing the housing question. Since migrant workers may be accustomed to accommodation standards in their home country that are more modest than those in Finland, they may accept lower standards in Finland. (Ibid.) The National Plan of Action against Trafficking in Human Beings of Finland identifies deficiencies in housing conditions, or the fact that the person is accommodated in the workplace, as indicators of an exploitative situation. (Työministeriö 2007b, 77.)

Our data include many examples of accommodation circumstances in which the exploited migrant workers have lived. Generally speaking, there were great variations in the circumstances of accommodation. At best, the accommodation is equivalent to Finnish standards, perhaps slightly more crowded than usual. At worst, the circumstances can be considerably below normal Finnish standards: the employees live in the workplace or in barracks, tents or sheds that lack sufficient hygiene and washing facilities, running water, or even electricity.

It is usual that the rent is high in comparison to the housing that is provided, and that several persons are accommodated in the same apartment, each of them paying a fixed sum regardless of how many persons are actually living in the

apartment. Thus, the employer is able to maximise the profit, and utilise the apartment as efficiently as possible.

> Say, you've got twenty men working, and you rent a small flat and pay a rent of four, five hundred euro for it, and then you make each of the men to pay the same rent legally, so you make a profit from the 19 extra persons. (Trade union representative)

> Eight persons share a two-room flat, they've got beds in two levels, and they sleep in turns. (Victim support provider).

The newspaper published by the Finnish Service Union United reported on a case concerning Thai women working in a spa in the region of the Capital. Five women slept in the same one-room flat rented by their employer: one in the bathroom, one in the kitchen, and three in the main room. (PAM-lehti 8.10.2010.) Also the newspaper Ahjo of the Finnish Metalworkers' Union (9/2007) has reported on a case where four men working in the Turku shipyard were made to pay 600 euro per month each in rent to a subcontractor for an apartment with an actual rent of 300 euro per month. In these examples, the employers who provided the accommodation made a significant profit from putting employees up in such circumstances. Also some of the interviewed victims had been in a similar situation. They told about their experiences as follows:

> MV: Was there accommodation waiting for you here?
> I1 & I2: Yes.
> MV: What was it like?
> I1: He [the representative of the recruiter] got for us a one-family house [in area X], a two-storey one-family house where all twelve of us were staying.
> MV: Did you have your own rooms?
> I1 & I2: There were two to three persons in each room.
> I2: Five rooms in all.
> I1: There were immediately discrepancies to what he had said earlier. In [home country] we had been told that the price of a room was 250-300 euro per month, but as soon as we came to Finland we were told that each person is to pay his/her own share which is 250−300 euro. We wondered whether it is really possible, that one room like this can be that expensive. (Two victims)

In the construction and metal industries, experts maintain that there are indications of workers being housed in spaces targeted for renovation, barracks, staff recreation facilities, or in storage areas at the workplace.

In the case of the Chinese cleaners, widely publicised in the media, the rental apartment of the employees was provided by the company that had recruited the people from China to Finland, and not by their employer (MOT 24.11.2008). Some of our interviewed victims had encountered similar arrangements. Such an arrangement may indeed be common in situations where the employees have

been recruited as a group through a recruitment agency. Consequently, the same persons who may have been made to pay illegal recruitment fees in their home countries are at risk of having to pay overpriced rents to a Finnish recruitment agency.

Seasonal workers, in particular, seem to be in a very dependent position with regard to housing, and our data indicate that their housing conditions are also the worst. This may be specifically related to the temporary nature of their employment. During their short stay, seasonal workers may be ready to accept sub-standard accommodation to minimise their own accommodation costs. However, often there are no alternatives available, even if the employee would wish to have better accommodation. Newspapers have reported extensively how, for instance, wild berry pickers from Asia stay in the wilderness in old worn-out village schools that may lack electricity or running water (e.g. HS 2.8.2010; HS 11.10.2009).

Similarly, migrant workers employed in berry farms and gardens are made to live in the workplace or its immediate vicinity, in sheds, trailers, or tents. In such circumstances, the employer is also able to monitor his/her employees outside of working hours. Such arrangements facilitate practices where employees are ordered to take an unpaid break from which they can then be called back to work when needed.

Accommodation provided by the employer is indeed one very concrete way of keeping the employee under a certain kind of control and dependent upon the employer. It is difficult for the workers to change jobs since they would also have to give up the accommodation. Also Anderson and Rogaly (2005, 39) maintain that accommodation is a factor that reinforces the dependent status of the victim: employers or intermediaries make the persons continue to work by exploiting this dependency.

The National Plan of Action against Trafficking in Human Beings of Finland states that with regard to accommodation, one should pay attention to, i.a. the housing conditions, location, price, the number of occupants, the terms of the contract (written contract), and who has access to the apartment, and whether the person has his/her own keys (Työministeriö 2007b, 81). In our research material, there are some examples of situations where the employer had access to the employee's apartment, or where the apartment was used partly as a storage space. In the case of the Chinese restaurant in Savonlinna, the employees were living in a flat across from the restaurant where they worked. The flat was rented by the employer, and was also used as a storage space for the restaurant. It was used, i.a., to store alcohol and beverages, rice and deep-frozen foodstuffs, for which several large freezers were placed in the flat. Over the years, several employees of the restaurant lived in the apartment. According to the pre-trial investigation material, the employers had a key to the flat, and they sometimes came in to fetch supplies for the restaurant. However, it was more usual that the employees brought the supplies to the restaurant when they went to work. One of victims described their housing arrangements like this:

> Interrogator: Were you satisfied with your accommodation?
> Victim: No. Our apartment was the storage room of the restaurant. There were bad smells, and there were a lot of many kinds of foodstuff that I was to carry to the workplace always when I went to work. Because of the smells, the window had to be kept open practically all of the time. There were several employees accommodated in the flat. (6700/R/2792/06, 79.)

Another victim had at first to live in a so-called "tofu factory" that was an old railway stop where the owners were running a tofu business. After more than a year, he was able to move into a flat located opposite the restaurant. He describes his situation as follows:

> The living circumstances in the tofu factory were really bad. The near-by disco was very loud, young people hanged around in the railway stop often, the refrigerators were noisy, and the building was cold in the winter. Also, after the tofu had been made, it was hot, and there were many kinds of smells. I had a bed. There were certain orders regarding both flats so that we must not waste water or electricity, and therefore we didn't dare to use the shower very long. (6700/R/2792/06, 95.)

In the case of the Thai garden workers, the persons were living, i.a., in a trailer, in the office of the garden, or in rooms of the house. According to the pre-trial investigation materials some of the victims were fully satisfied with their accommodation, while others thought the standard was low. Some were not aware that the costs of accommodation and food were deducted from their salaries but believed that they were free (Vaasa District Court 29.2.2009).[38] During the investigation, one of the victims explained about their living conditions as follows:

> I was living together with my brother and a third man in a trailer. There were only two beds, one of which we shared with my brother. There was no toilet or running water in the trailer. In the winter, the trailer was warm, as it was heated with one radiator. I washed myself in the shower that was in the house, and used the toilet that was in the house. (6800/R/4242/08, 19.)

Experts we interviewed maintained that practices where the workers are locked up in the apartment are rare. They had heard of two such instances: in one case, a construction worker was locked into a container for the night; in the other, illegal immigrants were housed in locked premises.

The inspection of the housing conditions of migrant workers is a difficult issue in Finland. Supervision is the task of the municipal sanitary inspectors, and therefore the labour inspectors have no power to check the housing conditions of

[38] The costs in the case of the Thai garden workers paid for accommodation and food are explained in chapter 5.3.5, as an example of debts.

migrant workers. As a result, the labour inspector inspecting an ethnic restaurant cannot just go to look, for example, if there are mattresses in the restaurant's supply store where the employees might be sleeping. The authorities admit that this constitutes a problem of mandates. The sanitary inspectors may not have the necessary experience to recognise what kind of conditions constitute an indication of labour exploitation or trafficking for forced labour. It is likely that different authorities see only certain aspects of migrants' circumstances such as accommodation or terms of employment and therefore do not see the overall situation nor recognize the victims of trafficking for forced labour.

5.2.3 Retention of passport

According to ILO (2005), the retention of a person's passport or other identity documents is one of the central indications of forced labour. Also the government law proposal (HE 34/2004, 93) emphasises that such a measure reflects the dependent status of the victim. In our data, there were a few references to passports being taken away from the workers, and a few interviewed experts had encountered the phenomenon in their own work. The interviewed experts maintained that employers give many kinds of excuses for the fact that they have been in possession of their employees' passports.

> They have said that they [the passports] are better protected here in my safe or with me. They have claimed that the documents are at risk if they are with the person in question. They could be stolen. (Victim support provider)

Usually, the workers give their passports to the employer when asked, and the employers may explain that they and the employees have agreed that he/she keeps the passport. Also the ILO maintains that the employers may give many kinds of reasons for keeping the passport, and may for instance refuse to give it back if the worker does not continue to work. This results in a situation where the worker is unable to prove his/her identity, thus forcing him/her to submit to the employer's will because of the fear of authorities. (ILO 2005b, 21.)

One of the interviewed experts told about an interesting case where the employer returned the confiscated passport to the employees when they travelled to their home country for a short vacation in exchange for a sizeable deposit.

> They were given the passport for some business they need to take care of, and always of course when they travelled home and back, and [the employer claimed that] the workers know and accept this arrangement, and that they are not forced to give the passport to the employer. I don't quite believe this. And then it turned out that when they give the passport to the worker, they keep back a deposit from the salary, and this money is only returned when the passport is given back to the employer, and here they were talking about deposits of up to five hundred euro. (Labour inspection and permit authority)

Deposits were used in this case also in connection with the apartment key and the work permit. The objective of such a deposit seems to have been to bind the employees to their work as comprehensively as possible, so that they would not, for instance, decide not to return to Finland when visiting the home country. Our material does not have additional examples of this kind of use of the passport as a deposit, but it has been suggested that this method can be used, in particular, as a means of binding posted workers to the job.

In addition, in the pre-trial investigation materials that we have read, police have paid attention to possible confiscations of passports when talking with the victims, but not all court judgements that we have studied make reference to whether the passport issue has been considered at all. It remains unclear whether this matter has been noted during the criminal investigation or trial with no subsequent mention of the issue in the judgement. However, for example, in the case of the Vietnamese restaurant in Pietarsaari, the court made particular mention of the fact that the alleged trafficking victim was in the possession of his passport since he used it as an identification document when frequenting local restaurants at night. (Österbotten District Court 30.4.2010.)

5.3 Economic control and other deficiencies regarding the terms of employment

Economic control is one of the means by which the victims of trafficking for forced labour and exploited migrant workers are controlled, and which makes them dependent on the employer in different ways. The most concrete method of economic control is the underpayment of wages and other discriminate features, as well as arrangements related to the payment of the wages. According to ILO, the underpayment or non-payment of salary is one of the indicators of forced labour. The ILO (2008, 19) lists the following questions for identifying a situation of economic control:

- Does the worker have a regular employment contract? If not, how are wages being paid?
- Is there any illegal wage deduction?
- Has the worker received any wage at all?
- What is the amount of the wage in relation to national statutory requirements?
- Do the workers have access to their earnings?
- Have the workers been deceived about the amount of their wages?
- Are wages paid on a regular basis?
- Is the worker paid in-kind?

In the following chapter, these indications of economic control are assessed in the light of the Finnish data.

5.3.1 Payment of salaries and salary discrimination

Problems related to the payment of wages are the most common examples of disadvantages and exploitation that migrant workers experience in Finland. All interviewed experts highlighted the problems related to the payment of wages as the most typical example of work-related exploitation encountered by migrant workers. In cases of exploitation, it is very common that the employer fails to pay any of the evening, night, Saturday and Sunday compensations, or overtime compensation, vacation money, or daily subsistence allowances which are all mandatory in Finland and stipulated in different collective agreements.

Also the exploited workers' basic hourly wages may be very low. The press has often noted instances where migrant workers have been paid record-low wages (e.g. HS 4.9.2009; HS 15.2.2008; HS 19.3.2006). Cases have been found in particular in the construction sector and metal industry, and in the restaurant sector, especially in ethnic restaurants. Helsingin Sanomat reported on 16.1.2010 that the lowest hourly wages found by the labour inspectors specialising in the inspection of migrant workers' terms of employment was three euro in the restaurant business (HS 16.1.2010).

The newspaper of the Finnish Construction Trade Union described on 8.11.2007 in harsh words the situation of three Bulgarian construction workers. The men arrived in Finland to be employed by an Estonian-registered company. They had been recruited by a local recruitment agency in Blaboevgrad in Bulgaria, and they had been promised hourly wages of 12 euro that would be paid at two-week intervals. The men had not signed any written work contract. The men worked for almost three months during which they, as a group, were paid a total of 900 euro. According to one of the men, they had one euro per day for food, and they earned more money by collecting empty bottles in parks. Their travel to work had to be made evading the transport fare. The Estonian company claimed that the men were in their employment, but that the Bulgarian recruitment agency was responsible for their situation.

Turun Sanomat reported on 5.9.2007 that the Lithuanian companies operating in the Turku shipyard as subcontractors were, according to labour inspectors, paying their workers hourly wages of 1−1.50 euro. Simultaneously, the collective agreement in the sector stipulated that the minimum wages before taxes should have been 7.45 euro per hour, meaning that in this case, the wage discrimination was indeed very significant. These examples are likely to be only the tip of the iceberg as concerns salary discrimination experienced by migrant workers in Finland, while the phenomenon mostly remains unobserved by media or authorities.

The employee and the employer may agree on a fixed sum of wages per hour which does not include any of the compensations and extras stipulated in the collective agreement. According to Kontula, this is common among migrant workers, especially in the construction sector (Kontula 2010, 55). Our data also include cases where the workers are not aware that they have the right to be paid

extra for evening and Sunday work in addition to their basic salary. This has happened for instance in ethnic restaurants (see also Hirvonen et al. 2010, 51).

There are some cases in our material, in which the migrant workers have been well aware that their salary ought to be higher, but they are in a situation where it is better not to complain to the employer and demand proper wages. This reflects their dependence on the employer who is exerting economic control over the workers in order to bind them to the situation.

However, paying a lower salary to migrant workers is not always unlawful. The use of foreign posted labour is cheaper for the employer than using Finnish labour, even if the enterprise operates on a fully legal basis. The use of so-called posted workers allows businesses to profit from the salary, social security and tax differences between Finland and the new EU member states (e.g. Hellsten 2006; Forsander 2008). Even if the posted workers should be paid according to the Finnish collective agreements, Kontula (2010, 55) points out that by using posted workers enterprises are able to save significant amounts of money because pension fees and other social security fees alone inflate the Finnish salary costs by about thirty per cent. In the new EU member states, these costs are considerably lower than in Finland.

According to Forsander (2008), from the perspective of the employee and of the authorities, the situation of posted workers is one of "a legal mechanism that may easily go over into the illegal sphere, where labour force is discriminated against based on their legal status and their country of origin, and where enterprises can gain competition benefits" (Forsander 2008, 348). As the employers attempt to maximise their profit and step over to the illegal area, the situation changes: this becomes criminal exploitation of labour, facilitated by a lack of supervision and the dependent status and the insecure position of the migrant workers (see Kontula 2010, 56). Since the minimum salary conditions are met, this is not actually underpayment, and therefore the labour protection authorities cannot interfere because they have no right to make interpretations of the collective agreement which is generally binding. This right is only granted to the trade unions and the employer unions. There are conflicting opinions concerning the lawfulness of the situation. Kontula criticises this, observing that "because the worker's nationality nevertheless has a direct impact on the size of the payroll, it is correct to speak of structural salary discrimination." (Ibid.)

It is the subject of an entirely different debate whether migrant workers are fully satisfied with their pay which is lower than what is paid to Finnish workers because the salaries they are paid are better in any case than what they would earn from similar work back home. For example, the Macedonian men interviewed in Ajankohtainen kakkonen (documentary programme on TV Channel 2) on 31.8.2010, who had worked for a foreign company on the construction site of the Olkiluoto nuclear plant between 2008−2010, explained that they had earned about 1,500−1,600 euro per month. They had not been paid any compensation for overtime, vacation money, or Sunday extras. They were not very happy with the salary, but stated it was anyway better than back home where there was no work at all.

Forsander points out that the Finnish wages are bound to the local consumer price index, but most of the migrant workers' consumption takes place in their home country with lower living costs (Forsander 2008, 350−351). When they are in Finland, the workers are trying to live as modestly as possible in order to save money for use in the home country. Consequently, the terms of employment may be very attractive to the migrant worker even though they are worse than those of Finnish workers. (Ibid.)

The Finnish metal workers' union newspaper, Ahjo (9/2007), reported that labour inspection had found hourly wages that were as low as 1 euro in the Turku shipyard, while the collective agreement stipulated a minimum wage of almost 8 euro for shipyard work, excluding daily allowances. The newspaper stated that the migrant workers may nonetheless be satisfied with their pay. First of all, they are employed, and secondly, when the daily allowances are added to the basic salary, they are in any case earning more money than in the home country. "We receive only rarely complaints from migrant workers. The denunciations mostly come from appointed trade union representatives or from competitors," an interviewed labour inspector says in the article.

5.3.2 Working hours, overtime, and vacation rights

The wage issue is also closely connected to the long working hours of migrant workers. Different sources indicate that it is very common that exploited migrant workers regularly work for more than the usual 40 hours a week.

> The working hours may be quite shocking. The whole time one is awake, say 16 hours a day, even 20 hours a day. No days off. You may need to do many kinds of work. Then there are also situations where you have to travel for several hours in order to do a short piece of work. Then you travel long hours to the next place where there is again a little thing to do. Thus, the real income remains low while it consumes a disproportionate amount of your time. (Victim support provider)

The daily working hours in our data ranged from about 8 hours to 19 hours, and Saturdays and sometimes even Sundays are spent at work as well. The workers usually have about one day off per week. Thus, it is quite common that the regulations regarding resting time periods are not observed.

According to § 31 of the Working Hours Act, the worker has the right to a rest period of at least 35 hours once a week. Long working days and weekend work inflate the disproportionateness of the low pay. According to § 19 of the Act, only 250 hours of overwork are allowed per calendar year. It is obvious that this limit has not been observed in cases where the employees regularly work long days.

The interviewed experts said that working hours constitute a very concrete means of controlling the workers and their doings:

> To my mind, how they [victims] are controlled is often by the long working days. They [the workers] are so exhausted that they can't do anything any more. I mean, in some cases we have had, they have to work for so long hours that they become eventually apathetic because they're all worn out. (Criminal investigation authority)

> If you work for so long hours, you can't participate in any language classes any more, so then you have no outside life of your own. The working hours play quite a concrete role then, because you work for 12, 14, or 16 hours a day, then you do not have much of a life of your own. (Victim support provider)

In addition, the migrant workers' rights to vacation are quite often disregarded. The newspaper of the Service Union United PAM reported on 8.10.2010 about Thai women working in a spa in the region of the Capital, who had been working for 2−3 years without vacation. The Thai woman who was interviewed said in the newspaper that she had been promised a vacation of 12 days after one year of work, and subsequently a vacation of one month after two years of work, but eventually any hope for vacation was destroyed, and she got no vacation at all. The salary arrangements of the women were also unusual. They had a fixed monthly salary, with a fixed extra wage if the person worked overtime. This fixed extra wage was intended to compensate for overtime, Sunday work, and the rent for the apartment. If the worker refused to work the excessive working hours, this fixed extra wage was taken from her, and the rent of the flat was also charged to her. The newspaper story did not reveal how much overtime the women had been doing overall (PAM 8.10.2010.) In the case of the Chinese restaurant in Savonlinna, the workers had only a few vacation days during the year. Even on those vacation days, the employers asked them to do some work-related chores, and thus the number of full vacation days was low. (Savonlinna District Court 20.2.2009.)

According to the interviewed experts, posted workers are particularly keen on working long workdays, as this allows them to have longer vacations in compensation. For the duration of the earned vacation, they usually travel to their home country to spend time with their families (see also Kontula 2010). However, it is not always clear whether the workers are actually allowed to spend the vacations they have earned, and whether they receive compensation for their extra working hours by being given days off.

A method commonly used to misrepresent the number of working hours in order to mislead the authorities is to record only part of the actual hours into the timekeeping. According to the Working Hours Act, a record has to be kept of the hours worked and the related remunerations for each employee, including overtime, extra time, emergency work and Sunday work (Working Hours Act § 37). This means that each workplace must have a work schedule that is comprised of the regular working hours of the employees, as well as the beginning and ending times of work days and the inclusion of the rest periods.

However, employers do not always keep records of working time. This is common for instance in the restaurant sector (Aluehallintovirasto 15.10.2010). Usually, the employers maintain that they are not aware of this obligation. Some employers keep a list of working shifts which is different from keeping records of employees' working hours. Our court material contains one example where the persons who were prosecuted for extortionate work discrimination explained in their defence that the working shift list in their cafe was only made for labour inspectors and was not a record of the working time of their employees. However, according to the work shift lists the employees from different countries had worked during evenings and weekends without proper compensation. Consequently, Espoo District Court sentenced the employers for extortionate work discrimination and ordered them to pay fines. (Espoo District Court 26.6.2009.)

In another case, the owners of a restaurant in Helsinki had not kept records of their employees' working times because "the employees know how many hours they have worked without such records" (Helsinki District Court 17.3.2008, 6). According to a statement by the Uusimaa labour inspectorate[39], the failure to keep records of working time caused financial loss to the workers since they were unable to monitor their own working time, control that they were paid correctly, or that they were receiving the correct overtime payments. The basic salary paid was also much below the minimum stipulated in the collective agreement, so the Helsinki District Court sentenced the employers to fines for extortionate work discrimination and working time protection offence. (Helsinki District Court 17.3.2008.)

Employees and companies may also try to mislead authorities by falsifying the working time records by entering only the employees' regular work times into the time sheets and leaving out overtime or hours done during the weekend. There are examples of this in our data regarding ethnic restaurants. On paper, an employee seems to be working the standard 37.5 hours per week, when in fact they are actually working a minimum of 50 hours a week with no days off (Helsinki District court 9.6.2009; Helsinki Appeal Court 12.2.2010). One way the authorities can possibly uncover such a deception is to look at the electronic entry and exit records if they are monitored (e.g. in large construction sites or shipyards). For example, if the working time records indicate that the migrant workers are working eight hours a day, but the entry and exit reports show that they spend an average of 11−12 hours in the workplace (e.g. Ahjo 9/2007), it is obvious that they are working overtime. However, the labour inspectors do not have access to the entry and exit records of all workplaces. The Ajankohtainen Kakkonen TV-programme reported on 31.8.2010, that the labour inspectors had not received the entry and exit reports of the Olkiluoto nuclear plant construction site, which is the single largest workplace employing migrant labour in Finland. However, Teollisuuden Voima, the main contractor and owner of other two nuclear plants in the area, does provide this data to the tax authorities. The

[39] Occupational Safety and Health Administration of Southern Finland since 1st January 2010.

information exchange between these two authorities does not work, at least not in this case, since the tax authorities only received data on the taxable incomes of the workers – but not the working time records – while the labour inspectors have access to these, but not to the entry and exit reports. As a consequence, neither authority is able to compare the hours in the entry and exit records with the hours reported in the working time records or with the taxation data, thus making it difficult for them to uncover any possible malpractice or exploitation of migrant workers.

We also found similar problems regarding inter-authority mandate and information exchange elsewhere in our data. Such problems contribute to the difficulties that authorities face in detecting the exploitation of migrant workers. The situation may go on for years before one authority or another notices the problem and asks for an explanation. For example, a bus company in Urjala paid only 1.03 euro per hour to Russian bus drivers who drove the route Tampere-St. Petersburg-Tampere. According to media reports, the case was initially found out when the work permit unit of Tampere asked the regional labour inspectorate to investigate salary anomalies in the work permit applications of the drivers. The men had been employed by the company since the mid-1990s. The court judgement of the case shows that the drivers were paid 27 euro in salary and 40 euro in daily subsistence allowance for each 26-hour return trip, while the minimum hourly wage stipulated by the collective agreement was around 9.19−10.27 euro in 2003−2006. Moreover, the men were not paid any compensation for annual vacation, or for sick-leave days, or other appropriate compensation for special days off. According to the prosecutor, the employer had failed to pay legal salaries and other fees for a total value of 122,235 euro. (Toijala District Court 1.10.2009.)

5.3.3 Verifying the payment of wages, and the misuse of bank accounts

Monitoring the observance of the terms of work of posted workers is difficult for Finnish labour inspectors because the regulations concerning wages, taxes, and social security, as well as their standards cross national borders. The interviewed experts maintained that the labour inspectors are for instance unable to verify whether the employers actually pay all the salary related costs of the workers, or whether they even pay their salaries in the home countries as they claim. The payment of the salaries of posted workers can in practice take place outside Finland, and therefore it cannot be verified by Finnish authorities. The labour inspectors are completely dependent on the documents given to them.

Problems related to whether the documents are genuine or have been tampered with have been discovered also in other situations. The amounts of salaries paid to migrant workers are difficult to verify because parts or all of the salary may be paid in cash. In such cases, the employer does not have a receipt of the payment. For instance, there are cases where overtime compensations have been paid in

cash and others where cash may have been used to pay advances which have then been subtracted from the next salary. The data also indicate that the workers' salaries may have been paid in cash to their family in the home country. For example in the case of the Thai garden workers, the employers said that they paid the workers' families in cash when visiting Thailand. The main offender said she had paid salaries by transferring money to her mother's account in Thailand, and the mother then paid the money to the families of the workers. The employer claimed that the arrangement had been agreed upon together with the workers.

According to the expert interviews and media sources, it is also common that migrant workers, and especially posted workers, are forbidden to tell labour inspectors about their salaries. They may be advised to say that their wages are of a given size in accordance with the collective agreement, while this is not true. It is also common that, in the contractor's liability documents and in the work permit documents, the employer has agreed to comply with the payment stipulations of the collective agreement but does not do this in reality.

Interestingly, the interviewed experts explained that they had seen situations where the full salary is paid to the worker's bank account, but the worker is then made to pay part of it back to the employer in cash.

> The person is paid the salary into his bank account, and when he goes to the ATM to get cash, there is also the other person accompanying him. This does not happen just by chance, but is an entirely organised activity. (Criminal investigation authority)

In this way, the criminal employers are able to cover up what they are doing because this procedure creates legitimate tracks to the worker's bank account data, but the worker is not allowed to keep the money. This sort of arrangement is said to be used in particular in ethnic restaurants, but there are indications of similar practices also in other sectors. In our court judgements, no examples of such arrangements could be found. Regarding the construction sector, the press has reported about a practice in the early 2000s, where salaries were repossessed by force at ATMs in Estonia from Estonian construction workers who worked in Finland. A representative of the Central Organisation of Finnish Trade Unions (SAK), interviewed in Turun Sanomat 27.5.2005 described the situation as follows:

> It is common practice that the salary is paid to the Estonian worker's bank account in Finland, but when the worker goes to the ATM in Estonia, he is accompanied by "gorillas" who take their share. These are of course not needed if the salary is paid for undeclared labour in cash. It is difficult to do anything about this because the worker of course does not dare to tell about it. (TS 27.5.2005.)

The trade union representative we interviewed described a case in which the wage agreed upon in the work contract was at first not paid at all, and when it was eventually paid, the worker was made to pay it back to the employer.

Even if the salary is paid regularly to the bank account, it is difficult for the authorities to verify the transactions of the bank account. Labour inspectors do not have the right to ask for bank statements from the workers in order to be able to check for instance whether a certain part of money is immediately withdrawn and given back to the employer. Thus, it is very difficult for labour inspectors or other authorities to track down work-related exploitation cases and prove, for example, that salary discrimination has taken place, if the migrant workers do not divulge their situation on their own. However, if sub-standard pay or other negligence is observed during an inspection, it is common practice that the workplace is subjected to a follow-up inspection, or at least the company is asked for a report on how they have reacted to the directives of the labour inspection authority. "Of course, paper is paper", as one interviewed labour inspector comments.

A further method to control the workers' use of money is to interfere directly with the workers' use of their bank account or to restrict their access to it. The most obvious example of this is the case of the Thai garden workers, in which the workers' ATM cards and their passwords were permanently in the employer's possession. The employer justified this by arguing that she had to make withdrawals from the bank accounts for costs incurred from her employees' board and lodging costs, plane tickets, and work permits. The employer used the workers' ATM cards and made the deductions by withdrawing cash herself. According to what the workers said, the cards had been taken from them immediately after the bank account was opened, and they had no clue about transactions taking place in their bank accounts and how much money was being moved in and out of the account. Some of the workers did not even know how to use an ATM machine. (6800/R/4242/08.) Below, we present an excerpt from the pre-trial investigation material, where the employer explains her practice:

> I have needed the passwords in order to make transactions on behalf of the workers. Or more exactly, in order to be able to take back incurred costs from their bank accounts. The [ATM] cards have not been in the possession of the workers at any stage. They gave the cards to me because we have made an agreement to the effect that if I pay for all their costs, I'll keep the cards and their passwords. The bank statements come from the bank once a month. The workers have however not been very interested in these documents because they don't understand anything about them. The workers know that they are being paid 250 euro every month. I did not think it was necessary to give the bank statements to the workers because I know what I am paying them. (6800/R/4242/08, 78.)

Also in the case of the Chinese restaurant in Savonlinna, an instance was found where the worker had opened an account – with a better interest – together with the employer.

> After I signed a new work contract my salary was being paid to an account from which I cannot withdraw money without my employer's

> agreement. [Date], I had to sign, in addition to the work contract, also some kind of contract with the bank, according to which withdrawals can only be made with the consent of [the employer] (…) From my current salary (1,000 euro), 500 euro goes to an account to which I have an ATM card, and the other 500 euro goes to an investment account from which [the employer] has the right to withdraw the money. I also want to say that the opening of the account from which the employer had the right to withdraw money was a precondition for my new work contract. My impression is that [the employer] required that this second account be opened in order for [the employer] to be able to control me so that I could not leave the restaurant. I did not want to open such an account at any rate because I am afraid that I might lose [to the employer] the money deposited there. (6700/R/2792/06, 98.)

The pre-trial investigation material shows that this account was one with a higher interest rate than standard accounts, and the worker and the employer were able to use it only together (6700/R/2792/06). This means that money could be withdrawn only with the consent of both account holders. The judgement of the Savonlinna District Court states that the restriction regarding the use of the bank account was made at the employer's request. According to the judgement, the Chinese cooks had earlier informed the owners about planning to leave the restaurant at such a short notice that the employer had had difficulties in finding new cooks in time. By restricting the use of the account, the employer would know if a worker "wanted to stop working". (Savonlinna District Court 20.2.2009.)

Both in the case of the Thai garden workers and in the case of the Chinese restaurant in Savonlinna, the employer had served as an interpreter and had helped when the workers had initially opened their bank accounts. The criminal investigation authorities who we interviewed briefly mentioned two individual cases where the employer had access to the worker's bank account, or where the employer had taken possession of the worker's internet banking codes. An interviewed trade union representative also had knowledge of a somewhat similar case:

> [Misuse may happen] even if the money were paid to a bank account, like in this Vietnamese case where the employer opened a bank account for a Vietnamese worker who was totally unable to speak the language, and took for himself the right to use it. The [labour] inspectors had demanded that the salary must be paid to a bank account. He paid the money to the account but then on the same day the money disappeared because the employer had the right to use the account. It's impossible to prevent such a practice. (Trade union representative)

Furthermore, a victim support provider told of a case in which the person concerned was not even aware that she had a bank account into which small sums of money were deposited.

The bank account issue is further complicated by the fact that it is not very easy for a foreigner to open a bank account in Finland. In principle, foreigners can open a bank account similarly to Finns, but according to the law the bank must be able to identify the client. For this purpose, the bank requires personal and address data, but also an ID-code, and many banks also require a work permit, a study certificate, or a recommendation letter from a reliable bank, and a specification of the kind of transactions that are to be made.[40] As a result, in practice it is quite difficult for a seasonal worker to open a bank account. Because of this, the employers of seasonal workers pay three months' wages in cash at the time when the workers are about to leave to go back home. According to an interviewed labour inspector the employers justify such an illegal practise by explaining that there are no safe places to keep the money in the facilities which accommodate the seasonal workers, and for this reason, as well, the wages are paid only at the end of the employment. Such an arrangement gives rise to many questions: how is the workers' subsistence taken care of while they are in Finland, what can they do if there is an unexpected need for money, and what happens if the workers want to stop working before the agreed time of employment? In that case, are they only paid part of the wages they are due?

5.3.4 Occupational health and work safety

Exploited migrant workers also encounter problems regarding occupational health and work safety issues. According to the law, employers are obliged to provide occupational health services to their employees. The law also concerns posted workers, but there are many problems regarding their situation. Generally speaking, the lack of work health services may be seen as an indication of poor working conditions. As a further feature of the exploitation of migrant workers, indications also include situations where workers are not allowed to stay away from work because of illness, or that they are not entitled to paid sick leave.

Obliging migrant workers to come to work while they are sick may be a serious indication of labour exploitation, since this may at worst permanently damage the worker's health. The most serious example of such exploitation is to be found in the case of the Chinese stone workers. Below is an excerpt from the script of the TV-programme MOT 28.10.2002 regarding this issue:

> When one of them [the Chinese men] broke his arm, it was put in a cast. The man was already back at work two days later. The men were also taken to Helsinki to fix cobblestones. The injured man was with the group, although according to the collective agreement he would have been entitled to a 28-day paid sick-leave. (…) Regarding why the injured man was working, [employer X] explained that he had explicitly wanted to return to work and he could not be stopped. The

[40] http://www.bof.fi/fi/suomen_pankki/faq/muut_asiat.htm

> Chinese had however not been informed about the right to paid sick leave. (MOT script 28.10.2002.)

In 2006, the reporter of Helsingin Sanomat visited the stone workers who had returned to China in order to interview them in connection with the pending trial. The reporter interviewed a man who said he had injured his hand twice in Finland; the second time his hand was caught in a stone crusher. “The hand is still weak, and it is often giving me a lot of pain”, the man said. His occupational accident was never taken to court. (HS 18.6.2006.) The pre-trial investigation material regarding the case of the Chinese restaurant in Savonlinna revealed instances as well where employees had been made to come to work while they had been sick or injured.

Nordic researchers and other sources have noted that migrant workers might be more prone to work related accidents and injuries than native workers especially in the construction sector (Misuse of migrant labour seminar 2010; HS 23.12.2007). On the other hand, according to Salminen (2007, 140−141), migrants face fewer occupational accidents than native Finns. However, the statistics of the Finnish Federation of Accident Insurance Institutions show a growing trend in the work-related accidents of migrants (Tapaturmavakuutus 1/2007). In 2006, work related accidents were particularly common among cleaners, farm and construction workers (Eskola & Alvesalo 2010, 33). There are many potential explanations for this: long working hours wear down the migrant workers, which make them more prone to accidents, they do not have proper work gear or equipment, they have not been familiarised with the machinery used and do not know the proper ways to do certain procedures. Interviewed experts also noted that migrant workers’ mandatory accident insurances are sometimes lacking. It is not unheard of that after an injury, the migrant worker is fired and has to return home (e.g. Espoo District Court 3.9.2008).

5.3.5 Debts

The ILO (2005b) indicators identify debt and debt bondage as one sign of forced labour and in a handbook for labour protection authorities, ILO (2008, 19) lists the following debt-related questions as indicators of forced labour:

- Does the worker have to repay high recruitment or transportation fees?
- If so, are these deducted from the salary?
- Is the worker forced to pay excessive fees for accommodation, food or working tools that are directly deducted from the salary?
- Has any loan or advance been paid that make it impossible to leave the employer?
- Are work permits bound to a specific employer? Has there been any complaint about the employer before?

In practice, debt bondage is defined as exploitation of the employee by making use of the debt relationship. A debt to the employer emphasises the worker’s

dependence on the employer, thus making it difficult to terminate employment. Debt does not need to be direct financial debt, but it may, for example, be a debt of gratitude the employees feel towards the employer because he/she has given them the opportunity to come to work in Finland. Family-related aspects may also be involved, as for example in the case of the Vietnamese restaurant in Pietarsaari. In this case, the victim's uncle had arranged to bring him to Finland in order to help him, and had also invested money in him. (Österbotten Disctrict Court 30.4.2010.)

According to different data, there are some indications of debt being present in cases of exploitation of migrant workers. This is often related to high recruitment fees paid by the employees to private recruitment agencies in their home countries. In addition to paying high recruitment fees, some exploited workers need to borrow money mainly to pay air tickets and other travel costs.

Interviewed victims explained that they had borrowed money from their relatives, friends, or the bank to pay for different work-related expenses. From their perspective, this represented an investment in their future, since a certain promised salary level in Finland made it seem possible both to pay back the debt and to save more money. However, the problem is that people coming from Asia, in particular, may have a distorted understanding of the level of prices in Finland, and do not have any idea of how expensive living in Finland can be. As a result,, they eventually become unable to repay their debt at the same pace they would have expected in their home country. Nevertheless, from the migrant worker's own perspective, even a low salary level in Finland may be a better alternative than returning back to the home country.

> You see, working in Finland even under bad terms is then a better alternative than going back home and working at the home country's standard wages that are worse than these bad terms in Finland. This is the combination in which the person will then agree to accept any kind of work in practice under any kinds of terms. (Victim support provider)

In our material, there is one case in which one migrant worker concretely ran into debt with the employer during his employment, and had to come back to Finland for a second time in order to be able to pay back his debt to the employer. This happened in the case of the Thai garden workers, where the debt seemed to have incurred from advance salaries and costs related to air tickets, board and lodging. The indebted worker's wife accompanied him when he came to Finland in order to help pay back the debt. (Vaasa District Court 29.10.2009, 12−13.)

In the case of the Thai garden workers, the debt issue was closely linked to the issue of the costs for board and lodging, and how these costs were to be subtracted from the wages. The employer subtracted 120 euro per month for the accommodation, and 13 euro per day for food and hygiene products as well as different air ticket, work permit and phone expenses from the "original" wage of 950 euro. In practice, the workers were left with net earnings of 200−250 euro per month. The greatest confusion in this case concerned the working hours, as,

according to the workers' own time keeping records, they had regularly worked for more than 8 hours every day, while, according to the employer's records, they had been working for 40 hours a week. Regardless of the number of hours, the workers received the same 200 euro per month. Because of costs related to air tickets and advance salaries, this resulted in situations where the workers were at times indebted to the employer. Some of the employees were not aware that accommodation and other costs were subtracted from their salaries since they believed them to be free. (6230/R2570/08.) One victim tells about this in the pre-trial investigation materials:

> I was promised a salary of 10.000 baht per month, free board and lodging. I did not understand that part of the salary would be taken away as has happened now. From this agreed salary, i.a. telephone costs have been subtracted, and we also needed to buy food with our own money because what was offered by the employer was not always sufficient. Furthermore, I have needed to buy i.a. hygiene commodities with my own money. (6230/R/2570/08, 25.)

Furthermore, in cases related to the picking of wild berries, examples were found where people had not earned enough money even to pay for their air tickets to Finland and back, as in a bad year there were simply not enough wild berries to pick. Thus, the visit to Finland turned out to be unprofitable and people were unable to pay back their debts. (E.g. Iltalehti 3.8.2006; HS 2.8.2010a/b.)

The debt may also lead to instances of re-victimisation. According to our interviewed experts, there are clear indications in the field that the same workers who have suffered from labour exploitation are at risk of ending up in the same situation again with a new employer.

> There is at least one case like that, where the same person has been working for two different employers, and then reports of offences having taken place in both businesses in which this person has been employed. I don't know why this could have happened, that the victim has drifted into two different places where such activity related to extortionate work discrimination has occurred, but anyway this is one case I remember. (Criminal investigation authority)

The risk of re-victimisation is clearly high in the case of persons who find themselves in a circle of debt.

5.3.6 Giving notice and wages due

Our expert interviews revealed that giving notice and the extortion that is linked to it is one means of controlling migrant workers.

> It's easy to bind these people to this job with a low salary, as it's enough to just hint that if you are difficult you'll be fired. (Victim support provider)

Repeated firing of workers may also be a method that the employer applies in order to remain unobserved by authorities. For some employers, it is easier to "recycle" the workers, and to keep recruiting new people continuously, rather than allow old employees to continue and become more aware of their rights.

> The employer (…) is so smart that he only uses the worker for a couple of months and then gets rid of him/her, because the risk of getting caught in this work is so great, so that the mass of workers is being recycled like this all the time. (Victim support provider)

New, inexperienced workers are more likely to accept poor working conditions, and do not dare to complain about their salary or other deficiencies to the employer or to the authorities. Our expert interviewees gave examples of situations in the construction, transport and metal sectors where, for example, workers demanding their due salaries were immediately fired, or not offered a new job in Finland. One interviewed expert described a case where Polish workers had asked for their unpaid salaries from a company in the metal industry with the consequence that they were soon given notice for "economic and production-related reasons", after which they had to leave their accommodation which had been provided by the employer and to return to Poland. One interviewee also told about a woman in cleaning work who was fired immediately after becoming pregnant. According to the interviewed experts, merely contacting trade unions could have the consequence of being fired.

> This is, of course, the most common, and let's say a fully normal method applied by the employers, they say that if (…) you even call the [trade] union, you'll get fired right away. Or if you are otherwise difficult, you'll get fired right away. If you are a posted worker employed by a foreign company, then there is no protection. If the master says that you go, then you go. There are no means to defend yourself. (Trade union representative)

The risk of being fired or the fear of not being employed again may explain why workers who have experienced salary discrimination never report the case to the authorities or demand their due salaries. One interviewee explained that even if somebody took a certain case to court and "won" good compensation for foreign workers, it is entirely possible that nobody would come to ask for the money.

> There was a case where we demanded that a larger group of [nationality X] be paid proper salaries as defined in the collective agreement. Their boss had said then that whoever is going to ask for the money is going to end up at the bottom of the Danube. And nobody made claims. (…) We also put ads in newspapers in [country X] that they should come to collect their money – but nobody turned up. So this threat is working quite well. Money is just money, but you only have one life. (Trade union representative)

However, exploited migrant workers are often not aware of their rights or the possibilities that exist to ask for their due salaries from, for example, the Finnish

pay security system (which does not apply to posted workers). Another possibility of trying to demand due salaries is to take the matter to court, but the risk is that if the case is lost, the worker may be made to pay all costs incurred in the trial, and a person living in Finland on a temporary basis is not likely to be ready to take such a risk.

Chapter 6: Identifying and helping victims

This chapter describes the situation of victims of work-related human trafficking and exploitation from a variety of perspectives. According to experience from other countries, many human trafficking cases remain hidden, and the cases that have come to the attention of authorities represent only a fraction of the full volume of human trafficking (see e.g. UNODC 2009c, 45; Aromaa 2007; Kangaspunta 2007; IOM & BM.I 2009, 49). The victims of human trafficking are often particularly vulnerable (cf. e.g. Surtees 2008; Anti-Slavery International 2006). In order to recognise the phenomenon and help the victims, it is of utmost importance that victims are identified and recognised.

First, this chapter deals with how the situations of exploitation come to the attention of the authorities or victim support providers. Next, victim support is discussed in particular in light of the Finnish official system of assistance for victims of human trafficking. We also describe the experiences of the victims we interviewed, as well as their views regarding victim assistance. Finally, the chapter looks at where the victims end up after receiving support services.

6.1 How cases of exploitation are found out

According to the experts who were interviewed, situations of work-related exploitation are mostly uncovered when somebody discovers problems in the working conditions or terms of work of a migrant worker, and reports this to the labour inspectorate, the police or to victim support agencies. Cases are disclosed, for example, when a Finnish spouse, friends, fellow workers or somebody else makes the contact on behalf of the exploited person and reports the situation.

> They come through indirect channels, the contacts, so it may be some Finn who has become acquainted and observed and reports. (Labour inspection and permit authority)

According to the interviewees, the victims of exploitation only rarely report their circumstances to outsiders or contact the support agencies or the authorities themselves, but such cases do exist, for example, where the persons have either gone directly to a labour inspectorate, a trade union, a victim support provider, or a police station. The threshold to contact outsiders is high, and is often specifically related to the victim's dependent situation and vulnerability, such as the fear that they themselves have done something illegal. Exploited migrant workers may be afraid of authorities, and they may also be afraid of losing their job if they tell the authorities about their experiences.

> They come from cultures in which nobody wants to get into contact with authorities. This is an obstacle that we are confronting, so if they have ties to Finland and somebody knows how to give them advice to the effect that here you can contact the authorities, then they do contact

> [us], but it takes quite a lot. And because they are anyway afraid to lose their job, they are not contacting [us] anyway. So I believe that there must be many more of them than what we know of. (Labour inspection and permit authority)

What is essential after the initial contact is whether the authorities and other actors identify and recognise exploitation and possible human trafficking.

6.2 Victim identification

It is often a challenging task to identify whether somebody is the victim of human trafficking. Victim identification may be hampered by the unclear distinction between human trafficking and other crime categories. In particular, in border-crossing situations it may be almost impossible to identify a victim, if the exploitation has not yet taken place and the person believes that he/she is on the way to legitimate work not knowing anything about future exploitation. Identification may also be difficult because of a preconception of what human trafficking victims or human trafficking situations look like.

At the international level, human trafficking for sexual exploitation seems to be more frequently detected and reported than trafficking for forced labour (see UNODC 2009c, 51). This may be because the legislation criminalising human trafficking in many countries does not include work-related trafficking, but only human trafficking for the purpose of sexual exploitation. Furthermore, human trafficking is often viewed in the context of sexual exploitation, while trafficking for forced labour is not necessarily identified. In many countries, prostitution occurs in public places such as streets and restaurants, and therefore the victims of sex trafficking may be more visible than the victims of other types of exploitation. The victims of forced labour may be working in hidden locations, and it is therefore a greater challenge to identify them (UNODC 2009c, 51.)

According to existing data, the situation seems to be the opposite in Finland. According to available statistics, situations of human trafficking related to the exploitation of labour have been recognised more frequently than prostitution-related human trafficking (Työministeriö 2007b, 39). Three out of four victims in the system of assistance for victims of human trafficking are victims of labour exploitation (Joutseno reception centre 2010). This may in part be explained by the fact that both labour inspectors and trade unions monitor the exploitation that occurs in workplaces. Prostitution in Finland, on the other hand, largely occurs in non-public places (Kontula 2008). However, it may also be possible that those who have been sexually exploited in prostitution are not referred to the system of assistance because human trafficking is not recognised in these cases (Vähemmistövaltuutettu 2010, 46). Nevertheless, for the time being the only court judgements passed for human trafficking in Finland have concerned human trafficking with the purpose of sexual exploitation.

Some of the interviewed experts were also of the opinion that the degree of victim identification and the related know-how are good, at least on a general level.

> AJ: Are the authorities and other actors able to identify these victims of work-related human trafficking or exploitation?
> I: In my opinion yes, I'm sure they are able to recognise, but (…) I guess it would be necessary to improve the identification. (Criminal investigation authority)

In order to make victim identification easier and more effective, different kinds of indicator lists have been developed. Both the National Plan of Action against Trafficking in Human Beings and the Revised National Plan of Action list elements that may be seen as indications of human trafficking (Ulkoasiainministeriö 2005, 41–43; Sisäasiainministeriö 2008, 26–28). So-called red flag indications for victim identification include features directly related to entering the country, such as forged travel documents, or the fact that somebody else has organised the travel and the visa. Characteristics related to the person include, for example, the person's fearfulness, reluctance to tell about his/her situation, ignorance of the name and address of the employer, and factors indicating dependence and subordination. (Sisäasiainministeriö 2008, 26–28.) One interviewed expert said that it is difficult to identify victims despite the indicators, because the elements intended to serve as guidelines are of such a general character.

> As these things, they are not very concrete, let's say the person is timid at the border control, or the eyes are roaming or something like that, well let's go and see [at the border control], I'd say this is the case with quite a lot of people. (Criminal investigation authority)

Furthermore, identification is difficult because only few actors meet the potential victim in person. Indeed, it is difficult to make an in-depth assessment of the situation of the applicant on the basis of documents only, and yet, the work of the labour inspection and permit authorities is largely based on checking documents. If the terms of employment, such as the wages and the working hour lists are in order, the authorities do not often have an opportunity or even any reason to conduct further investigations. However, papers that seem to be in order may actually conceal abuse and even forged documents.

The role of the labour inspectorate is crucial in victim identification, because they may often be the first authority to encounter the victim of exploitation in the workplace. However, identification is hampered by the lack of a direct contact with the migrant worker.

> [Victim] identification is also quite weak in our work, because in reality the contact with the workers who are potential victims is quite non-existent. (Labour inspection and permit authority)

Moreover, the worst cases may remain undetected because the most vulnerable workers are not aware of the existence of labour inspectors and do not know how to seek help. Often therefore, receiving help requires some assistance from somebody else.

> These worst cases, they never come to us of course. That they would even learn that such an authority even exists, is quite unlikely, and also that he/she would go and [make contact]. There should almost be some kind of support person, (…), or a Finnish spouse or a friend who would be better informed about these systems (Labour inspection and permit authority)

Identification of victims of exploitation and of direct human trafficking is also made difficult because the persons themselves are reluctant to tell about the exploitation they have experienced. The exploited workers do not necessarily tell about their experiences even to actors specialised in victim support. It might be that the person first contacts the victim support agency for a completely different issue, and then the suspicion that there might be human trafficking only emerges later.

> Identification is always a problem, if there is no reason to suspect, and the persons don't tell anything, and come to see you for some totally different reasons. How to recognise them continues to be a problem at all levels I guess. (Victim support provider)

In addition, the exploited workers may choose not to talk about their experiences because they do not dare or want to tell about the exploitation, or because they do not consider themselves to be victims. Their reluctance to tell anyone about their experiences may also be caused by their distrust of the authorities, by the trauma caused by the experience, and by the fear of the exploiters or by the fact that they are labelled as criminals or have to leave the country (UNODC 2009a, 2−3; UNODC 2008, 245, 255; Sigmon 2008; Työministeriö 2006, 26).

> [The more] dependent they are of the employer, the less able or the more scared they are to contact anybody. (Labour inspection and permit authority)

The identification of victims is also hampered by the busy schedule of authorities and other actors. Victim identification is not the main responsibility of any particular agency; instead, victims of human trafficking are identified in the context of the regular activity of a given authority. If there is a lot of work, it is difficult to make the necessary efforts in order to identify victims of trafficking in particular.

The key authorities may, despite indicator lists and training, still have problems recognising and understanding victims' experiences of exploitation. Authorities may be in contact with victims, but not realise they are victims.

> The victims may meet some of our workers, authorities, or others, without them realising that there are human trafficking or trafficking-related factors behind the situation. (Victim support provider)

General ignorance and lack of understanding concerning the existence of human trafficking and the related violence and trauma adds to the vulnerability of the victims, since it makes it more difficult to identify them (Sigmon 2008). According to a British study on practitioners' responses to trafficked children and young people, victims of trafficking may be met with disbelief and lack of understanding from the side of authorities and victim support providers. The extent of the violence and abuse disclosed by the victim may be unbelievable to the practitioners, the practitioners may not believe the child or young person to have been trafficked into the country, and the dynamics of trafficking are not understood (Pearce et al. 2009, 103–108). In Finland as well, there is disbelief and lack of understanding. Not even those authorities, who are in contact with potential victims, always pay attention to the possibility that human trafficking or aggravated work-related exploitation may actually take place in Finland.

> Some were terribly surprised about this, like how is this possible (…) Those agencies at least that have had so much to do with it, even those do not always come to think that it could be work-related human trafficking (…) I mean that the people's awareness of it is not so common yet, so there would still be much to do about that (…) those people should, those who are working there in the field (…) so they should then perhaps be a bit more awake, that it could be a matter like this, if they notice something, and then report it. (Labour inspection and permit authority)

Active outreach work with the purpose of finding victims is important if victims are to be better identified, but the tradition of outreach work is still meagre in Finland (Työministeriö 2006, 27). Victim identification may also be affected by the fact that Finland has often been perceived only as a transit country for human trafficking (Viuhko & Jokinen 2009). The remote location of Finland and the relatively effective monitoring by authorities may also have led to the conclusion that aggravated exploitation of migrant workers cannot occur in Finland.

In identifying human trafficking victims, general awareness of the indications of human trafficking and of the existence of the phenomenon is essential. Exploitation of migrant workers has existed over a long period of time, but seeing the cases as human trafficking is a new phenomenon according to one of our interviewed experts.

> These kind of cases have existed here for long, maybe always, I mean there have been foreigners who have worked for substandard wages and at times treated very badly, but whether we would have seen that this is connected with human trafficking, that is a quite new phenomenon, just a couple of years old. (Trade union representative)

However, it is also possible to criticise the focus on human trafficking alone. In particular, victim support experts emphasise that all people in need should be helped, regardless of whether they are victims of human trafficking or of other exploitation.

> In my work it doesn't make a difference. I am helping a human being in distress, to me it is irrelevant if it is human trafficking or (…) whatever there is behind it. (Victim support provider)

Thus, there is good reason to ask whether it is more harmful than beneficial to use very narrow criteria in defining victims. The official system of assistance for victims of human trafficking is open also for victims of crimes resembling human trafficking, and, at least in principle, all persons in need of help receive help.

6.3 Assisting victims of human trafficking within the official system of assistance

Applications in writing are required if a person wishes to be taken into the official system of assistance for victims of human trafficking. According to the interviewed experts, victims very rarely apply on their own as few victims are even aware of that such a system exists. Usually, somebody else, such as a civil society organisation or a legal advisor helps with the completion of the application. The applications are assessed by a multi-disciplinary evaluation group that operates in the reception centres for asylum seekers. This group assesses the victim's need for support, his/her security risks, and takes care of the dissemination of information between the authorities and the system of assistance (Kähkönen 2010a).

The National Rapporteur has criticised the requirement of the written application, as well as the composition of the multi-disciplinary evaluation group. The requirement of a written application may cause an unnecessary obstacle to seeking help, especially if, in order to be accepted into the system, one is required to provide a detailed description of victimisation of human trafficking. In a recommendation of June 2010, the National Rapporteur emphasises that the system of assistance must be victim-centred and maintains that in order to qualify for the system of assistance, certainty that the person has been a victim of human trafficking is not needed; instead, mere indications of human trafficking should be sufficient. (Vähemmistövaltuutetun suositus 2010.)

According to an interviewed victim support provider, in practice the threshold to access the system of assistance is low and victims are accepted into the system even on the basis of mere indications of human trafficking.

