

Preventing and Combating Trafficking in Human Beings in Serbia

REPORT ON TRAFFICKING FOR THE PURPOSE OF LABOUR EXPLOITATION IN SERBIA

Combating discrimination and
protecting the rights of vulnerable groups

Klara Skrivankova
Tamara Vukasović

Horizontal Facility for Western Balkans and Turkey

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**HORIZONTAL FACILITY FOR
WESTERN BALKANS AND TURKEY**

**“Preventing and Combating Trafficking
in Human Beings in Serbia”**

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THE PURPOSE OF LABOUR
EXPLOITATION IN SERBIA**

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Executive summary

Trafficking in human beings for the purpose of labour exploitation is an emerging area of focus in Serbia. The legal framework, largely comprised of anti-trafficking legislation and relevant social and employment laws, has been developed in reflection of international norms. All core international labour standards have been adopted by Serbia, with the exception of the 2014 ILO Forced Labour Protocol. A new National Strategy and a National Action Plan were drafted in 2013, but as of May 2017, these were yet to be adopted. The absence of policy framework was reported to impact on the ability of some of the actors to discharge their duties.

The Council of Europe Convention on Action against Trafficking in Human Beings provides a framework for identification and referral processes. However, the identification of trafficking for labour exploitation is sometimes hampered by a lack of consensus on indicators and the lack of clarity on distinguishing between labour rights' violations (such as breaches of employment and discrimination laws) and trafficking for labour exploitation (criminal law).

Risks factors associated with particular groups and specific industries are known to the authorities. At the same time, the dynamics between labour rights violations, poor working conditions, informality and fragmentation of the labour market, and the inefficiency of labour market enforcement agencies in preventing and detecting trafficking for labour exploitation are not often understood by the authorities. Neither is the definition of trafficking for labour exploitation sufficiently understood.

Agriculture, textiles and footwear production, construction, private care arrangements, domestic work and catering are the industries commonly cited as those most at risk of labour exploitation in Serbia. These industries are considered to carry risks, due to the often precarious nature of employment arrangements, difficult working conditions and low wages. A large part of these industries is also reportedly operating in the grey area, using unregistered and informal labour.

The risk of trafficking faced by migrants and refugees is a pressing concern in Serbia. There are estimates that some 8,000 individuals are currently in Serbia, with an unclear status. While the concern exists in Serbia, neither the authorities, nor the civil society organisations have identified any cases of trafficking for labour exploitation or forced labour of refugees and migrants in Serbia

The challenges identified by stakeholders in Serbia are similar to the challenges faced by other countries in the region and those that many other European countries have grappled with in the past. Government agencies' initiatives focus on several key areas – identification of victims, enforcement against perpetrators, prevention of trafficking and training and capacity building. While there is clarity about the roles and responsibilities of the agencies consulted for the report and more “traditional” actors, such as the police, the understanding of the roles and responsibilities of other agencies, such as labour market regulators, was limited.

Representatives of stakeholders with a mandate and an identified role in the anti-trafficking legislation and policy and to a certain extent whose operations are relevant to anti-trafficking action, such as those involved in labour market regulation and enforcement, have a good level of understanding of the phenomenon of trafficking in human beings as well as of the infrastructures that are in place to combat it. However, there is a concern that the knowledge is limited beyond individual specialists and that the level of knowledge, in particular the ability to identify a situation of trafficking and to respond to it in an appropriate manner, is low amongst professionals in general. For example, those who are not involved directly in anti-trafficking work in Serbia are more likely to find it difficult to distinguish between labour rights' violations, unregistered labour and other breaches of workers' rights, such as discrimination at the workplace.

The lack of knowledge of laws related to the labour market operations and enforcement amongst the police, and the similar lack of awareness about human trafficking amongst labour and market inspectors was also cited as an obstacle to identification. However, there was appreciation that this was a shortcoming and there have been attempts to bridge some of the gaps by for example organising joint inspection visits where police and labour inspections took part. These involved night inspections at entertainment premises, following intelligence that women might have been sexually exploited and required to work at the bar to encourage customers to purchase drinks.

Corporate accountability and comprehensive regulation of private sector as well as positive engagement with business is largely absent from Serbian anti-trafficking action and policy. Experience from other countries shows that a combined regulatory and engagement approach is likely to lead to better involvement with the private sector, than only voluntary initiatives that rely on the business proactively taking on leadership in the area.

There is an appreciation that private sector and trade unions also have a role in preventing trafficking and addressing situations that may contribute to human trafficking. At the same time, there was consensus that the issues of human rights need embedding in business practice in Serbia, but that a precursor to that would be addressing what has been described by many of the participants as the “grey zone” within which many businesses are perceived to operate.

The trade union activity in addressing trafficking in labour exploitation in Serbia has been limited and has mainly focused on labour exploitation of Serbian

nationals. Trade unions were involved in assistance to some of the workers who were exploited at the Sochi Olympic site in Russia, but were only able to offer limited support to the affected workers. Collaboration with trade unions in the main destination countries has been limited. However, better collaboration and co-ordination, including agreements, exist with trade union counterparts within the region.

The report recommends that Serbia builds on the existing legal and policy framework through further review and amendment. Some of the key recommendations made in the report include:

- ▶ Prompt adoption of a National Strategy and a National Action Plan;
- ▶ Increase awareness about risks of trafficking of labour exploitation linked to the operation of the labour market;
- ▶ Mandate and train labour market regulators, including the labour inspectorate and market inspectorate, to carry out pro-active investigations to identify and prevent trafficking in identified areas of risk;
- ▶ Consider adopting further regulation of private employment agencies;
- ▶ Engage the private sector in anti-trafficking action by adopting policies and legislation following the United Nations Guiding Principles on Business and Human Rights and pro-active engagement of businesses in anti-trafficking policy development and implementation;
- ▶ Engage trade unions and private sector in anti-trafficking policy development and implementation;
- ▶ Run a pilot project on pro-active identification in an at-risk industry (such as agriculture or construction), with participation of NGOs, trade unions, private sector and cross agency collaboration.

I. Introduction

This report reviews trafficking in human beings for the purpose of labour exploitation in Serbia. The report is developed within the European union and Council of Europe programmatic framework “Horizontal Facility for the Western Balkans and Turkey”, Action “Preventing and Combating Trafficking in Human Beings in Serbia”. It focuses on efforts undertaken to address trafficking for labour exploitation and the risk factors, the role of the private sector and the trade unions in this context. The report sets out to identify the legal, policy and institutional framework related to trafficking in human beings and any gaps in the current systems. It also aims to provide examples of initiatives taken by the government, the private sector and the trade unions. The report includes recommendations for concrete measures to be taken by national authorities in order to increase capacity of the private sector to reduce the demand for human trafficking.

The term “labour exploitation” refers to the purpose of human trafficking specified in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter the Council of Europe Convention) which covers forced labour or services, slavery or practices similar to slavery.

The report was drafted by two experts, an international expert, Klara Skrivankova (lead author), who has been involved for almost two decades in addressing human trafficking and monitoring actions by governments and businesses to prevent and address exploitation and a national expert, Tamara Vukasović, who was Co-chair and one of the founders of NGO ASTRA – Anti Trafficking Action and one of the first civil society activists to raise the issue of human trafficking in Serbia, with 19 years of experience.

The report has been compiled from information obtained during a two-day fact-finding mission to Belgrade in March 2017 and visits to Novi Sad, Nis and Zrenjain in April 2017. Novi Sad and Niš were selected for being the second and third largest cities of Serbia as well as important administrative and industrial areas.

The list of interviewed authorities and organisations is included in Annex V. The information collected during the fact-finding mission was supplemented by a review of further publicly available documents, including reports by Group of Experts on Action against Trafficking in Human Beings (hereinafter GRETA) and the response by the Government of Serbia to the questionnaire of the 2nd round of GRETA monitoring published on 27 February 2017.

The report has been informed by the 2014 Report concerning the implementation of the Council of Europe Convention by Serbia, prepared by GRETA. In particular, the following recommendations to Serbia have been considered:

“76. GRETA considers that the Serbian authorities should take further steps to ensure that national action to combat THB is comprehensive, and in particular: strengthen action to combat THB for the purpose of labour exploitation by involving civil society, the Labour Inspectorate, businesses, trade unions and employment agencies in a joint platform and improving the identification of and assistance to victims of THB for the purpose of labour exploitation.”¹ [...]

“163. The Serbian authorities should [...] pursue a pro-active approach to the identification of victims of trafficking for the purpose of labour exploitation by encouraging labour inspections in sectors most at risk (e.g. agriculture, entertainment, service sector, construction, domestic work)².”

Part 1 of the report introduces the international standards and legal obligations of States and private sector actors. Part 2 presents the national legal, policy and institutional framework in Serbia. Parts 3 and 4 assess the current practice and measures in Serbia. Part 5 draws conclusions and makes recommendations for measures to be taken by the relevant actors involved in addressing trafficking for the purpose of labour exploitation in Serbia. The final Annexes include specific recommendations for trade unions, recruitment agencies and the private sector.

1 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, Council of Europe, Strasbourg, 2014, p. 55.

2 Ibid p. 57.

II. Overview of international standards

1. United Nations Instruments

The United Nations (UN) have introduced a body of conventions and standards that are relevant to addressing trafficking in human beings for the purpose of labour exploitation. It is beyond the scope of this report to provide a full and comprehensive overview of all of them. This chapter focuses on key international standards relevant to Serbia.

1.1. UN Trafficking Protocol (*Palermo Protocol*)

Serbia is a party to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000). The Protocol covers measures that States need to adopt in order to prevent and address all forms of exploitation that are the outcome of trafficking, including the exploitation of forced labour and services (Art.3). The Protocol does not provide further definition of forced labour, as forced labour is defined by other instruments (see below). Article 9 of the Protocol is devoted to prevention of trafficking in persons, including by States Parties which “shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.”

In 2014, the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) published a paper³ on addressing the demand for trafficking in persons, including in the context of labour exploitation and recommended several strategies that State should undertake to that effect. Three of those strategies relevant to this report are:

- ▶ Measures and mechanisms to improve labour conditions in sectors vulnerable to the use of victims trafficked for labour exploitation, through strengthening and enforcing labour standards and regulations;
- ▶ Actions against exploitation associated with the migration process, including through better regulation of private recruitment agencies and better protection of migrant and refugee workers;
- ▶ Private sector initiatives to address exploitative labour practices within supply chains.

3 Dottridge, M; Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation, Council of Europe, Strasbourg, 2016, p. 4.

1.2. UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (hereinafter UNGPs)⁴ are a set of guidelines and measures that States and private sector are expected to take to prevent, address and remedy human rights abuses committed in business operations, regardless of the size of a business. The UNGPs were developed by the UN Special Representative on Business and Human Rights, John Ruggie, and endorsed by the UN Human Rights Council Resolution in 2011, which also established the UN Working Group on Business and Human Rights.

The core principles set by the UNGPs are that States have the duty to protect human rights, businesses the duty to respect human rights, and where violations occur, or the actions of business have adverse effect on the rights of individuals, remedies must be provided.

The UNGPs reaffirm the State's duty to protect human rights:

“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulation and adjudication” (Foundational Principle 1 of the UNGPs).⁵

The responsibility on States goes beyond the enactment of laws to protect human rights. States are also responsible for ensuring that businesses take steps to prevent and address human rights abuses.

“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.” (Foundational Principle 11 of the UNGPs).⁶

The UN Working Group on Business and Human Rights recommended that States adopt National Action Plans on Business and Human Rights. To date, fourteen States⁷ have developed National Action Plans, with a number of others in development.⁸

The UNGPs cover a whole spectrum of human rights concerns, including the right of all workers to be free from forced and compulsory labour, but also the expectation to prevent such severe exploitation. Similar to the concept of

4 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

5 Dottridge, M; *Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation*, Council of Europe, Strasbourg, 2016, p. 5.

6 Ibid.

7 Colombia, Denmark, Finland, France, Germany, Italy, Lithuania, the Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America.

8 <https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>

prevention, identification and protection applied within the anti-trafficking framework, the UNGPs expects that:

- ▶ Actual and potential human rights impacts are identified (Principles 15 to 18);
- ▶ Such impacts are prevented and mitigated (Principle 19)⁹.

The UNGPs bear a strong relevance to human trafficking. Increasingly, human rights due diligence is an accepted approach to address forced and child labour in supply chains. Business and trade regulation can contribute positively to enhancing supply chain transparency and traceability, creating a level playing field for business not to be undercut by those who draw unfair advantage from labour exploitation. It follows that respect for human rights of workers is recognised to prevent exploitation, including forced labour. Where human rights due diligence is properly carried out in supply chains, violations are more likely to be detected, and addressed, and measures developed to prevent these from re-occurring.

Due diligence is a process distinctly different from standard compliance or social audit, which are a preferred methodology for supply chain risk management by many international businesses. Due diligence includes understanding that there is a problem, pro-actively detecting human rights concern through risk assessment, and developing plans to address any concerns identified, including provision of remedies for any affected workers and publicly reporting on steps taken.

Human rights due diligence “process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.” (UNGP Principle 17)¹⁰

The UNGPs set a global standard indicating to businesses that they are expected to take responsibility and act to respect human rights and be transparent, by publicly reporting, about the actions they have taken.

