



European
Commission

Study on **case-law**

relating to trafficking in human
beings for labour exploitation

Executive summary



Migration and
Home Affairs

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EXECUTIVE SUMMARY

Trafficking in human beings (THB) is a severe crime and constitutes a gross violation of human rights, and as such it is explicitly prohibited by the EU Charter of Fundamental Rights (Article 5: Prohibition of slavery and forced labour) ⁽¹⁾. Addressing trafficking in human beings requires an effective response from criminal justice systems. The EU has developed a comprehensive legal and policy framework to address this phenomenon, in particular Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (hereafter the directive or Directive 2011/36/EU) and the EU strategy towards the eradication of trafficking in human beings 2012-2016 (hereafter the EU strategy) ⁽²⁾.

One of the forms of trafficking in human beings is trafficking in human beings for the purpose of labour exploitation. According to the Eurostat working paper covering the years 2010-2012, 19 % of registered THB victims were victims of labour exploitation.

In order to increase the number of cases of trafficking in human beings for the purpose of labour exploitation that are investigated and prosecuted and to improve the quality of the investigation and prosecution of such cases in all Member States, Action 4 of Priority E of the EU strategy on *Increased knowledge and effective response to changing trends in trafficking in human beings* called for a Commission funded EU-wide study on the related case-law.

In this context, the overall aim of this study is to identify case-law on trafficking in human beings for the purpose of forced labour (hereafter trafficking in human beings for forced labour or trafficking for forced labour) in EU Member States for the reference period 2009-2013, and to analyse Member State practices with respect to the prosecution of this crime. The case-law analysis also provides an indication of how national legislation transposing Directive 2011/36/EU is applied, without prejudice to the Commission's work on monitoring the transposition of the directive.

The study is based on reports conducted by national experts in the 28 EU Member States, as well as in-depth case studies of cases in the Member States where case law was identified. The study does not attempt to provide an exhaustive overview of the case-law in all Member States. Rather, it is based on the cases that have been identified by national experts based on the methodology developed for the study and the input received from many stakeholders consulted at national level.

The **scope** of the study is on trafficking in human beings for forced labour, including domestic servitude. The term forced labour is used throughout the study to reflect the terminology used in Article 2 of Directive 2011/36/EU. Most Member States refer to forced labour in the respective national offence provisions transposing Article 2 of the directive. Given that some Member States refer to labour exploitation and in practice there is significant overlap between the two terms, the title of the study therefore refers to the broader term labour exploitation to reflect this. Trafficking in human beings for sexual exploitation and other forms of exploitation including for engagement in criminal activities, forced begging or for the purpose of the removal of organs are also excluded from the scope of the study.

This study provides a broad overview of trafficking in human beings in the EU Member States (**section 2**), followed by a mapping of the legal and institutional framework, including the legal definitions of trafficking in human beings for forced labour (**section 3**), availability of data relating to case-law in this field (**section 4**), and an analysis of case-law investigation and prosecution practices and related challenges (**sections 5 and 6**). Key terms and the methodology for the study are outlined in **section 1**.

EU Member States' legal framework relating to trafficking in human beings for forced labour

The EU Member States' **legal framework** for investigating and prosecuting cases of trafficking in human beings for forced labour is based on the EU and international legislation such as the aforementioned Directive 2011/36/EU,

⁽¹⁾ Charter of Fundamental Rights of the European Union (2007/C 303/01), European Parliament, Council, Commission, http://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/european_charter_of_fundamental_rights_en_1.pdf.

⁽²⁾ European Commission, EU strategy towards the eradication of trafficking in human beings 2012-2016 (19 June 2012), http://ec.europa.eu/anti-trafficking/Publications/Ebook_Strategy.

the 1930 International Labour Organisation (ILO) Convention No 29 concerning forced or compulsory labour ⁽³⁾ and the Palermo Protocol ⁽⁴⁾.

All EU Member States include an offence provision for trafficking in human beings, and most include a specific reference to labour exploitation or forced labour within the anti-trafficking provisions. In most EU Member States, the relevant offence provisions on trafficking in human beings for forced labour cover the main elements as provided in the definition in Article 2 of Directive 2011/36/EU (**the action, means and purpose of trafficking**). However, there are differences in how the three elements of the offence are reflected in national legislation.

