

## Menneskehandel i arbeidslivet

### Summary

There is considerable knowledge about, and interventions that target, human trafficking and exploitation for prostitution. In labour trafficking however, other actors are involved, the victims identified have more often been men, and assistance providers face challenges other than those that are known from prostitution. Human trafficking for labour will also be encountered by other actors, and there is a considerable need for knowledge. This report discusses a number of key topics, such as which forms labour trafficking can take and how it can be distinguished from other terms and concepts that are commonly used to describe exploitation in the work sphere. Furthermore, we look into practical experiences, opportunities and challenges related to anti-trafficking efforts in three main areas: detecting and identifying human trafficking, assistance to victims and investigation/prosecution. The initiative for this project was taken by The Municipality of Oslo and KS – *Program for storbyforskning* (research programme for metropolitan areas), which also provided the funding. Norwegian municipalities play an important role in the efforts to combat human trafficking in collaboration with numerous other actors. The objective of this report is to make information about labour trafficking more accessible and comprehensible to a wide range of actors, irrespective of their previous familiarity with this topic. The report is based on interviews conducted in Oslo and Bergen, as well as a review of existing sources of information.

The most serious form of work-related crime is human trafficking, as defined in Sections 257 (human trafficking) and 258 (aggravated human trafficking) of the Norwegian Penal Code, with a maximum sentence of six years' and ten years' imprisonment respectively. In contrast to human trafficking for prostitution, employees can be exposed to gross violations of rules and regulations within seemingly legitimate enterprises. Labour trafficking primarily affects migrant workers. The combination of a low risk of detection, short sentences and large profits mean that criminal actors exploit the labour market. The cases that have been brought before the courts have included exploitation in shops, garden centres, restaurants, cleaning and paving. Other industries that have been a source of concern include car washes, construction and travelling craftspeople, taxis, domestic service and agriculture.

Many people express uncertainty with regard to concepts that describe labour exploitation, which may cause fewer cases to be discovered and investigated. For example, where is the line drawn between gross social dumping and human trafficking? Poor wages and long hours are indefensible, but do not necessarily mean that someone has been subjected to trafficking. For frontline social workers, i.e. those who are first to come in contact with victims of exploitation, there seems to be doubt regarding the degree of coercion and vulnerability that is required for a situation to be classified as trafficking. It is important to note that coercion does not necessarily need to be obvious/visible, nor does the worker need to be in the situation involuntarily. According to the law, exploitation of another person's vulnerability can also fall within the definition of human trafficking.

The distinction between human trafficking and other forms of exploitation in employment relationships is largely a legal matter and needs to be decided by legal proceedings. Each situation must be assessed on its own merit. There is little legal precedence, and only four verdicts (two of which are currently legally enforceable) concerning labour trafficking have been handed down to date. These verdicts considered wages and labour conditions, housing and sanitary conditions, the degree of freedom of movement/isolation, abuse of power, relationships of subordination and dependency, and the consequences of breaking out of the employment relationship. The Supreme Court has ruled that the verdict must be based on a comprehensive assessment of the situation.

In recent years, the concept of 'modern slavery' has come into use. This concept is not based on legislation or international conventions. Today, it is primarily associated with international activism and legislation targeting international supply chains. The concept is occasionally used as a synonym for human trafficking and occasionally as an umbrella term that also may include child labour and forced marriage.

'Slavery' is a narrow and imprecise concept to use in discussions of exploitation and labour trafficking and can stand in the way of the recognition of forms of exploitation that do not involve visible coercion. Slavery is also regulated by two sections (259 and 260) of the Norwegian Penal Code, which stipulate penalties of 10 and 21 years of imprisonment respectively. It appears that the term 'modern slavery' today is being used to rally political support, because it has a mobilising effect and attracts attention to these issues. There is, however, a question of what the costs of such a strategy are and what is lost along the way, in terms of a more realistic understanding of the problem.

Moreover, efforts to combat human trafficking also depend on collaboration between a broad range of actors, and it is essential that these have a shared understanding of the key concepts.

