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Delegations will find attached a report of the THB Project Team on Prosecuting Trafficking in Human Beings for the Purpose of Labour Exploitation.



Prosecuting THB for the Purpose of Labour Exploitation

REPORT

THB Project Team

December 2015

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1. Introduction

Purpose This report provides a source of information for practitioners involved in the investigation and prosecution of THB for the purpose of labour exploitation. It elaborates on a number of indicators of 'labour exploitation' that have emerged from national case law. Given that THB is very often a cross-border crime, the report also highlights best practice in judicial cooperation as identified through the analysis of Eurojust's casework.¹

Background In the context of the preparation of Eurojust's Strategic Meeting on THB, held in The Hague on 16 and 17 April 2015 (hereinafter *Strategic Meeting THB 2015*, which prompted the publication of a comprehensive [Outcome Report](#)),² a questionnaire on THB was addressed to the national authorities of Member States as well as Switzerland and Norway (hereinafter *THB External Questionnaire*). Section A of this questionnaire was dedicated to THB for the purpose of labour exploitation and focused on **(i) the existence of indicators to establish the labour exploitation purpose, and (ii) best practice stemming from national prosecuting experiences**. The responses revealed, inter alia, serious challenges in prosecuting THB for the purpose of labour exploitation as such, especially due to the difficulty in proving the labour exploitation purpose ([Annex](#) to the *Outcome Report Strategic Meeting THB 2015*).³

Methodology and Limitations The findings of this report are based on the analysis of (i) 32 judgments from 10 Member States and Norway,⁴ referred to Eurojust by national authorities when replying to the *THB External Questionnaire*; (ii) 17 cases registered in Eurojust as THB for labour exploitation; (iii) 29 responses to the *THB External Questionnaire*; and (iv) the outcome of the *Strategic Meeting THB 2015*. The analysis of case law does not aim to be exhaustive, given that it relies only on decisions referred to Eurojust in preparation for the *Strategic Meeting THB 2015*. As well as this, the low number of THB for labour exploitation cases referred to Eurojust does not allow the drawing of firm conclusions and can be considered only as illustrations of possible best practice in judicial cooperation.

Structure Chapter 2 focuses on the analysis of judgments on THB for the purpose of labour exploitation. Chapter 3 concerns Eurojust's casework on the same subject. Chapter 4 recalls the findings of the *THB External Questionnaire* and *Strategic Meeting THB 2015*. The final Chapter is dedicated to conclusions. Annex 1 presents the table on the analysed case law. Annex 2 includes the domestic legal provisions relied upon.

¹ This report might be taken as complementary to the *Study on case law on trafficking for the purpose of labour exploitation* published by the European Commission in October 2015, insofar as it focuses on proving the labour exploitation purpose and judicial cooperation in relation thereto. See http://ec.europa.eu/anti-trafficking/publications/study-case-law-trafficking-purpose-labour-exploitation_en.

² Eurojust, Strategic meeting on trafficking in human beings, The Hague, 16-17 April 2015, *Outcome Report*, available at <http://www.eurojust.europa.eu/Practitioners/operational/THB/Pages/THB-project.aspx>.

³ Annex to the outcome report of Eurojust's Strategic Meeting on THB, 16-17 April 2015, 3-6, available at <http://www.eurojust.europa.eu/Practitioners/operational/THB/Pages/THB-project.aspx>.

⁴ ⁴ This report might be taken as complementary to UNODC database SHERLOC, which includes several cases on THB. At the time of writing, there is one common case in this report and SHERLOC. See <http://www.unodc.org/cld/index-sherloc-cld.jsp>.

2. Proving the labour exploitation purpose

2.1 Analysis of selected case law

Purpose This Chapter aims to identify the indicators of labour exploitation as well as to better understand the interpretation thereof in specific cases. It is based on the analysis of 32 judgments from 11 countries. Hence, the Chapter should be read together with Annex I, which provides a summary of the examined national case law. Annex I also submits a synopsis of the ruling of the European Court of Human Rights (ECtHR) in *Siliadin v. France* since it is often recalled by domestic courts.

Furthermore, it should be noted that not all countries referring to specific indicators as identified *infra* adopted the same interpretations and/or faced the same difficulties in respect thereof.

Indicators From the analysis it emerged that courts consider the following indicators when assessing the 'labour exploitation purpose' in THB cases:

- **Poor living and working conditions** (AT, CZ, DK, ES, FI, IT, IE, NL, NO, SE, UK). To be precise:
 - *Reduced salaries* (or absence thereof) and *excessive working hours* (namely requiring night work and during weekends with very little or no rest periods) are important indicators of labour exploitation.
 - *Withholding salaries* for the alleged purpose of safekeeping or as penalties for unsatisfactory work is an indicator of labour exploitation.
 - The *nature and/or intensity of the work* shall be evaluated *vis-à-vis* the specific conditions of the victim, e.g. tasks that would not present a particular hardship for an adult man may do so for a child.
 - *Hygiene and safety conditions* are to be taken into account when assessing the 'labour exploitation purpose'.
 - Ensuring *accommodation in the workplace* enhances the ability of the employer to submit victims to excessive periods of work.
 - The crime of labour exploitation may be defined as a *crime against the rights of workers*. When foreign citizens are concerned, specific indicators of the crime include recruitment under misleading conditions, without work permits, or under conditions that would hinder or reduce labour rights (Annex 1, Decision 651/2006).
 - The *attempt to escape the scope of application of labour law* – e.g. referring to an internship with no retribution attached – will not automatically preclude the offence of labour exploitation.
- **Coercion⁵ and limitations on freedom of movement** (CZ, DK, ES, FI, IE, NL, SE, UK). In this regard:
 - The fact that a person is not held in absolute *deprivation of freedom* (e.g. victims are allowed out of work and residence only under tight surveillance or under *threat* of *retaliation* against themselves or

⁵ Coercion includes threats of punishment, death, and/or bodily or psychological harm as well as actual damage to physical and/or psychological integrity.

- family/loved ones were they not to return) does not preclude the crime type of THB for labour exploitation.
- The possibility for the victim to freely *travel* around the country for several months tends to suggest the absence of THB.
 - The *dependence of a victim vis-à-vis* the perpetrator (because, e.g., the former arrived in the country as a child and has since and for several years lived with the perpetrator) outweighs the apparent freedom of movement.
- **Language limitations** (CZ, ES, FI, IE, NL, SE). Notably:
- The fact that the victim does not speak the *language* of the country where he or she ‘works’ and is unable to communicate in any common language might be an important component of *vulnerability* that exploitation depends upon; the consent of the victim bears no weight on the assessment.
 - This vulnerability becomes particularly evident, e.g., when the employee receives the *contract* in a language he or she does not understand.
- **Seizure of identification documents by or on behalf of the employer** (CZ, ES, FI, NL, NO, SE). In particular:
- Allowing the victim to have access to his or her *documents* only to make *cash-transfers* to the country of origin after which the documents are again seized by or on behalf of the employer is an indicator of labour exploitation.
- **Illegal or irregular entry to or residence in the forum state** (ES, IE, NL, SE). In this respect:
- *Illegal immigration*⁶ is considered as trafficking when its aim is to potentially *create a situation of exploitation*; the actual exploitation of the victim is not a constitutive element of the offence.
 - Illegal immigration of workers and labour exploitation are *not crimes automatically linked*: the former is evidenced through the mere fostering of entry to the country of labour force, regardless of accomplishing the purpose of labour exploitation (if at all in existence).
 - THB for labour exploitation includes *managing and facilitating the travelling of victims*, e.g. by providing false residence and work permits (hence, even if there is no direct involvement in the ‘work relation’), thus enabling the actual employers with the power to control and manage the workers.
 - Labour exploitation implies employing *foreign citizens* without a *work permit* and on labour conditions that would hinder or reduce labour rights (Annex 1, Decision 372/2005).
- **Bondage debt** (ES, FI, NL, SE). Importantly:
- The existence of a *debt from the victim towards the perpetrator* does not justify or allow the seizure of identification documents.
- **No or limited medical insurance and social security contributions** (ES, IT, NL). Relevantly:

⁶ In this context, the terminology ‘illegal immigration’ refers to the entry or permanence of foreign nationals in the territory of a country in breach of that country’s laws regarding the entry, transit and residence of aliens (see, e.g., **Council Directive 2002/90/EC** defining the infringement of facilitation of unauthorised entry, transit and residence).

- The non-existence of a *labour contract* or registration with *Social Security Services* unveils the economic loss of the victim and co-related economic advantage of the perpetrator.
- The infringement in the payment of social contributions (i.e. '*black work*') does not suffice to prove the purpose of labour exploitation without proving that the living and working conditions were abusive.

It is relevant to note that 18 respondents to the *THB External Questionnaire* also referred to several of the indicators of labour exploitation mentioned above. In addition, the importance of the following was highlighted:

- **Proving salaries** were paid, which might be difficult if payments are made in cash;
- Assessing the **time span** of victims' submission to physical duress and/or threats;
- Considering – where enough evidence of THB for the purpose of labour exploitation is not available – sanctioning the employer for **discrimination or extortionate work discrimination** as well as the plaintiff's opportunity to claim damages in proceedings relating to such offences.

2.2 Lessons learned

Purpose As noted earlier, given the number of countries encompassed in the analysis (11), the proposals *infra* do not aim to be exhaustive. Rather, they are intended to highlight possible factors to be taken into account by national prosecutors and judges, where feasible and appropriate, in accordance with the different legal systems.

Observations The following observations arising from the case law examined might be of particular assistance to practitioners:

- The question of whether there is exploitation cannot be answered *a priori*, but rather depends on the **circumstances of the specific case**, namely nature and duration of employment, limitations imposed on the person concerned and the economic gain of the exploiter. For instance, not paying national insurance contributions or paying an excessively low salary is not sufficient *per se* to prove the 'labour exploitation purpose'. It is likely necessary to identify the imposition of **abusive conditions** that seriously prejudice the position of one of the contractual parties (*rectior*, the victim).
- When evaluating the circumstances of the case, **living standards** in the forum state may offer an important parameter of reference.
- The specific circumstances of the case should be assessed with special care when **child victims** are at stake, e.g. the fact that the child does/did not attend school or knew no adult of reference in the destination country besides the perpetrator is of significance to the assessment of the vulnerability and dependence of the victim.
- The **exploitative purpose** is grounded on at least one of the following practices:
 - coercion, including threats against oneself, family or loved ones, violence, misuse of authority arising from the actual state of affairs or abuse of a

- vulnerable position (e.g. mental illness or serious disease);
 - poor working terms and conditions;
 - dependency, e.g. working to pay off a debt and reliance on the perpetrator for such things as work, housing and identification documents;
 - the victim is not free or does not reasonably think has the freedom to escape from the working situation (this includes taking advantage of the person that entered the country illegally or irregularly and who accepts the situation of exploitation in the hope of receiving assistance in obtaining a residence permit; pregnancy; social isolation in the country of destination; cultural hierarchical references such as deference to caste systems, and/or extreme poverty in the country of origin).
- The fact that THB for labour (or sexual) exploitation is a **crime of intent**, means that the demand for solid evidence is all the more pressing. The evidence must show that the perpetrator was aware of the specific circumstances of the victim from which the position of dominance arose or may be presumed to have arisen. In addition, the perpetrator must have been aware that as a result of his acts the other person would or could have been exploited. Importantly, as THB for the purpose of labour (or sexual) exploitation is an offence of intent, it is irrelevant whether actual exploitation took place; on the other hand, the actual exploitation might be considered an **aggravating circumstance**.
- **Consent is irrelevant** for the assessment of exploitation if the victim 'accepted' the situation as a result of deceit, false promises, threats, abuse of authority or other forms of serious pressure.
- The prohibition of labour exploitation applies to all situations whereby someone provides services on behalf of a third party, **regardless of whether the relationship thus created is legally valid and independent of the legal status of the victims**. The relationship intertwining the perpetrator and the victim shall present a certain **durability** and **regularity**. In addition, the victim must be in a **subordinated position** *vis-à-vis* the perpetrator and remuneration of the victim shall be a legitimate expectation.

3. Judicial cooperation in cases of THB for labour exploitation

Purpose This Chapter provides a brief overview of THB for labour exploitation cases dealt with at Eurojust. The THB Project Team decided to look at all THB cases classified as labour exploitation, even though, following a more in-depth analysis, several appeared to deal with a different type of offence (e.g. THB of minors for pickpocketing; exploitation of workers in illegal professional cannabis plantations; documents of trafficked persons used for social benefit fraud). The THB Project Team also decided to focus on the most recent casework covering 2014 and the first half of 2015. Considering the small number of THB for labour exploitation cases under scrutiny, the list of challenges and best practice identified in the casework of Eurojust is not meant to be exhaustive and comprehensive, but is rather intended to provide examples.

3.1 Statistics on Eurojust's casework

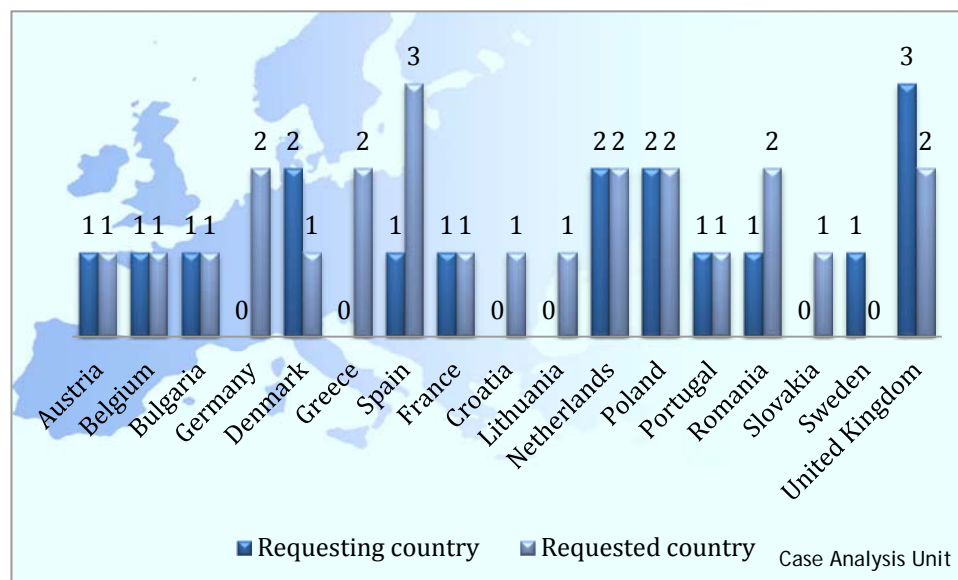
Case Management System In Eurojust's Case Management System (CMS), depending on the purpose of exploitation, THB cases can be registered in three sub-categories: THB for the purpose of sexual exploitation; THB for the purpose of labour exploitation and THB for other purposes.