Several years after the introduction of the UNGPs, it has become apparent that not many businesses are familiar with them, and that the voluntary approach to compliance only reinforces compliance by those who have already committed

9 Dottridge, M; Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation, Council of Europe, Strasbourg, 2016, p. 5.

10 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

to responsible business conduct. Consequently, several EU Member States have moved to legislate for mandatory disclosure. The United Kingdom requires since 2015 businesses with annual turnover of £36 million or over to report on steps they are taking to prevent and address modern slavery in their supply chain and in their own business (Modern Slavery Act 2015, s.54).

In February 2017, the Dutch Parliament approved a child labour due diligence law, requiring businesses to examine whether child labour occurs in their production chain. If child labour is found, the business is expected to develop a plan of action to address it and publicly report on their findings and action taken. If approved by the Senate, the Act will be effective from January 1, 2020. Also in February 2017, the French Parliament adopted a new business and human rights law which requires businesses to both identify and prevent adverse human rights impacts resulting from either their own activities or from the activities of companies they control as well as the activities of their sub-contractors. Companies employing at least 5,000 employees within their head office and its direct and indirect subsidiaries will have to comply. Switzerland is also considering similar legislation.

Any businesses that operate in Serbia, or have suppliers in Serbia, but are headquartered or registered in one of the above-mentioned countries, will be expected to include their Serbian supply chains in their due diligence. Similarly, any subsidiaries of companies linked to those countries, and which employ Serbian workers, will need to exercise due diligence to ensure that the rights of Serbian workers in their supply chains are respected.

1.3. International Labour Organization Standards

The UN agency called International Labour Organization (ILO) is the custodian of the fundamental labour rights treaties, including those prohibiting forced labour. Forced labour takes different forms, including debt bondage, trafficking, forced prostitution and other forms of modern slavery¹¹. According to the ILO, there is an explicit link between human trafficking and forced labour¹². "Forced labour and human trafficking are closely related terms though not identical in a legal sense.¹³" At the same time, the ILO perceives that "most situations of slavery or human trafficking are covered by ILO's definition of forced labour¹⁴".

The fundamental principles (recognised as core labour standards) enshrined in the ILO Conventions include:

- ▶ Freedom from forced labour;
- ▶ Freedom from child labour;
- ▶ Freedom from discrimination at work;
- ▶ Freedom to form and join a union, and to bargain collectively.

11 <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

12 http://www.ilo.org/global/topics/forced-labour/publications/WCMS_243395/lang--en/index.htm

13 http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang--en/index.htm

14 http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang--en/index.htm

Serbia has ratified 76 ILO International Labour Standards (Conventions), of which 62 are in force, including those on forced and child labour.

The ILO Forced Labour Convention of 1930 defines forced labour as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

Forced labour can be an outcome of the process of trafficking, defined as the purpose for which people are trafficked in the Palermo Protocol and the Council of Europe Convention. The term trafficking for labour exploitation is commonly used interchangeably with the term trafficking for forced labour.

The ILO Worst Forms of Child Labour Convention of 1982 defines the worst forms of child labour as: “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children.” Worst forms of child labour are distinct from child labour, which is defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. Child labour refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work.

However, not all child work (work performed by under 18’s) is prohibited under international law. The 1973 Convention on the minimum age for admission to employment and work sets out principles for minimum age of acceptance for employment or certain types of work:

Type of work	The minimum age at which children can start work	Possible exceptions for developing countries
<p>Hazardous work Any work which is likely to jeopardize children’s physical, mental or moral health, safety or morals should not be done by anyone under the age of 18.</p>	<p>18 (16 under strict conditions)</p>	<p>18 (16 under strict conditions)</p>
<p>Basic Minimum Age The minimum age for work should not be below the age for finishing compulsory schooling and in any case not less than 15.</p>	<p>15</p>	<p>14</p>
<p>Light work Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.</p>	<p>13-15</p>	<p>12-14</p>

2. Council of Europe legal obligations and standards

2.1. Council of Europe Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings (Art. 4) includes a definition of human trafficking similar to the Palermo Protocol. The Convention provides a minimum list of exploitative purpose which includes “forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” and requires States to criminalise all of them¹⁵. Furthermore, the Convention requires States to develop and implement anti-trafficking action in a non-discriminative manner (Art. 3), ensuring that the rights of all victims, regardless of their background or the type of exploitation, are protected.

The Convention places a positive obligation on Parties to prevent and protect victims of trafficking. The drafters of the Convention recognised the importance of improving the social and economic activities as a way to prevent trafficking in human beings: “Social and economic initiatives tackle the underlying and structural causes of trafficking and require long-term investments. It is widely recognised that improvement of economic and social conditions in countries of origin and measures to deal with extreme poverty would be the most effective way of preventing trafficking. Among social and economic initiatives, improved training and more employment opportunities for people liable to be traffickers’ prime targets would undoubtedly help prevent trafficking in human beings.”¹⁶

The implementation of the Convention is evaluated by the Group of Experts on Action against Trafficking in Human Beings (GRETA), which produces reports with recommendations on how to improve compliance with the Convention’s requirements.

With the attention of most States being traditionally on trafficking for sexual exploitation, the implementation of the Convention across all forms of exploitation has been found to lag behind. GRETA noted in its 4th General Report that trafficking for labour exploitation was not recognised and addressed in practice and policy in most of the State parties, which is likely to be a key reason for a low numbers of identified victims.¹⁷ Furthermore, GRETA has stressed that in order to discourage demand for the services of victims, labour inspection ought to be strengthened in industries where there is a particular risk of trafficking, such as agriculture, construction, textile production, as well as hospitality and domestic work.¹⁸

15 4th General Report on GRETA’s activities, GRETA (2015)1.

16 Explanatory Report on the Council of Europe Convention on Action against Trafficking in Human Beings, para. 103.

17 4th General Report on GRETA’s activities, GRETA (2015)1, p. 35.

18 4th General Report on GRETA’s activities, GRETA (2015)1, p. 40.

Effective penalties foreseen by the Convention include the requirement on the State parties to provide for the possibility of holding businesses liable for trafficking in human beings. In compliance with Article 22 of the Convention, States should ensure that corporate liability is enshrined in national legislation (civil, criminal or administrative), allowing for both individual liability of legal persons and liability of members of an executive organ of the business, for participation in human trafficking. Liability for trafficking that occurred as a consequence of lack of supervision or control should also be covered under corporate liability provisions.

In 2013, GRETA published its 3rd General Report on activities which includes a section on measures to discourage demand, including measures that relate to labour market regulation and the private sector.

“GRETA has noted in its reports that measures to discourage demand should target all forms of exploitation and not just the sex industry. The absence of effective regulation of certain labour market segments is one of the factors that help create an environment in which it is possible and profitable to use trafficked labour. Effectiveness requires combined labour inspection and enforcement powers, international information exchange, worker awareness of their rights, and practical support by the industry to ensure ethical standards by companies they use.”¹⁹

2.2. The European Convention on Human Rights and its case-law

Slavery, servitude and forced labour are prohibited under the European Convention on Human Rights (hereinafter the ECHR). While the ECHR does not explicitly mention trafficking, the European Court of Human Rights (hereinafter the Court) has ruled in a number of cases of trafficking and forced labour, confirming that trafficking in human beings falls under the scope of the ECHR. The cases considered by the Court concerned domestic servitude and sexual exploitation, and most recently trafficking for the purpose of labour exploitation. All member states of the Council of Europe are bound by the Court’s jurisprudence.

2.2.1. *Siliadin v France*²⁰

In 2005, the Court passed a judgment in what has become a landmark guidance case for a) the responsibility of States to protect individuals from acts prohibited under Art. 4 of the ECHR which were committed by private individuals; b) the interpretation of the definition of slavery. *Siliadin v France*²¹ case concerned a 15 year old girl from Togo trafficked to France for domestic work who lodged a complaint with the Court for violations of Art. 4 of the ECHR. Ms Siliadin’s case was that she was held in conditions analogous to slavery and also that France

19 3rd General Report on GRETA’s activities, GRETA (2013)17, Strasbourg as quoted in Dottridge, M; Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation, Council of Europe, Strasbourg, 2016, p. 7.

20 http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/siliadin_v_france_en_4.pdf

21 Application 73316/013.

has failed in its duty to protect her from breaches under Art. 4 because of the insufficient national penal legislation²².

The Court found that the applicant was required to perform forced labour and held in servitude. Furthermore, the Court defined servitude, which has until then remained undefined in international law. The Court interpreted servitude as ‘a particularly serious form of denial of freedom’, including ‘the obligation to perform certain services for others’ and ‘the obligation of the “serf” to live on another person’s property and the impossibility of altering his condition’. Ms Siliadin’s circumstances qualified as servitude because she was denied freedom of movement and was required to remain nearly always at the house where she worked, she had no resources of her own and she was required to perform forced labour.²³

2.2.2. *Rantsev v Cyprus and Russia*²⁴

This judgment was an important decision on the human rights dimension of trafficking in human beings. The Court held that a State might be obliged to go further than merely enacting legislation in order to meet its obligations under Art. 4 of the ECHR. This is particularly the case where ‘the state authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being trafficked or exploited (...) In case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk’. This means that States have positive obligations to prevent human trafficking and to afford protection to persons who are victims of human trafficking or might be at risk of becoming victims.

The judgment in *Rantsev* also shows the modern understanding of the definition of slavery emphasising that: ‘trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment. (...) It involves the use of violence and threats against victims, who live and work under poor conditions’.

2.2.3. *Chowdhury & Others v Greece*²⁵

In March 2017, the Court handed a decision in *Chowdhury & Others v Greece*. In its judgment, the Court held that Greece violated the prohibition of forced labour

22 Piotrowicz, R.: *States’ Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations*. International Journal of Refugee Law, Vol. 24, No. 2 pp. 181–201.

23 Ibid p. 190.

24 https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/rantsev_vs_russia_cyprus_en_4.pdf

25 <https://strasbourgobservers.com/2017/04/28/chowdhury-and-others-v-greece-further-integration-of-the-positive-obligations-under-article-4-of-the-echr-and-the-coe-convention-on-action-against-human-trafficking/>

and failed to protect a group of Bangladeshi migrant workers from trafficking. On this basis, the Court ordered compensation of over €500,000 to be paid. The judgment underlined signatory States' obligations to prevent and investigate trafficking, protect victims and punish traffickers. The case involved shootings at migrant workers who went on strike demanding their wages at the strawberry farms in Manolada, a small agricultural town in the Peloponnese. In July 2014, a Greek court acquitted those involved in the incident of charges of trafficking in human beings.

The *Chowdhury v Greece* case was the first occasion on which the Court had to examine the situation of forced labour and trafficking in the agricultural sector. The Court's decision emphasised that under Art. 4 of the ECHR governments are responsible for implementing preventive and protective measures to protect victims of trafficking, including facilitating the identification of victims by training officers and assisting victims in their physical, psychological and social recovery.

2.3. The Council of Europe Recommendation on Human Rights and Business

Since the introduction of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011, other international organisations have issued recommendations with regards to their implementation. In March 2016, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2016)3 on Human Rights and Business, thus recognising the significance of the duty to protect and respect human rights in the context of business operations. The Committee stressed that States should develop and adopt national action plans on human rights and business, as recommended in the UNGPs, through a multi-stakeholder consultation process which would include businesses, trade unions and NGOs. The Committee also recommended that the implementation of the action plan should be monitored continuously with the participation of all the key stakeholders and that the plans should be periodically evaluated and updated.

3. European Union law

As an EU candidate country, Serbia is expected to harmonise its national legislation with the *acquis* of the European Union. The EU laws include specific instruments addressing trafficking in human beings: the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing the Council Framework Decision 2002/629/JHA (hereinafter the Trafficking Directive), and other instruments that relate to combatting trafficking, such as the Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (the Non-Financial Reporting Directive).

The Trafficking Directive includes a detailed provision on liability of businesses, which covers non-only direct actions, but also action committed through connivance or lack of supervision. Article 5 requires Member States to ensure that legal persons can be sanctioned, under criminal or other law, for their participation in trafficking in human beings, through direct action, but also for enabling trafficking from occurring as a result of lack of supervision.

III. Overview of the national legal, policy and institutional framework in Serbia

1. Legal framework

1.1. Anti-trafficking legislation and relevant international law

Serbia is a signatory of a number of international conventions with relevance to trafficking in human beings, including: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime; the Council of Europe Convention on Action against Trafficking In Human Beings; the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the UN Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the ILO Forced Labour Convention (No. 29); the Abolition of Forced Labour Convention (No. 105); the ILO Migrant Workers (Supplementary Provisions) Convention (No. 143) and the Worst Forms of Child Labour Convention (No. 182).

The Serbian legal framework includes a number of laws with relevance to combating trafficking in human beings or direct reference to trafficking, including: the Constitution of the Republic of Serbia²⁶, the Criminal Code²⁷, the Criminal Procedure Code²⁸, the Law on Public Order and Peace²⁹, the Law on

26 "Official Gazette of the Republic of Serbia", no. 98/2006, Article 26 – Prohibition of slavery, servitude and forced labour: No person may be kept in slavery or servitude. All forms of human trafficking are prohibited. Forced labour is prohibited. Sexual or financial exploitation of person in unfavourable position shall be deemed forced labour. Labour or service of persons serving sentence of imprisonment if their labour is based on the principle of voluntariness with financial compensation, labour or service of military persons, nor labour or services during war or state of emergency in accordance with measures prescribed on the declaration of war or state of emergency, shall not be considered forced labour.

27 "Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 – amend 107/2005 – amend, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.

28 "Official Gazette of the Republic of Serbia", No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014.

29 "Official Gazette of the Republic of Serbia", No. 65/2013, 13/2016.