> The threshold to be accepted into the system of assistance is quite low, and as there is no requirement of an ongoing crime investigation at the stage when a person is taken into the system of assistance, so I would

> say that it is enough if there are some of those indications. Those factors in the story, such factors that are in some way related to the fact that the victim has in practice not had alternatives to leave. And then if there is something concrete, like keeping the person isolated, locked up, threats, exploitation of a debt relation. Just these factors that are in the Penal Code and the UN definition. (Victim support provider)

Thesslund (2009) has suggested that a victim-centred system of assistance should be based on the needs arising from a person's overall situation, rather than on the idea of fitting the person's situation within a predestined category. In fact, there have been remarkably few victims of sexual exploitation in the system of assistance. It may be that in their case, the criteria of being accepted into the system are stricter than for other victims. If the decisions as to whether a person can be accepted into the system of assistance are made with an overly rigid alignment with criminal law regulations, the result may be that some persons in need of help are excluded from support.

On the other hand, one of the interviewed experts emphasised that the threshold of the system of assistance must not be too low, otherwise there is a risk that the system will be abused.

> On the border, you say the words human trafficking, and after that you are allowed to stay in Finland for over a year, and your board and lodging is taken care of, and you don't need to prove anything else, just say the words human trafficking when you arrive [at the border]. (Employers' organisation representative)

The task of the system of assistance is to coordinate the support given to the victim and to create a support network around the victim. The support is provided in cooperation between authorities, civil society, and other actors. The practical arrangements depend on the victim's residence status and whether the victim receives help from an NGO, for example. The objective is to integrate the victim into the basic services provided by his/her home municipality, and to offer specific forms of support via the system of assistance. In practice, victims who are in the official system of assistance for victims of human trafficking quite rarely live at the Joutseno reception centre, but instead live in their home municipality or in secret safe houses. Victims may need health services (physical and mental health), income support, help with the criminal process, help in learning the language and dealing with their everyday life, with education and employment, and in creating social contacts. (See e.g. Vähemmistövaltuutettu 2010.)

In this way, victims of human trafficking and exploitation are helped in very concrete terms. The objective of providing support is to help them to be liberated from their difficult situation. When the person has been accepted into the official system of assistance, the first thing that is done is to find out what has happened to him/her, what are his/her hopes and needs, and how his/her case is going to be dealt with subsequently.

> We map the existing support network and the existing rights to basic services and other services. Then we arrange for the necessary services on an individual basis. (Victim support provider)

With regard to migrant workers, those who have experienced labour exploitation do not necessarily know how to function in Finnish society. If they have worked long hours and been in a dependent position in relation to their employer, they do not necessarily have the ability to take care of many practical matters. The support focuses also on explaining the functions of Finnish society to victims and through the system of assistance they are also given interpretation services (Kähkönen 2010b). Many victims are traumatised, and they are provided with support that tries to help them to recover. According to an interviewed representative of the criminal investigation authority, the support is useful for the psychological well-being of the victims, which enables them later to participate in the criminal justice process.

> They were completely exhausted, those workers. They were completely in pieces. You could see when they were taken into [the system of assistance], they recovered in two-three months so that they were then quite OK, so that you could then also think of a court trial. (Criminal investigation authority)

Victims remain as clients of the system of assistance for duration of a few days to a few years. The person may be removed from the system of assistance when the criteria of receiving help are no longer met, or if the victim leaves the country. The person may also be removed from the system of assistance if the human trafficking investigation is not initiated or if it is terminated, for example, because of lack of evidence, or if the person receives a continuous residence permit (Kähkönen 2010a; 2010b). According to our data, it would seem as though the victims do not wish to remain in the system for long periods of time, but would rather get on with their lives. Some of the victims stay in Finland and continue their life here.

> In the system of assistance, there are so many kinds of situations, and all of them do not after all become integrated in Finland so that they would receive a home municipality. Some of them become integrated, and receive a permanent or continuous residence permit and a home municipality. (Victim support provider)

6.4 Victims' experiences and views regarding assistance and help

The victims we interviewed were mostly satisfied with the help they had received in Finland. In the interviews, they described the help they had received (such as legal advice, economic assistance, and help with accommodation issues and various practical matters), and their assessment of it.

MV: Have you been satisfied with this help that you have received in this system of assistance?
I: I am very satisfied. I am very grateful to them, I have [seen] that there are many good people in Finland, and these treacherous people, swindlers, they are just a minority. (Victim)
MV: And have you been otherwise satisfied with this help that you have received [in the system of assistance]?
I: We are very satisfied, they directed us to the social welfare of [name of city], and they are helping us now. (Victim)

Interviewees expressed satisfaction with the help provided, and gratitude towards the people who provided help (both representatives of the official system of assistance and civil society, legal advisors, and social welfare representatives). In the victim interviews, there was hardly any criticism directed at the help and the system of assistance. It may be that the persons who agreed to be interviewed were those who mainly had positive experiences with regard to the support received and the elements of help provided. It may be a valid question to ask whether those persons who have very negative experiences or interpretations of the help provided or of Finnish authorities in general would agree to participate in this kind of study [41].

It is also possible that the persons who had received help feel that they owe a debt of gratitude towards their helpers (Brunovskis & Surtees 2007), and therefore prefer not to give possible negative feedback to those who have helped them. It may also be relevant that, at the time of the interview, the victims were within the system of assistance. The positive feedback may of course be simply due to the fact that the victims were genuinely satisfied with the help they received.

The victims we interviewed represented a select group in the sense that they had been able to get into contact with help, received support from the system of assistance created for human trafficking victims, and been willing to receive such help. Not all victims are willing to accept the help that is offered (see e.g. Brunovskis & Surtees 2007). In contrast, the interviewees were more or less active themselves in seeking help and in improving their own situation. In so doing, they are not representative of the potentially large pool of victims of exploitation, who, for whatever reason, are not able, or do not dare or want to seek help, and whose fate thus never comes to the attention of the authorities or other support providers.

According to the understanding of the interviewed experts, many victims of exploitation stay in Finland, or do not want to return to their home country, at least not immediately after the exploitation has been uncovered. According to an interviewed victim service provider, “it has been perhaps even a bit of a surprise

[41] It is also difficult to assess whether the interviewed persons thought that we were representatives of an authority or in some way linked to the official system of assistance, and whether this possibly influenced what they wanted to say in the interviews.

that the majority have remained [in Finland]". Some of them may stay in Finland because of the police investigation and the trial, and their expectation that they could receive unpaid salaries or some sort of financial compensation. Others may be planning to return home, but for practical reasons (for example because of the debt), cannot do so.

> MV: Do you have an idea as to whether these people are initially coming here in order to stay for good, or maybe for a year or two – like, I'll work for a while until I have made a lot of money, and then I'll return back home?
> I: The persons with whom I have talked about this have said that they intend to stay here for several years to work. So that they are able to earn enough or good money, and then their aspiration often is to return home. The aspiration or intention may change, or often the intention has changed as they have realised that they are not going to be able to pay the debt. In that case, returning home becomes a very difficult alternative. The debt over there is not going to vanish anywhere. (Victim support provider)

Some of the interviewed experts also observed that they do not really know what eventually happens to the exploited migrant workers, or where they end up after the exploitation has been found out. Also, the possible re-victimisation remains mostly unobserved, and the support agencies are usually not in a position to investigate or to find out what subsequently happens to the victims.

Chapter 7: Criminal investigation and court proceedings

This chapter deals with the issue related to the investigation of exploitation of migrant labour, and subsequently discusses problem areas and challenges related to the criminal justice process and passing of sentences. According to literature and our various research data, it seems to be clear that the number of migrant labour exploitation cases is abundant, but many of the cases never come to the attention of the authorities. Cases also drop out of the system in different stages of the criminal justice process. Causes for this are multiple: the police is unable to find out what happened, or contact the persons involved, or obtain evidence of the crime during the pre-trial investigation, or the prosecutor waives the charges in the case, etc. As a consequence, the number of convictions is much lower than the number of crimes recorded by the police[42]. Such attrition is common in the case of many crimes (see e.g. Kainulainen 2004 regarding rape).

According to our expert interviews, the cases of exploitation of migrant workers, i.e. cases labelled as offences of extortionate work discrimination and human trafficking, are challenging for the crime investigation authorities to investigate. This is caused by many different reasons.

When a possible case involving the exploitation of migrant workers is reported to the police, an investigation is carried out in order to find out whether there is reason to suspect that a crime has been committed (see Pre-Trial Investigation Act § 2). The case may be reported, for example, by the labour inspectorate, a lawyer hired by the victim, an organisation specialised in helping victims, a private person, or the victim him/herself. The case is usually reported to the local police, which then informs the National Bureau of Investigation (NBI) and the Minority Ombudsman's Office of relevant cases.

The case may also be detected as a result of the police's own investigations, or in connection with joint raids made by several authorities. According to our interviewees, the police makes such joint inspections in cooperation with other authorities, such as labour inspectors and tax authorities; the parties involved have positive experiences of such cooperation.

7.1 Which unit is responsible for the investigation?

Before the criminal investigation can be initiated, the case must be assigned to a specified unit or police officer. However, in the case of exploitation of migrant labour, it is not obvious which person or unit is going to be responsible for the investigation of the case due to the fact that it depends on how the case is defined

[42] Does not comprise unrecorded crime which may be considerable.

in the first place, whether it is a labour protection offence, an economic crime or a violent crime.

For example, the economic crime and property crime unit of the Helsinki police department investigates cases that are initiated with the labels of extortionate work discrimination and abuse of migrant labour, while the violent crimes unit investigates other work-related crimes defined in the Penal Code (or in practice, i.a. cases that are investigated as human trafficking). However, the distinction is not entirely clear, since the label of a given case may be changed during the investigation, as well as during the deliberations of the prosecution. The units specialised in different types of crime of course have expertise in different issues and themes, and this may steer the investigations in certain directions right from the very beginning. An interviewed victim service provider, for instance, was concerned about a situation where the unit for economic and property crime investigated instances of exploitation of migrant workers because he/she thought that these sorts of crimes were not given high priority in this unit.

The interviewed experts pointed out that investigating these crimes may prove to be challenging in a small locality[43]. The problem lies in the fact that the parties involved know each other, and the authorities may not want to accept the idea that "such things" could happen in their home town. As a result, this attitude has an impact on what offence is being investigated and what is believed to have happened. It also affects the way the investigation is carried out, and how it is focused. If the starting point is that human trafficking is not involved, then it will not be found in the investigation either.

> A small place, the perpetrators are highly esteemed there and have been running business there for a long time and so on, nobody wants to believe what they have done in the first place, and second, the authorities don't want to get certain reputation there. (Criminal investigation authority)

The case may be transferred to the NBI if it is in some way special (such as significantly large), or if it is linked to international or organised crime. If the case is transferred to the NBI, they are able to dedicate a special focus and resources for the job, while the local police are usually swamped with daily routines and petty crimes and have more limited resources.

[43] In a small police department, the case may in practice be assigned to the police officer who happens to be on shift when the crime is reported (Alvesalo & Jauhiainen 2006, 29−30). This is common practice with regard to all work-related crimes, since there are very few police officers who are specialised in the investigation of such offences (ibid.).

7.2 The length of the investigation

Because of limited resources, police investigations are usually piled up, and the actual opening of the investigation may be delayed by months. This of course hampers the success of an investigation, but may also cause new problems to the victims. A victim support provider was particularly critical of the police in this regard:

> To my mind, it takes an unacceptably long time to have the investigation started. Also considering that there is the risk in these kinds of cases that the person concerned has to go back to his/her home country, it cannot be appropriate that the investigation then stops because the person concerned is not any more able to come to be interrogated and such things. It is always makes a difference whether a victim is heard in person or by a letter. (Victim support provider)

From the victim's perspective, the timing and length of the investigation are highly significant matters because the validity of the victim's residence permit may run out during the investigation process or even before the investigation is opened. Such situations were mentioned also by the victims we interviewed.

An interviewed crime investigation authority admitted that delays may indeed occur in particular before the investigation is initiated, even if the investigation itself does not last a very long time. However, the interviewed experts were of the opinion that the police investigations as such take a long time as well, or are extended excessively for various reasons. Based on this, a trade union representative maintained that there is no point to report every single exploitation case to the police.

> The police have more than 2,000 economic crime investigations in their queue, and it takes about a year to investigate each case. That's a queue of 2,000 years. Of course they've got more investigators than one, but it's anyway futile to take these little things to them. (Trade union representative)

A practical problem arises when there are delays in initiating the investigation, or during an investigation that is extended over time, and the victims either have to leave the country, or may want to leave the country to return to their home country or go elsewhere. As a consequence, the police may have difficulties in interrogating them. These interrogations may also be carried out by relying on mutual legal cooperation agreements between countries, but in practice, there are great differences between countries in how they react to requests for legal aid. For instance, police have had difficulties in making Russian authorities react to legal aid requests (Viuhko & Jokinen 2009, 74).

In any case, money is one obstacle: criminal investigations that expand beyond national borders are very expensive. One of the interviewed experts explained that if the investigation leads abroad, a decision may be made to carry out only a

limited investigation[44]; in practice, this means that work on the case is discontinued.

> I: Then it's just a matter of chance, who the investigator there [in the police] happens to be, and if he knows anything about such cases.
> AJ: How does it then appear in your work if they [police] don't know what they are doing?
> I: In decisions to not press charges, or that the crime investigation is limited, the costs are prohibitive. So if migrant workers are involved, or something should be investigated abroad, then this is not done. (Labour inspection and permit authority)

7.3 Interrogation

Interrogations play a central role in the crime investigation. During the interrogation, the police attempts to find out, as accurately as possible, what has happened, where, why and how, and who has been involved (Kainulainen 2004, 62−63). Investigating and interrogating migrant workers and possibly also defendants who have a foreign background requires previous experience of how to deal with migrants, and a specific attitude to relevant situations. It may be difficult for the police to find out what happened exactly, especially if family matters or various delicate issues of an ethnic group or other cultural factors are involved. According to the interviewed experts, the police should exercise great care in asking about certain topics in an interrogation. The key is to ask about things in a simple manner and avoid complex terminology to avoid misunderstanding.

The police usually communicates with the victim and possibly with the suspects through an interpreter. This typically takes more time than an ordinary interrogation, and interpreters also cost money (in particular if the interpreter has to travel from another location). Sometimes, money is saved if the person to be interrogated speaks a little English but this may cause problems.

> Interrogations may be held, if somebody speaks a little Finnish or English, and they may then be of poor quality, when they save money and are not using an interpreter. And then you know there are cases which go to court, and it is explained there that the interrogation was made in English, and the court has therefore brought in an English-language interpreter, and then this interpreter says that this doesn't work, that this person doesn't speak enough English for this to work. Then you may ask, how about the interrogation, how have they been able to do that? It has likely happened so that they have written

[44] The prosecutor has the right, upon the proposal of the police officer in charge of the crime investigation, to decide that the investigation is terminated if the costs caused by a continued investigation would amount to a volume that is clearly disproportionate to the quality of the matter under investigation and to the likely sanctions (Pre-Trial Investigation Act 4 § 4).

> something and then the interrogator has said ‘this is what I’ve written, is this OK?’, and the victim says ‘yes’, and that’s it. (Criminal investigation authority)

From the perspective of the persons to be interrogated and the principle of legal protection, it is preferable that people speak in their own language with the help of an interpreter rather than to communicate ineffectively in English or Finnish. This situation is also better for the investigator. A valid question to be asked however is who can be entrusted to act as an interpreter, especially in a small locality. The risk here is that the interpreter may be an acquaintance, friend or relative of the employer who may influence the interrogation and introduce substantial bias. However, it must be noted that official interpreters are bound by professional ethical rules (Tulkin ammattisäännöstö 3/1994).

According to the interviewed experts, the police officer who conducts the interrogation should be able to create a confidential relationship with the victims and the suspects if he wants to know what has really happened (see also Kainulainen 2004, 63−66). This is expressed in the following interview excerpt:

> The interrogation is kind of an official discussion, and with some people you get along better while with others it works less well, so for example one person who had had enough and had walked out from there [workplace X], so when he then began to trust us and understood that he doesn’t need to be afraid of us, well then he was very helpful indeed and talked so much that the investigators almost became desperate, that oh boy, this guy talks a lot. But to be able to achieve this he had to be told several times over what it was all about. (…) we start things softly so that they dare to talk…about difficult things, nobody is going to start telling a total stranger right away, these are such difficult matters. (Criminal investigation authority)

Authority representatives who work with migrant workers make a common observation in that the victims often reveal facts step by step as they gain more confidence in the local authorities. It is quite possible that the persons in question alter their story several times during the interrogations, requiring several more interrogations in order to achieve the objective of getting an overall picture. However, one of the interviewed experts commented that when they change their story, people do not necessarily think they are lying but “I guess they think they are telling the truth”. A victim support provider formulates the issue like this:

> Then we have the Finnish authorities’ neurotic attitude to honesty, asking why he/she didn’t tell this right away. And then we are automatically assuming that they are lying and have made these things up, while in reality the system does not encourage people to tell immediately how things are. I think this is bad. (Victim support provider)

One of the interviewed experts also pointed out that if the persons to be interrogated belong to a larger ethnic community, it may be difficult to get inside that community to look for witnesses. “Then if [you find] such a person who’ll talk, he/she can actually give indirect information, and then is also unwilling to tell it if it is put on paper.” (Criminal investigation authority) Furthermore, the victims’ traumatic experiences may affect the way they are able to describe and remember the exploitation they have encountered, as research shows that victims of trafficking often suffer from memory loss and different symptoms related to post traumatic stress disorder (Zimmerman 2009, 27−28).

7.4 Problems regarding the evidence

During the criminal investigation, the police attempts to collect evidence of the crime which is as clear as possible. The stories of the victims and of the suspects are rarely the only evidence available on the matter, and from the police perspective, documentary evidence is often more important than oral testimony. Investigations of the exploitation of migrant workers and the ensuing criminal justice process contain many evidence-related problems. As shown in previous chapters, employers who break the law are in many ways trying to mislead the authorities regarding, i.a., the length of the working day and the payment of wages, which may hamper the securing of evidence of the crime committed.

> If only we are able to prove how much the workers have been paid, I mean that if this is based on something else than the workers’ own story, or if we otherwise have some factual evidence of how much has been paid, so that it is then a sub-standard payment, then the matter is clearer. But in such cases where it’s just the employer’s word against the employee’s word, maybe this can happen more often in regards of working hours, so if there are no records of working hours, then we may come across problems regarding the evidence. (Criminal investigation authority)

Some enterprises do not keep any kind of records of working hours, and in such cases it is difficult or even impossible to secure written evidence of the length of the working day. If this is missing, the police may estimate the length of the working day, for example in the case of ethnic restaurants, by observing the opening hours of the restaurant. In addition to these hours, preparatory work in the morning and cleaning work which is done after closing at night also need to be taken into account. Naturally, attempts are made to ask the workers during the interrogation about their working hours. The working hour lists which are sometimes kept by the workers on their own constitute valuable evidence, as in the case of the Thai garden workers, because many of them had kept their own accurate personal records that could be compared with the hours the employer claimed they had worked (6800/R/4242/08; 6230/R/2570/08; Vaasa District Court 29.2.2009).

The issue of working hours is important because, during the crime investigation, the police calculates the criminal benefit on the basis of working hours, times, and wages specified in the collective agreement. A secondary factor taken into account, which is also based on evidence relates to issues and arrangements relative to the payment of salaries. For example, if part or all of the salaries are paid outside of the accounts, it is difficult to prove whether they have been paid or not, in particular if the exploited workers are not willing to speak about it to the authorities. It is much more difficult to prove a crime if the evidence which is obtained consists only of oral statements secured during the interrogations. "If there's nothing in writing, then it's only about who you believe" stated an interviewed prosecutor.

7.5 Difficult crime labels and elements of crimes

Some interviewed experts were of the opinion that the police does not have sufficient expertise, know-how and/or experience to investigate cases related to the exploitation of migrant labour. In the Ajankohtainen Kakkonen TV-programme on 31.8.2010, researcher Anna Kontula said that she knows of three cases from the Olkiluoto nuclear plant construction site where police has discontinued a criminal investigation.

Furthermore, issues related to crime labels render cases cumbersome and expensive to investigate as the crime labels of extortionate work discrimination and human trafficking are rather new and rarely used. The interviewed experts suggested that police is either not at all familiar with these crime labels, or feels that they are difficult to apply.

> I: Well, to me this situation seems a bit weak, because police is at a loss in identifying these extortionate work discrimination cases, but the concept of work discrimination has probably become familiar to them, (…) so I think it may be easier to place it under such a more familiar concept. I don't believe in their know-how either, because we have had trouble in getting a crime investigation started in these cases, so that they would be investigated properly. I believe that this human trafficking as a concept may be a bit scary.
> AJ: So you mean you have had difficulties to make the police do…
> I: To conduct a good criminal investigation.
> AJ: Why is that? Is it because they don't know the topic?
> I: Yes, the legislation, they have such a broad field to cover, and I think these kinds of cases are coming in only rarely, well even these foreigner offences are sometimes a bit like that, they can't manage them either. They obviously think they are difficult. (Labour inspection and permit authority)

Victim support providers were of the same opinion. They thought that the lack of experience of the police was reflected in ambiguities and problems related to the criminal investigation. Labour inspection and permit authorities pointed out that

in their request for a crime investigation they indicate as accurately as possible all the crime labels they think are relevant in the case, such as extortionate work discrimination, work discrimination, working hours offence etc. This is found to be a good strategy to make the police pay attention to the right things, and advise them as to the focus of the criminal investigation. According to the law, labour inspection authorities are entitled to be heard during an investigation, as well as prior to the prosecutor's decision. The labour protection authorities provide informal support to the police investigations so that all relevant matters are sufficiently accounted for. (Työsuojeluhallinto 2007, 8−9.)

However, labour inspectors themselves may also lack experience and expertise in identifying human trafficking. In many expert interviews, the concept of human trafficking was deemed to be challenging and hard to interpret. One crime investigation authority representative was of the opinion that in particular the elements of the human trafficking paragraph are cumbersome, and that to prove all the elements of the crime in an investigation is difficult.

> Human trafficking cases are very rare and very challenging to investigate, and that's just because the elements of the crime have been described in a way that the person must be kept as a slave or under slavery-like circumstances, or on his/her way to such circumstances, and to investigate such an issue with our powers is very hard or even impossible. (Criminal investigation authority)

This expert interprets the concept in such a way that the proof of human trafficking requires slavery or slavery-like conditions. According to the Penal Code, slavery is not needed for a case to be defined as trafficking in human beings. Instead, the exploitation in human trafficking denotes situations where a person is subjected to sexual exploitation, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial gain (Penal Code 25 3 §). If slavery-like conditions were to be required – as the interviewed expert suggests – the threshold for fulfilling the elements of the human trafficking offence would be placed very high. In the ILO guidelines on the interpretation of forced labour the indications given are of many kinds and reflect different degrees of control, power, and violence (see ILO 2005b). Many of these indications would seem to be present as concerns the interviewees in the cases of exploitation of migrant workers encountered in Finnish working life (see chapter 5).

If the exploitation of migrant workers is examined in the context of so-called work-related crimes, it is clear that these are not among the most highly prioritised crimes to be investigated by the police (Alvesalo & Jauhiainen 2006). In addition, sanctions for work-related crimes are low, and coercive means are applied only rarely. This differs from what is common in relation to drug offences, for instance.

> If we receive a tip that five kilos of amphetamine is arriving in Helsinki harbour, the criminal benefit being, say 50,000 euro, then there'll be quite many authorities there, there'll be many police organisations,

> there's the NBI, there's the Helsinki police department, and the Southern customs district. Everybody is eagerly waiting as to who is going to get this case. Well, if then there's a clue that five Somalis are arriving, each of them is paying 10,000 euro, who'd be interested in that? (Criminal investigation authority)

The above interview excerpt emphasises the observation that crime investigation authorities are more interested in investigating narcotics smuggling than human smuggling. With regard to the illegal arrangement of immigration (the crime in the Finnish Penal Code corresponding to smuggling of migrants), an additional problem lies in the fact that the authorities are unable to know in what circumstances the person may end up in the destination county. The person may end up in forced labour in another European country to which he/she is travelling via Finland. Problems related to the cooperation of authorities between countries constitute an obstacle which hampers the investigation of this issue.

> The dimensions in these cases, they are such that we are sort of at the mercy of the authorities of other countries, the case is not any more in our hands. To investigate such a case is not so simple. Our legislation only covers the territory of our country. We can't get our hands on them. (Criminal investigation authority)

Of course, an irregular immigrant may also end up becoming an exploited worker in Finland.

7.6 Prosecution and non-prosecution

After the crime investigation is closed, the investigation material is forwarded to the prosecutor who assesses the case for possible prosecution. In practice, it is the prosecutor who decides what kinds of cases are selected to be taken to court (Virolainen 1998, 89). Different prosecutors may have different perspectives on how the law should be interpreted and on what grounds one may waive prosecution (see e.g. Kainulainen 2009, 126−130). The decisions on waiving prosecution are, at least according to the interviewed experts, rather common in the case of exploitation of migrant workers. There may be many reasons for this: the pre-trial investigation may be incomplete or otherwise problematic with regard to the evidence, sanctions for labour offences are often very lenient, and the questions concerning the interpretation of the legislation are difficult. Interviewed prosecutors explained that labour offences of the Penal Code are particularly difficult to interpret from the prosecutors' perspective, and as a consequence, prosecutors tend to avoid taking cases of work-related crimes to court.

> It may very well be that any crime label related to labour law, any work-related crime label, well, gives cold sweat to most prosecutors, and they sort of read this protocol or this crime investigation material that is forwarded to them in the course of the crime investigation, they

> read it in particular with this idea in mind, so as to how to get rid of this without having to take it to court. (Prosecutor)

Prosecutors may utilise the expertise of the labour inspectorate when dealing with such crimes, but the interviewed labour inspectors felt that their expertise is sometimes ignored and that this is reflected by the number of non-prosecution decisions.

7.7 Lenient sanctions

It was revealed in the expert interviews that the lenient sentences for work-related crimes decrease the motivation of both crime investigation staff and prosecutors to investigate and to prosecute such cases. For example, for extortionate work discrimination, a person may be sentenced to a maximum of two years' imprisonment, but in practice, such cases are punished with fines. For example, the owner of a restaurant in Vantaa was sentenced for extortionate work discrimination of a Pakistani man to 70 day fines at 6 euro each (equal to 420 euro) (Vantaa District Court 10.7.2009). The most severe punishment in our data was found in the case of the Chinese restaurant in Savonlinna. In this case, the couple who owned the restaurant was sentenced to 9 months' conditional imprisonment and a five year business ban.

> The crime investigation authority only looks at the maximum punishment [maximum two years imprisonment], and that's a cold fact. (Criminal investigation authority)

> I1: I have been doing some [work-related crime cases], and it's just this frustration, that I am sitting for two days in court, and if there is any sentence at all then it's something like ten day fines, so…
> I2: Yeah.
> I1: One has the feeling that it's a waste of the time of a learned person. It's not very gratifying. In the narcotics unit, it's so much more fun, as…
> I2: The prison door really swings…
> (Prosecutors)

Authorities feel that it does not make sense to spend too many resources and too much time on investigating a case in which even the maximum punishment is just two years, and where the defendant is likely to get off with a small fine. This of course gives rise to the question as to whether it would make more sense to try to bring the cases to court under the label of human trafficking, where the maximum penalties are higher. As noted before, it is challenging and time-consuming to prove such a case and it might also require extra investigation resources – that are not available. Moreover, the interviewed labour inspection and permit authorities thought the current punishments for exploitation of

migrant labour were low, and they did not think that they had any deterrent effect.

> It would be important somehow to be able to punish this employer more effectively for doing things like this (…) but right now just something like work discrimination and extortionate work discrimination, well it's quite, well it feels quite ineffective. (Labour inspection and permit authority)

According to our expert interviews, it would be important for the victims to actively demand their due wages, given the fact that these compensation claims may accumulate to a very large sum to be paid by the employer, in contrast to the small fines.

7.8 The satisfaction of the victims and its impact on the criminal justice process

One more issue that hampers the investigation of cases of migrant labour exploitation is the fact that the victims – exploited workers – do not necessarily have any demands against their employers. They may also be quite satisfied with the (sub-standard) wages they are being paid, as their incomes are in any case likely to be much higher than in the home country.

> What I have sometimes noticed in the police, and then sometimes in these court verdicts, is that they both reflect this attitude that if this victim doesn't him/herself think he/she has been discriminated against, then there is no discrimination. (Labour inspection and permit authority)

The government bill proposal 151/2003 takes note of the fact that often migrant workers do not have an interest of their own to push their own case to court, because their substandard terms of employment are often based on a mutual contract between the employer and themselves. Furthermore, the government proposal observes that fear of losing their job, and being extradited are reasons why migrant workers do not often go to the authorities and seek help. "Anonymous queries by foreigners are not uncommon, which indicates that migrant workers are dependent on their employers, and do not resort to any measures even if they are aware of their rights and of the way the labour inspectorate operates." (HE 151/2003, 8.)

According to the law, the employee is protected by minimum terms, thus rendering these regulations as binding law which means that making agreements to the detriment of the worker even with his/her own consent is unlawful (Työ- ja elinkeinoministeriö 2001, 2). In practice, work discrimination offences are subject to public prosecution, and prosecution of such offenses does not require the consent of the plaintiff. However, interviewed experts indicated that the police does not investigate cases at all, or at least does not investigate with the

appropriate vigour, if the victim does not have any demands. According to an interviewed crime investigation authority representative, the situation has however improved over the last few years.

> There has been some improvement; I think that they are investigated anyway. There's been clear improvement, as you saw right there, the prosecutor has also gone through the same thing, that when he is being reminded often enough that it's not a complainant offence and must be investigated, then that's how it goes, and they start to investigate them. And there has been an improvement, so that some cases have been initiated, but it's still a fact that they still are often not investigated. (Criminal investigation authority)

Another interviewed crime investigator denied that the victim's attitude would have an impact on whether the case is investigated or not.

> Well, the attitude of the employee has no impact whatsoever on the crime suspicion, and usually it's like this that they [the victims] are quite satisfied. Of course, as the salary back home is much lower compared to the sub-standard pay they receive in Finland. So compared to this, they are mostly satisfied in this situation, and they have no demands towards the employer, but this has no impact. (Criminal investigation authority)

A good example of how the satisfaction of the victims may impact even the court verdict is the 2008 case of a pizzeria in Helsinki. In this case, the foreign owner of the pizzeria was charged with extortionate work discrimination as he had paid three of his employees wages that were below the collective agreement, and had failed to pay additional compensations to which they were entitled. The court judgement stated that the employees and the employer were of the same nationality, and were friends, and that they had agreed together that the employees would help the defendant get the business started. The employees emphasised that they were in no way dependent on their employer, but that the arrangements were agreed upon together. The court decided that because of this there was no evidence of extortionate work discrimination. The court handed down this decision despite the fact that the judgement makes reference to the statement of the district labour protection authority that emphasises that from the perspective of the core elements of work discrimination it is irrelevant whether the workers themselves think that they have been discriminated against, and whether being in an unequal position is caused by a discriminatory purpose or not. (Helsinki District Court 13.10.2008.)

Moreover, an interviewed prosecutor admitted that the victim's being "satisfied" may have an impact on how successful the case turns out to be.

> Yes, the complainant's apparent or even real satisfaction with his situation might quite easily destroy the chances of success of a case of work-related human trafficking. Even if it could be proven that there was no choice. (Prosecutor)

What is it that causes this "satisfaction" of the victims? Why do they not have demands on their employers? One possible answer is that the victims have become used to unfair treatment already in their home country, and as a result, what happens in this context is nothing particular in their eyes (e.g. Woolfson 2007.)

> It may of course be that we are a little appalled to see such a thing, but a person who is coming from some extremely bad conditions, well he/she may be quite happy that he has a roof over his head and is even getting money − a couple of euro per day. But I don't know then what their Western dream may be, and if it has been realised in this situation. (Criminal investigation authority)

Another possible reason for why the victims do not demand punishment or compensation from the employer who has exploited them is the notion of a debt of gratitude. The employees may feel that they owe a debt of gratitude for the opportunity to have come to work in Finland, and they do not want to lose face. The employer of the same nationality may have established a position in the local community and in his own ethnic community, so that the victims do not stand much of a chance to start accusing him of crimes.

> In these cases it's always, they are coming West just for this purpose that they would make money. And these have sort of succeeded, over time… in the case of these Chinese people, they are not coming in order to get everything right away. That has no importance, but it is enough that they know that in the future, in maybe five, ten years, they may be able to establish something of their own, and then the money will start coming in. So they are prepared to do just about everything. So, that's likely to be why there are rarely complainants among them, as they have a longer [time perspective]. (Criminal investigation authority)

In this vein, Olsen (2008) emphasises the culturally bound motives of Chinese workers related to the question of why they initially move to the West and endure sub-standard working conditions. Chinese persons are deemed not to think about the rights of the individual, but rather of the rights of the family and the state that are more important. They may also be accustomed to bad working conditions, long working days, and certain forms of corruption in their home country. As a result, they do not think about the rights of the individual worker in the same way as is the norm in Europe. (Ibid., 27−29.)

Even if cultural features contribute to understanding why persons submit to exploitation, they do not remove the punishable nature of the act. The National Rapporteur writes in the first report that both the European Court of Human Rights and Finnish courts of justice have confirmed that the "satisfaction of the employees with their conditions of employment and working conditions does not eliminate the punishable nature of the offence" (Vähemmistövaltuutettu 2010, 143). Everybody must be treated equally in the labour market, and it is irrelevant

whether exploitation is understood differently in different countries, or whether the terms of employment are dissimilar.

Chapter 8: What is trafficking for forced labour?

8.1 The definition of human trafficking

The experts who were interviewed seem to have a relatively clear idea of what is meant by human trafficking for forced labour. According to them, an essential element of trafficking is that the person concerned is deceived about the contents of the work to the extent that the worker ends up in different kind of work than he/she was led to believe. A second essential feature is running into debt, for instance, because of fees charged by intermediaries. A third essential element is the exploitation that takes place in Finland. Most of these experts emphasised that human trafficking is a complex phenomenon, where the victims find themselves in a situation in which they have no alternative but to submit to exploitation. The experts were of the opinion that the exploitation comprises several of the following different elements:

- The employer pays no salary at all or only a very low salary
- The employees do not have money at their disposal
- The working conditions and hours violate the terms set in labour law
- The employer controls the employees' leisure time and freedom of movement
- The employer takes away the employees' passports and/or travel documents
- The employees are kept in a state of uncertainty with regard to the location of their residence, the place of work, and/or the employer's identity
- The employer does not allow the employees to use their bank accounts
- The employer exerts pressure on the employees

With regard to possible means of control, many experts consider restrictions to the freedom of movement to constitute a key indication of human trafficking. However, from a legal standpoint, the control does not need to take on extreme forms, such as being locked up in the workplace or the place of accommodation; it suffices that the freedom of movement is restricted by more subtle means. It follows then that no violence needs to be present in order for the offence of human trafficking to be established.

According to our data, it is difficult to distinguish between the human trafficking offence and other related crimes, in particular extortionate work discrimination. The legal distinction, however, seems to be relatively clear. If the ignorance of a migrant worker has been exploited, and he/she has been paid a sub-standard salary and has been made to work for long hours, the situation is likely to be one of extortionate work discrimination. However, if in addition to this, the worker has been deceived in regard of the nature and circumstances of the work, and

he/she is being controlled by various means, then the case may be one of human trafficking for forced labour. Nonetheless, in practice, interpretations are not very clear.

The main problem for this seems to be how the dependent status or insecure state of a person is assessed and defined. If the conditions with regard to the act and the purpose (i.e. exploitation) of the human trafficking offence are fulfilled, it is enough that the person's dependent status or insecure state has been abused in order to constitute the crime (Roth 2010b, 287). Despite this, in Finnish legal practice, the interpretation has been rather strict. To date, only the most serious and the most stereotypical instances of sexual exploitation have been interpreted as human trafficking. (Roth 2010a, 265.) In Finland's first court judgement concerning human trafficking, a mentally handicapped woman was defined as a human trafficking victim, while 13 other women in the same case were regarded as having been subjected to aggravated pandering (ibid., 266). As concerns sexual exploitation, it seems that constructing evidence of the dependent status or insecure state of a victim is difficult. This evidence may be equally difficult to establish in situations of human trafficking for forced labour.

These difficulties are made worse by the fact that the dependent status of the person subjected to extortionate work discrimination is caused by the same causes of dependence as those that constitute human trafficking. The situation of exploitation of economic or other distress in the extortionate work discrimination offence is similar to that of the exploitation of the victim's insecure state in the human trafficking offence (Kaikkonen 2008, 83). If only the most serious indications of dependence and insecurity are accepted, it is not surprising that even cases of serious work-related exploitation are dealt with as extortionate work discrimination (or even work discrimination, cf. Vaasa District Court 29.2.2009).

It is also difficult to define forced labour in concrete terms; in particular the term "force" causes problems. Forced labour does not require an extreme exertion of force, violence or control against the worker. Rather, according to indicators suggested by the ILO, the definition of forced labour seems to resemble closely the essential elements of extortionate work discrimination. The definition of "forced labour" does not seem to be met as easily as "inferior position", even though both comprise similar elements (Kaikkonen 2008, 88).

According to our study, different actors seem to have conflicting views regarding the theoretical contents of human trafficking and forced labour versus the practical application of the definition. The main problem is the image according to which human trafficking does not occur unless extreme exploitation and force are applied. When discussing the definition of human trafficking, some of our interviewed experts made reference to "the typical human trafficking case" portrayed in fiction and movies, in which the persons are deceived by false job promises, or are kidnapped, and eventually end up as slaves. According to the interviewed experts, such cases have not been observed in Finland.

Our study gives rise to the suspicion that many relevant actors may still have a stereotypical understanding of human trafficking and forced labour as an

extreme phenomenon, in which the victims of exploitation have been forced to work by the use of violence, and where their freedom of movement is totally restricted. However, human tracking can be much less dramatic than this. From international experience, it is known that very few victims of human trafficking have been forcibly kidnapped. For example, the IOM database comprises data on 16,000 victims of human trafficking, but only a hundred reported that they had been kidnapped by force (Craggs 2010). It is thus highly problematic if human trafficking is approached through stereotypical images, and the concept of forced labour is understood to concern only extreme situations.

8.2 Examples from other countries

Our data illustrate that there are serious instances of exploitation of migrant workers in Finland, and that they include elements of human trafficking and forced labour. However, different actors have problems in recognising human trafficking. In particular, information regarding law enforcement, prosecution and the courts imply that the situation of the exploited workers is not always assessed in a sufficiently comprehensive fashion. Especially in the cases of the Savonlinna Chinese restaurant and the Thai garden workers, in our opinion, clear features of human trafficking were displayed. Furthermore, many other cases in our data contain at least individual elements of human trafficking for forced labour, when assessed with reference to the ILO indicators of forced labour. In the following, we present examples from other countries in order to demonstrate that despite the problems related to the definition of human trafficking, court judgements have been passed for trafficking for forced labour in situations that correspond to the cases in Finland.

Examples from other jurisdictions show that cases of human trafficking for forced labour present a challenge to the criminal justice system. The manual for judges, prosecutors and legal practitioners, prepared by the ILO, presents court judgements regarding forced labour and human trafficking for forced labour from different countries (ILO 2009d). In these court judgements, certain central themes are repeated, demonstrating the most common issues that courts face when dealing with forced labour and trafficking for forced labour. These include the definition of forced labour; the tension between internal and external evidence; how to prove indirect forms of coercion; what consideration should be given to economic pressure; what elements should be recognised as constituting a situation of vulnerability or dependence; what role do a worker's own unique vulnerabilities play in the analysis of whether labour was forced, and; what remedies are ordered by the court (ILO 2009d, 5–6).

Precedents play an important role in the discussion on human trafficking and forced labour. The Supreme Court of the Netherlands passed its first judgement

on human trafficking outside the sex industry in October 2009[45]. The judgement in the case concerning a Chinese restaurant is highly interesting since corresponding judgements in Finland do not yet exist. Initially, both lower instance courts dismissed the charges for human trafficking. The Supreme Court was, however, of the opinion that human trafficking had taken place. Following the judgement, the number of prosecutions for human trafficking outside the sex industry increased, and several judgements were passed. (van Krimpen 2010; cf. the case description: Bureau NMR 2010, 85–86).

The Supreme Court of the Netherlands concluded that it is impossible to provide a general definition of when there is exploitation. What is defined as exploitation depends on the circumstances of the case, such as the nature and duration of the work, the restrictions imposed on the workers, and the employer's economic benefit. When assessing these details, the Supreme Court argued that reference should be made to the generally accepted standards in Dutch society. According to the Supreme Court, in order to meet the definition of the human trafficking offence it is not necessary for the victim to be actually exploited. (Bureau NMR 2010, 85–86; van Krimpen 2010.)

In order to assess human trafficking cases, a broad perspective and interpretation of the victim's overall situation is required, in particular as regards the insecure state and dependence of the victim. The fact that the victim is in principle able to leave the exploitative situation (such as having access to a mobile phone or if there is a police station in the vicinity) does not necessarily mean that he/she is in practice able to leave (cf. Österbotten District Court 30.4.2010). In reality, many seemingly inconspicuous circumstances may prevent the victim from leaving.[46] When assessing exploitation and forced labour, it is also necessary to gauge whether the victim has any realistic options to get out of the situation. Roth argues that it is important to assess the situation from the victims' perspective, and consider whether they are factually able to protect themselves from the exploitation (Roth 2010a, 280). Our victim interviews conveyed that there were numerous obstacles to seeking help, such as, for example, the lack of language skills, local knowledge, or means of transport, as well as ignorance concerning one's rights and the current living standards of Finnish society.

The comprehensive control applied in human trafficking and the problems related to leaving have been dealt with in a Norwegian court judgement. The District Court of Jæren delivered a sentence for aggravated human trafficking for forced labour in July 2008 (Jæren District Court, 4.7.2008). In this case, a group

[45] In lower courts, sentences for trafficking for forced labour had already been passed earlier. In the Netherlands, the crime of trafficking is divided into human trafficking in the sex industry versus human trafficking outside the sex industry, i.e. trafficking for "other forms of exploitation" (see Bureau NRM 2010, 25). In Dutch law, trafficking for forced labour is not distinguished from trafficking for sexual exploitation, since employment in sex work is defined as legal work (van Krimpen 2010).

[46] This is also being dealt with in the European Human Rights Court's decision Siliadin vs. France.

of particularly vulnerable British young men in England was enticed to work in asphalting and stone-laying in Norway. The court decided that despite the fact that the men left for Norway voluntarily, their consent was irrelevant because their vulnerable situation was abused. In its judgement, the court emphasised that one should assess whether the men could leave their exploitative circumstances, rather than dwell on the issue of consent. In the court's opinion, "the employment relationship with the accused was of such nature that they cannot be said to be capable of quitting it voluntarily, and in these circumstances they must be deemed to have been subjected to forced labour" (Jæren District Court, 4.7.2008, 12). Because the men were not able to leave, the court decided that they were victims of forced labour. The court also ruled that the employers had wilfully exploited the victims' vulnerable situation for forced labour. (Ibid.) According to expert assessments, the case was successful because enough time and resources were invested in the investigation and the legal procedure, in addition to which the legal cooperation between Norway and Great Britain worked well (Fowke 2010). In the Norwegian case, it is also significant that the case was initiated as a human trafficking one. Furthermore, the court did not stall on the concept of forced labour but chose to make reference to the working conditions in contemporary Norway.

The human trafficking criminalisation in the Netherlands refers to the "intention of exploiting this other person". Forced labour is referred to as one of the forms of exploitation in a list that comprises the exploitation of prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery-like practices or servitude (Bureau NRM 2010, 152). The debate on the definition of forced labour does not however appear to be a major problem in the Netherlands. In Norway, forced labour is included in the human trafficking clause, but the Jæren District Court avoided making the definition of forced labour a problem and focused on the question as to whether the workers had a factual possibility to leave the situation controlled by the employer. In both court cases, the insecure state and the dependent status of the victims were emphasised as factors that facilitated the exploitation. Both examples demonstrate that trafficking for forced labour exists in North European countries similar to Finland, and that the human trafficking clause can be applied in cases of exploitation of migrant workers.

If the interpretation by the Dutch Supreme Court and the argumentation of the Norwegian district court are applied to the cases of exploitation of migrant workers in Finland, there are good grounds to maintain that work-related human trafficking exists also in Finland. The details of the case of the Chinese restaurant in the Netherlands resemble closely, for example, the case of the Chinese restaurant in Savonlinna. In the Savonlinna case, the employer recruited the workers himself, i.e. was himself active in the process. On the other hand, the workers did not stay in the country illegally. Without full knowledge of the details of the Dutch case, it does however seem that the employees in the Savonlinna Chinese restaurant worked in worse conditions than those in the Dutch case: they worked at least equally long days, had fewer days off, were made to work even when ill, were prohibited from learning the Finnish language,

and were restricted in their contact with Finnish people by the employer. On top of this, the employer had prohibited at least one of the employees to leave town, the employees were not allowed to visit the other Chinese restaurant in town, and they were threatened with being returned to China if they did not obey the employer. Some of the employees worked in the restaurant for several years, and were accommodated in a flat that was being used as a storage room of the restaurant. The owners of the Chinese restaurant were sentenced for extortionate work discrimination, and agreed additionally to pay 400,000 euro of unpaid wages to the employees. The size of the monetary compensation shows that the employer had received substantial financial gain from exploiting the workers for several years. (Savonlinna District Court 20.2.2009; Roth 2010b) Similar features could also be found in the case of the Thai garden workers (Vaasa District Court 29.2.2009; see e.g. Chapter 5.3.5), in which the employees worked long days. Expenses related to board and lodging, air tickets, and work permits were deducted directly from their salaries. In addition, the employer was in possession of the ATM cards and the PIN codes of the workers, and she controlled their use of money.

In our opinion, the employers in the cases of the Savonlinna Chinese restaurant and the Thai garden workers had clearly exploited the dependent status and insecure state of the workers, and controlled them in a comprehensive manner. Because of their dependent status, the employees were in practice unable to leave the situation in which they were under the control of their employer.

Human trafficking is by its nature a process rather than a single event, the victim being pressured in a comprehensive manner. Consequently, the dependent status and insecure state of the victim may be exploited both in the context of recruitment and in the situation of forced labour itself. From the victims' perspective, it is essential to make an overall assessment of their experience. Therefore, attention should be paid to all constituent elements that render the situation such that workers are in fact unable to leave their work. For example, dependence may be caused by a family relationship to the employer. Contrary to what the Österbotten District Court argued in the case of the Vietnamese restaurant in Pietarsaari, a family tie may also be a negative factor – and the case may not necessarily be one of unselfish help towards a relative (see Österbotten District Court 30.4.2010).

Forced labour should also be assessed in the framework of the reality of contemporary Finnish society, with reference to Finnish working life. It is not useful to compare labour exploitation in Finland with situations of forced labour and extreme exploitation in other countries.

8.3 Conclusions related to the definition

Our court data seem to indicate that the different actors in the criminal justice system are not necessarily aware of – and do not apply − ILO's indicators of

forced labour, or the process and elements of human trafficking when they assess the exploitation and its seriousness.

In this study, we have applied ILO's instruments, in particular the indicators of forced labour. Our empirical material shows that the cases of exploitation of migrant workers identified in Finland comprise characteristics of forced labour according to ILO's indicators, and, consequently, trafficking for forced labour. Applying the human trafficking criminal offence of the Penal Code to situations of labour exploitation has proven to be difficult in Finland. Some experts have proposed that a new offence of aggravated extortionate work discrimination should be introduced into the Penal Code, or that work-related exploitation should be added to the definition of the human trafficking offence. If forced labour is understood very strictly so as to comprise only instances of extreme force, the question arises whether a separate criminal offence should be introduced for instances that do not meet the strict definition of forced labour, but that are nevertheless clearly more serious than extortionate work discrimination (see Roth 2010a, 299). Then again, the current Penal Code does provide a sufficiently comprehensive framework for the legal assessment of work-related human trafficking as well as for a more general approach to the phenomenon, if only it were possible to interpret forced labour more extensively than what is being done today.

As a solution to the problem, we propose to follow Soukola's (2009) suggestion, according to which forced labour and human trafficking should be assessed by applying concrete indicators. In Soukola's argumentation, the fact that the government law proposal fails to discuss the definition of forced labour in detail may "mislead the users of the law, or make them think that the definition of forced labour is in some way ambiguous". The ambiguity of the forced labour related elements of the human trafficking offence and the other demeaning circumstances would, according to Soukola, be solved if the investigations were carried out by applying ILO's detailed definition of forced labour and other international instruments. (Soukola 2009, 281–282.) As a way to clarify the legal definition, we suggest that recommendations be drafted on the basis of concrete examples, to be used in particular by criminal investigation authorities, prosecutors and judges.

Regarding the essential elements of the human trafficking offence, the situation should be subjected to a detailed assessment of the overall situation, i.e. the assessment should comprise the means applied, the criminal act itself, and the exploitative intention. Roth (2010a) argues, that for the human trafficking offence to be proven, it is not required that each suspect participate in the entire chain of events (recruitment, transportation, exploitation). It is sufficient that the suspect takes control of the victims, recruits them, transfers them, transports them, receives them, or harbours them. For the human trafficking offence to be proven, it should be sufficient that a single act and/or one single means be applied. In the exploitation cases identified in Finland, the means has usually

been the abuse of another person's dependent status or insecure state, or deception.[47]

Concerning the exploitation, it has to be assessed whether the case includes forced labour or a situation in which a person has been brought into forced labour. As we have argued above, forced labour does not need to refer only to extreme force, violence or control. When scrutinising the "force" of forced labour, it is essential to observe subtle means of control as well, such as the circumstances that prevent the migrant worker from leaving the workplace. Such circumstances comprise, for instance, dependence on the employer because of debt, and the insecure state caused by ignorance or the lack of alternatives. What need to be assessed are the circumstances that force a person to continue working (regardless of the fact that he/she initially consented to the work). The means by which the workers are controlled, their indebtedness made worse, or their freedom of movement and their sovereignty restricted, are the factors which render irrelevant the significance of the initial consent.

In addition, assessing human trafficking and forced labour is difficult because the essential elements of the offences of forced labour and of human trafficking partially overlap. The means used in human trafficking and the means by which forced labour is exacted "under the menace of penalty" largely overlap. The selected means thus play a double role. This may result in a situation in which the threshold of proof is set too high. Nevertheless, in the court judgements from Norway and the Netherlands, the dependent status or insecure state are emphasised as being factors that facilitate the exploitation, while the reasons that prevent the worker from leaving are simultaneously examined. Furthermore, a prerequisite for genuine consent to the employment is valid information as concerns the circumstances and the relevant rights, because a person cannot consent to his/her own exploitation. Regarding the human trafficking offence, the criminal intent of the perpetrators is of central importance as well; this means that the employer must know that the dependent status of the employees is being exploited.

In conclusion, human trafficking for forced labour may be seen to indicate a situation in which a person has been recruited or forced to work, in conditions he/she has been deceived about, and in which that person is subjected to serious exploitation from which he/she is unable to detach him/herself because of intimidation, violence, or other exertion of power. Thus our study demonstrates that situations of exploitation of migrant labour in Finland do indeed display features of human trafficking for forced labour. Last but not least, we would like to emphasise that while it is important, in a legal discourse to discuss and analyse the definition of human trafficking and how it relates to other offences which resemble human trafficking, the most important priority, from the perspective of helping victims, is to come to the help of people in distress.

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[47] We did not find indications of cases in which victims of trafficking for forced labour were effectively sold or bought.

Chapter 9: Summary and recommendations

The study aims to contribute to the improvement of the understanding of trafficking for forced labour, labour exploitation and related issues in Finland and describe the different forms of exploitation of migrant workers that occur in Finland. The study utilises different types of data: expert and victim interviews, court judgements and pre-trial investigation materials, as well as press articles and other media materials. Our study demonstrates that exploitation of migrant workers exists in Finland. At the worst, this exploitation amounts to trafficking for forced labour.

According to our study, the most serious cases of exploitation take place in the restaurant, construction and agriculture (esp. horticulture) sectors. The victims come from different parts of the world: from Asia, Eastern Europe and Finland's neighbouring areas. Their education level varies, but their objective is to work abroad to earn more money. The perpetrators are both Finns and people with a foreign background.

Our study shows that the recruitment of migrant workers can be divided roughly into two categories: recruitment via recruitment agencies, and a more small-scale recruitment that takes place via family, relatives, or acquaintances. Our data indicate many instances where migrant workers have had to pay high and illegal recruitment fees to recruitment agencies in their home countries in exchange for finding a job in Finland. In this situation, migrant workers already run into debt before arriving in Finland, which then makes them more dependent on their employer in Finland. With regard to work permits, most migrant workers have proper permits, but they may not be aware of their right to change employers nor know about the terms of employment with which their employer has agreed to comply. People may be willing to work in bad conditions just so that they can renew their work permit after the first year. However, if the minimum income level has not been met during the first year of employment, migrant workers cannot renew their work permit and have to return home.

Migrant workers experience many forms of exploitation in Finland. While direct physical violence seems quite rare, many migrant workers and their families are threatened and pressured directly or indirectly. Victims are threatened with regard to the police, work permit authorities, or being returned to the home country with termination of employment. Applying psychological pressure is common.

Regarding freedom of movement, no cases of workers being locked up in their workplaces were found. Instead, employers use other more subtle means of control to restrict the free movement of their workers. Employers also minimise the length of employees' free time by demanding very long working hours and discourage them from learning Finnish or meeting peers, in practice isolating them from Finnish society. Accommodation is of varied quality – from relatively normal accommodation, to sheds, barracks or even tents. It is usually provided either by the employer or the recruitment agency and the rent is high compared

to standard rents in order to maximise the profit made. As regards the retention of passports, our data show some examples where employers have taken away the workers' passports or identity documents using different excuses.

Salary discrimination in its different forms is the most common method of exploiting migrant workers. For example, the workers who often work during the evenings and weekends, and considerably more than the standard 40 hours a week are not paid any of the mandatory compensations for evening, night, Saturday and Sunday work, or overtime compensation, vacation money, or daily subsistence allowances. Moreover, the exploited workers' basic hourly wages may be very low. Working hours are often not recorded correctly in the working time records or no such mandatory records are kept. The employer may control the workers' finances by taking away their ATM cards or internet banking codes or by demanding that the workers pay back some of their salary in cash.