Statistics

- During the period from 1 January 2014 to 30 June 2015, a total of 106 THB cases were registered at Eurojust. In 17 of these cases, the crime type THB for the purpose of labour exploitation was selected in the CMS, thus 16% of the total amount of THB cases.
- 13 of these 17 cases were bilateral and four multilateral. Only one case was registered towards Europol.
- The following third States were involved: Bosnia and Herzegovina (two cases) and Switzerland (one case).

Chart 1 provides an overview of requesting and requested countries in operational THB for labour exploitation cases registered at Eurojust between 1 January 2014 and 30 June 2015 (countries not shown were not involved as requesting or requested country during the period in question).

Chart 1: Requesting and requested countries in operational THB for labour exploitation cases registered at Eurojust between 1 January 2014 and 30 June 2015



3.2 Case examples

Case 1:

Joint

Investigation

Team

Involved

countries: FR, BiH

A Bosnian criminal network trafficked underage Bosnian girls who committed theft, mainly on the Parisian public transport system. The network made estimated profits of more than EUR 2 million. The proceeds were used to buy luxury vehicles and properties in Bosnia and Herzegovina (BiH).

The Prosecution Office in Paris requested Eurojust's assistance in **coordinating ongoing investigations in France and BiH.**

- Two coordination meetings were organised, bringing the involved authorities together in The Hague and Sarajevo.
- A French-Bosnian joint investigation team (JIT) was set up for the first time, and received financing from Eurojust.

The JIT was set up to:

- gather evidence and facilitate the exchange of information between investigative teams to substantiate the links among members of the criminal organisation involved;
- facilitate the involvement of investigators from one State in the investigations being pursued by the other;
- synchronize the operation, particularly arrests, to avoid the loss of information and possible escape of criminals;
- identify the instruments and proceeds of crime;
- use the evidence gathered for the purposes of prosecution and the restraint and confiscation of the proceeds of crime in France and BiH.

A common action day took place in 2015. Following the action day, victims were placed in a child reception centre in BiH.

Added value of the coordination meetings:

- Facilitation of information exchange between France and BiH;
- Coordination of operational actions;
- Assistance in the setting up and running of a JIT;
- Avoiding conflicting investigations with other countries.

Added value of the JIT:

- The JIT facilitated effective cooperation and coordination between French and BiH investigations;
- JIT funding facilitated:
 - Covering the costs of real-time interpretation of the intercepts and translation of telecommunication transcripts and other documents;
 - Covering travel/accommodation costs for operational meetings;
 - Becoming more reactive to emerging information;
 - Identification of the exact location of the main suspects (who moved around quickly) and planning of a common action day with arrests and searches.

Eurojust's JIT funding programme also loaned communication equipment to the members (laptops, telephones) that ensured a safe means of communication.

Case 2:
Competing
EAWs
Involved

countries: BE,
DE, NL

One person was arrested in Belgium on the basis of European Arrest Warrants (EAWs) from Germany and the Netherlands. Both EAWs were issued for prosecution, but for different criminal activities (however, a similar nature of offences and modus operandi).

In Germany, the investigation related to the cultivation of narcotics at an illegal professional cannabis plantation together with other suspects, and gang-type trafficking in human beings for the purpose of exploitation of the workers. In the Netherlands, the investigation also related to the cultivation of hemp, human smuggling and human trafficking as a result of the discovery of illegal hemp cultivation.

The Belgian Federal Public Prosecutor's Office requested Eurojust to provide an opinion on the priority to be given between, on the one hand, an EAW issued by a German judicial authority and, on the other, an EAW issued by a Dutch judicial authority. Both EAWs were issued concerning the same person, but with regard to different criminal activities.

The Belgian Desk organised a Level II meeting (internal meeting at Eurojust with participation of the involved National Desks) to address how this issue could best be resolved.

Subsequently, Eurojust issued a **Eurojust opinion on concurrent EAWs** on the basis of Article 16 (2) of the Framework Decision 2002/584/JHA of 13 June on the EAW and Surrender Procedures between Member States.⁷

The *Eurojust Guidelines for deciding on competing EAWs* were applied:

- Date of the EAWs: the German EAW preceded the Dutch EAW; in addition, the German criminal investigations were in a much more advanced stage than in the Netherlands; in Germany, the case was trial ready while in the Netherlands it was not.
- Seriousness of the crime: the facts in Germany were committed on a larger scale than in the Netherlands.
- Position of the victims: several victims and their role were clearly identified in the German case, whilst their existence and role was much less clear in the Dutch case.

Therefore, Eurojust's opinion was that the requested person should be surrendered first to Germany. Once the German Court reached its verdict, the requested person should be surrendered by Germany to the Netherlands on the basis of Article 28 FD EAW.

Following advice from the Federal Public Prosecutor's Office to the District Public Prosecutor's Office, which was based on Eurojust's opinion, the Court decided on a surrender of the person to Germany.

3.3 Challenges and best practice

- Challenges** The challenges in judicial cooperation that needed to be addressed in THB for labour exploitation cases registered at Eurojust included:
- The need for coordination of investigations/proceedings ongoing in the involved countries (also in light of the *ne bis in idem* principle);
 - Clarification of links to parallel judicial proceedings in the requested countries;
 - Identification of competing EAWs;
 - Difficulties in judicial cooperation and the execution of Letters of Request (LoRs): no answer was received from the requested authority or misunderstandings in communication occurred.
- Best practice** The best practice in judicial cooperation facilitated by Eurojust included:
- The organisation of **coordination meetings** at Eurojust to bring together judicial and law enforcement authorities from the Member States and third States, allowing for targeted operations and a coordination of arrests (action day);
 - The setting up of **JITs** and **JITs funding** provided by Eurojust;
 - **Eurojust's assistance in the facilitation of the execution of LoRs** related to the delivery of summons to witnesses/the hearing of witnesses/transfer of proceedings;
 - **Prompt exchange of information** via Eurojust's National Desks; Example: information exchange facilitated by Eurojust in a case where the subject of a EAW indicated that he had been trafficked to country A, and sought to use that information as part of a legal argument to resist

⁷ If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority. Art 16, §2 of the FD mentions that 'The executing judicial authority may seek the advice of Eurojust when making the choice referred to in paragraph 1.'

extradition by arguing that if he were returned to country B (which issued the EAW) he would be highly susceptible to being trafficked again.

In addition, even though this has not yet been requested in a THB for labour exploitation case, the THB Project Team would like to mention the possibility of organising **coordination centres** to coordinate simultaneous operations among judicial authorities and police. In many coordination meetings, national authorities reach agreement on conducting joint actions and the setting up of a coordination centre at Eurojust. Coordination centres provide a unique opportunity for the real-time exchange of information and centralised coordination of the simultaneous execution of, *inter alia*, arrest warrants and searches and seizures in different States. Coordination centres expedite the timely transmission of additional information that is urgently needed to execute such measures as well as newly issued MLA requests.

4. Findings of the THB external questionnaire and the THB Strategic Meeting 2015

Purpose This Chapter provides a synopsis of the work carried out in the context of Eurojust's THB Project specifically regarding THB for the purpose of labour exploitation. The outcome of such work made clear the importance of scrutinising the 'labour exploitation purpose' and provided the impetus for this report. The chapter also provides additional information on possible indicators of the 'exploitative purpose' and best practice in respect thereof.

The *THB External Questionnaire* consisted of five sections. Section A was dedicated to the investigation and prosecution of THB for the purpose of labour exploitation with a view to (i) establishing whether countries have legislation, guidelines and/or case law determining the indicators for asserting the 'labour exploitation purpose', and (ii) identifying lessons learned from cases in which prosecution was successful (or unsuccessful) in proving the labour exploitation purpose. Among the respondents, eight countries indicated having had very few or no cases thus far on THB for the purpose of labour exploitation, while seven countries highlighted difficulties in prosecuting such cases, particularly in proving the 'labour exploitation purpose'. The most pressing evidentiary challenges arise, for instance, when attempting to prove the *unlawful appalling conditions*, including inadequate salaries, social conditions and accommodation.

Sources of indicators The following emerged from the analysis of replies (29) to the *THB External Questionnaire*:

- 25 countries have legislation, guidelines and/or case law determining indicators for the establishment of the 'labour exploitation purpose', with such indicators being listed in, *inter alia*, the (i) respective criminal codes; (ii) specific protocols; and (iii) guidelines established by the competent national authorities (e.g. Office of the Prosecutor-General, Department of Justice).
- Countries that do not have such internal guidelines or legislation resort to international sources for guidance, notably (i) guidelines issued by the International Labour Organisation (ILO); International Organisation for Migration (IOM) and/or UNODC; (ii) jurisprudence of the ECtHR; (iii) THB Directive 2011/36/EU; (iv) ILO Forced Labour Convention; (v) Council of Europe 2005 Convention on Action against Trafficking in Human Beings; (vi) EU Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of nationals of third-States who reside illegally; and (vii) UN 2000 Convention against Transnational Organised Crime and its Protocols.

Lessons learned and Best practice According to the responses to the *THB external questionnaire*:

- *Securing victim testimony* is often necessary to obtain convictions, which may pose difficulties when, e.g. victims do not perceive themselves as such (sometimes because they were manipulated or their consent is not based on an informed decision) or are not willing

to testify against their exploiters due, for example, to close bonds. Possible methods of addressing these challenges are:

- ***Ensuring protection and support for victims***, for instance:
 - Use of protection programmes;
 - Use of a reception centre when the police arrest suspects and recover victims – particularly where they have been isolated, subjected to violence and institutionalised;
 - Limit the number of third-party contacts and interrogations;
 - Allow vulnerable witnesses to provide evidence via live link from a reception centre to reduce their trauma.
 - ***Obtain victim testimonies before the trial*** in such manner that renders possible their use in court as evidence, if national legislation so allows.
 - ***Gathering corroborating evidence*** to support victim statements, e.g.:
 - Travel and financial transaction documentation;
 - Expert reports with regard to victim evolution and emotional injuries;
 - Use of bad character evidence from witnesses who had worked for the exploiter at a time that pre-dated the offences.
- ***Activating parallel financial investigations***.
 - ***Prosecuting other types of crime*** when evidence does not support THB as such. Examples of typically associated offences are: usury; fraud by abuse of authority; conspiracy; money laundering; cheating the revenue; benefit offences; non-payment and misuse of wages and salaries; (extortionate) work discrimination or conspiracy.
 - ***Good communication/cooperation at national level between the judiciary and the police as well as at international level*** with the countries of origin of victims (for which the involvement of the Embassies in those countries proved to be of added value).
 - ***Multidisciplinary approach*** that encompasses cooperation and sharing of information between several partners, such as labour inspectorates, immigration and nationalisation services, NGOs and State agencies that monitor working conditions.
 - ***Arrangements for registering and vetting Embassy Staff*** for paying housekeepers by bank transfer (this practice was introduced in some countries following scandals related to labour exploitation taking place at households of diplomats).
 - ***Using electronic evidence and special investigative techniques***, such as undercover agents, as best practice based on a large number of successful cases.
 - ***Training*** prosecutors, police officers and front-line personnel to recognise indicators of human trafficking for labour exploitation and how to help, support and protect people identified as victims. On an international basis, police officers have been trained by CEPOL and FRONTEX and have participated in projects such as RACE in Europe – Anti Slavery Project. In addition, NGOs could be involved in providing training.

Workshop 2 of the ***Strategic Meeting THB 2015*** focused on *Challenges in prosecuting THB for the purpose of labour exploitation*. The discussions tackled some of the issues already evidenced through replies to the *THB External Questionnaire*. By the same token, discussions elaborated on the difficulties faced by practitioners when investigating and prosecuting THB for the purpose

of labour exploitation and possible best practice in relation thereto. Notably, it was highlighted that such prosecutions are often very difficult, which leads, as a result, to a very low number of convictions. One of the major reasons for this is – again – the difficulty in proving the ‘labour exploitation purpose’. These difficulties have sometimes occurred due to a lack of clear legislation, guidelines and/or insufficient case law providing for indicators for labour exploitation. On other occasions the difficulties were caused by insufficiently precise definitions and/or interpretative standards regarding ‘forced labour’ and ‘labour (economic) exploitation’. In some jurisdictions, this resulted in prosecution and/or conviction for a lesser offence, such as violation of labour laws, exploitation of foreigners or fraud by abuse of authority. Consequently, in the absence of a conviction for THB, lower sanctions were imposed and the rights of victims for assistance, protection and compensation could not be followed up on. In some situations, the agreement of victims to poor working conditions, very long working hours, low salaries and inadequate housing as well as victims’ freedom of movement led to the conclusion that no exploitation had taken place.

As possible best practice in addressing these difficulties, the following recommendations were advanced:

- *Clearer definitions, legislation and guidelines*, as well as awareness-raising, training and the exchanging of best practice to assist law enforcement and judicial authorities in assessing and proving the labour exploitation purpose;
- *Investigating and prosecuting other offences in parallel with the THB offence*, considering e.g. the possibility of working in joint teams consisting of different authorities involved in the investigation of parallel offences;
- *Identifying additional measures to fight trafficking chains*, such as (i) sanctions for those who profit from the use of cheap labour (e.g. construction companies); (ii) financial investigations; (iii) administrative measures for violating health and safety regulations, labour, tax or immigration laws; and (iv) non-conviction based confiscation;
- *Encouraging multidisciplinary approaches* to fight THB for labour exploitation by involving other authorities, such as labour inspectorates and immigration services;
- *Assistance from Eurojust* in organising coordination meetings and coordination centres and in setting up and financing JITs.