Aliens³⁰, the Social Protection Law³¹, the Healthcare Law³², the Law on Seizure and Confiscation of the Proceeds from Crime³³, the Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles³⁴, the Law on the Protection Program for Participants in Criminal Proceedings³⁵, the Law on Personal Data Protection³⁶, Law on Prohibition of Discrimination³⁷. The Law on the Liability of Legal Entities for Criminal Offences also applies to human trafficking offences. It is applicable to Serbian and foreign businesses responsible for criminal offences in Serbia, foreign businesses committing offences on territory of a foreign country which damage Serbia or Serbian national or legal entity, and Serbian legal entities committing offences abroad.

Support of trafficked persons is regulated under the Social Protection Law³⁸ and the Healthcare Law³⁹ (Article 241). The Social Protection Law specifies trafficked persons as direct beneficiaries of social protection services⁴⁰. The Law established the Centre for the Protection of Victims of Trafficking in Human Beings.

1.2. Legal framework in the area of employment, labour market and business regulation

The legislative framework regulating employment and the labour market with relevance to human trafficking and its prevention includes: the Law on Employment and on Unemployment Insurance⁴¹, the Labour Law⁴², the Law on Aliens⁴³, the Law on Conditions for Posting of Employees Abroad⁴⁴, the Rulebook on Work Permits⁴⁵ and the Law on Safety and Health at Work. Other relevant legislation sets the powers and responsibilities of labour inspectors, such as the State Administration Law⁴⁶, the Labour Law⁴⁷ and the Law on Labour Relations in

30 "Official Gazette of the Republic of Serbia", No. 97/2008.

31 "Official Gazette of the Republic of Serbia", No. 24/2011.

32 "Official Gazette of the Republic of Serbia", No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013, 93/2014, 96/2015, 106/2015.

33 "Official Gazette of the Republic of Serbia", No. 32/2013.

34 "Official Gazette of the Republic of Serbia", No. 85/2005.

35 "Official Gazette of the Republic of Serbia", No. 85/2005.

36 "Official Gazette of the Republic of Serbia", No. 97/2008, 104/2009 – another law, 68/2012 – the decision of the Constitutional Court i 107/2012.

37 "Official Gazette of the Republic of Serbia", No. 22/2009.

38 "Official Gazette of the Republic of Serbia", No. 24/2011.

39 "Official Gazette of the Republic of Serbia", No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013, 93/2014, 96/2015, 106/2015.

40 Article 41.

41 "Official Gazette of the Republic of Serbia", No. 36/2009, 88/2010, 38/2015.

42 "Official Gazette of the Republic of Serbia", No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014 i 13/2017 – the decision of the Constitutional Court.

43 "Official Gazette of the Republic of Serbia", No. 97/08.

44 "Official Gazette of the Republic of Serbia", No. 91/15; the basic text of the Law has been in force since 13 January 2016. According to the EU Serbia 2016 Report, this law does not fully transpose the Posting of Workers Directive 96/71/EC.

45 "Official Gazette of the Republic of Serbia", No. 94/15.

46 "Official Gazette of the Republic of Serbia", No. 20/92, 48/93, 79/05 and 101/07.

47 "Official Gazette of the Republic of Serbia", No. 24/05, 61/05 and 54/09.

State Authorities⁴⁸ and those relevant to the operation of the market inspectorate, such as the Company Law⁴⁹ and the Law on Inspection Supervision⁵⁰.

Business regulation, in particular requirements on company reporting, public procurement rules and rules that govern corporate accountability, is relevance to prevention of trafficking, as the majority of forced labour cases are known to occur in the private sector. Businesses in Serbia are governed primarily by the Company Law, the Capital Market Law⁵¹, the Law on Takeover Bids⁵², the Law on Associations⁵³, the Law on Investment Funds⁵⁴, the Law on Banks⁵⁵, the Corporate Governance Code⁵⁶, the Law on Accounting and the Law on Auditing⁵⁷. Regulations governing the registration procedure for legal entities are: the Law on the Serbian Business Registers Agency⁵⁸, the Law on the Procedure of Registration with the Serbian Business Registers Agency⁵⁹ and the Rulebook on the Content of the Business Entities Register and Documentation required for Registration⁶⁰. In terms of reporting requirements, the national legislation regulates the coverage, content and timelines for annual and interim financial reporting.

2. Policy framework

The first national Strategy to Combat Trafficking in Human Beings in Serbia was adopted in December 2006, and the National Plan of Action to Combat Trafficking in Human Beings (2009-2011), in May 2009. At the time of drafting, the anti-trafficking framework and governance structure in Serbia was in transformation. The new Anti-trafficking Strategy and Action Plan for the prevention of and combat against human trafficking were drafted through a participative process in 2013, but as of May 2017 these were yet to be adopted.

The Employment and Social Reform Programme adopted in June 2016 also bears relevance to prevention of human trafficking, as does the National Employment Strategy 2010-2020, which was being revised at the time of writing.

In December 2015, the government adopted an action plan to implement the Public Procurement Strategy in 2016. It includes measures to further strengthen the capacity of public procurement stakeholders to fight corruption and to

48 "Official Gazette of the Republic of Serbia", No. 48/91, 39/02 and 79/05.

49 "Official Gazette of the Republic of Serbia", No. 36/2011 and 99/2011).

50 "Official Gazette of the Republic of Serbia", No. 36/2015.

51 "Official Gazette of the Republic of Serbia", No. 31/2011.

52 "Official Gazette of the Republic of Serbia", No. 46/2006, 107/2009 and 99-2011.

53 "Official Gazette of the Republic of Serbia", No. 51/2009 and 99/2011.

54 "Official Gazette of the Republic of Serbia", No. 46/2006, 51/2009, 31/2011 and 115/2014.

55 "Official Gazette of the Republic of Serbia", No. 107/2005 and 91/2010.

56 "Official Gazette of the Republic of Serbia", No. 99/2012.

57 "Official Gazette of the Republic of Serbia", No. 62/2013.

58 "Official Gazette of the Republic of Serbia", No. 55/2004, 111/2009 and 99/2011.

59 "Official Gazette of the Republic of Serbia", No. 99/2011 and 83/2014.

60 "Official Gazette of the Republic of Serbia", No. 6/2012.

reduce the number of irregularities. The public procurement exclusion criteria prohibit participation of bidders whose legal representatives were convicted for certain criminal offences⁶¹. However, the list of offences currently does not include human trafficking, forced or child labour.

As regards business and human rights, Serbia has supported the Resolution 26/22 of the UN Human Rights Council, to continue the mandate of the UN Working Group for Business and Human Rights, yet the UNGPs have not been formally endorsed, nor has there been a commitment to introduce a National Action Plan on Business and Human Rights so far. Some businesses carry out corporate social responsibility programmes but these are more in the area of corporate philanthropy, such as the production of a plan about online safety targeting children supported by Telenor Serbia⁶².

While corporate philanthropy initiatives are beneficial they are distinct from the concept of business and human rights and the expectations on businesses to look at their own operations and implement changes where there is a risk that the business operation might be inadvertently contributing to the risk of human trafficking. In Serbia, there is a nascent debate about business and human rights and the UNGPs⁶³. One of the recent initiatives in this regards has been the project “Business and Human Rights In-Country Process Serbia” implemented jointly by the Belgrade Centre for Human Rights and the Danish Institute for Human Rights, with the support of the Swedish International Development Cooperation Agency (SIDA) in the period January-June 2016. The project initiated a dialogue aimed at obtaining government to support UNGPs and adopt a National Action Plan or develop alternative measures, such as those aimed at encouraging businesses to assess their human rights impacts.

3. Institutional framework

3.1. Co-ordinating bodies

The strategic oversight and implementation of anti-trafficking policies falls under the responsibility of the Council for Combating Trafficking in Human Beings, which is chaired by the Ministry of the Interior and the Republican Anti-Trafficking Team co-ordinated by the National Co-ordinator for combating trafficking in human beings. The Team and the Co-ordinator sit with the Ministry of the Interior⁶⁴.

61 Article 75 Para. 2 of the Public Procurement Law: “[Bidder in public procurement procedure must prove that] It or its legal representative have not been convicted for any criminal act as members of an organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud”.

62 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, Council of Europe, Strasbourg, 2014.

63 <http://www.bgcentar.org.rs/bgcentar/eng-lat/business-human-rights-country-process-serbia/>

64 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, Council of Europe, Strasbourg, 2014, para. 22–28.

3.2. Centre for the Protection of Victims of Trafficking in Human Beings (CPTV) and National Referral Mechanism

The Ministry of Labour, Employment, Veterans and Social Affairs is responsible for the support and protection of trafficked persons through the operation of the Centre for the Protection of Victims of Trafficking in Human Beings (hereinafter CPTV), set up in 2012. The CPTV is responsible for the formal identification of victims. It is also responsible for coordinating the overall victim assistance and protection.⁶⁵ In 2010, prior to the establishment of the CPTV, guidelines for developing of standard operating procedures (hereinafter SOPs) for dealing with victims of human trafficking had been adopted.

The CPTV is responsible for the formal identification of victims of trafficking and its operation is funded from the state budget. However, the relevant statute does not specify which stakeholders can make a preliminary identification and refer cases to the CPTV. The CPTV identified victims referred by other agencies, such as the police, those referred by social protection system, civil society organisations and international organisations. ASTRA and Atina are the two specialist anti-trafficking civil society organisations that identify victims of trafficking. Victim of trafficking are entitled to benefit from social protection services without having to prove social need. The law also sets that the costs of accommodation for trafficked victims should be financed from the state budget.

Although the CPTV identifies victims, in the absence of a formal anti-trafficking strategy, there is a no formal National Referral Mechanism and the provision of victim support is largely sustained through memoranda and documents, such as the Regulation on the Network of Social Protection, which enables the work of the CPTV.

3.3. Labour Inspectorate

The Labour Inspectorate operates under the Ministry of Labour, Employment, Veterans and Social Affairs. Recommendations have been made by the review participants and GRETA in 2014 that both agencies be formally included in anti-trafficking policy response. The Labour Inspectorate⁶⁶ is responsible for overseeing in the area of safety and health at work, labour relations and the implementation of relevant legislation. It further oversees the implementation of other regulations, such as those relating to technical measures concerning safety and health at work.

The powers of a labour inspector include the authority to examine employer's general and individual or acts, records and other documentation; hear and take down statements from supervisors and interested parties; inspect business premises, facilities etc.; act upon citizens' reports and claims from employees, other natural persons and legal entities; order the implementation of measures and actions aimed at rectifying established violations of law; file reports to the authority with jurisdiction for specific criminal or economic offences; file a request

65 <http://www.centarzztlj.rs/eng/index.php/about-us/our-competence>

66 <http://www.minrzs.gov.rs/cir/dokumenti/inspekcija-rada/nadleznost-inspektorata>

for initiating misdemeanour proceedings; notify another authority if there are reasons for undertaking measures over which such authority has jurisdiction; initiate the suspension of enforcement; in case of the wrongful termination of a labour contract, issue a decision on the postponement of the enforcement of such decision and return the employee to the job until the end of the court proceedings. Inspection oversight in the area of safety and health at work may be performed over domestic and foreign legal entities and physical persons who have employees. The procedure of inspection oversight may be initiated *ex officio* or at the request of a party.

The Labour Inspectorate has 25 departments, offices and a group for labour inspection within administrative regions, two labour inspection departments in the City of Belgrade, and two departments at the headquarters of the Labour Inspectorate. The Labour Inspectorate has 260 employees, of whom 240 are labour inspectors (legal specialists and engineers of different technical professions). With 354,028 business entities registered at the end of 2016, there are 1,475 business entities per one labour inspector. This suggests a significant strain on the Labour Inspectorate capacity.

The 2015 amendment of the Law on Inspection Oversight⁶⁷ extended the mandate of labour inspection to inspect unregistered businesses, however, it does not cover domestic work or private farms.

3.4. National Employment Service and private employment agencies

The Ministry of Labour, Employment, Veterans and Social Affairs of the Republic of Serbia has the competency for regulation of employment and oversight over the labour market, including the functioning of the National Employment Service, authorised private employment agencies⁶⁸ and unemployment insurance.

With regards to private employment agencies regulations, the Law specifies that an employment agency may be set up by legal entities and natural persons for performing employment activities, including: informing about possibilities and conditions for employment; job brokering in the country and abroad; professional orientation, guidance and career planning; implementation of specific labour market policies based on the contract with the National Employment Service. Private agencies are not permitted to facilitate employment of persons under the age of 18 or jobs that are considered hazardous.

The Ministry issues licenses for operation of an agency based on a written application and compliance with a set of criteria, including work space, technical equipment and professional qualifications staff. The Ministry holds a public register⁶⁹ of licenses issued to private employment agencies. The register currently

67 "Official Gazette of the Republic of Serbia", No. 36/2015.

68 "Official Gazette of the Republic of Serbia", No. 36/2009, 88/2010, 38/2015.

69 National Employment Service – official website: http://www.nsz.gov.rs/live/nudite-posao/agencije-za-posredovanje-u-zaposljavanju/spisak_agencija_za_zapo_ljavanje_kojima_je_izdata_dozvola_za_rad_cid170; Ministry of Labour, Employment, Veteran and Social

includes 90 entries. The license is issued for a period of five years and may be extended, but also revoked if the agency fails to perform its tasks in accordance with the law.

3.5. Market Inspectorate

The Market Inspectorate operates under the Ministry of Trade, Tourism and Telecommunications. It is responsible for inspecting agencies that are involved in any form of job brokering with or without a license and also have the power to remove improper advertising in this area. The Market Inspectorate also controls illegal recruitment services offered by unregistered individuals.

