

THE PROBLEMS OF ENFORCING AND CONTROLLING THE EXPLOITATION OF MIGRANT WORKERS IN FINLAND

Natalia Ollus, HEUNI
NSfK Working Group
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European Institute for Crime Prevention and Control, affiliated with the United Nations

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Kokkola restaurateurs face human trafficking charges

Three owners of an Indian restaurant have gone on trial in the west-coast town of Kokkola, facing charges including human trafficking. According to the prosecutor, they forced a Nepalese employee to work massive amounts of overtime and reclaimed most of his wages, leaving him only with a small net pay. The accused deny all charges.

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Helsinki café charged with human trafficking

FTimes – STT Report, Sep 27



File Photo Lehtikuva.

The suspected victim worked in two different restaurants between 2007 and 2012.

The case will be presented before the District Court of Helsinki in due time.

A case of human trafficking is suspected to have occurred at a restaurant in Helsinki, reported Svenska Yle, the national broadcaster which caters to the Swedish speaking people.

Charges have been pressed against the restaurant's executive director.

According to Svenska Yle, the suspected victim, a man of Pakistani background, had been working 12 hours a day for lower than agreed wages.

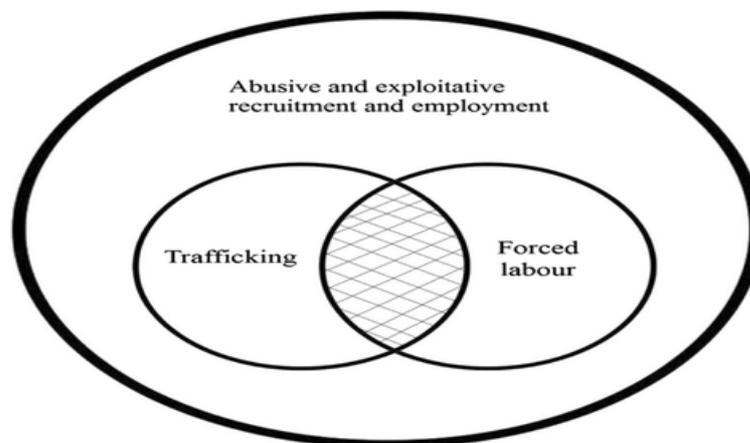
The lead investigator, Petri Rainiala told Yle that the suspected victim had resolved permit issues in advance together with the authorities and all seemed to be well.

The working conditions had also been agreed beforehand. The reality, however, was revealed by another man.

Parallel provisions (2004)

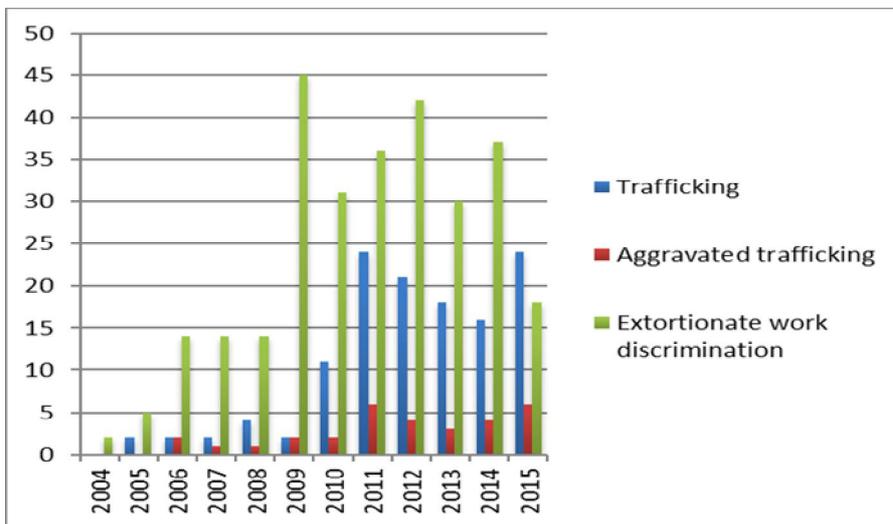
- **Trafficking**
 - A person who by abusing the **dependent status or vulnerable state** of another person or by coercing another person, by deceiving another person or by abusing a mistake made by that person, by paying remuneration to a person who has control over another person, or by accepting such remuneration takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20, section 9, subsection 1, paragraph 1, (procuring) or comparable sexual abuse, **forced labour** or other demeaning circumstances or removal of bodily organs or tissues shall be sentenced for trafficking in human beings to imprisonment for a minimum of four months and a maximum of six years.
 - A person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1 – 4) have been used.
 - An attempt shall be punished.
 - **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 perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years. (Criminal Code 47:3a (302/2004))

Trafficking in human beings, forced labour and the exploitation of (migrant) labour



Police recorded crimes 2004-2015

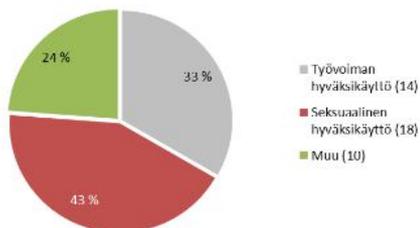
(National Criminal Police 2016)