5. Conclusions

The table below presents the main findings of this report with reference to the analysis of national judgments and the outcome of the analysis of Eurojust's casework.

Proving the labour exploitation purpose - INDICATORS AND OBSERVATIONS

Indicators of labour exploitation	Observations re investigations and prosecutions
<ul style="list-style-type: none"> ▪ Poor living and working conditions ▪ Coercion and limitations on freedom of movement ▪ Language limitations ▪ Seizure of identification documents by or on behalf of the employer ▪ Illegal/irregular entry or residence in the forum state ▪ Bondage debt ▪ No or limited medical insurance and social security contributions 	<ul style="list-style-type: none"> ▪ Specific circumstances of the case ▪ Crime of intent ▪ Irrelevance of consent ▪ Insignificance of legal status of victim and/or work relationship ▪ Exploitative purpose grounded on at least one of the following elements: (a) coercion; (b) poor living and working conditions; (c) dependency; (iv) no <i>de facto</i> freedom of movement ▪ Standards of living in the forum state ▪ Particular vulnerability of children



THB for the Purpose of Labour Exploitation – JUDICIAL COOPERATION GOOD PRACTICE

Challenges encountered by the involved countries	Possible assistance by Eurojust
<ul style="list-style-type: none"> ▪ Clarifying links and/or possible overlap between parallel judicial proceedings ▪ Need for coordination of ongoing investigations/proceedings in the involved countries ▪ Competing European Arrest Warrants ▪ Difficulties in judicial cooperation and the execution of Letters of Request (LoRs): no answer or misunderstandings in the communication 	<ul style="list-style-type: none"> ▪ Facilitation of prompt exchange of information ▪ Organisation of coordination meetings and coordination centres ▪ Assistance in setting up joint investigation teams (JITs) ▪ Providing JITs funding ▪ Facilitation of the execution of LoRs

It is important to note that the interpretation and application *in concreto* of indicators identified in this report as well as observations regarding the investigation and prosecution of THB for the purpose of labour exploitation are conditioned to the specifics of the different legal systems.

ANNEX I

Analysis of court decisions on THB for the purpose of labour exploitation

Reference	Case description	The court decision	Key words
 <p>Supreme Court 7 Tdo 1261/2013 12 March 2014 www.parlament.gov.at</p>	<p>Case concerning Romanian nationals recruited in RO to work in CZ under the promise of very good living and working conditions. However, upon arrival they were deprived of their IDs, submitted to excessive working hours, low wages, threats, physical assault and restricted freedom of movement.</p>	<p>Defendants sentenced to 5 years imprisonment for THB (art. 232a (2c), (3a) of the Criminal Code effective until 31.12.2009). The Supreme Court ruled, in the present case, that the ‘forced labour’ element must be interpreted in accordance with the definition of forced labour within the meaning of Article 2 of the Forced Labour Convention as well as Directive 2011/36/EU. The Supreme Court also referred to the decision of the ECtHR concerning Siwa-Akofa Siliadin v. France. The Court held that the ‘forced labour’ element is met when the offender transports foreign nationals into the Czech Republic and then takes their travel and personal documents, restricts freedom of movement, does not pay adequate wages, enforces work by making threats of beatings or against their lives, so the victims find themselves in a vulnerable position because of their ignorance of the environment and the language in a foreign country. Their freedom and human dignity is thus severely restricted. Link to the judgment (Only in CZ)</p>	<ul style="list-style-type: none"> - <i>Forced labour</i> - <i>Freedom of movement</i> - <i>Coercion</i> - <i>Ignorance of the environment</i> - <i>and language</i>
 <p>The Eastern High court of Denmark 4 March 2015</p>	<p>Case concerning the exploitation of several Romanian citizens in DK, whereby the victims were submitted to excessive working hours, payment pro forma and found their salaries sometimes reduced on grounds of unsatisfactory performance and/or paid into an account controlled by the</p>	<p>The accused were acquitted of THB for the purpose of labour exploitation but convicted of usury. Although the court held that the victims were forced to live under poor conditions in the defendants’ garage and were monitored by a surveillance camera, the Court considered that the victims were able to go shopping and collect bottles in their spare time. They also had their ID, money and a moderate social network including family and friends. Moreover, all of the victims left Denmark for a shorter or longer period of time and returned to work for the defendants. The court held that the victims did have the choice not to work for the defendants. Link to the judgment.</p>	<ul style="list-style-type: none"> - <i>THB for the purpose of labour exploitation</i> - <i>Freedom of movement</i> - <i>Freedom of choice</i>



High Court in
Dublin

Lin v Governor of
Cloverhill Prison
and Others

[2014] IEHC 214

23 April 2014

accused.

Case concerning a Chinese national who had been found locked in a growhouse. He was charged with various drug offences. He pleaded guilty to one offence and was in custody, awaiting trial, on the others. He **claimed that his detention was unlawful** and that he ought not to be prosecuted as he was a victim of human trafficking, relying on Directive 2011/36/EU, in particular, Article 8.

The High Court ruled that the applicant was in lawful detention.

The High Court considered relevant legislation, notably the **Criminal Justice (Human Trafficking) Act 2008** ([‘the Act of 2008’](#)) ([link](#)) and the **‘Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking’** from 2008 ([link](#)). The court also considered **relevant case law on the topic of slavery and involuntary servitude**, including the decision in *Siliadin v France*.

Drawing on the decision in *Siliadin*, the Court held that the applicant had been held in conditions of **servitude** within the meaning of the definition of **‘labour exploitation’** in section 1 of the Act of 2008. It noted that he was a **vulnerable individual** who could **not speak or communicate in English**, had been the subject of **extreme deprivation of liberty**, and had been subjected to **a real threat of violence** from the criminals responsible for the growhouse. The fact that he had **consented to work in it was**, the Court held, **irrelevant**.

The Court then turned to the applicant’s claim that he should not be prosecuted by virtue of Article 8 of the Directive. It held that Article 8 imposed **no direct obligation in that regard on the prosecution**, as it permitted the relevant prosecuting authorities not to prosecute the victims of trafficking where the crimes committed were the direct consequence of their exploitation by traffickers. The crucial matter was that, for Article 8 to apply, the applicant would have to be **a victim of trafficking**, and there would have to be **a real and substantial connection between his status** as a person who had been trafficked and **the crimes** which had actually been committed.

However, the Court was not satisfied that the applicant **had been trafficked into the State**, there being no independent evidence to support the applicant’s testimony in that regard. The fact that the applicant had been able to travel around the State for a number of months was critical independent and objective evidence, tending to suggest that he had not been trafficked.

The court therefore held on the basis of the available evidence that **the applicant had not been trafficked into the State**. In those circumstances, it followed that any offences committed by the applicant in the growhouse had not been as a **‘direct consequence’ of being trafficked**, the essential requirement of Article 8 of the Directive of 2011. The High Court therefore concluded that the applicant **was in lawful detention**.

[Link](#) to the judgement.

- Reasonable grounds
- Servitude
- Deprivation of liberty
- Trafficking



High Court of
Ireland

P -v- Chief
Superintendent
Garda National
Immigration
Bureau & ors

[2015] IEHC 222
2013 795 JR

15 April 2015

www.parlament.gov.at

Case concerning a Vietnamese woman found during a Gardaí search of a warehouse secured by means of steel shutters to the external padlocks, allegedly lured into IE with deceitful promises of work. She was arrested and charged with two offences under the Misuse of Drugs Acts 1977/1984. She claimed that she was a victim of human trafficking and the failure of the Gardaí to recognise her as such denied her the opportunity to avail of the protection regime for such victims.

In the judicial review - *In The Matter Of The European Convention On Human Rights Act 2003, Directive 2011/36/EU, The Charter Of Fundamental Rights Of The European Union* - the High Court ruled that **the legislation had not been properly transposed on the grounds that the State had failed to adopt an appropriate mechanism to determine whether a person who was suspected of committing a criminal offence was the victim of human trafficking.** The applicant had spent almost three years in detention, much of that time waiting for the decision on her application to be recognised as a victim of human trafficking. The High Court began by considering relevant legislation (see the case above) as well as the 'National Action Plan' to prevent and combat trafficking of human beings in Ireland. The Court noted that it appeared clear that **the standard set by Directive 2011/36/EU does not permit the State to impose a burden of proof** (in relation to the **application for recognition as a victim of trafficking**) on an applicant. The test of 'reasonable-grounds indications' is an objective one. It may be satisfied by a convincing account on the part of an applicant, but **even an unconvincing account** may suffice if there is objective evidence of trafficking. (The Court did not consider that non-disclosure by the applicant of her illegal presence in Germany twenty years ago provides a sufficiently 'clear and compelling' ground for declining to consider her case.) Concentration on the veracity of an applicant may also lead decision makers to overlook the fact that what is at stake is not simply a matter of entitlement to beneficial status, but a measure intended to facilitate the investigation of a serious crime.

The Court concluded that **the mechanism adopted in circumstances such as the present case cannot be considered to be 'appropriate'** unless it deals clearly with the interaction between the application for recognition and the criminal investigation into the applicant's alleged activities. The Court determined that the current mechanism, such as it is, must be held to be inadequate in terms of the transposition of the Directive.

[Link](#) to the judgment.

- Reasonable grounds indications
- Suspected victim of THB
- Early identification mechanism
- Burden of proof



Case concerning illegally resident Nigerian women

NOTE - This case does not deal with THB for the purpose of labour exploitation. However, the findings of the Court refer to the deprivation of the human rights of the victims who are forced into prostitution under burdensome circumstances akin to slavery. The reasoning tackles issues of labour exploitation.

- Labour exploitation

exploited and lured into prostitution having been brought to ES under false labour expectations.

- The Court found some of the accused guilty of **THB for the purpose of sexual exploitation** when the victim is particularly vulnerable (Art. 177 bis Criminal Code) and sentenced them to penalties of up to ten years' imprisonment. It noted, *inter alia*:
- THB, whether for the purposes of **sexual or labour exploitation**, is an **offence of intent**, and not of result. The Court defines **dolus specialis** of trafficking as the purpose aimed at by the perpetrator when committing the material acts of the offence. Fulfilment of the special intent element does not require the intended aim to be achieved.
 - **Consent is meaningless** in establishing a situation of exploitation when the victim has been induced into prostitution by **deceit; false promises; abuse of authority; or other pressure such as debt bondage; the practice of voodoo rituals; retention of identity documents or force.**
 - **Abuse of a position of vulnerability** means the person believes that she has no reasonable alternative but to submit to the services demanded **and includes taking advantage of the person having entered the country illegally or without proper documentation**; pregnancy; social isolation in the country of destination; and extreme poverty in the country of origin. The abuse of a position of vulnerability of the victim constitutes an **aggravating circumstance.**

- *Crime of intent*
- *Consent*
- *Dolus specialis*
- *Vulnerability*
- *Deceit*
- *Illegal immigration*
- *Aggravating circumstance*

Case concerning illegally resident Russian women allegedly exploited in a bar, induced to prostitution having been lured to ES under false labour expectations.

- The Supreme Court upheld the conviction of the accused for **crimes against the rights of foreign citizens** (sentenced to eight years' imprisonment as per art. 318 bis Criminal Code), **labour exploitation** (two years' imprisonment as per art. 312.2 Criminal Code), **and inducement to prostitution**. The Court noted, *inter alia*:
- Illegal immigration is considered as trafficking when its aim is to **potentially create** a situation of sexual exploitation by somebody else; i.e. it is not mandatory that the victim be actually sexually exploited. However, the actual sexual exploitation of the victim constitutes an **aggravating factor**.
 - The **crime of labour exploitation** is defined as **crime against the rights of workers**. When foreigners are involved, indicators of this crime type include: recruitment under **false or misleading conditions**, recruitment without a **work permit** or recruitment under conditions that would hinder or reduce **labour rights**.
 - When the facts constitute a crime of sexual exploitation and a crime of labour exploitation, there will automatically be **concurrency of crimes** (*'concurso de jurisdicción'*).

- *Illegal immigration*
- *Concurrency of crimes*
- *Rights of workers*
- *Deception*
- *Aggravating circumstance*



Supreme Court

Decision
no. 321/2005

10 March 2005

[Link](#) to the judgment.

Case concerning the illegal employment of Romanian workers in agriculture through forgery of official documents (false residence permits) and false work permits). The farming companies, as employers, transferred money to the defendants' bank accounts and the defendants deducted their services, including daily transport and accommodation, before paying the victims.

The two defendants were convicted in the Court of first instance, among other crimes, for illegal immigration (art. 313.1 of the Criminal Code) and **THB for the purpose of labour exploitation** (art. 312.1 of the Criminal Code). The appeal was dismissed by the Supreme Court.

In its reasoning the Court noted:

- The defendants facilitated the travel of dozens of Romanian nationals to Spain by providing them work and **false documentation**.
- Despite the workers having been hired by the farming companies - whereas the defendants provided false documents in exchange for money - they were **facilitating** the work, which provided the farming companies with the power to control and manage the workers.
- The crime of **illegal immigration** is understood as the facilitation of transportation, its organisation or implementation, or even the subsequent reception of human beings in Spain. The trafficking offence for the purpose of labour exploitation was also committed, **regardless of whether or not the employment contract was legally valid**.
- The **crime of trafficking** holds the **exploitation of workers** as a central element, as was the case between the defendants and their victims, since the defendants deprived the victims of their **legal minimum wage** and only paid them a fraction.

[Link](#) to the judgment.