In 2016, the Market Inspectorate inspected⁷⁰ 882 unregistered entities and issued 827 decisions to prohibit these entities from operation.

Since trafficking in human beings for labour exploitation often occurs in the grey areas of the labour market where unregistered entities operate, the Market Inspectorate plays an important role not only in detecting potential situations of exploitation, but also in prevention through deterrence and inspection of on-line advertising. The online job recruitment and job advertising in Serbia and abroad falls within the mandate of the Market Inspectorate. This function is particularly relevant to prevention and identification of trafficking for labour exploitation, as some of the recruitment occurs through on-line jobs advertising. While several areas of responsibility of the Market Inspectorate bear relevance to trafficking in human beings, the service has not received any specific training on human trafficking so far.

3.6. Public Procurement Office

The Public Procurement Office, which supervises the implementation of the law on public procurement⁷¹, also does not have a formal role in anti-trafficking action. Given the risk of trafficking for labour exploitation in product and service supply chains, anti-trafficking policies ought to include public procurement.

Affairs – official website: <http://www.minrzs.gov.rs/cir/dokumenti/zaposljavanje/agencije-za-zaposljavanje>

70 Market Inspectorate Annual Report for 2016. <http://mtt.gov.rs/sektori/sektor-trzisne-inspekcije/>

71 Public Procurement Law (PPL), "Official Gazette of the Republic of Serbia", No. 124/2012, 14/2015 and 68/2015.

IV. Assessment of the national situation

4. General overview

Serbia is located in the central part of the Balkan Peninsula, occupying an area of 88,499 square kilometres. It is divided into five regions, which include the City of Belgrade as a special territorial unit and 30 administrative districts.⁷² In 2014, the population of Serbia was estimated at 7,131,787 (a decrease compared to the 2011 census when it was 7,186,862). The rate of population growth in relation to the previous year is negative (-4.9 per 1,000 inhabitants).⁷³ The average age of the population in Serbia increased from 40.4 years (2004) to 42.6 (2014).

The ethnic composition of the population of Serbia is diverse, with 21 ethnic communities of over two thousand members represented in the country.⁷⁴ Serbs (83.3%), Hungarians are the most numerous group (mostly represented in the region of Vojvodina), followed by Roma (South and East Serbia and Vojvodina region) and Bosnians (mostly living in Šumadija and Western Serbia).

Serbia is a member of a number of international organisations, including the United Nations (UN), the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and NATO programme – The Partnership for Peace (PfP). Serbia is in the process of acceding to the World Trade Organization (WTO), with a view to acceding to the Organisation for Economic Co-operation and Development (OECD). Serbia is also active in organizations which aim to enhance regional economic co-operation, such as the Organization of the Black Sea Economic Cooperation, the Danube Commission and EFTA agreement (The European Free Trade Association).⁷⁵ Serbia officially applied for membership of the European Union in December 2009 and received a full candidate status in March 2012 and started accession negotiations in January 2014.

The Serbian GDP in 2015 was estimated at \$36.56 billion or \$5,102 per capita; purchasing power parity GDP was \$97.27 billion or \$13,577 per capita.⁷⁶ The

72 <http://www.srbija.gov.rs/pages/article.php?id=30> .

73 2015 Statistical Yearbook of the Republic of Serbia <http://webrzs.stat.gov.rs/WebSite/userFiles/file/Aktuelnosti/StatGod2015.pdf> . Since 1999 data on Kosovo are not included in the Statistical Yearbooks of the Republic of Serbia.

74 <http://www.srbija.gov.rs/pages/article.php?id=30>

75 <http://www.mfa.gov.rs/en/foreign-policy/multilateral-issues/economic-diplomacy>. Retrieved 18 April 2017.

76 "Report for Selected Countries and Subjects", International Monetary Fund. Retrieved 18 April 2017. <http://www.imf.org/external/pubs/ft/weo/2016/02/weodata/weorept.aspx?>

economy is dominated by services which account for 47.6% of GDP and industry with 42.7% of GDP, followed by agriculture at 9.7% of GDP.⁷⁷ Basic socio-economic indicators, such as GDP, inflation and poverty levels, are important factors to take into account when assessing the overall risk of trafficking in any country.⁷⁸

Serbia's HDI (Human Development Index) value for 2015 was 0.776, which puts the country in the high human development category, positioning it at 66 out of 188 countries and territories⁷⁹. According to Eurostat, 25.4% of the population in Serbia was viewed as being at risk of falling into poverty (the highest rate among EU countries and candidate countries).⁸⁰ Significant inequalities were also noted in income distribution in 2015, when in Serbia the ratio was 9.0 (higher than in any of the EU Member States or candidate states).⁸¹

In considering the risk of trafficking, basic economic indicators and factors such as poverty, unemployment and lack of decent work opportunities need to be taken into account. Studies on human trafficking make a number of conclusions as to the reason why a person may be trafficked or vulnerable to trafficking. Most commonly, it is considered that "unemployment, poverty, lack of education, limited options concerning one's future life plans, deprivation, violence as well as discrimination might encourage a person to try to make a living somewhere else and "pushes" him/her to look for alternatives."⁸² These factors were also commonly cited by the interviewees of this report.

Serbia is considered mainly a country of origin for trafficking in human beings, and to a lesser extent a transit and a destination country. There is a difference in the number of cases of trafficking in human beings officially recorded by government agencies⁸³ and by civil society organisations. The variance in the government data is linked to their institutional mandate. For instance, the CPTV records all the cases that it positively identified as victims of trafficking, whereas the criminal

pr.x=79&pr.y=11&sy=2015&ey=2021&scsm=1&ssd=1&sort=country&ds=.&br=1&c=914%2C962%2C943%2C963%2C918%2C960%2C942&s=NGDPD%2CNGDPDPC%2CPPPGDP%2CPPPPC&grp=0&a=

77 <https://www.cia.gov/library/publications/the-world-factbook/geos/ri.html>

78 Data from the International Monetary Fund

79 Human Development is measured by Human Development Index (HDI) - a summary measure for assessing progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living. <http://www.rs.undp.org/content/serbia/en/home/presscenter/articles/2017/03/23/the-human-development-report-2016.html>

80 "At-risk-of-poverty rate and threshold, 2015". Eurostat (ilc_li01) and (ilc_li02): http://ec.europa.eu/eurostat/statistics-explained/index.php/Income_distribution_statistics

81 "Inequality of income distribution, 2015 (income quintile share ratio)". Eurostat (ilc_di11): http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_di11&lang=en

82 ASTRA, *Human Trafficking Peer Education Manual*, Belgrade, 2016

83 Reply from Serbia to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, Second evaluation round (Reply submitted on 8 February 2017), Council of Europe, Strasbourg, 2014, statistics on trafficking in human beings (per year, starting with 2010), Page 62. Number of trafficked persons for the purpose of labour exploitation (per year): 2010 – 4, 2011 – 22, 2012 – 12, 2013 – 22, 2014 – 98, 2015 – 3 and 2016 – 7;

justice actors, such as the police and the prosecutor's office, record cases linked to criminal proceedings. However, all the available data sets conclude, that most cases of trafficking in human beings identified in Serbia, are cases of trafficking for the purpose of sexual exploitation.

The CPTV⁸⁴ recorded in 2016:

- ▶ 55 identified victims of trafficking;
- ▶ the majority of whom were women and girls trafficked for the purpose of sexual exploitation (47 victims; 85% of the total number of victims identified);
- ▶ 8 victims were men, all except one exposed to labour exploitation (one man was coerced into criminal activity);
- ▶ Children accounted for 38% of all identified victims (21, 90% of whom were girls);
- ▶ The victims identified in 2016 were mainly citizens of Serbia (52, i.e. 91%) and they were mostly exploited in the territory of Serbia. Other countries of origin include Nepal, Afghanistan, Albania and Pakistan;
- ▶ In 67% of cases victims who were citizens of Serbia were exploited in Serbia. Other countries of exploitation were Germany (16%), Russia (8%), Macedonia, Netherlands, Italy, Switzerland and Syria;
- ▶ Multiple form of exploitation occurred in 11 cases where all victims were women, mostly sexually exploited, while forced marriage appears in 6 cases.
- ▶ In the seven cases of trafficking in human beings for labour exploitation, victims were exploited in the following industries: agriculture – 1 victim (child), hotels and restaurants – 2 victims, construction industry – 4 victims. The victims of labour exploitation in the construction industry were exploited in the Russian Federation, while the other three victims were exploited in Serbia. In 6 cases victims were found through regular operation of the police who notified the CPTV of the need to identify them. In one case the victim was found through the NGO Atina.

During 2016, the CPTV also received 40 reports for the identification of victims among migrant and refugee population. Out of the total number, 2 women were identified as victims. One case involved labour exploitation and coercion into marriage and the other involved transnational sexual exploitation.

In 2016, the Ministry of the Interior⁸⁵ registered 11 criminal reports for trafficking in human beings under Article 388 of the Criminal Code of Serbia. These criminal

84 <http://www.centarzztlj.rs/images/stat/16/Statisticki%20izvestaj%20za%202016%20godinu.pdf>

85 <http://www.astra.rs/wp-content/uploads/2017/03/ASTRA-Annual-Newsletter-No.50.pdf>

reports referred to 14 perpetrators and 31 victims. All the perpetrators were adult citizens of Serbia (12 men and 2 women). The majority of victims were exploited in the territory of Serbia; in 4 cases the exploitation took place in Germany, and one case was identified in the phase of recruitment, where the country of destination was Austria.

The SOS hotline operated by the NGO ASTRA⁸⁶ receives calls related to human trafficking. In 2016, the hotline received in excess of 3700 calls. 32 reports were received about potential human trafficking cases; 15 victims were identified from these calls;

- ▶ In nine cases, the victims were men – eight were reportedly subject to exploitation on construction sites in France and one was exploited for petty crime;
- ▶ Half of the identified female victims (6) were sexually exploited (3), two of them were forced to marriage, and one case was discovered before the exploitation started;
- ▶ All victims were citizens of Serbia, exploited in France (7), Montenegro (1) and Serbia (7).

In 2016, the NGO Atina referred 8 cases to the CPTV and the police, after detecting indicators of human trafficking. The CPTV identified two persons as victims of human trafficking. Among these 8 cases, 5 were migrants and 3 were citizens of Serbia. Also:

1. Three persons were referred to their programs by the CPTV and one by an organization from Germany. These are all citizens of Serbia.
2. As for the migrants, 2 persons were referred to Atina by the Center for Social Work, 4 by NGOs, a representative of Atina identified 4 of them.
3. During the last year, Atina assisted a total of 72 victims of human trafficking – 62 of them were citizens of Serbia and 10 refugees.
4. 17 cases (15 labor only, 2 multiple exploitation) of Serbian citizens/victims of labour exploitation were assisted.

The State Prosecutor's Office⁸⁷ handles cases for prosecution and collects data about the numbers of cases prosecuted and convicted. In 2016:

- ▶ 18 persons were charged with human trafficking offences;
- ▶ 20 individuals were convicted of human trafficking offences
- ▶ there was no conviction for trafficking for the purpose of labour exploitation.

⁸⁶ <http://www.astra.rs/wp-content/uploads/2017/03/ASTRA-Annual-Newsletter-No.50.pdf>

⁸⁷ <http://www.astra.rs/wp-content/uploads/2017/03/ASTRA-Annual-Newsletter-No.50.pdf>

2. Labour market overview

There is a link between the functioning of the labour market and potential risk of trafficking. Poverty, unemployment, lack of respect to workers' rights and lack of access to decent work⁸⁸ opportunities are all known underlying factors that make some individuals vulnerable to recruitment by unscrupulous agents and to human trafficking. General poor protection of workers' rights in the labour market in Serbia has been raised as a concern by most of the review participants.

High unemployment is a key characteristic of the Serbian labour market. The revised data of the Labour Force Survey of the Statistical Office of the Republic of Serbia⁸⁹ for 2014 and 2015 (published in May 2016) shows the average unemployment rate in 2015 as 17.7% (19.2% in 2014). However, the unemployment rate of young persons (under 30 years of age) is much higher and was recorded as 23.64% (the highest being in the Braničevski Region – 29.52%) in March 2017.

Long-term unemployment is another significant challenge. Almost 12% (11.61%) of those registered with the National Employment Service have been unemployed for more than 10 years, 61.76% of them are women. Poor access of women to the labour market is a systemic problem in Serbia. The EU Serbia 2016 Report⁹⁰ found that women's position in the labour market has not changed and is characterised by significantly lower activity and employment rates compared to men. The Roma population is the most discriminated against in the labour market (with Roma women being the worst off). Other categories of persons with poor access to the labour market are persons with disabilities and people with low qualifications. However, the level of education does not appear to impact on ability to find work, as according to the National Employment Service⁹¹ more than 67% of all unemployed persons have a medium or high level of education.

Due to lack of access to decent work, there is reportedly a high rate of informal employment. The data of the Statistical Office of the Republic of Serbia⁹² showed 2,009,785 registered employees in 2016. Out of this figure, 79.4% were employees at legal entities; entrepreneurs and their employees and persons individually running business – 16.1% and registered individual agricultural producers (farmers) – 4.5%. The number of registered employees in the private sector increased by nearly 10% in 2016 year-on-year as a result of stricter labour

88 The ILO defines "decent work" as "work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men".

89 <http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=26>

90 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf

91 http://www.nsz.gov.rs/live/digitalAssets/7/7247_bilten_nsz_03_2017_-_broj_175.pdf, The National Employment Service – Monthly Statistics Bulletin No 175, March 2017.