In addition, deficiencies exist in the occupational health and work safety coverage of exploited migrant workers. They lack mandatory insurance, they may have to work even when sick and the safety protocols in their working environments may be insufficient, especially in the construction sector. Regarding debt issues, these are often related to high recruitment fees paid by the employees to private recruitment agencies in their home countries. Some exploited workers need to borrow money to pay their air tickets and other travel costs and different deductions for accommodation, food and travel and pay advantages may lead to situations where the worker is indebted to the employer. The risk of re-victimisation is clearly high in the case of persons who find themselves in a circle of debt.

Victims of trafficking for forced labour and labour exploitation rarely report their circumstances to outsiders or contact the support agencies or the authorities themselves. Victim identification is very challenging and it may be hampered by the unclear distinction between human trafficking and other crime categories. Only few actors meet the potential victim in person, and it is difficult to make an in-depth assessment of the situation of the applicant on the basis of documents only. Victims may not wish to talk about their experiences because they do not dare to do so for various reasons (fear, distrust, trauma etc.), or because they do not consider themselves to be victims in the first place. The official assistance system for victims of trafficking is well regarded by the different experts and victims we interviewed, but many actors do not know about the system.

Criminal investigations regarding the cases of exploitation of migrant workers are challenging for many reasons. The police lack proper resources and expertise, and the length of investigations are long and may need international cooperation. Interviewing victims may be difficult, as language and cultural barriers make the communication more difficult. Finding sufficient evidence of the crime is often problematic and the relevant crime labels are thought to be difficult to use and prove by the law enforcement officers. These same issues are reflected in the work of the prosecutors. Expert interviews revealed that lenient sentences for work-related crimes decrease the motivation of both crime investigation staff and prosecutors to investigate and to prosecute such cases.

Moreover, the fact that victims do not have any demands against their employers may affect the criminal process, even though work discrimination offences are subject to public prosecution, and prosecution of such offenses does not require the consent of the plaintiff.

Thus far, no judgement has been passed in Finland on trafficking for forced labour. However, our study shows that cases of exploitation of migrant workers include elements of forced labour according to the ILO indicators (2005b; 2008; 2009b). We argue, however, that the interpretation of the definition of trafficking for forced labour is difficult for many practitioners and actors. This may in part be influenced by a strict and stereotypical understanding of trafficking in human beings. Different actors do not necessarily see the bigger picture and the victim's situation as a whole, but only recognise separate forms of exploitation. As a result, potential trafficking cases are dealt with by the courts, prosecutors and the police as extortionate work discrimination or other such work-related offences. We argue, however, that if a victim's insecure status and dependent state have been exploited, both their work and free time have been controlled and they have not had a de facto chance to quit the job and leave, the case may amount to a situation of trafficking for forced labour. We also maintain that the victim's circumstances should not primarily be compared to extreme cases in other countries, as they should be seen in relation to acceptable standards in Finnish working life. In our view the current penal legislation is sufficient in terms of work-related trafficking. The problem lies in the lack of interpretative guidelines and instructions.

Data collection on trafficking in human beings has both nationally and internationally mostly focused on data on known victims or known cases. It is evident that the majority of cases will remain unknown unless active outreach is carried out. The National Rapporteur collects information in a comprehensive manner, but the challenge is how to get all authorities and other actors to actively collect information and data on trafficking in human beings.

Finally, we make some recommendations.[48] In order to tackle the exploitation of migrant workers and trafficking for forced labour, it is clear that the general awareness of the phenomenon should be improved. Migrant workers themselves should be informed about their rights and the acceptable terms of employment in Finland. Such information should be provided to the migrants already prior to their arrival in Finland, e.g. through the Finnish consulates. Information should also be made available while in Finland, e.g. through the establishment of a specific hotline for migrant workers.

To enhance the identification of the victims and relevant cases, different actors such as the police, prosecutors, labour inspectors, trade union activists, social workers and nurses should be educated on the elements of trafficking for forced labour. This could be done using concrete examples and case studies of actual

[48] The Finnish report contains 7 pages of concrete recommendations which were not translated into English as they are very country-specific in nature (Jokinen et al. 2011, 195−201).

cases that have taken place in Finland. These actors should also be provided with sufficient resources to identify cases, to help the victims and to investigate the crimes. The development of a National Referral Mechanism would also be important, so that all actors and practitioners know what to do when they encounter a potential victim of trafficking for forced labour.

The current provision on trafficking in human beings of the Finnish Penal Code is, in our view, sufficient. However, the interpretation of the definition of trafficking and the elements of the crime seem to be difficult for various practitioners. The distinction between extortionate work discrimination and trafficking seems particularly problematic. Our research shows that cases that include elements of trafficking for forced labour have been dealt with as cases of extortionate work discrimination in courts. In order to illustrate the elements of the crime of trafficking for forced labour, it would be useful to develop guidelines for criminal justice actors and practitioners. These guidelines could be based on the ILO indicators on forced labour. It is essential that the situation of victims of work-related exploitation is considered in a comprehensive manner, so that the possible elements of trafficking for forced labour are unveiled.

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Trafficking for Forced Labour in Poland

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Chapter 1: Introduction and terminology

When human trafficking first made headlines in Europe 15−20 years ago[1], it was generally associated with the sex industry and its response to the growing demand for more and more sophisticated sex services involving very young women coming from different cultures, children and child pornography. It was also associated with a growing migration problem and the rapid growth of organised crime, both in Europe and worldwide. [2] It was a view shared by the international community, governments, researchers and non-governmental organisations. This can be seen in how the issue was covered or in the names of victim support organisations which mainly focused on women and sex services. Almost no one ever considered forced labour, especially not on the "old continent". Asia or Africa might be affected, but not Europe – we seemed to think at that time.

In fact, the problem persists on a growing scale[3]. All European countries are affected. While forced labour varies from country to country, data collected e.g. by the ILO shows that no place in Europe is free from forced labour. Depending on the level of wealth, some countries and areas are countries of origin, transit countries or destination countries. A country of origin is one whose citizen becomes a victim of human trafficking. A transit country is one through which victims are transported or smuggled. A destination country is one in which people become victims of human trafficking for forced labour. Some countries, such as Poland, can play all three roles, while some others are countries of destination or origin only. No country is known to be a transit country only.

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[1] The organisation of human trafficking. A study of Criminal Involvement in sexual exploitation in Sweden, Finland and Estonia. Stockholm 2008, p. 19; Buchowska, Stana (2006): Czynniki sprzyjające handlowi ludźmi. In Lasocik, Zbigniew (eds.): Handel ludźmi. Zapobieganie i Ściganie. Warszawa: Ośrodek Badań Praw Człowieka Uniwersytet Warszawski, p. 332.

[2] Trafficking in Human Beings in South Eastern Europe, UNDP, 2003; Elaine Pearson, Historical Development of Trafficking – The Legal Framework for Anti-Trafficking Interventions, in: Challenging Trafficking in Persons. Theoretical Debate & Practical Approaches, Nomos 2005; R.J. Kelly, J. Maghan, J.D. Serio, Illicit Trafficking. A Reference Handbook, ABC CLIO 2005; M. Tchomorova, Trafficking in Women – Personal, Psychological and Social Problems in (Non)-United Europe, in: Trafficking in Women. Questions and Answers, Animus Association, La Strada Foundation 2002.

[3] ILO Minimum Estimate of Forced Labour in the World, Geneva 2005.

Forms of forced labour vary greatly across Europe. The differences are found in the industries involved, how the victims are exploited and who they are.[4] For example in some countries people are forced into work on fruit and vegetable plantations while in others in small factories or on construction sites. In some countries, forced labour is a problem in private enterprises but there are others where state-owned enterprises take advantage of forced labour. [5] In some countries, the majority of the victims are foreign nationals from the poorer countries of the European Union, but in others the victims come from non-European countries, including Asia. While most of the victims are adults, children are also exploited. Those engaging in forced labour come from different ethnic origins or are members of different organisations. They are *ad hoc* "consortia" of employment agencies and employers, or organised crime groups.[6]

This brief overview shows the extent of the problem. You might think that because we understand the different aspects of forced labour, we have extensive and in-depth knowledge of the problem. But we do not. Our knowledge is anecdotal, inaccurate and not based on evidence. We must build a system to study forced labour, collect reliable information and analyse the data.

This is not an easy task. The usual research procedures do not work well with forced labour and human trafficking. There are many barriers to consider. The most important one is that migrant victims often stay illegally in the country and their biggest fear is of the authorities rather than the perpetrators. Another barrier is the conspiracy of silence between perpetrators and victims. There are mental and cultural barriers which stop people from admitting that they are a victim of a crime, not to mention being exploited. According to recent experience of La Strada, this is a particular problem for men from Asian male dominated countries.[7] Finally, organising forced labour involves conspiracy, and there is very little the police can do unless these crimes are reported by the victims (which they understandably are not doing) or by citizens. Many communities believe that it is not right to interfere with other people's business and it is immoral to report others to the police, especially when foreign nationals are involved.

The objective of the project was to develop a model for studying forced labour. The idea was not to collect knowledge but to consider different ways to **study forced labour, describe it and analyse it** and ensure that the information we obtain is useful for cognitive and practical reasons, e.g. to prevent the problem or help the victims.

Forced labour did not happen overnight. The problem existed in different parts of the world, but it was not until Europe and the United States became affected

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[4] Forced labour and human trafficking. Handbook for labour inspectors. International Labour Office, Geneva 2008.

[5] Trafficking in Persons Report. U.S. Department of State, 2010.

[6] ILO Minimum Estimate of Forced Labour in the World, Geneva 2005.

[7] This issue was presented at the First National Expert Meeting held in Poland in March 2009.

that it attracted public attention. We need to understand the social and legal context of forced labour in Poland. This is not to study the aetiology of the problem, but to identify areas that need more research and analysis, and to understand how the legal infrastructure addresses the problem of forced labour. This will be covered in Chapter 1. Chapter 2 presents the basic study assumptions forming the foundations of our work and a description of the methodology applied with a special focus on international cooperation. As much as it is important, international cooperation is not easy when you consider the social, cultural and legal differences between countries. Further in the report we will present everything we have been able to find out about forced labour. The picture is far from complete but that was not the point. In fact the objective was to gain a better understanding of the problem, identify sources of information and develop a data collection system to include statistics from government agencies, NGOs and research organisations. Next, this publication gives a description of the system which responds to cases of forced labour. Again, rather than attempting to provide a complete description, the report identifies specific parts or segments of the system which should help with further in-depth analyses and the establishment of effective mechanisms for eliminating forced labour from public life. We will analyse four aspects of the system. They are prevention of forced labour, victim identification, prosecution and penalisation of perpetrators and helping the victims. The final chapter tackles the question of how to collect knowledge on forced labour and use it effectively.

To ensure consistency in the terminology used in the report, it is important to define the main terms. Some terms have legal definitions based on national or international law and others have been defined in the course of our work.

The basic term used in this publication is **forced labour**. It consists of two words: labour and forced. Let us discuss them one by one. Labour is usually defined as a conscious and deliberate human activity designed to create and produce specific material or cultural goods which are the basis and condition of the existence and development of human society[8]. In legal terms labour is an occupation rendered in conditions of subordination for which people are paid[9]. The second term in forced labour is forced and can be defined as exerting an influence or pressure on another person against their will[10]. This can also mean subjecting another person to unlawful physical and/or mental pressure.

Forced labour (sometimes referred to as **compulsory**) has been defined in the International Labour Organisation's Convention No. 29 concerning forced or

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[8] T. Bulenda, Forced labour and employee exploitation – ethical and legal aspects, [w:] Human trafficking – prevention and prosecution, (red.) Z. Lasocik, Warszawa 2006, p. 292.

[9] Work in conditions of subordination implies the rendering of work in a place and at a time agreed to in a contract and under the management of and for the benefit of the organisation (employer) that organises the work. Por. L. Florek, T. Zieliński, Labour law, Warszawa 2007, p. 2.

[10] T. Bulenda, Forced labour, op. cit., p. 293.

compulsory labour[11]. In the light of the convention forced labour or compulsory labour means "... ***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".*** Because it is quite concise, let us consider the terms used in the definition. *All work or service* means any type of work, employment or occupation where the employment relationship or the legality of employment are not of importance[12]. As a result, forced labour will include occupations that are illegal in a given country, such as prostitution or are not regulated in the labour law[13], such as domestic work or forcing family members into work[14]. *Any person* refers to adults and children and it is of no significance whether the victim is a citizen of the country in which he was subjected to forced labour[15.] *The menace of any penalty* refers not only to penal sanctions but different forms of coercion, including the threat to use force (punishable threat), withholding of identity documents, restricting freedom and failure to pay for work done[16]. The definition also says that the person *has not offered himself voluntarily* for the work or service. This applies not only to people being forced into work but to people who are misled by their employers as to the conditions of work, employment or pay and cannot annul the employment contract or quit[17].

The reason why we are quoting this convention and discussing it at length is because the Polish law does not include a definition of forced labour. However under Article 91 of the Constitution, international agreements ratified by Poland become part of the Polish legal system, making the above definition a legally binding definition in Poland. In addition, many countries follow the definition given in the ILO Convention No. 29[18.]

Our research shows that forced or compulsory labour very often involves human trafficking. Because we have often dealt with cases of human trafficking for forced labour in this work, it is important to quote the relevant definition. While Poland adopted its own definition of human trafficking in July 2010, for the purposes of this report we will be using the definition of the Palermo Protocol[19]. It says that **human trafficking** means "... *the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force*

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[11] Journal of Laws of 1959, No. 20, Heading 122.

[12] B. Andrees, A handbook for labour inspectors, International Labour Office, Geneva 2008, p. 4.

[13] However, forced prostitution was not include in the research of the FLEX project.

[14] Ibidem, p. 4.

[15] Combating forced labour: a handbook for employers and business, International Labour Organization, Geneva 2008, p. 8.

[16] B. Andrees, A handbook for labour inspectors, op. cit., p. 4.

[17] Ibidem, p. 4.

[18] ILO Convention No. 29 has been ratified by 174 countries.

[19] Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which is a protocol to the Convention adopted by the United Nations against transnational organised crime (Journal of Laws of 2005, No. 18, Heading 160.

or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

The focus of our work was not only on cases of human trafficking for forced labour but also cases of slavery and exploitation. It is important to define **slavery** and **exploitation** because these terms are confused with forced labour. Let us take the definition from international law, i.e. the League of Nations Slavery Convention[20]. It states that "*slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"*[21]. And so **slavery** is a condition in which a person is treated like an object (property right), where a slave is the object not the subject of law. Slavery is often considered an equivalent to forced labour. Although the differences are subtle, slavery is the state of being owned by a master and being treated like an object. While a victim of forced labour can also be treated like an object, it is the element of coercion that matters, and who the victims belongs to, if at all, is secondary. This is why slavery is treated as one of the forms of forced labour [22].

To define **exploitation** let us refer to the Polish penal law. Under Article 304 of the Penal Code exploitation involves "*taking advantage … of a natural or legal person or an organisation ... who is in a position of vulnerability and entering into an agreement with that person under which they are required to provide a service which bears no proportion to the reciprocal benefit*"[23]. It is fair to say, however, that this definition does not include labour exploitation and was originally meant to cover situations closer to usury than to exploitation in the sense of slavery. As it is described here the exploitation occurs when an employer knowingly takes advantage of the employee's position of vulnerability and enters with him into an employment contract or a civil law agreement which offers inferior conditions to the employee. A position of vulnerability does not only involve material things but also health, family, etc. And so an employee in a position of vulnerability could be a foreign national who has spent his savings to be able to work abroad. However, after he had arrived in the country of destination, he was told by his employer that he would be paid much less than originally promised. Exploitation also occurs when an employer pays the wages but it is much less than agreed in writing or orally between the employer and employee. Exploitation occurs when the employee is paid significantly less than

[20] Journal of Laws of 1930, No. 6, Heading 48.

[21] Ibidem.

[22] See: Trafficking for forced labour. How to monitor the recruitment of migrant workers, International Labour Organisation, Geneva 2006, p. 5.

[23] Journal of Laws of 1997, No. 88, Heading 553.

the going rate for the specific job. In fact it is the only definition of the exploitation.

Because the report frequently uses the terms of **victim** and **perpetrator** we need to define victims and perpetrators of forced labour. A victim is someone who has been forced, exploited or enslaved to work or provide a service. We considered people victims when they were harmed by a perpetrator of (or person accused of) the crime of human trafficking for forced labour. Victims included also those who received help under the *Programme of support and protection for the victims/witnesses of human trafficking*, a scheme run by the La Strada Foundation for the Ministry of the Interior and Administration. This included people who were considered victims of forced labour by other non-governmental organisations which support migrant victims.

A perpetrator is someone who has been taking advantage of, forcing or enslaving a victim to work or provide a service, irrespective of whether he has been tried for forcing people to work (there is no such crime in Poland). A perpetrator is also someone who has been involved in the *recruitment, transportation, harbouring or receipt of victims*. And so a perpetrator is someone who has been sentenced for or charged with human trafficking for forced labour.

The report also uses the term **irregular migration** which we define according to IOM nomenclature as the crossing of a state border and/or staying in a country in violation of national or international law. Illegal/irregular migration also refers to foreign nationals who have entered a country legally but their visas have already expired[24].

[24] Compare: World migration 2008. Managing labour mobility in the evolving global economy, International Organization for Migration, Geneva 2008.

Chapter 2: The Polish context

2.1 Social context

Owing to the specifics of forced labour (as defined above), foreigners are its most common victims. Local citizens are much more often exploited, treated badly at work or become victims as a result of other violations of the employee's rights. If this is the case, then the extensive area of social phenomena related to the movement of human populations, namely migrations, must be of concern to anyone who deals with the issue of forced labour.[25]

In Poland, the migration issue appeared only after 1989, i.e.: after system transformations. In the past decades, foreigners were not very numerous, so actually they did not draw the society's attention. The ethnic origin of newcomers was also of much importance as Poland became most often the country of destination for citizens of other European countries. The only multi-ethnic groups were students from a few African and Asian countries, including Angola and Vietnam, who landed in Poland as part of the programme aimed at supporting the youth from those countries which were getting involved in the "development of socialist management methods". The programme was implemented collectively by the Eastern Bloc countries, whereas particular members of that community were responsible for supporting specified countries. Also various political refugees, who gained support from the group of socialist countries, found a shelter in Poland. Such was the case with e.g.: a large group of Greeks who left their country after the military junta coup in 1967.

The situation changed quite fundamentally at the beginning of the nineties. The opening of borders, the alleviation of the visa regime, the collective fascination with capitalist forms of economic management and the ubiquitous freedom, intensified the movement of people in Eastern Europe in all possible directions. In Poland, citizens of neighbouring countries, such as, predominantly Ukraine, Russia and Belarus, the Baltic countries, and in particular Lithuania, as well as inhabitants of the Balkan countries, mainly Romania and Bulgaria started to arrive more often in Poland.

The first social response to the effects of migration movements and economic mobility (trade) was rather negative in Poland. Polish people were not mentally prepared for "sharing" their country with foreigners. Such critical attitudes were even reinforced by media, which presented foreigners as smugglers and perpetrators of serious crimes. In time, the situation however changed and already in the late nineties, Poles started to perceive also positive features in

[25] To prove the importance of this issue, suffice it to mention that the Report of the International Organization for Migration addressing the issue of the world labour mobility covers over 500 pages, see "World Migration 2008. Managing Labour Mobility in the Evolving Global Economy, IOM 2008".

foreigners. First and foremost, it turned out that foreigners could be very useful in performing some types of work and that they could enrich the native culture. In consequence, the presence of migrants was accepted by the society and tolerated by the state that did not have any coherent strategy of dealing with the growing number of migrants. Moreover, Poland had had a relatively liberal visa regime for many years, which by no means served the purpose of consciously creating migrant populations in Poland. In the meantime, two other nationalities appeared, which since their arrival, have been playing a key role in the Polish labour market: the Vietnamese and the Armenians.

The legal situation of migrants in Poland changed fundamentally after Poland's accession to the Schengen information system. The new situation also forced the state authorities to start a debate on the creation of a coherent and long-term migration policy, including the protection of migrants' work. The state authorities did not treat the issue as specifically important, given the still modest number of migrants, the dominance of citizens from neighbouring European countries and the absence of overwhelming adverse effects of the foreigners' presence in Poland. Also for that reason, there was no intrinsic institutional sensitivity in Poland to the ill-treatment of foreigners. The lack of interest and possibly negligence on the part of state authorities manifested themselves, among other situations, in the fact that it was not until 2007 when the National Labour Inspectorate was vested with respective powers (and obligations) to oversee the employment of foreigners for its legality; however farms and households were excluded.

Another important factor that must be considered when analysing the work of foreigner in Poland, is the massive outflow of work force from Poland in 2004. It is estimated that during this period, between one and a half million and two million people emigrated to work in other European countries (mainly English-speaking countries). Even when we consider the fact that part of them have already returned, the loss of work force is still considerable and must be compensated. Undoubtedly, foreigners are the only new source of labour.

Just like everywhere else, migrants in Poland are migrants who stay in Poland legally, namely in accordance with local regulations and those who stay in the state's territory by violating such regulations. The analogous situation concerns a work permit – some of them hold such a permit and some do not. Obviously, in these two cases, the dominance of the latter, i.e. those who infringe extent immigration regulations and work without a required permit, is conspicuous. The following two examples are the most characteristic ones: it is estimated that in Poland there are between 300,000 and 500,000 Ukrainians who work illegally, while the number of work permits issued to citizens of Ukraine is slightly over 3,000. The situation looks similar with the citizens of Vietnam. While Polish consulates in Vietnam issue from 500 to 700 visas annually, the number of Vietnamese people in Poland is estimated at 50,000−60,000.

This situation is further proven by figures obtained from the National Labour Inspectorate (in Polish: PIP). During the past three years, inspectors of this institution detected roughly 1,000 cases of illegal employment of foreigners who

are working without a required work permit. At the same time it is observed that along with gaining experience in this type of controlling activity, the number of identified migrants hired by violating applicable legal provisions grows year by year.

Criminal activity of migrants in Poland is a significant aspect that reflects their situation. In the years 2004−2009, the number of such criminal acts dropped considerably. While in 2004 foreigners committed about 3,800 crimes, in 2009 this number amounted to only 2,000. The disparity in figures, which reflect the victimological vulnerability of this group is even much more visible. Thus, in 2004, migrants were victims of about 4,300 crimes, while in 2009 this number dropped to 1,300.

2.2 Legal context

Poland, being a democratic state of law, is morally bound by such documents as the Universal Declaration of Human Rights from 1948, which in its Article 4 bans slavery and proclaims that no one shall be held in slavery or servitude, and that slavery and the slave trade shall be prohibited in all their forms. At the same time, the same document contains provisions in Article 23, in which the international community declared that everyone had the right to free choice of employment.

Poland is also a party to almost all important international conventions, which address slavery, human trafficking or forced labour, at global and regional (European) level. The following acts of international law must be mentioned: the Slavery Convention signed on 25 September 1926[26], which defines slavery and slave trade and also determines (Article 5) that forced labour can only be applied in exceptional situations; the International Covenant on Civil and Political Rights from 16 December 1966[27], which in its Article 3 clause 3 prohibits forced or compulsory work, the Convention on the Rights of the Child from 1989[28] and the optional protocol thereto on the sale of children, child prostitution and child pornography from 25 May 2005[29], which impose the obligation on states to protect children from any economic exploitation as well as any work and activities which could be harmful or hazardous to their physical and mental or social development; last but not least, the (European) Convention for Protection of Human Rights and Fundamental Freedoms adopted in 1950[30] which explicitly addresses the issue of forced labour: Article 4 of the said Convention prohibits slavery and servitude, as well as forced and compulsory work.

[26] O.J. from 1930 No. 6 item 48.

[27] O.J. from 1977 No. 38 item 167.

[28] O.J. from 23 December 1991 No. 120 item 526.

[29] O.J. from 2007 No. 76 item 495.

[30] O.J. from 1993 No. 61 item 284.

A special document, which becomes more and more operative in the European legislature market is the Charter of Fundamental Rights of the European Union[31]. In this case, the ban on forced labour was defined from the point of view of the subject that performs work. In Article 5 of the Charter, the European legislator proclaims that no one shall be required to perform forced or compulsory work. The Charter also acknowledges (Article 15) that everyone has the right to engage in work and pursue a freely chosen or accepted occupation.

The International Labour Organization (ILO) plays a special role as regards the legislation related to forced labour. Convention No. 29 on forced or compulsory labour adopted by the said Organization in 1930[32] proclaims that forced or compulsory work is all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily (Article 2).

Other significant conventions enacted by the ILO that address forced labour and its elimination are as follows: Convention No. 95 of the ILO on the protection of wages[33] from 1949, Convention No. 105 on the abolition of forced labour[34] dated 25 June 1957, which incorporates the obligatory immediate and complete abolition of forced or compulsory work, as well as Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour[35] from 17 June 1999.

2.2.1 The Constitution of the Republic of Poland

Although Poland is a party to almost all instruments of international law on human trafficking for the purpose of engaging them in forced labour, in the national law, forced labour has not been penalised. However, Polish legal provisions protect employees from exploitation and ill-treatment by employers. And although forced labour has not been prohibited in Poland, it is not the case that a victim of exploitation or forced labour is helpless and forced labour and exploitation are not prosecuted. Already the Constitution of the Republic of Poland[36], which is the primary normative act in the hierarchy of sources of laws, lays down that "*Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.*" (Article 24 of Poland's Constitution). And despite generality of the quoted provision, the state system legislator incorporated this provision in the core section, namely in Chapter 1 of the Constitution of the Republic of Poland. The Chapter thus contains rules that

[31] O.J. of EC from 18 December 2000.

[32] O.J. from 1959 No.20 item 122.

[33] O.J. from 1955 No. 38 item 234.

[34] O.J. from 1959 No. 39 item 240.

[35] O.J. from 2004 No.134 item 1474.

[36] J.L from 1997 No. 78 item 483.

govern the political, social and economic system of the Republic of Poland. This in turn allows the state to step in to oversee relations between employees and employers so that none of the parties to a labour process could be exploited/harmed by the other party[37]. However, such labour protection is understood quite broadly by the Polish state system legislator. Not only is this the matter of the protection of employees' interests but also of the interests of employers, or even of consumers of manufactured goods or services.[38] Nevertheless, employees are under special care because it is the employee who in economic terms is undoubtedly the less powerful party in the employee-employer relationship.[39]

The Constitution of the Republic of Poland ensures, however, not only the oversight of working conditions (Article 24 of the Constitution) but also the freedom to choose and pursue occupation and choose a place of work. In the light of Article 65 clause 1 of Poland's Constitution, public authorities cannot impose employment or decide about the choice of employment and a place of work.[40] This signifies that the Constitution prohibits forced or compulsory labour[41], although only implicitly. There are however linkages with corresponding provisions in Convention No. 29 of the ILO, which define forced labour as all work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily. It is true that Poland's Constitution provides for the introduction of the obligation to work by statute but provisions of Conventions Nos. 29 and 105 of the ILO regulate this issue in a similar manner. However, every introduction of the obligation to work must each time be justified by the legislator and caused by exceptional situations. The Polish law specifies such exceptions explicitly; therefore the obligation to work is legitimate only in the following situations: prevention of natural disasters and elimination of their effects[42], the protection of the state[43], the penalty of imprisonment[44], the penalty of restricted liberty[45], or

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[37] *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (L. Garlicki, et. al.), published by Wydawnictwo Sejmowe 2005, Chapter 1 „Rzeczpospolita", Article 24, p. 3.

[38] B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, published by Wydawnictwo C.H. Beck 2009, p. 142.

[39] P. Winczorek, *Prawo konstytucyjne Rzeczypospolitej Polskiej*, published by Wydawnictwo Liber, Warsaw 2000, p. 37.

[40] *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (L. Garlicki, et. al.), published by Wydawnictwo Sejmowe 2005, Chapter 2 „*Wolności, prawa i obowiązki człowieka i obywatela*", Article 65, p. 3.

[41] B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, published by Wydawnictwo C.H. Beck 2009, p. 337.

[42] J.L from 2002 No. 66 item 558 as amended.

[43] J.L from 2004 No. 241 item 2416 as amended.

[44] J.L from 1997 No. 90 item 557 as amended.

[45] J.L. from 1997 No. 88 item 553 as amended.

provisional detention[46]. Another crucial fact is that the obligation to work can only be imposed on citizens of the Polish Republic provided that they are to fulfil constitutional obligations, including but not limited to the protection of their Homeland[47]. One can infer from the present legal provisions that they protect the citizens from any arbitrary introduction of the obligation to work by public authorities.

The Constitution of the Republic of Poland also contains the provision, which prohibits any permanent employment of children under 16. Article 65 clause 3 lays down that "*The permanent employment of children under 16 years of age shall be prohibited. The types and nature of admissible employment shall be specified by statute*". On the one hand, the wording of the quoted provision is not clear enough and it may be construed in different ways. One may, hence, conclude that the Constitution provides for the permanent employment of children under 16 but this requires the application of respective statutory provisions. On the other hand, the foregoing provision may be construed as a peremptory ban by the Constitution on the permanent employment of children and the admission of temporary employment of children under 16 only in specified situations[48].

On the grounds of the above quoted provisions of Poland's Constitution one cannot infer that forced labour in Poland is prohibited although we are bound to forbid it on the grounds of international regulations Poland is a party to. However, one can conclude that despite the fact that the Constitution does not provide for a ban on forced labour, there are still constitutional grounds to deem human exploitation or forced labour forbidden. This stems from, first and foremost, the wording of Article 65 clause 1 of Poland's Constitution which ensures the freedom to choose and pursue an occupation and choose a place of work. And although the further wording of the said provision sets forth that an obligation to work can be imposed by statute, this applies to exceptional situations only, which are explicitly specified. The same position was expressed in Article 4 of the European Convention for Protection of Human Rights and Fundamental Freedoms. The European legislator did forbid forced labour but at the same time it admitted the obligation to perform work in specified situations. For the sake of clarity, these works are works that citizens may not want to perform, such as any work performed by persons sentenced to imprisonment or when preventing a natural disaster. Therefore, the obligation to work as construed above cannot be defined as a violation of the ban on forced labour.

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[46] J.L from 1997 No. 90 item 557 as amended.

[47] Read with B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, published by Wydawnictwo C.H. Beck 2009, p. 338.

[48] Szerzej: *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (L. Garlicki, et. al.), published by Wydawnictwo Sejmowe 2005, Chapter 2 „*Wolności, prawa i obowiązki człowieka i obywatela*", Article 65, p. 8.

2.2.2 Polish Penal Law

As far as Polish criminal provisions which penalize trafficking in humans for the purpose of engaging them in forced labour are concerned, the issue is more intricate due to the latest amendment of the Penal Code, which concerned the very crime of human trafficking. Prior to the said amendment, i.e.: before 7 September 2010, the Penal Code had described the crime of trafficking in humans in its Article 253. This act was ranked in the category of crimes against the public order. The contents of the Article was as follows: *"Whoever is trading in persons even with their consent, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years"*. In addition, the Penal Code also contained Article 204 clause 4, which penalised any conduct that consisted of luring or abducting any person with the intent to engage that person in prostitution abroad. Such conduct was subject to the penalty of imprisonment for the period of one to ten years. On the other hand, provisions which introduced the Penal Code incorporated Article 8, which reads as follows: "*Whoever causes the hand-over of another person to make such person a slave or trades slaves, shall be subject to the penalty of imprisonment for a minimum term of 3 years"*. Hence, in Poland, the crime of human trafficking has been so far penalised on the basis of three legal provisions. However, as one can easily conclude, these provisions provided for different forms of sentencing. Thus, the perpetrator, in the case of human trafficking with the intent to engage the person into prostitution, could be sentenced on the grounds of Article 253 of the Penal Code, which provided for the imprisonment for the term of 3 to 15 years, or under Article 204 clause 4 of the Penal Code, which imposed the penalty of imprisonment for the term of "only" 1 to 10 years. Such disparity of sanctions in the aforementioned provisions raised many objections on the part of penal prosecution bodies. The legislator's reason for treating the perpetrator leniently as described in Article 204 clause 4 of the Penal Code is hence vague when compared to the much more severe punishment envisaged for the perpetrator of the act described in Article 253 of the Penal Code. Moreover, the perpetrator of the act under Article 204 clause 4 of the Penal Code had to lure or abduct his/her victim, hence fulfil additional attributes of the act. The perpetrator of the crime under Article 253 of the Penal Code did not have to fulfil any additional attributes as the act described in the said Article could be committed even with the victim's consent [49].

The most material change in the amended Penal Code concerned the incorporation of the definition of human trafficking. The absence of this definition restrained the interpretation of provisions that penalised human

[49] Compare to: Krzysztof Karsznicki, *Analiza polskiego prawa pod kątem efektywności ścigania handlu ludźmi do pracy przymusowej*. The study was prepared in 2008 for *Instytut Wymiaru Sprawiedliwości* (Institute of Justice) in Warsaw.

trafficking by penal persecution bodies and justice administration[50]. Given this context, it was forced labour that was the most dubious issue because some other issues concerning human trafficking with the intent to engage in forced labour could be classified as crimes against rights of persons who performed paid work. On the other hand, a more lenient penal sanction is envisaged for such crimes because in Polish penal law, crimes against the employee's rights are treated as a misdemeanour and not as a crime as in the case of human trafficking. For this reason, *Ośrodek Badań Handlu Ludźmi* (the Human Trafficking Studies Center) stressed many times the need of introducing the definition of human trafficking to the Penal Code.

Finally, after a six-year debate, the Polish legislator decided to introduce a legal definition of human trafficking to the Penal Code. And despite the fact that the Polish penal law does not yet incorporate any provision that penalises forced labour, the definition of human trafficking acknowledges, nevertheless, that any work or service of a compulsory nature, including slavery, is a form of human trafficking.

Hence, the said definition renders that *"Trafficking in persons shall mean the recruitment, transportation, delivery, transfer, harbouring or receipt of persons, by means of force or an illegal duress, abduction, deception, inducing into error, or unfair profiting by somebody's error, or incapacity of due understanding of an undertaken action, the abuse of a position of vulnerability, or the abuse of a critical position or the state of helplessness, the giving and receiving of a financial or personal benefit, or a promise thereof to a person exercising custody or having control over another person; for the purpose of exploitation, even with such person's consent, specifically in prostitution, pornography or other forms of sexual exploitation, at work or in service of a compulsory nature, begging, slavery* (underlined by the authors) *or other practices of exploitation degrading human dignity or for the purpose of obtaining cells, tissues or organs against statutory provisions. If the conduct of the perpetrator affects a minor, such conduct shall constitute trafficking in persons even if no methods or means mentioned in clauses 1-6 have been applied."*

One can easily observe that the construction of the definition of human trafficking applied in the Polish penal code is close to the definition proclaimed in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,* which supplements *the United Nations Convention Against Transnational Organized Crime*[51], which was adopted by the General Assembly of the United Nations on 15 November 2000[52]. Alike the Palermo Protocol, the Polish legislator selected a conclusive list of attributes that

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[50] See: Joanna Warzyszkiewicz, *Opinia funkcjonariuszy ochrony porządku prawnego na temat wprowadzenia definicji handlu ludźmi do kodeksu karnego* [in:] *Handel ludźmi. Zapobieganie i ściganie*, (ed.) Zbigniew Lasocik, *Ośrodek Badań Praw Człowieka*, Warsaw 2006, p. 231−235.

[51] The colloquial name of this document is the Palermo Protocol and this name is applied in this report.

[52] J.L. from 2005 No. 18 item 160.

are characteristic to this act, including but not limited to, the recruitment or transportation of victims. Also the manner of committing the crime consisting in trafficking in persons is a closed catalogue, e.g.: the use of violence or the induction into error. However, the perpetrator (subjective party) includes intent with a simultaneous indication of aims of the perpetrator's action. The first aim is hence to exploit a person. The manner of exploiting a person by the perpetrator is for the legislator an open category. The legislator only enumerated the most specific situations, such as prostitution, pornography, sexual exploitation, begging, and also work or service of compulsory nature or slavery. Thus, the legislator deemed forced labour and slavery to be one of the forms of trafficking in persons, being at the same time crimes subject to prosecution.

In addition to the introduction of the definition of human trafficking and the recognition of forced labour as one of the forms of this crime, the legislator also defined slavery. In the light of Article 115 clause 23 of the Penal Code, slavery is "*(...) a state of dependence whereby a human being is treated as property"*. This definition is close to the definition applied in the Geneva Convention on Slavery dated 25 September 1926 r.[53]. The Convention defined slavery as the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised.

In the amended Penal Code, provisions in Article 204 clause 4 and Article 253 were deleted and Article 189 a. was added. The present provision that penalises human trafficking reads as follows: *"Clause 1. Whoever commits trafficking in persons shall be subject to the penalty of imprisonment for a minimum term of 3 years. Clause 2. Whoever makes preparations to commit the offence specified in Clause 1, shall be subject to the penalty of imprisonment for the term of 3 months to 5 years."* The provision so constructed and addressing trafficking in humans, introduced some constituents as compared to Article 253 of the Penal Code applied hitherto.

Firstly, the disposition of the provision was transformed. The expression: "is engaged in trafficking in persons" was replaced with "commits trafficking in persons". Moreover, Article 253 of the Penal Code contained a stipulation that one deals with trafficking in persons also when the victim gives his/her consent to it. While in Article 189a there is no reference to the victim's consent because this is determined in the definition discussed above, provided in Article 115 clause 22. The sanction remained intact because trafficking in persons is still subject to the penalty of imprisonment for a minimum term of 3 years, which signifies that this act is a crime. The legislator also penalised the preparations to commit such a crime. Here, the penalty of imprisonment ranges from 3 months to 5 years.

Secondly, the placement of the provision on trafficking in persons changed. So far, the provision of Article 253 of the Penal Code had been placed in the category of crimes against the public order (Chapter XXXII), while Article 204

[53] J.L. from 1930 No. 6 item 48.

clause 4 (the luring or abduction of a human being with the intent to engage in prostitution abroad) was placed in the category of crimes against sexual freedoms and decorousness (Chapter XXV). Presently, Article 253 and Article 204 clause 4 are deleted and replaced with only one provision, specifically Article 189a of the Penal Code placed in Chapter XXIII on crimes against freedoms.

The wording of Article 8 in Provisions which introduce the Penal Code was also amended. The present provision was defined as follows: *"Whoever causes the hand-over of another person into the state of slavery or keeps such person in such state, or trades slaves, shall be subject to the penalty of imprisonment for a minimum term of 3 years"*. In the previous edition of the said Article the expression "keeps such person in this state (of slavery – reminded by the authors)" was absent while only the take-over of a person into the state of slavery and trade in slaves were forbidden.

Obviously, the amendment of the Penal Code, in its part concerning trafficking in persons, regulates many issues. Mostly, the definition of trafficking in persons introduced to the Penal Code, although not flawless, does define the scope of this crime. This, in turn, allows for taking more effective measures by prosecution bodies and the judiciary while counteracting this crime. Although the definition raises many reservations, specifically regarding a comprehensive nature of casuistry in terms of attributes of the crime consisting in human trade and the manner of committing such crime, one should, nevertheless, restrain oneself from assessing this definition because the coming years will prove whether the definition has passed an exam, whether the introduction of the definition has translated actually itself into more effective work of prosecution bodies and whether the phenomenon consisting forced labour, including slave trade, is effectively prevented in Poland.

The amendment of the Penal Code also regulated one more issue, namely the issue of penalisation for human trafficking as such as well as the issue of luring or abducting with the intent to engage in prostitution abroad. So far, there have been two separate prohibited acts, distinguished by the Penal Code in terms of sentencing although both of these two provisions concerned *de facto* human trade.

Furthermore, in addition to the provisions discussed above, the Polish Penal Code penalizes any conduct which consists of violating rights of persons who perform paid work. Most of all, provisions on a malicious or persistent violation of the employee's rights (Article 218 clause 1 of the Penal Code); the exposure of the employee's life or health to danger (Article 220 clauses 1−3), and the failure to notify of an accident at work or an occupational disease of a person who performs paid work (Article 221) are the most important.

Article 218 clause 1 of the Penal Code penalises any conduct which consists of a malicious or persistent violation of the employee's rights that result from an employment relationship or social insurance. This act is subject to the penalty of fine, the penalty of the restriction of liberty or imprisonment for a maximum term of 2 years. However, the discussed provision only applies to those persons

who are employed under an employment relationship and not civil law agreements (e.g.: an agreement to perform a specified task)[54]. The violation, by commission or omission, of the provisions of Article 218 of the Penal Code may pertain to e.g.: the non-payment of remuneration or the non-payment of health insurance contributions on behalf of the employee. It also needs highlighting that Article 218 of the Penal Code is read in conjunction with provisions in Articles 281−283 of the Labour Code (hereinafter referred to as: L.C.), which also envisage the employer's liability for a misdemeanour against the employee's rights. Here, the relation materialises itself by the fact that the violation of the provisions of Articles 281−283 (which are misdemeanours), become a crime under Article 218 of the Penal Code[55], if the perpetrator's conduct consists of a malicious and persistent violation of the employee's rights[56]. For this reason, some penal law theorists claim that Article 218 clause 1 of the Penal Code constitutes, in its sense, a "graded type of misdemeanours" under Articles 281−283 of the L.C.[57]

On the other hand, Article 220 of the Penal Code penalises the conduct of the employer or any other person responsible for work which consists of the failure to provide secure and hygienic work conditions to the employee, and which consequently may lead to the loss of life or a grievous detriment to health. Thus, one can infer from the wording of Article 220 of the Penal Code that the said provision protects not only the employee's rights as such but also his/her life and health[58]. The conduct described in Article 220 of the Penal Code is subject to the penalty of imprisonment for a maximum term of 3 years. Article 220 of the Penal Code can also be treated as a "graded type of misdemeanour" under Article 283 clause 1 of the L.C.[59]

Another provision in the Penal Code, aimed at the protection of employee rights, is Article 221. This provision penalises any conduct, which consists of the failure to notify a competent body within required timeframes of an accident at work or an occupational disease by a person liable for such notification. This provision protects hence the employee's rights to benefits that he/she is entitled to in connection with an accident at work or an occupational disease, but also

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[54] *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 712.

[55] However provisions in Article 218 of the Penal Code do not square in full with those contained in Articles 281-283 of the L.C. since the provisions in the Labour Code are more inclusive and contain a more comprehensive catalogue of employee issues subject to protection.

[56] *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 711.

[57] W. Radecki, *Granice ingerencji prawa karnego w stosunki pracy*, published by Prokuratura i Prawo, 6/2005, p. 13.

[58] *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 717.

[59] W. Radecki, *Granice ingerencji prawa karnego w stosunki pracy*, published by Prokuratura i Prawo, 6/2005, p. 13.

secure and hygienic work conditions[60]. Article 221 of the Penal Code, alike Articles 218 and 220 of the Penal Code, also corresponds to a provision in the Labour Code, namely Article 283 clause 2 sub-clause 6 of the L.C.[61].

It is true that the above category of conducts consisting of the violation of employee rights does not penalise forced labour but it still constitutes an additional form of protection against exploitation at work, especially in such cases which are not eligible as human trafficking. One can conclude hence, that these provisions protect the employee from exploitation at work. Article 189a of the Penal Code protects persons from forcing them to work by treating forced labour as a form of human trafficking.

2.2.3 Institutions dealing with trafficking in persons

In Poland, there are several institutions which counteract trafficking for forced labour, such as the Prosecutor's Office, Police, Border Guard and the labour inspectorate. While the role of the Prosecutor's Office, the Police and the Border Guard is clear as these are prosecution bodies, the responsibilities of the labour inspectorate in the scope of the elimination of forced labour are quite specific. The National Labour Inspectorate is the only Polish entity empowered to control employment and work conditions, the observance of the occupational health and safety regulations, etc. Moreover, since mid-2007, the powers of the labour inspectorate have been widened to also comprise the control of the legal employment of foreigners in Poland. Until then, the issues related to the legality of the employment of foreigners had been dealt with by, in the said order, provincial labour offices, poviat local governments, or services subordinated to province governors[62].

Presently, responsibilities of labour inspectors include controlling the employment of foreigners for its legality, in cooperation with officers of the Border Guard. In April 2008, an agreement was thus signed between the National Labour Inspectorate and the Border Guard. By virtue of this instrument, labour inspectors and officers of the BG not only control jointly the employment of foreigners and their stay for their legality but they also exchange information about the foreigner's work in Poland. The substantial constituent of this agreement is also the concept of enhancement of labour inspectors' and Border Guard officers' skills by the exchange of information and experience.

Obviously, the agreement between the National Labour Inspectorate and the Border Guard is a very advantageous solution. Joint controls related to the

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[60] *Kodeks karny. Komentarz* (ed. O. Górniok), published by Wydawnictwo Prawnicze LexisNexis, Warsaw 2006, p. 722.

[61] W. Radecki, *Granice ingerencji prawa karnego w stosunki pracy*, published by Prokuratura i Prawo, 6/2005, p. 13.

[62] See http://www.pip.gov.pl/html/pl/info/doc/99030075.pdf.

monitoring of work performed by foreigners in Poland is an unquestionable advantage for these two entities. It is an advantage not only in the scope of the identification of a larger number of cases of forced labour or exploitation at work but also in the exchange of knowledge and experience between representatives of these institutions. Labour inspectors can thus gain knowledge about the legality of stay of foreigners in Poland while officers from the Border Guard can gain knowledge about labour provisions and regulations which concern the issue of work conditions in Poland.

Chapter 3: Data and methods

3.1 Research questions

The basic objective of the EU-funded project *Trafficking for Forced Labour and Labour Exploitation (FLEX) − towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* was to gain a deeper understanding of human trafficking for forced labour in Estonia, Finland and Poland and strengthen the cooperation and exchange of information between organisations involved in identifying and investigating human trafficking and forced labour in these three countries. The specific objective was to study the problem of forced labour using a consistent methodology for collecting and analysing quantitative and qualitative data and to evaluate the legal framework of human trafficking for forced labour on the basis of the current laws, criminal cases and the decisions of the judiciary. The project's other key objective was to build channels of cooperation and exchange of information between the relevant national and international institutions in Estonia, Finland and Poland. This was realised through national and international expert meetings.

The FLEX project also gives Polish authorities a great opportunity to discuss forced labour and labour exploitation issues in Poland. Since 2007, law enforcement bodies or the labour inspectorate have not taken these issues into consideration, despite that members of the Human Trafficking Studies Centre have raised the forced labour issue many times since 2004.

The purpose of the research was to learn as much as we could about the problem of trafficking for forced labour in Poland. In doing this we looked at the problem from two angles. One was to describe the phenomenology and the other to understand how the relevant institutions identified and investigated human trafficking for forced labour. The reason for this holistic approach was the fact that very little is known about human trafficking for forced labour in Poland. While the relevant institutions can quite successfully deal with cases of human trafficking for sexual exploitation, they do not do so well when the cases do not involve the sex industry. Because forced labour is seen as a new phenomenon, law enforcement and labour inspectorate officers are still learning how to deal with it. This is why the results of this study will be made available to those officials who are responsible for eliminating forced labour. What makes this project so critical is that the problem is poorly researched in Poland[63]. While we

[63] The only work on forced labour comes from the Human Trafficking Studies Centre Warsaw University: M. Koss, Z. Lasocik, Ł. Wieczorek, Assessment of legal framework and responses of the justice system to trafficking and forced labour in Poland, Human Trafficking Studies Centre Warsaw University, Warszawa 2008; and J. Filipowicz, Z. Lasocik, Ł. Wieczorek, Study on trafficking for forced labour in Poland. Susceptible economic sectors and assistance structures for victims of forced labour, Human Trafficking Studies Centre Warsaw University, Warszawa 2010.

still know very little about forced labour, human trafficking for sexual exploitation[64] has been increasing since Poland's accession to the European Union in 2004 accompanied by a new form of human trafficking, i.e. for forced labour.

Because forced labour in Poland is a fact, we decided to take part in an international research project[65]. The objective was to build a model for collecting data about forced labour. Although human trafficking for forced labour is not a new problem, it was not treated seriously enough.

The study had several objectives. The priority was to establish which sectors are most likely to use forced labour, and what methods were employed by perpetrators, such as threats, physical violence or debt bondage. Another area of interest were the conditions of work and pay of victims and their status in the destination country, how they were recruited / trapped into forced labour or how they learned about the job which eventually turned out to be slave labour. It was also important to understand who the victims of forced labour in Poland are, and who the perpetrators are. Our study was also designed to establish how the victim was identified and what happened afterwards, in particular whether they have received any assistance or compensation. We studied case files and expert interviews to establish whether Polish law enforcement agencies have cooperated with other countries during their investigations when the victims were foreign nationals.

We carried out similar analyses of Polish victims of forced labour abroad. Currently, two cases are ongoing (one is handled by the prosecutor's office and the other one is in court) involving Poles forced to work on plantations in Italy. These cases are covered in greater detail in the sources and methods section of the study.

The questions and research areas were designed to help us collect materials and understand the problem and gain as much information as possible about cases of forced labour in Poland and Polish victims of forced labour abroad.

3.2 Data and methods used

The study under the project *Trafficking for Forced Labour and Labour Exploitation (FLEX) − towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* was divided into several stages. It began with a series of interviews with experts who identify and investigate

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[64] See police statistics http://www.policja.pl/portal/pol/768/41222/Sprawozdania.html and http://www.policja.pl/portal/pol/31/560/Handel_ludzmi_and_nielegalna_adopcja_art_253.html.

[65] The study on human trafficking in Poland was made possible under a grant *Trafficking for Forced Labour and Labour Exploitation (FLEX) – towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* funded by the European Commission. The project's coordinator, HEUNI (The European Institute for Crime Prevention and Control), played an important role.

human trafficking and forced labour in Poland. The interviews were conducted based on an interview template developed by the Project Team comprising representatives of HEUNI (Finland), Tartu University (Estonia) and the Human Trafficking Studies Centre Warsaw University (Poland). The template consisted of 16 questions asking about cases of forced labour, perpetrators, existing laws, systems to assist victims of forced labour and what data are collected about forced labour and labour exploitation[66].

A total of 10 interviews were conducted with representatives of the Police, Border Guard, Prosecutor's Office, National Labour Inspectorate, Ministry of Labour and Social Policy, Office of the Governor, non-governmental organisations, trade unions and employers' associations. The experts interviewed work for organisations that deal with problems of human trafficking, forced labour, employee rights or corporate social responsibility. Because we have been studying human trafficking and forced labour for seven years, our data analyses will also be based on knowledge we have from previous studies or interviews with people dealing with different aspects of how these problems can be eradicated.

The interviews were organised as follows. In the first stage, experts from the organisations mentioned above were identified. The work of these experts involves areas such as human trafficking, forced labour, workers' rights or corporate social responsibility. Next, we contacted the experts to explain our project and the objective of our study. We asked if they would agree to talk to us about human trafficking for forced labour and labour exploitation. We then agreed on the date of the meeting. All interviews were held in the experts' offices and went on for about an hour. All interviews were written down and are archived in the documentation centre of the Human Trafficking Studies Centre Warsaw University. The interviews were conducted from April to July 2010.

In the second part of the study victims of forced labour were interviewed. The difficulty at this point was how to define victims of forced labour. This is because Poland is both the destination country for people from the East (including the Far East) and the country of origin of victims of forced labour in Western Europe. As a consequence, there are in fact two groups of victims in Poland, one comprising Poles subjected to forced labour outside Poland and the other one comprising foreign nationals exploited in Poland. In Poland, Italy and Spain people have been charged with organising so called "labour camps" where as many as almost 200 Poles were trapped into forced labour. Despite our numerous attempts, none of the Polish victims of forced labour agreed to talk to us either personally or via government institutions and refused to take part in the study. With regard to foreign nationals who were victims of forced labour in Poland, none of the victims were in Poland during the fieldwork phase of the study (May−September 2010). However, before the FLEX team developed the victim interview template, we had managed to talk to four victims of forced labour in Poland. These were a woman from Ukraine exploited on a farm in

[66] Expert interview guides are included in Annex 3.

Poland, and three foreigners exploited in a shipyard.[67] The interviews were conducted in January and February 2010. All interviewed victims were under the assistance of NGOs' which are dealing with the victims of trafficking and domestic violence. To ensure the safety and confidentiality of the victims the interviews were made in the NGOs' office. Each interview was conducted on the date specified by the victim and the NGOs. All interviews were made only with those victims who agreed for being interviewed. The interviews were made in the Polish or English languages and were made by Łukasz Wieczorek in the presence of an NGO representative. This was made to give the victims as much psychological comfort as possible during the interview.

The interviews were carried out based on an interview framework prepared by the team for Human Trafficking Studies Centre Warsaw University, because the FLEX joint interview framework was not ready yet.[68]

By chance, a member of our research team met a member of the criminal group responsible for organising working camps in Italy (file no. VI Ds 49/09 District Prosecutor's Office in Gorzów Wielkopolski). This group recruited people in Poland, transferred them to Italy and offered hard work, low salaries and difficult conditions to leave. At the time of the interview it had not been decided yet whether these perpetrators would be accused of forced labour or not. This interview was made possible because the perpetrator contacted us via an internet forum. We left the information at one Polish online forum, explaining that we are looking for victims who have been exploited to work in Italy. However none of the victims contacted us, but the perpetrator made a phone call to the Human Trafficking Studies Centre Warsaw University to talk with us. The perpetrator wanted to explain to us the whole situation with Polish workers exploited in Italy and this is how the interview with the perpetrator was possible.

Another important objective of the study was to analyse criminal cases involving human trafficking for forced labour (Article 253 of the Penal Code[69]). A total of 5 criminal cases were analysed which are the only ones that have been tried (some are still ongoing) before common courts of law in Poland. These five criminal cases are the only cases on trafficking for forced labour in Poland so far. We excluded cases which involved victims and/or perpetrators from Poland investigated by law enforcement in other countries, e.g. the case known as *terra promesa* (file no. 21/07 District Court in Krakow). The case was tried in two court proceedings because some of the perpetrators were charged in Italy, and others in Poland. In both cases, charges were pressed against Poles, except that

[67] Although we did not have the interview guide at the time, we made the decision to carry out those interviews because the victims were receiving assistance from two non-governmental organisations and because we were concerned that the victims might leave Poland or move when the pre-trial proceedings are over.

[68] Interview framework for the victims prepare by the Human Trafficking Studies Centre are included in Annex 7.