Supreme Court

Decision
no. 540/2006

17 May 2006

- The Court of first instance convicted the defendant for the facilitation of illegal immigration (art. 313.1 of the Criminal Code) and illegal detention (art. 163.1 of the Criminal Code). The defendant lodged an appeal, which was upheld by the Supreme Court. In so doing it considered as follows:
- Even though the **salary** of the victim (EUR 100 per month) was very low, nothing was said about the working conditions.
 - Failure to register a person who provides domestic services with the **social security** authority is not a criminal offence. However, hiring a foreign worker without a previously **obtained work permit** does constitute a serious crime. In addition, the employment was agreed between the parties freely.
 - Regarding the fact that the defendant **locked up** the victim after six months of employment having not done so earlier, the Supreme Court held that the defendant

- *Forgery of official documents*
- *Illegal immigration*
- *THB for the purpose of labour exploitation*
- *Minimum wage*

- *Illegal immigration*
- *Illegal detention*
- *Working conditions*
- *Coercion*

wanted to prevent the victim from leaving the house merely while the defendant was not at home for a relatively short time. Thus, the Court concluded that, in this context, this behaviour could not qualify as serious **illegal detention** that should be sanctioned with imprisonment. It concluded that the behaviour of the appellant should be punished with a fine.
[Link](#) to the judgment.



ES

Supreme Court

Decision no.
372/2005

17 March 2005

Case concerning an illegally exploited Lithuanian woman in bars and induced into prostitution having been lured to ES under false labour expectations.

The Supreme Court upheld the conviction of the accused for inducement to prostitution and **labour exploitation** (art. 499 *bis* 1 Criminal Code). The Supreme Court considered, *inter alia*:

- Labour exploitation implies employing foreign citizens without a **work permit** and under labour conditions that would **hinder** or reduce **labour rights**.
- Labour exploitation does not converge with the crime of **illegal immigration**, since for the latter, the condition of being a (potential) worker is not required. However, consciously and on a voluntary basis employing an illegal immigrant constitutes an **aggravating factor**.

- The crime type of labour exploitation protects **all persons** who provide remunerated services on behalf of the 'employer', **regardless** whether the **labour relationship is legal or not**.

- **Labour exploitation**, as a crime against the rights of workers, will include the exploitation of those providing remunerated services on behalf of the 'employer' and could include **prostitution and sexual exploitation** (settled case law). Both crimes may be **linked**, but **not automatically**. In the present case, the situation of economic exploitation, coercion to exercise prostitution and of labour exploitation is blatant.

[Link](#) to the judgment.

- *Aggravating circumstance*
- *Concurrence of crimes*
- *Irrelevance of legal status of labour relationship or victim*

Case concerning several women lured to ES under false work prospects and induced into prostitution by threats and violence.

- The Supreme Court upheld the conviction of the accused for inducement to prostitution and **labour exploitation** (to one year and nine months' imprisonment and three years' imprisonment as per art. 311 Criminal Code). In its decision, the Court considered, *inter alia*:
- The accused recruited and/or employed several foreign women to work as prostitutes and carry out other activities in a night club (e.g. waitressing, dancing) without the entering into of any **labour contract** or registration with **social security authorities**. The accused were entirely aware of the **economic loss** thereby caused to the women.
 - Despite agreement that a (reduced) part of the **income** made with the sale of beverages, dancing and sexual activities would be delivered to the women, the **accused kept** most of the proceeds under the pretext of safekeeping.
 - The women were made to work every day, from 20.00 to 03.00, even when menstruating.
 - The women were kept under **tight surveillance** and their **passports were withheld** by the accused.
 - The women were under a state of **permanent fear** given the **threats** made by the accused against their lives and the lives and well-being of their **families**. The women were **beaten** if they refused to work.
 - The fact that the women could **move around relatively free** does not undermine the conclusion that they were under a state of **coercion**.
 - The crime type of labour exploitation protects **all people (including illegal residents)** that carry out services to others, independent of whether the **contract is legal or otherwise** (prostitution – illegal in Spain – is thus also covered). Of importance is that the 'work' relationship is vested with a certain **durability** and **regularity, dependence** and connected with **financial retribution**.

[Link](#) to the judgment.

Rights of workers
Freedom of movement
Irrelevance of legal status of labour relationship
Irrelevant legal status of victim
Work relationship



Supreme Court

Decision no.
1045/2003

18 July 2003

Case concerning illegally resident Colombian women exploited as sexual workers and deprived of personal freedom.

The Spanish Supreme Court upheld the conviction of the accused for **labour exploitation** (art. 311 Criminal Code) and the crime of compulsory deprivation of personal freedom, to which corresponded a penalty of two years and six months' imprisonment. The Court considered, *inter alia*:

- **Labour exploitation** implies employing **foreign citizens** without a **work permit** and on **labour conditions** that would **hinder** or reduce **labour rights**. This crime type protects **all persons** who provide **remunerated services** on behalf of the 'employer', regardless of whether the labour relationship is **legal or not**. Persons who exercise prostitution would be protected by this provision (settled case law).
- With regard to the crime of **illegal immigration of workers**, this is evidenced by the mere fostering or promotion of the introduction in the country of labour force, regardless of whether the aim of being actually labour exploited is fulfilled; i.e., it is not mandatory that the victim's labour rights are actually exploited. On the contrary, **labour exploitation** applies when working conditions **hinder** or reduce the specific **labour rights of workers** by 'employing' foreign citizens without a **work permit**. Therefore, both crimes (illegal immigration of workers and crime of labour exploitation) are not always automatically connected, since the object of protection is different.

[Link](#) to the judgment.



Supreme Court

Decision no.
995/2000

30 June 2000

Case concerning labour exploitation of an Algerian and Spanish nationals based namely on false allegations of qualifications of the accused.

The Supreme Court found the accused guilty, among other offences, of **labour exploitation** (art. 499 *bis* 1 Criminal Code) and sentenced them to two months' imprisonment and a fine of 250,000 PTS. In its decision, the Court considered, *inter alia*:

- The Algerian victim accepted a non-remunerated domestic service agreement in the hope it could help to obtain a **residence permit**. The accused **lured** the victim into believing he was a lawyer able to assist with the residence application. The victim did not have a **specific schedule or concrete tasks**. He was **not paid** for his services, although he was **fed** by the accused.
- At a certain stage, the accused instructed the Algerian national to sign a '**contract of enslavement**'.
- When the victim wished to abandon the arrangement, the accused **retained his passport**. The accused took advantage of the **position of dependence and vulnerability** of the Algerian national.
- Additionally, **pretending** to be a qualified psychologist, the other accused lured the parents of a troubled Spanish man to allow him to work at the accused company,

whereby the parents paid for social security costs as well as the salary of the young man. This situation led to **embezzlement** of the accused and impoverishment of the parents and their son and amounted to an attempt to **escape the scope of application of labour law**.

- The fact that the victims could abandon the residence and company, respectively, of the accused (**not** being in a state of **deprivation of liberty**) does **not preclude** the crime type of **labour exploitation**.
- Labour exploitation covers also **non-legal/regulated work relations** as well as **all people** (legal or illegal residents) carrying out services for a third-party.
- The requirement of **deception** will be satisfied by the existence of a situation of abuse (**broadly understood**) that leads to exploitation by the employer.

[Link](#) to the judgment.



Supreme Court

Decision no. 6068
of 2008

www.parliament.gv.at

Case concerning the recruitment of an irregular immigrant, offering him accommodation and meals, without paying social security contributions for his job, and omitting to pay (once) his salary.

The Italian Supreme court ruled that there was no **exploitation** (article 12 paragraph 5 of the Immigration Act 286/1998 'Gaining unfair profit from the irregular condition of the migrant', leading to up to four years' imprisonment), but, rather, a less serious offence (article 22 paragraph 5 of the Immigration Act 286/1998 of 'Recruiting migrant without a resident permit', leading to up to one year imprisonment). Factors such as using '**black work**' from irregular migrants (i.e. without paying social security contributions) were not considered sufficient to prove the more serious offence. The court deemed it necessary to identify something more, such as the 'imposition of **oppressive and discriminatory conditions**' which completely unbalance a contractual relationship. This element is needed to integrate the 'labour exploitation' according to consolidated jurisprudence (4700/2000 and 40398/2006). These conditions were not present in the case according to the Court. The remaining offence (article 22) was time-barred due to the lapsing of four years and six months.



Supreme Court

Decision no.
48826 of 2009

Case concerning exploitation of seven Chinese irregular immigrants, making them work in inhumane conditions.

The Supreme Court upheld the conviction ruled by the Court of Appeal of Brescia on 23.06.2009. The Italian Supreme court ruled that the 'unfair profit' was evidenced by the fact that the irregular immigrants were **working during the night and living in the same working place**, which was unhealthy and rundown. These were considered **inhumane conditions**, which were accepted by the irregular immigrants only because **they lacked any contractual strength** because of their irregular state.



Tribunal of Prato

Decision no. 5

12 January 2015



Amsterdam Court

Decision no.
ECLI:NL:RBAMS:
2013:8010

3 December 2013

<p>- Lack of contractual strength</p>	<p>The Tribunal of Prato convicted the main defendant to three years and four months' imprisonment (for the offence related to article 12 as explained below), plus five years and four months (for manslaughter). The Court ruled that article 12 paragraph 5 of the Immigration Act 286/1998 ('Gaining unfair profit from the irregular condition of the migrant') could be applied due to the fact that the irregular immigrants suffered oppressive and discriminatory conditions, which were accepted only due to the lack of contractual strength. In particular, the irregular immigrants were forced to sleep and work in the same rundown and unhygienic place, which allowed the exploiters to maximise profits. They worked 13 hours per day on average, without days of rest, in unsafe conditions and were paid on a piecework basis, which is an almost totally forbidden practice, according to the national contract related to the textile sector, which was used as a benchmark to establish the arbitrariness of the working conditions.</p>	<p>- Pursuing unfair profit</p> <p>- Inhuman conditions</p> <p>- Long work hours</p> <p>- Unsafe conditions</p> <p>- Living in the work place</p> <p>- Lack of contractual strength</p> <p>- Payment on a piecework basis</p>
<p>The defendant, together with his brother, trafficked their cousin (minor, age 14, of Moroccan origin) for the purpose of labour exploitation in a textile and clothing shop under improper conditions and no payment (or, at times, unreasonable payment). They took advantage of the fact that the victim had no valid residence permit for staying in NL, no</p>	<p>The court convicted the defendant of THB (sentenced to 21 months' imprisonment), noting <i>inter alia</i>:</p> <p>- (i) the question of whether – and if so, when – there is exploitation cannot be answered in general terms, but rather depends on the circumstances of the case;</p> <p>(ii) factors such as the nature and duration of employment, the restrictions it entails for the person concerned and the economic gains of the exploiter have to be taken into account; (iii) when weighing these and other relevant factors, Dutch (social) standards should be taken as a reference; (iv) it is not mandatory that the victim is actually being exploited; (v) the intention of the suspect has to aim at the exploitation of the employee.</p> <p>- 'Exploitative situation' clarifies the concept of 'abuse of dominance arising from actual relations'.</p> <p>- In the specific case, the Court held there was labour exploitation in view of: (f) no payment or unreasonably low payment which undeniably has produced a</p>	<p>- Exploitation of a minor</p> <p>- Residence permit</p> <p>- Circumstances of the case</p> <p>- National living standards</p> <p>- Work conditions</p> <p>- Low salaries</p> <p>- ID documents</p> <p>- Threats</p>

knowledge of the Dutch language, no social network, no relevant education and no possibility of living independently. The exploitation lasted for many years.

significant economic benefit to the perpetrators; (ii) **very hard physical labour** for a minor (the assembly and disassembly of the stall and the manoeuvring of heavy rolls of fabric); (iii) **extremely long working hours** (6 days/week, nine hours/day, plus 2-3 evenings/week working for the brother of the perpetrator); (iv) **holding of ID documents**; (v) **complete dependency of the victim on the perpetrators** since she was still a child when arriving in NL, spoke no Dutch, stayed in NL illegally, had never gone to school and was not allowed to go outside; (vi) **recurrent threats** of victim being reported to the police and/or returned to Morocco.



's-Hertogenbosch
Appeal Court

Decision no.

ECLI:NL:GHSHE:
2012:BX0599

6 July 2012

www.parliament.gov.at

Case concerning the labour exploitation of 60-70 foreign seasonal workers on an asparagus farm, whereby the defendant took advantage of the victims' position of (economic) vulnerability. Also known as the *Someren* case.

The court convicted the defendant of **THB for the purpose of labour exploitation** (art. 273(f) Criminal Code) and applied a sentence of 36 months' imprisonment. The Court considered, *inter alia*:

- Though the existence of exploitation cannot be defined in general, in the present case, it was evident that the defendant had the intention of exploiting workers. When weighing the concrete circumstances (e.g. **nature and duration** of employment, **economic gains** for exploiter, **restrictions** on the victims), **Dutch (social) standards** should be taken as a reference.
- The existence of labour exploitation was evidenced by: (i) **seizure of ID documents**; (ii) **appalling living conditions** whereby the workers were housed by the defendant in small rooms with no windows, shared beds, and were provided with insufficient and unsanitary toilets and showers and no hot water; (iii) insufficient and low-quality **food**; (iv) **dangerous living conditions**; (v) **restriction of the freedom of movement**, according to which workers were not entitled to leave the shelter after 22:00 pm, with an aggressive dog left freely in the yard to enforce this rule; (vi) **employment contract in a language that workers did not understand** (Dutch); (vii) **very long working hours** (10-14 hours per day/7 days per week); (viii) **very low wage or no wage at all for the work performed**, significantly under the minimum wage.



Court of Appeal in
Arnhem

Case concerning the exploitation of Indian illegal immigrants in an NL factory. Also known as *Moonfish case*.

The Court overturned the decision of the District Court of Zwolle (the 1st instance Court ruled that the suspect did not act with the purpose of labour exploitation but convicted him for aiding and abetting another person, for profit motives, in obtaining residence in the Netherlands according to art. 197a of the Dutch Criminal Code, and tax fraud) and found the defendant acted with the purpose of labour exploitation. It convicted the

- Tax-contribution fraud
- Medical insurance

latter for THB for the purpose of exploitation (art. 273a/273f Criminal Code), smuggling of human beings (art. 197a Criminal Code) and being a member of a criminal organisation, and handed down a sentence of 13 months and compensation of EUR 11,464,78.