92 <http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=26>.

inspection. Labour demand, although increasing, still has not reached the level it was before the economic crisis.

Minimum wage in Serbia⁹³ in March 2017 amounted to RSD 23,920 (EUR 194) net, that is RSD 32,441 (EUR 263) gross. In April 2017, the average net wage stood at RSD 20,800 (EUR 169), RSD 27,990 (EUR 227) gross. The amount of minimum wage per working hour in Serbia is RSD 130 (around EUR 1.05).

3. General awareness

Representatives of stakeholders with a mandate and an identified role in the anti-trafficking legislation and policy and to a certain extent whose operations are relevant to anti-trafficking action, such as those involved in labour market regulation and enforcement, have a good level of understanding of trafficking in human beings as well as infrastructures that are in place to combat trafficking.

However, there is a concern that the knowledge is limited beyond individual specialists and that the level of knowledge, in particular the ability to identify a situation of trafficking and to respond to it in an appropriate manner, is low amongst professionals in general. For example, those who are not involved directly in anti-trafficking work in Serbia are more likely to find it difficult to distinguish between labour rights violations, unregistered labour and other breaches of workers' rights, such as discrimination in the workplace.

The assessment confirmed that the knowledge about trafficking for sexual exploitation is overall much higher than the knowledge about trafficking for labour exploitation, which is reflected in the low numbers of detected and identified cases of trafficking for labour exploitation.

A particular area of concern is the lack of clarity whether a situation falls under the definition of trafficking, especially in instances where the possible victim is perceived to have agreed to take up the job in the first place or to work without authorisation. The **irrelevance of consent**, as defined in Art. 4 of the Council of Europe Convention, appears to be poorly understood, as is the **abuse of a position of vulnerability**, in situations where workers perceived they had no option, or felt that they were unable to negotiate their conditions because of limited availability of jobs and the high level of unemployment.

Low number of identified and reported cases of trafficking for labour exploitation in Serbia has been symptomatic over the past few years. For example, the police departments in Niš and Novi Sad, received no reports on human trafficking for the purpose of labour exploitation in 2016 and in the past decade no more than two cases were dealt with by the police in the region. One of the historic cases occurred in Novi Sad ten years ago, when the police filed a criminal report for the offence

93 "Official Gazette of the Republic of Serbia", No. 77/2016, <http://www.zup.co.rs/materijali/Tabela%206L.pdf>

of human trafficking for labour exploitation where the victim was a man, foreign citizen. The Public Prosecutor qualified this offence as domestic violence (the perpetrator was the victim's cousin-in-law).

The review participants raised concerns over cases of poor employment practice and violation of labour standards linked to production sites of foreign businesses in Serbia. In 2016, cases were publicised involving shoe manufacturers supplying brands in south Korea^{94 95} and the EU^{96 97 98}. Reports alleged for example that some of the factories do not fully follow the procedures for registering workers who were able to get health insurance only based on incomplete labour contracts. Both factories are located in Southern Serbia, where standards of living are lower than in the North or in Belgrade. They operate in the textile and footwear industry, which mostly employs women. While these cases have not been deemed to be cases of trafficking for labour exploitation, they are illustrative of the poor protection of workers' rights in the industry.

Most of the cases mentioned by the participants in the fact-finding mission were cases concerning Serbian nationals exploited in other countries. One of the best known cases involved workers from Serbia exploited at the construction sites of the Sochi Winter Olympics. The recruiters and transporters were mostly citizens of Serbia. The workers were usually employed by Serbian firms that were subcontracted by Russian companies. The workers usually found out about these job opportunities through informal channels, (acquaintances or other workers), or found an advert on unsecure and unverified on-line portals and in newspapers.

The workers did not have work permits and were extending their stay by periodically leaving the Russian Federation to Abkhazia and returning later. They were subject to harsh and unsafe working and living conditions as well as threats and blackmail. Employers coerced them to continue working under the threat of reporting them to the Russian immigration authorities. The police in Novi Sad for example have 25 notes⁹⁹ on this case. The police in Niš also received reports from workers from Ražanj and Svrlijig (towns in the Niš region) in connection with this case. No prosecution was brought in this case, even though charges have been raised against one firm in Čačak and the process is still on-hold, largely due to the lack of co-operation on the side of the Russian authorities.

The Netherlands, Austria and Germany were also mentioned as popular destinations for labour migration of Serbian workers with anecdotal cases of exploitation

94 [https://insajder.net/en/site/tema/1005/Yura-Labor-Ministry-asked-us-to-donate-cars-\(VIDEO\).htm](https://insajder.net/en/site/tema/1005/Yura-Labor-Ministry-asked-us-to-donate-cars-(VIDEO).htm)

95 [https://insajder.net/en/site/tema/876/Yura-has-so-far-received-EUR25m-in-subsidies-and-free-land-\(VIDEO\).htm](https://insajder.net/en/site/tema/876/Yura-has-so-far-received-EUR25m-in-subsidies-and-free-land-(VIDEO).htm)

96 <http://www.masina.rs/eng/real-cost-shoes/>

97 <http://www.masina.rs/eng/working-geox-21-century-case-serbia/>

98 <http://www.masina.rs/eng/real-price-geox-shoes/>

99 Official note means the information on the activity carried out by the police officers (meeting, event etc.) that may, but not necessarily contain personal observations of the investigator, proposals etc.

mentioned by several participants. The Police in Novi Sad mentioned instances of possible exploitation of Serbian citizens as truck drivers for Slovenian companies.

Most interviewees mentioned cases of Serbians allegedly exploited in the past three years in Slovakia in factories in Galanta (Samsung) and Trnava (Peugeot). The workers were promised work in these factories as well as a work permit (while Slovakia has a visa free arrangement with Serbia, Serbians do not have direct access to the labour market and require a permit to work regularly in Slovakia). The recruitment for jobs in Slovakia occurs largely through informal channels, either through a word of mouth or on-line. Workers initially pay a facilitation and transportation fee and are instructed to gather at a meeting point from where minibuses will transport them to Slovakia.

The information provided by the participants suggested that while there was high demand for work in Slovakia amongst workers, these cases have been associated with deception (about conditions and pay); false promises and implicit threat of immigration enforcement (in particular in relation to the arrangement of work permit and thus putting workers at risk of deportation); abuse of a position of vulnerability (the knowledge by the recruiters that workers were desperate to obtain any job), creating a situation of dependency (withholding of wages from the workers, and thus making them destitute and preventing them from returning to Serbia). The working conditions in the factories were reportedly exploitative, with workers required to work for twelve hours without a break and allowed to use the toilet only with permission in allocated times. An article of the situation in Samsung factories was published in the media in February 2017 in Slovakia¹⁰⁰ and in Serbia following an undercover investigation by a Serbian journalist.

Serbian authorities have begun to collaborate with the Slovak authorities on addressing these cases. According to information provided by those interviewed, the Slovak authorities are currently treating these cases as immigration offences, namely offences of facilitation illegal migration, rather than human trafficking.

In March 2017, the Serbian Minister of Labour, Employment, Veteran and Social Affairs met with the Slovak Minister in Bratislava regarding these cases¹⁰¹ and a process has been initiated for a Memorandum of Understanding between Serbia and Slovakia.

While there appears to be general awareness about cases of possible trafficking for labour exploitation, given the low number of actually identified cases, most interviewed participants have a limited practical experience in handling cases, or if they do, the practical experience is in relation to a very small number of cases. There is some awareness about historical cases, such as the case of "SerbAz", which involved large numbers of Serbian workers trafficked for forced labour to Azerbaijan over ten years ago. The case attracted a lot of international attention¹⁰² at the time.

100 <http://www.topky.sk/cl/13/1609485/Srbsky-novinar-pracoval-tajne-v-galantskej-fabrike--Ponizujuce-podmienky-a-mizerny-plat>

101 <http://www.minrzs.gov.rs/lat/aktuelno/item/7903-sporazum-o-socijalnoj-sigurnosti-srpskih-radnika-u-slovackoj?highlight=WyJtaW5pc3RhciIsInNsb3ZhXHUwMTBka2kiLCJtaW5pc3RhciJd>

102 http://www.ilo.org/global/topics/forced-labour/news/WCMS_126195/lang--en/index.htm

4. Initiatives and measures taken by government agencies

Government agencies initiatives focus on several key areas – identification of victims, enforcement against perpetrators, prevention of trafficking and training and capacity building. While there was clarity about the roles and responsibilities of the agencies consulted for the report and more “traditional” actors, such as the police, the understanding of the roles and responsibilities of other agencies, such as labour market regulators, was limited.

As mentioned previously, the CPVT has identified some cases of trafficking for labour exploitation, but the overall number remains low. With regards to cases of Serbian workers exploited abroad, there was a consensus that collaboration with the countries of destination needed to be strengthened, as Serbian authorities are only informed about concerns once the workers have returned. The case of Serbian workers exploited in factories in Slovakia was repeatedly mentioned as an experience to learn from. The lack of labour attaché functions at Serbian embassies in the most common countries of destination was considered an issue. Mutual legal assistance route is considered not to be a very effective way of collaborating, as it is very slow and limited in scope.

Collaboration and multi-stakeholders initiatives were highlighted as a good strategy to bridge existing gaps in the police officers’ understanding of labour market regulation and enforcement, and the similar lack of awareness about human trafficking amongst labour and market inspectors. Organising joint inspection visits by police and labour inspections was cited as a good practice example. These involved night inspections at entertainment premises, following intelligence that women might have been sexually exploited and required to work at the bar to encourage customers to purchase drinks.

The development of specialism was considered to be good practice. For example, there are specialised prosecutors on trafficking in human beings, who act as single points of contact and provide operational guidance. Similarly, there are specialists within the police and the border guards. However, front-line officers only get basic information on the phenomenon, are not duly trained on human trafficking and their level of awareness is considered to be low. The lack of training and awareness, combined with a lack of mandate of labour inspection to identify and investigate trafficking for labour exploitation, can lead to serious workplace abuses to be qualified as lesser offences, or not identified. There have not been any specialised trainings for labour inspectors on human trafficking, except for a two-day TAIEX (Technical Support and Information Exchange Instrument of the European Commission) workshop, organised by the Ministry of the Interior in 2011, which was attended by 12 labour inspectors alongside police officers.

The Labour Inspectorate has accessed and conducted inspections in industries with a high risk of trafficking and exploitation, such as construction industry as well as unregistered and informal working places. From January to December 2016, the Inspectorate conducted 53,069 inspections, 19,472 persons were

found to be working unregistered (without employment contract working with registered entities or persons working with unregistered entities), representing a 19% increase on 2015.

In 2016, the Labour Inspectorate conducted 14,156 health and safety inspections, covering 178,919 employees. The inspectors made 478 decisions prohibiting work in the workplace due to hazardous conditions that could harm workers to health and safety and issued 5,331 decisions ordering improvements in the area of health and safety.

Enforcement and inspection in another at-risk sector, agriculture (in particular seasonal temporary work), is considered a challenge, as labour inspectors do not have the authority to inspect family farms. In addition to extending the powers of the Labour Inspectorate across all agriculture, it would be necessary to develop collaboration with the Ministry of Agriculture, Forestry and Water Management.

While the Labour Inspectorate carries out activities relevant to prevention, enforcement and identification of trafficking, these are currently not specifically integrated within the anti-trafficking policy framework (if a labour inspector suspects a situation of trafficking they can notify the CPTV and the police. However, there is no protocol that sets out and regulates the co-operation). In 2014 GRETA recommended that: "...Serbian authorities should take further steps to ensure that national action to combat THB is comprehensive, in particular strengthened action to combat THB for the purpose of labour exploitation by involving Labour Inspectorate...".

As regards addressing the risk of deceptive recruitment, especially, but not exclusively of Serbian nationals, there appears to be a gap in the regulation of labour brokering. It appears that a significant proportion of recruitment occurs either over the Internet or through a word of mouth outside of the regulatory framework. While there is a system for regulation and licensing of labour providers, the current system is not considered to be comprehensive enough to eliminate rogue operators. Detection and disruption of operation of informal and unregulated employment agencies that are seen as responsible for brokering jobs abroad which put people at risk of trafficking is a recognised challenge. An example is a language school in Novi Pazar that offered job facilitation abroad in addition to language courses.

5. Initiatives and measures taken by trade unions

The trade union activity in addressing trafficking in labour exploitation in Serbia has been limited and has mainly focused on labour exploitation of Serbian nationals abroad. Trade unions were involved in assistance to some of the workers who were exploited at the Sochi Olympic site, but were only able to offer limited support to the affected workers.

The main challenges faced by the trade unions include fragmented labour market and significant grey economy in the risk industries, such as construction, the supply of workforce willing to take up jobs abroad even without proper authorisation because of lack of opportunities and bad working conditions in Serbia, transient and temporary workers (especially in agriculture) and reluctance by employers to permit unionisation of workers.

So far, there has been limited collaboration with unions in the main destination countries and there are no bilateral agreements between Serbian trade unions and trade unions in the main Western European countries of destination.

Better collaboration and co-ordination exists with trade union counterparts within the region. For instance, the BBI-Group 9 network has launched an initiative aimed at supporting migrant workers, with a specific focus on migration within the Balkans. The group is composed of nine trade unions in the area of construction industry and forestry which are members of the BWI (Builders and Wood Workers International). The network has arisen out of a need to provide support and service to migrant workers in order to prevent the abuse of their rights and consequent social damping of domestic workers. In addition to specific services, the network also worked to produce guides and information booklets for migrant workers, as well as to detect labour exploitation cases.