The scope of human trafficking in Norway cannot be determined. We need to base our knowledge on reports from various agencies, individual cases in the legal system and media reporting. Despite the increasing attention devoted to labour trafficking, there has been a decline in the number of formal complaints to the police. In 2013, altogether 39 formal complaints concerning forced labour were raised, in 2018 there were 18. It is not possible to determine whether this reflects a real decline in labour trafficking in Norway, since many factors influence whether a case will be reported or not. Not least, it is essential that cases of labour trafficking are in fact detected and that those who are likely to come into contact with such exploitation are enabled to recognise signs that ought to spur further investigation.

The information we have obtained through the interviews and from legal precedence helps identify some factors that would indicate that further investigations are called for:

- If the employees depend on their employer for housing
- If the employees in question have been brought to Norway for work
- If the employees receive their wages in cash
- If the employees are kept isolated with their co-workers at the workplace with no other network
- If the employees have no control of their own documents and money

The risk factors for human trafficking are mainly the same as those for social dumping and work-related crime. It occurs most frequently in industries/enterprises with low establishment costs, many unskilled workers and few formal requirements for skills, with a large proportion of migrant labour, frequently on short-term stays, and long and/or complicated contractual chains. An absence of trade unions and employers' associations is also part of this picture. Both the type (or lack) of residence permits and the form of affiliation with the labour market play a crucial role for the degree of vulnerability in the working situation. Language barriers and secluded environments are clear factors for vulnerability. Formal status, i.e. as labour migrant, asylum seeker, refugee or irregular migrant, may also have a bearing. For example, people who need a residence permit (relevant for persons from so-called third countries, i.e. non-EU/EEA) will be more dependent on their employer than people from EEA countries.

It is unrealistic to believe that human trafficking can be identified upon the first contact. The coercion involved may take many different forms (for example economic or cultural) and will not always be visible, and a long time may pass before sufficient insight into the victims' experiences can be established. They may fear losing their job or being deported, be afraid of the traffickers, be exposed to threats to themselves or their families, they may be in a relationship of dependence on those who exploit them or part of the same social network or local community (including in their home country). Language and cultural barriers and distrust in the authorities may also play a role.

Exploited workers tend to be in a situation where they earn some money or anticipate earning some money at a later time (for example once debts have been repaid), and it is not a given that they perceive themselves as victims. If they leave the employment relationship they will be left with nothing. Those on the frontline face a dilemma in identifying human trafficking in situations where they are unsure of whether this may worsen the situation for the potential victim.

During our work with this report we have obtained information on thirty-some cases that can provide some indication of how the exploitation was identified. In these cases, the victims have come into contact with the police and/or assistance providers in various ways: the police or other authorities have been tipped off about extremely poor working conditions, the use of illegal labour or other issues that have caused them to carry out controls. The issues have been revealed during inspections (for example by the Labour Inspection Authority). Some victims have sought help from various NGOs, while others have told their story to private individuals who have encouraged them to seek assistance.

Assistance to victims of human trafficking in Norway is partly based on special measures and interventions and partly on the use of general health and welfare services. The assistance includes subsistence allowances and housing, assistance with health care, legal assistance, in some cases work placement and training, activities and counselling/support. For many victims, the basis for assistance is the so-called 'reflection period', which is a special measure for victims of human trafficking. This is a temporary residence and work permit with a duration of six months, which has a low threshold for approval and gives rights pursuant to the Social Services Act. The purpose of the

reflection period is to provide victims with opportunities for receiving assistance and deciding whether or not to cooperate with the police. If the person in question decides to cooperate with the police, the permits can be extended for one year at a time. If the person testifies in court on human trafficking, permanent residence (protection) should, as a general rule, be granted. The stakes may thus be high, and appropriate legal assistance is essential for a group that may be victims of serious crime, in an unsettled situation in terms of their residence and work permit and needing to relate to a complicated Norwegian regulatory framework regarding their rights.

Broadly speaking, there are three groups that seek help:

- Those who plan to return to their home country or travel somewhere else as quickly as possible and need help in the meantime
- Those who primarily hope that their case will be investigated and that they will be paid their outstanding wages before they continue working
- Those who hope that the assistance will help them find a permanent job and residence in Norway.