The Court considered, *inter alia*:

- The victims were **residing illegally** in the Netherlands, and for this reason were not allowed to work, a circumstance the defendant knew.
- The victims (or their families) had incurred large **debts** to pay for the journey from India to Europe.
- None of the victims spoke (sufficient) Dutch and they had no **ID documents**.
- They generally worked six days per week, **12 hours** per day, and were paid a **wage** of EUR 800 per month (thus around EUR three/hour), with deductions of EUR 100 rent per month, and no pay for over time.
- The **work** they carried out can be classified as **heavy according to Dutch standards**.
- The victims were accommodated by the defendant and his brothers in a **house** that belonged to one of them, where eight persons lived and some had to **share a bed**. The victims were also transported to and from work by the defendant.
- No **medical insurance** was provided to workers nor were tax or social insurance contributions ever paid for them.

[Link](#) to the judgement.

Case concerning the exploitation of Chinese individuals illegally residing in NL, working at a restaurant (where the accused was one of the managers).

- In this verdict, the Dutch Supreme Court expressed itself for the first time about other forms of exploitation. It quashed the contested judgment and remitted the case to the Court of Appeal for re-adjudication. In so doing the Court considered the following:
 - The question of **exploitation** within the meaning of Article 273a (old) of the Criminal Code cannot be answered in general, but is dependent on the **particular circumstances** of the case and Dutch **social standards**. Factors such as the **nature and duration of employment**, the **limitations** imposed on the person concerned and the **economic gains** of the exploiter have to be taken into account. It is not mandatory that the victim is actually being exploited. The **intention** of the defendant has to aim at the exploitation of the employee.
 - Adequate **proof of abuse** has been submitted when it is established that the perpetrator must have been aware of the relevant factual circumstances of the person concerned from which the position of dominance arose or may be presumed

- *Particular circumstances of the case*
- *National social standards*
- *Nature and duration of employment*
- *Limitations for person concerned*
- *Economic*

to have arisen in the sense that these circumstances gave cause to the perpetrator's conditional intent. The same is applicable to situations in which the victim is in a **vulnerable position**. In addition, the accused must have been aware that as a **result of his actions** the other person would or could have been exploited and that, consequently, this is also what the accused wished for. However, neither the need for the accused to take the initiative nor the need for the accused to bring the victim into an exploitative situation – i.e. a situation which made exploitation feasible – are autonomous requirements.

The **exploitative purpose** was evidenced by the fact that the victims: (i) worked for approximately 11 to 13 hours per day six days per week in exchange for meals and lodging or for a very low monetary payment (between EUR 450 and 800 per month); (ii) were **accommodated** in a small room in the restaurant building; and (iii) were prevented from leaving the building or seeking contact with the outside world. This was so despite the victims: (a) having decided themselves to come to the Netherlands to earn money and applied to work in the restaurant; (b) having asked (a number of them) solely for meals and lodging and worked on a voluntary basis; (c) not having any monetary **debts** or other obligations towards those present in the restaurant; (d) being **free to depart** at any time they wished; and (e) having had (a number of them) already worked at other locations - this does not necessarily indicate their **voluntary agreement** or the absence of an exploitative situation.

[Link](#) to the judgement.

Case concerning the alleged exploitation of a Nepalese domestic worker in AT.

The defendant was acquitted of the charges for lack of evidence.

The victim had allegedly been hired by the defendant, a resident of Austria, who paid her a **very low wage** (EUR 350 to 450 per month) for approximately 70 **working hours/week**. The victim did not have access to her ID documents. By **threatening** to send her back to Nepal, the defendant attempted to hinder the victim from attending an interview with the Austrian Federal Ministry for European and International Affairs.

- Labour exploitation
- Excessive working hours
- ID documents
- Coercion

Case concerning a Vietnamese person having been lured to FI under false

- Trafficking in human beings
- Dependence



Regional Criminal Court of Vienna

NO 041 Hv
6/11 t

3 May 2011



Court of Appeal of

Turku
(Turun
hovioikeus)

Decision no. 650,
R 13/276,

27 May 2014



Court of Appeal of

Turku
(Turun
hovioikeus),

Decision no. 1700,
R 12/1529

30 September
2013

terms and conditions of employment. The prosecutor brought charges primarily for trafficking in human beings and secondarily for extortionate work discrimination and work safety offences.

- The victim was essentially misled by the defendant about his working hours, accommodation and salary; notably, the victim had been promised a room of his own and a monthly salary of EUR 1,000, which was reduced.
- The victim was in a vulnerable state and dependent on others: (i) he could speak only Vietnamese and had no friends in Finland, with his only relative in Finland being one of the defendants; (ii) the defendant knew that the victim sent money to his very poor family in Vietnam and the victim had already in the beginning borrowed money from the defendant to send it to his family in Vietnam; (iii) the victim had access to his passport only when sending money to his family in Vietnam. Otherwise, the passport was in the possession of the defendant.
- Accordingly, the defendant took control over the victim for labour.

Case concerning the recruitment, by two defendants, of eight persons in Vietnam to work as chefs and waiters in their restaurants in FI after being misled regarding the expected salaries and work conditions.

- The Court of Appeal convicted the defendants of THB (chapter 25, section 3, Criminal Code) related to six victims as well as extortionate work discrimination and several aggravated economic offences. Nevertheless, the Court of Appeal considered it justified to reduce the sentence passed by the District Court (from six years and 10 months to five years imprisonment) since they did not physically prevent the victims from moving. The Court considered, *inter alia*:
 - The victims were forced to work in insecure conditions and even if they were not physically prevented from moving, in practice they were prevented from meeting other people and attending Finnish language courses due to long working days and lack of free time. The insecure and dependent circumstances were maintained and the victims were not able to integrate into Finnish society.
 - The salary of the workers, starting from between EUR 300 and 500 per month and rising annually up to EUR 700-1,300 per month, was considerably lower than Finnish workers typically earn in similar work arrangements. The working hours were usually 10-12 hours per day, sometimes up to 17 hours per day and the working days 6-7 days per week. The victims were accommodated in apartments owned by the defendants. The allowable overtime work hours provided by Finnish labour legislation were exceeded. The deception concerning salary and work conditions meant that the victims' original consent to work for the defendants became irrelevant.
 - The victims constantly needed to borrow money from the defendants during their stay in Finland. In Vietnamese culture, debts shall be paid back before finishing the contract of employment. As the defendants were of Vietnamese origin, they took
- Extortionate work discrimination
- Low salary,
- Dependence
- Unsafe work conditions
- Vulnerability
- Debt bondage
- Debt of gratitude
- Dishonour
- Irrelevance of consent
- Living and working conditions



Court of Appeal of Vaasa (Vaasan hovioikeus), Vaasa, Finland, Decision no. 1210, R 13/309, 20 November 2013
www.parlament.gv.at

advantage of the victims' cultural background. Furthermore, the victims felt they were bound by a **debt of gratitude** to the defendants, since they were given a chance to travel to Finland, which meant hope for a better future for themselves and their families.

- The defendants **threatened** the victims with sending them back to Vietnam, which instilled constant fear given the cultural maxim in Vietnam that it is a man's duty to provide for his family.

[Link](#) to the judgment.

Case concerning the recruitment of 26 men from Kyrgyzstan by three individuals to work in FI under promised good working conditions.

One of the defendants was sentenced to three years and six months' imprisonment for **THB** (chapter 25, section 3, Criminal Code), aggravated embezzlement and one minor offence. In its decision to convict, the Court considered, *inter alia*:

- The victims had **no knowledge** of the exact amount of the salary, Finnish **labour legislation** concerning working hours and minimum wages, or available health care services. Furthermore, they were deprived of **ID documents** and were made to sign documents whose content was unknown to them. Importantly, the defendant opened bank accounts under the name of the victims without their knowledge and withdrew a significant part of the funds with the corresponding debit cards (EUR 171,863 in total). These factors led the victims to **insecure and dependent circumstances**.

- The victims communicated with other employers only through the **interpretation** of the defendant.
 - Submission to **working days** (including weekends) longer than those of Finnish workers: at least eight hours of overtime weekly without receiving overtime salary. Notably, the victims worked at least one year without having **annual leave**. Thus, the victims were **placed in a considerably inferior position**.
- **Accommodation** was set in the house of the defendant or in the premises of the company, which had not been completed. There were at most seven or eight persons sleeping in the same room and the use of hot water was restricted. The **boundaries between working hours and leisure** time were obscured given the poor living conditions and restrictions on movement. The victims were also **prohibited to talk** with local people.
- **Penalties (fines)** were applied to mistakes and prohibited conduct (e.g. EUR 50 for leaving the accommodation without permission of defendant). The victims were in a

- *Language skills*
- *Labour legislation*
- *Dependence*
- *ID documents*
- *Interpretation*
- *Threats*
- *Freedom of movement*
- *Debt bondage*



District court of
Hudiksvall

File B1834-11

31 October 2011



Hudiksvalls
tingsrätt (district
court)

File B2220-11

15 June 2012

situation of **debt bondage**.

- The paid **salaries** were given to the victims in **small fractions** to buy food at the local grocery store.

Case concerning the exploitation for forced labour - fruit picking (five days) – of three Bulgarian victims who were trafficked to SE by two fellow citizens.

The defendants were acquitted of **THB** (art. 4 (1) Criminal Code) but found guilty of beatings, arbitrary handling (of passports) and molestation. The prosecutor did not appeal the THB issue.
The victims were allegedly misled by false promises regarding **working conditions**. They would also have been forced to work through unlawful **coercion**, including beatings. **Passports** were taken and no **salaries** paid. One victim was **illiterate** and another **mentally ill**. None had money to return home.
All involved provided vague information or changed their statements in court. Both defendants were acquitted of THB due to lack of evidence. Importantly, the Court did not find evidence that the victims, when recruited, had been misled about the working conditions. As the victims had debts to the accused and it was unclear how much fruit each had picked, it was also never proven if the victims were insufficiently paid. Likewise, it was deemed that no evidence existed to prove the suspects had an underlying intention to defraud the victims if the fruit picking had continued over a longer period.

- Fruit picking for short time period
- Coercion
- Vague and contradictory statements
- Mental illness
- Insufficient evidence
- Seizure ID documents
- Lack of salary

Case concerning the exploitation for forced labour of 12 Bulgarian victims, trafficked to SE by two fellow citizens to do wild berry picking in the forests, under deceitful working conditions. Six victims were trafficked during summer 2009 and another six in summer 2010.

Both accused were convicted by the Court. However, it was not found proven that the defendants had beaten or threatened the victims, mainly due to vague and contradictory statements provided by victims and witnesses. The crimes were considered less serious. Both were convicted and sentenced to 10 months' imprisonment, expelled from Sweden and prohibited to return to the country for a period of 10 years. The court ruled each of the three victims were to be compensated by the perpetrator with SEK 25,000 (equivalent to EUR 2,400) and each of the other nine victims to be compensated with SEK 10,000 (equivalent to EUR 950).
The convicted were found to have used improper means to exploit the vulnerable position of victims and engage them in forced labour. Specifically:
- The victims were misled regarding **working conditions** when recruited in Bulgaria;
- They were transported to Sweden and **accommodated in outhouses** and forced to eat **outdated food** from waste containers;
- The victims were **threatened** to be sold, beaten or killed if they attempted to leave Sweden;

- Berry picking for relatively short time period
- Vague and contradictory statements
- Language
- ID documents
- Accommodated on
- Work condition
- Deception
- Food



Svea Hovrätt
(Court of Appeal)

B6263-10

14 October 2010



District court of
Malmö

File B3573-10

2 July 2010

- Victims' passports and **ID cards** were taken;
- **No salaries** were paid and victims had no money to return home;
- Victims knew no Swedish.

- *Coercion*
- *Compensation victims*
- *Lack of salary*

Case regarding the exploitation for forced labour (specifically for the purpose of street begging) of a Romanian national. The victim was a homeless adult orphan with mental and physical disabilities.

The District Court found the two accused guilty of **THB** (art. 4 (1) Criminal Code). Each was sentenced to two years' imprisonment, and prohibited from returning to Sweden for eight years. The court also ruled for the victim to be compensated with SEK 60,000 (equivalent to EUR 5,500) to be jointly paid by the convicted. The case was appealed and the Court increased the length of the sentence to three years. The victim was recruited in Romania and transported to Sweden via Austria, Germany and Denmark. For approximately six months he was forced to **beg on the streets** in all of the aforementioned countries. The defendant transported and **accommodated** the victim who was fully **controlled** by them. He was told to '*produce money for them*' by street begging and was neither allowed to keep his **passport** nor did he receive any **money**. He called the accused mum and dad and was sometimes beaten by them when he did not earn enough money. The defendant constantly **guarded** the victim while begging to ensure he did not leave or be contacted by the police.

- *Forced street begging*
- *Compensation to the victim*
- *Freedom of movement*
- *Dependence*
- *Vulnerability*

Case concerning exploitation for forced labour – ground engineering work. Three UK victims were trafficked to SE from UK via NL by two fellow citizens.

The Court acquitted both defendants as it considered there was neither enough evidence to prove they had misled the alleged victims at recruitment nor that the salaries were less than promised. It was also not proven that the victims had been controlled in a way that could amount to **THB**. The case was not appealed. As for the circumstances of the case, they were allegedly as follows:

- The victims were deceived in respect of **work conditions**, including salaries (GBP 40 /day + house and food promised, though only GBP 10 paid).
- The victims had to travel with the defendants from city to city and if no jobs were found they were not paid at all.
- These conditions were accepted due to **poverty**, homelessness and lack of means to travel back home as well as **fear** arising from the knowledge that other people were beaten.
- The victims did not dare go to the police as they were **threatened** by the defendants. They stayed for approximately six months.

- *Ground engineering workers*
- *Deception*
- *Fear*
- *Threats*
- *Poverty*
- *Lack of salaries*
- *Surveillance*



District court of
Umeå

File B179-12

19 February 2013

Case concerning aggravated usury but with many similarities to THB for labour exploitation – tyre work (approximately one year). Three Pakistani victims were lured with false promises and voluntarily travelled to SE to work in a factory.