There is a concern in the trade union movement about the increasing risk of exploitation of migrants and refugees that are in the territory of Serbia with the arrival of the peak period of demand for seasonal agricultural labour. Further concern is linked to the limited presence of trade unions in the sector of agriculture (especially for seasonal and temporary labour), and domestic work and to the unfavourable attitude of employers towards workers' organisations. This includes international businesses that have strong workers' organisations and collective agreements in place in their countries of origin, but appear to be unwilling to support unionisation of Serbian workforce.

The 2016 International Trade Union Congress (hereinafter ITUC) global rights survey¹⁰³ placed Serbia in category 4¹⁰⁴ (systematic violations of labour rights), a two point drop from category 2 in the previous year. The change reflects the dramatic increase in the number of violations recorded in the country. However, the ranking may also be related to improved workers' capacity to report cases of violations. In 2016, ITUC found that workers are unable to effectively access judicial remedies when their rights are violated. High court and legal fees imposed by the Act on Court Fees and the Law on the Bar tariff, in combination with the lack of possibility for a worker to have a representative other than a lawyer, such as a trade union representative, makes it very difficult for individuals to raise grievances.

Court proceedings concerning labour issues can take up to eight years. Trade unions have called for the establishment of specialised labour courts in order to

103 https://www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf

104 On a scale 1–6, with 1 being the best performing category.

improve access to justice with no avail so far. Collective bargaining negotiations are often protracted without a reason at the sectorial or company level, leading in practice to the impossibility to conclude an agreement. In addition, trade unions in Serbia are not sufficiently protected against interference in their activities. For example, in the public enterprise Skijalista Srbije, founded and owned by the State, the employer continuously tried to declare null the last trade union elections and to appoint representatives of the management as elected trade union's representatives¹⁰⁵.

A number of participants in the regions also considered that trade unions ought to improve their support for workers' rights and suggested joint working with others, such as civil society organisations.

6. Initiatives and measures taken by the civil society

Civil society plays a key role in the identification of and assistance to trafficked persons, as well as in provision of information to persons at risk through the existing hotline run by ASTRA. The two principal civil society organisations involved in anti-trafficking action in Serbia are ASTRA¹⁰⁶ and Atina¹⁰⁷. Both organisations also work increasingly on the issue of refugees and migrants, given the concerns over the risk of exploitation of this vulnerable population in Serbia.

In 2011 and 2012, ASTRA in cooperation with the Society KLJUČ¹⁰⁸ from Slovenia and Partnership for Social Development (PSD)¹⁰⁹ from Croatia implemented the project "Make it work! – fighting trafficking and exploitation of workers"¹¹⁰, supported by the European Union. The project was aimed at raising awareness about EU standards and practices in the sphere of workers' rights and constituted an effort to minimise the risk of them becoming victims of human trafficking and exploitation. It addressed civil society, trade unions, state bodies and the general public and included an advocacy campaign raising awareness on the dangers of trafficking and information provided to the general public, research and situation analysis in Serbia, research on and dissemination of related EU best practices, and establishment of a hotline for victims on human trafficking and labour exploitation.

In October 2011, TNS Medium Gallup conducted a qualitative survey¹¹¹ for ASTRA with a representative sample of 2506 respondents. The survey was aimed at assessing the level of awareness, perception and understanding of labour exploitation and human trafficking among Serbian citizens. Some of the findings of this survey are:

105 https://www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf

106 <http://www.astra.rs/?lang=en>

107 <http://atina.org.rs/en>

108 <http://www.drustvo-kljuc.si/>

109 <http://psd.hr/>

110 <http://www.astra.rs/make-it-work-2/?lang=en>

111 http://www.astra.org.rs/eng/wp-content/uploads/2011/11/Report_TNS-Medium-Gallup_Astra__Labor-exploitation-and-human-trafficking_F2F_Oct-11.pdf and http://www.astra.org.rs/eng/wp-content/uploads/2011/11/Report_TNSMediumGallup_Astra_FG_October_11.pdf

- ▶ Low awareness of labour exploitation;
- ▶ Top of the mind associations are mostly directed to non-paid (or poor paid) work:
 - Suspend payments is the most frequent spontaneous association;
 - The term often interferes with the violation of labour rights (e.g. tax avoidance, unpaid overtime work);
- ▶ Overall situation in Serbia: poverty, unemployment, corruption and consequently decline of basic moral values are perceived as the main cause for potential victimization;
- ▶ Construction, agriculture, tourism and catering are perceived as the main at-risk industries;
- ▶ Almost half of respondents (46%) know someone or had experience with labour exploitation. Almost each third (28%) had suspicious job offer, mostly through job ads or from acquaintances.

Civil society organisations collaborate with government agencies. For example, ASTRA worked together with the Market Inspectorate to identify businesses that facilitate illegal or informal employment of Serbians. Citizens inform ASTRA about suspicious job offers and irregularities in the work of employment agencies. After initial check-up, the information is forwarded to the Market inspectorate or the competent ministry for further processing, who later inform ASTRA about the measures that have been taken.

As part of its regular programme, the NGO Atina provides legal and psychosocial support to victims of labour exploitation. In the well-known case of labour exploitation in Chechnya, Atina's representatives supported 16 workers who testified about the exploitation of their labour in Chechnya. Furthermore, in one case in which the NGO Atina was involved, assistance was provided to a woman who was a victim of trafficking for the purpose of labour exploitation against whom the prosecutor's office initially had brought charges for committing a crime.

By setting up seven local anti-trafficking networks in Novi Sad, Subotica, Sremska Mitrovica, Kraljevo, Kragujevac, Nis and Vranje, the NGO Atina has worked to strengthen the capacity of the members of these networks to recognise and properly respond to cases of labour exploitation. The training programme provided included a special module on labour exploitation.

7. Initiatives and measures taken by the private sector

Although Serbia has not yet developed a National Action Plan on Business and Human Right, following the UNGPs, there is an appreciation that private sector has a role in preventing trafficking and addressing situations that may contribute to human trafficking.

Some initial initiatives have been undertaken by businesses and other stakeholder with relevance to trafficking for labour exploitation. For example, over 50 companies, academic institutions, civil society, towns and trade unions from Serbia are part of the UN Global Compact¹¹² (UNGC)¹¹³, including 23 small and medium-sized enterprises¹¹⁴. The UN Global Compact is to a great extent linked with UNGPs¹¹⁵, especially with the principles relating to company's responsibility to respect human rights. Principles 1 and 2 of the Global Compact are a basis for further implementation of the UNGPs.

In its recent response to the GRETA second round questionnaire, the Serbian government stated that "the Serbian Chamber of Commerce and Industry continues to contribute to the observance and protection of the rights guaranteed by the Convention of the Council of Europe, and is available for co-operation to all relevant institutions for the propose of further improvement of implementation if the rights guaranteed by the Convention."¹¹⁶ The response does not include details on how the Chamber of Commerce contributes specifically or how it works with its members to increase awareness and business action against trafficking in human beings.

A response from one international business with operations in Serbia, Philip Morris International (hereinafter PMI), a tobacco company with a subsidiary in Niš, has also been included into the reply to the GRETA's questionnaire¹¹⁷. In its statement, Philip Morris reiterates its commitment to the UNGPs and to the fight against human trafficking with general comments about the need for multi-stakeholders collaboration for the eradication of modern slavery. The statement also refers to the company's activities and collaborations globally and within the region. PMI further referred to its Agricultural Labour Practices Programme, which it has been implemented in Serbia, which includes activities aimed at improving living conditions and eradication of child labour in tobacco growing communities in Serbia, in particular in the southern regions of Presevo and Bujanovac.

Amongst the interviewed participants, there was little knowledge about particular private sector activities aimed at addressing the rights of trafficking. There was consensus that the issues of human rights needs embedding in business practice in Serbia, but that a precursor to that would be addressing what has been described by many of the participants as the "grey zone" within which many businesses are perceived to operate.

112 The UN Global Compact is a United Nations initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation.

113 <https://www.unglobalcompact.org/what-is-gc/mission/principles>

114 <https://www.unglobalcompact.org/what-is-gc/participants>

115 Translation of the UNGPs into Serbian by the Belgrade Centre for Human Rights available at: <http://bgcentar.org.rs/bgcentar/wp-content/uploads/2013/11/Portal-ljudska-prava-i-biznisrukovodeca-nacela.pdf>

116 Reply from Serbia to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, Second evaluation round (Reply Submitted on 8 February 2017) p. 35.

117 <http://www.coe.int/en/web/anti-human-trafficking/serbia>

Two businesses, Marriott International and the Manpower Group, participated in the fact-finding mission. Both businesses are known internationally to engage on anti-trafficking efforts. Marriott trains all their staff on human trafficking, with a particular focus on trafficking for sexual exploitation, to enable staff to recognise possible victims being brought into the hotel. Internationally, the group has also begun to focus on trafficking for labour exploitation and links with the hospitality industry. Their representative also stated that they have a thorough process for supplier selection and only use agencies with whom they had long-term cooperation, and that they deliver trainings on human trafficking to their staff. The Marriott representative referred to an initiative to establish a working group composed of representatives of several hotels in Belgrade to focus on human rights and corporate responsibility issues within the hotel industry.

The Manpower representative stressed the need to make better selection of agencies that are licensed for recruitment of workers and that licensing requirements must be stricter.

8. Areas of risk

Poor employment practice and low pay, as well as demand by some businesses for cheap labour in Serbia and lack of general workplace protection were considered as underlying risk factors (some participants commented on the need to review the government foreign investor relation policy¹¹⁸ that some view as contributing to the underlying issues),.

Agriculture, textiles and footwear production, construction, private care arrangements and catering are the industries considered with the highest risk, due to the often precarious nature of employment arrangement in the industry, difficult working conditions and low wages. A large part of these industries is also reportedly operating in the grey area, using unregistered and informal labour. A trade union representative noted that 53% of the workforce in the construction industry has no work contracts and 40% of the labour is informal. There is also increasing presence of migrant workers in the industry, in particular from The Republic of Moldova, Albania and Bulgaria.

Participants referred to anecdotal cases, or trends that point to heightened areas of risk, such as:

- ▶ Serbian workers seeking work abroad due to limited opportunities in Serbia. These workers are targeted by unscrupulous labour brokers (online or by word of mouth);
- ▶ Industries with low worker protection, high concentration of informal work and temporary/seasonal labour and low-wage labour intensive sectors;

¹¹⁸ <http://www.transparentnost.org.rs/index.php/en/110-english/naslovna/8440-state-racketeering-conflict-of-interest-and-hidden-costs>

- ▶ Migrant workers in Serbia and demand for those in certain sectors with poor worker protection (such as construction);
- ▶ Large refugee and migrant population vulnerable to exploitation, because of their desire to find work to fund they journeys further to the EU.

For each of those categories, cases were mentioned by participants. Anecdotal cases of Serbian workers exploited in Austria, Germany, and the Netherlands and most recently in Slovakia were mentioned repeatedly. While there was no certainty that these cases amounted to trafficking for the purpose of the labour exploitation, and often the opinion prevailed amongst participants, that because the workers willingly migrated for work, even with the knowledge that they may be working without authorisation, these cannot be cases of trafficking. However, when details of cases were discussed, indicators of forced labour and trafficking, such as deception, abuse of the position of vulnerability, withholding of wages, were often present.

Similarly, cases of migrant workers (especially workers from other Balkan countries) in precarious situations in Serbia, because of informal working arrangements, poor working conditions, work without permit were not necessarily considered as potential trafficking situations, because of the perceived willing participation of the workers.

Serbia has been significantly impacted by the so-called global migration crisis. The country used to be predominantly a transit route for mainly Afghani, Pakistani and to a limited extent Syrian refugees and migrants. After the initial passage route through Serbia to Hungary closed in March 2016, thousands of individuals became trapped in Serbia. There are estimates that some 8,000 persons are currently in Serbia, with an unclear status. Most do not wish to remain or seek international protection in Serbia, which poses a challenge in terms of long-term policy planning. Some 10% of those are suspected to be children, mainly adolescent boys from Afghanistan and Pakistan. The lack of a proper age assessment procedures and effective guardianship system in Serbia makes it difficult to protect and safeguard these children and increases the risk of them being abused and exploited. Some agencies have identified that an informal “guardianship” system has been developed within the community, organised by key individuals that disseminate information and act as gatekeeper to not only information, but also to provision of support and further travel opportunities. There is a concern that these “guardians” are traffickers or smugglers themselves, or are linked to the networks.

The 17 reception centres across Serbia accommodate 85% of the total refugee and migrant population. Those not accommodated in the centres usually live outside, mainly in the centre of Belgrade and are destitute at risk of exploitation.

Civil society organisations also report that there has been a change in the profile of the refugee and migrant population. Whereas previously the individuals transiting through Serbia were relatively well of and had been financing the travel

largely from their own resources, the current population seem to be much less of and finance their journey by doing odd jobs along the route. This puts them at risk of being targeted by traffickers, who are aware of their vulnerable situations.

Refugee and migrant population in Serbia, which is estimated to be several thousands of mainly adolescent boys and young men, is recognised as particularly vulnerable to exploitation and trafficking. Their uncertain legal status, combined with their desire to find funding for continuation of their journey and lack of framework, capacity and expertise in asylum and immigration matters in Serbia, increase that risk.

