

Perpetrators free, victims not helped

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The Netherlands Court of Audits published a report 'Perpetrators free, victims not helped' on September 28th 2021 on labour exploitation in the Netherlands.

(<https://www.rekenkamer.nl/actueel/nieuws/2021/09/28/aanpak-arbeidsuitbuiting-door-inspectie->

These are the main conclusions, findings and recommendations (translated with a translation tool by fnv- no official translation available):

- More inspectors at the Inspectorate SZW has not led to an effective fight against labor exploitation in recent years. The Inspectorate's approach has not resulted in fewer offenders going unpunished or in more victims being helped. This is evident from research by the Court of Audit.
- In 4 years, the Inspectorate SZW handled a total of 331 reports of labour exploitation made by municipalities, the police and SZW inspectors. Of these, fewer and fewer cases are transferred to the Public Prosecutor's Office for criminal prosecution. In 2016, 27% of the reports led to an investigation, in 2019 this was only 4%.
- The sanctions imposed by the ISZW on employers who seriously harm employees are limited. This does not lead to termination of serious violations by employers.
- The inspection has 2 routes available. Through criminal law, to investigate cases of labor exploitation as a form of human trafficking and hand them over to the prosecution office. Or through administrative law, to fine serious violations of labor laws, the so-called *ernstige benadeling* (*severe exploitation approach*). The current combination of the criminal law approach with administrative law enforcement is not effective.
- More investigations and the detection of more violations in the period 2017-2019 did not lead to an increase in the sanctions imposed by the Inspectorate SZW. Given the seriousness of this issue, we find it remarkable that the number of multiple fines (fines for multiple violations) imposed by the Inspectorate SZW is decreasing significantly: in 2017 the Inspectorate SZW imposed multiple fines in 10 cases, in 2019 only in 1 case (see Figure 6).
- Single fining does not lead to an end to serious violations by malicious employers. In our research, several organizations, such as a workers' organization and an emergency response organization, indicated that the current fines are not a sufficiently deterrent. Malicious employers calculate the fines. The financial benefit of the exploitative situation is higher than the amount of the fines. In this way, it pays for offenders to continue seriously violating labor market laws.
- In addition to imposing fines, the Inspectorate SZW has other enforcement instruments, such as the (preventive) shutting down of a company or the imposition of "last onder dwangsom". A "last onder dwangsom" means that the employer must change the working situation within a certain period of time in order to avoid a fine. The use of these instruments forces the employer to change the work situation and it can therefore help to stop offenders. Our research shows that the Inspectorate SZW imposes these sanctions on a very limited scale. The Inspectorate SZW has used a "last onder dwangsom" once in the period 2017 to 2019. This was in 2017. In addition, the Inspectorate SZW issued a warning for preventive shutdowns a total of 5 times in 2017 and 2018. The Inspectorate SZW has not shut down a company in recent years due to serious harm to employees. Given the seriousness of the issue, we find it remarkable that investigations into serious disadvantage ultimately hardly lead to more severe sanctions that the Inspectorate SZW can use.
- Based on our data analysis, we find that in the majority of the labor exploitation cases investigated by the Inspectorate SZW, the Inspectorate SZW registered only a small number

of victims (1 or 2 victims). There are also cases without registered victims. We also find that the Inspectorate SZW has no insight into the number of victims of serious disadvantage. The Inspectorate SZW does not register these victims.

- The multiple dependence of victims also causes inspectors of the Inspectorate SZW to be reluctant to report serious situations. This is because within the administrative law approach victims do not receive protection and compensation. In the event of dismissal, the home and other important facilities are often also lost, inspectors told us. Inspectors we spoke to in the focus groups almost all mentioned this, because of their involvement, as a major frustration in their work.
- Although the Inspectorate SZW indicates that the administrative law approach is aimed at effect, i.e. stopping the disadvantage in a broad sense, it is not known to the Inspectorate SZW whether it actually gets victims out of their situation and helps them, in cooperation with chain partners.
- In our investigation we saw that the Inspectorate SZW has developed a system to make the results of the approach to labor exploitation and serious disadvantage measurable and transparent. Indicators that the Inspectorate SZW has named, for example, are the number of criminal employers that the Inspectorate SZW investigates together with chain partners and the number of victims that the Inspectorate SZW removes from a situation of labor exploitation and serious disadvantage. However, we found that the Inspectorate SZW does not have this information at its disposal, or does not have it completely, because the Inspectorate did not, or did not unambiguously, record this information during the period covered by our investigation. This also means that the Inspectorate SZW cannot use this information for its own steering, monitoring and accountability. In addition, it also means that the Minister of SZW, as the responsible minister, does not have this information at his disposal and, for that reason, cannot answer to the parliament.
- Organizations such as CoMensha, Fairwork, FNV (FNV et. al, 2019) and NRM (national coordinator human trafficking, 2019a, NRM, 2021b) have in recent years highlighted the insufficient ability to address labor exploitation within existing laws, regulations and enforcement. The Ministry of SZW (social affairs) and JenV (justice) are exploring the added value of a new article of law. In a Parliamentary letter about the progress of the program Together against Human Trafficking of July 2020, the State Secretary of JenV writes that the analysis so far shows that in practice it is mainly about situations of serious disadvantage, rather than labour exploitation in the criminal sense. Action can already be taken against these forms of serious disadvantage, says the State Secretary of JenV (JenV, 2020d). However, based on our research, we conclude that the current administrative law approach does not do justice to the seriousness of the situations and that this approach does not work well, see Section 4.3.
- In our research, we find that the Inspectorate SZW puts bottlenecks on the agenda, but that the Minister of SZW reacts little to them on the basis of his responsibility for the system of laws and regulations for the labor market. The risk is that the bottlenecks do not reach the parliament sufficiently, both for the exercise of its supervisory role and for its role as co-legislator. In the State of Fair Work 2019, for example, the Inspectorate SZW argues for easily enforceable rules for labor and the labor market (Inspectorate SZW, 2019a). In the presentation of the State of Fair Work 2019 to the House of Representatives, the minister responds only to the Inspectorate SZW's call for all parties involved in the labor market to jointly consider how fair working conditions in a healthy and safe workplace can be better ensured (SZW, 2019)