The Court found the two defendants guilty of **aggravated usury** (art. 9 (5) Criminal Code). Each received a conditional sentence, equivalent to 11 months in prison, to be fulfilled by an obligation to participate in community service of 240 hours. They were found to have exploited and misused the **dependence** and underdog situation of the victims for their own financial gain. When recruited, the victims were **misled** regarding working conditions. The official contracts sent to Swedish authorities showed full-time (eight hours/day) work and a decent salary, but in reality victims had to work much more for less money. **Salaries** paid were also transferred back to the company. The victims did not dare leave due to their **dependence** on the employers, lack of knowledge of the **language** (one victim was **illiterate**), financial difficulties, threats and violence. They were also afraid to be sent home and to lose their Swedish **residence permits**.

- Usury
- Low salaries
- Heavy working hours
- Coercion
- Illiteracy
- Language
- Residence permit



R v K. (S.) [2011]
2 Cr. App. R 34,
CA

8 July 2011

www.parliament.gov.at

Case concerning THB for the purpose of labour exploitation of a domestic worker.

The victim was convicted of trafficking people for exploitation (section 4 of the Asylum and Immigration (Treatment of Claimants, etc.)) Act 2004. The victim had been brought to the UK by the appellant and required to work as a housekeeper. She was made to work very **long hours**, was **poorly fed**, never allowed out on her own, allowed little contact with her family and paid very little. The Court reiterated and accepted the definitions of Article 4 of the ECHR – namely ‘slavery’, ‘servitude’ and ‘**forced or compulsory labour**’ in *Siliadin*. The Court noted that these terms formed ‘a **hierarchy of denial of personal autonomy**’. The court noted that the terms were **not mutually exclusive**, should not be considered archaic, and that ‘force’ can be demonstrated in many ways.

- Long hours
- Poor food
- Tight surveillance
- Contact with family and friends
- Denial of personal autonomy



Attorney General's Reference (Nos 2, 3, 4 and 5 of 2013) [2013] EWCA Crim 324

26 March 2013

Case concerning conspiracy for forced labour whereby victims were bullied in view of their vulnerable position.

Following a three-month long trial, all five defendants referred were convicted of **conspiracy** to require a person to perform **forced or compulsory labour** (section 71 Coroners and Justice Act 2009). They were sentenced to three, four and six and a half years' imprisonment. The defendants, who were members of the same family, had a business involved in general property maintenance and **bullied vulnerable** and isolated men into working for them on the basis of **false promises** that they would be paid reasonably well and provided with accommodation and food. **Violence** and **coercion** were used, and the **conditions** the men were forced to work in were **very poor**. The case addressed the relevant factors that might assist in the assessment of the **seriousness of an offence** and subsequent sentencing, and the final verdicts upheld the sentences passed by the original judge.

- False promises
- Abuse of vulnerable position
- Violence
- Coercion
- Poor working conditions



NO

Jaeren City Court

4 July 2008

<p>Case concerning the recruitment, by a British national, of several homeless young men in the UK and their transportation to Norway where they were threatened and forced to work as asphalt workers.</p>	<p>The Court found the defendant guilty of human trafficking (art. 224 previous Criminal Code) and sentenced him to one year and six months imprisonment. The Court referred in its decision to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (The Palermo Protocol). It took into account, <i>inter alia</i>:</p> <ul style="list-style-type: none"> - The workers received very low wages, and less than initially agreed upon. - They had false passports, and due to mental illness did not know how to travel back to the UK on their own. - The victims did not speak Norwegian, were very afraid of the traffickers and were mentally disabled. - In such situation, the victims had no real opportunity to get out of the employment. - The fact that the victims initially consented to go to Norway and work as asphalt workers was irrelevant in view of their vulnerable situation. 	<ul style="list-style-type: none"> - THB - Labour exploitation - Vulnerability - Mental disease - Irrelevance of consent - Low salaries - Language limitations
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NO

Gulating Court of Appeals

25 June 2013

<p>Case concerning a Brazilian man who worked in a gay sauna in Bergen.</p>	<p>The Court found the Norwegian defendant guilty of human trafficking (art. 224 previous Criminal Code) and sentenced him to three years' imprisonment. The conviction was not solely for human trafficking but included also tax fraud and complicity in the violation of the Norwegian Immigration Act. The Court considered, <i>inter alia</i>:</p> <ul style="list-style-type: none"> - The victim worked up to 16 hours a day for almost three years, and the salary was very low. He also had to perform sexual massage if requested by customers. - He did not have a work permit in Norway, and slept in the sauna because he did not have money to rent his own apartment. He was also infected with HIV. <p>The severity of the exploitation was assessed by considering the length of exploitation and the victim's vulnerability increased after discovering he was infected with HIV. The victim was afraid that he would not receive proper treatment in Brazil. The defendant took advantage of the victim's fear of what would happen to him if he was found by the Norwegian Police and expelled to Brazil.</p> <p>The proceeds of THB were considered to be approximately EUR 55,000.</p> <p>The victim was willing to give testimony in court, and in this case the perpetrator would probably not have been convicted without the victim's testimony.</p>	<ul style="list-style-type: none"> - THB - Labour exploitation - Vulnerability - HIV - Length of exploitation - Accommodati on - Low salary
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European Court of Human Rights (ECtHR)

ECtHR

*Siliadin v.
France*

26 October
2005

A case of a Togolese female who arrived in France aged 15 years and seven months. It had been agreed that she would work at Mrs D.'s home until the cost of her air ticket had been reimbursed and that Mrs D. would attend to her immigration status and find her a place at school. In reality, the applicant became an unpaid housemaid for Mr and Mrs D. and her passport was taken from her. Later Mrs D. 'loaned' the applicant to Mr and Mrs B., who had two small children (+1 from a previous marriage), so that she could assist the pregnant Mrs B. with housework. The applicant lived at Mr and Mrs B.'s home, her father having given his consent. On her return from the maternity hospital, Mrs B. told the applicant that she had decided to keep her. The applicant subsequently became a general

In the case of **Siliadin v. France**, trafficking in human beings was considered by the ECtHR for the first time. Relying on Article 4 of the European Convention on Human Rights (Prohibition of slavery and forced labour), the applicant submitted that French criminal law **did not afford her sufficient and effective protection against 'servitude', or at the very least against the 'forced and compulsory' labour which in practice had made her a domestic slave**. In this case the Court considered that the applicant **had, at the least, been subjected to forced labour and held in servitude within the meaning of Article 4 of the Convention**. However, the Court held that it **could not be considered that the applicant had been held in slavery in the traditional sense of that concept**.

The Court noted that although the applicant was not threatened by a 'penalty', she was in an equivalent situation in terms of the perceived seriousness of the threat. She was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police. Indeed, Mr and Mrs B. nurtured that fear and led her to believe that her status would be regularised. Accordingly, the Court considered that the first criterion had been met, especially since the applicant was a minor at the relevant time.

The Court noted that, according to the 1927 Slavery Convention, **'slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'**. Although the applicant was, in the present case, clearly deprived of her personal autonomy, the evidence did not suggest that she was held in slavery in the proper sense, in other words that Mr and Mrs B. exercised a genuine right of legal ownership over her, thus reducing her to the status of an 'object'.

It follows in the light of the case law on this issue that for Convention purposes **'servitude' means an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of 'slavery'** described above.

In addition to the fact that the applicant was required to perform forced labour, the Court noted that the labour lasted almost fifteen hours a day, seven days per week. She had been brought to France by a relative of her father's, and had not chosen to work for Mr and Mrs B. As a minor, she had no resources and was vulnerable and isolated, and had no means of living elsewhere than in the home of Mr and Mrs B., where she shared the children's bedroom as no other accommodation had been offered. She was entirely at Mr and Mrs B.'s mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which never occurred. In addition, the applicant, who was afraid of being arrested

- *Forced labour*
- *Servitude*

housemaid for Mr and Mrs B. for several years. She worked seven days a week, without a day off. Her working day began at 7.30 a.m., when she had to get up and prepare breakfast, dress the children, take them to nursery school or their recreational activities, look after the baby, do the housework and wash and iron clothes. In the evening she prepared dinner, looked after the older children, did the washing up and went to bed at about 10.30 p.m. In addition, she had to clean a studio flat, in the same building, which Mr B. had made into an office.

The applicant slept on a mattress on the floor in the children's bedroom, she was not paid and did not attend school.

by the police, was not in any event permitted to leave the house, except to take the children to their classes and various activities. Thus, she had no freedom of movement and no free time. As she had not been sent to school, despite the promises made to her father, the applicant could not hope that her situation would improve and was completely dependent on Mr and Mrs B. In those circumstances, **the Court concluded that the applicant, a minor at the relevant time, was held in servitude within the meaning of Article 4 of the Convention.**


[Link](#) to the judgment.

The applicant's 'employers' were prosecuted under Articles 225-13 and 225-14 of the Criminal Code. In the judgment delivered on 10 June 1999, the Paris tribunal de grande instance found Mr and Mrs B. guilty of the offence defined in Article 225-13 of the Criminal Code. Conversely, it found that the offence set out in Article 225-14 had not been made out. The defendants were sentenced to twelve months' imprisonment, seven of which were suspended, and ordered to pay a fine of FRF 100,000 each and to pay, jointly and severally, FRF 100,000 to the applicant in damages. On appeal by Mr and Mrs B., the Paris Court of Appeal delivered a judgment on 19 October 2000 in which it quashed the judgment at first instance and acquitted the defendants.

On appeal on points of law by the applicant alone, the Court of Cassation overturned the Court of Appeal's judgment, but only in respect of its civil aspects, and the case was remitted to another court of appeal. On 15 May 2003 that court gave a judgment upholding the findings of the tribunal de première instance and awarded the applicant damages. (As the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment of 19 October 2000, the appeal to the Court of Cassation concerned only the civil aspect of the case and Mr and Mrs B.'s acquittal thus became final.)

ANNEX II

National legal provisions as referred to in the analysed case-law*

Member State	Legislation	Legal provisions
 CZ	Criminal Code	<p>As worded at the material time</p> <p>Section 232a - Trafficking in Human Beings</p> <p>(1) Whoever forces, procures, hires, entices, transports, conceals, detains, or consigns a child to be used by another for</p> <ol style="list-style-type: none">sexual intercourse or other forms of sexual abuse or harassment,slavery or servitude, orforced labour or other forms of exploitation, <p>shall be sentenced to imprisonment for two to ten years.</p> <p>(2) The same sentence shall be imposed to anyone who forces, procures, hires, entices, transports, hides, detains, or consigns a person other than referred to in Sub-section (1) by using violence, threat of violence or other grievous harm or deceit, or by abusing his/her error, distress, or addiction in order to use him/her for</p> <ol style="list-style-type: none">sexual intercourse or other forms of sexual abuse or harassment,slavery or servitude, orforced labour or other forms of exploitation. <p>(3) An offender shall be sentenced to imprisonment for five to twelve years if he/she</p> <ol style="list-style-type: none">commits then act referred to in Sub-section (1) or (2) as a member of an organised group,exposes another person to a risk of grievous bodily harm or death by such an act,commits such an act with the intention to gain a substantial profit, or

* Please note that some of the English translations provided in this compilation are not official.

d) commits such an act with the intention to use another person for prostitution.

As amended by the Law of 8 January 2009

Section 168 Trafficking in Human Beings

(1) Whoever forces, procures, hires, incites, entices, transports, conceals, detains, receives or consigns a child to be used a) by another for sexual intercourse or other forms of sexual abuse or harassment, or for production of pornographic works,

b) by another for extraction of tissue, cell, or organs from his/her body,

c) for service in the armed forces,

d) for slavery or servitude, or

e) for forced labour or other forms of exploitation, or

who profits on such a conduct,

shall be sentenced to imprisonment for two to ten years.

(2) The same sentence shall be imposed to anyone who forces, procures, hires, incites, entices, transports, hides, detains, receives or consigns a person other than referred to in Sub-section (1) by using violence, threat of violence or other grievous harm or deceit, or by abusing his/her error, distress, or addiction in order to use him/her

a) by another for sexual intercourse or other forms of sexual abuse or harassment, or for the production of pornographic works,

b) by another for extraction of tissue, cell, or organs from their body,

c) service in the armed forces,

d) slavery or servitude, or

e) forced labour or other forms of exploitation, or

who profits on such conduct.

(3) An offender shall be sentenced to imprisonment for five to twelve years or to confiscation of property if he/she

a) commits then act referred to in Sub-section (1) or (2) as a member of an organised group,

b) exposes another person to a risk of grievous bodily harm or death by such an act,

c) commits such an act with the intention to gain a substantial profit for him-/herself or for another, or

d) commits such an act with the intention to use another person for prostitution.

(4) An offender shall be sentenced to imprisonment for eight to fifteen years or to confiscation of property if he/she

a) causes grievous bodily harm by the act referred to in Sub-section (1) or (2),

b) commits such an act with the intention to gain extensive profit for him-/herself or for another, or

c) commits such an act in connection to an organised group operating in several states.

(5) An offender shall be sentenced to imprisonment for ten to eighteen years or to confiscation of property, if he/she causes death by the act referred to in Sub-section (1) or (2).

(6) Preparation is criminal.

Criminal Law
(Human
Trafficking)
Act 2008

1.— In this Act— **“exploitation”** means—
(a) labour exploitation,
(b) sexual exploitation, or
(c) exploitation consisting of the removal of one or more of the organs of a person;

“labour exploitation” means, in relation to a person (including a child)—
(a) subjecting the person to forced labour,
(b) forcing him or her to render services to another, or
(c) enslavement of the person or subjecting him or her to servitude or a similar condition or state;

...
4.— (1) A person (in this section referred to as the “trafficker”) who trafficks another person (in this section referred to as the “trafficked person”), other than a child or a person to whom subsection (3) applies, for the purposes of the exploitation of the trafficked person shall be guilty of an offence if, in or for the purpose of trafficking the trafficked person, the trafficker—
(a) coerced, threatened, abducted or otherwise used force against the trafficked person,
(b) deceived or committed a fraud against the trafficked person,
(c) abused his or her authority or took advantage of the vulnerability of the trafficked person to such extent as to cause the trafficked person to have had no real and acceptable alternative but to submit to being trafficked,
(d) coerced, threatened or otherwise used force against any person in whose care or charge, or under whose control, the trafficked person was for the time being, in order to compel that person to permit the trafficker to traffick the trafficked person, or
(e) made any payment to, or conferred any right, interest or other benefit on, any person in whose care or charge, or under whose control, the trafficked person was for the time being, in exchange for that person permitting the trafficker to traffick the trafficked person.