Neither the authorities, nor civil society organisations have identified any cases of trafficking for labour exploitation or forced labour of refugees and migrants in Serbia. However, there have been 40 reports of cases of trafficking for sexual exploitation involving refugees reported to the CPTV. Some of those who are currently in Serbia have also reported previous experience with labour exploitation in other countries.

There is a general recognition that this population is particularly vulnerable to trafficking for labour exploitation, and that there is an urgent need to put in place infrastructure for managing the situation, and strengthen the capacities of key groups of professionals.

9. Co-ordination of anti-trafficking action in Serbia

In absence of a policy framework or standard operating procedures that would govern the referral process, interviewed participants highlighted some difficulties in co-ordinating anti-trafficking actions. While there was positive experience in collaborating within the criminal justice sector, for example between the police and the prosecutors, it was noted that collaboration across the government agencies could be improved. In particular, it was recommended that communication between the Ministry of the Interior and the Labour Inspectorate could be strengthened to facilitate more joined-up working and regular joint operations and exchange of information.

V. Conclusions and recommendations

1. Conclusions

Trafficking in human beings for the purpose of labour exploitation is an emergent area of focus in Serbia. The legal framework, largely comprised of anti-trafficking legislation and relevant social and employment laws, has been developed in reflection of international norms. All core international labour standards have been adopted by Serbia, with the exception of the 2014 ILO Forced Labour Protocol. The legal framework, policy and infrastructure provides Serbia with a good foundation to identify trafficking for labour exploitation, and to, in particular identify and address risks of exploitation. However, in the absence of a National Strategy and an Action Plan, and very limited financial and human resources, the anti-trafficking action in Serbia has been stagnating.

The report confirmed good levels of awareness about trafficking for the purpose of labour exploitation amongst specialist agencies and specialist units within those agencies, yet the number of identified cases over the past few years has been very low.

Risks factors associated with particular groups and specific industries are known to the authorities. At the same time, the dynamics between labour rights violations, poor working conditions, informality and fragmentation of the labour market, and the inefficiency of labour market enforcement agencies in preventing and detecting trafficking for labour exploitation are not often understood by the authorities. Neither is the definition of trafficking for labour exploitation sufficiently understood. According to the international standards and the national legislation, the irrelevance of consent, deception and abuse of a position of vulnerability are the particular elements of the definition of trafficking, where there appears to be a deficit in understanding.

The challenges identified by stakeholders in Serbia are similar to challenges faced by other countries in the region and challenges that many other European countries have grappled with in the past. With a low number of actual identified cases in Serbia, and against the backdrop of poor employment practice in certain areas, high unemployment, limited discussion about business and human rights and government incentives for foreign investment, the areas requiring further attention for the authorities can be clustered into four different categories:

- ▶ Capacity and capability to identify cases of trafficking for labour exploitation;
- ▶ Identifying and addressing the risk of exploitation in Serbia due to poor employment practice, lack of protection and presence of vulnerable populations (such as Roma and refugee and migrant communities);

- ▶ Risk of exploitation of Serbians abroad due to limited opportunities/poor employment practice in Serbia;
- ▶ Prevention of trafficking in human beings through fostering responsible corporate practice.

2. Recommendations

This section proposes recommendations for future action in order to effectively tackle trafficking for the purpose of labour exploitation. Some of the recommendations will require further resources and investment; others can be implemented with existing resources or through pooling of existing resources. The recommendations are addressed to both anti-trafficking authorities and entities that can play a role in preventing and combating labour exploitation. Conclusions and recommendations for the involvement of trade unions, recruitment agencies and businesses are addressed separately in the annexes.

2.1. Legislative framework

Serbian legislation is largely compliant with the international legal framework on trafficking in human beings with regard to the criminal law provisions as well as social care legislation that regulates access of identified victims to assistance. Core international labour standards have also been embedded within the Serbian law. However, in order to address the issue comprehensively criminal and non-criminal legislation should be used in particular relevant areas of employment and labour market regulation. The existing legal and policy framework provide a solid foundation for strengthening the national efforts to prevent and combat trafficking for labour exploitation and its underlying causes.

Recommendations for review of legislation to strengthen prevention and enforcement against trafficking for labour exploitation

- ▶ Ensure that any recruitment for work through fraud or deception is defined as a criminal offence, in order to prevent and disrupt the use of fraud and deception for the purpose of trafficking;
- ▶ Ensure that corporate liability laws enable prosecution for human trafficking through lack of supervision and connivance;
- ▶ Extend the mandate of labour inspection to cover all economic sectors (including agriculture and domestic work);
- ▶ Harmonise Serbian business law with international law, including legislation requiring non-financial disclosure and supply chain due diligence from private sector and public authorities;
- ▶ Include exclusion criteria for public procurement contracts for human trafficking offences, including conspiracy, child labour, labour rights violations.
- ▶ Ratify the 2014 ILO Forced Labour Protocol.

2.2. Policy framework and institutional capacity

As due diligence and corporate accountability become widely accepted standard, many businesses expect the State to implement regulatory and policy change to create a level playing field, so that compliant business is not undercut by those that derive unfair advantage through labour exploitation. The report has identified a number of areas in which policy framework could be strengthened:

Recommendations for review of policy to strengthen prevention and enforcement against trafficking for labour exploitation:

- ▶ Adopt without further delay the Strategy for Combating Human Trafficking in the Republic of Serbia and the National Action Plan;
- ▶ Ensure that the Labour Inspectorate, the National Employment Agency, the Market Inspectorate and the Public Procurement Office are included in the National Action Plan and mandated with specific tasks;
- ▶ Ensure that the Strategy and the National Action Plan implementation are sufficiently resourced;
- ▶ Develop a set of operational indicators of trafficking for labour exploitation, covering the whole “continuum of exploitation” and building on ILO forced labour indicators;
- ▶ Engage private sector and trade unions in policy development and implementation;
- ▶ Run a pilot project on pro-active identification in an at-risk industry (such as agriculture or construction), with participation of NGOs, trade unions, private sector and cross agency collaboration;
- ▶ Implement the recommendation on Human rights and Business adopted by the Committee of Ministers of the Council of Europe and, in particular, develop and adopt a National Action Plan on Business and Human Rights;
- ▶ Develop due diligence and ethical procurement guidelines (see Annex IV).

2.3. Labour market

The role of labour inspection in preventing, disrupting and uncovering labour exploitation is widely recognised. However, the lack of familiarity of other agencies with the role of labour inspection, the fragmentation of the labour inspection functions between the two inspection bodies (the Labour inspectorate and the Market Inspectorate) and the limited mandate of the Labour Inspectorate have, in addition to the shortage of resources and capacity, proved to be a challenge.

Recommendations for review of labour market enforcement to strengthen prevention and disruption of trafficking for labour exploitation:

- ▶ Introduce regular training for labour inspection and market inspection officials;

- ▶ Introduce the concept of “decent work”¹¹⁹ in the anti-trafficking policy (National Action Plan) as an objective for the Serbian labour market, to address all forms of abuse and poor employment practice;
- ▶ Specialise and target inspections and enforcement activities (including joint operations with other law enforcement agencies) in sectors with higher risk of labour exploitation;
- ▶ Ensure a Firewall between immigration enforcement and workers’ rights, ensuring that irregular foreign workers are not treated as immigration offenders, where they have been trafficked and exploited;
- ▶ Strengthen the role of the National Employment Agency to monitor trends on the labour market and activity of private employment agencies;
- ▶ Ensure enforcement of current regulation on labour providers and private recruitment agencies;
- ▶ Apply licencing and registration to labour providers based abroad and providing workers to Serbia. Sanctions should be applied both to provision of labour without a license, but also for using of an unlicensed labour provided. Revenue from license registration should be used to supplement the operation of the system and also the enforcement;
- ▶ Make available the information about licencing and job facilitation regulation in Serbia on the website of Serbian embassies in countries where most migrant workers come from;
- ▶ Introduce a gradated system of penalties for non-compliance and violations that should include a scale of penalties, allowing for proportionate sanction, but also to create a deterrent effect and drive improvements and reduce re-offending.

The range of penalties and sanctions should include:

- Licence/registration revocation
- Temporary licence/registration suspension with a time-bound requirement on improvement attached
- Publication of licence revocation/suspension
- Temporary or permanent ban on trading in the recruitment industry for individuals convicted of violations/repeat offenders

Fines and other financial sanctions

- Exclusion of businesses and individuals from participation in bids and tenders for public contracts;
- ▶ Introduce legal provisions to ensure that workers are not charged any fees for the costs of recruitment or ancillary services from the recruiter, such as transport, accommodation, translation, certificates.

¹¹⁹ The ILO defines “decent work” as “work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.” Creating decent work is also included as one of the goals (No 8) in the Sustainable Development Goals.

VI – ANNEXES

ANNEX I – Specific recommendations for actions and measures to be taken by trade unions

(This section is largely based on recommendations contained in ITUC – Anti-Slavery International publication *Never Work Alone – NGOs and Trade Unions Join Forces to Combat Forced Labour and Trafficking in Europe*¹²⁰)

Trade unions are likely to come across trafficking situations at workplaces or situations that indicate a risk of exploitation, including forced labour and trafficking for particular groups of workers. Given their structure, trade unions are well placed to engage in action to address the underlying factors and address human trafficking.

Unions monitor compliance with labour laws, and are partners in negotiations with employers and the governments. They also have a role in advocating in the policy arena on issues that bear relevance to anti-trafficking action, such as socio-economic policies, labour market regulation and enforcement. Trade unions are able to exercise high degree of leverage, as they represent groups of workers – hence, individual workers gain a greater voice. Furthermore, it is recognised that organised, unionised workers are at a lower risk of trafficking and forced labour.

While anti-trafficking is still a new area of action for trade unions and an area where expertise is developing, the examples of trade union engagement and partnership are growing. For example, trade unions¹²¹ and the NGO ASTRA worked together on the cases of Serbian workers exploited in Sochi. The cooperation included exchange of information between workers, trade unions, ASTRA and institutions, connecting workers with trade unions in the country of their current residence, provision of assistance and help workers return to Serbia and urging institutions to react and assist workers while in Sochi, but also upon their return.

The cooperation continued to prevent trafficking situations through informing workers about legal work and stay in destination countries. It is important

120 http://www.ituc-csi.org/IMG/pdf/Forced_labour_EN_FINAL.pdf

121 Especially Trade Union GS GIGMDIPP NEZAVISNOST

that trade unions recognise the need to include and reach out to particularly vulnerable groups of workers, such as migrant workers. It is recognised that campaigning for raising the standards and conditions for the most vulnerable worker at the workplace (such as a vulnerable undocumented migrant worker), has the effect for improving standards and pay across the sector and benefit all workers.

To increase the trade union capability in the area of anti-trafficking, trade unions in Serbia should:

- ▶ Promote the ratification and effective implementation of ILO Conventions 29 and 105, 81 and 129, 181, 97 and 143 and the 2014 Forced Labour Protocols;
- ▶ Raise awareness about forced labour and trafficking among union members and officials;
- ▶ Address forced labour and trafficking in bipartite and tripartite negotiations and agreements;
- ▶ Develop policies against forced labour and human trafficking;
- ▶ Monitor employment agencies as well as companies, including their supply chains to detect and combat forced labour and trafficking practices;
- ▶ Identify, document and publicly report on trafficking, forced labour and labour exploitation cases;
- ▶ Develop bilateral, sectoral or regional trade union cooperation agreements with unions in most common countries of destination of Serbian workers and countries of origin of migrant workers in Serbia;
- ▶ Develop strategic partnerships with civil society organisations;
- ▶ Cooperate with labour inspection services, law enforcement and other relevant national, regional or international authorities or interagency working groups;
- ▶ Reach out to and offer direct support to informal, unprotected and migrant workers at risk, to address their specific situation and needs, including through their integration in trade union ranks;
- ▶ Ensure that proper attention is paid to all aspects of racism and discrimination, including in particular its gender dimension, as women and girls are especially at risk;
- ▶ Target sectors where forced labour and trafficking are most likely to occur, such as construction, agriculture, manufacturing, textile production and hospitality.

ANNEX II – Specific recommendations for actions and measures to be taken by recruitment agencies

Next to the National Employment Agency, labour providers play a vital role in Serbia's economy by supplying the workforce for a wide range of sectors both in country and abroad. Specialist labour providers aspire to find and manage labour required both for short and longer term periods. Many labour providers (also referred to as brokers or facilitators) strive to operate a model of good practice, with respect to the law and the rights of workers.

However, good operators are eroded by those who operate outside or on the fringes of law and make their profits through worker exploitation, including human trafficking. The labour provision sector in Serbia is very diverse, with some agencies (many of them operating internationally, such as Manpower Group) making a considerable effort to retain a good reputation and adopt provisions to address human trafficking. However, the common feature of all agency labour provision is the so-called triangular relationship between the agency, the worker and the user company, which can lead to weakening of directly enforceable labour rights for the workers and has been linked to trafficking in human beings.

The Serbian regulatory framework does not appear to consider the commonly known "triangular relationship" which makes regulation of recruitment agencies more literature. Hence, it is important to ensure that both regulation and implementation cover a number of areas, including:

- ▶ Regulation of the services agencies provide;
- ▶ The regulation of contracts between agencies and workers;
- ▶ The regulation of assignments between workers and user companies.

The most common example of exploitative practice by labour providers include deceptive recruitment (such as charging workers a variety of fees, or misinforming workers about type of work or conditions of work), which lead workers into a situation of debt bondage; and exploitative placement, which can include wage manipulation, withholding of wages, tying workers to accommodation.

