

Preventing exploitation, protecting the victims? Foreign workers under forced labour or slavery-like conditions in the European Union

At the international level, efforts against slavery and slave-trade, trafficking in human beings, forced and bonded labour, have been made through conclusion of various conventions and forms of cooperation. Nevertheless, the ILO estimates that at least 12.3 million people are victims of forced labour worldwide even today. Of these, 9.8 million are exploited by private agents, including more than 2.4 million in forced labour as a result of trafficking in human beings. This “modern-day form of slavery” or “underside of globalization” has become a legitimate concern in political as well as in legal agendas during the last 15 years.

The motive to do this research comes basically from the dissatisfaction with the prevailing political and legal approaches to trafficking in human beings, which emphasize the importance of anti-immigration (TEC title IV) and repressive criminal justice measures (TEU title VI) in “combating trafficking”. This research thus asks what are on the one hand the real objectives and on the other hand the impacts of these anti-trafficking measures on foreign, often irregular, workers in the field (in more detail are to be looked at some EU Member States). These impacts are most visible when the immigration law, criminal law and human/labour rights, with different ways to approach the problem and with different goals, collide. The research asks what does the European Union do to *prevent* exploitation of foreign workers, with special emphasis on domestic and posted workers, in Europe? What does it do to *protect* the exploited people? Are these legal measures enough and what should be done better in order to fulfil the obligations in international human rights law and practice? It is further discussed whether, in fact, there is to be found mechanisms and structures, which promote or at least sustain exploitation of foreign workers in the field? As it is said, law plays an important role in constructing immigrant as a special population of Other and in promoting the process of exclusion. While marginalizing the Others, the law creates vulnerabilities and makes exploitation possible. The goal of this research is to evaluate the impacts of these legal and political developments (immigration law and criminal justice) on foreign workers and, finally, to suggest also ways forward.

From the human rights perspective, one way forward is, at least in the beginning, to question the usefulness of the concept of trafficking in general. The concept seems to be ambiguous and insuffi-

ciently defined. Although the Palermo Trafficking Protocol uses the terms of “exploitation”, “consent” or “a position of vulnerability”, it does not define them in detail and thus leaves the concept of trafficking without real legal content. Thus, the research asks what kind of legal meaning “exploitation”, “consent” and “position of vulnerability” have been given in jurisprudence (Belgium, France, Germany, Italy, the Netherlands, Sweden, ECHR) and how these terms should be defined? Too much emphasis is also placed on the process through which people are brought under forced labour or slavery-like conditions. While much forced labour involves the trafficking of individuals into a situation of forced labour in a destination country, the vast majority of forced labour may involve a person who has entered a country through a smuggling route and has ended up into a situation of forced labour. From the human rights point of view, exploitation of human beings under forced labour or slavery-like conditions (forced labour outcomes) should be addressed no matter whether such exploitation involves a victim of trafficking, a smuggled person or an illegal migrant. Therefore, this research asks whether the reinterpretation of the ILO Forced Labour Conventions and ILO legal framework in general would be able to give a more reasonable point of departure in preventing exploitation of foreign workers and to protect exploited workers?