



English summary  
of Fafo-notat 2021:11

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## Labour trafficking in Norway. Updated report

## Labour trafficking

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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 other challenges than those that are known from trafficking for prostitution. Labour trafficking will also be encountered by other actors, and there is a considerable need for knowledge. This report is an updated summary of the original report *Menneskehandel i arbeidslivet* [Labour trafficking], published in 2019.

This report discusses a number of key topics, such as which forms labour trafficking can take and how the human trafficking term 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 of traffickers. The initiative for the original project was taken by The Municipality of Oslo and KS – Program for storbyforskning (research programme for metropolitan areas), which also provided the funding. The report is based on interviews with 38 respondents conducted in Oslo and Bergen, as well as a review of existing sources of information.

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. There is a great interest among many different actors to learn more about labour trafficking and how to work against such exploitation. We are therefore pleased that the Council of Baltic Sea States (CBSS), as part of the project Competence Building, Assistance Provision and Prosecution of Labor Exploitation Cases (CAPE), has funded this updated and somewhat abbreviated publication. An important question for the CAPE project is whether connections can be identified between different recruitment practices for labour and whether human trafficking follows. We have therefore also updated the report with an additional six qualitative interviews on whether such connections have been observed in Norway.

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

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workers. 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, tax-is, 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 excessively long working hours are unacceptable, but do not necessarily mean that someone has been subjected to trafficking. For many frontline workers or “first responders”, i.e. those who are first to come into 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 or 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 (three 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 may also 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 or obvious 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’ is currently 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 col-

laboration 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. Despite the increasing attention 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. This does not necessarily reflect 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 able 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. This list is not comprehensive, nor do these factors always mean that labour trafficking is taking place.

- 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 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 contract/supply 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 also vulnerability factors. Formal status, i.e. as labour migrant, asylum seeker, refugee, or irregular migrant, may also be relevant. 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.

In the trafficking cases that have been identified and prosecuted in Norway, recruitment of employees has taken place via informal networks, family and through intermediaries. Contact can be established both in person and through ads on social media. Often those involved come from the same town or village. Our key informants in the trafficking field observe that the employees can also be picked up by the employer and / or intermediaries, who arrange travel to and

from the home country and / or place of residence, or the employees need to borrow money to cover travel and living costs. There are also cases of suspected exploitation where employers within the EEA area recruit labour from countries outside the EEA (so-called third countries) and bring them for assignments in Norway.

Mediators not only provide the labour, but also organize the employees' travel documents and the trip itself. Mediators can assist in applications for residence permits for work, and in registering the stay with the police and the Tax Administration. This creates strong dependencies. Employees who are exposed to gross exploitation usually do not have a permanent connection to the workplace. They may have an employment contract that can be referred to when needed, for example by supervision or control, but this has little value in all other respects.

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 dependency 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 and be a hindrance in seeking assistance to leave an exploitative situation.

Exploited workers tend to sometimes earn some money or anticipate earning money at a later stage (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 may 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 some thirty cases that can provide indication of how 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, or the use of illegal labour or other issues that have caused authorities to carry out controls. The issues have been revealed during inspections (for example by the Labour Inspection Authority). Some victims have sought help from 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 support and housing, assistance with health care, legal assistance, in some cases work placement and training,

activities and counselling. 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 according 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 in a human trafficking trial, 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 legal 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 trafficking victims are not a homogenous group. They have different starting points in terms of their experiences and socio-economic 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 may have had cognitive disabilities, and that this has not been sufficiently addressed 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 exaggerated expectations 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 eye of a needle. The case may be difficult to prove, which will be a problem if a 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.

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 also lies the necessity of prioritising 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 amongst our respondents that relatively few cases are prosecuted as human trafficking because the threshold to achieving a conviction may be lower for other charges. The challenge is that the rights of victims are closely linked to whether human trafficking charges are pressed or not. 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, being much stricter for trafficking cases.

Competence in how the coercion involved in human trafficking plays out in practice, especially in cases where it appears that the victim could have left the exploitative relationship, is important, in order 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 an ideally cohesive 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 of action that we have analysed in this report (identification, assistance, and prosecution). 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 considerable 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 take action can be raised if actors feel very uncertain as to whether a case will fall within the scope of human trafficking. The challenges posed by this grey area have received more attention over the past year, and many have spoken of a "lawless space". Questions have been raised as to whether new legislation is needed to address gross exploitation. In 2020, there was a proposal to increase the penalties for violations of the Working Environment Act, as well as a proposal to introduce legislation against wage theft. There is currently a real concern amongst many about giving potential victims an unrealistic impression of the amount of help they can expect to receive. 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, and effectively lower the threshold to explore options. The cases that fall just outside the definition of human trafficking may thus be just as important to address as those that fall within it, including in order to strengthen work against human trafficking as such.