The International Labour Organization identified that: "unscrupulous employment agencies, informal labour intermediaries and other operators acting outside the legal and regulatory framework that prey especially on low-skilled workers have been playing an increasingly important role. Reported abuses involve one or more of the following: deception about the nature and conditions of work; retention of passports; illegal wage deductions; debt bondage linked to repayment of recruitment fees; threats if workers want to leave their employers, coupled with fears of subsequent expulsion from a country. A combination of these abuses can amount to human trafficking and forced labour. Despite the existence of international labour standards relating to recruitment, national laws

and their enforcement often fall short of protecting the rights of workers, and migrant workers in particular.¹²²

To address this, the ILO launched a global “Fair Recruitment Initiative” to:

- ▶ help prevent human trafficking and forced labour;
- ▶ protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment process (including pre-selection, selection, transportation, placement and possibility to return);
- ▶ reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination¹²³.

To address the risk of unscrupulous agents operating in Serbia, recruiting Serbian workers for jobs abroad and to address similar risk faced by foreign workers recruited for work in Serbia, the authorities should:

- ▶ Introduce better regulation and licensing, to ensure that good operators are not undercut by unscrupulous ones;
- ▶ Encourage forming of a specialist trade association for employment agencies/labour providers that would represent, and support its members (similar associations already exist in other countries, such as REC¹²⁴ in the UK);
- ▶ The National Employment Agency in collaboration with reputable private agencies should develop a code of practice outlining unacceptable conduct (such as fee charging);
- ▶ Extend the mandate of the National Employment Agency to monitor activities of private employment agencies in Serbia;
- ▶ Provide training for labour providers on prevention of human trafficking and understanding of international labour standards;
- ▶ Join the global recruitment agency association CIETT, a partner in the ILO Fair Recruitment Initiative¹²⁵;
- ▶ Develop a human trafficking and ethical policy and report publicly on their implementation;
- ▶ Work with business customers to develop good practice across the industry;
- ▶ Partner with specialist civil society organisations and trade unions to obtain the necessary skills and develop standard operating procedures to address risks and instances of human trafficking;
- ▶ Advocate for Serbia to participate in the ILO Fair Recruitment Initiative.

122 <http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>

123 Ibid

124 <https://www.rec.uk.com>

125 <http://www.wecglobal.org>

ANNEX III – Specific recommendations for actions and measures to be taken by businesses

Businesses have the responsibility to **respect human rights**¹²⁶. This includes the duty to address and to be transparent about the risks and actual instances of trafficking in human beings in supply chains and operations of the private sector. Stakeholders, including customers, investors, civil society organisations and the public are increasingly considering credibility of businesses based on their human rights considerations. However, poor due diligence processes can lead to legal liability of businesses for abuses, including human trafficking, occurring in their supply chains. Trafficking in human beings is a serious crime and businesses can be held liable where they fail to act to address it. Working with and monitoring suppliers, wherever they are in the supply chains, is also the responsibility of businesses.

Private sector should be prepared for the eventuality of trafficking occurring in their supply chain. Whether in direct or indirect supply chains, a business has a responsibility to mitigate the situation. Pro-actively putting in place procedures for identifying the risk and responding to instances of human trafficking will help business react quickly and more appropriately should a situation arise, and also help reduce risk of negative media and reputational damage.

Private sector needs to consider and be equipped to deal with two principal scenarios

- ▶ a risk of human trafficking
- ▶ an actual instance of human trafficking in their own operations or in supply chains

Understanding underlying causes of human trafficking helps address the violations that might put workers more at risk. Protecting and promoting fundamental labour rights helps prevent most severe violations, such as human trafficking, from occurring. There are some practical steps that businesses can take to trafficking and to assist workers to stay free from further exploitation:

- ▶ Map existing policies within your business and codes of conduct (internal and supplier related) and identify coverage of risks related to human trafficking;
- ▶ Involve internal and external stakeholders (such as NGOs) in policy review and development;
- ▶ Where not in place, develop human rights policies and due diligence processes and commit to implementation of the UN Guiding Principles on Business and Human Rights and the Council of Europe recommendation;

¹²⁶ UN Guiding Principles on Business and Human Rights.

- ▶ Join the UN Global Compact¹²⁷;
- ▶ Review policies on the rights of workers to organise and bargain collectively;
- ▶ Encourage communication and engagement up and down the supply chain;
- ▶ Ensure that policies specify expectations on key business functions (including procurement, buyers, human resource), suppliers, customers, business partners and others linked to business operations, products and services and that those functions receive appropriate training on human trafficking;
- ▶ Ensure that all contracts include clauses on human trafficking and risk factors.

In case of an identified situation of human trafficking, it is important to be able to act quickly but also proportionately to prevent further abuse and to achieve the best possible resolution for the affected workers. Having systems in place in advance is better than to hastily try to develop a response after a concern has been raised:

- ▶ Avoid hasty, knee-jerk reactions, such as immediate supplier termination, without considering the risks and well-being of workers
- ▶ Avoid imposing blanket bans on employment of certain categories of workers, such as young workers or refugees, as this could expose them to greater harm
- ▶ Recognise freedom of association and help workers understand their rights
- ▶ Promote complaint mechanisms and whistleblowing procedures that will enable workers to raise complaints about abuses
- ▶ Ensure that workers are not charged recruitment fees or any other hidden fees (such as for transportation, visa facilitation and translation services)
- ▶ Know who your workers are, conduct regular worker survey and ensure that workers are enabled to feedback and whistle blow without repercussions
- ▶ Promote direct and long-term employment rather than sub-contracting and overreliance on temporary labour
- ▶ Formalise relationships with suppliers and other business partners and encourage suppliers to establish such relationships with their own suppliers
- ▶ Enter into a framework agreement with a trade union
- ▶ Develop a partnership with and anti-trafficking civil society organisation.

¹²⁷ <https://www.unglobalcompact.org>

Annex IV – Description of concepts and tools

1. Decent work

The ILO defines decent work as “work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.”¹²⁸

Decent work is the optimal situation (as opposed to forced labour), that should be achieved in the workplace. Any situation that is not decent work is exploitative in one way or another, with the most extreme form of exploitation being forced labour, often as a result of trafficking.

Understanding the role of decent work, and subscribing to the decent work agenda is a key tool for each state in their ability to combat trafficking for the purpose of labour exploitation.

Decent work and economic growth is also one of the goals (Goal no. 8) of the Global Sustainable Development Goals. One of the targets, 8.7 recognises the direct correlation between creation of decent work and addressing of human trafficking:

Goal 8.7: Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.¹²⁹

To advance its efforts on trafficking in human beings for the purpose of labour exploitation, Serbia should also consider advancement of the decent work agenda and the Global Sustainable Development Goals, which would further reinforce its compliance with the Council of Europe Convention.

The Framework on the Measurement of Decent Work¹³⁰ that covers the ten substantive elements which are closely linked to the four strategic pillars of the Decent Work Agenda, that is, (i) International labour standards and fundamental principles and rights at work (ii) Employment creation (iii) Social protection and (iv) Social dialogue and tripartism, can be a helpful tool.

128 <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

129 <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-8-decent-work-and-economic-growth/targets/>

130 Decent work (http://www.ilo.org/wcmsp5/groups/public/---dgreports/-integration/documents/publication/wcms_229374.pdf)

2. Human Rights Due Diligence

The term **human rights due diligence** relates to steps taken by a company to both identify and act upon actual and potential risks for workers in its operations, supply chains and the services it uses. Human rights due diligence can assist in the detection of trafficking, but also identify and address areas of risk and remedy the situation of trafficking workers.

States should encourage businesses to develop human rights due diligence framework throughout their supply chains. At the same time, governments should ensure that they undertake human rights due diligence in their procurement processes at all levels of government.

The Ethical Trading Initiative¹³¹ and its members developed a human rights due diligence framework which recommends businesses and others to undertake a 4-step process:



131 <http://www.ethicaltrade.org/resources/human-rights-due-diligence-framework>

Annex V – Resources

1. List of contacts met during the fact finding mission in Belgrade:

- ▶ Ministry of Interior of the Republic of Serbia
 - Border Police, Police Directorate
 - Criminal Police, Police Directorate
 - Sector for International Cooperation, EU Affairs and Planning, Project Management Department
- ▶ Ministry of Labour, Employment, Veterans and Social Affairs of the Republic of Serbia – Labour Inspectorate
 - Study-Analytical Division
 - Department for Second Degree Procedure in the field of Labour Relation an Occupational Safety and Health
 - Labor Inspection Division in the City of Belgrade.
- ▶ Ministry of Labor, Employment, Veterans and Social Affairs of the Republic of Serbia – Labour Sector
- ▶ National Employment Service
 - Department of Normative and Legal Affairs
 - Department for Job Seeking and Career Planning Services
- ▶ Ministry of Trade, Tourism and Telecommunications
- ▶ Market Inspectorate
- ▶ Ministry of Foreign Affairs of the Republic of Serbia
- ▶ Public Prosecutor’s office
- ▶ Department for International Co-operation and Legal Assistance
- ▶ Center for Human Trafficking Victims Protection
- ▶ Trade Union GS GIGMDIPP NEZAVISNOST
- ▶ Autonomous Union of Building and Construction Industry Workers of Serbia (Sindikata radnika građevinarstva i IGM Srbije), Energoprojekt
- ▶ NGO ASTRA
- ▶ NGO ATINA
- ▶ NGO Group 484
- ▶ Marriott Hotels Serbia
- ▶ ManPower Group
- ▶ ILO Serbia
- ▶ UNHCR Serbia Office

2. List of contacts met during the fact finding mission in the regions

Niš

- ▶ Center for Foster Care and Adoption
- ▶ Ministry of the Interior – Regional Police Directorate, Department of the border police
- ▶ NGO SOS Helpline and Center for Girls

Novi Sad

- ▶ Ministry of the Interior – Regional Police Directorate, Department of the border police for foreigners, illegal migration and trafficking in human beings
- ▶ Department for Social Protection, Children and Family Welfare
- ▶ Human rights lawyer

Zrenjanin

- ▶ NGO Paor

3. References and resources for further information

- ▶ UN Guiding Principles on Business and Human Rights
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- ▶ United Nations Global Compact
<https://www.unglobalcompact.org>
- ▶ United Nations Sustainable Development Goals
<http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-8-decent-work-and-economic-growth/targets/>
- ▶ ILO resources on decent work, fair recruitment and forced labour
<http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>
<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>
http://www.ilo.org/wcmsp5/groups/public/---dgreports/integration/documents/publication/wcms_229374.pdf
<http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>
- ▶ Council of Europe Convention on Action against Trafficking in Human Beings
<http://www.coe.int/en/web/anti-human-trafficking/about-the-convention>
- ▶ 3rd General Report on GRETA's activities, GRETA (2013)17
<https://rm.coe.int/16805aa45d>

- ▶ 4rd General Report on GRETA's activities, GRETA (2015)1
<https://rm.coe.int/16805aa45f>
 Dottridge, M; Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation., Council of Europe, Strasbourg, 2016. <https://rm.coe.int/16806b61f0>
- ▶ European Union Agency for Fundamental Rights (FRA) (2015). Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights.
<http://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>
- ▶ Ethical Trading Initiative Human Rights Due Diligence Framework
<http://www.ethicaltrade.org/resources/human-rights-due-diligence-framework>
- ▶ ITUC: Never Work Alone – *NGOs and Trade Unions Join Forces to Combat Forced Labour and Trafficking in Europe*. ITUC, *Anti-Slavery International*. 2011
http://www.ituc-csi.org/IMG/pdf/Forced_labour_EN_FINAL.pdf
- ▶ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, Council of Europe, Strasbourg, 2014, GRETA(2013)19. <https://rm.coe.int/168063bdf5>
- ▶ Reply from Serbia to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. Second evaluation round. (Reply Submitted on 8 February 2017), GRETA(2017)9. <https://rm.coe.int/16806f7bf9>
- ▶ Statistics of the Centre for the Protection of Victims of Trafficking in Human Beings
<http://www.centarzztlj.rs/eng/index.php/stats-and-reports/12-info/46-statistics-2016>
- ▶ ASTRA, Monitoring and Evaluation of Anti-Trafficking Laws and Policies and their Implementation in the Republic of Serbia in 2014 and 2015, Belgrade, 2016.
<http://www.astra.rs/wp-content/uploads/2016/12/Monitoring-Report-Serbia.pdf>
- ▶ ASTRA project "Make it work"
<http://www.astra.rs/make-it-work-2/?lang=en>
- ▶ ATINA NGO website
<http://www.atina.org.rs/en/trgovina-ljudima>

Trafficking in human beings for the purpose of labour exploitation is an emerging area of focus in Serbia. The report reviews the efforts undertaken by the national authorities, trade unions, businesses and civil society to address human trafficking for the purpose of labour exploitation and the related risk factors. The report includes recommendations for concrete measures to reduce demand for human trafficking and identify possible victims. The report has been produced as a part of the European Union and Council of Europe programmatic framework "Horizontal Facility for the Western Balkans and Turkey" within the Action "Preventing and Combating Trafficking in Human Beings in Serbia".

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

The European Union is a unique economic and political partnership between 28 democratic European countries. Its aims are peace, prosperity and freedom for its 500 million citizens – in a fairer, safer world. To make things happen, EU countries set up bodies to run the EU and adopt its legislation. The main ones are the European Parliament (representing the people of Europe), the Council of the European Union (representing national governments) and the European Commission (representing the common EU interest).

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