[69] After the revision of the Penal Code of 20 May 2010 human trafficking is defined in Article 189a of the Penal Code, in Chapter XXIII which covers crimes against freedom.

the Italian court also convicted perpetrators who were nationals of Ukraine, Bulgaria, Italy and Algeria while the Polish court tried Polish perpetrators only.

We excluded cases in which Polish victims were exploited or forced to work abroad and investigated by the law enforcement from other countries because of insufficient time to bring these cases to Poland. Also technical restrictions, such as money for travels and translations, was a reason why we decided to analyse only those cases which have been investigated by Polish law enforcement bodies.

Each of the criminal cases involved a different sector of the economy. In the first case, a Vietnamese man was forced to work on market stalls in south-east Poland (file no. III K 145/04 District Court in Kielce). The next case involved Ukrainian nationals trafficked into Poland and made to beg in the streets despite promises of domestic work or work as salesmen (file no. II K 49/07 District Court in Rzeszow). Two other criminal cases involved Poles in forced labour on plantations in Italy. The cases are quite different. One is tried by the District Court in Krakow and involves nearly a thousand victims of forced labour from Poland working on farms in Italy in the region of Apulia. The case is still pending (file no. 21/07 District Court in Krakow). The second case involves Poles in forced labour in Italy working on tangerine plantations in the region of Calabria in 2009. In this case Poles were defrauded as to the working conditions, but the charges are about trafficking in human beings. The case is still in the pre-trial stage, handled by the District Prosecutor's Office in Gorzów Wielkopolski (file no. VI Ds 49/09 District Prosecutor's Office in Gorzów Wielkopolski). Another case involves forced labour of 19 Bangladeshi nationals working in the Gdansk Shipyard as ship builders. The victims were working illegally because their work permit was for fish processing rather than ship building. The victims received no pay and were not allowed to move freely without the perpetrator's consent. The case is tried in the District Court in Gdańsk (file no. IV K 141/10 District Court in Gdańsk). Poland has very few criminal court cases concerning trafficking for forced labour.

Criminal court cases give us the most important information about the forced labour issue in Poland, and because of this we decided to base our research mainly on court cases. On the other hand, we realize that court cases probably show only the tip of the iceberg in terms of labour exploitation or forced labour in Poland.

The criminal cases were analysed using a file questionnaire developed by the researchers at the Human Trafficking Studies Centre Warsaw University[70]. It is designed to extract the key information from the files of criminal cases. It first collects the basic details about the victims and perpetrators such as age, gender, education, family or criminal record (in the case of perpetrators). Next the questionnaire asks about the type of work in which the victims were employed. We wanted to know how the victims were exploited, in which sector of the economy, what the conditions of work and stay were, and whether the victims

[70] The criminal file questionnaire is included in Annex 6.

had insurance and employment contracts, and what status they had in the destination country. It is important to point out that it is still not quite clear in Poland how to identify victims of human trafficking, especially victims of forced labour[71]. This is why part of our project was to establish how the victim had been identified and what happened next, i.e. whether they had received any help or support.

All criminal cases have been archived and are stored in the documentation centre of the Human Trafficking Studies Centre Warsaw University where only members of the Centre have access to them. The documents archived are not entire case files but only the key details such as the charges, justification of the charges, testimonies of victims, witnesses and defendants and the sentences.

An important source of information about cases of forced labour in Poland and Poles exploited abroad is the press. We looked for cases of forced labour in Poland and abroad involving Polish people. What we wanted to establish was how the press reported the problem and what issues they focussed on regarding forced labour. The question was whether the press only described cases of forced labour or whether they also tried to analyse the problem and understand the underlying social problem.

The analysis of press publications was divided into two stages. We began with a review of all articles in the Polish press from January 2010 to June 2010. A total of more than 900 national and regional papers and magazines were analysed. This was carried out by the Institute of Media Monitoring (hereinafter: the IMM), an organisation specialising in press analysis. The IMM searched for the key words such as exploitation of people, abuse of workers, abuse, forced labour, human trafficking, slavery, slave labour.

Press materials were sent to us every day in electronic form throughout the entire period of monitoring. We received them by e-mail or downloaded them from the IMM server using a special access code. That way we could view all press articles containing the key words.

At the end of each month we put together all the materials we had received and selected the ones that covered forced labour in Poland and Poles in forced labour abroad. In addition, the IMM server generated monthly summaries using IMM's special software. These monthly reports included statistics about press publications during a particular month, the overall number of publications during the month compared with other months, the newspapers which carried most of the relevant information, the authors who had written most about human trafficking and forced labour and the overall circulation of those newspapers with information of interest to our study.

Thanks to the data we were able to assess the contents and the number of press materials on human trafficking and forced labour by day, week, month and

[71] See: Z. Lasocik, J. Filipowicz, Ł. Wieczorek, Study on trafficking for forced labour in Poland. Susceptible economic sectors and assistance structures for victims of forced labour, Human Trafficking Studies Centre Warsaw University, Warszawa 2010.

quarter, and by region. In addition, the reports also gave us a good idea of how many people may have read the news.

During the study period (January−June 2010) a total of 497 articles were published containing the above key words. Of these, 139 articles covered forced labour not involving sexual exploitation.

In stage two of the analysis, press archives were searched for articles covering forced labour, slavery and human trafficking which were published from 2004 until the end of 2009 in Gazeta Wyborcza. There are four leading national dailies in Poland, of which Gazeta Wyborcza has the highest circulation (about 400,000 copies daily) and is one of Poland's most read papers. This is why we decided to analyse the press archives of Gazeta Wyborcza.

Another source of information on the sectors of the national economy which may be affected by forced labour are the data collected by institutions responsible for controlling the observance of employee rights, and the National Labour Inspectorate (PIP) in particular. Although the annual reports of the National Labour Inspectorate do not as yet feature any statistical information on cases of forced labour identified in Poland, information can be found there on illegal employment of both Polish and foreign workers. [72] The data referred to above has been acquired in the course of inspections controlling the legality of employment, carried out since 2008 by PIP jointly with the Border Guard.[73]

Information about human trafficking and forced labour is also archived by organisations involved in identifying and investigating these matters. We studied the records of the National Labour Inspectorate, the Ministry of the Interior and Administration, the Office for Foreigners, the International Organisation for Migration (Polish section), La Strada Foundation, trade unions and the Centre of Migration Research Warsaw University. We studied annual National Labour Inspectorate reports of the Chief Labour Inspector, National Action Plans against Human Trafficking developed by the Ministry of the Interior and Administration, reports on the work of the Team for Combating and Preventing Human Trafficking and the Working Group, part of the Team. We also used statistics on human trafficking, migrant workers and assistance provided to victims of human trafficking. We analysed documents and papers on the topic of human trafficking for forced labour or labour exploitation that have been published by the above organisations.

For that part of the analysis we especially used several publications (see the literature list at the end of the report).

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[72] See Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2007 r., Warszawa 2008; Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2008 r., Warszawa 2009; Sprawozdanie Głównego Inspektora Pracy z działalności Państwowej Inspekcji Pracy w 2009 r., Warszawa 2010. http://www.pip.gov.pl.

[73] However, the National Labour Inspectorate PIP initiated the inspections controlling the legality of employment as late as 1 July 2007.

The statistics and information analysed in this part of the project involved cases of forced labour or labour exploitation recorded by the above organisations. We also examined documents produced by these organisations about the problems in question such as annual reports, reports on human trafficking in Poland, migrant workers in Poland and Poles working abroad.

3.3 Ethical questions related to the research

This type of research always raises questions about ethical standards. Because they are in a vulnerable position, victims of human trafficking or forced labour must be treated with great care and researchers must make them feel as comfortable as possible. The victims must agree to talk even if it only involves asking them if they would agree to be interviewed. We must ensure that the victim stays anonymous. Obviously, before we can talk to the victim, law enforcement or an NGO must first establish the victim's personal details, but these will be protected when they talk to a researcher. The second important issue is the trauma that the victim has gone through. The task of the researchers is to do everything they can to limit the victims' exposure to their worst memories. This is why we suggested that police officers should only talk to the victim once and not repeat the questioning. As a consequence, researchers too must not make the victim suffer again. Before they talk to a victim, researchers must first understand their social and mental state and very carefully prepare a strategy for the interview. They should consult a doctor, psychologist or care worker first. As much as it is our goal to gain information, we cannot do it at the cost of the victim. In our research we have also prepared a strategy for the interviews. Firstly we contacted the NGO workers who were held responsible for assistance to the victims of human trafficking. We asked these people, whether they were currently helping victims of forced labour. If they were, we talked with the NGO worker about the opportunity to provide an interview with the victims of forced labour in Poland. This was made to be sure that the victims are in good mental/psychological condition and that they agree to talk with the researcher. Otherwise, conducting the interview was impossible.

Finally, when talking to victims of crime and in particular the crime of human trafficking and forced labour, we must use the right language and register, avoid negative words or terms and not sound judgemental. Because the victims are usually foreign nationals, we should use qualified interpreters and explain to them the vulnerability of the victim. During the interview run by the Polish team involved in the FLEX project, the researcher did not use a qualified interpreter, because all interviewed victims spoke Polish or English.

When talking to experts, there are other issues to consider. First, we must keep the interviews confidential and protect the anonymity of the experts. Not all experts agree to have their names revealed and this must be respected. A lot of times this has nothing to do with the particular topics but with the fact that their knowledge is limited which they do not want others to know. Experts also ask

for anonymity when their views are different from their bosses' or from the official policy of their organisation. Finally, because the interviewee may have limited knowledge of the issue, we must avoid comments which would be considered judgemental, leading or personal.

With regard to perpetrators, we must adhere to all criminological standards.[74] The person we are talking to must be ensured confidentiality and anonymity as a source of information for our research. We must avoid any statements suggesting that they are a perpetrator or may be held liable, especially when they have not been convicted of the crime. When we are not quite certain that we are dealing with human trafficking for forced labour, we should only discuss issues related to how employees are treated and not to human trafficking as such.

It happens quite often that we talk to or we interview a person who is a suspect of crimes related to human trafficking or forced labour, but the early stage of the investigation does not allow us to be certain that either of these did actually occur. This happened to us when a member of our research team met with a member of the criminal group being responsible for organising working camps in Italy. This group recruited people in Poland, transferred them to Italy and offered hard work, low salaries and difficult conditions to leave. At the time of the interview it had not yet been decided whether these perpetrators would be charged with forced labour or not. In such situation the interview should be designed in such a way that the researcher can collect as much information as possible on relations between the organisers of the job and the workers, on working conditions, on payments etc., to assume that this basic information will be available. This type of data has to be treated as material to describe the social context of the activities related to forced labour. Sometimes the information may help to find traces of forced labour, obviously only for research purposes.

[74] R. K. Schutt, R. Bachman Fundamentals of Research in Criminology and Criminal Justice, Deutscher Gemeindeverlag 2008, M.G. Maxfield, E.R. Babbie, Research Methods for Criminal Justice and Criminology, Wadsworth Inc Fulfillment, 2007, E. Babbie, Badania społeczne w praktyce, Warszawa 2005, Wydawnictwo Naukowe PWN.

Chapter 4: Analysis of research results

4.1 General information about the forced labour phenomenon in Poland

Within the scope of the FLEX project, we have tried to collect as much information as possible about cases of forced labour and exploitative situations, involving Polish citizens both in Poland and abroad. The task has not been easy, as the phenomenon of forced labour in Poland remains largely unresearched. The public administration, law enforcement and judiciary bodies, as well as the National Labour Inspectorate (PIP) turned their attention to the problem of trafficking in human beings for forced labour only three years ago.[75] Before then, the bodies referred to above focused mainly on the phenomenon of trafficking in human beings for sexual exploitation, without noting (or wanting to note) the equally important problem of exploitation and forced labour of Polish citizens both in Poland and abroad. The public administration finally took notice of the problem of trafficking in human beings for forced labour as late as in 2007. In 2008, the Labour Inspectorate (PIP) and the Border Guard (SG) resolved to carry out joint inspections focused on controlling the legality of residence and employment in Poland. The fact that, three years ago, the discussion started in Poland on preventing and combating trafficking in human beings for forced labour does not mean, however, that Poland's public policy bodies are capable of coping with the elimination of this phenomenon. There are three reasons for this state of affairs, i.e. problems with identification of forced labour victims in Poland, low social awareness of the problem, and organisational problems within the institutions which are – or should be – committed to the elimination of forced labour.[76]

Problems with the identification of forced labour cases translate directly to the small number of such cases detected. To date, Poland's law enforcement and judiciary bodies have noted around seven cases of trafficking in human beings for forced labour, four of which either have been submitted to courts or are pending litigation. The research focused exclusively on the criminal law cases either already resolved by, or still pending before Polish courts. The cases of exploitation of Polish citizens abroad, processed by foreign law enforcement bodies, have not been taken into account in the analysis due to the inaccessibility of data on such cases.

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[75] As early as in 2004, the Human Trafficking Studies Centre (Ośrodek Badań Handlu Ludźmi OBHL) issued an appeal to the Ministry of Interior and Administration (Ministerstwo Spraw Wewnętrznych i Administracji MSWiA) to incorporate the counteracting of forced labour into the National Programme for Combating and Preventing Trafficking in human beings. MSWiA, however, raised the problem of trafficking for forced labour as late as in 2007.

[76] The most notable of these institutions are the National Labour Inspectorate (PIP), the Police Force, the Border Guard and the State Prosecution Office.

Hence, there are very few cases of forced labour reported in Poland, against the annual average of approximately 2,000 cases of violations of employee rights (Article 218 of the Criminal Code).[77] The total number of offences committed annually against the rights of persons performing activities as part of gainful employment (Article 218−221 of the Criminal Code) is approx. 3,000.[78] Judging by the above, if law enforcement bodies report several thousand cases of employee rights violations each year, the cases of forced labour in Poland must be expected to occur much more frequently. However, the number of detected cases of forced labour in Poland depends mostly on the awareness of law enforcement officers and labour inspectors. Also officers and labour inspectors need "tools" to combat this special crime. One of these tools can be the operational indicators of trafficking in human beings prepared by the ILO.[79] This simple tool could be very useful in recognizing trafficking, forced labour and labour exploitation situations.

Secondly, it must be noted that Poland is the country of origin, as well as the transit and target country for victims of trafficking in human beings. What is also important, Poland's borders are the external borders of the European Union. This situation makes our country a very attractive work place for foreigners. According to our research, such foreigners are also particularly vulnerable to becoming victims of forced labour.[80] According to our observations, analysis of the press and data provided by La Strada, until recently most forced labour and exploitation victims came from the former USSR. They are now being outnumbered by citizens of Asian countries.[81] The most probable reason underlying the increasing share of Asians among the aliens in Poland is Poland's membership of the European Union and the Schengen area, coupled with a relatively easy visa procedure, as compared to other EU Member States, and to the Western European countries in particular.

Although the number of forced labour cases reported in Poland is very low, the material accumulated in this study may provide a multitude of information on this phenomenon in Poland. We must start by clarifying that until now, all criminal law cases concerning trafficking in human beings for forced labour in Poland are different in terms of victims, perpetrators and types of work that the victims have been forced to perform. The offences under analysis involved work

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[77] Cf. http://www.policja.pl/portal/pol/26/522/Naruszenie_praw_pracownika_art_218.html.

[78] Cf. http://www.policja.pl/portal.php?serwis=pol&dzial=26.

[79] Cf. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/ publication/ wcms_105023. pdf.

[80] Filipowicz, Joanna, Lasocik, Zbigniew, Wieczorek, Łukasz: Study on trafficking for forced labour in Poland – Susceptible economic sectors and assistance structures for victims of forced labour, Human Trafficking Studies Centre Warsaw University, Warsaw 2010.

[81] T. Kiryan, M. N.J. van der Linden, Trafficking of migrant workers from Ukraine: Issues of labour and sexual exploitation, , Geneva 2005, ILO; Trafficking in Persons Report 2009, US Department of State, p. 242; W Polsce trwa wyzysk tysięcy niewolników. Chińczyk jest tani i je raz dziennie, Dziennik Daily, August 14, 2008.

in bazaars, panhandling, work on agricultural plantations and at shipyards. The cases of trafficking in human beings for forced labour referred to above also involved a group of unemployed Polish persons, forced by a criminal group to open bank accounts in Germany, later used for abusing the credit limits assigned to such accounts, and a case of Azeris, illegally employed by force in a Polish tobacco plant.[82] [83]

In the former case, a criminal group recruited a number of unemployed persons from north-western Poland, promising them well-paid jobs in Germany. Upon arrival, however, the victims learned there were no jobs waiting for them. Instead, the perpetrators forced the victims to open accounts in German banks and to buy appliances, mainly radio and TV equipment, within the credit limits on their debit or credit cards.[84] After a limit was used up, the perpetrators shared the goods, and the victims were free to go. In the latter case, an organised criminal group from Poland recruited three engineers, citizens of Azerbaijan, to launch a cigarette production line at a Polish tobacco plant. The victims held tourist visas to Italy. Instead, they flew to Vienna, from where they were taken to a city in western Poland. During their employment at the tobacco plant they were not allowed to leave their work place, and even had their food brought there by the perpetrators. The victims received no money for their work. The entire affair was discovered during a Border Guard inspection of the plant. The prosecution had the Azeris arrested under the charges of participating in an organised criminal group. The Azeris initially pleaded guilty and voluntarily submitted to punishment. Only after an intervention from OSCE were the victims provided legal assistance and revoked their earlier depositions, declaring to be victims, and not offenders. The court procedure in this case is still pending.

Looking at these cases, one must note that the construction industry, agriculture or household assistance services may not necessarily be the only sectors where forced labour may occur, as was frequently pointed out by the experts we interviewed in this matter; these sectors, however, are particularly susceptible to trafficking in human beings. As evidenced by the few criminal law cases referred to above, one can conclude that forced labour victims may be found in any sector of industry. There are, of course, certain sectors of the national economy which are particularly susceptible to human exploitation or forced labour, but such phenomena are not limited only to these sectors. Hence, one can conclude that the methods of trafficking in human beings for forced labour are changing continuously. As in the case of criminal groups which may promptly adjust to

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[82] See Daniel M. woli milczeć, Gazeta Wyborcza Szczecin, 06.03.2010; Leszek Wójcik, 7 lat za handel ludźmi, Kurier Szczeciński, 18.03.2010; Adam Zadworny, 7 lat za handel ludźmi, Gazeta Wyborcza Szczecin, 18.03.2010; Mariusz Prakitny, Skazany za niewolnictwo, Głos Szczeciński, 18.03.2010.

[83] See Marcelina Szumer, Pracowali jak niewolnicy. Teraz trafią do więzienia?, Metro Warszawa, 05.03.2010.

[84] Human Trafficking Studies Centre Warsaw University do not have a lot of information about this case. This information were based only on a few articles in the Polish newspapers.

market needs and generate profits from various sources of criminal activity, victims of trafficking in human beings may be subjected to forced labour in various plants and companies, not necessarily operating within the so-called grey area.

4.2 Modus operandi of the perpetrators

Although the forms of forced labour change constantly, the *modus operandi* of the perpetrators remains unchanged. In all criminal law cases that we analysed, the victims were given false information about the working conditions. The work offers presented by the perpetrators have never been met. Victims were given false information regarding the nature of employment, i.e. the citizens of Bangladesh who were promised work in the fish processing industry, ultimately found themselves employed at a shipyard to polish ship hulls. The most sophisticated methods of misleading victims about the working conditions, however, have been employed by a mixed organised crime group from Ukraine and Moldova, which forced Ukrainian citizens brought to Poland to panhandle on the streets of Polish cities.[85] The victims were promised employment at Polish bazaars or as domestics help, and were told to travel to Poland with their children to facilitate the crossing of the Polish-Ukrainian border. The perpetrators did not participate in the transfer of victims across the border, but only brought them there and told them to cross the border on their own on the basis of a tourist visa. Cars waiting on the Polish side of the border took the victims to a city, where the criminal group was based.

In the opinion of a police expert, in numerous cases the victims were recruited using the same method. The victims are recruited by an intermediary, promising interesting work and good wages. Next, the victim is transferred across the border. In most cases, the intermediary (recruiter) is a citizen of the same country as the victim. The intermediaries are well organised, they know how to manipulate the recruited persons and how to effectively mislead them. However, they usually know nothing about the procedures regarding the employment of aliens applied in the target country. A good example is the case of the Bangladeshi citizens who were forced to work in a shipyard. The victims were recruited by the perpetrator and his acquaintance. Like their victims, both were citizens of Bangladesh. Most people they recruited came from an impoverished background and had little education. The perpetrators knew how to manipulate these people to make them want to travel to work in Poland. Of course, the people they recruited were promised well-paid work in Poland. The perpetrator provided the Bangladeshi citizens with all necessary documents and made the travel arrangements to Poland. The perpetrator accompanied the victims throughout their entire trip from Bangladesh to Poland. Upon arrival at a Polish airport, the victims were taken over by the perpetrator's female partner.

[85] Case file no. II K 49/07, District Court in Rzeszów.

The analysis of criminal law cases indicated that victims were being misled about the remuneration, meals and accommodation. Upon arrival at their destination, the victims learned that they must pay for their meals and accommodation, although they had been promised that such costs would be covered by the employer. In the case of Bangladeshi workers, the victims had to pay the perpetrator a three months' rent in advance. However, they lived at the perpetrator's premises for two months only. In the case code-named *terra promesa*[86] involving Polish citizens forced to work in the Bari and Foggia regions of Italy, the victims were also charged with accommodation costs. These costs, however, coupled with other benefits, such as i.e. the fee for seeking employment, were too high for the victims to cover from their wages. In the case of Polish citizens working at a tangerine plantation in Calabria, Italy, the victims were also forced to pay approx. 120 euro per month for accommodation. They were forced, however, to live in filthy and mouldy premises, without hot water or heating, even though it was November. Above that, the victims were forbidden to use any electrical appliances other than kettles and water heating equipment. Those who violated this rule were liable to a fiscal penalty of 20 euro per day.

As in other cases, the promised wages were actually never paid, if the victims received any money at all. In numerous cases[87] the victims received no money at all for their work. In nearly all cases, the perpetrators provided the same explanation for their failure to pay the promised wages. In most cases, the perpetrators maintained that they incurred considerable costs associated with the transportation of victims to the destination country and finding work for them. They simultaneously noted that the victims would start getting paid the promised money as soon as they provided enough work to pay back their debt. However, such a situation never occurred in any of the cases under analysis. Even after the victims had worked enough to pay back a significant part of their alleged "debt", the perpetrators told them that they had incurred more costs associated with their stay in Poland, so they needed to work more in order to finally start getting paid. This was the situation which occurred in the case of the Ukrainian citizens forced to panhandle.[88] When a Vietnamese citizen forced to work at Polish bazaars asked the perpetrator how much longer it would take to work to cover the costs of his travel from Vietnam to Poland, he was told that it would take approximately 4−5 years, despite the fact that the victim paid most of the travel costs himself. Failure to pay the victims, or partial payment of wages occurred in

[86] It is the code name for an international operation carried out by Polish and Italian police, aimed at destroying an international crime group. The group exploited citizens of Poland, Ukraine, Italy and Algeria by forcing them to work for agricultural farms in Foggia (region of Apulia) in south-eastern Italy (case file no. III K 21/07, District Court in Kraków).

[87] Case file no. III K 145/04 District Court in Kielce; case file no. III K 21/07, District Court in Kraków; case file no. II K 49/07 District Court in Rzeszow.

[88] Case file no. II K 49/07 District Court in Rzeszów.

all cases of forced labour in Poland and of forced labour of Polish citizens abroad.[89]

4.3 Who are the victims?

According to the research, most forced labour victims in Poland are young or middle-aged, male and female. In rare cases, the victims are underage. The analysis of criminal law cases concerning trafficking in human beings for forced labour indicated that most victims were between 18 and 60 years of age. Hence, it is difficult to unanimously determine what age group and gender are dominant among forced labour victims. The age and gender of victims seem to depend on the type of work. Hence, the case of panhandling (II K 49/07 District Court in Rzeszów) mostly involved young women with small children, whereas the cases of Polish citizens forced to work at Italian plantations (III K 21/07 District Court in Kraków and VI Ds 49/09 District Prosecution Office in Gorzów Wlkp.) involved mostly males aged between 18 and 60. On the other hand, however, in the case of Bangladeshi citizens (IV K 141/10 District Court in Gdańsk) forced to work at Stocznia Gdańska shipyard, all victims were male, most of them rather young. The average age of this group was 29, with the oldest victims 38 years old. It must be noted here that in the case of forced labour, neither age nor gender matter, provided that no sexual abuse is involved[90].

According to the material collected for this study (i.e. criminal cases, interviews with experts, press materials, materials from institutions involved in eliminating trafficking in human beings), most victims of forced labour or exploitation in Poland are foreigners. It is difficult to unanimously determine the dominant nationality of victims, but it must be noted that most victims come from poorer countries, usually from Eastern Europe (mainly from Ukraine) and Asia (i.e. Bangladesh and Vietnam). Just a few criminal law cases and very limited information from institutions committed to the elimination of trafficking in human beings and forced labour are not enough to draw far-reaching conclusions, although certain tendencies may be observed in the migration of labour to Poland. Poland is an attractive destination for the citizens of poorer countries, particularly those bordering with Poland. For many years now, citizens of Ukraine, Russia and Belarus accounted for a considerable part of labour migration to Poland.[91] In the case of other countries, Poland is not as much a more affluent neighbour, where employment may be found, but mainly a "passage" to other (more affluent) European Union Member States. Since Poland belongs to the so-called Schengen Area, a foreigner entering into Poland may without much difficulty travel across nearly the entire EU territory.

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[89] Case file no. III K 145/04 District Court in Kielce.

[90] Most victims of sexual abuse are young women.

[91] See the statistical data of the Office for Foreigners: http://www.udsc.gov.pl/Zestawienia,roczne,233.html cf. http://www.mpips.gov.pl/index.php?gid=1286.

Poland is also becoming an attractive destination for labour migrants from Asia, mainly from Vietnam, the Philippines, India, China or South Korea. The citizens of these countries quite frequently become victims of forced labour, exploitation, or fraud by misleading them about working conditions or the nature of employment. For several years now, Polish press has been carrying regular press coverage of exploitation of foreigners (especially since Poland joined the EU).[92]

Citizens of Eastern European or Asian states are not, however, the only victims of trafficking in human beings and forced labour. Polish citizens also become victims of forced labour in Europe, as evidenced by the two criminal law cases that involved Polish citizens forced to work at Italian plantations.[93] Although the cases referred to above involve citizens of Poland, i.e. of an EU Member State, exploited in another EU Member State, certain similarities may be observed with the exploitation of foreign victims in Poland. In both cases we are dealing with rather uneducated people, usually unemployed and underprivileged. On rare occasions, single victims with higher education could be found both among foreigners and Polish citizens. The Bangladeshi citizens forced to work at the shipyard were more diversified in terms of education. While some of the victims from this group never even attended school, others graduated from primary or vocational schools, and several had a higher education. The group also included a single university student. Nevertheless, the group was dominated by people with primary and vocational education, with only a few secondary school graduates. Cases have been reported, however, involving well educated victims. In the case of Azeris forced to work for an illegal tobacco plant, all victims had higher technical education; they were all engineers. Filipino women employed at a mushroom farm were rather well educated, and most of them had good command of English.

The common factor reported both in the case of forced labour victims in Poland and Polish citizens forced to work abroad was their family status. Firstly, both groups of victims (foreign citizens in Poland and Polish citizens abroad) came from impoverished backgrounds and lived in small towns and villages. As a rule, they were the breadwinners for their families. For them the trip abroad was the only chance to provide for their families. For this reason, many of the victims either raised loans, or, like the foreign victims (and those from Bangladesh in particular), they sold their entire property, mainly land and valuables (i.e. jewellery).

Both groups have one more feature in common: the inability to communicate in the language of their country of destination. A definite majority of foreign victims of forced labour in Poland did not speak any Polish. Only a few of the

[92] Between January and July 2010, a total of 139 articles on forced labour were published, including 20 articles about foreigners either exploited or forced to work in Poland.

[93] See III K 21/07 District Court in Kraków and VI Ds 49/09 District Prosecution Office in Gorzów Wlkp.

victims knew several expressions in Polish.[94] The same occurred in the case of the Polish citizens forced to work on Italian plantations, since most of them did not speak Italian. Out of over one thousand victims, only a few persons knew several expressions in Italian.

4.4 Who are the perpetrators?

We also aimed our research at profiling the perpetrators of trafficking in human beings for forced labour. The profiles of the perpetrators were based on five criminal cases, which are the only cases of forced labour dealt with by criminal courts in Poland so far. Because of that, the information given below is only an indicatory picture of the perpetrators. In all analysed criminal court cases there were 38 prosecuted or convicted perpetrators.

In the course of the initial analysis of the material, we noted that as a rule, the perpetrators were of the same nationality as their victims. The perpetrators, however, sometimes used the assistance of citizens of the country of destination of the trafficking operation.[95] It is absolutely understandable why both the perpetrators and the victims are of the same nationality. Let us mainly consider the organisation of a forced labour scam. In such situations, the perpetrators know what kind of people may be misled about working conditions and where to find potential victims. This shows that the perpetrators mostly have a clear intent from the beginning of the recruitment to the exploitation phase. The lack of a language barrier between the perpetrators and their victims is also of some relevance.

In terms of age, most perpetrators were between 23 and 62 years old, averaging 36 years of age. Their age distribution indicates that the trafficking in human beings and forced labour-related offences are committed both by young (23 years old), and older people (62 years old), whereas common or criminal offences are usually committed by young people, aged between 17 and 29. Hence it must be noted that in the case of trafficking in human beings for forced labour, the age of the perpetrators is of no relevance.

The gender of the perpetrators is an important factor. In all criminal law cases concerning forced labour, charges were pressed against 38 perpetrators. Of these, 27 were male and 11 female. Concluding, men and women accounted for 70% and 30% of the perpetrators, respectively. Although this particular criminal activity is dominated by males, one must note that the share of female

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[94] The above applies mainly to Ukrainian women, forced to panhandle on the streets of Polish cities. Their command of Polish was, however, limited to their "employment", i.e. begging passers-by for money.

[95] Such a situation occurred e.g. in the case of the Polish crime group which recruited Polish citizens to work on plantations in Italy, also referred to as the *terra promesa* case. In this case, the perpetrators relied mainly on the assistance of local criminals (case file sygn.akt 21/07 District Court in Kraków).

perpetrators in trafficking in human beings for forced labour is higher than the share of female perpetrators in the total number of common or criminal offences, which in Poland stands at 10%.[96] Based on the court data, the share of female perpetrators is higher, at least in this sample.

In terms of education, a definite majority of the perpetrators had secondary or vocational education (43% and 33%, respectively), and only three persons had primary education (8%). Six perpetrators had higher education. The group of graduates from higher education facilities included a high school teacher, several persons with a Master's degree in economics, a graduate from managerial studies and an engineer. According to the above specification, the offence of trafficking in human beings for forced labour is to a large extent committed by persons with either secondary or higher education (accounting for nearly 60% of the perpetrators), and to a lesser extent by persons with either primary or vocational education (40% of the perpetrators). On the other hand, common and criminal offences are committed mostly by persons with either primary or vocational education.[97] This difference is hardly surprising, as the offences of trafficking in human beings and labour exploitation are usually associated with crossing borders and operations of organised crime groups. Since such activities necessitate the mastering of interpersonal relations and elementary command of foreign languages, organised crime groups tend to delegate these responsibilities to persons with the best educational background. On the other hand, research into border area crime indicates that the perpetrators of such offences, mainly committed by violating regulations governing trade in goods, are usually better educated than the perpetrators of typical criminal offences, committed under "regular circumstances".[98]

In the course of our research we attempted to determine whether the perpetrators of forced labour are convicted felons, and if yes – for what kind of offences. The analysis of criminal law cases indicated that a definite majority of the perpetrators had never before been sentenced by a court of law. Only in the case code-named *terra promesa*, several persons (out of twenty-three defendants) had prior court sentences. The group of convicted felons included five men and two women. One of the men was convicted in the past for a traffic accident, while the remaining perpetrators had past convictions for fraud associated with organising foreign employment, including one person convicted for trafficking in foreign citizens. According to the information above, some of the perpetrators had already some previous "work experience" in the area of exploiting people abroad by misleading them about wages and terms of employment. Moreover, one of

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[96] Atlas przestępczości w Polsce 4, A. Siemaszko (red.), Oficyna Naukowa, Warszawa 2009, pages 56 and 89.

[97] See T. Szymanowski, Polityka karna i penitencjarna w Polsce w okresie przemian prawa karnego, Wydawnictwo Uniwersytetu Warszawskiego, Warszawa 2004, pages 161−162.

[98] K. Laskowska, Kryminologiczne aspekty przestępczości granicznej, AK t. XXVI, Warszawa 2004, and also: I. Rzeplińska, Przestępczość cudzoziemców w Polsce, Warszawa 2000, Wyd. Scholar.

the perpetrators, before joining an organised crime group forcing Polish citizens to work in Italy, was involved in trafficking citizens of Ukraine to Poland.

4.5 Working conditions and salary

The analysis of the criminal law cases referred to above indicates that the victims were used to perform various types of work. In most cases, the victims were forced to collect fruit or vegetables at agricultural plantations. The above applies both to Poland, and to the victims of forced labour abroad. Apart from the above, the victims were being forced to work at bazaars, a shipyard and as domestic help. There was also one case of two citizens of Azerbaijan who were forced to provide labour at an illegal tobacco factory in Poland. The victims were exploited from a few up to twenty months.

The actual working conditions were never the same as promised by the perpetrators or the intermediaries assisting them. Sometimes the victims neither earned any money they were promised when they were recruited, nor performed the promised work. For instance, in a case where citizens of Ukraine were forced to panhandle in Poland, the victims were promised work at bazaars or as domestic help, whereas the citizens of Bangladesh were promised work in the fish processing industry, and in Poland it turned out that they had to work at a shipyard, polishing ship hulls.

The victims never earned the money there were promised, if they received any at all. In the case of the Bangladeshi citizens forced to work at a shipyard, the victims never received any wages, apart from small amounts for the purchase of food or winter clothing. When they were recruited in Bangladesh, the perpetrator and his intermediary promised them salaries of 800 USD per month. After the first month, when the victims started to claim their money, the perpetrator informed them that the company employing them will pay the money, but after one more month. After two months had passed, the shipyard terminated the contract with the Bangladeshi citizens, since their work permits were valid for fish processing industry, and not for shipyard work. The perpetrator, however, informed the victims that the contract was terminated because the employer was dissatisfied with their work, and that they will not be paid because the cost of their stay in Poland was very high and the money they had earned so far was insufficient to pay their bills, rent and food costs. Simultaneously, the perpetrator forced the victims to sign a document confirming that they had been paid, even though they received none of their wages. Fearful that victims might refuse to sign the document, the perpetrator threatened to take their passports away. Only two persons refused to sign the documents, and escaped on the following day.

The only victims in our sample of cases to receive any money were the Polish citizens employed in Italian citrus plantations in the region of Calabria, who received about 10 euros per month, with the outstanding amount confiscated by the perpetrators and promised to be paid at a later date. As a rule, most perpetrators never paid the victims any money. Only a small group of people

received a part of the money after having returned home, most probably because of the interest in the case expressed by the Consulate of the Republic of Poland in Rome. The victims of labour camps in Bari and Foggia earned 1 euro per day of work, the difference being that the victims who fell ill and could not work had to pay the perpetrators a penalty of 20 euro per day. In both cases, the victims were forced to pay for their meals and accommodation, according to exaggerated accommodation rates and sub-standard wages, resulting in that the victims being unable to pay back their debt, even after several months of work.

The other victims, i.e. the Vietnamese citizen and the citizens of Ukraine forced to panhandle did not receive any remuneration. The Ukrainian woman exploited first as a farm hand, and later as a domestic help, initially received some wages, but as soon as she moved to the perpetrator's premises she was not paid any more, despite the fact that the victim asked for money explaining that she must support her child and parents in Ukraine. When the victim became more insistent about the payment of any money at all, the perpetrator locked her up in a garage, and during winter moved her to the attic of the house, forbidding her to leave the house.

In terms of working hours, the victims worked in most cases for more than 8 hours per day, and some of them were forced to work as much as 15 hours per day. Most victims worked 5-6 days per week, and the Ukrainian citizens forced to panhandle in Poland by a mixed, Ukrainian and Moldavian organised crime group, had to work 7 days per week, 12 hours per day regardless of the season. In the last case, the victims had to collect at least PLN 200 (about 50 euro) every day, a quite substantial amount as for Polish conditions. Nevertheless, although some victims were able to “earn” as much as PLN 800 (about 200 euro) per day, the fact of having earned a higher amount on one day did not mean that the victim would get time off on the following day and would not be forced to beg or to bring in less money to the perpetrators. Neither was it tantamount to the victims paying back their debt sooner to the perpetrators. Moreover, the victims were unable to keep any of the money they collected, as they were systematically checked that they did not hide any money and they were frisked by the perpetrators as soon as they returned to their place of residence. The woman who was found to conceal a part of the money she had collected was subjected to a beating by the perpetrators.

4.6 Means of control used against the victims

The research indicated that the perpetrators aim at assuming control over the victims, although by variable methods. Some perpetrators applied subtler methods of control, such as psychological violence, while others resorted to plain physical violence.

The classic method of control was threats and verbal abuse. Since most victims had an unclear status of their stay in Poland, the perpetrators threatened to notify the law enforcement agencies of their illegal alien status. The Ukrainian citizens

forced to panhandle were threatened by the perpetrators who told them that they know corrupt police officers in Ukraine, who will press charges against them for illegal employment in Poland as soon as they are deported home. Moreover, the perpetrators abused the victims physically, humiliated them and threatened they would kill the victims or members of their families.

In the case of the victims from Bangladesh, the perpetrators told one of the victims that he would be imprisoned if caught by the police. The perpetrator knew what methods to use to intimidate the victims, as he was a citizen of Bangladesh himself. Not without relevance is the fact of corruption among Bangladeshi police and their brutality, with the general society fearful of any contact with the police or other law enforcement bodies. Being aware of this fact, the perpetrator used it to his advantage; i.e. when one of the victims escaped, he called the victim's sister in Bangladesh asking her to tell her brother to come back right away because of the danger he was in – once caught by the Polish police, he might get killed. In another case, the perpetrator blackmailed the victim by telling him that the father of the perpetrator's girlfriend worked for the Polish government, and if the victim ran away, his visa would be cancelled and he would have problems in Poland.[99]

Apart from the begging case, physical violence was also applied in the case of the Polish citizens exploited in labour camps in Italy, in the case code-named *terra promesa*[100]. The victims were threatened with detention, they were beaten, and several persons were forced to take mind-altering substances. One of the victims (female) was repeatedly raped by the perpetrators and was mutilated by tattooing. Moreover, the penalties for refusing to follow the orders of the perpetrators included detention in a cage with a raving bull. In one case, a man placed in the bull cage died of a heart attack. The bull cage was placed in the yard, to make other victims see the penalty for disobedience. According to the victims' testimonies, the perpetrators maintained contacts with local police officers, which made the victims too afraid to escape the labour camp. The victims were aware that they would be immediately caught and subjected to severe penalties. The most surprising aspect of this case is the fact that Italian police officers knew about the Polish citizens forced to work (and saw them, too), but failed to intervene in any way. For this reason, the ensuing investigation was carried out by a special Carabinieri unit (ROS) from Rome, and not by the local police.

Apart from violence and threats, the perpetrators also applied other means of control. *Inter alia*, they restricted the possibilities of the victims to leave their place of work and/or residence. Nearly in all cases, save for the case of the Vietnamese citizen forced to work in bazaars and the Bangladeshi citizens exploited at a shipyard, the victims could not leave their work place without

[99] Information based on court files (file no. IV K 141/10 District Court in Gdańsk) and an interview with the judge dealing with this case.

[100] Case file no. III K 21/07 District Court in Kraków.

permission and were kept under guard.[101] [102] At work, the victims were controlled by various methods. In the *terra promesa*[103] case, the victims were guarded by guards carrying firearms. The guards also used dogs for guarding the victims. In the case of the Ukrainian citizens forced to beg, the victims were controlled by a criminal group. They were checked for presence at the venue assigned to them by the perpetrators and for performing their "work". When one of the victims escaped and returned to the home country (Moldova), the perpetrators quickly found her and brought her back to Poland to continue begging for them. The perpetrators forced their victim to return to Poland with threats that she still had a debt to pay. Only after regaining their trust in her, the perpetrators allowed the victim to continue begging in another Polish city, where she could live and work on her own. However, the victim was obligated to report daily the money earned and send it to the perpetrators, mainly via a messenger service or by money order, and sometimes the perpetrators arrived in person to collect the earnings (the money collected by begging). The victims relocated to another city were forced to leave a security bond in the form of e.g. the birth certificates of their children. In one case, the victim was forced to leave her youngest (3-year-old) child with the perpetrators, who forced the child to beg with another woman, who was childless.

Additionally, the victims of trafficking in human beings for forced labour had their documents confiscated. Nearly in all cases under analysis, the perpetrators deprived the victims of their identity documents and passports. Knowing of the criminal liability for the seizure of official documents, the perpetrators usually restricted themselves to a single document, i.e. an ID card, leaving the passport with the victim. Such was the case of the Polish citizens forced to work at a citrus plantation in the Italian region of Calabria.[104] In the *terra promesa* case, the perpetrators confiscated the mobile phones of their victims. The phones were taken away in order to prevent contacts with families or calls for help. In the case of the Bangladeshi citizens forced to work at a shipyard, the perpetrators initially refrained from confiscating any documents from the victims, but as soon as the victims ceased to work at the shipyard (the employer terminated their contracts on the pretext that their permits allowed them to work in fish processing industry only, and not in shipbuilding), the perpetrators demanded the victims to hand over their documents, arguing they needed them for the purpose of Immigration Office procedures. In the case of the Vietnamese citizen forced to work in bazaars, the perpetrators deprived him of his passport already at the when he travelled to Poland. In Poland, he was given a forged Vietnamese driving license, which later caused his detention by the Border Guard during its routine inspection of aliens. In the case of the Ukrainians forced to panhandle, the perpetrators confiscated the identity documents from the victims, leaving them

[101] Case file no. III K 145/04 District Court in Kielce.

[102] Case file no. IV K 141/10 District Court in Gdańsk.

[103] Case file no. III K 21/07 District Court in Kraków.

[104] VI Ds. 49/09 District Prosecution Office in Gorzów Wlkp.

only with temporary Polish residence permits. One of the women who came to Poland with her underage children, had their birth certificates confiscated by the perpetrators. The fact that the perpetrators did not confiscate ID cards or passports of victims was caused by the type of "work" performed by the victims, since panhandlers are exposed to inspections by law enforcement authorities.

Case analysis and interviews with victims indicate that one of the methods of controlling the victims is to provide them with accommodation at their workplace or within the premises owned by the perpetrators. Victims living on the premises owned by the perpetrator(s) include the Polish citizens forced to work in Italy, the citizens of Bangladesh exploited when working at a shipyard, the Vietnamese citizen forced to work in Polish bazaars and the Ukrainian woman forced to work as farm hand and a domestic help in a village in the vicinity of Warsaw. In the latter case, the victim was housed in a garage owned by the perpetrator, despite the fact that she was pregnant with him.[105] Only after the onset of winter, the perpetrator resolved to move the Ukrainian woman to the attic of his house, where she remained even after her child was born until she was taken away by the police. Moreover, the perpetrator repeatedly battered the woman during her pregnancy and after the birth of the baby rendering her unable to breast-feed the child.[106]

According to the information presented above, the forms of control may vary from sophisticated acts, such as confiscation of documents or providing accommodation on premises owned by the perpetrators, to very brutal ones, such as beatings, rape or forceful use of mind-altering substances.

Sometimes the perpetrators applied several of such methods in combination. In most cases, the perpetrators threatened the victims with beating or harming their families, while simultaneously placing the victims at the premises owned by the perpetrators, where the victims could be controlled at any time of day or night. Physical violence was rare, but if applied, was usually very brutal.

4.7 Economic sectors affected

Based upon the accumulated data for this study, it is difficult to extrapolate directly which sectors of Polish economy are particularly susceptible to forced labour. The analysis of all criminal law cases processed by Polish prosecutors so far indicate that most cases of forced labour occur in agriculture, commerce and shipbuilding industry. In one case, victims recruited for work at bazaars and as domestic help were forced to panhandle on the streets of Polish cities.

On the other hand, the experts we interviewed maintained that trafficking in human beings for forced labour affected mainly such sectors as agriculture,

[105] The pregnancy was not a result of rape.

[106] This information was acquired from an interview with the victim.

construction industry, food and agricultural processing and domestic help.[107] Several experts indicated that according to their knowledge, forced labour also occurs in the so-called "grey zone", i.e. illegal manufacturing plants, as well as in small workshops and production plants.[108] A representative of one of Poland's largest trade unions explained that most cases of exploitation were reported in agriculture, construction industry and textile industry. The trade union, however, has no information on the situation of labourers working as domestic help, although they assume that this "industry", too, is affected by forced labour and human exploitation. The representative of the labour and social policy sector was the only interviewee who was unable to specify which sectors were affected by exploitation. All that this person knew was the fact that until recently, exploitation occurred in brothels, and had no information on exploitation or forced labour. A representative of one of the Voivodeship[109] Labour Offices, on the other hand, was unable to provide any information on which sectors of the national economy were susceptible to the exploitation of forced labour victims.

Press information and interviews with experts committed to the elimination of trafficking or counteracting the violations of employee rights indicate, however, that small agricultural farms and small workshops and manufacturing plants constitute a considerable problem in terms of exploitation or forced labour. In 2009 alone, Polish law enforcement and labour inspection bodies reported three cases of exploitation of foreign labourers by small entrepreneurs. Two cases involved persons employed on a Champignon mushroom farm, and one involved illegal employment and provision of misleading information on labour conditions at a tobacco plant. [110] [111] The latter case refers to employment in an illegal cigarette production facility.[112]

According to information from the National Labour Inspectorate (PIP), illegal employment of Polish staff members most frequently occurred in hospitality and catering enterprises.[113] Other most frequently affected sectors include

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[107] These opinions have been provided by representatives of prosecutor's offices, labour inspection, an NGO, Interior and employers' organisation.

[108] Opinion of a representative of the Police Force and Border Guard.

[109] Voivodeship is traditionally high-level administrative subdivision or administrative unit of Poland. Recently there are sixteen voivodeships in Poland. Administrative authority at voivodeship level is shared between a government-appointed governor (wojewoda) and locally elected assembly and the executive chosen by that assembly.

[110] Barbara Majewska, Niewolnicza praca w pieczarkarni, Polska Gazeta Krakowska, 20.01.2010 r.; Janusz Włodarczyk, Filipinki nadal są bez pracy, Słowo Podlasia, 02.02.2010 r.; Maciej Miłosz, Tajowie w Polsce: praca za grosze, potem deportacja, Rzeczpospolita 10.03.10 r.

[111] Marcelina Szumer, Pracowali jak niewolnicy. Teraz trafią do więzienia? Metro Warszawa, 05.03.2010 r.

[112] Case file no. V Ds. 38/09 Appeal Prosecutor's Office in Białystok.

[113] Most frequently, the illegal nature of such employment was caused by failure to make an employment agreement and to state the terms and conditions of employment (in writing), as well as the failure to report staff members to the Social Insurance Institution.

construction industry, industrial processing, agriculture and hunting, commerce and repair services. Foreign workers are most frequently employed in processing industry (i.e. in tobacco plants, food processing plants), hotels and restaurants, construction industry and agriculture. [114]

The sectors most probably affected by exploitation or forced labour still remain undiagnosed in Poland. One must note here that the phenomenon of trafficking in human beings for forced labour in Poland has been subject to discussions in Poland for the past two years only, and apart from the research carried out by the Centre for Research into Trafficking in human beings of the University of Warsaw, no one else has actually tried to explain this phenomenon.

According to our research, particular attention must be paid to agriculture, construction industry, commerce and domestic help. Moreover, both the Labour Inspectorate and law enforcement bodies should include in their inspections small-scale workshops and production plants, in particular those employing foreigners.

4.8 The legal status of the victims in the country of destination

In our study, we also attempted to determine the legal status of the victims in their country of destination. This information is of particular importance to law enforcement and labour inspection bodies, since it is the staff of these two institutions that actually identify the victims.

The information collected indicates that most forced labour victims stayed in Poland illegally, and victims from Ukraine travelled to Poland on tourist visas. However, the visas were valid for three months only, and upon their expiration the status of victims in Poland became irregular. Also the Polish citizens forced to work on Italian plantations performed their work illegally, although as EU citizens, they could legally stay in Italy. The victims from Bangladesh had Polish visas and work permits, but their employment with the shipyard was illegal, as their permits restricted their employment to the fish processing industry. The citizens of Philippines and Thailand exploited in mushroom farms arrived legally in Poland and held work permits. The only discrepancy was the fact that the citizens of Thailand worked for a different employer than the one specified in their permits. It must be noted, however, that the fact that we are dealing with legal aliens does not preclude that they might be victims of forced labour.

Another issue is the lack of insurance and employment contracts. In all criminal cases we analysed, the victims had no insurance. On the other hand, any employment contracts entered into with the victims were found to be either false, or to contain civil law clauses prohibiting the employees from claiming their

[114] See the annual reports by the Chief Labour Inspector on the operations of the National Labour Inspectorate (PIP) http://www.pip.gov.pl.

rights concerning remuneration or working hours. In the opinion of an expert from the Labour Inspectorate, employers who enter into contracts with their staff members are frequently found to fail to pay all components of remuneration, and insurance premiums in particular.

In the case of the Bangladeshi citizens employed by the shipyard, the perpetrators entered into two agreements with each victim. The first contract, signed while still in Bangladesh, contained provisions according to which the Bengalese were to be employed by a company owned by the perpetrator, which promised to provide them with meals and lodgings, as well as covering the transportation costs of employees from Bangladesh to Poland, and also from Poland to Bangladesh upon the expiration of the contract. The contracts were made in the Polish, Bengalese and English languages. Based upon these contracts, the Pomeranian Voivodeship Authorities in Gdańsk issued work permits for the Bangladeshi workers, and the Embassy of the Republic of Poland in New Delhi, India, issued them visas, allowing them to live and work in Poland. [115] As soon as the Bangladeshi workers arrived in Poland, the perpetrator informed them that their working conditions had changed. Instead of filleting fish, they were to be employed in a shipyard. Simultaneously, the perpetrator informed the victims that due to changed terms and conditions of employment, they must make a new contract. They were to sign contracts for physical work, even though the permits of the citizens of Bangladesh did not allow another type of work. In the new contracts, the perpetrator withdrew from the obligation to provide the workers with meals and lodgings within the territory of Poland, and to cover the costs of their return trip from Poland to Bangladesh. Above that, the new contracts were made in the Polish and English languages. None of the workers knew any of these languages, and some of them could not even read or write. An important difference must be noted between the contracts signed in Poland and those signed in Bangladesh. Additionally, other documents which the perpetrator forced the workers to sign, such as e.g. the declaration of having been paid remuneration, which they never actually received, were made in the Polish language.

4.9 Other related phenomena – agency or leased workers

To date, only a few cases of trafficking in human beings for forced labour have been reported in Poland. However, based on several criminal law cases we noted a new phenomenon which emerged about two years ago, i.e. the so-called agency or leased workers. Agency or leased workers refers to people who have employment contracts with other business entities than the ones they actually work for. Such staff members are performing work by virtue of temporary

[115] The Embassy of the Republic of Poland in New Delhi, India, was vested with the right to issue Polish visas to the citizens of the People's Republic of Bangladesh.

employment agreements.[116] In this case, the actual employer is the temporary work agency, whereas the employees actually work for a substitute employer-user. The objective of this form of employment is to provide employers with employees having appropriate skills or qualifications to perform certain work. The system allows the employers to reduce their personnel costs, associated e.g. with personnel training. Moreover, the enterprise is free of administration and personnel costs, such as disbursement of remuneration or payment of insurance premiums. All these actions are performed by the agency which is "leasing" the employee. The only role of the employer is to transfer the employee's wages to the temporary work agency.

Hence, the leasing of employees allows companies to save on staff recruitment costs, although in its misunderstood and abused version, employee leasing may result in numerous violations of employee rights, also in the form of forced labour. The entire responsibility is vested in the company running employee leasing operations. A company leasing a staff member may have no information on whether such an employee has actually been paid full wages, or whether agency has made illegal deductions from the employee's remuneration.

In the opinion of experts, increased numbers of citizens of Asian states arrive in Poland on the basis of so-called employee leasing schemes. The Border Guard reported a case of a woman from China, who was brought to Poland by a Polish temporary employment agency ran by a citizen of China. The victim had an employee visa and a work permit. The victim expected to earn about 700 USD per month. The employer was supposed to provide her with meals and lodgings. Upon her arrival to Poland, however, her employment conditions turned out to be very different than those presented by the leasing agency when she was recruited. The victim was forced to work 6 days a week, 11 hours daily. Sometimes, she had to work on Sundays, too. Apart from the above, the victim did not receive the promised meals. For monthly work she received a salary of PLN 800, out of which she had to pay PLN 600 to the leasing agency. Ultimately, the victim resigned and asked the leasing agency to find her another job. The broker became angry and imprisoned the victim at his house, forcing her at the same time to perform domestic chores and to babysit his child. When the victim was finally freed by the Border Guard, she was already in a very bad mental condition and wanted to commit suicide. Initially, the prosecutor's office pressed charges against the perpetrator according to provisions under Article 253 of the Criminal Code (trafficking in human beings), but ultimately the perpetrator was convicted based upon Article 275 of the Criminal Code (using the identity document of another person).[117]

The case of Bangladeshi citizens exploited at the shipyard also involved employment by an employee leasing company, owned by the perpetrator. In this case, the perpetrator's company leased employees to a shipbuilding company

[116] Journal of Laws Dz. U. 2003, No. 166, Item1608 as amended.

[117] Information based on the interview with an expert from the Border Guard.

operating at the shipyard. The remuneration of Bangladeshi workers was paid to the perpetrator's company, who was expected to then settle the accounts with the workers – which he actually never did. The victims worked for two months according to this scheme (from October to December 2009), i.e. until the Border Guard's inspection checking the legality of their stay. In the course of the inspection, it turned out that the workers from Bangladesh were allowed to work in the fish processing industry, and did not have the permit to work in the shipbuilding industry. Pursuant to the above, the shipyard terminated the employee leasing contract with the perpetrator's company.