For example, **the act** of trafficking through the exchange or transfer of control is not explicitly stated in the legislation of all Member States. In most Member States, the relevant offence provisions on trafficking in human beings for forced labour cover the main **means** of trafficking as provided in Article 2 of Directive 2011/36/EU.

While most Member States sanction the offence of trafficking in human beings with an **explicit reference to forced labour or labour exploitation**, the concept of forced labour is not explicitly defined in many Member States. The case-law analysis conducted for this study revealed that key elements of the offence used in EU Member States' laws such as conditions contrary to human dignity, lack of freedom or of personal liberty, direct intent to exploit, or other subjective criteria can be difficult to prove.

The limited case-law in this area is furthermore a challenge in itself, as in some EU Member States there is little or no precedent to rely on.

In some Member States, offence provisions closely linked to trafficking in human beings for forced labour, including provisions relating to exploitation of immigrant work, were applied to cases involving elements of trafficking for forced labour. These include cases where several charges were brought (including trafficking in human beings for forced labour) but a conviction was not obtained due to the difficulties in proving the trafficking offence, as well as cases which involved elements of trafficking but charges were brought under alternative offence provisions.

National institutional framework for investigating and prosecuting trafficking in human beings for forced labour

Based on the evidence gathered for the purpose of this study, the main actor involved in investigating trafficking in human beings for forced labour cases in the Member States is the police. In some EU Member States prosecutors and judges are also involved in the investigation. Public prosecutors are the main actors involved in the prosecution of trafficking in human beings for forced labour. In some EU Member States labour inspectors are also involved in such cases, mainly by providing expert witness testimony or in identifying offences through workplace inspections.

Most of the national experts for this study reported that training on trafficking in human beings for forced labour is provided to the relevant authorities involved in the investigation and prosecution of this offence. However, a lack of understanding or experience among practitioners in the crime of trafficking in human beings specifically for forced labour was reported by many national experts. In some of the case studies analysed, this issue had a direct impact on the prosecution of the offence and often led to cases being prosecuted under alternative offence provisions. Many stakeholders consulted for this study suggested that more regular and specific legal training should be provided to improve the knowledge and skills of the key professionals. This would improve the identification of cases, the assistance provided to victims, as well as the collection of evidence for the successful prosecution and conviction of traffickers.

Availability of data and identification of national case-law

Reliable and comparable data on this matter is crucial. Given the difficulty of comparing and analysing such data and drawing meaningful conclusions, there is a need to strengthen efforts to ensure reliability of data on trafficking in human beings across EU Member States. The number of cases of trafficking in human beings for forced labour

⁽³⁾ ILO, C029 — Forced Labour Convention, 1930 (No 29), Geneva, 14th ILC session (28 June 1930), available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C029

⁽⁴⁾ UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

identified in the context of the study during the reference period (2009–2013) across all EU Member States is limited. In several Member States no case-law was identified at all ⁽⁵⁾. In 11 Member States, fewer than six cases were identified in total.

The findings of the study suggest that these low figures could be attributed either to a low level of prosecution of the offence of trafficking in human beings for forced labour in the particular Member State, or to difficulties in accessing the trafficking in human beings for forced labour judgments. In several Member States, relatively few cases were identified due to issues of accessibility of case-law, including where cases are not recorded in a centralised database or are not publicly available.

The case-law analysed **does not reflect the entirety of Member State efforts in prosecuting cases of trafficking in human beings for forced labour**. Despite extensive steps taken by the national experts during the course of the study to identify relevant case-law, including desk research and stakeholder consultation, as mentioned earlier, the case-law presented in this study is not exhaustive for each Member State. **The cases analysed for this study moreover focus on those adjudicated under the national offence provisions transposing Article 2 of Directive 2011/36/EU, and not those under alternative offence provisions.**

Case-law analysis

Observations regarding the general characteristics, investigation and prosecution of trafficking for forced labour cases are made on the basis of the case-law analysed for this study. The case-law analysis focused on the characteristics of the trafficking for forced labour (sectors, recruitment, circumstances of the victim, etc.) as well as the investigation, prosecution and delivery of judgments.

i. General characteristics

Among the cases analysed, the main sectors in which trafficking in human beings for forced labour occurred were in the sectors of domestic work, entertainment and recreation, accommodation and food service activities, agriculture, forestry and fishing, cleaning services, construction, manufacturing, arts, transportation and storage, and information and communication.

