

Trafficking for Forced Labour and Labour Exploitation – Setting the Scene

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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 (UNODC), 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 (Arbetsmarknadsdepartementet 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. arising 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).

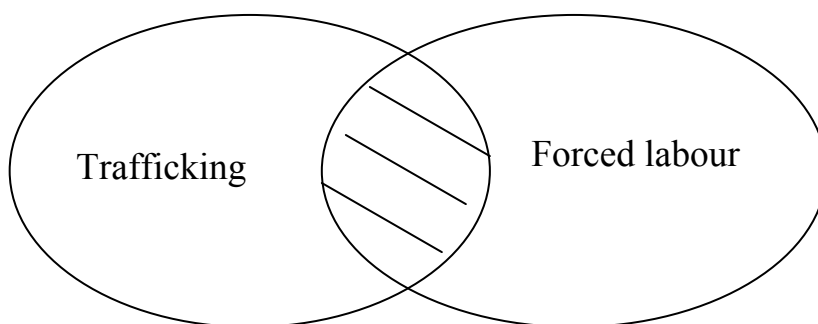
The ILO operational indicators on trafficking in human beings for improved identification, characterisation and data collection (ILO 2009b) provide a more detailed aid for identifying and recognising cases of trafficking. These indicators enable an analysis of whether a specific case shows signs of trafficking 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 Finnish⁴ and the Polish⁵ reports were translated into English and shortened. The Estonian partners wrote their report in English and then translated it into Estonian⁶.

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

⁴ Jokinen, Anniina, Ollus, Natalia & Viuhko, Minna (2011): Ehdolla 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 trafficking². 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 report³ 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 trafficking⁴.

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, 9⁵). 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 at the end of 2009 including 56,100 EU citizens, and 31,500 CIS⁹ 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 countries¹⁰ 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. (Työsuojelehallinto 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 workers¹¹, 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 (Uusi-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 2010¹². 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 English¹⁵. 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

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 case²⁴ (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 sanctions²⁵:

- extortionate work discrimination,
- instigation to extortionate work discrimination,
- work discrimination²⁶ + 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 research register, there were only six final judgements²⁷ 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 perspective²⁹ 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; Burčiková 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 Estonia³¹ 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. (Ultiiminen 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 world³³, 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 have residence 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 intermediaries³⁴, 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 (Keskiuomalainen 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 be 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 citizen³⁶ 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 nearby 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 inspectorate³⁹, 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 District 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 & B.M.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 study⁴¹.

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 police⁴². 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 locality⁴³. 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 investigation⁴⁴; 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 country. 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 trafficking 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 2009⁴⁵. 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 asphaltting 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.

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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