In the case of the Thai citizens exploited at a mushroom farm in south-western Poland, the victims were employed by two Polish employment agencies, specialising in the recruitment of staff from Asia. The agencies charged the Thai workers a fee for having found the jobs for them. The only discrepancy was the fact that the Thai citizens worked for a different employer than the one specified in their permits. Together, both employment agencies brought to Poland about 200 workers from Thailand.

The application of employee leasing by perpetrators of forced labour or exploitation is an entirely new phenomenon in Poland. According to our research, the fact that the perpetrators are running legal operations, e.g. in the form of an employment agency, is actually a camouflage concealing their illegal operations. The perpetrators do not actually want the people they bring to Poland to work legally, but they are only concerned about providing such workers with Polish visas. It must be noted that the employee leasing scheme was applied only in the case of Asian workers. We did receive signals, however, indicating that this method of employing foreign workers in Poland was also applied in the case of citizens of Eastern European countries. Attempts to legalise the operations of these strange "employment agencies" are actually of lesser relevance. All the perpetrators were interested in was to reach the highest profit possible for each foreigner brought to Poland, as was particularly visible in case of the citizens of Bangladesh. Even though the victims paid most of their travel costs to Poland and accommodation costs once they arrived here, they did not receive any money after having worked for a month, despite the fact that the perpetrator was paid for the Bangladeshi workers by the shipyard.

4.10 Impacts of the recession

In our study, we attempted to establish whether the current economic crisis had any impact on the increase in the number of forced labour cases reported in Poland. However, this impact turned difficult to establish based upon criminal law cases, since only two such cases occurred after the crisis started. It must also be noted that the economic crisis was not as severe in Poland as in other EU Member States. In order to learn whether the economic crisis actually had any impact upon the occurrence of forced labour and exploitation in Poland, we resolved to present this question to the experts we interviewed. The experts had

diverse opinions on this matter; some of them thought the economic crisis actually caused an increase in the number of forced labour cases in Poland, whereas in the opinion of others this effect was negligible. In the opinion of an expert representing one of Poland's largest trade unions, it is difficult to determine the impact of the economic crisis on trafficking in human beings for forced labour in Poland due to insufficient data on the subject. The expert noted, however, that although the number of cases of exploiting labour was on the increase, including the number of cases of trafficking in human beings for forced labour, this state of affairs may have been caused by two reasons. Firstly, we may be dealing in Poland with an actual growth in the number of exploitation or forced labour cases caused by the current economic crisis. On the other hand, however, institutions committed to combating forced labour and exploitation are becoming more effective and are able to report more cases of such offences. The above applies in particular to the Police Force, the Border Guard and the National Labour Inspectorate.

In the opinion of representatives of the prosecutor's offices, Border Guard, labour inspectiorate and La Strada organisation, the economic crisis could have an impact upon the phenomenon of forced labour in Poland, since employers are now seeking savings in their companies, involving numerous violations of employee rights. These experts stressed that compared to preceding years, we might be dealing now with a higher share of illegally employed aliens in the total workforce. As far as illegal employment is concerned, the probability exists of non-compliance with the provisions of the labour law, including the exploitation of workers, or even forced labour. In the opinion of experts, small production plants and workshops are particularly vulnerable to such practices, especially those operating within the so-called “grey zone”.

Experts also stressed that the recession was not the only driver behind the increasing number of cases of exploitation or forced labour. The employers' conviction of their impunity or diminutive liability for violating employee rights is not of small relevance. Employers convinced of their impunity will exploit their workforce even more, or at least consider the liability for violations of employee rights to be a calculated risk, taken into consideration in their profit estimates.

Chapter 5: Law in practice and law in action, i.e. how the justice system and law enforcement define forced labour

Although Poland has had very few criminal cases of human trafficking for forced labour and no laws to penalise forced labour as such, our aim was to establish how law enforcement and the judiciary define forced labour. We wanted to know how investigators and judges handle criminal cases involving exploitation or forced labour. Do they use this term at all or do they perhaps combine forced labour or forced services with other crimes stated in the Penal Code?

We agreed that law enforcement and the justice system can consider forced labour as a crime against the rights of people doing paid work (Article 218−221 of the Penal Code) or as human trafficking (Article 253 of the Penal Code, since September 2010 Article 189a of the Penal Code)[118]. With more than three thousand cases a year recorded in Poland and a busy research schedule, an analysis of criminal cases involving violations of employee rights was not possible. As a consequence, in looking for the answers we shifted our focus to criminal cases involving human trafficking without sexual abuse. In addition, the results of our expert interviews suggested that cases identified by law enforcement or labour inspection as forced labour are usually qualified by prosecutors and judges as human trafficking.

Obviously, we were only able to study a portion of forced labour cases in Poland because many of them either remain undetected or are not identified at all by investigators or labour inspectors. We know from our interviews with labour inspectors that the National Labour Inspectorate has been tackling the problem of human trafficking only since mid-2007 and had no prior powers to identify and investigate these cases. The same can be said about the prosecutors, police and Border Guard. Because law enforcement and labour inspection became involved only a few years ago, very few cases of forced labour have been investigated and tried in a criminal court. So far there have been five criminal cases involving human trafficking in Poland of which three are still on-going[119]. As a result, our analysis of the five criminal cases could not possibly provide a comprehensive picture of forced labour in Poland. All we can do is highlight some of the aspects knowing that it is only the tip of the iceberg[120].

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[118] Polish criminal law covering exploitation and forced labour including human trafficking is detailed in Chapter 1, Section 1.2 Legal context.

[119] As of July 2010.

[120] See Beate Andrees, Forced labour as a form of human trafficking, in Z.Lasocik (ed.): Human trafficking. Prevention and prosecution. Human Rights Studies Centre, Warszawa 2006, p. 196.

Nonetheless we decided to look at these five cases of human trafficking for forced labour to try to understand how the justice system and law enforcement have been tackling the problem and how, if at all, they have defined forced labour.

5.1 The difficulty of defining human trafficking

For a proper assessment of the empirical material, it must be explained that while the Polish legal order penalised human trafficking (Article 253 of the Penal Code), it did not provide a relevant definition. This continued until the current Penal Code took effect, i.e. from 1997 until the end of 2010 when the penal law was revised in September 2010. The definition, however, is not included in the penal regulation itself specifying the sanctions. Instead it is included in the introductory part of the Penal Code[121] as a definition of a statutory term.

Over the years, the laconic statement banning human trafficking but failing to provide a legal definition of the crime has been the cause of numerous misinterpretations and misapplications of Article 253 of the Penal Code (human trafficking).[122] All it did was to make the criminal justice system more alert than it would be otherwise. The police thought they were better off not accusing people of human trafficking because of the difficulty of providing the evidence and thus to convince the prosecutor to press charges. Mindful of the possibility of a different charge formulated by the prosecutor, police officers offered a "safer" option, one that is easier to prove. Things were no different for prosecutors who would formulate charges contrary to the evidence gathered. That was often because of a lack of knowledge about human trafficking and the international laws and for fear that the judge would change the proposed charges[123].

The concern was legitimate because the judges in Poland differed in their verdicts on human trafficking and lacked clarity on what human trafficking really meant in the context of the laconic Article 253 of the Penal Code (human

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[121] Journal of Laws of 2010 No. 98, Heading 626.

[122] There were two definitions of human trafficking in the Polish legal order. They come from two key documents of international law, i.e. the Palermo Protocol of 15 November 2000 (Journal of Laws of 2005 No. 18, Heading 160) and the EU Framework Decision of 19 July 2002 (2002/629/JHA). Whether they can be applied directly has been the topic of an intense debate within the legal community. According to Filip Jasiński, Krzysztof Karsznicki, Combatting human trafficking from the perspective of the European Union, Państwo i Prawo 2003, no. 8, p. 84-96. Andrzej Sakowicz, The crime of human trafficking from the perspective of international regulations, Prokuratura i Prawo 2006, no.3, p. 52−69. Eleonora Zielińska, The need to revise the Penal Code in light of the ratified protocol for the prevention and penalisation of human trafficking, Studia Iuridica 2006, no. XLVI, p. 337−344.

[123] Krzysztof Karsznicki, Prosecuting the crime of human trafficking in Poland, Human Trafficking Studies Centre Warsaw University, Warszawa 2010, p. 31−46.

trafficking). The question for the courts was e.g. whether the term trafficking in human beings applies only when it involves the "sale" of more than one person[124]. The regulation in Polish uses the plural of "person", possibly suggesting that it does not apply to cases involving one person only. Another issue disputed by the judiciary was the fact that for "human trafficking" to occur, a sales agreement in the meaning of civil law must be made. In other words, the question is whether human trafficking must include a typical transaction or whether the crime occurs even if none of the commonly recognised commercial conditions are met. With each new verdict the courts tended to apply broader interpretations of human trafficking and applied Article 253 of the Penal Code more often. Of particular importance was a Supreme Court verdict providing the linguistic interpretation of the crime of human trafficking. Despite this, some problems with interpretation and application of the regulation persisted[125].

Despite the lack of a Penal Code definition, cases of human trafficking were investigated and tried with prosecutors and judges slowly but successively resorting to international law, in particular the Palermo Protocol and the 2002 Framework Decision.

The purpose of these introductory comments was to highlight an important fact which is that all the criminal cases we have analysed occurred when the Penal Code did not provide a definition of human trafficking and the doctrine and the judiciary held disputes on the meaning of terms such as human trafficking and forced labour.

In the criminal cases we have analysed, prosecutors and judges defined human trafficking and forced labour in two ways. First, they would make references to linguistic or systemic interpretation. That meant quoting the doctrine and dogma of penal law, i.e. handbooks and commentaries to the human trafficking regulation and the relevant Supreme Court verdicts.

The second strategy was to quote international law on human trafficking and/or forced labour. In this case, judges and prosecutors would usually refer to United Nations Convention against Transnational Organised Crime of 15 November 2000[126], including the Palermo Protocol of 15 November 2000[127], Council Framework Decision of 19 July 2002 on combating trafficking in human beings, and the International Labour Organisation's conventions, primarily Convention No. 29 concerning forced or compulsory labour. That was a legitimate strategy because under the Polish Constitution ratified international agreements become part of Poland's legal order. The only problem was whether international laws

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[124] An Appeals Court verdict in Wrocław, 21 February 2003, II AKa 586/02, Verdicts of Appeals Courts in 2003 , no. 5.

[125] According to Barbara Namysłowska-Gabrysiak, Analysis of courts' verdicts in 1999–2009 in cases of human trafficking in the light of Polish and international legal regulations, for the Institute of the Justice System, Warszawa 2010.

[126] Journal of Laws of 2005 No. 18, Heading 158.

[127] Journal of Laws of 2005 No. 18, Heading 160.

quoted by the courts were self-enforcing, i.e. whether the ratification itself is enough to quote the law in trying criminal cases.[128]

5.2 How the courts and prosecutors defined human trafficking for forced labour

Despite the limited number of criminal cases, the analysis shows an evolution in how human trafficking for forced labour or human trafficking as such has been defined. In the first case involving human trafficking for forced labour from 2004 (file number III K 145/04 District Court in Kielce) the court and prosecutor used very concise statements to define human trafficking for forced labour. Human trafficking for forced labour was defined as "forcing into slave labour" with no explanation of what "slave labour" meant. While the prosecutor and the judge often used the term "exploitation for slave labour" none of them had ever explained or defined it. In its final verdict the court proved that the perpetrators had knowingly taken advantage of the difficult situation of the victim. The man took out a loan to be able to come to Poland and pay the middlemen, which led to debt bondage. He had a family to support in his home country. On the other hand, he was staying in Poland illegally, did not speak any Polish, did not know Polish culture, and had no documents or means to support himself. In the verdict the judge emphasized the complete dependency of the victim on the perpetrators and that he had to follow their orders.

In the case of the Bangladeshi citizens forced to work in the Gdańsk Shipyard in 2009 (file number IV K 141/10 District Court in Gdańsk), the prosecutor defined human trafficking on the basis of the Palermo Protocol. He supported his claim of human trafficking by stating that while the perpetrator recruited and transported the people into Poland legally, he misled them about the conditions of work in Poland. The prosecutor also claimed that once in Poland the victims were exploited for compulsory labour using practices similar to slavery and that the victims had no way of refusing to work, received no pay and the work was beyond their physical capacity. In addition, the perpetrator restricted the victims' personal freedom by forcing them to stay in a secured building and rationed their food. The perpetrator deprived them of their passports and mobile phones.

The prosecutor in charge of the case involving the Bangladeshi nationals went beyond the Palermo Protocol definition of human trafficking by referring to the revised Penal Code of 20 May 2010[129] which states that human trafficking also involves forcing people into compulsory labour or services.

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[128] Po A. Sakowicz, The crime of human trafficking from the perspective of international regulations, Prokuratura i Prawo 2006, no. 1, p. 52–69, and K. Karsznicki, Prosecuting the crime of human trafficking in Poland, Human Trafficking Studies Centre Warsaw University, Warszawa 2010, p. 22.

[129] Journal of Laws of 2010 No. 98, Heading 626.

In the case of the Ukrainian nationals forced to beg on the streets in Poland (file number II K 49/07), the prosecutor and judge stated that the perpetrators committed the crime of human trafficking to force the victims to beg. In this case the prosecutor and judge quoted the Palermo Protocol definition of human trafficking.

The prosecutor demonstrated that the perpetrators had misled the victims about the nature of the work and were involved in the recruitment, transport, transfer and sale of the victims from Ukraine to Poland and took advantage of the victims for forced labour which was to beg. While the prosecutor accused the perpetrators of exploitation for forced labour, he never explained what it entailed. In the justification of its verdict the court stated that human trafficking involves the treatment of people as objects of trade which is often pursued to exploit these people. The court also pointed out that people (adults and minors) cannot be the objects of any trade whether for personal gain or not. The court referred to Supreme Court rulings[130] and stated that in the light of Polish law when a perpetrator/perpetrators act to transfer a human being this constitutes a case of human trafficking.

In an effort to define human trafficking, the court went beyond Supreme Court and national courts' rulings, and quoted international laws concerning human trafficking which Poland has ratified. The court first referred to documents of international law adopted in the early 20th century. They include the International Agreement of 18 May 1904, the International Convention signed on 4 May 1910 for the suppression of the white slave traffic[131] and the Convention of 30 September 1921 for the suppression of the traffic in women and children[132]. In addition, the court referred to the definitions in the Palermo Protocol and Council Framework Decision No. 2002/629 JHA on combating trafficking in human beings[133]. While the court described at length the documents of international law concerning human trafficking and the dogmas of the Polish law on that issue, it offered very little explanation of human trafficking for forced labour in the case heard before it. All the court did was to state that on the basis of the evidence gathered, the perpetrators were involved in the recruitment, transport and transfer of Ukrainian nationals into Poland to subsequently force them to beg in the streets in Poland. In addition, the perpetrators took all the money the victims had made (from begging), claiming that it was going towards the amounts they had spent to bring the victims into Poland. In the opinion of the court, the fact that the perpetrators recruited the victims, arranged their trip to Poland by helping them with the necessary documents, organised the transport, placed them in Poland, told them what the work would entail and took away the

[130] Supreme Court verdict of 19 April 2002 , V KKN 353/00, LEX no. 56863.

[131] Journal of Laws of 1922. No. 87, Heading 783.

[132] Journal of Laws of 1925 No. 125, Heading 893.

[133] Official Journal EC L 203 of 1 August 2002.

money they had made (from begging) and used threats, had met all criteria of the crime of human trafficking.

In the other cases that are still pending, the prosecutors use an almost identical definition of human trafficking, i.e. *"... the defendant/defendants engaged in human trafficking to exploit them for slave or compulsory labour in that they recruited the victims and misled them as to the conditions of work and pay"*[134]. The indictment also states that the perpetrators held the victims against their will in conditions offensive to human dignity and used psychological and/or physical force.

Some cases are still being tried, including the *terra promesa* case of 2006. Poles were exploited on plantations in Italy outside the city of Foggia (file number 21/07 District Court in Krakow) and the perpetrators are charged with human trafficking based on the Palermo Protocol definition and the definition of forced labour used in the International Labour Organisation's Convention No. 29 concerning forced or compulsory labour. The prosecutor claims that the perpetrators knew perfectly well that the conditions of work in Italy were bad and that the people were recruited for forced labour. As a result, the prosecutor believes that the perpetrators deliberately misled the victims by telling them that the conditions of work were very good and promised good pay. Once in Italy, the workers realised the conditions were deplorable and the pay was none or just a few euro for a day's work. The perpetrators were involved not only in the recruitment of victims for forced labour, but also in transporting them to Italy and transferring them to others for forced labour. The perpetrators had complete control over the victims, one more criterion of forced labour. The victims were subjected to intimidation, physical and psychological violence and were not allowed to leave the premises. The perpetrators imposed financial penalties for work undone and claimed they had run up a debt for the costs of accommodation. Because those costs were very high and the pay was very low, the victims were unable to pay back the debt through work.

This case involves not only forced labour but debt bondage as well which the ILO considers a form of forced labour[135]. The prosecutor, however, only used the terms of human trafficking and forced labour.

The prosecutor also explained that even though the victims agreed to take the job, they knew nothing about the real conditions of work in Italy and could not oppose their employers because they were kept in rooms guarded by armed guards. In addition, the victims had no money which made going back to Poland impossible.

In his indictment, the prosecutor emphasised the fact that the victims were held in conditions offensive to human dignity because the place was not fit for human

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[134] File number IV K 141/10 District Court in Gdańsk, p. 1869; file number 21/07 District Court in Kraków and VI Dp. 40/07/S, p. 29.

[135] Human trafficking for forced labour. How to monitor the recruitment of migrant workers, handbook, International Labour Organisation, Warszawa 2006, p. 5.

occupation. The victims were placed in makeshift buildings, old cars or tents. None had toilets. The perpetrators did not allow any contact with the external world by confiscating telephones and stopping the victims from leaving the premises. The victims were held on the plantation far from the city. In addition, the victims' identity documents were confiscated. This is why the prosecutors believe that this is a case of human trafficking for forced labour.

The above overview of the criminal cases suggests that courts and prosecutors always consider forced labour in the context of human trafficking which is perfectly understandable because the Polish Penal Code does not penalise forced labour as such. On the other hand, all the criminal cases analysed were tried when the Polish Penal Code did not provide a definition of human trafficking. Today, because the definition of human trafficking has been introduced into the Penal Code, the Polish penal law considers forced labour as a form of human trafficking or at least states that forced labour can be one of the objectives of human trafficking. What remains to be solved is how to treat those acts which meet the criteria of forced labour but do not meet those of human trafficking. We must remember that according to the ILO, forced labour does not have to involve human trafficking[136].This observation poses an obvious task for anyone studying the problem of forced labour in Poland. There should be on-going monitoring of the justice system to identify cases involving exploitation of others, especially foreigners. It is also important to cover all such criminal cases in great detail and to understand how law enforcement and the courts present their case and how this is evolving.

[136] A Global Alliance against forced labour Global Report under the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Organisation, Geneva 2005, p. 7.

Chapter 6: Short description of the system of elimination of trafficking in human beings for forced labour

6.1 Prevention

The forced labour prevention system includes a large number of possible actions which may be classified as: 1. policy-level solutions – creating a development strategy with consideration to the presence of foreigners on the labour market, creating a reasonable and realistic migration policy, 2. institutional and systemic solutions, such as e.g. creating and strengthening institutions responsible for verifying the legality and conditions of employment, as well as simplifying the employment procedures of foreigners; 3. penalising the behaviour associated with extortion of certain benefits and exploitation of workforce; 4. building partnerships for the elimination of forced labour, mainly with the participation of trade unions and employers' organisations; 5. solutions at the level of social awareness and mentality, aimed at building social awareness of forced labour and creating a climate of social condemnation of human exploitation.

6.2 Identification of victims

The weakest element of the system of identifying victims is the nearly complete lack of self-identification. The main problem of forced labour victims is the fact that they are usually employed illegally, and as such they are even more afraid than their employers of the authorities of the State, which has at its disposal a number of possible sanctions for such behaviour, deportation notwithstanding. Law enforcement bodies, such as the police force and the Border Guard, as well as control bodies, such as the National Labour Inspectorate (PIP), the Chief Sanitary Inspectorate (SANEPID) or the Supreme Audit Office (NIK) achieved certain success in the identification of victims of forced labour. The analysis of press articles we collected in 6 months indicated that only in a few cases, the authorities had been notified by citizens. In Poland, it is still a common rule not to interfere into somebody else's affairs, except when it is absolutely necessary.

The analysis of criminal law cases indicated that most cases of trafficking in human beings for forced labour were reported either by the victims themselves, or by third parties. Very few cases were detected in operations undertaken by law enforcement bodies. Only one such case, i.e. of a Vietnamese citizen forced to work in bazaars, was detected in the course of a routine inspection checking the legality of employment, carried out by the Border Guard. It is worth noting here that initially the Border Guard officers wanted to deport the victim because of his irregular status in Poland.

In both cases involving the forced labour of Polish citizens on Italian plantations, the victims themselves reported the existence of labour camps in Italy to law enforcement agencies. In the case code-named *terra promesa*[137], Polish police initially refrained from taking any actions, but as the information on forced labour of Polish citizens in Italy multiplied over time, it initiated cooperation with the Italian Carabinieri. Both Polish and Italian law enforcement bodies quickly realised that they are most probably dealing with trafficking in human beings for forced labour.

In the case of Polish citizens exploited on a tangerine plantation in the Italian province of Calabria, one of the victims upon returning to Poland asked the state prosecutor's office for assistance, but the latter refrained from taking any actions in this matter. For this reason, the victim decided to grant an interview to a local newspaper, describing the work conditions in Italy[138]. Moreover, other victims who managed to leave that workplace notified the Consulate of the Republic of Poland in Rome, which subsequently entered into cooperation with the Polish police and the Italian Carabinieri. The Polish and Italian law enforcement agencies became interested in the case only upon numerous interventions of victims.

In the case of the citizens of Bangladesh forced to work at a shipyard in Gdańsk, two victims managed to escape from their lodgings to the railway station in Gdańsk. At the train station, they asked the travellers for petty change to buy train tickets, because they wanted to travel to Warsaw. Once on the train, they met a woman travelling with her grandson, who promised to assist them in finding an NGO dealing with foreigners. This way, the Bangladeshi found their way to the Association of Legal Intervention (Stowarzyszenie Interwencji Prawnej SIP) which offers assistance to foreigners, and next to La Strada Foundation which included them in its *Programme of Support to And Protection of Victims/Witnesses of Trafficking in Human Beings (Program wsparcia i ochrony ofiary/świadka handlu ludźmi)*.

A third party also played a key role in the detection of the case of the Ukrainian citizens forced to beg − in this case it was the owner of the hotel in which one of the victims was lodged. As soon as the owner learned that the woman and her child were forced by an organised crime group to beg, she offered her assistance, moved the victims to her own house, and informed the local police of the entire situation. It is worth noting here that in this case the participation of a third person went much beyond the usual notification of the right services, as the victims were also given concrete assistance.

In several other cases, forced labour victims were identified following media intervention. A good example of such intervention is the case of Philippine women, forced to work at a mushroom farm in eastern Poland. It was not,

[137] III K 21/07 District Court in Kraków.

[138] Cf. Wojciech Olszewski, Handlarze ludźmi zostali aresztowani, Gazeta Lubuska, 05.01.2010.

however, the only occasion, when law enforcement or labour inspection bodies learned of exploitation or forced labour from the media.

The identification methods of forced labour victims in Poland are best evidenced by the case of a Ukrainian woman, forced to work as a farm hand and a domestic help at a farm near Warsaw. The case was detected by sheer accident. The man who imprisoned the victim at his home was stopped by the police for drunken driving and failed to produce any identification documents. The man asked the police officers to accompany him to his house to allow him to collect the necessary documents. The police officers drove the man home in their car. When the Ukrainian woman saw a police car driving into the yard, she immediately ran from the house and begged the officers for help; she wanted them to take her immediately to the police station. Initially, the police officers refused to accept her complaint, explaining it falls outside their scope of competence. The officers told the woman that if she felt maltreated, she might (quote) "*... take a bike and come to the police station to testify"*[139]. The Police officers did not trust the victim and did not want to talk to her. The victim, however, begged to be taken from the perpetrator's house. Ultimately, the first police patrol asked their colleagues from the police station for help. Upon arrival on the scene, the officers from the second patrol promised the Ukrainian woman to take her away from there as soon as they find her a place to stay. The police officers did not know what to do with the victim and where to take her. For this reason, they returned to their police station to enquire what institution may take in a foreign woman with a small child. After several hours, when the police officers knew the Ukrainian woman may be admitted to a women's hostel, they returned to take the victim and her child there. The Ukrainian woman was initially identified neither as victim of forced labour, nor of domestic violence. The characteristic feature of this case is the fact that the first police patrol to arrive at the perpetrator's house refused to accept the complaint of the Ukrainian woman at all, despite her insistence and begging for being taken from that house together with her child. Only the intervention of a second police patrol caused the officers to provide the woman with assistance and to take her, together with her child, away from the perpetrator's home.

The information collected indicates unanimously that the activities undertaken by law enforcement bodies to detect forced labour cases are limited, not to say nonexistent. Law enforcement bodies wait for the victims, witnesses or media to notify them of such offences. And even if law enforcement agencies actually receive information on cases of forced labour, they are not always interested in pursuing the matter any further. Hence, it is essential to enhance the system of identifying cases of trafficking in human beings for forced labour. Despite the increasing number of cases of employee rights violation, identified by Polish law enforcement and labour inspection bodies, which subsequently often turn out to be cases of trafficking in human beings for forced labour, these institutions still have problems with the identification of forced labour cases in Poland.

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[139] Quotation from interview with the victim, 28 January 2010.

The basic problem in the identification of victims is the insufficient knowledge of law enforcement officers on trafficking in human beings and forced labour. For this purpose, it is necessary to increase the number of training courses, particularly training of low-ranking police officers, since it is such officers who most frequently encounter the victims of trafficking in human beings and forced labour, although in most cases they are not aware of this fact. A good example is the case of the Ukrainian woman, forced to work as farm hand and domestic servant.

Apart from training courses, it is also necessary to provide the police officers with tools enabling them to detect more cases of exploitation and forced labour in Poland. An effective solution could be offered in the form of a questionnaire, aimed at improving the identification of trafficking in human beings and forced labour victims. Already 5 years ago, the Centre for Research into Human Trafficking at the University of Warsaw (Ośrodek Badań Handlu Ludźmi UW), working together with other institutions and organisations committed to eliminating the trafficking in human beings, developed a questionnaire to help law enforcement officers in the identification of trafficking in human beings victims. Also a pilot programme of using the questionnaire was carried out. However, the concept of introducing the questionnaire as a tool assisting the police and Border Guard officers in identifying victims of trafficking in human beings did not take hold.

Another concept, not without relevance to improving the detection rate of cases of forced labour, is focused on increasing the scale of operational and investigative actions. As far as institutions involved in the elimination of trafficking in human beings and forced labour are concerned, such activities may now be carried out by the police and the Border Guard. For this reason, the agreement signed in April 2008 between the National Labour Inspectorate (PIP) and the Border Guard on controlling the compliance with regulations governing the employment of foreigners must be given high regard. The initiative is not limited to joint actions or the exchange of information, but also includes cooperation in improving inspection methods and the qualifications of both labour inspectors and Border Guard officers. The complementary nature of cooperation between these two institutions sets a good example to other institutions involved in eliminating forced labour. Such cooperation may become a remedy to the two basic problems affecting the Polish system of eliminating forced labour. The first of these problems is the fact that officers of specialist institutions are not properly prepared to identify cases of forced labour. The other problem is the low effectiveness of the Polish system of eliminating forced labour and trafficking in human beings, caused by the incoherence of actions undertaken by the prosecution and law enforcement bodies.

The small number of criminal law cases of trafficking in human beings for forced labour initiated by law enforcement and labour inspection bodies may also be a consequence of a generally low awareness among police officers on forced labour and trafficking in human beings. In the opinion of most experts, low-ranking officers and employees know little about eliminating such

phenomena. Experts indicated the lack of training on forced labour to be the reason behind this state of affairs. Moreover, the experts stressed that Polish authorities had been very late to express their interest in this matter, since the problem of forced labour was raised for the first time at the National Conference on Human Trafficking, organised in 2008 by the Ministry of Interior and Administration (MSWiA).

6.3 Prosecution of the offence of trafficking in human beings for forced labour

From the point of view of the prosecution of forced labour, the penalisation of acts aimed at forcing another person to perform given work is certainly of key importance. In the Polish legal system there is no such offence, meaning that the perpetrators of such offences must be prosecuted on the basis of either the regulation prohibiting trafficking in human beings, or a group of provisions on the violations of employee rights. The second, important precondition for effective prosecution is the existence of a highly specialised and well trained public service, namely of special teams of police and Border Guard officers, responsible for identifying forced labour victims and arresting perpetrators, assisted by investigation teams specialising in migration- and tax-related offences. The third precondition for effective prosecution of forced labour is the incorporation of trafficking in human beings and forced labour into the operational tasks of investigation services to initiate the process of gathering information which in time will be transformed into hard evidence. And finally, the last but not least element is the proper training of prosecutors and judges, who would not hesitate to apply a unanimous legal qualification of offences involving trafficking in human beings or forced labour.

In the opinion of experts, the level of preparation of institutions involved in combating trafficking in human beings for forced labour is steadily improving. The experts maintained, though, that even if the awareness of the officers of the law of trafficking in human beings and forced labour is improving, the training available in this field is still insufficient. In the opinion of experts, the prosecutors, judges and Border Guard officers employed at the Foreigners Department are particularly in need of appropriate training in this area. On the other hand, the expert representing trade unions pointed out that it is hard to assess whether the institutions involved in the elimination of trafficking in human beings are operating properly. If such institutions had no problems with the identification of forced labour victims, most probably many more cases would have been revealed. Just a few cases of forced labour over the past ten years in a country with the population of nearly forty million people certainly is not much.

Despite their rather good assessment of activities carried out by institutions and organisations involved in preventing and combating trafficking in human beings for forced labour, experts still maintain that actions undertaken by such

institutions are insufficient. This state of affairs is mainly attributed to gaps in Polish law, which prohibit effective combating of forced labour. In the opinion of nearly all experts in our study, the lack of regulations penalising forced labour prohibits law enforcement and labour inspection bodies from taking any effective actions. The experts hope that the definition of trafficking in human beings, incorporated in May 2010 into the Criminal Code, defining forced labour as one of the forms of trafficking in human beings, will resolve the problem of prosecuting the trafficking in human beings for forced labour.[140]

Cooperation between institutions and organisations involved in eliminating forced labour within the scope of information exchange is also an important problem. The system of information exchange between such institutions must definitely be improved.

In this context, the agreements referred to above, signed in 2008 between the National Labour Inspectorate (PIP) and the Border Guard (SG) in the matter of compliance with regulations on employing foreigners, deserve high appreciation. A similar agreement with the police is now pending preparatory works by the National Labour Inspectorate (PIP). In 2010, PIP is planning to sign a new cooperation agreement with the police. The existing agreement between the police and PIP is of a general nature, whereas in the new agreement, PIP will stress the importance of information exchange and cooperation within the scope of legality of employment. The National Labour Inspectorate (PIP) and the prosecution office shall enhance their cooperation, especially due to the fact that the prosecution office has the necessary legal instruments at its disposal that could make the combating of forced labour more effective. The assistance provided by the prosecution office may also be of relevance, especially in cases of exploitation or forced labour of foreigners, since in such cases the prosecution office may apply for international legal assistance.

Ineffective information flows between law enforcement and labour inspection bodies are not the only problem they endure in this area. Our research indicated that problems with eliminating forced labour or trafficking in human beings may occur within a single institution. According to information from the Border Guard, as soon as an illegal alien worker is detained, an investigative team starts investigation into the case to detect the employer who hired such a foreigner against the law. However, the Border Guard officers responsible for foreigners want to deport the victim as soon as possible, as in their opinion such a person is simply an illegal alien in Poland. This conflict of interests, occurring within a single institution, exerts destructive influence upon the process of identifying and prosecuting cases of trafficking in human beings and forced labour.

Effective cooperation between national law enforcement institutions with their foreign counterparts also bears an impact upon effective prosecution of trafficking in human beings and forced labour. In the case of trafficking in human beings and forced labour, international cooperation is of great

[140] Journal of Laws Dz. U. 2010, No. 98, Item 626.

importance, as such offences are often of cross-border nature, with the victims usually being foreigners. As a consequence, investigators must rely on the assistance from foreign institutions and organisations to effectively implement preparatory proceedings. Therefore, in our analysis of criminal law cases and interviews with experts, we tried to determine whether such international assistance actually takes place, and if it does - what it focuses on. Whether only basic information is collected, i.e. concerning prior convictions, or is the cooperation based on e.g. setting up Joint Investigation Teams.[141]

The results of the study indicated that the international cooperation between Polish and foreign law enforcement bodies is improving year by year. Initially, if at all, such cooperation focused rather on the collection and exchange of basic information, particularly concerning the perpetrators of the offence of trafficking in human beings and of forced labour. In recent years, however, Polish law enforcement bodies, and the police and State Prosecution Office in particular, take advantage of international cooperation more frequently and on a broader scale. Even though Polish law enforcement bodies failed so far to set up a Joint Investigation Team, Poland may boast good international cooperation in the area of trafficking for forced labour.[142] The cooperation in question was established in the case of Italian labour camps, code-named *terra promesa*[143], in the course of which Polish police cooperated with the Italian Carabinieri. The cooperation was established at the stage of preparatory proceedings. In the spring of 2006, the police of both countries entered into an agreement, followed by cooperation between national prosecution bodies. Despite the fact that no Joint Investigation Team was set up, as Italy did not implement the *Framework Decision of the Council of 13 June 2002 on Joint Investigation Teams (2002/465/JHA)*, the cooperation was nevertheless effective. The lack of institutional forms of cooperation did not keep the parties from exchanging information on the perpetrators, sending witness depositions and other evidence (such as recordings of conversations and photographs made during the surveillance of the plantation) or from a joint operation of detaining the perpetrators. The cooperation also involved the participation of Europol and Eurojust. The organisations referred to above prepared an analysis of evidence and produced a flow chart of the investigation.

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[141] The setting up of joint investigation teams is possible by virtue of Framework Decision adopted by the Council on 13 June 2002 on joint investigation (2002/465/JHA). The basic tasks of JITs include prosecution of cross-border crime and the collection and securing of evidence.

[142] There have been no JITs working with the participation of the Polish police. In the case code-named *terra promesa* no Joint Investigation Team was set up, since Italy at the time still did have adequate legislation in place. Moreover, Poland attempted to set up a JIT with Lithuania, but the operational material collected proved insufficient. On another occasion, the Central Team for Trafficking in Human Beings at the Chief HQ of the Polish police tried to set up a JIT with the German police, but differences in the qualification of cases of trafficking in human beings caused this initiative to fail, too.

[143] Case file no. III K 21/07 District Court in Kraków.

The case in question clearly indicates that even without a legal basis, international cooperation between law enforcement bodies may still exist. As it turns out, the spirit of cooperation and understanding between the parties is enough. So far, it remains the best example of cooperation between Polish and foreign law enforcement bodies.

The cooperation between Polish law enforcement bodies and their counterparts from Asian states, however, remains a serious problem. No cooperation has been established in cases concerning the exploitation of a Vietnamese citizen or the forced labour of Bangladeshi citizens.[144] [145] In the case of the victim from Vietnam, Poland has undertaken attempts to enter into cooperation with the Vietnamese side, but to no avail. There was no response on the part of Vietnam. As far as the case of Bangladeshi citizens is concerned, no international cooperation was established either. Moreover, Poland did not enter into an agreement on legal assistance with Bangladesh, and for this reason Polish law enforcement bodies will probably refrain from entering into cooperation with that country in the matter of exchanging information on the case.

The problem of cooperation between Polish and Asian law enforcement bodies must be solved, particularly due to the increasing number of Asian victims of forced labour in Poland. This situation may be remedied, inter alia, by signing bilateral agreements on criminal law cases, particularly with the countries of origin of most victims of forced labour in Poland.

6.4 Punishing of the offence of trafficking in human beings for forced labour

In our study, we also tried to stress the issue of penalties imposed by the courts of law upon the perpetrators of trafficking in human beings for forced labour. It must be noted here that according to the Polish Criminal Code, trafficking in human beings is subject to a penalty of imprisonment for 3 to 15 years. Hence, in the light of Polish regulations, trafficking in human beings is a crime, subject to one of the highest penalties envisaged in our Criminal Code. However, the analysis of criminal law cases indicated that the penalties applied by Polish courts of law for trafficking in human beings are rather low. Of the two criminal law cases which ended in convictions (other cases still pending), the perpetrators were sentenced to the penalty of imprisonment for from one to 4 years. One of the perpetrators was sentenced to 1 year in prison, two perpetrators − to 3 years in prison, one to 3.5 years in prison and another to 4 years in prison. It must be noted, however, that three of the perpetrators referred to above were also convicted for participation in an organised crime group. Such offences are subject to a penalty of imprisonment for 3 months to 5 years, but persons

[144] Case file no. III K 145/04 District Court in Kielce.

[145] Case file no. IV K 141/10 District Court in Gdańsk.

convicted for either establishing or commanding an organised crime group may be sentenced to a penalty of imprisonment of 1 to 10 years.

One can see that courts take a liberal approach to perpetrators of trafficking in human beings for forced labour. Such offenders are not the only ones to receive low sentences. Also in cases of trafficking in human beings for sexual abuse, most sentences call for the maximum of 3 years in prison.[146] According to the information above, courts frequently apply the lowest penalty envisaged in the Criminal Code for such offences, and sometimes even apply extraordinary mitigation of penalty. This court practice is truly striking, particularly in the light of the fact that some offences associated with trafficking in human beings are perpetrated using very brutal methods.

6.5 Assistance to victims

From the point of view of description and analysis of the system of providing assistance to the victims of trafficking in human beings and of forced labour, the most important aspect is whether there are any relevant legal norms in existence and who is responsible for implementing this duty. Of key importance here is to answer the question, who is actually the leading entity in this case, the State, local self governments, or NGOs? Poland actually has no such system for providing assistance to forced labour victims, although the country's legal system does envisage relevant solutions, allowing such persons to be provided with minimum care and support. There are no central institutions which could assume responsibility for such activities, nor is there a system of local institutions providing support to such persons. However, a network of voivodeship-level coordinators, dealing with trafficking in human beings and forced labour is now being established. There is only one professional NGO (La Strada) dealing with victims of trafficking in human beings, and increasingly with forced labour victims. The organisation in question receives financial support from the State, but according to its information, this aid is hardly adequate. In some parts of the country there are local organisations dealing with social problems, which provide limited assistance to crime victims, including the victims of trafficking in human beings.

Basically in Poland there is only one assistance programme for the victims of trafficking in human beings and forced labour, *Programme of support to and protection of victims/witnesses of trafficking in human beings (Program wsparcia i ochrony ofiary/świadka handlu ludźmi)*. This programme is a public task sponsored by the Ministry of Interior and Administration but implemented by the NGO La Strada Foundation. There are also a few more NGOs in Poland providing assistance for the victims of trafficking and forced labour.

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[146] Barbara Namysłowska-Gabrysiak, Analiza orzecznictwa sądowego za lata 1999-2009 w sprawach dotyczących handlu ludźmi w świetle polskich i międzynarodowych regulacji prawnych, Opracowanie przygotowane na zlecenie Instytutu Wymiaru Sprawiedliwości, Warszawa 2010.

In order to learn more about the operations of the support system for victims of trafficking in human beings for forced labour, we tried to determine from information collected on criminal law cases, whether the victims ever received any assistance and if they did − in what form such assistance was offered. Our research indicated that a definite majority of victims never received any support, whether from the State or from NGOs. None of the victims ever received any compensation. Only in the case of the citizens of Bangladesh, forced to work at a shipyard, seven out of nineteen victims received assistance from an NGO and were included in the *Programme of support to and protection of victims/witnesses of trafficking in human beings*. In the case of the citizens of Ukraine, forced to panhandle, only one woman and her underage children could spend several days at a hostel for homeless women, where they received welfare assistance in the form of meals and accommodation.

It is surprising that so few victims of trafficking in human beings for forced labour actually received assistance in Poland. Equally striking is the fact that none of the Polish citizens, who became victims of forced labour abroad, ever received any assistance in Poland, and that no NGOs ever attempted to help these people. Only in the case code-named *terra promesa*, the Polish Human Rights Defender (Rzecznik Praw Obywatelskich – RPO) asked the Italian side to provide information on the labourer who died at the labour camp and on the site of his grave.

The experts also pointed out that the system of support to victims of trafficking in human beings does exist in Poland, but it is underdeveloped. They stressed that there is only one organisation in Poland providing assistance to victims of trafficking in human beings, but it is mainly oriented at helping the victims of trafficking in human beings for sexual abuse. For this reason, in the opinion of experts, the assistance procedures must be diversified, particularly in the case of assistance to victims of trafficking for forced labour. The assistance system should be oriented at providing assistance to a maximum number of victims, and not just to individual groups of victims of forced labour in Poland.

In the opinion of one of the experts, the problem of providing assistance to Polish citizens who became victims of exploitation or forced labour abroad must be resolved as soon as possible. At present, Polish citizens who become victims of trafficking for forced labour abroad, receive no assistance or support. Another problem is associated with the money from the State budget, allocated to the assistance for forced labour victims. In the opinion of NGO experts, and those representing the labour and social policy area, the amounts allocated for that purpose from the State budget are insufficient. In 2010, for instance, the Ministry of Interior and Administration (MSWiA) intends to allocate PLN 930,000 (about 230,000 euro) to the implementation of the "Programme for support to and protection of victims/witnesses of trafficking in human beings" addressed to foreigners and to the operations of the National Centre for Interventions and Consultations for Victims of Trafficking in Human Beings.[147] The amount

[147] http://www.pomoc.rpo.gov.pl/index.php?md=96&s=1

referred to above shall be allocated in full to a single Polish-based NGO. The remaining organisations, willing to assist victims of trafficking in human beings, must rely solely on the support from their donors.

As far as systemic assistance to victims of trafficking in human beings for forced labour is concerned, there are several NGOs in existence in Poland dealing with the problems of trafficking in human beings, but only one of these organisations actually provides assistance to the victims of trafficking in human beings for forced labour. This situation is a consequence of the fact that only one organisation receives money from the State budget for providing assistance to the victims of trafficking in human beings and of forced labour. The money from the State budget is granted to the organisation of assistance to the victims of trafficking in human beings by way of a competition. Presently, only one NGO is capable of winning such a competition. Smaller NGOs are most probably unable to meet the requirements specified in the public procurement task concerning the provision of assistance to the victims of trafficking in human beings and forced labour.

Moreover, La Strada which implements the programme of assistance to the victims of trafficking in human beings is currently also coping with the assistance to women who became victims of trafficking in human beings for prostitution. In the fifteen years of its existence, the organisation in question created a complex system of support to women who became victims of trafficking in human beings. However, the provision of assistance to victims of forced labour gives rise to a number of problems within the organisation, particularly related to its infrastructure.

Not without relevance is also the fact that the operations of this organisation are limited to Warsaw and that it has no branch offices in other parts of Poland. Despite cooperation with local NGOs within the scope of assistance to victims of trafficking in human beings, the organisation in question is rather disinterested in the provision of assistance to victims of trafficking in human beings and forced labour or in supporting the establishment of local NGOs providing such assistance. The Ministry of Interior, which is responsible in Poland for eliminating the trafficking in human beings, is not interested in assisting local NGOs which could provide assistance and support to victims of trafficking in human beings within their areas of operation. Although there is no doubt that NGOs should not be established by top-down initiatives, any incentives for creating such foundations are definitely more than welcome, especially since the lack of local NGOs is the basic weakness of the Polish system of providing assistance to the victims of trafficking in human beings and forced labour. The existing system of providing assistance to victims is highly centralised, making many victims unable to use the support or assistance offered. The lack of organisations providing assistance to the victims of trafficking in human beings in Poland results in may victims never receiving any help. According to our study, only very few victims of trafficking for forced labour have ever been granted any assistance. It must be noted here that the cases under analysis were limited to few offences which ended in conviction or are still pending

preparatory proceedings. In other words, the analysis was limited to the cases of trafficking in human beings for forced labour already detected by law enforcement bodies. Despite the above, not all of the victims received State aid. Moreover, assuming we are dealing in Poland with a large number of undetected cases of trafficking in human beings and forced labour, the number of victims of such offences must be much higher than indicated in the statistics of the NGO implementing the *Programme of support to and protection of victims/witnesses of trafficking in human beings*. According to the aforementioned data, the *Programme for support to and protection of victims/witnesses of trafficking in human beings* covered 85 persons in the years 2006−2009, and only 15 persons in the first half of 2010 (January−June)[148].

[148] Information received from the Team for Trafficking in Human Beings of the Ministry of Interior and Administration. The figures cover both victims of trafficking for sexual exploitation and trafficking for forced labour.

Chapter 7: How to do a study on trafficking for forced labour

7.1 General remark

As far as social practices go, there are some that do not lend themselves to scientific cognition easily. Forced labour is one of them. Just as with corruption and prostitution, these social phenomena are a significant challenge for researchers. In the case of forced labour, the real problem is hidden behind a façade of what seems to be a legitimate business. The difficulty in studying trafficking for forced labour is that while the victim is abused by a private employer, the real oppressor, the one that the victim fears most, is the state. It is the system that pushes the victim into the hands of the perpetrators. This is because the victims usually come from a different country, and their work and stay are illegal. As a result none of the parties are willing to report the crime or talk about. This is where the main research difficulty lies, i.e. in poor access to information.

Another important difficulty in studying trafficking for forced labour is that it is a fairly new problem and under-researched as a result. Our knowledge continues to be anecdotal and intuitive rather than empirical. For this reason, anyone considering a study into the problem should approach it from a "tabula rasa" perspective to keep their minds open to all information for subsequent verification which will gradually help them to build a picture of the problem.

7.2 Interviews with experts (mostly law enforcement and state officials)

The researcher must also accept the fact that in the first stage of the study there may people who know more, sometimes much more about the issue, although their knowledge may not be well structured, lacking logical order, or fragmented. For those reasons the initial interviews with experts have to be well thought out and constructed is such a way that the stream of information and facts, both related and unrelated to the topic, is properly focused.

Again, due to the nature of the crime and the special situation of the victims it is important to keep the interview confidential and protect the experts' anonymity. Not all experts agree to have their names revealed and this must be respected. In many cases this has to do with two situations. First, they do not want to be "recognised" as revealing this or that information which could be considered confidential. Second, they do not want be recognised because their knowledge is limited and they do not want others to know.

Experts also ask for anonymity when their views are different from their bosses' or from the official policy of their organisation. Finally, because the interviewee may have limited knowledge of the issue, we must avoid comments which would be considered judgemental, leading or personal.

Often when we interview a person who is supposed to know everything, during the interview we find that their expertise is limited or none at all. This is a very uncomfortable situation for the "expert" – the researcher should avoid any form of labelling them as non-expert.

7.3 Official data from all possible institutions

With basic information from experts, one can design the data collecting phase. This was an important part of our study. Therefore, within the context of the FLEX project, the team constructed a special table with needs, suggestions and hints on how to collect information. This table and the methodology are presented in the final chapter of this joint publication (see also Annex 1).

7.4 Press analysis

The press is an important source of information in two situations. First, when the subject of the study is not known and we use media news as an inspiration for determining the potential fields of investigation, topics to be studied, perpetrators/victims, beneficiaries, etc. We carefully collect single pieces of information and use them to build our knowledge. A good example is the trafficking in human organs or cultural justification of special types of crimes committed within ethnic minorities in countries like Poland. Second, when the subject is very well known and we simply want to enrich our studies by adding the media dimension. We do not count on the media as a source of information, but we rather see them as an indicator of the social context of a particular problem we are trying to describe. Organised crime is a good example. We know so much about that that we now go to the media to see what kind of message they transfer to the general public about this social phenomenon.

In Poland, forced labour became the subject of media interest very recently. After the change of the political regime there were many publications showing the ugly face of capitalism by demonstrating abuse of workforce, poor working conditions of workers, unjust salaries etc. In general terms one can say that the media reported many violations of workers rights. But there were no or very few articles about foreign workers. Later, the problem of human trafficking became public.

7.5 Criminal cases – law in action studies

In criminology, studying the files of criminal cases is one of the most important methods for learning about the social environment of a crime. Access to real cases has been key to understanding many crimes. This is not the case with human trafficking or forced labour. As we have said many times before, we have only limited knowledge of these crimes. When analysed empirically, they are considered only as the tip of the iceberg. What this means in practical terms is that very few cases are investigated and even fewer are tried and we only get to see a small part of the problem. As a result, any extrapolation of conclusions would be unfounded. But despite that, the research should continue because already a small number of cases provide a sufficient basis to study the most important issue, i.e. the practical application of the law.

Any investigation of a criminal case ending in a verdict should be studied. Unlike typical criminology research, where we focus on a selected aspect, human trafficking and forced labour must be analysed carefully in their entirety. Such an approach offers some important insights. First, by analysing the files we collect to gain knowledge about forced labour as such. Second, by analysing the court files we gain an understanding of how law enforcement has handled a new crime. Third, by analysing prosecution files and verdicts we can understand how competent prosecutors and judges are in interpreting the law. Fourth, by analysing the files we can judge how the justice system treats victims.

In the first instance, it is important to understand the phenomenology of the crime, who recruits workers, how and from what countries, what are the transfer channels of migrants, is organised crime involved in creating illegal labour and if so, to what extent, what are the susceptible sectors of the economy, etc.

At the institutional level, the key issue is to know who has identified the victim and how, what was the role of law enforcement, are there special structures and procedures within law enforcement to ensure effective prosecution, has law enforcement cooperated with other bodies, especially with foreign partners and international organisations, etc.

The third dimension covers all of the issues discussed at length here, i.e. can the police, prosecutors and courts effectively investigate, charge and convict perpetrators under the current laws, are the officers of the judiciary competent in interpreting domestic law, can they refer to and use international regulations and if so, to what extent (e.g. definitions of human trafficking or forced labour).

Finally, the victim − the files of a criminal case are an irreplaceable source of information about whether the justice system was willing to treat the victim in a way that would reflect the situation they are in and their mental state. Obviously, the victims themselves are an important source of information, but perhaps they will refuse to talk or not understand the intricacies of the procedures or even realise their rights. The most important issue is to establish whether the victim has received immediate help, are they looked after by the state or a non-governmental organisation representing the state, has law enforcement used

alternative sources of information or relied entirely on victim testimony, has the case been investigated without subjecting the victim to repeated victimisation, how many hearings have there been if at all, has the victim been questioned by a same sex officer, etc.

7.6 Interviews with victims

This type of research always raises questions about ethical standards. Because they are in a vulnerable position, victims of human trafficking or forced labour must be treated with great care and researchers must make them feel comfortable as much as they can. The victims must agree to talk even if it only involves asking them if they would agree to be interviewed. We must ensure that the victim remains anonymous. Obviously, before we can talk to the victim, law enforcement or an NGO must first establish the victim's personal details, but these will be protected when they talk to a researcher. The second important issue is the trauma the victim has gone through. The task of the researcher is to do everything they can to limit the victim's exposure to their worst memories. This is why we demand that police officers should only talk to the victim once and not repeat the questioning. As a consequence, researchers too must not make the victim suffer again. Before they talk to a victim, researchers must first understand their social and mental state and very carefully prepare a strategy for the interview. They should consult a doctor, psychologist or care worker first. As much as it is our goal to gain information, we cannot do it at the cost of the victim.

And finally, when talking to victims of crime and in particular the crime of human trafficking and forced labour we must use the right language and register, avoid negative words or terms and not sound judgemental. Because the victims are usually foreign nationals, we must use a qualified interpreter and explain to them the vulnerability of the victim.

7.7 Interviews with perpetrators

With regard to perpetrators, we must adhere to all criminology standards.[149] The person we are talking to must be ensured confidentiality and anonymity as a source of information for our research. We must avoid any statements suggesting that they are a perpetrator or may be held liable, especially when they have not been convicted of the crime. When we are not quite certain that we are dealing with human trafficking for forced labour, we should only discuss issues related

[149] R. K. Schutt, R. Bachman Fundamentals of Research in Criminology and Criminal Justice, Deutscher Gemeindeverlag 2008, M.G. Maxfield, E.R. Babbie, Research Methods for Criminal Justice and Criminology, Wadsworth Inc Fulfillment, 2007, E. Babbie, Badania społeczne w praktyce, Warszawa 2005, Wydawnictwo Naukowe PWN.

to how employees are treated and not to human trafficking as such. It is quite possible that the interview is with a person who is suspected of crimes related to human trafficking or forced labour but the early stage of the investigation does not allow certainty of that either of these occurred. In such a situation the interview should be designed in such a way that the researcher can collect as much information as possible on relations between the organisers of the job and the workers, working conditions, pay, etc. to assume that this basic information will serve as a basis for further enquiries. This type of data, if collected, has to be treated as a material to describe the social context of the activities related to work and especially forced labour. Sometimes this information seems unimportant at a first glance but may help to find traces of abuse or forced labour, obviously only for research purposes.

7.8 Public opinion polls

Although largely underestimated as a source of knowledge on forced labour, public opinion polls are worth considering at least for two reasons. The first has to do with a research model or, to put it in a broader context, with a philosophy of cognition known as humanistic sociology. If seen from this perspective, the study of forced labour as a social phenomenon is in fact the study of one of the manifestations of civilisation. In other words, it is the study of culture. If we assume that culture can only be studied by studying the awareness of individuals, we need to ask people about their understanding of the term forced labour, does it exist, is it a serious problem, do they want the state to take action or would they rather if employment was beyond the control of the state and its bodies.

The second reason is more pragmatic. We can assume that members of society not only have and express certain opinions which can be transposed into general views and opinions, but they are also holders of individual experiences which can build the image of a phenomenon or help search for new areas of research exploration. In other words, the respondents in a survey can talk about their experience with the issue, about cases they know of or about the propensity of specific sectors of the economy to exploit others. Anyone who is familiar with the practice of criminology will agree how important it is to research victimisation or use self-report studies.

Chapter 8: Conclusions and recommendations

Regardless of the legal classification, trafficking for forced labour is a felony constituting at the same time a serious violation of human rights. Forced labour is a special crime also due to the fact that it is committed all over the world, regardless of economic systems in place. According to the estimates of the International Labour Organisation, about 12 million people all over the world are forced to work or are enslaved in connection with work.

