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## **Human Trafficking for Labour Exploitation.**

### **An explorative study into its forms, origins and extent in selected industrial sectors in Berlin and Brandenburg**

In the last ten years there have been numerous initiatives to combat human trafficking at international and national level. These activities, however, focused on measures to combat the area of human trafficking for sexual exploitation. For about five years now, the topic of human trafficking for labour exploitation (TH/LE) has been treated more intensively.

In the course of this study on behalf of the Berlin Alliance against Human Trafficking (BBGM):

- available knowledge on TH/LE was collected and systematised;
- in qualitative interviews (possible) cases of TH/LE in Berlin and Brandenburg were described and analysed;
- a method was developed to estimate the extent of TH/LE, and the possibilities of its implementation with available data was assessed.

#### **1. Current state of knowledge**

The number of investigations, charges and sentences dealing with TH/LE is small despite the presumption that there are large numbers of unreported cases. Scientific findings are unreliable and controversial, in spite of a high amount of publications and studies on this topic.

In Europe the existence of exploitative employment has been established in the construction sector, in the hotel and catering industries, in agriculture and, above all, in private households. Sector-specific patterns of recruitment and employment exist which force poorer working conditions on the persons affected using legal facades (a contract for work, falsely declared self-employment, posted workers).

So far, in the numerous international and European laws passed since 2000 on the subject of human trafficking, the main focus has been on the approach of combating crime. Recently, however, there has also been an increasingly stronger focus on the obligation to protect the victims.

In the Federal Republic of Germany there were altogether 221 investigations instigated into TH/LE between 2006 and 2009. Since 2007, the number of investigations has fallen from 92 to 24 cases in 2009. Taken overall, it has been established that the criminal offence of TH/LE is only rarely used.

## **2. The situation in Berlin and Brandenburg**

According to information from the authorities in charge, the existence of TH/LE in Brandenburg and Berlin cannot be proved. In the period from 2006 to 2009 only two investigations were instigated in Brandenburg, both in 2006. Altogether, 98 investigations were opened in Berlin between 2006 and 2009. However it was only possible to get an order of summary punishment for TH/LE in just one case. Since 2006 the number of criminal investigations has been sinking continuously, from 54 to 3 cases of suspected TH/LE in 2009. It was pointed out that the criminal offence is very complex; that great demands were placed on the provision of evidence, and the persons affected were not prepared to testify. In combination, these elements lead to suspects being charged with an offence that is easier to prove than TH/LE.

During the course of the research 24 employees of counselling agencies were interviewed who had counselled cases of extreme labour exploitation on social or residential rights in the period between 2005 and 2009. The 36 cases described were spread over 15 sectors of employment, including the construction sector, commerce, landscape and gardening, the hotel and restaurant industry and private households. 12 cases were selected from ten sectors of employment so that the forms of exploitative employment could be shown in more detail in the study.

The cases collected show that extreme exploitation also occurs in officially registered and listed employment, and that EU citizens are affected along with persons who are registered in Germany with uncertain residency status (tolerated residency). The risk of falling into an exploitative situation by means of individual factors (such as sex, age, education, language skills) is lesser than by means of social and legal factors (such as uncertain residency status or no residency status, multiple dependencies or a lack of social integration).

In a total of 13 cases there are indications that give grounds for an initial suspicion of TH/LE. The really serious cases affected persons working in private households and restaurants. Cases of the open use of violence play a very small role. More subtle forms of force were described, such as deception and exploitation of a coercive situation.

It can therefore be assumed that in Berlin and Brandenburg there are indeed a number of unreported cases of extremely exploitative employment which under international law contain indications of human trafficking.

## **3. The possibilities of making an estimate**

There are no sure findings available on the extent and forms of TH/LE on a global level. One estimate provided by ILO 2005 suggests some 7.8 million forced workers worldwide, 84,000

of them in the industrialised countries. Every 5<sup>th</sup> case also involved “recruiters” and “mediators” and, thus “human traffickers” according to the language used in international law.

For Germany and for the individual federal states there are no methodically based estimates available on the extent of TH/LE. It is difficult to make methodically sound estimates as the clandestine nature of the offence and the subsequently poor data available. The authors suggest the Logicom Method as a basic approach, which utilizes different databases to produce minimum and maximum estimates. A best possible basis estimate is ascertained in comparing the minimum and maximum estimate and is then tested for its reliability in interviews with experts in the field. The duration of uncovered cases of TH/LE is used as an indicator for the number of unreported cases.

However, taken overall, the data collected in the course of this study is not sufficient to obtain a realistic estimation of the true numbers of unreported cases. The authors assume from what they know already that, in their entirety, cases of human trafficking for labour exploitation boasting physical constraints or confinement does not exceed the two figure region. However, the total number of cases which, on closer legal examination, possibly fulfil the criteria for the criminal offence of human trafficking for labour exploitation could be considerably greater than the number of particularly brutal and clear-cut cases.

#### **4. Conclusions**

The study proposes to distinguish between different forms of exploitative employer-employee relationship as follows, while considering the degree of voluntariness:

- mutually agreed-upon exploitative relationships
- disguised exploitative relationships
- exploitative relationships that have later been forced on the employees affected
- openly coercive exploitative relationships

The picture of a “pyramid of exploitation” clearly illustrates the gradual and cumulative dynamics of exploitation. The base of the pyramid consists of the predominantly mutually agree-upon cases, the cases disguised by the use of subtle forms of coercion, or exploitative employment that was later forced on the persons affected. Openly coercive exploitation forms the fine tip of the pyramid, numerically very small. Frequently victims of extreme exploitation continue to retain some degree of capacity for action. However, under existing legal and institutional conditions those involved scarcely have any starting points from which they can make criminal accusations against those responsible for exploitative employment or suspected TH/LE. Therefore, even when they receive the appropriate counselling and are advised to do so, victims often decide not to instigate civil law proceedings against the perpetrator.

Because they themselves have often taken part in law violations or still are, they are justifiably afraid that alerting law enforcement will result in they themselves being punished: since, if a charge of TH/LE cannot be proved, the persons affected are often threatened with a lawsuit on the grounds of illegal residency or unregistered employment – a state of affairs described as “the distorting or puzzling logic of the human trafficking concept” (*Vexierlogik*).

The authors find it sensible to not only consider *bringing* people into labour exploitation a punishable offence. A criminal offence of *labour exploitation* itself should also be introduced, with objective criteria for proof and legal conditions are assessed in order to strengthen the employee's legal security and his or her ability to cope with conflict.

*The entire study is available in German language at [www.gegen-menschenhandel.de](http://www.gegen-menschenhandel.de)*