(2) In proceedings for an offence under this section it shall not be a defence for the defendant to show that the person in respect of whom the offence was committed consented to the commission of any of the acts of which the offence consists.

...

Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking

3. This notice applies to a foreign national who is identified as a suspected victim of human trafficking, that is, where there are reasonable grounds for believing that he or she is a victim of an offence under sections 2 or 4 of the Criminal Law (Human Trafficking) Act 2008 or section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998. Whether there are reasonable grounds for that belief in any particular case is determined by a member of the Garda Síochána

not below the rank of Superintendent at the Office of the Garda National Immigration Bureau (GNIB) at 13-14 Burgh Quay, Dublin 2. For the purpose of this notice a 'foreign national' means a person from outside the European Economic Area.

..

5. ... a person who has been identified by a member of the Garda Síochána not below the rank of Superintendent in GNIB as a suspected victim of human trafficking may be granted a permission to remain lawfully in the State for a period of 60 days (a 'recovery and reflection period'). The purpose of the recovery and reflection period is to allow the person -

a) time to recover from the alleged trafficking, and

b) to escape the influence of the alleged perpetrators of the alleged trafficking

so that he or she can take an informed decision as to whether to assist Gardaí or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking.

[Link to the provisions.](#)



ES

Criminal
Code

Article 177 bis – Trafficking in human beings

1. Whoever, using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of a national or alien victim, were to induce, transport, transfer, receive or house such a victim for any of the purposes described below, within Spain, from Spain, in transit or with destination therein, shall be convicted of human trafficking and punished with the penalty of five to eight years imprisonment.;

a) Imposing on the victim forced work or services, slavery or practices similar to slavery or servitude or begging;

b) Sexual exploitation, including pornography;

c) Extraction of their bodily organs.

2. Even when not resorting to any of the means listed in the preceding Section, the actions stated in the preceding Section shall be deemed human trafficking when perpetrated with minors for the purposes of exploitation.

3. The consent of a victim of human trafficking shall be irrelevant when any of the means stated in Section one of this Article has been resorted to.

4. A higher degree punishment than that foreseen in Section 1 of this Article shall be applied when:

a) The trafficking puts the victim in serious danger;

b) The victim is a minor;

c) The victim is especially vulnerable due to illness, disability or his situation.

Should more than one circumstance concur, the punishment shall be imposed in its upper half.

5. A punishment higher in one degree than that foreseen in Section 1 of this Article shall be imposed, and absolute barring from six to twelve years for those who perpetrate such acts availing themselves of their status as an authority due to being agent or public officer thereof . If any of the circumstances also foreseen in Section 4 of this Article should also concur, the penalties shall be imposed in the upper half.

6. A punishment higher in one degree than foreseen in Section 1 of this Article shall be imposed and special barring from

profession, trade, industry or commerce for the time of the sentence, when the offender belongs to an organisation or assembly of more than two persons, even if transitory in nature, which perpetrates such activities. Should any of the circumstances foreseen in Section 4 of this Article concur, the penalties imposed shall be in the upper half. If the circumstance foreseen in Section 5 of this Article concurs, the penalties imposed shall be those stated in the upper half thereof. In the case of the managers, directors or persons in charge of such organisations or assemblies, the upper half of the punishment shall be applied, which may be raised to the one immediately above it in degree.

In all cases, the punishment shall be raised to the one immediately above in degree if any of the circumstances foreseen in Section 4 or the circumstance foreseen in Section 5 of this Article concurs.

7. When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the offences described in the Article, the punishment imposed thereon shall be a fine from three to five times the profit obtained. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Sections b) to g) of Section 7 of Article 33.

8. Provocation, conspiracy and solicitation to commit the offence of trafficking in human beings shall be punished with the penalty lower by one or two degrees to that of the relevant offence.

9. In all cases, the penalties foreseen in this Article shall be imposed without prejudice to the relevant one, as appropriate, for the offence of Article 318 bis of this Code and other offences effectively committed, including those related to the relevant exploitation.

10. Sentences by foreign Judges or Courts of Law for offences of the same kind as those foreseen in this Article shall have the effect of recidivism, except if the criminal record has been cancelled or may be, pursuant to Spanish Law.

11. Without prejudice to application of the general rules of this Code, the victims of trafficking in human beings shall be exempt of punishment for the criminal offences that might have been committed while suffering exploitation, as long as participation therein has been a direct consequence of the situation of violence, intimidation, deceit or abuse to which they may have been subjected to and provided there is an adequate proportionality between that situation and the criminal act perpetrated.

Article 188

1. Whoever uses violence, intimidation or deceit, or abuse of a situation of superiority or need or vulnerability of the victim, to force a person who is of legal age to practice prostitution, or to continue to do so, shall be punished with the prison sentences of two to four years and a fine from twelve to twenty- four months. The same punishment shall be incurred by whoever makes a profit from exploiting prostitution by another person, even when that person consents.
2. Should the conduct mentioned by perpetrated against a minor or incapacitated person, to initiate or maintain that person in prostitution, the offender shall be handed down a sentence of imprisonment from four to six years.
3. Whoever behaves as foreseen in the preceding Section, when the victim is under thirteen years old, shall be punished with a sentence of imprisonment from five to ten years.
4. The penalties shall be imposed as foreseen in the preceding Sections, in the upper half, in the respective cases, when any of the following circumstances concur:

- a) When the offender has availed himself of his status as an authority, agent or public officer thereof. In that case, the punishment of absolute barring from six to twelve years shall also be applied;
- b) When the offender belongs to a criminal organisation or group with the purpose of perpetrating those activities;
- c) When the offender has endangered the life or health of the victim, maliciously or due to serious negligence.
5. The penalties stated shall be imposed in the respective cases, without prejudice to the relevant one for the sexual assaults or abuses committed against the person prostituted.

Article 312

1. Punishment by imprisonment from two to five years and a fine from six to twelve months shall apply to those who unlawfully traffic with labour.
2. The same punishment shall be incurred by whoever recruits persons or leads them to leave their place of work by offering deceitful or false employment or working conditions and whoever employs foreign citizens without work permits under conditions that negatively affect, suppress or restrict the rights they are recognised by the legal provisions, collective bargaining agreements or individual contracts.

Article 313

Whoever were to bring about or favour emigration of any person to another country simulating a contract or placement, or using another similar deceit, shall be punished with the penalty foreseen in the preceding Article.

Article 318 bis 2

1. Whoever, directly or indirectly, promotes, favours or facilitates illegal trafficking or clandestine immigration of persons from, in transit and with their destination in Spain, or with their destination in another country in the European Union, shall be punished with the penalty from four to eight years imprisonment.
 2. Those who perpetrate the conduct described the preceding Section for profit or using violence, intimidation, deceit, or abusing a situation of superiority or of special vulnerability of the victim, or endangering life, personal health or integrity, shall be punished with the penalties in the upper half. Should the victim be a minor or incapacitated, this shall be punished with the penalties higher by one degree to those foreseen in the preceding Section.
 3. The same penalties as in the preceding Section, and also that of absolute barring from six to twelve years, shall be incurred by those who perpetrate the acts availing themselves of their status as an authority, agent thereof or public officer.
 4. The penalties higher by one degree to those foreseen in Sections 1 to 3 of this Article shall be imposed, in the respective cases, and special barring from profession, trade, industry or commerce for the term of the conviction, when the offender belongs to an organisation or assembly, even if transitory in nature, which perpetrates such operations.
- In the case of managers, directors or those in charge of those organisations or assemblies, the upper half of the punishment shall be applied, that may be raised to the one immediately above it in degree. When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the offences defined in this Title, the punishment of a fine from two to five years

shall be imposed, or that from three to five times the profit obtained if the resulting amount were to be higher. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Sections b) to g) of Section 7 of Article 33.

5. The Courts of Law, taking into account the seriousness of the act and its circumstances, the conditions of the offender and the purpose he had intended, may impose the punishment lower by one degree to the relevant one stated.

As worded at the material time

Article 225-13

“It shall be an offence punishable by two years' imprisonment and a fine of 500,000 francs to obtain from an individual the performance of services without payment or in exchange for payment that is manifestly disproportionate to the amount of work carried out, by taking advantage of that person's vulnerability or state of dependence.”

Article 225-14

“It shall be an offence punishable by two years' imprisonment and a fine of 500,000 francs to subject an individual to working or living conditions which are incompatible with human dignity by taking advantage of that individual's vulnerability or state of dependence.”

As amended by the Law of 18 March 2003

Article 225-13

“It shall be an offence punishable by five years' imprisonment and a fine of 150,000 euros to obtain from an individual whose vulnerability or state of dependence is apparent or of which the offender is aware, the performance of services without payment or in exchange for payment which is manifestly disproportionate to the amount of work carried out.”

Article 225-14

“It shall be an offence punishable by five years' imprisonment and a fine of 150,000 euros to subject an individual whose vulnerability or state of dependence is apparent or of which the offender is aware to working or living conditions which are incompatible with human dignity.”

Article 225-15

“The offences set out in Articles 225-13 and 225-14 shall be punishable by seven years' imprisonment and a fine of 200,000 euros if they are committed against more than one person. If they are committed against a minor, they shall be punishable by seven years' imprisonment and a fine of 200,000 euros. If they are committed against more than one person, including one or more minors, they shall be punishable by ten years' imprisonment and a fine of 300,000 euros.”



Immigration
Act
286/1998

Article 12 paragraph 5

“Gaining unfair profit from the irregular condition of the migrant”, *Whoever, in order to gain an unfair profit from the irregular condition of a stranger, encourages the stay of the latter on the Italian territory, is sanctioned with imprisonment up to 4 years and with a pecuniary sanction of €15,493.*
Offence = Major Crime

Article 22 paragraph 5

“Recruiting migrant without a resident permit”, *The employer recruiting foreign workers without a residence permit is sanctioned with detention from three months up to 1 year and with a pecuniary sanction equal to €5,000 per worker recruited.*
Contravention = Minor Crime



Criminal
Code

Artikel 273f

1. Als schuldig aan mensenhandel wordt met gevangenisstraf van ten hoogste twaalf jaren of geldboete van de vijfde categorie gestraft:

1°. degene die een ander door dwang, geweld of een andere feitelijkheid of door dreiging met geweld of een andere feitelijkheid, door afpersing, fraude, misleiding dan wel door misbruik van uit feitelijke omstandigheden voortvloeiend overwicht, door misbruik van een kwetsbare positie of door het geven of ontvangen van betalingen of voordelen om de instemming van een persoon te verkrijgen die zeggenschap over die ander heeft, werft, vervoert, overbrengt, huisvest of opneemt, met inbegrip van de wisseling of overdracht van de controle over die ander, met het oogmerk van uitbuiting van die ander of de verwijdering van diens organen;

2°. degene die een ander werft, vervoert, overbrengt, huisvest of opneemt, met inbegrip van de wisseling of overdracht van de controle over die ander, met het oogmerk van uitbuiting van die ander of de verwijdering van diens organen, terwijl die ander de leeftijd van achttien jaren nog niet heeft bereikt;

3°. degene die een ander aanwerft, medeneemt of ontvoert met het oogmerk die ander in een ander land ertoe te brengen zich beschikbaar te stellen tot het verrichten van seksuele handelingen met of voor een derde tegen betaling;

4°. degene die een ander met een van de onder 1° genoemde middelen dwingt of beweegt zich beschikbaar te stellen tot het verrichten van arbeid of diensten of zijn organen beschikbaar te stellen dan wel onder de onder 1° genoemde omstandigheden enige handeling onderneemt waarvan hij weet of redelijkerwijs moet vermoeden dat die ander zich daardoor beschikbaar stelt tot het verrichten van arbeid of diensten of zijn organen beschikbaar stelt;

5°. degene die een ander ertoe brengt zich beschikbaar te stellen tot het verrichten van seksuele handelingen met of voor een derde tegen betaling of zijn organen tegen betaling beschikbaar te stellen dan wel ten aanzien van een ander enige handeling onderneemt waarvan hij weet of redelijkerwijs moet vermoeden dat die ander zich daardoor beschikbaar stelt tot het verrichten van die handelingen of zijn organen tegen betaling beschikbaar stelt, terwijl die ander de leeftijd van achttien jaren nog niet heeft bereikt;

- 6°. degene die opzettelijk voordeel trekt uit de uitbuiting van een ander;
- 7°. degene die opzettelijk voordeel trekt uit de verwijdering van organen van een ander, terwijl hij weet of redelijkerwijs moet vermoeden dat diens organen onder de onder 1° bedoelde omstandigheden zijn verwijderd;
- 8°. degene die opzettelijk voordeel trekt uit seksuele handelingen van een ander met of voor een derde tegen betaling of de verwijdering van diens organen tegen betaling, terwijl die ander de leeftijd van achttien jaren nog niet heeft bereikt;
- 9°. degene die een ander met een van de onder 1° genoemde middelen dwingt dan wel beweegt hem te bevoorordelen uit de opbrengst van diens seksuele handelingen met of voor een derde of van de verwijdering van diens organen.

2. Uitbuiting omvat ten minste uitbuiting van een ander in de prostitutie, andere vormen van seksuele uitbuiting, gedwongen of verplichte arbeid of diensten, met inbegrip van bedelarij, slavernij en met slavernij te vergelijken praktijken, dienstbaarheid en uitbuiting van strafbare activiteiten.