Human trafficking for sex trade purposes has been recognised as a serious problem in Europe for many years, but recently the attention of state institutions, international organisations and media has been drawn to such phenomena as forced labour or organised exploitation. Our research, conducted under the FLEX project, also indicates that this problem has a strong presence in Poland. What is more, there is evidence that forced labour or exploitation of other people's work is much more widespread than is commonly believed. Considering at the same time that the so-called dark number in the case of this crime may be high, the problem of forced labour in Poland becomes one of the more important issues to be resolved.

The basic objective of the project entitled *Trafficking for Forced Labour and Labour Exploitation (FLEX) − towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* was to create a research methodology and to develop a data collection scheme concerning trafficking for forced labour. However, during the project, we also tried to describe the forced labour phenomenon in Poland, and to analyse the system of its elimination from the social life in our country. The research conducted allows us to formulate certain regularities, share the most important observations, and propose methods of resolving problems occurring in Poland in the context of forced labour.

The significant majority of victims of forced labour in Poland are foreigners, mainly young or middle-aged. Although victims of human trafficking used in sex business usually originate from Eastern Europe (Belarus, Ukraine, Bulgaria, Russia), foreigners whose work is exploited in Poland are those coming from Asian countries (Bangladesh, Philippines, Thailand, China, Vietnam). In most cases those persons arrive in Poland legally, i.e. they have residence visas, and even permits to perform specific work, but eventually they are sent to perform different work than that specified in their contracts, and their treatment there violates basic principles of employment and the principle of respect for human dignity. It may therefore be legitimately claimed that the legality of residence and having a work permit do not exclude the existence of forced labour. This claim is confirmed also in the case of Poles who were exploited e.g. in Italy and who arrived in the destination country legally, in many cases with an employment contract, but despite this they performed work in violation of legal regulations.

Under the research conducted, we also tried to identify sectors of the economy which are particularly susceptible to exploitation or forcing people to work. In Poland those sectors are agriculture, construction, trade and domestic help. Moreover, exploitation at work takes place in small enterprises, factories and workshops of other industries which operate in the so-called grey economy. It should be emphasised, however, that these findings are preliminary and the sectors susceptible to forced work in Polish economy still have not been identified accurately. That is why there is an urgent need to conduct further research in this respect.

Another problem is the employee status of victims of forced labour. We noted that in several cases we had analysed, people subjected to forced labour or exploitation at work were people employed through the so-called employee leasing. In a nutshell, this phenomenon consists of employees being engaged by temporary employment agencies, whereas the employer who uses the services of leased employees/agency workers does not hand over remuneration to the employees but to such an agency. Research shows however that employee leasing may constitute one of the method of importing employees to Poland, who are then exploited or forced to work. In one of the criminal cases we analysed, the perpetrator, who was the owner of a company dealing with employee leasing, brought Bangladeshi nationals to Poland and leased them to another company. Despite the fact that he received money from the company which benefited from the labour of those people, he did not pay them any remuneration. The leasing of employees as a new phenomenon requires further research and analyses.

Despite the fact that trafficking for forced labour has recently become a serious problem in Poland, the research we conducted did not indicate that Polish authorities devoted any particular attention to this phenomenon. The elimination of forced labour was entered in national programs for combating human trafficking in Poland as one of the tasks of state institutions at a relatively late point in time. Forced labour has not been the subject of a national discussion as yet. That is why it is so important that human trafficking and forced labour are dealt with by the highest national authorities, and an organised and effective response to such phenomena should be one of priorities of the state policy.

There is no institution in Poland whose main task would be to initiate activities connected with prevention and combating of forced labour. Although there are several initiatives, institutions and non-governmental organisations dealing with the elimination of human trafficking, which are coordinated by the Ministry of Interior and Administration, forced labour is still dealt with as a marginal problem in Poland. That is why establishing an institution which would assume the duties of an initiator and coordinator of activities aimed at eliminating forced labour in Poland should be considered.

Any success in this respect is possible only where two key players in the market become involved in actions aimed at counteracting forced labour. These key players are trade unions and employers' organisations. The participation of those organisations in the establishment of a forced labour elimination system in Poland should be in their own interest, but also in the interest of state authorities.

Another matter which should be dealt with is Polish legislation concerning forced labour. After many years of discussions, the definition of human trafficking has been introduced into Polish criminal law, covering the situation where victims of this crime are exploited e.g. to provide sexual services, but it does not include cases of forced labour as such. What we mean is that the Polish criminal law still does not identify a separate crime of forcing another human being to work. Of course, there are regulations protecting the rights of employees, but there is no regulation prohibiting forced labour as such. Criminal investigations conducted so far in relation to forced labour in Poland were conducted in the context of human trafficking which accompanied that phenomenon. At this moment, it is difficult to answer the question what will happen if victims of forced labour who are not at the same time victims of human trafficking are identified in Poland. This is because it should be remembered, as the International Labour Organisation has pointed out, not each case in which a person is forced to work must be connected with human trafficking. Although Poland is a party to two ILO conventions concerning forced or compulsory work, at the moment it is difficult to imagine that provisions of those documents could be applied instead of domestic legal regulations.

Another issue which should be noted is the system of identification of forced labour victims in Poland. Research shows that there is no such system in Poland. One of the reasons for this situation is the still insufficient awareness of functionaries of law enforcement bodies, labour inspection, but also social workers, to recognise this phenomenon. This means that a programme of training in problems of forced labour and work exploitation should be initiated for employees from institutions and organisations which are or should be involved in combating those crimes.

Yet another problem is the absence of non-governmental organisations which could provide help to victims of forced labour. In Poland only the NGO La Strada provides support to victims of human trafficking, that is why so far this organisation has been providing assistance to people exploited or forced to work in Poland. However, the system of support for victims of human trafficking was constructed with women, victims of sexual exploitation – usually dealt with individually – in mind. Victims of forced labour, often very large groups of foreigners, mainly men, caused new problems, especially in terms of organisation. The fact that more and more frequently victims of forced labour come from Asian countries, i.e. cultures completely different from those from which previous victims of human trafficking in Poland came – mainly Eastern European countries – is not without importance. That is why the training proposed above should include classes in cultural anthropology of the Far East, or workshops sensitizing participants to issues of intercultural dialogue.

Moreover, the issue of competences of institutions involved in the elimination of forced labour should be dealt with. It seems that the competences of the State Labour Inspectorate and the Border Guards are too narrow in that respect. Although both institutions conduct joint checks of legality of residence and

employment of foreigners, those entities should be equipped with other legal instruments enabling them to efficiently eliminate forced labour in Poland. For example, the Border Guards may investigate criminal cases concerning human trafficking only to a limited extent.

In eliminating trafficking for forced labour, social awareness of the problem also plays an important role. The research conducted indicates quite explicitly that there is still widespread consent to exploitation of people, particularly foreigners from poor countries, in Polish society. Therefore it seems essential that information campaigns sensitizing people to the problem of forced labour should be conducted, among other things to point out the potential threat of becoming a victim but also the potential threat of becoming a perpetrator. In this respect, media have an important role to play, as they should not only provide information about such cases but also sensitize the society to the problem of exploitation and forcing people to work.

And last but not least: in Poland, but also in Europe, there is still a shortage of in-depth studies and analyses on trafficking for forced labour and work exploitation. Therefore, the purpose of the FLEX project was to create a model of such research. We hope that we have managed to achieve this objective, and the best indicator of this will be further research on this phenomenon conducted using the methodology we have presented. The creation of an integrated data collection system and the use of potential sources of information about cases for forced labour would be an essential outcome.

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List of interviewed experts

1. **National Public Prosecutor's Office** – high official from the National Public Prosecutor's Office (THB expert).
2. **Polish National Police Headquarters** –a member of the police team involved in eliminating of human trafficking.
3. **Border Guard** – an expert form Polish Border Guard Headquarter.
4. **National Labour Inspectorate** – high official from the Department of Legal Employment National Labour Inspectorate.
5. **Ministry of Interior and Administration** – high official from the Department of Migration Policy Ministry of Interior and Administration.
6. **NGOs** – an expert from the La Strada Foundation against Trafficking in Human Beings and Slavery.
7. **Trade Unions –** representative from NSZZ "Solidarnosc".
8. **Employers** - representative from Polish Confederation of Private Employers "Leviatan".
9. **Labour Office in Warsaw** – an expert form Department of Work Permits for Foreigners Labour Office in Warsaw.
10. **Mazowieckie Province Office** – Representative form Department of Foreigners

Trafficking for Forced Labour and Labour Exploitation in Estonia

Maris Kask & Anna Markina

Chapter 1: Introduction

Trafficking in human beings for the purpose of forced labour has received relatively little attention compared to trafficking for sexual exploitation as the latter has been the focus of previous studies related to human trafficking in Estonia[1].

Trafficking in human beings and labour exploitation for the purposes of forced labour is more difficult to identify than sexual exploitation. This is to a great extent due to the absence of legal regulations, the fact that forced labour is even more hidden than sexual exploitation and that there is no comprehensive awareness of the nature of the problem among the population.[2]

The movement of labour has continued to increase within and into the EU and there is an increase in various forms of labour exploitation, especially of migrant workers. Cases of involuntary labour have become the topic of the day, where the victims are forced, by deceit, abuse of violence or by taking advantage of their vulnerable position, to work under conditions materially different from those agreed upon (regarding the remuneration, working hours or nature of work) as well incidents where the identification documents of the victims have been withheld rendering termination of the employment relationship and leaving the country difficult. Such experiences damage the physical and mental well-being of the victim and often cause irreversible consequences to his or her quality of life.[3] At the same time, there are no court verdicts on trafficking for forced labour or labour exploitation. Therefore, there is a need to understand the extent and nature of this problem, to systematically collect information on this phenomenon and to enhance cooperation and exchange of information to prevent the crime.

This report looks at labour migration and trafficking into, from and through the country. The victims can be citizens of Estonia or citizens of some other country, while the exploitation can take place also within Estonia (internal trafficking) or

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[1] For further information see for example Trummal, A. (2003), 'Alaealiste kaubitsemine seksuaalse ekspluateerimise eesmärgil Euroopas: päritoluriigid. Eesti uurimisraport'. Saar, J,, et al. (2001). Trafficking in Women and Prostitution in the Baltic States. Social and Legal Aspects'.

[2] Global report on trafficking in persons, http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf.

[3] Development Plan for Combating Trafficking in Human Beings 2006-2009, available at http://www.just.ee/18886.

in some other country. In 2006, before the economic recession, the common opinion regarding the so-called modern-day slave trade saw Estonia as one of the potential destination countries due to its rapid economic growth and deficit of workforce. Above all, this concerns the residents of the lesser developed republics of the former Soviet Union but also for migrants originating from Asian and African countries.[4] Since the economic recession the situation in Estonia has changed remarkably. The current report thus is based on the following postulates:

the labour market situation in Estonia has gone through quite a severe negative transformation since the onset of the recession as the unemployment rate has risen by almost 10 per cent since 2007, and the amount of long-term unemployed people has increased; the socio-economic background of the population has thus deteriorated in terms of household living standards, average monthly incomes and working conditions; the risk of Estonian residents being victimised to human trafficking in more developed Western countries persists and potentially even increases.

The present economic crisis and the absence of employment opportunities motivates the potential victims of trafficking to look for employment in other countries. Estonian law enforcement agencies do not have an overview of the Estonians who have gone to work abroad and have become victims of deceit and exploitation.

This report aims to give an overview of the current national situation, offering empirical and legislative analysis pertaining to the subject matter. The information and data used in the report has been collected by expert interviews, from available media sources, at expert meetings and round tables and from relevant literature.

[4] Development Plan 2006−2009, op cit., supra note 3.

Chapter 2: Background and legislative framework

2.1 National definitions

Currently, Estonian law does not provide a specific human trafficking definition. Therefore regulations concerning other related crimes such as enslavement, abduction, illegal transportation of aliens across the state border or temporary border line of the Republic of Estonia, provision of opportunity to engage in unlawful activities, procurement for prostitution and labour fraud are applied in the legal system and criminal proceedings.

Enslaving - Placing a human being in a situation where he or she is forced to work or perform other duties against his or her will for the benefit of another person, or keeping a person in such situation, if such act is performed through violence or deceit or by taking advantage of the helpless situation of the person.[5]

Abduction - Taking or leaving a person, through violence or deceit, in a state where it is possible to persecute or humiliate him or her on grounds of race or gender or for other reasons, and where he or she lacks legal protection against such treatment and does not have the possibility to leave the state.[6]

Fraud - A person who receives proprietary benefits by knowingly causing a misconception of existing facts.[7]

Estonian law does not offer a definition or specific regulation for prohibition of labour exploitation or forced labour. However, the Employment Contracts Act stipulates the principle of equal treatment which basically prohibits discrimination at the work place on any basis. The same act entails provisions for duties of employers which contain reference to prohibition of exploitation at the work place by the employer.

Contract of services - one person (the contractor) undertakes to manufacture or modify a thing or to achieve any other agreed result by providing a service (work), and the other person (the customer) undertakes to pay remuneration therefor.[8]

Authorisation agreement - one person (the mandatary) undertakes to provide services to another person (the mandator) pursuant to an agreement (to perform

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[5] Art 133 Penal Code, RT I 2001, 61, 364, entered into force 1 September 2002.

[6] *Ibid.*, art 134.

[7] *Ibid.,* art 209.

[8] Art 635 Law of Obligations Act, RT I 2001, 81, 487, entered into force 1 July 2002.

the mandate) and the mandator undertakes to pay remuneration to the mandatary therefor if so agreed.[9]

Employment contract - a natural person (employee) does work for another person (employer) in subordination to the management and supervision of the employer. The employer remunerates the employee for such work.[10]

The aforementioned contracts are relevant in the subject matter as exploitation may occur in any kind of employment situation, not only in the one that is regulated with the employment contract. The contract on services is very widespread contract, mostly used to regulate short-term employment between employer, i.e. customer and worker, i.e. contractor. The authorisation contract is mostly used to regulate long-term but still temporary employment where the employer, i.e. mandator needs only one specific service from the worker, i.e. mandatary.

2.2 Reflections on the current national situation

2.2.1 Trafficking for forced labour and labour exploitation

According to the TIP report, Estonia is a source country and, to a lesser extent, a destination country for women subjected to trafficking in persons, specifically forced prostitution, and for men and women in conditions of forced labour. Men and women from Estonia are subjected to conditions of forced labour in Spain, Norway, and Finland.[11]

There are two types of migrant labour that can be exploited – the labour force that has entered a country legally, or in the case of EU, falls under the free movement of labour, and the labour force that has been trafficked or facilitated. The legal situation of migrants can change during their stay in a destination country. Facilitated or trafficked persons may receive a residence permit and migrants that have entered in a country legally may obtain an irregular migrant status once the legal basis of their stay has expired. Either way, on both occasions, the labour can be exploited. Migration policy tends to be mainly occupied with irregular immigrants and does not cover the proportion of exploited migrants who have arrived legally and yet find themselves in highly exploitative work situations (i.e. extra long hours, underpaid work etc).

Due to the global economic recession Estonia is facing challenges of a high unemployment rate, a decrease of average income and the general living standards, and an increase in long-term unemployment. According to Statistics

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[9] *Ibid.,* art 619.

[10] Art 1(1) Employment Contracts Act, RT I 2009, 5, 35, entered into force 1 July 2009.

[11] United States Department of State ‚Trafficking in Persons Report 2010 – Estonia', available at http://www.unhcr.org/refworld/country,,,,EST,,4c1883f6c,0.html.

Estonia, in the 2nd quarter of 2010, the estimated number of unemployed persons was 128,000 and the unemployment rate 18.6%. Above all, unemployment is a problem among men. In the 2nd quarter, the unemployment rate of men was 22.6%, and still considerably higher compared to the unemployment rate of women (14.8%)[12]. The number of newly registered unemployed persons was decreasing in the last quarters, but long-term unemployment was still growing.

In the 2nd quarter, 58,000 unemployed persons had been looking for a job for one year or more (long-term unemployed), of whom 19,000 had been looking for a job for two years or more (very long-term unemployed). The share of long-term unemployed persons among unemployed persons increased to 46%, the share of very long-term unemployed persons to 15%.[13] The number of persons who had stopped seeking a job or discouraged persons[14]was also larger in the 2nd quarter than in the 1st quarter (9,000 and 7,000 respectively).[15] Finding a job is increasingly difficult also for young people. In the 3rd quarter of 2009, the unemployment rate of persons aged 15–24 grew to 29.2%. A year earlier it was 14.7%.[16] At the same time, average monthly gross wages in Estonia decreased by almost 10% in the 3rd quarter compared to the 2nd quarter of 2009[17].

Although women have the same legal rights as men under the law and are entitled to equal pay for equal work, these rights are not always observed in practice. While the average educational level of women was higher than that of men, their average pay was generally lower. According to media reports, the difference between the salaries of men and women was more than 20 percent.[18]

In the light of the current statistics and overall depressing situation in the labour market the risk of trafficking in persons for forced labour and labour exploitation is remarkably high. According to the International Organization for Migration (IOM), in 2008, an estimated 10,000 to 15,000 Estonian residents had a permanent employment arrangement in a foreign country.[19] With regard to emigration from Estonia, the main reasons for regular migrants are economic considerations, mostly employment.

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[12] Press release of Statistics Estonia from 13.08.2010, available at http://www.stat.ee/37840.

[13] *Ibid*.

[14] Discouraged persons are persons that have stopped seeking a job because they did not expect to find one.

[15] Press release of Statistics Estonia, op cit.,supra note 17.

[16] Press release of Statistics Estonia from 13.11.2009, available at http://www.stat.ee/31268.

[17] Press release of Statistics Estonia from 25.11.2009, available at http://www.stat.ee/31230.

[18] BBC News from 18 July 2007 'EU gender pay gap 'not narrowing', available at http://news.bbc.co.uk/1/hi/world/europe/6904434.stm.

[19] Facts and Figures – Estonia. Available at http://www.iom.int/jahia/Jahia/activities/europe/nordic-and-baltic-countries/estonia.

Although no exact data on the number of Estonian residents currently working abroad is available, there are several estimates. According to Statistics Finland data, approximately 21,000 Estonian residents come to work in Finland. Additionally, the Department of Migration of Finland estimates that the number of persons who work and live in Finland on a permanent basis is another 25,000. According to media estimates, the real number of Estonians working in Finland may be up to 100,000.[20] A report issued by the Ministry of Social Affairs in December 2010[21] estimates that 8.5% or about 77,000 of Estonian population aged 15−64 are potential labour migrants[22]. Of them, 43,000 persons have already applied for employment abroad, studied the language of the destination country etc.

The three labour market risk groups, which are under special attention in the European Employment Strategy are: the long-term unemployed, young people, and older people. They all face higher or lower barriers when entering the labour market, and this should be taken into account by policymakers as they develop employment measures.[23] Therefore, it causes extreme concern to observe that the unemployment rate is increasing amongst young people simultaneously with an increase in the long-term unemployment rate, since they are all particularly vulnerable to the offers of human traffickers, as people with a poor social or economic position (persons who have a low income, little or no education, the unemployed, etc.) are considered to be at risk.

Based on the aforementioned statistical data and gender equality in law and the work place, both, men and women belong to a risk group of trafficking in persons, the trend for Estonia being more of a source country for human trafficking rather than a destination country. Travel-friendly regulations in the Schengen Visa zone, short distances, low travel costs, and the attraction of legitimate employment have lowered the barriers to trafficking to Nordic and other EU countries.

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[20] Johannson, R. Soomes võib tööl olla kuni 100 000 Eesti elanikku. ERR news. Available at: http://uudised.err.ee/index.php?06221445.

[21] Veidemann, B. Eesti tööealise rahvastiku väljarändepotentsiaal aastal 2010. Poliitikaanalüüs. Sotsiaalministeeriumi toimetised nr. 8/2010.

[22] Potential labour migrants are defined as persons who are planning to look for employment abroad and who have taken some preparatory steps for the execution of such plans.

[23] Employment and Working Life in Estonia 2008−2009, Series of the Ministry of Social Affairs No 3/2009, pp 27, available at http://www.sm.ee/fileadmin/meedia/Dokumendid/Toovaldkond/toovaldkonna_areng_2008-2009_eng.pdf.

2.2.2 The relevant criminalisations and offences used to prosecute trafficking for forced labour and labour exploitation

According to the US Department of State Trafficking in Persons Report 2008, Estonia falls within "tier 2" which means that the Government of Estonia "does not yet fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so."[24]

Although Estonian law does not specify human trafficking as a criminal offence, other related crimes such as enslavement, abduction, illegal transportation of aliens across the state border or the temporary border line of the Republic of Estonia, provision of opportunity to engage in unlawful activities, and procurement for prostitution and labour fraud are punishable as criminal offences. The penalties prescribed for such acts range from 5 to 15 years of imprisonment, which are sufficiently high and commensurate with penalties prescribed for other serious crimes, such as sexual assault.

According to the national Reporting on Implementation of Development Plan for Combating Trafficking in Human Beings (reporting period 01.01.2009−31.12.2009)[25], 116 criminal offences which may be related to trafficking in human beings were registered in 2009; this is 72 (39%) less than in 2008 (189 registered criminal offences). These cases are mainly related to facilitation of prostitution where persons granted the use of premises for the provision of sexual favours or mediated sexual favours through phone or the Internet[26]. The most common offences related to trafficking in human beings were unlawful deprivation of liberty (43), manufacture of works involving child pornography or making child pornography available (27), and aiding prostitution (15).

In 2009, authorities conducted three trafficking investigations that concerned sexual exploitation. The cases were prosecuted under the article 133 of the Estonian Penal Code, which refers to enslavement, the most serious trafficking-related crime in Estonian criminal law. However, the traffickers were acquitted in the district court. Over the year 2008, the government extradited three Estonian nationals charged with human trafficking for sexual exploitation to Finland and law enforcement authorities exchanged information on a regular

[24] United States Department of State ‚Trafficking in Persons Report 2010 – Estonia', op cit., supra note 16.

[25] Development Plan 2006−2009, op cit., supra note 3.

[26] Development Plan for Reducing Violence for Years 2010-2014, available at http://www.just.ee/orb.aw/class=file/action=preview/id=52311/Development_Plan_for_Reducing_Violence_for_Years_2010-2014.pdf.

basis with counterparts from Sweden, Denmark, Norway, Finland, the United Kingdom, and Poland[27].

Thus far there are no forced labour or labour exploitation cases that have reached an Estonian court. Most of the potential human trafficking cases end up in court as fraud cases and do not deal with exploitative situations or human trafficking issues.

The US Department of State has recommended Estonia to draft a trafficking-specific criminal statute that incorporates a definition of trafficking in persons in conformity with the UN Palermo Protocol; implement the approved plan to establish formal procedures for identifying victims among vulnerable populations; and maintain efforts to train police to identify potential victims and refer them for assistance[28].

At the moment, there is no specific institution in Estonia that would deal with human trafficking for forced labour or labour exploitation. We have several institutions that are connected with the phenomenon one way or the other, depending on their jurisdiction.

The Citizenship and Migration Division of Police deals with migration control in Estonia and aims to detect irregular migrant workers. However, it does not control working conditions of migrant labour in Estonia. The Centre of Extradition detains irregular migrant workers who have been detected by the Citizenship and Migration Division but is not involved in criminal procedures. The Criminal Police deals with pre-trial investigation of human trafficking for labour exploitation or forced labour. However, thus far, according to our expert interviews, they have more expertise in the investigation of cases of trafficking in human beings for sexual exploitation.

The Labour Inspectorate monitors working conditions of employees but is not involved in the legal status of migrant labour nor is it involved in the identification of victims of trafficking in human beings. Therefore there is a great need for an institution with sufficient knowledge, awareness and jurisdiction to identify victims of human trafficking forced labour or labour exploitation and to provide necessary assistance for them. More information about institutions dealing with human trafficking can be found in the separate chapter.

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[27] United States Department of State ‚Trafficking in Persons Report 2009 – Estonia', available at http://www.unhcr.org/refworld/country,,,,EST,,4a4214bdc,0.html.

[28] *Ibid*.

Chapter 3: Data and methods

3.1 Research questions

The general objective of the FLEX project is to increase the knowledge of trafficking for forced labour in Estonia and to strengthen related cooperation and exchange of information within and between Estonia, Finland and Poland. The country specific objectives regarding Estonian situation include: 1) Assessing the legal understanding of trafficking for forced labour in Estonia through analysis of legislation, court cases and legislative practice 2) Providing opportunities to strengthen cooperation and exchange of information nationally through two national expert meetings and the establishment of a network of national experts and actors. 3) Exploring the nature of trafficking for forced labour and types of exploitation of migrant labour in Estonia through developing and testing a methodology for collecting qualitative and quantitative data. The project aims at answering the following questions:

1) Which economic sectors in Estonia are especially affected by labour exploitation (of EU-citizens and/or third country nationals)?
2) What kind of exploitative situations exist in Estonia?
3) What are the main source countries of migrant labour in Estonia?
4) Are there forced labour situations in Estonia and do these situations include elements of trafficking?
5) Which economic sectors are especially affected by labour exploitation for Estonian national abroad?
6) What are the main destination countries for Estonian nationals?
7) What kind of exploitative situations Estonian nationals face abroad?
8) How current legal background and legislative means respond to labour exploitation situations and trafficking for forced labour to and from Estonia?
9) What is being done to prevent such exploitation and how can the responses be improved?
10) Do relevant actors and authorities recognise victims of trafficking for forced labour and are there sufficient mechanisms to assist the victims?

3.2 Data and methods used

Initially the idea was to use two methods for this study: interviews and analysis of court judgements and pre-trial investigations. Unfortunately we were denied access to pre-trial investigation materials and we could not detect any court cases

concerning human trafficking for forced labour and labour exploitation. Therefore the main source and method of the current study are in-depth interviews with experts. Media reports were also used for data collection and one expert seminar was held.

3.2.1 Interviews

In spring and summer 2010, interviews were conducted with 11 representatives of state authorities, law enforcement and police, and with several practitioners. The interviewees represented different sectors and had thus various expertise and different perspectives in the subject matter. The aim was to have as comprehensive coverage of expert areas as possible. Information about existing experts was received in meetings with the Ministry of Justice that has organised round tables of experts of human trafficking and administers an experts working group of national development plans.[29]. Unfortunately, only one interview with an exploited person was conducted. We also included into the analysis one victim interview conducted in the context of another trafficking-related project and published by the NGO Living for Tomorrow.[30]

The interviews followed a broad and general standard template[31] which was, however, modified depending on the interviewee and the kind of information and knowledge they had about the trafficking process. The template consisted of five subsections: 1) exploitation cases, 2) general questions, 3) legislation, 4) identifying and helping victims and 5) data collection and recording. The anonymity of all informants of the study was protected, so that the report does not reveal the interviewee's name, or his/her accurate professional title or place of employment.

Difficulties finding informants

There were difficulties finding informants, especially victims of trafficking, mainly due to the sensitive nature of the topic and the lack of identified victims. The victims of human trafficking were difficult to find as the number of identified human trafficking victims in Estonia is very small. Persons who were trafficked or who had experienced exploitation abroad do not consider themselves as victims. Usually those who have been identified as victims had faced trafficking for sexual exploitation and thus did not match the criteria applied in the current study.

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[29] Development Plan 2006−2009, op cit., supra note 3 and Development Plan 2010−2014, op cit., supra note 31.

[30] Downes, P. et al. "Not one victim more". Tallinn 2008.

[31] See joint qualitative interview template for expert interviews in Annex 3.

Since there were no court cases of trafficking in human beings for labour exploitation in Estonia, it was not possible to identify persons with an official victim status. Therefore, we tried to find victims in other ways. First, we asked the interviewed experts to bring us together with the victims. Although we were often promised to be given get victims' contact, it never came true. After analysing the situation, we came to the conclusion that the problem was not the lack of cooperation between institutions and researchers but the fact that none of the institutions kept records on relevant cases or potential victims. In practice, it turned out that the contact between (potential) victims and institutions usually takes place in form of consultation which, as a rule, is not recorded at all. In such a situation experts know and are able to talk about several cases and victims, but when it comes to concrete persons or contacts, these are not so easy to identify.

The second approach we used was to try to reach victims of trafficking for labour exploitation directly. We did manage to identify, via media and experts working with victims, a few returned migrants who had been victims of labour exploitation abroad. After we had contacted these victims several times by email and telephone, they eventually refused to be interviewed, although we explained them all the confidentiality and anonymity measures that we have taken in this project. There was also a case where trafficking victims were only willing to give an interview a high fee. Our position was that it was not advisable to give any remuneration to respondents[32] in this type of research as it might raise doubt about the reliability and adequacy of the information provided by the informants.

The single conducted victim interview followed the broad and general standard template[33] but it was also modified to suit to interviewee's individual circumstances and the kind of information and experience the informant had with the trafficking and exploitation process. The template consisted of five subsections: 1) background information, 2) recruitment, 3) nature of exploitation, 4) getting help and 5) returning to the home country. The anonymity of this person is protected, so that the report does not reveal the interviewee's name, place of employment or the exact profession.

[32] The FLEX project turned to the European Commission regarding the possible remunerations to respondents under this project. The EC said in their email sent 26/08/2010 that the Commission does not have an official regulation as whether to renumerate interviewees or not. Projects that intend to collect data from victims of crime should take into account the fact that respondents may not wish to provide the data required, and that this is their right. All projects, regardless of their nature, must consider carefully the ethical questions that may arise. The EC further emphasizes that all projects should take a human rights-based approach to implementation and all methodologies used should pass the test of ethical conduct.

[33] See joint qualitative interview template in Annex 5. In addition to the shared questions, we also had questions regarding recruitment and possible use of facilitation firms in Estonia and also questions regarding returning back to Estonia and how it was handled.

3.2.2 Court verdicts and pre-trial investigations

The second method planned to be applied in the study was to analyse court verdicts and pre-trial investigations pertaining to trafficking for forced labour and labour exploitation.

Court verdicts

Between the years of 2004−2010 no court cases matching the criteria of the current project, i.e. human trafficking for forced labour or labour exploitation were found. Human trafficking related cases that had reached the court within the given time frame were related to trafficking for sexual, not labour exploitation.

After further research it was evident that most of the cases that might be concerned with labour exploitation or forced labour end up in court based on the fraud article in the Penal Code, although they might entail trafficking. Most of the victims are forced by deceit, violence or by taking advantage of their vulnerable position, to work under conditions materially different from those agreed upon (regarding the salary, working hours or nature of work). Persons who have found job opportunities abroad via employment facilitators are often defrauded as they are compelled to pay several fees to facilitators, because they have insufficient knowledge about their rights.

Although we carried out cross-referencing of existing court verdicts that might include elements of human trafficking, we could not find any cases that would contain sufficient information to identify relevant elements. Thus, in order to detect cases relevant to the current study, an in-depth legal analysis of existing fraud cases together with pre-trial investigation materials needs to be conducted.

Our reasoning applies to potential labour exploitation and forced labour cases that are being prosecuted in the labour dispute committee. As the Estonian Labour Employment Contracts Act does not entail a specific provision prohibiting exploitation, court cases concerning equal treatment should be analysed as they might entail elements of labour exploitation or forced labour. However, as the amount of these kinds of cases is large and the analysis requires a lot more time and attention, we were unable to do this in the current project.

Pre-trial investigations

No relevant pre-trial investigations were used in this study as the access to the materials was denied. In 2003, Estonia enacted the Personal Data Protection Act to protect the fundamental rights and liberties of natural persons regarding personal data, above all the right to protection of private life. According to the Act, sensitive personal data comprise information about committing an offence or victimisation to an offence before a public court hearing, defining the decision in the matter of the offence or termination of the court proceeding as sensitive

personal data. Therefore, processing pre-trial investigations fall under severe restrictions provided in the law. Authorities are not permitted to communicate any sensitive personal data to third parties without the consent of the person concerned. Therefore, we were not allowed access to the relevant pre-trial investigation materials, not even for the purpose of conducting research.

3.2.3 Other relevant data

Several authorities (foreign missions, medical institutions, shelters, etc) as well as the third sector deal with cases of human trafficking. However, no systematic collection of information on the cases and victims of human trafficking has been organised at the state level. During the national expert meeting potential sources of information were discussed. The Labour Inspectorate receives phone calls and emails regarding exploitative labour situations in Estonia but thus far they have not kept a record of received data. The Citizenship and Migration Bureau can provide statistics on the nationalities and numbers of employment permits issued that might lead to potential situations of exploitation of migrant workers. However, we were not able to detect any relevant cases for the purpose of the current study.

3.2.4 Media reports

Media reports on trafficking for labour exploitation and forced labour from 2004 until 2010 were collected systematically. The three major daily and weekly newspapers were used in the analysis: Eesti Päevaleht, Postimees, Eesti Ekspress. Data were also collected from websites and advertising papers[34] as well as relevant Estonian Public Broadcasting programs. See chapter 5.1 for more information.

3.2.5 Seminars

One national expert meeting was organised in February 2010 in order to discuss various types of exploitation of migrant labour in Estonia as well as to discuss and identify possible cases of trafficking for forced labour and labour exploitation with experts who may have come across such cases in their daily work. A further objective of meeting was also to find possible additional data sources as well as additional experts to be interviewed for the research.

This was the first national expert meeting to be organised by the University of Tartu. The meeting provided a first forum for a discussion on this topic. It was generally agreed that little is known of this phenomenon. The first direct positive

[34] Papers that only publish adverts, e.g Kuldne Börs, Soov.

result of the national experts meeting was that it established a network of national actors that deal with migrant labour and labour exploitation, trafficking for forced labour and labour exploitation. This was an important step towards raising awareness about the phenomenon in Estonia. The second national expert meeting will be held in January 2011 to present the final report in a national context.

Meanwhile, the Ministry of Justice organised a round table of national experts of human trafficking in May 2010. In this round table, we presented some preliminary findings of the current project. The objective of the round table was to introduce the new national development plan for reducing violence for year 2010−2014 and to discuss the document called "The Analysis of Definition and Crime of Human Trafficking", which was drafted by the Ministry of Justice.[35]

3.2.6 Analysis of data

When possible, the interviews were recorded and transcribed. When the respondent refused the use of the voice recorder, the interview answers were recorded by hand. All interviews were coded using a qualitative analysis software package Atlas TI. We used free coding, meaning that we approached our data without a set of existing codes. The set of codes that emerged as a result of coding, were combined into code families.[36]

Additionally, minutes made during the project regional seminar were used to complete the analysis. The biggest problem for the current analysis was small amount of cases and difficulties reaching victims of trafficking for labour exploitation. In such a way most of the analysis is unfortunately based on second-hand information and experience. However, as we learned from the expert interviews, this situation is directly related to the perception of the problem of trafficking for labour exploitation in Estonia.

3.3 Ethical questions related to the study

The topic of human trafficking is a very sensitive field for research. Therefore, the data collected during the project must be approached, analysed and reported bearing in mind multiple ethical issues.

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[35] "The Analysis of Definition and Crime of Human Trafficking", Ministry of Justice, Criminal Statistics and Analysis Division, Tallinn 2010.

[36] The following code families were formed: problematization of trafficking for labour exploitation; push-pull factors for the labour migration; economic sectors involved; countries involved; actors involved; victim status; who becomes a victim; victim assistance; elements of exploitation; institutions involved; and criminal procedure.

Interviewing Estonian citizens who have experienced labour exploitation abroad or migrants who have experienced labour exploitation within Estonia was one part of the project. We were interested to know how they found out about the job, what the working conditions were like, and how the situation was resolved.

The information gained from the interviews was treated in a confidential way. We did not share the information with outsiders and followed all relevant standards of data management as stipulated in the Personal Data Protection Act. In the final publication the information is presented in such a manner that no individual interviewees can be recognised. Participation in the interviewing process was voluntary. Interviewees were free to withdraw from the interview at any point or decline to answer any particular question if they wanted.

We recorded all the interviews and transcribed them afterwards. The recording was stored on a removable disk which did not leave the University of Tartu premises. The transcription was also stored electronically and this too is kept within the confines of the University of Tartu premises. Excerpts from some of the interviews may be used to illustrate certain features of the more general picture in reports to the European Commission and to other academic audiences but no respondent will be identifiable in any report or publication. We expect that we will need to keep the data for up to five years (in order that transcripts can be verified in cases of uncertainty and to be used as 'proof of activity' on our part). After that the material will be destroyed.

Chapter 4: Legislative analysis

According to the US Department of State Trafficking in Persons Report 2010, Estonia falls within "tier 2" which means that the Government of Estonia does not yet fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.

4.1 Procedural issues of labour exploitation cases

Estonia lacks a trafficking-specific law. Existing laws do not adequately prohibit and punish all forms of human trafficking, including the transportation, harbouring, obtaining, or recruitment of a trafficking victim and the use of coercion as a means to traffic a person. The lack of a specific human trafficking provision in the Estonian Penal Code is seen as a problem by many practitioners and scholars as it creates difficulties in data collection and statistics. Thus far in the statistics relevant crimes have been referred to as crimes that may be related to human trafficking. Therefore it is more complex to compare data and develop interstate cooperation in the prosecution of cross-border crimes. In 2009, Estonia issued official guidelines for identification of victims of trafficking in human beings for practitioners on human trafficking victim identification. The guidelines have served the purpose of awareness raising among law enforcement agents and other practitioners.

The research findings indicate that the focus of legislation and law enforcement agencies was upon sexual exploitation rather than labour. A "visible bias" can be noticed which might have to do with the idea that trafficking for forced prostitution is more likely to be detected than trafficking for forced labour. This is to a great extent due to the absence of legal regulations, the fact that forced labour is even more hidden than sexual exploitation and that there is no comprehensive awareness of the nature of the problem among the population.

It might also derive from the fact that trafficking for forced prostitution has been an open discussion topic for many years and received attention on different levels. Many practitioners and scholars do not believe labour exploitation and forced labour to be a problem in Estonia. The same attitude can also be seen in media reports that mainly associate human trafficking with sexual exploitation cases.

4.1.1 Barriers to criminal proceedings

<u>Victim's report of a criminal offence</u>

Human trafficking is a crime not easily detected. The victims themselves and third persons only rarely report this crime. The victims are ashamed of their

experience, afraid of the disapproval of the society or the threats of the criminals. Very often victims are under serious influence of the perpetrators (physical or mental) and are afraid to come forward with their situation. This is also reflected in the common attitude of victims who are just being happy to have got back home safely, not wishing to remember the painful and shameful exploitation situations nor go through complicated bureaucracy and court procedures. Very often their financial resources are also limited, as victims have mostly paid their own travel expenses and have not received any salary for the work they have done.

In the cases of migrant labour exploitation in Estonia victims are often illegally present in the country and are scared of possible deportation. This, together with a generally low education level and lack of language skills, makes migrant labour particularly vulnerable to exploitation. The exploited person is usually employed without a written agreement and should he/she wish to leave is being threatened by the exploiter to be denounced to the police as an illegal immigrant and to be facing deportation.

Victims' perception of exploitation

In terms of forced labour or labour exploitation, people often do not consider themselves to be victims of exploitation. Receiving a remarkably lower salary or working excessive hours is often considered to be an inherent part of the migration process rather than of the exploitation or trafficking process.

In the case of Estonian construction workers in Ukraine[37], the persons were living at the workplace in a trailer accommodation without hot water or water closet. According to the interviews, the victims did not complain about their living conditions but considered them rather to be a natural part of simple work abroad. In the same case, persons worked excessive hours at weekends without receiving any salary and did not consider this as labour exploitation.

Cross-border cooperation

Crimes which involve human trafficking are often perpetrated in a foreign country and information on such offences may even not reach Estonia. Therefore, all offences may not be reflected by the official statistics. The clandestine nature of the criminal offence makes it more difficult to get an overview of the situation.

In the case of Ukrainian construction workers mentioned above, criminal proceedings were terminated due to unsatisfactory cross-border cooperation and insufficient mutual assistance in criminal matters with Ukrainian judicial

[37] Five Russian-speaking men from Estonia went to work in Ukraine in construction and ended up being exploited by their employer. They submitted the complaint but the case was closed due to the cross-border procedural problems with Ukraine.

authorities. This demonstrates clearly the relevance of common definitions of the criminal offence of human trafficking and labour exploitation across Europe. The lack of adequate provisions in domestic legislations in both countries, Estonia and Ukraine, resulted in controversial perceptions of labour exploitation and forced labour.[38] As the exploitation took place in Ukraine and the perpetrator was an Ukrainian citizen, Estonia could not prosecute without the permission of Ukrainian judicial authorities.

First criminal proceeding

As there are no relevant court cases of labour exploitation, forced labour or human trafficking for these purposes, it is difficult to initiate criminal proceedings in the matter. The reason for this is that the first time to start criminal proceeding of a new type of criminal offence raises always many complications. Prosecution faces challenges in finding evidence, approaching witnesses and victims, taking testimonies etc. A lot of attention must be paid to the victims and the information they provide. There is always the possibility that the victims may refuse giving testimony in court since they do not want to face their perpetrators.

As long as the Estonian Penal Code does not entail specific provisions for prosecuting human trafficking, labour exploitation, or forced labour, it is very challenging to start criminal proceedings. This contributes additionally to the general denial of existing problems in regards of the subject matter as described to in chapter 5.[39]

4.1.2 Identification of relevant cases

The main problem in terms of this project was the lack of relevant court verdicts. Human trafficking related cases that reach the court are usually related to trafficking for sexual and not labour exploitation.

It is evident that most of the cases that might be related to labour exploitation or forced labour end up in court on the basis of the fraud article[40] in Penal Code. This applies also to cases which might entail elements of trafficking.

From a clear black letter law approach, this arrangement seems justified: people have been deceived into an unfavourable situation by taking advantage of their vulnerability. Victims have lost their money or have not received any salary or

[38] Ukrainian authorities declared the case as non exploitative.

[39] Experts still believe that the problem is nearly non-existent since no concrete cases have been detected.

[40] Art. 209 stipulates fraud as 'A person who receives proprietary benefits by knowingly causing a misconception of existing facts', Penal Code, RT[1] I 2001, 61, 364, entered into force 1 September 2002.

work or the nature of work was different from what was agreed upon. These circumstances constitute a fraud case. Considering the generally high threshold of exploitation the exploitation elements may never reach the court as the victims do not report them, and relevant authorities lack knowledge and/or interest to investigate the cases further.

In order to detect cases relevant to the current study an in depth legal analysis of existing fraud cases needs to be conducted. Unfortunately we did not have the time and the resources to do this within the context of current project. We recommend that such a study should be conducted in the near future as this is a potential methodology to detect labour trafficking cases to and from Estonia.

The same issues came up when we tried to detect potential labour exploitation and forced labour cases prosecuted in the labour dispute committee. As the Estonian Labour Employment Contracts Act does not entail specific provisions for prohibiting exploitation, the cases of equal treatment should be analysed as they might entail elements of labour exploitation or forced labour.

4.2 Lack of the legislation

Despite the guidelines for identification of victims of trafficking in human beings, awareness on the topic among practitioners and politicians remains low. In-depth interviews that were conducted during the project with various national experts demonstrated clearly that Estonia should still improve cooperation between different state agencies. Also a specific provision on trafficking incorporating a definition of trafficking in persons in conformity with the 2000 UN Palermo Protocol needs to be developed. Moreover, continued efforts to train practitioners and state agents in the subject matter are important particularly regarding the elements of trafficking for forced labour and labour exploitation.

One of the outcomes of the national expert meeting that took place in February 2010 stated that the lack of a specific trafficking provision hinders investigation and prosecution of potential trafficking cases. The same applies for labour exploitation and forced labour cases, as the current legislation does not provide a definition for labour exploitation or forced labour, nor prohibits labour exploitation *expressis verbis*. However, reference to the prohibition may be found in provisions of several legal acts, e.g. the Employment Contracts Act[41] and the Law of Obligations Act. The latter specifies conditions for contracts for the provision of services that entail several obligatory clauses for the customer and sets rights for the contractor. As many people work under the contract of services or the authorisation agreement and not under an employment contract, it

[41] Art 3 Employment Contracts Act 'Employers shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Equal Treatment Act and Gender Equality Act', RT I 2009, 5, 35, passed on 17 December 2008.

is very important to foresee all the precautions in respective legislation to prevent exploitative situations.

One of the most recent legal developments in terms of prohibiting labour exploitation was the directive of the European Parliament and of the Council providing for minimum standards for sanctions and measures against employers of third-country nationals having an irregular status. The directive stresses the need for more dissuasive sanctions in serious cases, such as persistently repeated infringements, the illegal employment of a significant number of third-country nationals, particularly exploitative working conditions, the employer knowing that the worker is a victim of trafficking in human beings and the illegal employment of a minor.[42]

In addition to the Penal Code and labour law, an important role in the prevention of migrant labour exploitation in Estonia lies within regulations of migration law. Employment of recent immigrants in the Estonian labour market is governed by the Aliens Act. The amended version of the Act is applicable as of the second half of 2008.

Effective migration surveillance and legislation plays pivotal role in detecting potential exploitative situations. However, strict enforcement of immigration laws could also result in detention and return of migrants to their home countries without assessing whether these individuals are victims of forced labour exploitation.[43] The latter might give an argument for perpetrators to use as one of the coercive measures against victims by threatening them with deportation in the case they should turn to law enforcement authorities.

Estonia is one of the countries in the EU that has enforced a strict migration policy. According to the Obligation to Leave and Prohibition of Entry Act, an alien who entered Estonia illegally may be expelled without issuing a precept and without the permission of an administrative court.[44] Many human trafficking victims can be covered with that regulation.

Providing a reflection period instead of immediate deportation for detected victims is of paramount importance, since many individuals do not identify themselves as victims of trafficking, and arrest and deportation proceedings may reinforce a self-perception as criminals instead of as victims. In many cases

> They [trafficking victims] do not know what trafficking is, do not understand their own legal situation, and are convinced that they are criminals. (Expert interview)

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[42] EC directive 2009/52/EC of 18 June 2009. Official Journal of the European Union of 30.06.2009, L168/24.

[43] Malpani, R. 'Legal Aspects of Trafficking for Forced Labour Purposes in Europe', ILO 2006, p 32.

[44] Art 14(3) Obligation to Leave and Prohibition on Entry Act, RT[1] I 1998, 98/99, 1575, entered into force 1 April 1999.

While efforts to enforce immigration laws should be supported, law enforcement and immigration personnel, victims' rights groups and governments must determine whether strict enforcement of immigration laws is antagonistic to providing victims of forced labour with protection and support, or whether these two important goals can be achieved simultaneously.

4.3 Legislation amendments and developments

Estonia has taken further steps to improve its legislation in order to detect human trafficking cases and provide assistance for trafficking victims.

4.3.1 Aliens Act

The fast growth in the demand for external labour during the economic boom in Estonia and the time consuming bureaucratic recruitment process created the need for adjustments in migration policy. Economic experts developed their proposals for a more flexible and simple system for recruitment of migrant workers in 2006−2007. The proposals were incorporated in the Aliens Act and the amended Act entered into force in the summer of 2008. The most important amendment was the institution of a wage criterion for short-term immigrant workers. According to this amendment, employers are required to remunerate aliens employed under a temporary residence permit for employment by paying them remuneration, which is at least equal to the annual average wages as most recently published by Statistics Estonia multiplied by 1.24.[45]

Persons who have come to work in Estonia for a short time (less than six months) have to receive a remuneration, which is at least equal to the most recent average gross monthly wages in the principal sector of economic activity of the employer as published by Statistics Estonia, but may not be lower than the annual average wages in Estonia multiplied by 1.24[46]. Consequently, the gross monthly wages payable to an alien recruited today would be approximately 1,000 euro.[47]

In addition to complying with the wage requirement, an employer has to apply for a permission of the Unemployment Insurance Fund for hiring an alien for a period exceeding six months in one year. The application for this permission can be submitted if the employer has announced a public competition of at least three weeks in duration and has used the national labour facilitation service, but has been unable to find a suitable candidate from Estonia or from the Member States

[45] *Ibid*.

[46] *Ibid.*

[47] Employment and Working Life in Estonia, op cit., supra note 28.

of the EU and the European Economic Area.[48] This regulation helps to prevent exploitation of migrant workers who have entered in Estonia legally and have registered their employment for residence permit application procedures.

Another regulation regarding temporary residence permits was enacted in 2007. This regulation stipulates the possibility to provide a temporary residence permit in the case of justifies public interest if the person is a victim or witness in criminal proceedings of a human trafficking offence, provided that the person has given his/her consent to assist ascertaining the evidence-related facts and has interrupted any contact with the suspects or the accused. A temporary residence permit is issued for the period of one year. A person granted such a residence permit has the right to work in Estonia without a work permit. This arrangement helps victims of human trafficking to be integrated in the society and simplifies residence permit applications.

4.3.2 Penal Code

The Ministry of Justice is currently preparing amendments of the Penal Code that would also include a human trafficking-specific criminal provision that incorporates a definition of trafficking in persons in conformity with the UN Palermo Protocol. Unfortunately, implementation of the planned amendments has been postponed thus far.

Prior to the preparation of the amendments, the Ministry of Justice conducted an in-depth analysis concerning experts' opinions of the sufficiency of current legislation, their knowledge and propositions about a potential trafficking provision. All the experts found the absence of human trafficking definition to hinder international cooperation involving both state authorities and non-governmental organizations. The latter is of particular importance as trafficking is usually a cross-border crime. In criminal proceeding prosecutors face difficulties in collecting evidence and proofs especially victims' testimonies as exploited people often refuse to make open statements in court out of fear for perpetrators and potential consequences. This often results in suspended procedure due to undetected evidence or unidentified perpetrators.

Law specialists thought it necessary to introduce a specific human trafficking provision in the Penal Code under the section of crimes against the person. The trafficking definition should derive from the Palermo Protocol.

At the moment, the main legislative difference concerns the consent of the victim. According to article 133 of the Penal Code, which is the most commonly applied article when prosecuting human trafficking related criminal offences, enslaving means "placing a human being in a situation where he or she is forced to work or perform other duties against his or her will for the benefit of another person, or keeping a person in such situation, if such act is performed through

[48] *Ibid*.

violence or deceit or by taking advantage of the helpless situation of the person"[49]

According to the Palermo Protocol and Council of Europe Convention, a person's consent is irrelevant if the criminal act comprises the necessary elements stipulated in the document. Interviewed national experts found that the planned human trafficking regulation should derive directly from the wording in the Palermo Convention thus abolishing the necessity to provide evidence for the lack of the victim's consent.

[49] Art. 133 Penal Code, RT[1] I 2001, 61, 364, entered into force 1 September 2002.

Chapter 5: Problematisation of human trafficking for forced labour and labour exploitation

5.1 Media analysis[50]

For the current media analysis mass media publications were identified from the database of Estonian articles, *Index Scriptorium Estoniae (ISE)*[51].This database contains articles from newspapers, magazines and journals, serial publications, anthologies, and collections from the 1990s on, allowing the full-text to be accessed in free digital archives and Web publications. About 200 new entries are added to the database each day.

Prior to the ISE database, we used on-line versions of the main daily newspapers such as *Postimees*, *Eesti Päevaleht*, *SL Õhtuleht* and the weekly newspaper *Eesti Ekspress*. Additionally we used the news broadcasts of Estonian Broadcasting (*ERR*) for the analysis. Each newspaper has an on-line archive that allows a full-text search of articles. The articles in these archives are not tagged with key words, and therefore the search resulted in a vast amount of articles that needed to be checked for the relevance of their content. The search from full-texts articles did not result in locating any additional items that were not covered by the database ISE. Therefore, for further research we recommend an indexed database for the identification of articles for media analysis. Another positive moment about ISE database is that it also indexes local newspapers that in our case contained interesting information about trafficking for labour exploitation.

Firstly, we needed to decide what kind of key words to use to conduct the search for the relevant material. As the main topic of the current research project was trafficking in human beings (*inimkaubandus*), we started our search for the relevant material with this key word. For the first rough search, we used the ISE, the database of all Estonian articles, maintained by the Estonian National Library. The database indexes all articles in the Estonian press, including regional publications. The publications are indexed regardless of whether they are available on-line or not. The first search was conducted for newspaper articles in Estonian and Russian published since 1 January 2004. We used only one key word: trafficking in human beings (*inimkaubandus*). The search resulted in 171 records.

Secondly, we narrowed down the search and excluded articles that also contained the key word prostitution (*prostitutsioon)*. The result was 68 articles. These articles were examined for their contents. Of all 68 articles, only three of

[50] This part is co-authored by Sirli Spelman.

[51] Available free of charge at http://ise.elnet.ee.

them were available on-line. The articles contained no description of cases and their content was of a rather general character: discussion on labour facilitation firms, information about a telephone hot line for victims of trafficking etc. The numbers here are to illustrate the problematisation of the topic of trafficking in Estonia: with a very high probability, "trafficking in human beings" will be perceived as a topic related to the facilitation of prostitution and sexual exploitation.

Using the ISE database, we conducted several searches using various keywords. Some of them we found useful, some of them resulted in broad and irrelevant results. For further research, we recommend the use of following keywords:

- *Inimkaubandus* (trafficking in human beings) – the search resulted mainly in articles concerning trafficking for sexual exploitation; articles concerning more general topics such as awareness rising, legislation requirements etc.
- *Orjastamine* (slavery), *orjatöö* (slave work) – using these key words, one can locate very few specific articles about slavery cases. At the same time *orjatöö* (slave work) would be rather used as a metaphor to describe poorly paid work of rescue workers.
- Combination of key words: *pettus* and *tööotsimine* (deceit and employment seeking); *pettus* and *tööturg* (deceit and labour market); *pettus* and *tööjõud* (deceit and labour); *pettus* and *tööjõu mobiilsus* (deceit and labour mobility) – will help to identify relevant articles. The search results partly overlapped, however, each search helped to locate at least some original articles.
- Some relevant publications could be found using keywords *töö välismaal* (working abroad).
- *Töövahendusfirma* (labour facilitation company), *töövahendus* and *pettus* (labour facilitation and deceit) – with these keywords we managed to find articles describing cases that concerned trafficking or deceit cases involving labour facilitation companies.

We did not find keywords such as *ekspluateerimine* (exploitation), *tööekspluateerimine*, *tööalane ekspluateerimine* (labour exploitation), *tööorjus* (labour slavery) very useful as the search did not result in any relevant publications. We also did not find using the combination of töö (work) and some destination country, e.g. *töö ja Soome* (work and Finland) to be very useful for the purpose of the media analysis since it resulted in a vast amount of irrelevant articles.

