

Presentation Imke van Gardingen – FNV
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Dear all,

As a trade union we have quite a clear picture of the legal frameworks for labour exploitation. And obviously also of the hurdles we face in practice.

In the international arena we have all kinds of definitions for labour exploitation; human trafficking as defined in the Palermo protocol. The ILO Forced labour definitions. Modern Slavery. This can be confusing. But the real challenge lies in the implementation of these international standards.

In discussing how labour exploitation should be defined legally, in order to make it effective in practice, I want to reflect upon a few subjects. First, the urgent need for investigations preceding legal actions, 2. the current fragmented legal approach, and 3. the need for bold actors.

So first, the need for investigations. Labour exploitation is mostly systematically organized. It is the whole package deal of wage deductions, social security fraud, keeping workers isolated and dependent that makes systematic labour exploitation very profitable. A good example is the Dutch mushroom case where 500 Polish workers were exploited. The owner and employer was sentenced to prison for 25 months for fraud, human trafficking and exploitation. The case is currently under appeal. But persistent investigations already started in 2006 by our trade union officer.

To add to that, investigation should go beyond looking into direct employment relations. Flexible contracts, the use of contractors and subsidiaries make it sometimes impossible to know who the employer is and who can be held liable. Mostly there is the company in the top of the chain setting the standards, and shoving all liabilities on to contractors and subcontractors. So in order to expose the real villain we have to explore and investigate what the underlying structures are. This requires diving into piles of chamber of commerce documents, reading thick labour inspection reports, using big data to map networks.

That is what we do. And we can see that inspection and prosecution offices also work on these kind of investigations. But not enough. Labour exploitation is in the same category as other more traditional offenses and crimes, all very serious issues. But the effect is that labour exploitation is marginalized. The cases that are targeted are the more clear cut cases. And the very urgent

indept investigations are lagging behind. For sure it will take much of the capacity, while time and means are always short. But it is incredibly important to invest. Like the rapporteur on human trafficking noted last year. Labour exploitation is professionalized and offenders are or operate like criminal organizations. And will continue to do so if the exploitation is not tackled at its roots.

Second, the fragmented legal approach. Labour exploitation is a crime. The sanction level has even been raised. That shows how seriously the offence is taken. But the downside is that it can also make judges reluctant to act.

The act is criminalized, as it should be. But the act of labour exploitation, also involves labour law infringements, violation of administrative laws and immigration laws. I would suggest everyone who want an introduction in different fields of law, to work on labour exploitation. You get to work on civil law, administrative law, criminal law, migration law, European regulations, complaint mechanisms. Very interesting, but dazzling if you have to work with it. It not only requires knowledge of these fields of law but also using them at the right strategic moment. It is like playing chess on different chessboards at the same time. I know just a few persons who can. On this topic I can be short, we really need to get rid of this fragmented approach.

And we also need more focus on access to justice and remedies for the victims. The process shouldn't stop at chasing the offender. Let's take the example of the mushroom farm again: not one of the 500 workers has yet been compensated. And on top of that under appeal the judge decided that the workers have to testify again. But where exactly should they be found? They are mobile, migrant workers. A status that made them vulnerable for abuse to start with.

And third, very importantly, we need bold actors. Legislation stays a dead letter if we do not have bold actors. It is easier to have someone go to court to complain about their neighbour's tree, than to have someone file a complaint for labour exploitation. Cases on labour exploitation don't float to the surface automatically. It involves pioneering, it involves field work, it may mean leaving your professional comfort zone.

To start with workers. They should not hide, but organise themselves. Exploitation is never an individual issue. And we need bold, creative and ambitious officers not only working on the most obvious targets.

There is this one example of a [Dutch judgement](#) that illustrates this perfectly. Recently a shipbreaking company owner was prosecuted. And sentenced for company activities in Turkey and India under horrific labour conditions. The company activities had caught the attention of the prosecution office on another case, they were then prosecuted for violating regulations on the transfer of waste materials and additionally being judged severely for not taking responsibility for the appalling working conditions. It is a fine example of how the real offenders can be held liable. It is like catching Al Capone on tax evasion. We need this kind of pioneering and creativity from all actors involved to show labour exploitation can be tackled.

I'd like to conclude here and make a reference to the title. To put it simple, labour Exploitation on the one hand concerns labour issues. And in that field it has to compete with regular issues that involve the whole national labour market. From the exploitation perspective it tends to be marginalized because it has to compete with grave crimes like prostitution and child begging.

I want to end here by suggesting that the problem of labour exploitation has matured by now and should stand on its own feet. And for that it would be worth while exploring specific legislation on modern slavery.