The majority of the victims in the analysed cases were EU citizens. Many victims, however, also originated from outside the EU, mainly from Brazil, China, Morocco, Ukraine, Vietnam, India and Bangladesh.

On the basis of the case-law analysed, it was possible to identify the following principle ways of recruitment.

- Traffickers and victims already knew each other.
- Traffickers recruited the victims through intermediaries, including via family members or an agency.
- Traffickers recruited the victims directly, for example, by promising good working conditions.
- Victims responded to work offers directly or via internet recruitment.

In many of the cases analysed, the victims presented particular vulnerabilities, including poverty, low level of education, disabilities, poor health, alcohol dependency, advanced age or minority, irregular migratory status, lack of knowledge of the local language, taking of personal documents and isolation of the victim.

ii. Investigations

In most cases analysed, trafficking in human beings for forced labour was reported to the law-enforcement authorities by the victims themselves. Cases were also identified following an investigation by the police and, to a lesser extent, labour inspectors and immigration and tax authorities.

⁽⁵⁾ This was the case in Estonia, Ireland, Lithuania, Hungary, Malta, Portugal and parts of the UK (Northern Ireland and Scotland).

Many case studies reported that victims of trafficking in human beings for forced labour received protection and support during and after criminal investigations and proceedings, including legal advice, legal representation and psychological help. In some of the cases analysed labour inspectors were involved, including by providing expert witness testimonies and in notifying the police following a workplace inspection.

iii. Prosecutions

Most court proceedings included **victim and witness testimonies** and police reports. In most of the case studies analysed, victims testified in court. Many national experts highlighted the crucial role victim and witness testimonies played in the prosecution of trafficking in human beings for forced labour cases. In many of the cases analysed the defendant was present in court. In some cases however, measures were taken to reduce the victim's exposure to the defendant.

The **time taken for the national courts to take a decision** varies significantly across the Member States and between the case studies. While the length of proceedings relates to variations in standard legal procedures, it has a significant impact in the context of trafficking cases and long court proceedings were mentioned by many national experts as an obstacle to the prosecution of traffickers, as victims are often vulnerable and do not remember the sequence of events or they might return to the country of origin during the proceedings.

The **analysis of the court judgments** revealed varying interpretations of the scope of the offence, as well as of the key concepts involved in the prosecution of trafficking in human beings for forced labour cases. These concepts, used in EU Member State laws, include the requirement of intent, direct involvement, consent, withholding of wages or excessive wage reductions that violate previously made agreements, restriction of movement and confinement to the workplace or to a limited area. The main reasons for dismissing cases initially brought as trafficking for forced labour arose from a lack of evidence to establish the constitutive elements of this offence. The credibility of victim testimonies was also a factor leading to the acquittal of defendants in certain cases.

As regards **penalties**, while the legislation in most of the Member States provides penalties above the minimum requirement of EU law, the case-law analysis revealed that in practice the penalties imposed were relatively low. A reason identified for low penalties and often suspended sentences is the lack of sufficient evidence to prove the seriousness or the extent of the offence committed due to the often poor quality of the victim and witness testimonies with little additional corroborating evidence.

The case-law analysed for this study provides limited information about **compensation** for damages awarded to victims of trafficking in human beings for forced labour. Compensation is often claimed outside of the criminal proceedings and the case-law rarely provides information on whether and how (e.g. civil or labour law proceedings, through a state compensation scheme) it was obtained. Among the cases analysed, compensation was awarded either in the criminal trial (including by victims constituting themselves as civil claimants in the criminal trial), by courts or the prosecution awarding the compensation ex officio, or by victims directly seeking compensation from a civil court. The case studies revealed that victims do not always claim compensation or claim just part of it, or even waive this right during the proceedings.