It can be said that the topic of this study is poorly reflected in the independent Estonian media. Most of the articles about human trafficking are highlighting the problems with prostitution and sexual abuse. Although both, prostitution and sexual abuse are extremely important and relevant topics, the press should also function as "the fourth power" to draw attention to the relatively unexplored matter of forced labour and labour exploitation.

Trafficking in human beings for the purpose of forced labour has received relatively little attention in the media scene compared for example to human trafficking with the purpose of sexual exploitation. The topic of forced labour has become a more important issue to write about in different publications only in the last 4−5 years. Different publications throughout different times have argued that Estonia is a target country, a transit country and a country of origin for the purpose of forced labour and labour exploitation. These articles attempt to provide an overview of the current situation.

There is a discernible pattern among these publications – the main topics of these articles are different cases of involuntary work where victims have been forced (by deceit, violence or taking advantage of their difficult situation) to work under conditions different from what had been agreed upon. These publications also describe the fact that in almost every case the employers have withheld peoples' documents, so that they could not end the employment relationship nor leave the country. Such experiences damage the well-being of the victims and often cause irreversible consequences to their quality of life. Therefore, there is a need to understand the nature of this problem, to collect information regarding this matter and strengthen cooperation to prevent the crime. There were mainly two different approaches in these publications: one described the situation of the victims and the other describing the current situation of the problem (how much information there is about this matter, what has to be done with that information, what are the possible solutions etc).

5.1.1 Presentation of the labour migration issue

There is general agreement in the media about the reasons for labour migration from Estonia. In 2004−2006, the newly opened EU market created new opportunities to earn salaries that were several times higher compared to the Estonian salaries for similar work. In 2009−2010, the context of labour migration is often mentioned in the context of high unemployment rate in Estonia.

In 2004−2006, labour migration was often discussed in terms of unpaid taxes. The restrictions of the movement of labour applied by several countries, e.g. Finland, created a situation in which the workers were not directly employed by the Finnish firms, but were "hired"/posted via labour facilitation firms. This created opportunity for the firms to pay wages well below the average level in the country of destination. In general, workers' rights were not protected at all, and awareness on the issue was very low. Another problematic issue was also taxes, as they were often not paid at all in any country.

> The main thing that forces Estonians to look for justice is salary and all related issues. [e.g. When an Estonian firm sent its workers to the Nordic countries, the salaries Estonians received were three times lower]. The

> biggest problem, however, is employees who are sent abroad by labour facilitation firms. Facilitators do not know much about laws. [52]

From the very beginning of our observation period until the end of 2010, the issue of labour facilitation firms still remains the main topic of concern regarding trafficking for labour exploitation from Estonia. According to media accounts, in addition to the already mentioned differences in wages and unpaid taxes, facilitation firms were also involved in frauds. Usually, a person who wants to go abroad signs some sort of agreement with labour facilitators, pays a certain amount of money, supposedly to cover transportation costs, and the story ends there: the person is deceived and will not receive a job or anything else in exchange for the money paid. In the mid-2000s, these firms were often illegal and not registered in the Commercial Register. Persons are also deceived in other ways: the person is sent abroad but no work is provided there; the person is charged for the labour facilitation services, although it is illegal etc. Many articles not only report about concrete fraud cases but they aim at raising awareness of the potential labour migrants regarding the problem in general. For example, *Postimees* published in 2010 several articles to raise awareness about the danger of becoming a victim of trafficking or providing information about victim assistance. Some of the titles of the publications will give a general idea of these warnings:

> In trouble abroad. Who will help? − *Välismaal plindris. Kes päästab välja?* PM 12/12/2010.
>
> Experienced women can also become victims of trafficking. − *Inimkaubanduse ohvriks satuvad ka elukogenud naised.* PM 19/10/2010.
>
> Estonian Unemployment Fund: When choosing labour facilitator one should be very careful. − *Töötukassa: töövahendaja valikul tuleb olla ettevaatlik.* PM 08/10/2010.
>
> 10 recommendations when seeking employment abroad. − *10 soovitust välismaale tööle minejale* PM 21/05/2010.

In the media articles, voice is given to police, lawyers, EURES and NGO representatives. In fact, the Estonian Unemployment Fund, represented by EURES, and the NGO Living for Tomorrow are the main actors in awareness raising publications. Their representatives are sometimes authors of the publications, sometimes they are interviewed by the journalists and in some cases publications inform about events organised by these organisations (either separately or in cooperation).

The problem of trafficking for labour exploitation is often discussed in terms of how legally ignorant people are misled by facilitators. The problem is also

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[52] Narusk, A., "Tööandja saadab piiri taha tööle? Uuri riikide tööseadusi". EPL 28/03/05. Available at http://www.epl.ee/artikkel/288167.

discussed in general terms regarding how the labour market functions in Estonia. For example, an article published in the EPL looks at the problem of labour exploitation as part of a more general problem in Estonia – an undeveloped work culture. From the point of view of the employer, this problem also concerns unskilful, non-committed and therefore unreliable employee candidates. From the point of view of the employee, we find too many cases in which workers are deceived or fired without reason and proper notification, salaries are not paid etc.

> In general, we cannot blame employees or employers only. And there is no point in blaming at all, because the problem is more general. These are signs of an underdeveloped labour market, and the current hectic and unclear labour market policy of the government and lack of clear vision does not contribute to the development of the market either. Endless disputes between employers, trade unions and government on the topic of Labour Law create bigger uncertainty for entrepreneurs as well as for employees. (…) And in what way can a reciprocal respect between employee and employer merge when the question of survival is more and more one's own business and no certainty could be expected from the state? [53]

5.1.2 Presentation of the victims of trafficking for labour exploitation

The media articles describe trafficking in human beings for forced labour and labour exploitation from and through the country. The victims are citizens of Estonia as well as citizens of some other country. The exploitation takes place in Estonia as well as in some other countries. Generally speaking, Estonian media do not publish articles from the point of view of the traffickers. Feature articles on individual labourers and trafficking victims are hard to find, because almost all of the media reports are about prostitution and trafficking for sexual exploitation. However, since 2006, articles about victims of trafficking for labour exploitation have become more frequent.

Many of these media reports describe the horrifying situation into which the victims have been tricked. Employers are usually represented as violent and having an important role in the victim's life. There is a distinctive difference between the jobs people are tricked into – male victims are mainly forced to work in the construction sector, while women are trafficked to work as domestic help or au pairs.[54]

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[53] Rumessen, I., 'Toimetaja pilguga: Kultuuritu tööturu mängureeglid'. Ärileht (EPL supplement) 27/05/2009.

[54] The most colourful example about forced labour among female victims was the article published in March 2010 describing an Asian landlady who had many young women (probably also from Asia, although the article did not specify this) working for her in inhuman conditions in Russia: "The young women had to work 24 hours a day and they were not paid for it.

The fact that the labour facilitating firms abuse different kinds of people for trafficking is not surprising. One of the articles was about an Estonian deaf-mute man who was promised a well-paid job in Greece. The communication manager of the Central Criminal Police commented the article, saying that this kind of scheme works mainly because people with such a disability have difficulties finding a suitable job in Eastern Europe:

> Two of the Ukrainian deaf-mute men were able to get together many deaf-mute people promising them a job in Greece or in different South European resorts. But instead of getting a job, they were forced to pay the dealers monthly fees, and if they did not pay, the dealers threatened to harm the workers' relatives in their home country.[55]

Some of the criminals were caught, but two of the main dealers are still on the loose – they go by the names Clown and Doll.

One of the distinguishing features is the fact that the media draws a link between poverty, exploitation and trafficking. The dominant feature is the presentation of the victims as people who are unemployed, living in poverty or in poor conditions and are marginalized to the point where it is hard to find any solution to their current situation.[56] Many articles mention the lack of resources to deal with human trafficking. In addition, the lack of regulation of the labour market, specifically employment agencies that act as facilitators for employment abroad, are thought to be part of the problem.

5.1.3 Possible solutions

From the analysis of the media reports, three main solutions proposed to tackle the problems of trafficking emerged: changing the legal basis of sanctions; tightening the existing laws to protect people from being deceived by false job advertisements; and raising public awareness with regards to the dangers of human trafficking. Since poverty and inequality are described as main causes of trafficking for the purpose of forced labour, decreasing such conditions is

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Whenever they made a mistake, they were punished. The landlady's daughter had her personal slave – (probably still) a child from Kazakhstan. She also worked 24 hours a day, and still got punished." Although the example describes the situation in Moscow, it feels like it is rather close to home. The impression is created that one day we might hear news about young Estonian girls forced to work in such horrifying conditions.

[55] Ojakivi, M., (2005) Eesti kurttumm langes ukrainlaste aetud inimkaubanduse ohvriks – http://www.epl.ee/artikkel/300260 (10.11.2010).

[56] Annist, A. (2005) Presentation of trafficking for sexual exploitaion in the Estonian media from 2001 to 2004. – *Trafficking in human beings for sexual exploitation. An analysis of the situation in Estonia.* Helsinki: IOM, Regional Office for the Baltic and Nordic countries, 77−90.

naturally proposed as necessary to deal with this problem.[57] Raising awareness is seen as the only concrete measure to improve the situation.

Many articles offered practical advice for people who want to work abroad. These articles assumed that people who had become trafficking victims were unaware of what they were getting themselves into. The desire to work abroad was described as implying potential dangers to those not thoroughly prepared. Some articles even warned that the traffickers often have a way of presenting themselves as nice people who only want to help.

Though awareness raising is a powerful tool, it is not a sufficient solution for this matter. A comprehensive understanding and practical solutions to trafficking people for the purpose of forced labour are still needed. This will need a comprehensive approach where the media can play only one among many other necessary roles.[58]

5.2 Labour migration to Estonia

5.2.1 Evaluation of the extent of labour migration to Estonia

The data collected during the study allows the assumption that cases of exploitation of migrant labour exist in Estonia. However, many practitioners and scholars do not believe labour exploitation and forced labour to be problem in Estonia. As there is no regular data collection and registration and no authorized institution to detect labour exploitation cases, the problematisation from the side of authorities remains non-existent.

One of the results of the National Experts' Meeting that was held during the project indicated a common understanding amongst practitioners' that Estonia is mainly a source country of human trafficking. Many experts did not see Estonia as a destination country because of its poor economic situation and high unemployment rate. The statistics, however scarce, demonstrate an increase in peoples' movement to Estonia for economic and labour reasons mainly from lesser developed former Soviet Bloc countries.

Experts noted the difficulties in collecting data about labour migrants from other EU member states due to the Schengen Visa zone arrangements which hampers the possibilities to detect potential labour exploitation cases in Estonia. This leads to the paradoxical situation where on one hand there is data allowing to make assumptions about cases of exploitation of migrant labour in Estonia. At the same time experts still assess the problem to be nearly non-existent, since no concrete cases have been detected.

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[57] *Ibid*.

[58] *Ibid*.

Another reason supporting the denial of the problematic nature of the subject matter relies on the lack of jurisdiction of law enforcement institutions. Currently, no institution has jurisdiction or legal obligation to control the factual situation at the workplace. The Citizenship and Migration Division of Police controls migrant labour in Estonia only in terms of work permit/residence permit but does not identify victims of human trafficking for forced labour or labour exploitation. At the same time, the Labour Inspectorate controls only contractual labour relations, i.e. they have jurisdiction over work relations that are based on the employment contract and not on an authorisation agreement or a service contract. Interviews with relevant national actors demonstrated that there was a lack of interest towards changing the situation and solving the jurisdiction problems.

5.2.2 Awareness raising

Experts we interviewed emphasised the pivotal role of awareness raising among the general public and the authorities engaged in prevention work. There are national good practises regarding this. The non-profit association Living For Tomorrow Hotline provides support for victims of trafficking in human beings and advises persons who wish to study and work abroad safely. It appears from the calls made to the hotline that in the current economic situation advice is often asked in connection with search for work. The callers seek mainly the work of unskilled labour but there are also many people for whom it does not matter what kind of work to do and under what conditions to work. Thus it is important to educate people, especially young people entering the labour market and to explain them what should be taken into account upon going to work abroad, how to communicate with a recruitment company, etc.

One of the target groups is young people, who should be informed more actively since they do not recognize the potential risks related to trafficking in human beings, e.g. the possibility to become a victim of forced labour or sexual exploitation upon travelling or in connection with studies. Another important activity is the organisation of anti-trafficking training for specialists engaged in the prevention of and fight against human trafficking and assisting trafficking victims. Training should be continuous and systematic.

5.2.3 The number of irregular immigrants coming to Estonia is growing

In order to analyse, prevent and deal with potential exploitation of migrant labour in Estonia, an overview of migration trends would be very important. Unfortunately, lack of reliable migration statistics means there is no clear overview of migration flows or the structure of migration. Regarding legal migrants arriving to Estonia from non-EU member states, information of

migration flows can be gained from residence permit applications that are submitted to the Citizenship and Migration Board. However, there are today no clear estimates of neither irregular nor legal migration influx from EU member states.

Irregular immigration is gaining increasing attention. The Border Guard of Estonia is discovering an increasing number of cases where persons, who have received a Schengen Visa, never come to Estonia or continue to other countries immediately upon arrival. The number of irregular entries has increased as well. Legal labour migration is also on the rise. The expansion of the Schengen Visa area did not lead to an increase in the demand for residence permits in general, but the number of applications for short-term residence permits for the purpose of employment has increased.[59] The only figure increasing a bit over the past 5 five years (2005−2009) was the number of residence permit applications for the purpose of work. Consequently, also the number of corresponding residence permits issued was growing although only insignificantly.

If legal migration indicators were on a moderate decline during past years, then the figures describing illegal immigration were plummeting and decreased about 50 percent or more over the past five years. Also a comparison of the same relevant data describing the number of apprehended illegal immigrants in the country with other EU member states revealed that Estonia was having the lowest corresponding ratio in the EU.[60]

5.2.4 Push-pull factors

Even though the average wages in Estonia are significantly lower than the wages earned in the old Member States of the EU, the geographic location and historic ties facilitate immigration to Estonia from the countries of the former Soviet Union. The largest group of recent immigrants who have come to Estonia since 1992 is from Russia. Of EU countries, Finland and Latvia are the main countries of origin of the recent immigrants.

More than half of recent immigrants (65%) are in the best working age, i.e., from 24 to 49 years. Most of the recent immigrants (69%) have come to Estonia for family reasons.[61]

The group of recent immigrants, who arrived for the purpose of employment after the year 2000 includes proportionally more skilled workers, managers, professionals and officials than the local Estonian labour force, but the distribution of occupations varies depending on the country of origin. While

[59] Employment and Working Life in Estonia, op cit., supra note 28.

[60] Belitshev, E. (2010) "Trafficking for Forced Labour – Estonia as Possible Country of Destination". Research Paper, University of Tartu.

[61] Järv, K. Uusimmigrandid Eestis. – Immigrantrahvastik Eestis. Vastutav toimetaja Siim Krusell. Tallinn: Statistikaamet, 2009, p. 35–57.

around three quarters of the recent immigrants from the old EU Member States and other developed states were employed as managers, professionals and officials, an equally large proportion of those who arrived from the countries of the former Soviet Union were employed as skilled workers.[62]

A survey commissioned by the Ministry of Social Affairs and conducted in April 2009 by the company Turu-uuringute AS indicated that specific skills and work experience are the main reason for recruiting workers from third countries. Despite the current economic situation, there is a continuous demand for external labour. Approximately one-fourth of the employers, who had recruited or had considered recruiting migrant labour, stated that the need for migrant labour would prevail in the near future (two or three years). Most migrant workers were recruited in manufacturing, but education and accommodation were also significant sectors from which institutions recruited or considered recruiting migrant workers.[63]

The data from the Citizenship and Migration Board (CMB) and the Unemployment Insurance Fund confirm that the majority of applicants for work permits in 2009 were metal workers and ship's hull plate installers.

Experts we interviewed also noted education as one of the possible pull factors for immigrants coming to Estonia. Education could be one of the options for young people to leave their own country and enter legally an EU member state. This phenomenon is supported by the decrease of young Estonian people studying in Estonian universities as many of them seek better opportunities in old EU member states as well as the fact that the population of Estonia is ageing significantly over the coming years due to the low birth rate. Immigrants migrating for the purpose of studies may very likely become temporary residents in Estonia. They may see Estonia as a 'gateway' to Western Europe because of its favourable geographic location and geopolitical position (democratic society where it is possible to study and work in Russian) and the opportunity for further migration to Western European countries.

The interviewed experts did not foresee a noticeable increase in asylum seekers or forced migrants coming to Estonia in the nearest future but rather estimated the number to remain on the current level. Of course there is always the risk that the arriving asylum seekers are not bona fide refugees but trying to benefit from their poor situation.

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[62] Krusell, S., 'Välismaalased eesti tööturul. – Ränne.' Vastutav toimetaja Alis Tammur, Helerin Rannala. Tallinn: Statistikaamet, 2009, p. 67–74.

[63] Employment and Working Life in Estonia, op cit., supra note 28.

5.3 Labour migration from Estonia

5.3.1 Push-pull factors

Specialists in labour force facilitation have said there is an increased pressure for finding work abroad, because the situation in the Estonian labour market has rapidly deteriorated over the last year[64]. Even though Estonia has no reliable data for evaluating the total immigration and emigration flows, the migration surveys of the Bank of Estonia allow the conclusion that the outflow of labour from Estonia increased in 2008.[65]

In the light of the current statistics, and because of the overall depressing situation in the labour market, the risk of trafficking in persons for forced labour and labour exploitation has grown remarkably. According to the International Organization for Migration (IOM) in 2008, an estimated 10,000 to 15,000 Estonian residents had a permanent employment arrangement in a foreign country.[66] With regard to emigration from Estonia, the main push factors for regular migrants are economic considerations, mostly employment.

This phenomenon is particularly marked amongst Russian-speaking men from the region of North-Eastern Estonia[67] where there is the largest Russian-speaking community, the members of which are mostly either non-Estonian citizens or stateless people[68]. Many of them are immigrants or descendants of the Soviet period immigrants in Estonia. In many EU host countries, migrant labour met with difficulties because of the rapidly growing unemployment rate since the economic recession in 2008. Depending on countries of destination, migrant workers are known to be most affected in such sectors (construction, manufacturing, hotels and restaurants) in which unemployment has grown.

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[64] Gavronski, A. Huvi välismaal töötamise vastu on hüppeliselt kasvanud. – ERR uudised, Aktuaalne Kaamera, 12.07.2009, available at http://uudised.err.ee/index.php?06170843.

[65] Employment and Working Life in Estonia, op cit., supra note 28.

[66] Facts and Figures – Estonia. Available at http://www.iom.int/jahia/Jahia/activities/europe/nordic-and-baltic-countries/estonia.

[67] According to the statistical data provided by the NGO Living for Tomorrow, 54% of the callers in 2009 were men, and 23% of all callers were from the region of North-Eastern Estonia, and 85% of all callers were Russian speaking.

[68] In Estonia, there ar currently approximately 100,000 stateless persons, i.e. people without citizenship. They are mostly descendants of Russiam speaking immigrants who migrated to Estonia during the Soviet Union period and were not granted Estonian citizenship after the re-established independence of the Republic of Estonia in 1991. The argument of the Estonian government was based on the fact that the 1940 Soviet occupation was *de jure* illegal and not recognized by the majority of states; therefore, the immigrants who have arrived in the Baltic States during the illegal occupation period after 1940 are considered to be irregular immigrants and not entitled to the Estonian citizenship. The same applies for their descendants.

Due to the poor economic situation, low education level and little knowledge of the Estonian language, Russian-speaking people (mainly men) seek job opportunities abroad.

This trend is also demonstrated in the increased number of telephone calls to the non-profit association Living For Tomorrow Hotline that advises persons who wish to study and work abroad safely. It appears from the calls made to the hotline that in the current economic situation, advice is often asked in connection with search for work. The callers seek mainly unskilled jobs, but there are also many people for whom it does not matter what work to do and under what conditions to work.

An analysis of changes in employment from 2007 to 2008 indicates that an overwhelming majority (89%) of those who had worked abroad for some time during the year before the survey continued to be employed in 2008, and even if unemployed, did not seek to return to Estonia[69].

This situation can be explained by a number of factors. Return migration flows generally correspond more with economic, social and political developments in the country of origin, and with the ease of circulation, than with economic conditions in the countries receiving immigrants. Migrants often choose to remain in the host countries despite deteriorating labour market conditions in order to preserve social security benefits. The adverse economic and employment situation in the country of origin also discourages them from returning. The ease of circulation and the strength of attachments that migrants maintain with their countries of origin are also important variables that influence return migration.[70]

5.3.2 Main destination countries and sectors involved

Most popular destination countries for Estonian nationals, both Estonian and Russian speaking, are the United Kingdom, Finland, Norway, Germany and Sweden. In the choice of destination country, language skills play an important role (the United Kingdom, Finland and Germany), and so does the geographical proximity to the home country (Finland and Sweden) and the presence of previous networks, relatives or acquaintances in the destination country. The latter is very characteristic for Finland where most people find the job not via labour facilitators in Estonia but through established networks of friends and acquaintances[71].

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[69] Employment and Working Life in Estonia, op cit., supra note 28.

[70] Papademetriou and Terrazas, 'Immigrants and the Current Economic Crisis', available at http://www.migrationpolicy.org/pubs/lmi_recessionionJan09.pdf.

[71] See relevant information also in the Finnish national report.

According to the expert interviews, construction, seasonal jobs, social care, and cleaning work tend to be most affected by the large number of employed migrant labour and possible labour exploitation cases, or even forced labour.

In the United Kingdom, the most popular sectors tend to be accommodation, cleaning, housekeeping and social care. In Norway they are the fishing industry (men), cleaning (women) and construction (men). In Finland, the main sectors for migrant labour from Estonia continue to be construction (men) and cleaning (women). Most migrant workers are men aged 20−30 years and women aged 40−50. Women, mainly Russian-speaking, seek employment also in seasonal jobs (agriculture) whereas men are interested in unskilled work in construction. According to the interviewed experts of EURES in Tallinn, Ireland was about two years ago one of the most popular destination countries for Estonian nationals. However, this has changed since the economic recession in 2008.

Chapter 6: The nature of exploitation

Our study is mainly focused on migrant workers who have left Estonia for a job abroad. In principle, most of them have volunteered to go, and have actively sought employment abroad. Thus, they have not been forced at gunpoint to go to work abroad. With regard to their exploitation, as in the case of exploited migrant workers in Finland[72], their initial consent to move and to work is irrelevant. What is central, instead, is that they have been deceived, they are dependent and helpless, and that their working time and leisure time have been controlled. In other words, they have been exploited by their employers or recruiters or other intermediaries.[73]

Human trafficking for forced labour follows a certain pattern: the worker is looking for work through a seemingly official procedure, but the working conditions are worse than promised, and the worker is subjected to exploitation, be that long working days or sub-standard wages or housing conditions.[74] The worker is usually not able to leave his/her job as he/she is being controlled by the employer with physical or psychological violence, threats, restrictions of the freedom of movement, or the retention of his/her identification documents.[75]

The following chapter deals with the nature of labour exploitation in the context that Estonian nationals have faced abroad, since Estonia is mainly a country of origin for trafficking for forced labour or labour exploitation. We have structured the chapter keeping in mind the ILO indicators of trafficking of adults for labour exploitation.[76] The list of indicators distinguishes between deceptive recruitment, coercive recruitment, and recruitment by abuse of vulnerability. As the list of indicators is quite long, we included into our analysis only those that were relevant to cases of trafficking for labour exploitation from Estonia. Indicators of exploitation in the ILO list are: excessive working days or hours, bad living conditions; hazardous work; low or no salary; no respect of labour laws or contract signed; no social protection (contract, social insurance, etc.); very bad working conditions; wage manipulation. Nearly all of these indicators were explicitly mentioned in the experts interviews conducted for the current study. The detailed analysis of recruitment and exploitation indicators is presented below.

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[72] Jokinen et al. (2011). Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 63. Helsinki: HEUNI.

[73] Ibid.

[74] See Surtees (2008) cit. Jokinen et al. (2011). Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 61. Helsinki: HEUNI.

[75] Jokinen et al. (2011). Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 61. Helsinki: HEUNI.

[76] ILO (2009). Operational indicators of trafficking in human beings. Geneva: ILO.

6.1 Recruitment

In most cases our experts referred to, the victims were recruited in their home country, i.e. in Estonia. How networks and organisations find victims or victims find them, varies from case to case.

6.1.1 Labour facilitation companies

The interviewed experts revealed that most of the victims of labour exploitation or deceit have found out about job opportunities abroad via labour facilitation companies. The most common way of finding job adverts is either via internet or in newspapers. Some contact facilitators on their own initiative, asking whether they have any job offers abroad.

> The victim found a job advert on the internet, on a well known jobseekers' website, offering a well paid job in construction in France. (Interview with a victim by the Estonian Public Broadcasting Company)

There have also been cases in which labour facilitation companies put their adverts up in local schools:

> A labour facilitation company advertised its services in a general school in Narva, offering to help to find a job abroad for 2,000 EEK. (Expert interview)

According to an interviewed expert, it is very rare that a person finds a job directly from an employer abroad. Mostly, there is no direct contact the with employer at all.

> There is always a middleman who takes care of everything, communicates with the employer, collects the fees etc. Basically, he is the one who commits the deceit and sometimes even the exploitation. The victim has no contact to the employer, and very often does not even know who the employer is or where the work place is going to be. (Expert interview)

The common pattern is to take money from the victims. As labour facilitation has to be free of charge in Estonia[77], facilitators involved in a deceit disguise the fees to be paid for other services such as uploading the victim's CV on a database, consultation etc.

> They start by asking 500 EEK for uploading the person's CV on some database or for consultation. Then they go in by asking 3,000 EEK for

[77] Art 12 Labour Market Services and Benefits Act, RT I 2005, 54, 430, entered into force 1 January 2006

> some sort of training, or they sign a "sponsorship contract" with the person, or tell the person that the facilitation contract is already an employment contract. (Expert interview)
>
> Lately, they have been saying that the fees are for finding an accommodation and for the deposit for the accommodation. (Expert interview)

A labour facilitation company, in order to operate legally, needs to be licensed[78]. Experts mentioned that up until a few years ago, the main issue was the lack of a license which made it easier to detect potential companies that break the law and are involved in deceit. However, by now the awareness has improved, and most of the facilitators involved in a deceit are fully licensed and thus not so easily detected any more.

One of the major issues that emerged in the survey was the issue of activity licenses required from labour facilitation companies. Several companies have been found that have been active in the labour market for a decade and have been detected to be problematic and often involved in illegal activities. However, they continue to operate, as after losing their activity license they will just register a new company under a different name and on a different address. Further research would demonstrate clearly that the owner of the company is the same person who owned all the previous ones that lost their activity license because of illegal undertakings.

Many experts thought that activity licences are issued too easily, and that they are being insufficiently controlled. Unfortunately, it remained unclear to the experts which institution is in practice responsible for issuing activity licenses for labour facilitation companies or which institution or organisation has the jurisdiction to execute regular control over their activities. According to the law the Ministry of Social Affairs is responsible for the task.[79]

One of the very common recruitment methods used by facilitators is to exert pressure on the person, rushing him/her into making a decision and signing the documents very quickly without allowing him/her to read the documents previously.

> They use the "hastening" technique saying "you don't have time to think about this offer. If you don't pay the fees now and sign the contract with us, the job will be gone and given to someone else. You need to leave home tomorrow as the employer needs someone a.s.a.p. (Expert interview)

Many of the cases remain a simple deceit and do not develop into an actual labour exploitation situation. In these occasions, labour facilitation companies

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[78] Art 4 Commercial Code, RT I 1995, 26–28, 355, entered into force 1 September 1995.

[79] "Tööturuteenuste ja -toetuste seadus" § 39 available at: https://www.riigiteataja.ee/akt/13337559?leiaKehtiv.

just deceive people to pay amounts of money promising them to find a job abroad. After the money is received from the victims, they can no longer be reached, i.e. they do not reply phone calls, messages, or emails, and have relocated their office.

> It was obvious that this was the kind of office that you can "pack up in 5 minutes and disappear". (Expert interview)

6.1.2 Other recruitment methods

As mentioned in the previous chapter, people often find job opportunities abroad via personal networks, or acquaintances. One of the patterns that have emerged during the past three years is mostly related with exploitation cases in Finland. In this pattern, an Estonian national woman is married to a Finnish man and they have established a construction company. The woman, as she is usually able to communicate effectively in both Estonian and Russian, and has good knowledge of local systems and legislation in Estonia, is responsible for recruiting labour from Estonia either by internet adverts or through personal networks. As the husband is Finnish, he knows the Finnish system and legislation in terms of how to establish a construction company, to deal with employment contracts, and to find the loopholes in respective labour and corporate legislation.

> It can be called a "system of spouses". An Estonian national woman recruits labour from Estonia. Labour facilitation fees are being usually disguised under "training fees". The employer, i.e. usually the Finnish national husband, organises the accommodation for labour. Accommodation fees are normally deducted from the wages, however living conditions are below any normal standard. Additionally, such exploiters do not pay the taxes either. (Expert interview)

6.2 Elements of exploitation

6.2.1 No work in the destination country

According to the media sources and expert interviews, one of the most common features regarding labour facilitation is that people are deceived of large amounts of money in exchange of empty promises. This does technically not amount to labour exploitation or forced labour but might create a situation in which the deceived person has no other option but to fall into the trap of labour exploitation or forced labour.

The situation begins as a person enters into a contract with a labour facilitation company, paying the company for their services. In exchange, the company promises the person a job abroad. The deceit techniques were described in more detail in the section on labour facilitation companies above. As a consequence of

the deceit, the person travels to the destination country at his/her own cost, and ends up with nothing. Very often, the person has been promised to be met by a local representative at the airport of the destination country. Upon arrival, no one is waiting for the person and he/she has no information as to where exactly to go, as the victims of deceit have usually not been informed about their employers or the location of work. Facilitators make sure that they remain the only contact of the deceived person.

As the victims tend to have a poor economic background, and they have usually paid all their money and savings to the facilitators (service fees, transport costs etc.), or in a worse case, even taken a loan to go abroad, they find themselves in a very vulnerable situation that might easily ending up in exploitative situations.

> There was recently a case where a young man was promised a job in XXX. He spent all his savings to pay the facilitators and had resigned from his job in Estonia. The facilitators had used the hastening technique with him. He was told that someone would meet him at the airport in the destination country. Upon arrival, there was no one expecting him. He didn't speak the language, had no money to get back home, and had no idea of where to go. (Expert interview)

In most cases, the victim's family is not financially in a position to pay for the travel back to Estonia. Unfortunately, we have no information on how these people manage to return to Estonia. The job opportunity that the victim was hoping to have abroad was the last chance to improve the financial situation of the whole family. Therefore, although the situation does not amount to labour exploitation, it creates a situation where the victim becomes even more vulnerable for traffickers and is at risk of becoming the victim of human trafficking for labour exploitation or forced labour.

6.2.2 Actual work differs from the promised one

In many cases mentioned by the experts, persons who have been facilitated abroad end up in work that is quite different from what was initially promised.

> Girls were recruited as dancers. At the place they were forced to do cleaning work, working as hostesses, and in some cases were even engaged in prostitution. (Expert interview)

As described in the previous section, victims very often lack resources needed to return home. Thus, they find no better option than to accept the work that has been offered to them, no matter how bad the conditions or how small the salary.

> Usually they get a job that is much more difficult and different than the one they agreed to do originally. As they had paid so much money to get there (the country of destination), they accept it and continue working as this is at least some kind of possibility to earn some money to get back home. (Expert interview)

> Initially he was being promised a construction job in XXX. But then it turned out to be repair work in some restaurant for 20 euro a week. He was sleeping in the basement of the restaurant and didn't get any wages or food. The employer told him to eat the food from the freezer that had passed the expiration date. Yet he stayed there for the whole week and finished the job. (Expert interview)

> We were promised a light job in ship construction. Basically the final refinement work. (Interview with a victim by the Estonian Public Broadcast)

In another case, people were initially promised a job in the accommodation sector in country XXX.

> Upon arrival, there was no job, and they were forced to distribute flyers in the streets of city XXX for 2 months. The employer kept them there on false pretences, promising them to start with the job in accommodation next week. (Expert interview)

6.2.3 No written contract or double contract system

Work without a written contract is a very common method of controlling migrant workers. This method is very strongly related to the low awareness of the general public about their basic rights and labour laws whether in Estonia or in any other country.

Working without a written contract is one of the ways to control the worker. Without written proof the worker has major difficulties providing evidence of exploitation to the police, the labour inspectorate, or trade unions. As the experts said, employers very often detain the worker at the work place, promising to sign a contract as soon as possible, be that next day, week or month. The employees continue working without a written contract, as leaving would constitute becoming unemployed.

As employers are very often subject to labour inspectorate or trade unions control, they prepare double contracts: one for the authorities, i.e. labour inspectorate, trade unions, police, and another that is an actual agreement with worker. This is a method commonly used in order to misrepresent the number of working hours, wages or any other working conditions.[80] Another common method is to sign a "fake-contract" with the worker, and destroy it afterwards, the actual working conditions then becoming completely different from the ones in contract. As the contract has been destroyed, the worker has again no evidence to claim his/her rights.

[80] See also Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 67−68. Helsinki: HEUNI.

6.2.4 Sub-standard housing conditions

Sub-standard housing conditions may be seen as an indicator of the exploitation of migrant labour, or as an indication of the dependent status of the workers. Since most victims who come from Estonia have a poor or very poor economic background, they have often been accustomed to very modest accommodation standards in their home country and may thus accept lower standards also in the country of destination.

Often the accommodation provided is below normal standards: sometimes it is just more crowded than usual, sometimes the employees live in the workplace or places not suitable for living such as barracks or tents that lack sufficient hygiene and washing facilities, running water, or even electricity. The same issue also occurred and was mentioned repeatedly by several experts in the Finnish report in the cases of migrant labour from Estonia working in Finland.[81]

> They were living 8 people in one small room and had no washing facilities. (Expert interview)

In the construction industry, the worst cases of sub-standard living conditions were found:

> They were living at the work place in a barrack with no running water or washing facilities. Yet, when turning to the police, they never complained about their living conditions but considered them to be "tolerable". (Expert interview)

> We were staying 8 and 11 of us in a very small apartment and slept on the floor. There was no shower. As we didn't get any salary we couldn't buy food for days. (Interview with a victim by Estonian Public Broadcast)

> There have been cases where people have lived in tents in the winter. (Expert interview)

Providing accommodation enables the employer to monitor his/her employees also outside of working hours, call them to work any time of the day and any day of the week.[82] No cases where the workers would actually have been locked into the provided accommodation were referred to in the Estonian expert interviews.

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[81] Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 85−86. Helsinki: HEUNI.

[82] Ibid., 87.

6.2.5 Threats

The use of threats may have various forms in the context of labour exploitation. In most cases, the victims have been threatened with the termination of the employment. Many of the experts we interviewed mentioned this kind of threat to be the most common form of exploitation and force. Since employees face the serious risk of having no job whatsoever in their home countries, they agree to work under sub-standard conditions for extensive periods of time.

Experts revealed that giving notice and repeated firing of workers is also one common means of controlling the employees. For some employers, it is easier and cheaper to "recycle" the workers, and to keep recruiting new people continuously, rather than to allow old employees to continue and become more aware of their rights.[83] This practice is more evident in the construction sector where people are being hired only for a month or even shorter periods of time without any written contract and fired shortly afterwards for "failing to perform the work duties". Usually the person receives minimum wages for the short period of work. This "recycling" method enables the employer to complete the job with minimum labour costs.

According to the experts, a very common method applied in Finland by the employers, is to say that if the worker contacts the labour union or labour inspectorate, he/she will get fired right away. The risk of being fired may explain why workers who have experienced different kinds of exploitation never report such cases to the authorities. [84]

6.2.6 Physical violence

Employers and criminals are able to control the victims by using threats and violence as means of control. According to the interviewed experts, it is more common that exploitation of migrant labour involves psychological violence and different kinds of threats than physical violence. One of the interviewed experts had heard of sexual violence committed by the employer during the employment. The expert mentioned two cases where the employer had inflicted sexual abuse to control the worker. Both workers were women.

> A Norwegian employer was exploiting sexually this woman for 6 months or even more until she was finally able to turn to the police. (Expert interview)

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[83] Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 103−104. Helsinki: HEUNI.

[84] See also Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 104. Helsinki: HEUNI.

> A 19 year old girl was working in a casino in Cyprus and was sexually abused by the employer. (Expert interview)

6.2.7 Sub-standard wages, delayed wages or no wages

While cases of physical violence are very rare, economic control is the main means to control the victims of labour exploitation. Economic means such as the underpayment of wages or delays in the payment of wages make the victims dependent of the employer. It is very common that the employer does not compensate extra working hours as stipulated in the respective legislation or collective agreements. There are also cases in which the migrant workers have known that their salary ought to be higher, but they are in a situation where it is better to accept this little or have nothing.[85]

The men working in construction in Ukraine received no salary whatsoever for their work (expert interview). The same can be noted in the case of the three men working in construction in France (interview with a victim by the Estonian Public Broadcast), and in the case of the two women in seasonal work in Spain (expert interview). However, the problem most often described by the experts concerned Estonian nationals employed in construction work in Finland.

Similar to findings presented in the Finnish national report, our interviews demonstrate that Estonians who look for employment abroad may be satisfied with the pay which is lower than what is paid, for example, to legally employed Finns in Finland or Swedes in Sweden for the same job, as the salaries they would receive in Estonia would still be even lower, or they would not have any work at all.[86]

6.2.8 Long working hours

Many interviewed experts said that it is very common that exploited migrant workers are regularly working for more than the usual 40 hours a week. This was again mentioned particularly regarding Estonian nationals working in Finland.

> They work 7 days a week, 3 weeks in a row, no days off. If they're lucky, they get to go to Estonia 2 days a month. (Expert interview)

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[85] Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 91−93. Helsinki: HEUNI.

[86] Ibid., 92.

Exhausting workers with long working hours is one very efficient means of control as workers get so exhausted that they cannot complain or escape. [87] They eventually become apathetic.

6.2.9 Retention of passport

According to the ILO, retention of a person's passport or other identity document is one of the central indications of forced labour[88]. In our data, there were a few references to passports having been taken away from the workers. Often employers or facilitators take passports from the victims claiming that they need the document to provide some permits, to arrange for accommodation etc. However, usually the passports are just kept in the possession of the employer in order to control the workers.

> Their passports had been taken to provide the workers with some permission to access the construction site. Bizarrely, the workers lived at the construction site and they couldn't say for sure whether the access permission was even necessary or not. (Expert interview)

6.3 Vulnerabilities of victims

As stated in the previous chapters, Estonia is mainly a source country, and to a lesser extent a destination country for trafficking for forced labour and labour exploitation.

Due to the global economic recession Estonia is facing challenges of a high unemployment rate, a decrease in average income and general living standards, and an increase in long-term unemployment. All these consequences of the economic crisis have a major impact on the daily lives and socio-economic status of people in Estonia. This increases the risk of trafficking in persons for forced labour and labour exploitation as economic considerations, mostly employment, are the main reason with regard to emigration from Estonia.

6.3.1 Socio-economic background

Recent research on the labour migration potential conducted by the Ministry of Social Affairs confirmed that the main reasons of looking for employment abroad is to find any kind of job and to earn better wages. Only one-third of those looking for long-time employment and slightly less than one-half of

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[87] See also Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 93−94. Helsinki: HEUNI.

[88] ILO 2005, op cit., supra note 5.

Estonians looking for long-time employment abroad would want to be employed in a position that corresponds to their qualification. However, the majority would agree with a less qualified job.[89]

In the course of our study, we established that a low socio-economic status is the main risk factor of victims of labour exploitation and forced labour. According to experts, on average people who are actively seeking for a job abroad have either been unemployed for quite some time or are employed in Estonia but subjected to sub-standard working conditions, unpaid wages (for months) and even in debt. What is also important is that work without contract, lower salaries and unpaid wages are not a new situation they usually encounter abroad, since this is what often has been their reality already in Estonia. The salaries they are being paid when they look for employment abroad are in any case better than what they earned in Estonia. This makes the victims obviously more dependent upon the employer, facilitator or exploiter abroad in terms of housing, transport, and employment since they have no financial security or stability and they very often come from families of an even worse economic background.

Experts stated on many occasions how a poor socio-economic background played a pivotal role in a person becoming the victim of deceit or sub-standard working conditions.

> People with higher education level never agree to work without a written employment contract or agree to work in sub-standard working conditions. (Expert interview)

> I mean he called us and said what can I do? (...) I have no job in Estonia to come to and I have no money to pay for my return trip. (Expert interview)

6.3.2 Language skills

Our study demonstrates that language skills, or more precisely, the lack of them, increase the vulnerability of migrant workers at the hands of exploitative employers and traffickers. A survey conducted by the Ministry of Social Affairs shows that 43% of Estonians looking for employment abroad see that the lack of language skills may be a problem for them.[90]

Experts noted during the interviews that it is much easier for people without language skills to be deceived by labour facilitators.

> The contract he signed was in English and the facilitator knew he could not speak any other language but Russian. So it must have been conscious deceit. He [the victim] did not understand what he was

[89] Veidemann, B. (2010) op. cit., supra note 26.

[90] Veidemann, B. (2010) op. cit., supra note 26.

> signing; only what he had been told by the facilitator. (Expert interview)

As described in previous chapters, most people who wish to emigrate from Estonia are Russian-speaking men from the North-Eastern Estonia region that is mainly a Russian speaking area. Most of the job seekers do not even speak Estonian, and are thus having difficulties of finding information and knowledge about their rights. However, there have been cases of migrant workers from Estonia with language skills who have been exploited anyway.

> There was a case of young Russian-speaking men who were detained and deceived and forced to live in sub-standard living conditions in the United Kingdom for 2 months. Despite having good knowledge of English they were still vulnerable at the hands of exploiters. (Expert interview)

6.3.3 Awareness of rights

The studies conducted within the framework of the Nordic-Baltic information campaign against trafficking in women in Estonia in the beginning of the 2000s have shown that young people have an increasing interest in working in a foreign country, and the general understanding is that living abroad always results in a higher standard of living. These studies demonstrate that in general, Estonian people have a poor knowledge of the risk of human trafficking for forced labour and labour exploitation.[91]

The study of the labour migration potential shows that in 2010, potential labour migrants were less aware about job opportunities abroad compared to 2006. Only 47% of respondents said they are well or rather well informed about job opportunities abroad, while in 2006 this figure was 60%. Despite the increased number of media reports on the victims deceived by labour facilitation firms, the potential labour migrants do not perceive this problem to be actual. Estonian residents looking for employment abroad are most of all interested in receiving information about vacancies abroad (24%) and general information about formalities when moving abroad (23%). The respondents were not interested in learning more about the background of the employer or the working conditions.[92]

In our study we established that Estonian people not only have poor knowledge of human trafficking but also about exploitation, labour rights and of human rights in general. Anyone who does not know how to seek a job abroad in a safe manner or how to legally enter into an employment contract may easily be at risk. Traffickers lure victims with the promise of legitimate employment or the

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[91] For further information see for example Pajumets, M. (2002) and Espere, K. (2004).

[92] Veidemann, B. (2010) op.cit., supra note 26.

opportunity to live and study abroad. They tend to befriend victims or attempt to pretend to be legitimate job facilitators[93]. Experts who were interviewed for the study all referred to cases in which employment facilitators, both illegal and legal, have taken advantage of the ignorance and trust of people and demanded unjustified payment, failed to provide the promised service, violated the rules regarding working conditions, etc.

The low awareness of their basic human rights and labour rights was clearly demonstrated in the cases of Estonian migrant workers in Finland. People are not aware of their right to belong to trade unions nor are they aware of the protection that trade unions can provide in terms of working conditions and workers' rights. Thus, the migrant workers mostly face problems related to the payment of wages, salary discrimination, failure to pay compensations for evening, night, and Saturday and Sunday work, etc. There were also cases, in which the migrant workers have known that their salary ought to be higher, but they are in a situation in which it is better not to complain to the employer and to demand proper wages (see section 6.2.5 on threats).

The low awareness is related to the fact that most people seeking jobs abroad have a low educational level. They are mostly simple workers and 'blue collars' whose knowledge and understanding of complex legal issues such as labour rights, basic employment contract requirements, or non-discrimination stipulations are limited. Very often they feel that they are in no position to require better living standards or working conditions as this would result in unemployment (see section 6.2.5 of threats).

[93] United States Department of State,'Trafficking in Persons Report 2009 – Estonia', op cit., supra note 32.

Chapter 7: Institutions and authorities dealing with human trafficking

7.1 Citizenship and migration division of police

The Citizenship and Migration Division of Police (CMD) elaborates necessary proceeding regulations and draft law proposals that regulate migration surveillance and migration control. The CMD searches information on potential illegal immigrants in Estonia via a systematic internal database control that contains information about issued residence permits for the purpose of work. If a person is allowed to stay in Estonia on the grounds of short-term labour migration permit, regular checks of different databases makes it possible to find out whether the conditions of the residence permit have been breached.

If the validity of the temporary residence permit for the purpose of work has expired, the CMD makes an immediate employment control in order to detect whether the person is still employed in Estonia. With the termination of the residence permit, the person loses legal grounds to stay in the country and thus becomes an illegal immigrant and faces deportation. The CMD also executes random raids at work places that are potentially employing migrant labour (e.g. ethnic restaurants) to check the legal status of the employees. Raids can be performed on the basis of clues and information provided by other authorities such as the Tax and Customs Board, the Border Guard, or from the press.

There have also been cases in which an immigrant has turned to the CMD himself making the request to leave Estonia. By doing so, he/she usually reveals information about his/her employment which can be then investigated further by the CMD officials. However, the problem in terms of potential migrant labour exploitation cases or forced labour in Estonia relies on the fact that the CMD controls migrant labour only in terms of work permit/residence permit, but does not identify victims of human trafficking or forced labour/labour exploitation. This is partly because of the lack of jurisdiction to do so and partly because of the low awareness among migration surveillance officials to identify relevant cases.

7.2 Centre of extradition

Detected illegal immigrants in Estonia are sent to the Centre of Extradition (the Centre) which is a sub-organisation of the Police and Border Guard. The Centre does not interfere with the criminal or migration proceedings of illegal migrants, but only detains persons residing illegally in Estonia, and executes court judgements of deportation.

The Centre is a maximum security area from where detainees are only allowed to leave for procedural (participation in court sessions) or medical reasons (necessary check-ups at hospitals). Sometimes, detainees are permitted to leave the Centre on severe personal grounds such as funerals of a family member. The Centre does not collect any data regarding exploitation of migrant labour or potential human trafficking cases for labour exploitation and forced labour. The Centre is not looking at anything that may have happened to the detainees before they end up in the Centre.

7.3 Estonian embassies abroad

Estonian embassies play an important role in providing assistance to Estonian nationals abroad. As one of the illustrative elements of trafficking in human beings cases for labour exploitation and forced labour is withholding the victim's documents. In order to return to the home country, victims need to have the relevant documents.

Very often victims try to turn to Estonian embassies abroad with a general request for help, as was noted by the experts:

> A 19 year old Estonian girl being exploited in XXX country turned to the Estonian embassy in XXX country writing "I am working here in casino and I was being abused. I managed to leave and I have no place to live or any money to buy food nor am I able to buy the return ticket to Estonia. Can you please help me to get back to Estonia?". (Expert interview)

However, the embassy officials apparently lacked experience to identify the victim of labour exploitation who was potentially trafficked, as their answer was: "Please turn to your family in order to get back to Estonia". The embassy did not take any further steps to investigate the matter, nor did they make any effort to report the case to local law enforcement authorities, or inform the girl about victim assistance options. The reaction of the embassy was peculiar especially as the girl gave them all her contact details and used the word 'abuse' which has a very serious meaning.

In another case a husband was contacting the Estonian embassy in XXX to help her wife who was being exploited. The embassy did not believe him and considered the case to be "just a jealous husband chasing her wife abroad". Later, it appeared that the wife had been a victim of both sexual and labour exploitation.

Very often victims find it difficult to turn to an embassy as these are usually located in the capital of the foreign country, while the exploitation may occur in smaller towns "in the middle of nowhere". Many times, victims do not even know where exactly they are, nor do they have facilities, such as access to e-mail or telephone to contact the embassy. Access to an embassy may also be effectively hindered because of the lack of financial resources. Since the

transportation costs are high in most of the destination countries of Estonian nationals. This is aggravated by the fact that victims of exploitation are often not receiving any salary for their work, and they may have spent all their savings to pay high recruitment and/or transportation fees; also they are due to pay excessive fees for accommodation, food or working tools, or they have received a loan or an advance which makes it impossible to leave the employer.

Unfortunately, embassies are not recording data relevant to trafficking in human beings for labour exploitation and forced labour. However, one of the goals in the Government's Development Plan for Reducing Violence for the Years 2010−2014 is to raise the awareness among embassy officials by systematic training to improve their ability to identify victims of human trafficking and labour exploitation and forced labour.

7.4 Labour market organisations

Labour market organisations (including the Labour Inspectorate, the Estonian Chamber of Commerce and Industry, the Estonian Employers' Confederation, the Estonian Unemployment Insurance Fund) have not participated sufficiently in the prevention of labour exploitation so far, and have not received adequate information concerning trafficking in human beings for forced labour.

At the same time, there has not been much discussion on what could the role of labour market organisations in the prevention of trafficking in human beings. Only rarely, employers have been engaged in discussions on topics related to trafficking in human beings. Consequently, in order to raise the issue of labour exploitation, the efficiency of cooperation shall be improved and first of all education and training shall be provided to the employers in order to prevent potential cases of forced labour. Officials of the Citizenship and Migration Division of the Police have pointed out the need for stricter control in order to inspect the working conditions of workers who have immigrated into Estonia.

7.5 Police

According to our expert interviews, the cases of labour exploitation of migrant workers, and human trafficking are challenging to the crime investigation authorities to investigate. When a case of exploitation of migrant labour has been detected, the case is reported to the police. The case may be reported by, for example, an organisation specialised in helping victims, a private person, or the victim him/herself. Since there are very few police officers who are specialised in the investigation of such offences, the interviewed experts pointed out that

investigations of these crimes may be challenging, or may even be discouraged. [94]

The common awareness among police officers is still considered to be very low, despite the issuance of guidelines for the identification of and provision of support to victims of trafficking in human beings (prepared by the Ministry of Social Affairs in 2009) and training provided by victims' support experts.

According to our experts interviews, the cases that reach the police are very often terminated as criminal proceedings already in the pre-trial investigation phase. This is caused by many different reasons. The lack of time and human resources at the police is now aggravated due to the budget cuts that were introduced after the economic recession in 2008. Thus, the number of police officers was reduced significantly, and many of those who continued their employment suffered from salary cuts. This obviously reduces the work motivation of the police officers. Since the cases of labour exploitation of migrant workers, and human trafficking, are challenging to investigate, the lack of time (as one police officer has now very likely more work assignments than before) slows down or prevents the investigation to be initiated.

Unfortunately, we were only able to conduct one interview with a police officer who admitted that he had very limited experience in investigating labour exploitation and human trafficking cases. [95]

Additionally, the awareness of exploitation and basic human rights is very low among the general public. People do not know how to submit a report on a crime, or sometimes are not even aware of the circumstance that a case could/should be reported to the police. When the victim of exploitation finally overcomes psychological and legal obstacles and approaches the police he/she may not know what exactly to report.

> He/she does not go to the police saying "I'm being exploited". He/she goes to the police saying "I haven't received any salary" or "living conditions provided by the employer were really bad". In the first case, the police officer will tell him/her to turn to the Labour Dispute Committee, and in the last case he/she will most likely be laughed at. (Expert interview)

Either way, police officers dealing with cases and victims of human trafficking or labour exploitation need to be very well prepared and trained in order to be able and ready to investigate such case in a professional fashion. Today, however, such professionalism and readiness is absent. Unfortunately, we could not access pre-trial investigation materials as they fall under severe restrictions implied in the law. Authorities are not permitted to communicate any sensitive

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[94] See also Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 116−117. Helsinki: HEUNI.

[95] This also relates to the criminal proceedings barrier in the first time proceedings that was described in the chapter on the legislative analysis.

personal data to third parties without the consent of the person concerned. It is therefore difficult to comment upon the information given by the experts regarding the lack of capabilities of the police.

7.6 Prosecutor's office

The Prosecutor's Office directs the pre-trial proceedings and ensures the legality and efficiency thereof and represents public prosecution in court.[96] The authority of a Prosecutor's Office in criminal proceedings is exercised independently by the prosecutor in the name of the Prosecutor's Office, and the prosecutor is governed only by law.[97]

Since there are no relevant court cases of labour exploitation or forced labour or human trafficking for these purposes, criminal proceedings are difficult to initiate. Prosecutors are generally speaking not well aware of the relevant criminal offences, and lack previous experience in prosecuting human trafficking for labour exploitation and forced labour cases.

During the criminal investigation, the prosecutor attempts to collect as clear evidence of the crime as possible. The stories of the victims and the suspects are rarely the only evidence available of the matter, and from the prosecution's perspective, documentary evidence is often more important than oral testimony. In investigations of labour exploitation, employers breaking the law are in many ways trying to mislead the authorities regarding, i.e., the length of the working day and the payment of wages, and this may hamper the securing of evidence of the crime committed.[98]

> But in the case where it's just employer's word against employee's word, so if there are no records of working hours, no written contract, no evidence of unpaid wages, then we may come across problems regarding the evidence. (Expert interview)

In the court trial, perception and cross-examination problems related to victims may cause problems to the prosecutor's work, and have impact on how successfully the prosecution proceeds in court, and on the outcome of the trial. Being under psychological pressure, victims may easily break down during the cross-examination, and thus change their story during the trial.

As the courts and prosecutors are not familiar with the criminal offence, the outcomes of the first proceedings might be unpredictable. At the moment, human trafficking cases are prosecuted under article 133 of the Penal Code, i.e. as enslavement. The wording of this article stipulates that the victim must end up in

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[96] Art 30 (1) Code of Criminal Procedure, RT[1] I 2003, 27, 166, entered into force 1 July 2004.

[97] *Ibid*., art 30(2).

[98] Jokinen et al. (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland, 121−122. Helsinki: HEUNI.

the exploitative situation against his/her will, which requires the prosecution to provide evidence of the broken will of the victim.

As observed above, victims usually do not consider themselves as victims and very often feel guilt and shame of ending up in the exploitative situation. Thus, for the defence it is very easy to break the victim during the cross-examination. The court's inexperienced perception of the elements of the unknown criminal offence, the unreliability of the victim's testimony, and insufficiently documented evidence might result in acquittal verdict. This is why the first proceeding of a new criminal offence is of crucial importance, especially when it comes to such a sensitive criminal offence as human trafficking or labour exploitation and forced labour.