The needs for assistance are diverse, and it is not meaningful to describe trafficking victims as a homogenous group. They have different starting points in terms of their experiences and socioeconomic and personal resources. Mapping their real needs may also be difficult because of language problems and cultural barriers. It is worrying to note that in some of these cases there has been concern that those who have been exploited have had cognitive impairments, and that this has not been sufficiently revealed in the investigation and follow-up of their cases.

Coordination of assistance may present challenges, in two respects in particular: the practical issues involved in coordination of assistance in general and more principal issues – different mandates and opinions of what constitutes the best approach. Those who are engaged in assistance are also concerned about giving rise to false expectations in the victim as to what help can be provided and what will happen in the longer term. The reason originates in the fundamental organisation and legislation in this area, which link the victims' rights to police investigation and requirements defined by the legal system, while many of the cases fail to pass through this needle's eye. The case may be difficult to prove, which will be a problem if the lack of evidence comes to light at a time when the victim has already cooperated at the initial stage. If the case has not proceeded to a stage that qualifies for witness protection, this may place the victims in a very difficult situation vis-à-vis the perpetrators of the exploitation. This may give rise to false expectations and induce them to cooperate in the hope of achieving an outcome which is in fact quite unrealistic.

The considerable gap between rights according to whether a case is defined as human trafficking or not may also represent an obstacle to detection of incidents of trafficking. Uncertainty as to whether a person will fulfil the criteria may also raise the threshold to initiation of interventions.

Only very few cases have been brought before the courts; this is also reflected in the small number of formal complaints and subsequent investigations. It is reasonable to ask whether this may mean that the number of cases that fall under the human trafficking provisions of the Penal Code is not necessarily all that high. However, there are indications that these provisions are underused in cases that pertain to labour exploitation. There has been little awareness of and limited competence related to labour trafficking among many of those who might be in a position to uncover or suspect such conditions.

Furthermore, it is essential that the police have sufficient resources and competence on human trafficking to be able to follow up cases that are reported to them, including outside the special anti-trafficking units. At the heart of the question of resources lies also the necessity of giving priority to these cases. Many of our informants point out that it is far easier to elicit sympathy and willingness to act when the cases involve young women who have been trafficked for prostitution than it is to mobilise similar engagement to address a situation involving adult men who do not 'behave like victims'. When those who are exploited additionally resist being portrayed as victims and fail to see any benefits in cooperating with the police, this may cause the cases to be given low priority.

It is a recurring concern that the reason why relatively few cases are prosecuted as human trafficking is that the threshold to achieving a conviction may be lower for other indictments. The challenge is that the rights of victims are closely linked to the particular provision invoked by the prosecution. Indictment and prosecution according to the provisions on human trafficking may give rights to permanent residence and more comprehensive support, whereas

the processing of an identical case as a violation of the Working Environment Act or as illegal employment entails no rights for victims. Moreover, the sentencing and penal sanctions differ considerably.

Competence regarding how the different means of coercion involved in human trafficking may be applied in practice, especially in cases where it appears that the victim could have escaped from the exploitative relationship, is important to provide a sound basis for investigation and criminal prosecution. These cases also require a solid legal presentation and an instructive description of the ways in which coercion and exploitation may manifest, especially in their less obvious forms.

It is important to regard anti-trafficking efforts as a chain of interventions that involve collaboration between a number of different actors. Identification and assistance are also crucial to facilitate investigation and prosecution of human trafficking in working life. However, this collaboration may be hampered by formal barriers and insufficient procedures, which have been a recurring topic in all three areas. Provisions should therefore be made for establishment of common arenas and communication between agencies that have different mandates and understandings of the problem. There is a need for quality-assured knowledge on human trafficking among actors in the labour market and people who are in contact with particularly vulnerable migrant groups.

The large gap between rights/sanctions depending on whether a case will be defined as human trafficking or not may be a hindrance to anti-trafficking efforts, because the threshold to instigate measures can be raised if there is uncertainty as to whether a case will fall within the scope of these provisions. There might also be a real concern about giving an unrealistic impression of the amount of help than can be made available. Support for measures that target vulnerable groups in which exploitation may occur, although not necessarily to the level of human trafficking, may thus have a positive effect, because this will allow for the provision of at least some assistance. The issues that fall outside the definition of human trafficking may be just as important as those that fall within it, including for work against human trafficking as such.