

The difficulties of distinguishing between human trafficking and extortionate work discrimination

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Work related trafficking in human beings

Means: taking advantage of the dependent status or vulnerable state of another person, or by pressuring another, by deceiving another person, or by taking advantage of a mistake made by that person, by paying remuneration to a person who has control over another person, or by accepting such remuneration

Act: takes control over another person, recruits, transfers, transports, receives or provides accommodation for another person

Purpose: for purposes of forced labour



Work discrimination

- An employer, or a representative thereof, who when selecting an employee or during employment without an important and justifiable reason puts an employee in an inferior position because of race, national or ethnic origin, nationality or language, shall be sentenced for *work discrimination to a fine or to imprisonment for at most six months*.
- Inferior position compared to other employees or the labour market in general
- Normally concerns wages and working hours



Extortionate work discrimination

If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance.

the offender shall, unless a more severe penalty has been provided elsewhere in law for the act, be sentenced for *extortionate work discrimination* to a fine or to imprisonment for at most two years.

- There can not be an important and justifiable reason!



Essential elements in theory

- Economic distress: not possible to earn living without said work
- Other distress: e.g. homelessness
- Dependent position: family relations, debt, threat of revealing illegal presence in country, living in employers house
- Lack of understanding: lack of understanding the labour market, rights of workers
- Thoughtlessness or ignorance: doesn't come to think of the terms of the employment contract, because the employee is just happy to find work



Economic distress or other distress/ dependent position

- The employee lived in employers home, employer had use of credit card
- Family relation, debt relation
- Taking advantage of possible deportation is taking advantage of dependent position
- So called key money
- Employee wasn't able to make a living without said work and dependent position caused by debt. Without said work wouldn't be able to get residence permit
- Lack of social network, doesn't know anyone but the employer



Lack of understanding, thoughtlessness or ignorance

- Lack of language skills (finnish)
- The employee has been told to lie about wages and working hours when applying for work permit
- Employment itself is so important, that the employee doesn't pay attention to the terms. One should take in to consideration the actual possibilities of finding out about terms of work in Finland.



Lack of understanding, thoughtlessness or ignorance

- Lived in Finland for many years before being hired and had prior experience of restaurant work: no lack of understanding, thoughtlessness or dependent position
- The employees and the employer were all Russian and the employment contract was written in Russian. Lack of language skills has not been taken advantage of.
- How long has the employee been in Finland?
- Has the employee had prior jobs?
- What kind of social contacts does the employee have?



Considerably inferior position

- Paying considerably lower wages, very long working hours, malpractice gone on for a long time
- Paid 4,94- 6,25 euro /hour. The pay according to the collective agreement should have been 8,99 euro /hour. Still not considerably inferior position, because the employment only lasted 1 month. One employee recieved only 2,45- 2,87 euro /hours= was considered considerably inferior position.
- 1-2 euro /hour below minimum wage does not put in considerably inferior position.



Considerably inferior position

- Received no pay at all, was considered to be considerably inferior position
- All in all during employment employee should have received 37 000 euro more. Hourly wage 1,6- 3,3 euro.
- 6 euro less than minimum wage /hour is a considerable amount, 2,60 less is not.



Conclusions

- Extortionate work discrimination requires a valid employment contract, human trafficking does not
- In the cases in Finland there has usually been an employment contract
- Problems with proof, mainly working hours and lack of witnesses
- Employees often satisfied, do not want bring forward
- The threshold is quite high. Does a relatively high threshold for extortionate work discrimination raise the bar for human trafficking?



Conclusions

- If a case is not investigated as human trafficking it means the victim is not entitled to all the benefits a victim of human trafficking is
- Are there too many similar crimes? How do we draw the line between them?
- Is it always *some* crime to pay a foreign worker too little?
- Why is simply not paying less than minimum wage a crime?