Types of exploitation experienced by assisted victims – current situation

(Joutseno 2016)

Uhriutumistyyppi: uudet asiakkaat (42)



HEUNI's groundbreaking research on exploitation

- **Manipulation of contractual practices**
 - Underpayment or non-payment of wages
 - Secret contract clauses, illegal salary deductions and overcharged loans
- **Exploiting migrants' economic vulnerability**
 - Overpricing of accommodation, food, transport and other items
 - Irregular deductions from wages for tools, mandatory certificates etc
 - Threat of providing insufficient working days/hours (preventing the worker from securing minimum income for the renewal of the work permit)
- **Exploiting migrants' powerlessness**
 - Denying access to language courses, to join the trade union, to medical care
 - Provision of unsafe and unhealthy working and living environment
- **Risk for trafficking increases with:**
 - Exploitation and deceit already in the country of origin
 - Lack of adequate information on rights and obligations in country of destination

Continuum of exploitation

- Exploitation of migrant workers as a continuum: from less severe to more severe acts
 - Less serious forms of exploitation can create conditions where more serious exploitation (trafficking) may take place
 - Not only extreme force or violence, but also subtler forms of control and dependency
 - Focus on the circumstances that prevent the person from leaving the workplace
 - Difficulties for authorities and others to identify exploitation

My PhD research in its final stages

- Nature of trafficking in human beings for the purpose of forced labour in the European context
 - The difficulties of defining, investigating and controlling it
 - Empirical focus on Finland
- Framework:
 - Forced labour in the context of neoliberal global capitalism
 - More serious forms of exploitation, such as trafficking, are borne out of the overall misuse and exploitation of migrant workers.

Four articles

1. The relevance of historical definitions in regulating forced labour and combating human trafficking (2015)
2. Migrant labour and its exploitation in Finnish governmental policies (2012)
3. Exploitation of migrant labour and the problems of control in Finland (2014)
4. Migrant workers and the consequences of neoliberal labour market conditions (2016)

Trafficking as hidden crime

- Why it is so difficult to define, investigate, control and understand exploitation and trafficking?
- Why are so few cases investigated and prosecuted, and why so few cases lead to a conviction?

Problems of control

- Control authorities have difficulties in grasping, identifying and tackling exploitation of migrant labour and trafficking
- **Historical, complex definition** of trafficking for forced labour:
 - trafficking is reduced to **stereotypes** of extreme violence, organised criminal groups, illegal immigration, and something that does not affect (Finnish) society

- Difficulty in linking the exploitation of migrant workers and trafficking due to the many contestations involved:
 - migrants are on one hand wanted and needed as labour, but on the other hand illegal and unwanted migrants are considered a threat and a risk
 - protection of some ("ideal and deserving") victims of trafficking while protecting the borders from unwanted migrants and organised crime

Empirical findings re the problems of control

(Alvesalo-Kuusi, Jokinen & Ollus 2014)

1. Unwillingness to investigate cases of exploitation of migrant workers
 - The responsibilities for investigation are unclear - the investigation of exploitation of migrant labour may focus on *labour violations, economic offences or violent crime* -> affecting the outcome and emphasis of the case
 - There is a lack of specialisation – the crimes of exploitation of migrant labour become no-one's responsibility.
 - Exploitation crimes are considered less important and less interesting than other crimes – disinterest in the investigation of exploitation but also a reflection of how the police prioritise certain crimes over others.

2. Cases of trafficking are not identified

- control authorities have problems constructing incidents of exploitation of migrant labour as crimes –the elements of trafficking and exploitation are not properly identified
- control authorities find the criminal provisions complex –the boundaries between these THB and extortionate work discrimination are deemed difficult to interpret in practice
- the crime of exploitation is not deemed motivating or worth investigating – conscious down-playing of these crimes –> lack of interest and specialisation in the investigation of exploitation of migrant workers.

3. A shared ideology affects investigations

- The lenient sanctions especially for the crime of extortionate work discrimination seem to affect the motivation of control authorities to investigate and prosecute these crimes.
- The stricter the punishments and the more serious the crime, the worthier such cases are of investigation.
- Control authorities seem to de-legitimise exploited migrant workers based on the fact that they do not have demands against their employers – yet many victims do not consider themselves victims of crime
- **Serious forms of exploitation of migrant workers are not adequately recognised and only the most extreme forms of exploitation are seen to fulfil the crime of trafficking for the purpose of forced labour.**

Political question of prioritisation

- The control of the crimes of exploitation of migrant labour and trafficking are highly political and ideological questions of what should be controlled.
- The control the crimes against migrant workers and punitive enforcement may jeopardize the effective functioning of our current economic order
- Economic, ideological and political factors influence what crimes are enforced – need a shift in how the police conceptualise their role re crimes against migrant workers?
- Investigations seem to target employers and employees of the same ethnic groups – are control authorities only addressing certain forms of threats to the social order?

Future challenges

- Global and regional inequalities likely to increase
 - migration and mobility on the increase – related exploitation on the increase as well?
 - The vulnerability of undocumented migrants in particular
- Increasing flexibility, division of labour markets and structural inequalities – further disregard and dismissal of labour rights in times of austerity?