7.7 The Labour inspectorate

The Labour Inspectorate (LI) is a government agency operating under the Ministry of Social Affairs. Their functions include carrying out administrative proceeding; to approve administrative acts and rules; to carry out extrajudicial proceedings concerning misdemeanours to the extent prescribed by law; to commence criminal proceedings and to carry out urgent investigative actions and to resolve individual labour disputes pursuant to procedure prescribed by law.[99]

However, LI officials have the jurisdiction to control only contractual labour relations, i.e. employees who are working with an employment contract. This gives rise to various issues in data collection and detection of cases of migrant labour exploitation. Firstly, the LI does not have the jurisdiction or competence to detect cases of migrant labour exploitation. The LI has not yet identified 'pure labour exploitation cases' but admit the possibility to have come across clandestine labour exploitation that would need further investigation. However, as one of the experts noted

> In order to investigate you need to have a personal motivation and interest in the topic. (Expert interview)

Secondly, raids to work places are being executed upon previous notice to the employer. Although there is no obligation to notify the employer about the planned raid, it is a common working practice. Additionally. raids are being carried out at the registered address of the employer and not at the actual work place where the exploitation may take place. Thirdly, the LI has no legal right to check a persons' identification.

> It is impossible to identify whether the person entered into and signed the employment contract is really the same person who is factually working. (Expert interview)

[99] Official website of The Labour Inspectorate, available at http://www.ti.ee/index.php?page=10&.

The only institution that has the jurisdiction for a person's identification is the police.

> Unfortunately, police officers are not able to accompany labour inspectors on each raid or not even on the ones where there is a suspicion of labour exploitation or any other breaches of law. (Expert interview)

The LI receives telephone calls and e-mails concerning exploitative labour situations in Estonia, but thus far they have not kept a record of the received data.

7.8 Trade unions

The Estonian Trade Union Confederation (ETUC) operates to ensure that the principle of social justice is respected in society. The EAKL represents the employees' interests in collective agreements and protects employees' rights in employment relations, consults employers on developing a sustainable labour market and the government on developing a socially sustainable economic model.[100]

Unfortunately, the role of trade unions has been insignificant in regards of labour exploitation and forced labour cases of migrants in Estonia or raising awareness of liabilities of seeking work abroad. In the course of our project, we were unable to conduct interviews with trade unions representatives. Therefore, the following comments have not been supported by official opinions of trade union representatives.

What was stated above about the lack of interest among labour market organisations towards the topic, applies to the participation of trade unions in the prevention of labour exploitation so far. Also they have not received adequate information concerning forced labour for the purposes of trafficking in human beings.

> Our society is not able to provide protection for employees. If an employee turns to the Labour Dispute Committee, he/she will most likely be fired, and the employer receives a reprimand at the most. […] The development and awareness of communication between employer and employee, work ambience and the culture of employment relations have been neglected in our current society. Maybe it's a question of general democracy development and the lack of experience of employers and employees. (Expert Interview)

[100] Official website of Estonian Trade Union Confederation, available at http://www.eakl.ee/index.php?pid=418&lang=7.

At the same time it is rather clear what the role of trade unions could be in the prevention of trafficking in human beings and exploitation or forced labour of migrant workers in Estonia. Issues of trafficking in human beings have been only little discussed with the trade unions. Therefore, in order to raise the issue of labour exploitation, the efficiency of cooperation should be improved, and first of all education and training should be provided to the trade unions in order to prevent potential cases of forced labour and working under forced working conditions.

In conclusion, our study indicates that the main problem regarding the relevant institutions in Estonia seems to be the lack of a state-imposed jurisdiction to control the factual situation at the factual workplace.

Chapter 8: Summary and recommendations

8.1 Summary

In recent years, the issues of trafficking in human beings for labour exploitation and forced labour have been recognised as a new aspect of human trafficking. The objective of the study presented in this report was to analyse the nature of trafficking for forced labour in Estonia, to provide an overview of exploitative situations existing in Estonia, including which economic sectors are especially affected, how such exploitation has been prevented, and whether relevant actors and authorities recognize and identify human trafficking victims for forced labour and labour exploitation.

Since this is a pilot project in the subject matter, we are happy to conclude that the study proved to be successful. Although several legal and practical obstacles prevented us from collecting as much data as we were initially hoping, we were nevertheless able to gather sufficient information for an initial overview of the situation in Estonia. We thus hope that this study provides an initiative and inspiration for further studies concerning trafficking in human beings for forced labour and labour exploitation.

8.1.1 Problems encountered during the study

The main problem we encountered during the study was the unavailability of relevant information. This issue concerned mainly pre-trial investigation materials and court verdicts. The access to the former is prevented by the Personal Data Protection Act that defines information concerning the commission of an offence or victimisation to an offence sensitive personal data before a public court hearing, the decision in the matter of the offence, or the termination of the court proceeding in the matter. Pre-trial investigation materials fall under these restrictions, since they involve sensitive personal data and are not allowed to be shared even for the purpose of research.

Another problem encountered during the current analysis was the lack of relevant cases and court verdicts. Thus, we could not receive any first-hand information but had to rely on second-hand and third-hand information and experience. This is also the reason why the description of cases in our study remains limited since we simply did not have any further information about them. However, as we learned from the expert interviews, this situation reflects the perception of human trafficking for labour exploitation amongst Estonian authorities. As we described also in chapter 5, most of the state authorities do not recognise trafficking in human beings to be a problem for Estonia.

In our study we were faced with difficulties when trying to reach victims of trafficking for labour exploitation and forced labour. This was partly because of

the victims' self-perception and partly due to the lack of an official victim assistance system. Victims of labour exploitation and forced labour very often do not see themselves as victims and thus do not report to any authorities about the experienced exploitation. The problem occurred also because none of the institutions that had come into contact with exploitation victims were keeping records on cases or potential victims. Contact between (potential) victims and institutions usually takes place in the form of consultation that, as a rule, is not recorded at all. In such a situation, we could only rely on the information provided by the experts.

8.1.2 Main findings

Estonia is mainly a source country of human trafficking for forced labour and labour exploitation. To a lesser extent, Estonia is also a destination country for migrants coming from former Soviet Union member states.

Estonia as a destination country

Most migrant workers arriving to Estonia are from former Soviet Union countries and are in general unskilled workers with a low educational level. Mostly, they are employed in the construction sector or the services sector (ethnic restaurants, massage salons etc). Unfortunately, there is very little data available about (potential) migrant labour exploitation and forced labour situations in Estonia. Potential labour exploitation of migrant labour from EU countries is difficult to detect due to the Schengen Visa zone arrangements.

The problematisation from authorities remains non-existent because law enforcement institutions lack jurisdiction. At the current point, no institution has jurisdiction or a legal obligation to control the factual situation at workplaces. Conducted interviews with relevant national actors demonstrated, unfortunately, the lack of interest towards changing the situation.

Estonia as a source country

The most popular destination countries for Estonian nationals, both Estonian and Russian speaking, are the United Kingdom, Finland, Norway, Germany and Sweden. According to the expert interviews, construction, seasonal job, social care and cleaning sectors tend to be those most affected by the large number of employed migrant labour and possible labour exploitation cases or even forced labour.

According to media sources and expert interviews, there is increased pressure for finding work abroad, because the situation in the Estonian labour market has deteriorated rapidly in the last year. The high unemployment rate, the decrease of the average income and the general living standard, and the increase of long-

term unemployment are the factors that have made people to seek for employment abroad and thus increased the risk of trafficking in persons for forced labour and labour exploitation. These vulnerabilities are in general accentuated by the lack of language skills; potential risk group people do not speak at all or speak only very poorly the language of the destination country.

In our study, we established that Estonian people have poor knowledge of human trafficking as well as about exploitation, labour rights and of human rights in general. This is strongly influencing their behaviour as migrant workers.

Media

The topic of our study is in general poorly reflected in Estonian media. This demonstrates a generally low awareness of human trafficking for forced labour and labour exploitation. Most of the trafficking-related articles concern sexual exploitation and prostitution cases.

Media are mainly reporting about deceit and/or fraud cases committed by labour facilitation companies. The voice in the articles is usually given to a few national actors that are more active in the media than state authorities. Such media reflection creates distinctive links between poverty, exploitation, and trafficking, emphasising the problematic socio-economic background of the victims, and stressing that the victims 'share the burden' and guilt in the exploitation.

Legislation

Estonia lacks a trafficking-specific law, and existing laws do not adequately prohibit and punish all forms of human trafficking. This is seen as a problem by many practitioners and scholars as it creates difficulties in data collection and statistics. The research findings indicate that the focus of legislation and law enforcement agencies was upon sexual exploitation rather than labour.

Currently, there are no court verdicts regarding trafficking for forced labour or labour exploitation. Human trafficking related cases that reach the court are usually about trafficking for sexual, not labour exploitation. It is evident that most of the cases that might be related to labour exploitation or forced labour end up in court based on the fraud article[101] in the Penal Code even when they comprise trafficking elements.

[101] Art. 209 stipulates fraud as 'A person who receives proprietary benefits by knowingly causing a misconception of existing facts', Penal Code, RT[1] I 2001, 61, 364, entered into force 1 September 2002.

8.2 Recommendations

Based on our main findings, we have made recommendations to improve the current national situation in Estonia regarding human trafficking for forced labour and labour exploitation.

Recommendations pertaining to legislation:

- Development and implementation of a human trafficking-specific criminal provision in the Estonian Penal Code that incorporates a definition of trafficking in persons in conformity with the UN Palermo Protocol and Council of Europe convention.
- Conducting an in-depth legal analysis of existing fraud cases and labour discrimination cases together with pre-trial investigation materials in order to detect potential trafficking in human beings for forced labour and labour exploitation cases.
- The issuing of activity licenses to labour facilitation companies should be based on stricter criteria, together with executing regular control over their activities.

Recommendations pertaining to institutions:

- Broadening the jurisdiction of the Citizenship and Migration Division of Police or the Labour Inspectorate so as to require them to control the factual situation at work places in order to identify potential labour exploitation cases or even forced labour situations in Estonia.
- Strengthening the role of trade unions so that they become the institutions that protect the labour rights of Estonian workers abroad and help to prevent migrant labour exploitation in Estonia.

Recommendations pertaining to victim assistance:

- Broadening the role of Estonian embassies abroad by training and general awareness raising to assist Estonian nationals who have become victims of human trafficking for forced labour or labour exploitation.
- Providing Estonian embassies abroad with the obligation to record all data regarding trafficking in human beings for forced labour and labour exploitation, in order to acquire an overview of potential trafficking cases of Estonian workers abroad and to provide them with the necessary assistance.

Recommendations pertaining to data collection:

- Broadening the tasks of the Labour Inspectorate of recording and systematically collecting complaints and data regarding exploitation of migrant labour and Estonian labour, in order to facilitate further research and to acquire an official overview of potential labour exploitation and forced labour situations in Estonia.

Recommendations pertaining to awareness raising:

- Raising the awareness of the general public concerning their human rights, labour rights, and human trafficking by means of developing the trade unions, providing training, and creating study curricula. Relevant national actors should resort to media more often as the ‘fourth power’ to raise the awareness about the topic.
- Raising the awareness of officials and authorities about the phenomenon by means of systematic professional training to the effect that throughout the chain of proceedings, the specialists dealing with cases of trafficking in human beings obtain a common understanding of the problem of trafficking in human beings, including the identification of victims, and the need and possibilities for referral for professional assistance, and specifications of this procedure.

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Trafficking for Forced Labour: Project Summary and Conclusions

Anniina Jokinen & Natalia Ollus

Summary of project activities

The FLEX project was premised on the fact that in the EU at large trafficking in persons for the purpose of forced labour has received relatively little attention as compared to trafficking for sexual exploitation. Moreover, the movement of labour continues to increase within and to the EU. While documented cases of forced labour and related trafficking remain low, there is evidence of an increase in various forms of labour exploitation of migrant workers.

The aim of this project and joint report was to describe the national situation regarding trafficking for forced labour and labour exploitation in Finland, Poland and Estonia and to improve data collection in order to gather better information on trafficking for forced labour and related phenomena. Our objective was to understand the kind of exploitative work situations that exist in the three countries; whether forced labour situations exist and whether these situations include elements of trafficking; which economic sectors are especially affected; what is being done to prevent such exploitation; whether relevant actors and authorities adequately identify victims of trafficking for forced labour and whether sufficient mechanisms exist to assist the victims.

In this project, we used both a qualitative and quantitative approach to collect information on trafficking for forced labour, e.g. expert and victim interviews, pre-trial investigation materials, court judgements, statistics and media sources. One of the outcomes of the project is a pilot methodology which can be used to carry out research on trafficking for forced labour, as well as to collect data on this phenomenon.

In each of the countries, the project built a network with relevant national actors to inform the process and facilitate access to various data sources. National meetings which were very well attended in all the three countries formed a basis for cooperation and exchange of information at the national level. Participants included representatives from the police, the border guard authority, prosecutor's office, labour inspectorates, immigration service, trade unions, employers' unions, NGOs, etc. The meetings discussed trafficking and labour exploitation and provided a platform for knowledge-sharing between the various actors. For example in Finland, the discussions addressed concrete cases of exploitation of migrant workers and the participants discussed the characteristics and nature of trafficking. Furthermore, challenges relating to the recognition, identification and prevention of the phenomenon, and needs for improvement, were identified. In Poland, the national expert meeting discussed the current legislation as well as

the need to enhance the identification of cases and raise public awareness. The Estonian meeting discussed the problems attached to the oversight and identification of exploitative situations in Estonia, the lack of a criminal provision on trafficking and ways in which victims can be encouraged to seek help from law enforcement and other institutions.

Moreover, throughout the course of the project an international network of contacts was built, resulting in one international expert meeting organised in Helsinki in December 2010. The participants included representatives from the International Labour Organization, United Nations Office on Drugs and Crime, International Organization for Migration, the European Commission, the Council of the Baltic Sea States, and the Bureau of the Dutch National Rapporteur, as well as practitioners and project partners from Finland, Poland and Estonia. The meeting examined how to improve data collection on trafficking for forced labour and the draft pilot methodology was presented and discussed. The meeting also focused on the definition of trafficking for forced labour and participants discussed the differences between trafficking versus exploitation, as well as the elements which constitute the offence of forced labour.

The national reports of all three countries were finalised in early 2011, and the research findings were discussed at national seminars which were well attended with the research being well received by the participants. In Finland, HEUNI organised a seminar in February 2011 entitled "Trafficking in Human Beings in Finnish Work Life" together with the Finnish National Rapporteur and the Central Organisation of Finnish Trade Unions (SAK).[1] The Finnish report was launched at a press conference at the beginning of the seminar and was disseminated to the participants of the seminar who were in excess of 150. The topic and the findings of the report have also been discussed widely in the Finnish media, including in the major newspapers and TV news and as a result, an active discussion on exploitation of migrant workers and trafficking for forced labour is currently taking place in Finland[2]. In Estonia, the findings of the project and the Estonian situation were discussed in a national seminar in February 2011. The seminar also discussed how to incorporate the findings of the research with the current government measures to counteract violence, including trafficking in persons. In Poland, the team organised a national meeting in February 2011 with 40 participants to discuss the issue of trafficking for forced labour and the recommendations regarding identifying and assisting the victims, as well as the role of labour unions and employers' organisations in tackling the phenomenon.

In the three countries, discussions were also held on the need for further research and studies to be carried out on the topic of trafficking for forced labour. The

[1] The seminar presentations are available at: http://www.ofm.fi/intermin/vvt/home.nsf/headlines/2740B79FD50C3DEBC225781E00319AE9?OpenDocument.

[2] The Finnish report was presented and discussed in at least twenty internet newspaper articles, in more than twelve print media articles, and in at least seven TV and radio appearances.

pilot methodology, developed under the auspices of the FLEX project, provides suggestions for further data collection and research into trafficking for forced labour.

Pilot methodology

One of the aims of the FLEX project was to describe trafficking for forced labour by using a large variety of different data sources. While many trafficking studies have developed a standardised methodology and indicators on trafficking, this project aimed at producing a comparative methodology which is locally applicable and incorporates both qualitative and quantitative information sources allowing for a more systematic data collection. Keeping this objective in mind, we encouraged innovative thinking throughout the project with regard to possible information and data sources.

The concrete result of the FLEX project is a pilot methodology which allows for describing trafficking for forced labour in a broad sense, and extends to cases beyond those that are known cases of trafficking. In addition, the methodology allows for data collection in situations where there is only limited official data and statistics, or where there are no criminal cases (cases that have entered the court). The methodology thus also allows for the description of potential or suspected cases of trafficking, i.e. situations where there is merely an indication that it might be trafficking.

The pilot methodology is intended to be universal and can be applied in different countries and contexts. The methodology is inherently qualitative in nature and is particularly suitable in situations where there is only limited information available. The focus of the pilot methodology is not solely on the trafficking process, but also incorporates a focus on whether situations of labour exploitation include forced labour and other exploitative outcomes of trafficking.

The pilot methodology consists of three parts:

- a comprehensive table listing possible data/information sources;
- a research methodology which includes the identification of key experts to be interviewed, the identification of relevant criminal cases for analysis, and an analysis of the current social and legal context, and;
- an analysis of the materials using the ILO indicators (ILO 2005b; 2008; 2009b) and existing legal practice.

We have not included the international legal framework in the methodology as such but our methodology is in essence based on the international definition of

trafficking in human beings and forced labour. Thus, the common international definitions form the starting point of the methodology.[3]

1) Sources of information

In the context of the FLEX project we have tried to identify all the key sources of information on trafficking for forced labour and labour exploitation (see Annex 1). We created a table which lists all potential sources of information identified by the FLEX project members. The aim of the list is to present an overview of how to collect state-of-the-art information on trafficking for forced labour in a comprehensive manner. We realise that not all the information listed in the table is easily or readily available. Some of the information might be difficult for researchers to access. In addition, some of the information may not only refer to trafficking for forced labour, but may instead describe exploitation of migrant labour in a broader sense.

The table in Annex 1 firstly lists the source of information, the prerequisites for the use of the information, as well as the strengths and weaknesses of the information. Finally, the table suggests a possible method of analysis of the data.

The pilot methodology has been used to different degrees in the three country reports but not all the listed sources of information have been used. The table is based on the actual data sources used in the research in the three countries but it also includes a variety of potential data sources, which we could not, due to time and other constraints, use during the course of the FLEX project. However, we hope that the suggested pilot methodology, together with the suggested data sources will provide a basis for additional studies on trafficking for forced labour in the three countries, and also in other countries in the European Union and beyond.

2) Research methodology

The suggested pilot methodology relies on a specific research method. The first element of the method is the identification of key actors and practitioners in the country in question. These actors can provide expertise and information on trafficking for forced labour. In the context of the FLEX project we used national expert meetings as a platform for identifying experts. We invited a variety of experts who either come in direct or indirect contact with the issue of trafficking for forced labour to attend a national expert meeting on the topic. The assumption was that these experts possess valuable information on the phenomenon and that by interviewing them, an insight to the topic can be gained. The first element of the methodology is thus to identify potential expert

[3] Key international instruments include the UN Palermo Protocol and the ILO Conventions No. 29 and 105 on forced labour.

interviewees from the group of national experts. The experts can then be interviewed using a specific thematic interview template (see Annex 3).

In addition to experts, it is useful if victims of trafficking or labour exploitation can be interviewed. While important ethical measures must be taken into consideration when interviewing victims of trafficking or other exploitation, these persons have valuable and unique first-hand information. With the exception of one interview, the researchers of the FLEX project interviewed only victims of trafficking (who had been defined as victims of trafficking by some authority). The proposed pilot methodology however suggests that returned migrants or victims of various degrees of labour exploitation be interviewed as well. In this regard, the ILO methodology of interviewing returned migrants (see Andrees & van der Linden 2005; Andrees 2009) provides useful and interesting methodological suggestions.

The proposed research methodology also requires that existing national legislation and legal practice be analysed. In the context of the FLEX project, the Polish team analysed a number of existing court cases on trafficking for forced labour and drew conclusions on the phenomenon based on the characteristics found in the court cases. In Finland, the researchers focused on analysing the definition of trafficking and forced labour in the context of existing court cases on crimes that resemble trafficking (such as extortionate work discrimination). In Estonia, as legislation on trafficking is lacking, the analysis looked at describing the phenomenon at a more general level.

3) Framework of analysis

The ILO indicators (ILO 2005b; 2008; 2009b) form the framework for the analysis (see Ollus & Jokinen 2011, 22–23 for an analysis of the indicators). Based on these indicators, the collected data and information can be analysed vis-à-vis whether they contain elements of trafficking for forced labour or not. These indicators are particularly useful in situations where there are no existing court cases on trafficking for forced labour (as in Finland and Estonia). In Poland, where there were existing court cases on trafficking for forced labour, the existing legal practice was used as a frame of reference.

The pilot methodology is flexible and can be applied in different situations, circumstances and legal contexts. The main idea behind the development of the method was to approach the phenomenon of trafficking for forced labour from the grassroots level, concentrating on finding information beyond existing statistics and official information.

We believe that the proposed pilot methodology complements the existing quantitative data collection recommendations and proposals (e.g. ILO 2009b; IOM & B.MI 2009; Surtees 2009; Vermeulen & Paterson 2010). While the methodology does not provide a template for data collection, it provides a suggestion as to how to qualitatively study trafficking for forced labour and labour exploitation in a variety of settings, and as such, it provides an important

addition to the discussion on the measurement of the phenomenon of trafficking in human beings. A summary of the main findings of the research in the three countries follows.

Summary of the research findings

According to this study, Finland is a destination country, Estonia mainly an origin country and Poland both a destination and an origin country of trafficking for forced labour. The situation in these countries is different with respect to the legislation, practices, actors and agencies involved, but the phenomenon itself shows similar traits in all three countries.

According to the research, the victims come from different countries which tend to be poorer than the destination countries. Both Finland and Poland have been destination countries for people coming from Asia, but it is also clear that people from within the EU, from Eastern Europe and former Yugoslavian countries end up as victims of forced labour in Finland and in Poland. The victims of trafficking identified in this research project usually lack language skills, and many speak only their mother tongue. They end up working in sectors such as agriculture, shipyards, construction, restaurant and service sectors, commerce, different seasonal jobs or as domestic servants..

Often victims are already indebted prior to arriving in the country of destination due to travel costs and different recruitment fees they have paid. Recruitment fees seem to be particularly common for workers coming from Asian countries. However, the Estonian research shows that Estonian workers have also paid recruitment fees. The research in Finland and Poland shows that victims are misled or even deceived by recruiters and intermediaries who make false promises and paint rosy images about the terms of work, length of employment and the salary paid. Sometimes no work is provided in the destination country, or the work is only part-time despite promises of a full-time job.

Research in Finland and Poland shows that the perpetrators are often of the same nationality as the victims. This means that they usually know how to exploit their countrymen and women, to take advantage of them, control and threaten them in different ways. However, it is also evident that some of the perpetrators are natives of the country of destination.

The research shows that victims are exploited in many different ways. Trafficking for forced labour is clearly present in many of the cases studied if one uses the ILO indicators (2005b; 2008; 2009b) on forced labour as a measure of the worst forms of exploitation in trafficking. The victims are usually paid very low salaries without any mandatory compensations or extras. There are also examples of victims receiving no salary at all. General working conditions are often poor, and the accommodation provided by the employers is expensive and often lacks basic amenities.

Victims find themselves under constant supervision and control and they are very dependent on their employer. They often work 6−7 days a week, 8−15 hours a day. Victims may have written work contracts in languages they do not understand. It also seems to be rather common that there are two different work contracts: one in the native language and one in the language of the destination country. These two contracts have different terms of employment and the aim of having two of them is to mislead the authorities in the country of destination into believing that the employee is hired under adequate terms.

The research shows very few indications of situations where the victims are physically locked in the work place. However, there are numerous indications of situations where their freedom of movement is limited in different ways and their passports and money are taken away. Victims are thus isolated from the surrounding society and remain unaware of their own rights and the terms of employment that are acceptable in the destination country. Direct use of violence seems to be somewhat rarer than various subtler forms of control and coercion. The research shows examples where the victims and their families have been threatened. Debt is also a powerful means of control, as it reinforces the victims' dependency on the perpetrators. Debt was present in many of the cases studied in the three countries. These various means of control are used in combinations which render the victims unable to quit the job and leave. As such, they are in a situation of forced labour.

According to the findings of the research, involvement of organised crime groups differ between the three countries. In Poland, there are cases of involvement of organised crime groups, but in the Finnish and Estonian data there were no direct indications of organised crime involvement.

The issue of leased and posted workers also became evident in the research as a potentially vulnerable group to exploitation. The research shows that the terms of employment of leased and posted workers are often precarious. This topic would warrant further research from the perspective of trafficking for forced labour.

Furthermore, problems regarding the identification of victims and cases and the provision of victim assistance are similar in all three countries. The victims of trafficking for forced labour and labour exploitation rarely want to contact authorities on their own. They often do not identify themselves as victims of trafficking and are often afraid of the authorities and of deportation. They hardly ever talk about the exploitation they have encountered even after they have returned home. This was particularly evident in the Estonian research, as the researchers had great difficulties finding informants willing to talk about their experiences of exploitation as migrant workers.

The research in Finland and Poland also shows that criminal investigations concerning the exploitation of migrant workers and trafficking for forced labour are lengthy and complex. At the very latest, problems emerge when the investigation leads abroad, as joint investigations and mutual legal assistance is often time-consuming and cumbersome. Also the attrition rate of cases seems to be high. This reflects the problems that exist during the investigation and again

in the prosecution of cases. Furthermore, the resources of the investigative authorities are often insufficient and most importantly, the law enforcement actors lack expertise to adequately identify cases.

Finally, the three studies confirm the premise that the phenomenon of trafficking for forced labour is particularly hidden. It is clear that the cases that come to the attention of the authorities represent merely the tip of the iceberg in all three countries. There obviously exist therefore huge difficulties in the identification of potential cases. In Poland, where court judgements on trafficking for forced labour do exist, the researchers maintain that there are still major problems in raising the awareness of the authorities and of the general public (Lasocik & Wieczorek 2011). Only very serious cases are identified as trafficking for forced labour in Poland. As such, victims have problems getting the help they need. (Ibid.) The Finnish research shows that while no judgements on trafficking for forced labour have been passed in Finland, the relevant cases are usually dealt with as extortionate work discrimination or as other work-related offences instead (Jokinen et al. 2011). Insufficient awareness on trafficking for forced labour among different authorities and actors, as well as stereotypical thinking hinder the identification of trafficking cases (ibid.). In Estonia, no specific prohibition of trafficking in persons exists (Kask & Markina 2011). The researchers argue that the level of awareness of trafficking for forced labour is not only low among the authorities, but also among the general public. It seems that the problems that arise during the criminal proceedings are attributable to the fact that relevant cases never reach court or are dealt with as fraud cases. (Ibid.) Estonians and Estonian Russians may end up as victims of trafficking or labour exploitation abroad only to return home without reporting the abuse they faced to anyone.

Based on the research findings from Finland, Poland and Estonia, below we finally arrive at some joint conclusions and recommendations about what can be done to counter the phenomenon of trafficking for forced labour and exploitation of migrant workers. We also make suggestions regarding data collection and further research on trafficking for forced labour and labour exploitation.

Conclusions and recommendations

The premise of the FLEX project was that the phenomenon of trafficking for forced labour is interconnected between the project countries of Estonia, Finland and Poland. While Estonians and Poles are among the largest groups of migrant workers that come to Finland, they also travel beyond Finland to the other Nordic countries and to Western and Southern Europe to work. A considerable percentage of Estonians and Poles work abroad, but we do not have comprehensive information about the exploitative situations they may encounter. Clearly, more information is needed on what distinguishes successful migrant workers from those migrants who become victims of exploitation, or at worst, trafficking for forced labour.

- We therefore recommend that following ILO practices (Andrees 2009), a survey on the experiences of returned workers be conducted in Estonia and Poland.
- In Finland, the same experiences could be captured by doing exit surveys at harbours and border crossings on people who are returning to their home countries. This would also improve the data that is available on the exploitation of migrant workers.
- The data collection efforts of various authorities in the three countries need to be streamlined. There is also a need to collect basic data on trafficking for forced labour. This is closely linked to the identification and recognition of cases.

Furthermore, while the volume of trafficking in the North-Eastern sub-region of the EU is not perhaps as high as in other parts of the European Union, we believe that the particular characteristics of trafficking for forced labour in this region are equally useful for understanding the phenomenon elsewhere. The results of the research show that the elements of trafficking for forced labour in Estonia, Finland and Poland are similar to the elements of trafficking for forced labour found in research in other countries in Europe. Our research confirms that the elements of the offence of trafficking for forced labour do not have to include extreme violence, coercion or force, but that victims are effectively exploited through more subtle and psychological means of control.

The research findings also indicate that making the distinction between trafficking for forced labour and other forms of labour exploitation is challenging. While both Finland and Poland have specific legislation criminalising trafficking for forced labour, current legal practice from both countries shows that the implementation of the definition is difficult.

- At least in the case of Finland, further guidelines on the interpretation of the definition of trafficking for forced labour is clearly needed.
- In Poland, there also seems to be a need to further elaborate on what constitutes trafficking for forced labour versus other crimes of work-related exploitation or forced labour as such.
- In Estonia, it is evident that a specific provision on trafficking is needed. Since Estonia is mostly a country of origin, attention should be paid to uncovering illegal recruitment practices and the facilitation of trafficking. To tackle this phenomenon, legal measures should also be taken against those who organise and facilitate such crimes

The research clearly demonstrates that there are real connections and overlaps between exploitative labour conditions and trafficking for forced labour. However, drawing strict lines between these may be counterproductive, especially from the point of view of the victims. Regardless of how the victims' experiences are defined by the criminal justice system, they have been victimised and should be helped.

Moreover, the research shows that cases of trafficking for forced labour are not adequately identified in the three countries. This is certainly the case as well in other parts of the European Union. In order to enhance the identification of victims and cases of serious exploitation, there is a need to improve the general awareness of the phenomenon not only among all the relevant actors, but also among the general public.

- Practitioners, in particular, should be educated about the indicators and the elements which constitute trafficking for forced labour so that they can identify potential victims and cases. Identification is a precondition for investigation, prosecution, conviction and compensation to victims. Mere identification is however not enough.

Victims also need assistance and help to overcome their ordeal and to be able to partake in criminal proceedings. The existing systems of assistance to victims of trafficking tend to focus on victims of sexual exploitation but the needs of victims of labour-related trafficking may be different from the needs of victims of other types of trafficking.

- Specific low-threshold services targeted to victims of trafficking for forced labour are needed in all three countries.

The project findings also indicate that practitioners do not necessarily know what to do when they encounter a potential victim of trafficking.

- National referral mechanisms should therefore be developed in the three countries.
- Finland has a National Rapporteur on human trafficking, and this kind of independent office should also be established in Estonia and Poland.
- In addition, more significant resources for the authorities, NGOs and other actors are needed to combat trafficking. This also requires that trafficking for forced labour be placed high on the political agenda.

Finally, following Andrees (2008), we argue that trafficking for forced labour exists within a continuum of exploitation. It exists in an environment where migrant labour is exploited and abused in many different ways in order to maximise the profits of the employers and their companies. The exploitation of migrant workers may take many forms, but when does simple exploitation turn into trafficking for forced labour? Taking into account the ILO indicators on forced labour as well as the definition of the Palermo Protocol, we have argued in our research that exploitation may turn into trafficking for forced labour when the migrant worker is unable to quit his or her job and step away from the control of the employer. If the worker cannot leave because of his or her dependency on the employer, due to the position of vulnerability and control enforced by the employer, it may be a case of trafficking for forced labour. It is our responsibility to identify such cases and to treat the victims of this crime with respect and dignity and to provide them with the help and assistance they need.

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Annex 1: Pilot methodology table

Information source	Description of the type of information	Preconditions	Strengths	Weaknesses	Suggested research method and analysis
INTERVIEWS					
Expert interviews	Interviews with selected experts within a set thematic framework/template E.g.: - Police - Border guards - Prosecutors - Judges - Trade Unions - Employers' organisations - Labour Inspectors - Migration authorities - Work permit authorities - Lawyers/Legal aid - Official victim assistance system - National Rapporteur or equivalent - NGOs (victim assistance, immigrant associations etc) - Faith-based organisations/church	Careful selection of interviewees, identification of the "best" experts Networking with experts (e.g. through the national expert meetings) Building of trust and motivation to participate (importance of personal contacts and institutional credibility) Suitable thematic interview template Informed consent Selection of interviewers, sensitivity, interviewer training	A variety of sectors and kinds of information (views) Information from the field/grassroots-level Get the opinion of the organisation	Biased information (only know what they know) Don't want to reveal all details they know Hearsay Don't want to mention/reveal weaknesses of their own organisation Don't want to give their own opinion, only the official line	Recorded (if possible) thematic interview Quantitative questionnaires to experts Coding and analysis Thematic analysis, discourse analysis, narrative analysis Quantitative analysis of questionnaires

	- Social workers - Ministry of Foreign Affairs/consular officers - Relevant Ministries (Interior, Justice, Social Affairs etc) - Researchers - Union stewards - Recruitment agencies, labour broker companies, employment agencies In addition to experts, there are middlemen, facilitators and those who assist victims (private persons) who could be interviewed with the same thematic framework/template				
Victim interviews	Interviews with identified victims within a set thematic template In addition to victims, there are friends, relatives, acquaintances, witnesses and those who assist victims (private persons) who could be interviewed with the same thematic template	System of assistance for victims of trafficking (to facilitate access to victims) Identification and access to victims through court files, personal contacts etc Building of trust A common language (need to use interpreters) Strict adherence to ethical considerations and confidentiality/anonymity	First-hand, unique and subjective information on exploitation The only source of information on the whole trafficking process, including criminal justice services and victim assistance Information on hidden criminality Opportunity for victim to share their experiences	Risk of trauma to victims (and interviewers) Effect of trauma on the story (inconsistencies and memory-failure) Fear Security risks to victims (and interviewers)	Recorded (if possible) thematic interview Recorded (if possible) life-story interview Quantitative questionnaires to victims Coding and analysis Thematic analysis, discourse analysis,

		Suitable thematic interview template Selection of interviewers, sensitivity, interviewer training Informed consent		Subjective information, exaggeration, down-playing Difficulty for the victim to distinguish between authorities and researchers Language and cultural problems and issues with using interpreters Expectations of victims (remuneration, assistance/help)	narrative analysis Quantitative analysis of questionnaires
Interviews with migrant workers	Interviews with returned or current migrant workers within a set thematic framework/template	Identification and access to migrants through NGOs, work places, labour inspectorates, trade unions, media and social media, etc Building of trust A common language (need to use interpreters) Strict adherence to ethical considerations and confidentiality/anonymity	First-hand, unique and subjective information on experiences and possible exploitation Second-hand information on experiences of other migrant workers Subjective views on motivations to migrate and the migration process (recruitment, employment, conditions etc)	Subjective information Difficulty for the migrants to distinguish between authorities and researchers Language and cultural problems and issues with using interpreters Expectations of migrants (remuneration,	Recorded (if possible) thematic interview Recorded (if possible) life-story interview Quantitative questionnaires to migrant workers Coding and analysis

		Selection of interviewers, sensitivity, interviewer training Suitable thematic interview template Informed consent Migrants' status might affect their willingness to participate in research	Information on hidden criminality Opportunity for migrants to share their experiences	assistance/help, effect of research on overall migration policies and attitudes towards migrants) Risk of trauma to migrants Effect of trauma on the story (inconsistencies and memory-failure) Fear Security risks	Thematic analysis, discourse analysis, narrative analysis Quantitative analysis of questionnaire
Interviews with perpetrators	Interviews with convicted/charged/suspected perpetrators of human trafficking within a set thematic framework/template	Identification and access to perpetrators through media and social media, law enforcement authorities, court files, pre-trial investigation files, prisons, experts and victims, etc Building of trust A common language (need to use interpreters) Strict adherence to ethical considerations and confidentiality/anonymity	First-hand, unique and subjective information on the trafficking chain and process (recruitment, transport, exploitation), modus operandi Subjective views on motivations to exploit (opportunities, market) Second-hand information on experiences of other perpetrators, victims Information on hidden criminality	Too dangerous to interviewers Difficulties to identify and get access to respondents and get their consent Subjective information, inconsistencies, authenticity of the narrative, exaggeration	Recorded (if possible) thematic interview Recorded (if possible) life-story interview Quantitative questionnaires to perpetrators Coding and analysis Thematic analysis, discourse analysis, narrative analysis

		Suitable thematic interview template Selection of interviewers, sensitivity, interviewer training Security of interviewers and interviewees Informed consent		Difficulty for the perpetrator to distinguish between authorities and researchers Risk of trauma (to perpetrator and researcher)	Quantitative analysis of questionnaires
Interviews with employers	Interviews with employers who employ migrant workers within a set thematic framework/template E.g.: - Ethnic restaurants - Construction industry - Cleaning - Social and health care - Seasonal work (e.g. agriculture) - Small factories - Transport - Metal industry, shipyards - Fishery and fish-processing - Food processing - Hospitality sector - Market/bazaar work - Farming, agriculture, berry picking - Recruitment and labour mediation agencies	Identification and access to employers through employer's organisations, trade unions, labour inspectorates, law enforcement authorities, media and social media, court files, pre-trial investigation files, experts and victims, etc Building of trust A common language (need to use interpreters) Strict adherence to ethical considerations and confidentiality/anonymity Suitable thematic interview template	First-hand, unique and subjective information on recruitment of migrant labour, transport, conditions of work Second-hand information on experiences of other employers, exploited migrants Subjective views on motivations to recruit and possibly exploit migrant workers Possible own first-hand information on migration and exploitation	Do not have relevant information or unwillingness to talk Language and cultural problems and issues with using interpreters (if the employer is also a migrant) Difficulty for the perpetrator to distinguish between authorities and researchers	Recorded (if possible) thematic interview Recorded (if possible) life-story interview Quantitative questionnaires to employers Coding and analysis Thematic analysis, discourse analysis, narrative analysis Quantitative analysis of questionnaires

	- Clothing factories and sweatshops	Selection of interviewers, sensitivity, interviewer training Security of interviewers and interviewees Informed consent			
CRIMINAL JUSTICE SYSTEM					
Court judgements	Judgements/decisions of criminal courts, civil courts, labour courts/arbitration courts etc. concerning: - Trafficking in human beings - Enslaving - Fraud - Usury - Labour/work exploitation - Extortionate work discrimination - Labour/work discrimination - Violation of worker's rights - Arrangement of illegal immigration/smuggling - Etc.	Knowledge about existing cases Access to decisions and files Research permits might be needed Open-mind to the possibility of trafficking cases existing under diverging crimes	Legally relevant information Factual information and diverge description of cases, including testimonies Court argumentation on the legal definition of the crime Information on case-law and precedents Witness statements	Differences in the way the decisions/judgements are written and structured Lack of guidelines, inconsistent knowledge, lack of details Differences in court data bases Difficult to access the data bases, non-transparent registration of cases Lack of relevant information Secondary, tertiary information	Text analysis Thematic analysis, typologies Dogmatic (legal) analysis Quantitative analysis of data

Pre-trial investigation materials and prosecution materials	Information on the investigations by law enforcement (police, border guards, prosecution, tax and customs officials and prosecutors) into relevant cases, e.g.: - Trafficking in human beings - Enslaving - Fraud - Usury - Labour/work exploitation - Extortionate work discrimination - Labour/work discrimination - Violation of worker's rights - Arrangement of illegal immigration/smuggling - Etc.	Knowledge about existing cases Access to decisions and files Research permits might be needed Open-mind to the possibility of trafficking cases existing under diverging crimes Selection of suitable cases	Detailed information on victims, witnesses and perpetrators Interrogation protocols with first-hand information on victims, witnesses and perpetrators (but constructed by the officials) A variety of material evidence	Lack of access at all (legal obstacles) If available, limits to using the data (secrecy) If available, sensitivity of the data (what details can be included) The information focuses on finding evidence, not necessarily a comprehensive description of the victim's or suspect's situation Large amount of information, difficult to identify relevant data	Text analysis Content analysis Thematic analysis, typologies Discourse analysis Quantitative analysis of data
INSPECTION REPORTS AND PERMIT AUTHORITIES					
Labour inspection reports	Information on the labour market, violations of labour law, workers' rights and guidelines for improvement	Access to files, data bases Availability of inspection reports and relevant information	Background information on issues in the labour market (especially concerning migrant workers) Information on irregular employment, working conditions and violations	Differences in the way the reports are written and structured Lack of guidelines for reporting, inconsistent knowledge, lack of	Text analysis Content analysis Thematic analysis Discourse analysis Typologies Quantitative

			of workers' rights	details Difficult to access the data bases Difficult to use the data bases Lack of unified recording and storage of information Lack of relevant information Secondary, tertiary information	analysis of data
Reports by ombudsmen, health, tax, social and welfare authorities as well as civil society actors	Information on the conditions of migrant workers in a given country	Access to files, data bases Availability of inspection reports and relevant information Research permits might be needed	Background information on the conditions of issues in the labour market (especially concerning migrant workers) Information on irregular employment, working conditions and violations of workers' rights	Fragmentary data and lack of cooperation and sharing of information between authorities Differences in the way the reports are written and structured Lack of guidelines for reporting, inconsistent knowledge, lack of details	Text analysis Content analysis Discourse analysis Thematic analysis Typologies Quantitative analysis of data

				Difficult to access the data bases Difficult to use the data bases Lack of unified recording and storage of information Lack of relevant information Secondary, tertiary information	
OTHER SOURCES OF INFORMATION					
Media	Stories of exploitation, experiences of migrant workers, description of working conditions, victim assistance, criminal justice efforts etc Sources, e.g.: - Newspapers (daily, weekly, national, local, regional) - Trade union magazines - Employer union magazines - Special magazines: newsletters, bulletins - Advertising papers - Ethnic (other language) newspapers	Access to newspapers (cost) Access to newspaper archives	Cover events and incidents not possible to locate/find anywhere else Interviews with victims, perpetrators, people involved, experts Description of the situation Brings cases to public attention and the attention of authorities Investigative journalism Helps identify other relevant cases and data (pre-trial investigation	Do not offer an analysis of the information Sensationalist information Time and cost of going through archives Lack of electronic archives	Text analysis Content analysis Discourse analysis Thematic analysis Typologies Quantitative analysis of data

	- TV-broadcasts - Radio broadcasts - Internet: newsportals, advertising portals, blogs, discussion fora, social media		and courts) Helps identify potential interviewees		
Expert meetings	Gathering of people with knowledge of trafficking for forced labour or representing institutions dealing (or supposedly dealing) with the issue	Careful identification, selection and motivation of experts/participants who have information on concrete cases Access to experts Building of trust and motivation to participate (importance of personal contacts and institutional credibility) Participants prepare prior to the meeting (each participant presents available information and the viewpoint of the institution)	Creation of network and awareness-raising Identification of interviewees Face-to-face interaction with representatives of a variety of sectors Possibility that the expert meeting results in enhanced cooperation between actors	Have no information, not willing or allowed to share information Unmotivated to participate Hearsay, only second or third-hand information	Notes, reports and memoranda from the meeting Recording (if possible and if it doesn't affect the meeting)

Annex 2: Infopaper for Expert Interviews (Template)

Labour Exploitation and Trafficking for Forced Labour

The EU-funded project *Trafficking for Forced Labour and Labour Exploitation (FLEX) - towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* was started in November 2009. The FLEX project is coordinated by the European Institute for Crime Prevention and Control (HEUNI) in Finland. The aim of this project is to map the existence of labour exploitation that can be defined as trafficking for forced labour in Estonia, Finland and Poland. The aim of the project is to increase the knowledge of trafficking for forced labour and labour exploitation in Finland/Estonia/Poland and to strengthen cooperation and exchange of information nationally and internationally. The essential goal of the project is also to develop a data collection method for more systematic collection of information on trafficking for forced labour and related crimes. The country report (in Finnish/Estonian/Polish) and the joint 3-country report (in English) are to be published in early 2011.

Interviewing experts who deal with labour exploitation and trafficking for forced is one part of the project. We are interested in discussing concrete cases of labour exploitation that you may have encountered in your work and the types of labour exploitation and trafficking for forced labour that citizens of Finland/Estonia/Poland have experienced in other countries, as well as discuss types of exploitation of migrant labour within Finland/Estonia/Poland. We want to know which sectors are particularly vulnerable to exploitation, where are the victims from, how they are recruited, exploited and forced to continue working and what happens to the cases after they have been identified. We would also like to talk about possible data sources, how data is collected and recorded and where we can find additional information on labour exploitation and forced labour.

The information gained from the expert interviews is confidential and professional discretion is maintained. Interviews are reported in the final publications so that the interviewees or their stories cannot be recognised.

If you have any questions about the FLEX project or the interviews, please contact our staff.

Kind regards,

Name
Title
Phone number
E-mail address

Annex 3: Thematic Interview Template for Expert Interviews

1. Have cases of exploitation of (migrant) labour come to your attention - either from the country, to the country or within the country? Please give examples and describe the cases.
   ADDITIONAL QUESTIONS IF NEEDED:
   a. What type of exploitation is involved?
   b. Who are the victims: where are they from, are they minors/adults, males/females, can you describe their background?
   c. What is the recruitment process: how do these people find the employment, are there mediators/facilitators involved, fees, subcontracting chains etc; how is the transportation organised; do they transit any countries; what kind of documentation do they have; are they posted workers/leased workers?
   d. Who are the perpetrators/exploiters: where are they from; men/women; part of some larger organisation?

2. Which economic sectors are especially affected by such labour exploitation?

3. How do employers force the employees to work?
   ADDITIONAL QUESTIONS IF NEEDED:
   a. What are the methods used?
   b. How are the employees kept under control?
   c. Do employers use violence or threats, or other forms of control?

4. What happened to the workers who were exploited?
   ADDITIONAL QUESTIONS IF NEEDED:
   a. Did you help them and how?
   b. Where do the victims end up?
   c. Do they want to stay in Finland/Estonia/Poland?

5. What legislative terms do you use in describing these cases?
   ADDITIONAL QUESTIONS IF NEEDED:
   a. Do you think there are forced labour situations involved in these cases of exploitation? (Note to interviewer: if the concept of forced labour is unclear to the respondent, suggest elements of forced labour)
   b. Do you think these situations include elements of trafficking in human beings? (Note to interviewer: if the concept of trafficking is unclear to the respondent, suggest elements of the crime)
   c. How have you recorded/registered these cases?

6. Are you familiar with the national legislation regarding the misuse of foreign labour/human trafficking?
   ADDITIONAL QUESTIONS IF NEEDED:
   a. Do you think the current legislation (criminal law and labour law) is sufficient?
   b. Do you find the definitions adequate to deal with the issue?

7. Do you think the assistance and support system for victims of trafficking is sufficient?
   ADDITIONAL QUESTIONS IF NEEDED:
   a. Do you think there is need for additional mechanisms to assist victims?
   b. Do you think responses need to be improved, and if so, how?

8. Do you think the relevant actors and authorities are able to recognise/identify victims of trafficking for forced labour?

9. Do victims contact your organisation directly or do you do outreach work to find victims/exploited persons?

10. Have these cases of exploitation been reported to any (law enforcement) authority? If yes, how does law enforcement deal with these cases?

11. Has your organisation/entity collected information on various types of labour exploitation, forced labour, trafficking for forced labour? (also: exploitation of migrant labour etc)?

12. Do you keep any statistics on this issue, any registries, any case files?

13. In order for us to find out more about this phenomenon would you like to suggest to us any additional sources of information or people to interview?

14. How has the economic downturn affected the (labour exploitation/trafficking/forced labour) situation?

15. Why does such labour exploitation exist in Finland/Estonia/Poland? What do you think are the underlying reasons for this exploitation? Why does this phenomenon continue to exist?

16. Is there anything else you would like to add or do you have any additional ideas regarding what should be done to combat labour exploitation and trafficking for forced labour?

Annex 4: Infopaper for Victim Interviews (Template)

The EU-funded project *Trafficking for Forced Labour and Labour Exploitation (FLEX) – towards increased knowledge, cooperation and exchange of information in Estonia, Finland and Poland* commenced in November 2009. The FLEX project is coordinated by the European Institute for Crime Prevention and Control (HEUNI), located in Finland. The project aims to map the existence of labour exploitation that may amount to trafficking for forced labour in Estonia, Finland and Poland. The objective is to increase the knowledge of trafficking for forced labour and labour exploitation in Finland/Estonia/Poland and to strengthen cooperation and exchange of information nationally and internationally. The country report (in Finnish/Estonian/Polish) and the joint 3-country report (in English) are to be published in early 2011.

Interviewing Estonian/Polish citizens who have experienced labour exploitation abroad or migrants who have experienced labour exploitation within Finland/Estonia/Poland is one part of the project. We are interested to know how you found out about the job, what your working conditions were like and how the situation was resolved. [Add/remove specific questions/points according to your local needs.] Your answers will give us valuable information and we are very thankful for your participation.

The information gained from interviews will be treated in a confidential way. We will not share the information with outsiders and will follow all relevant standards of data management. In the final publication the information will be presented in such a manner that no individual interviewees can be recognised. Participation in the interviewing process is voluntary. You are free to withdraw from the interview at any point or decline to answer any particular question if you want.

If you have any questions about the FLEX project or the interviews, please contact our staff.

Kind regards,
Name
Title
Phone number
E-mail address

Annex 5: Thematic Interview Template for Victim Interviews

Can you tell me how long you have been in Finland/Poland/Estonia/Country X?

How long have you worked in Finland/Poland/Estonia/Country X? Where have you worked?

Recruitment

How did you hear about the job? How did you end up working there?

Did get the job through an employment agency or mediation company?

Did you have to pay something (e.g. a mediation fee) to get the job? How much did you pay and to whom?

How did you get a work permit? Who obtained it for you? Did you pay for it?

How did you travel to Finland/Poland/Estonia/Country X? Did you buy the tickets yourself?

Did you have to borrow money to be able to travel to Finland/Poland/ Estonia/Country X? How much? Where did you borrow the money?

Did someone meet you at the airport/railway station/harbour etc? Who?

Work

What kind of work did you do? Where?

Did the work/employment correspond to what you were promised?

What were your working hours? What time of the day and how many hours per day? How many days per month?

How many employees where there in the same work place?

What were the working conditions like?

What was your employer like? How did you communicate with him (especially if no common language)?

Were you threatened (with violence, exportation, police etc.)?

Did the employer use violence against you?

Were you able to quit the job at will?

Were you forced to keep working? How?

Did you have your passport/identification papers with you at all times?

Did you tell anyobe about the situation?

Salary and employment contract

Did you have a written and signed employment contract? Or just an oral agreement?

How was the salary paid (in cash, to bank account etc.)?

How often where you paid the salary?

Can you tell how much salary you received?

Where you satisfied with the salary?

Did you ever have problems getting the salary?

Was the salary the same as promised?

Did you pay any taxes?

Did you have to pay any part of your salary back to the employer?

Were there any expenses deducted directly from your wages?

Were you able to save anything from your salary?

Did you send money back to your family in your home country?

Housing

Where did you stay/live?

How many of you lived there?

How was the housing arranged?

How much did you pay for the housing?

Were you satisfied with the living conditions?

Did you think you had to pay too much for living there?

How did you commute? (How did you go to work?)

Free time

Did you have any days off?

Were you able to do anything you wanted during your free time or did you have to ask permission from the employer?

Did you get to know any local people? (Did you learn the local language?)

Were you in touch with your family and friends in your home country?

How did your employment end?

Getting help

Did you seek help yourself? Where?

Did you get help? What help did you get?

Are you satisfied with the help you got?

How did the authorities hear about the situation?

Do you know if your case has been investigated and/or prosecuted? If so, do you know how the case is proceeding?

Finally

Have you heard about others who have had problems while working in Finland/Poland/Estonia/Country X?

Do you want to stay in Finland/Poland/Estonia/Country X or do you want to return to you home country or move to another country and work there?

Is there anything else you would like to add?

Annex 6: Questionnaire of analysis of criminal cases in Poland

1. Basic information about offender (age, gender, nationality, educational background, criminal record, etc.)
2. Basic information about victim
   a) Age
   b) Gender
   c) Nationality
   d) Educational background and profession
   e) Family situation before he/she became a victim of forced labour
   f) Did the victim know the local language?
3. Information about the victim's work
   a) In which economic sector was the victim exploited?
   b) How was the victim exploited:
      i. Use of violence or threats of violence against the victim (type of violence, physical/sexual, also threats against family members)
      ii. Restriction of freedom of movement at the workplace
      iii. Threats of denunciation to authorities (if irregular status)
      iv. Debts: were possible costs of transport and recruitment deducted from the victim's salary? Did the victim pay the employer excessive amounts for accommodation, food etc?
      v. Wages/salary: how much did the victim earn, was the salary paid regularly or not, did the victim receive in-kind payments, were there unlawful deductions from the wage?
      vi. Were the identity documents of the victim taken by the employer, did the victim have access to his/her documents?
   c) What were the working conditions?
   d) How many hours did the victim have to work? Including overtime and weekend work
   e) Did the victim get work/social protection (contract, insurance, etc.)?
   f) What was the legal status of the victim at the destination country?
   g) Were the victim´s documents confiscated?
   h) What were the conditions of the victim's accommodation?

4. How and by whom was the victim identified?
5. What happened to the victim after identification/after the trial?
6. What kind of assistance did the victim receive?
7. Did the victim receive compensation?

8. Was international cooperation used during investigations?
9. Final sentence (if the case is ended with a final court sentence)
10. Brief description of the case facts

Annex 7: Questionnaire for the interviews with the victims of forced labour and for court cases analysis in Poland

1. Brief description of the case facts.
2. Basic information about victim.
   a) Age
   b) Gender
   c) Nationality
   d) Educational background and profession
   e) Family situation before he/she stay a victim of forced labour
   f) Did the victim know the local language?
3. Information about the victim's work
   a) Working conditions
   b) How long was the victim exploited?
   c) Working hours (how many)
   d) Work/social protection (contract, insurance, etc.)
   e) Legal status of the victim at the destination country
   f) Were the victim´s documents confiscated?
4. Conditions of the victim's accommodations.
5. How and by whom was the victim identified?
6. What happened to the victim after identification/after the trial?
7. What kind of assistance did the victim receive?
8. Did the victim receive compensation?