The amounts of compensation awarded to victims vary considerably among Member States. From the information on compensation analysed, the compensation ranged from EUR 50 to EUR 252 000 (EUR 126 000 per victim). Differences could be explained by a number of factors, including the individual facts of the case, the income and the living standards in a given Member State as well the differences in traditional levels of compensation schemes to victims of crime in different EU Member States. Moreover, many Member State courts have difficulties in determining compensation due to the lack of benchmarks to assess material and non-material damages caused to victims of trafficking. Different approaches are taken by Member State courts in calculating compensation to victims of human trafficking, including based on unpaid or underpaid wages. Some case studies also revealed that even when decisions on compensation were made, these were difficult to enforce. Based on the findings of the study, the issue of compensation is key to victims, as the difficulties in obtaining compensation can discourage them from engaging in the proceedings.

Challenges in prosecution

As with other forms of trafficking in human beings, securing **evidence from victims** and corroborating that evidence is a main challenge in investigating and prosecuting trafficking in human beings for forced labour. Likewise, it is absolutely crucial that victims are supported and protected throughout and after their involvement in the criminal proceedings.

A number of factors affect victims' and witnesses' willingness to cooperate and participate in the investigation/prosecution. These include the fears experienced by the victim, including fear of retribution by the suspect or of deportation, lack of trust in the authorities, fear of incurring criminal charges. Victims may also not identify themselves as victims for different reasons. Another issue identified in the course of the study as a serious obstacle to investigation and prosecution of trafficking in human beings for forced labour was the lack of sufficient **protection measures for victims**. A related issue was the obstruction of proceedings and intimidation of witnesses by the defendants.

Availability and use of resources

The study shows that the lack of **sufficient resources** can have an impact on the investigation and prosecution of trafficking in human beings for forced labour cases in some Member States. This relates to the training of staff, size of staff (especially in the police forces), the technical equipment and other services (such as translating/interpreting) available to law enforcement staff as well as to the victims of crime, or funds allocated for data collection and research on trafficking in human beings for forced labour. Some case studies also pointed to how the lack of adequate means to react to different and exceptional situations such as large number of victims and witnesses, affect the success of prosecution.

Among the cases analysed for this study, most were reported directly by the victims. A lack of resources affects proactive investigations when relevant actors are not sufficiently familiar and trained to apply the anti-trafficking legislation. This leads for example to situations where the necessary evidence is not collected, or where the offence is prosecuted under alternative legislative provisions (such as fraud).

Cooperation

The study also showed that **national cooperation was reported to be sufficient and effective**. Case studies however revealed that, for instance, labour inspectors who may discover forced labour situations from workplace inspections, e.g. abusive practices of wage payment, unfair deductions, fraudulent contracts and abusive recruitment practices, were in some instances not sufficiently involved in the identification or investigation of trafficking cases.

Within the EU, there are many opportunities to cooperate on cross-border cases with the support of Justice and Home Affairs agencies such as the European agency for the enhancement of judicial cooperation (Eurojust), the European Police Office (Europol) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). To strengthen even further the approach in addressing trafficking in human beings offences, many Member States have intensified cooperation with embassies and high commissions of key source countries. While EU Member States have signed mutual (bilateral) agreements with non-EU countries to enhance cooperation, stakeholders from some Member States stated that cooperation with non-EU countries is often difficult. Challenges raised include difficulties in obtaining and verifying evidence from non-EU countries, or lengthy reaction times following a request for information.

Despite noteworthy initiatives towards increasing the effectiveness of investigation and prosecution of the offence of trafficking in human beings for forced labour in many EU Member States, challenges were identified in addressing these offences and in obtaining redress for victims. In particular, a wide-ranging understanding of what constitutes trafficking for forced labour as well as variations in police effectiveness, judicial responses and sentencing (including compensation) between EU Member States result in an inconsistent application of these provisions across the EU. Increased efforts in collecting data and further guidance, including on the interpretation and application of the offence provisions, would be a step towards an improved and better-coordinated response to address this phenomenon.