3. De schuldige wordt gestraft met gevangenisstraf van ten hoogste vijftien jaren of geldboete van de vijfde categorie, indien:

- 1°. de feiten, omschreven in het eerste lid, worden gepleegd door twee of meer verenigde personen;
- 2°. degene ten aanzien van wie de in het eerste lid omschreven feiten worden gepleegd een persoon is die de leeftijd van achttien jaren nog niet heeft bereikt dan wel een ander persoon is bij wie misbruik van een kwetsbare positie wordt gemaakt;
- 3°. de feiten, omschreven in het eerste lid, zijn voorafgegaan, vergezeld of gevolgd van geweld.

4. Indien een van de in het eerste lid omschreven feiten zwaar lichamelijk letsel ten gevolge heeft of daarvan levensgevaar voor een ander te duchten is, wordt gevangenisstraf van ten hoogste achttien jaren of geldboete van de vijfde categorie opgelegd.

5. Indien een van de in het eerste lid omschreven feiten de dood ten gevolge heeft, wordt levenslange gevangenisstraf of tijdelijke van ten hoogste dertig jaren of geldboete van de vijfde categorie opgelegd.

6. Onder kwetsbare positie wordt mede begrepen een situatie waarin een persoon geen andere werkelijke of aanvaardbare keuze heeft dan het misbruik te ondergaan.

7. Artikel 251 is van overeenkomstige toepassing.

[Link to the provisions \(in NL only\).](#)



Criminal
Code

Section 104a.

(1) Wer eine volljährige Person mit dem Vorsatz, dass sie ausgebeutet werde (Abs. 3), unter Einsatz unlauterer Mittel (Abs. 2) gegen diese Person anwirbt, beherbergt oder sonst aufnimmt, befördert oder einem anderen anbieten anbietet oder weitergibt, ist mit



Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

(2) Unlautere Mittel sind der Einsatz von Gewalt oder gefährlicher Drohung, die Täuschung über Tatsachen, die Ausnützung einer Autoritätsstellung, einer Zwangslage, einer Geisteskrankheit oder eines Zustands, der die Person wehrlos macht, die Einschüchterung und die Gewährung oder Annahme eines Vorteils für die Übergabe der Herrschaft über die Person.

(3) Ausbeutung umfasst die sexuelle Ausbeutung, die Ausbeutung durch Organentnahme, die Ausbeutung der Arbeitskraft, die Ausbeutung zur Bettelei sowie die Ausbeutung zur Begehung mit Strafe bedrohter Handlungen.

(4) Wer die Tat im Rahmen einer kriminellen Vereinigung, unter Anwendung schwerer Gewalt oder so begeht, dass durch die Tat das Leben der Person vorsätzlich oder grob fahrlässig gefährdet wird oder die Tat einen besonders schweren Nachteil für die Person zur Folge hat, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.

(5) Mit Freiheitsstrafe von einem bis zu zehn Jahren ist auch zu bestrafen, wer eine minderjährige Person mit dem Vorsatz, dass sie ausgebeutet werde (Abs. 3), anwirbt, beherbergt oder sonst aufnimmt, befördert oder einem anderen anbietet oder weitergibt.

[Link to the provisions \(in DE only\).](#)

Criminal
Code
(39/1889)⁸

Chapter 25, section 3 - *Trafficking in human beings (650/2004)*

A person who

- (1) by abusing the dependent status or vulnerable state of another person,
- (2) by deceiving another person or by abusing a mistake made by 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, section 9, subsection 1(1) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial benefit shall be sentenced for *trafficking in human beings* to imprisonment for at least four months and at most six years. (1177/2014)

Also 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. (1177/2014)

An attempt is punishable.

⁸ Please note that the section 3 a of chapter 25 of the Finnish Criminal Code has changed slightly as of 1 October 2015.

Chapter 25, section 3 a – Aggravated trafficking in human beings (650/2004)

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 intentionally 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 or herself has been substantially diminished, or
- (4) the offence has been committed within the framework of a criminal organisation referred to in chapter 17, section 1a, subsection 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 at least two years and at most ten years.

Also a person who enslaves or keeps another person in servitude, transports or trades in slaves shall be sentenced for aggravated trafficking in human beings if the act is aggravated when assessed as whole.

An attempt is punishable.

Chapter 47, section 3 - Work discrimination (885/2009)

An employer, or a representative thereof, who when advertising for a vacancy or selecting an employee, or during employment without an important and justifiable reason puts an applicant for a job or an employee in an inferior position

- 1) because of race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference, inheritance, disability or state of health, or
- 2) because of religion, political opinion, political or industrial activity or a comparable circumstance shall be sentenced for *work discrimination* to a fine or to imprisonment for at most six months.

Chapter 47, section 3(a) – Extortionate work discrimination (302/2004)

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.

Section 4 - Working hours

The time spent on work and the time an employee is required to be present at a place of work at the employer's disposal are considered working hours.

Daily periods of rest as referred to in section 28 or based on agreement are not included in working hours if the employee is

Working

Hours Act
(605/1996)

free to leave the place of work during these times.
Travel time is not included in working hours if it does not constitute work performance.

Section 17 - Additional work and overtime

Additional work refers to work done on the employer's initiative which does not exceed the regular working hours prescribed in sections 6 or 7, agreed under sections 9, 10 or 12, or referred to in section 14.

Overtime refers to work carried out on the employer's initiative in addition to the regular working hours referred to in subsection 1.

Section 19 - Maximum amounts of overtime

The maximum amount of overtime during a four-month period is 138 hours, though 250 hours must not be exceeded in a calendar year.

An employer can agree on additional overtime with employee representatives or personnel or a personnel group together as referred to in section 10. The maximum amount of such additional overtime in a calendar year is 80 hours. The maximum amount of 138 hours referred to in subsection 1 above cannot, however, be exceeded. Employer and employee organizations which operate nationwide can make exceptions to the time period referred to in subsection 1 by collective agreement. Such collective-agreement based periods cannot, however, exceed 12 months and the maximum amount of annual overtime must comply with the limits laid down in subsections 1 and 2 above.



Criminal
Procedure
Code
BROTTSBALK (1962:700)
GIVEN STOCKHOLMS SLOTT DEN 21 DECEMBER 1962

4 kap. Om brott mot frihet och frid

4 kap. 1 §

Den som bemäktigar sig och för bort eller spärrar in ett barn eller någon annan med uppsåt att skada honom eller henne till liv eller hälsa eller att tvinga honom eller henne till tjänst eller att öva utpressning, döms för *människoröv* till fängelse på viss tid, lägst fyra och högst arton år, eller på livstid.

Är brottet mindre grovt, döms till fängelse i högst sex år. *Lag (2009:396).*

4 kap. 1 a §

Den som, i annat fall än som avses i 1 §, genom olaga tvång, vilseledande, utnyttjande av någons utsatta belägenhet eller med annat sådant otillbörligt medel rekryterar, transporterar, överför, inhyser eller tar emot en person i syfte att han eller hon ska exploateras för sexuella ändamål, avlägsnande av organ, krigstjänst, tvångsarbete eller annan verksamhet i en situation som innebär nödläge för den utsatte, döms för *människohandel* till fängelse i lägst två och högst tio år.

Den som begår en gärning som avses i första stycket mot en person som inte har fyllt arton år döms för människohandel även



Asylum and
Immigration
(Treatment
of Claimants,
etc.) Act
2004

Legislation at time of alleged offending

Section 4 – Trafficking people for exploitation

- (1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the “passenger”) and—
- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
 - (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.
- (2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—
- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
 - (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.
- (3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and—
- (a) he intends to exploit the passenger outside the United Kingdom, or
 - (b) he believes that another person is likely to exploit the passenger outside the United Kingdom.
- (4) For the purposes of this section a person is exploited if (and only if)—
- (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
 - (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),
 - (c) he is subjected to force, threats or deception designed to induce him—
 - (i) to provide services of any kind,
 - (ii) to provide another person with benefits of any kind, or
 - (iii) to enable another person to acquire benefits of any kind, or
 - (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—

om inte något sådant otillbörligt medel som anges där har använts.
Är ett brott som avses i första eller andra stycket mindre grovt, döms till fängelse i högst fyra år. *Lag (2010:371)*.

4 kap. 10 §

För försök, förberedelse eller stämpling till människorov, människohandel eller olaga frihetsberövande och för underlåtenhet att avslöja ett sådant brott döms det till ansvar enligt 23 kap. Detsamma gäller för försök eller förberedelse till olaga tvång som är grovt, äktenskapstvång, dataintrång som om det fullbordats inte skulle ha varit att anse som ringa, eller grovt dataintrång. *Lag (2014:302) ändrad g. lag (2014:382)*.

- (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
(ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.
- (5) A person guilty of an offence under this section shall be liable—
(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
(b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

Coroners
and Justice
Act 2009

Legislation at time of alleged offending

Section 71 – Slavery, servitude and forced or compulsory labour

(1) A person (D) commits an offence if—

- (a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or
(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.
- (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).
- (3) A person guilty of an offence under this section is liable—
(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.
- (4) In this section—
“Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950;
“the relevant period” means—
(a) in relation to England and Wales, 12 months;
(b) in relation to Northern Ireland, 6 months.

Modern
Slavery Act
2005

Legislative provision after 31 July 2015

Section 1 - Slavery, servitude and forced or compulsory labour

(1) A person commits an offence if—

- (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought

to know that the other person is held in slavery or servitude, or

(b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.

(3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

(4) For example, regard may be had—

(a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons;

(b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).

(5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

Section 2 - Human trafficking

This section has no associated Explanatory Notes

(1) A person commits an offence if the person arranges or facilitates the travel of another person ("V") with a view to V being exploited.

(2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).

(3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.

(4) A person arranges or facilitates V's travel with a view to V being exploited only if—

(a) the person intends to exploit V (in any part of the world) during or after the travel, or

(b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.

(5) "Travel" means—

(a) arriving in, or entering, any country,

(b) departing from any country,

(c) travelling within any country.

(6) A person who is a UK national commits an offence under this section regardless of—

(a) where the arranging or facilitating takes place, or

(b) where the travel takes place.

(7) A person who is not a UK national commits an offence under this section if—

- (a) any part of the arranging or facilitating takes place in the United Kingdom, or
- (b) the travel consists of arrival in or entry into, departure from, or travel within, the United Kingdom.

Criminal Code⁹

English version of the previous Norwegian Criminal Code:

Section 224

Any person who by force, threats, misuse of another person's vulnerability, or other improper conduct exploits another person for the purpose of

- a) prostitution or other sexual purposes,
- b) forced labour,
- c) war service in a foreign country, or
- d) removal of any of the said person's organs,

or who induces another person to allow himself or herself to be used for such purposes, shall be guilty of human trafficking and shall be liable to imprisonment for a term not exceeding five years.

Any person who

- a) makes arrangements for such exploitation or inducement as is mentioned in the first paragraph by procuring, transporting or receiving the person concerned,
- b) in any other way aids and abets such exploitation or inducement, or
- c) provides payment or any other advantage in order to obtain consent to such exploitation from any person who has authority over the aggrieved person, or who receives such payment or other advantage shall be liable to the same penalty.

Any person who commits an act referred to in the first or second paragraph against a person who is under 18 years of age shall be liable to a penalty independently of any use of force or threats, misuse of a person's vulnerability, or other improper conduct.

Gross human trafficking is punishable by imprisonment for a term not exceeding ten years. In deciding whether the offence is gross, particular importance shall be attached to whether the person exposed to the act was under 18 years of age, whether gross violence or coercion was used or whether the act led to considerable gain.

§ 257.1 *Menneskehandel*

Den som ved vold,² trusler,³ misbruk av sårbar situasjon eller annen utilbørlig atferd tvinger, utnytter eller forleder en person

⁹ The new Norwegian Criminal Code entered into force on 1 October 2015.

til

- a) prostitusjon⁴ eller andre seksuelle ytelser,
- b) arbeid eller tjenester, herunder tigging,
- c) krigstjeneste i fremmed land, eller
- d) å samtykke i fjerning av et av vedkommendes indre organer,

straffes for **menneskehandel** med fengsel inntil 6 år.

På samme måte straffes den som

- a) legger forholdene til rette for slik tvang, utnyttelse eller forledelse som nevnt i første ledd ved å anskaffe, transportere eller motta personen,
- b) på annen måte medvirker til tvangen, utnyttelsen eller forledelsen, eller
- c) gir betaling eller annen fordel for å få samtykke til en slik handlemåte fra en person som har myndighet over den fornærmede, eller som mottar slik betaling eller fordel.

Den som begår en handling som nevnt i første eller annet ledd mot en person som er under 18 år, straffes uavhengig av om vold, trusler, misbruk av sårbar situasjon eller annen utilbørlig atferd er anvendt.⁵ Den som var uvitende om at fornærmede var under 18 år, straffes hvis han på noe punkt kan klandres for sin uvitenhet.⁶

0 Tilføyd ved [lov 19 juni 2009 nr. 74](#).

1 Sml. [strl. 1902 § 224 \(1\)-\(3\)](#). Jf. [§ 5 \(1\) nr. 9 og 131](#), [lov 13 juni 1969 nr. 26 § 3-3](#) og [§ 3-5](#) og [strpl. § 107 a](#).

2 Jf. kap. 25.

3 Jf. [§§ 263](#) og [264](#).

4 Jf. [§ 309](#), 315 og 316.

5 Jf. [§§ 87 \(1\)](#) og [309](#).

6 Sml. [§ 307](#).

§ 258.1 Grov menneskehandel

Grov menneskehandel straffes med fengsel inntil 10 år. Ved avgjørelsen av om overtredelsen er grov skal det særlig legges vekt på om den som ble utsatt for handlingen var under 18 år, om det ble brukt grov vold eller tvang og om handlingen har medført² betydelig utbytte. Den som var uvitende om at fornærmede var under 18 år, straffes hvis han på noe punkt kan klandres for sin uvitenhet.³

0 Tilføyd ved [lov 19 juni 2009 nr. 74](#).

1 Sml. [strl. 1902 § 224 \(4\)](#). Jf. [§§ 333 \(2\)](#) og [338 \(2\)](#), [lov 13 juni 1969 nr. 26 § 3-3](#) og [§ 3-5](#) og [strpl. § 107 a](#).

2 Jf. [§ 24](#).

3 Sml. [§ 30Z](#).
