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We've got people lined up behind the door

Placing the trafficking and
exploitation of migrant workers
in context in the restaurant and
cleaning sectors in Finland

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WE'VE GOT PEOPLE LINED UP BEHIND THE DOOR

Foreword

HEUNI'S SECOND STUDY on exploitation of migrant workers and trafficking in persons for the purpose of forced labour was published in 2013. The report **“We’ve got people lined up behind the door”: Placing the Trafficking and Exploitation of Migrant Workers in Context in the Restaurant and Cleaning Sectors in Finland** was prepared as part of an EU-funded project looking into the issue in Finland, Estonia, Lithuania and Sweden. The study was a follow-up to HEUNI’s first study on the topic, launched two years earlier, and aimed at providing a more in-depth analysis of selected sectors, recruitment methods and the business model of exploitation in Finland. In addition to research, the project organized multistakeholder meetings to establish a dialogue between key labour actors. It also produced the first set of concrete guidelines for employers and recruitment agencies and other actors for the prevention of trafficking for forced labour and labour exploitation. The report kickstarted HEUNI’s work with businesses and corporate social responsibility, a topic which is today a core theme in HEUNI’s work and services.¹

The report found that most migrant workers coming to Finland seek work due to economic reasons and many are willing to compromise regarding the employment and the working conditions, as long as they can earn more than at home. Recruitment of migrant workers in the restaurant and cleaning sectors is carried out either via recruitment and employment service companies or via relatives, acquaintances and word-of-mouth. The study uncovered several

¹ HEUNI Trainings, Heuni. heuni.fi/our-services#d9badbe7

cases where migrant workers paid unreasonably high recruitment and placement fees in order to secure a job in Finland. Different forms of underpayment of wages were common, often in connection with poor terms of employment, irregular or excessive working hours, and difficult working conditions. The study argued that many of the exploited workers seemed to be weighing the pros and cons of disclosing their experiences of exploitation to the authorities versus the risk of losing their job, their means of income and perhaps even their residence right if they disclosed their experiences of exploitation. Similar findings have been made in more recent studies and media articles covering exploitation in cleaning and in the restaurant sector.²

The study **“We’ve got people lined up behind the door”** argues that the exploitation of migrant workers should be seen as part of a larger, structural context, where dishonest and exploitative actors engage in economic crime and distort free competition. Thus, exploitation is not a stand-alone, specific phenomenon, but part of a larger societal and historical development.³ In the report we also argue that a focus solely on trafficking for forced labour makes it difficult to see and understand the larger structural and contextual factors that facilitate exploitation of migrant workers. Trafficking does not take place in isolation from the larger context of exploitation of migrant workers. Therefore, exploitation can perhaps best be understood as a continuum rather than as clear-cut, separate phenomena. We also make many more arguments, which are still very valid and relevant. By relaunching the report in English as a standalone report, we hope it will find a new international readership.

² The long shift - Talous, HS.fi (www.hs.fi/talous/art-2000006075594.html) & A dirty business - Sunnuntai, HS.fi (www.hs.fi/sunnuntai/art-2000006562417.html)

³ This point is argued further in Report Series N° 84: From Forced Flexibility to Forced Labour: The Exploitation of Migrant Workers in Finland, Heuni. heuni.fi/-/report-series-84

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1. Introduction

IN RECENT DECADES, the forces of globalization have restructured the labour markets and economies in both industrialized and developed countries. Along with the movement of industries and production from West to East in response to economic incentives, there has been a parallel movement of labour from East to West and North to South. In the European Union, the promotion of free movement has further facilitated labour migration within the EU. At the same time, national and regional efforts have strengthened in order to control migration and to allow only certain “desirable” migrants entry into societies as well as labour markets.

This development has been evident also in Finland. Since 2006, Finnish government policies have actively promoted an increase in labour migration. While the focus has been on attracting and acquiring skilled migrant workers, there has simultaneously been an increase in the arrival of unskilled migrants in Finland. In 2007, most labour migrants who came from third countries to Finland were unskilled (Asa & Muurinen 2010, 47). Migrant workers are portrayed as supplementing the Finnish workforce, with a focus on highly educated workers, experts and entrepreneurs (Valtioneuvosto 2013). At the same time there are signs that the number of migrant workers in low-paid service sector positions has increased (Asa & Muurinen 2010). Domestic labour is often unwilling to work if the terms

of employment are based on part-time and low-paid contracts, and require highly flexible and uncertain working hours and conditions.

Most migrants in Finland are employed in the labour-intensive, low-paid service sector. Some sources estimate e.g. that every second person working in the cleaning sector in the Helsinki area has a migrant background (HS 10 March 2013). Also the restaurant sector employs a lot of migrant workers (e.g. YLE 10 December 2012). The labour costs in both sectors form a large part of the overall costs. At times of austerity and in a situation where costs must be cut, savings are sought in labour costs, i.e. the wages of the workers. This creates at worst a dualisation or bifurcation of the labour market, where the working conditions of migrant workers are fundamentally different from those of domestic labour. These developments form the backdrop for the structures and forces which make possible the exploitation of migrant labour – and ultimately trafficking for forced labour – in the Finnish labour market.

On an international level, it seems that trafficking for labour exploitation has increased in recent years, or at least this phenomenon has been identified more often than before (IOM 2012; UNODC 2012; ILO 2012). This seems to be particularly true for Finland, where the majority of identified cases of trafficking are related to labour exploitation rather than sexual exploitation (see further below). In many other EU countries, trafficking for sexual exploitation is identified more often than trafficking for labour exploitation, and in this regard Finland differs from other EU countries (Eurostat 2013). This may be related to an increased awareness of labour exploitation and labour trafficking among Finnish authorities and organisations, and not necessarily to the scale of the problem. As this study will show, however, exploitation of migrant labour is relatively common in Finland, and additional measures to prevent it are needed.

1.1 Aims of this report

THIS REPORT WAS prepared under the auspices of the ADSTRINGO project, “Addressing trafficking for labour exploitation through improved partnerships, enhanced diagnostics and intensified organisational approaches”. The project is managed by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) in collaboration with the Ministry of Interior of Lithuania, the University of Tartu, and the Council of the Baltic Sea States, Task Force against Trafficking in Human Beings. It is being implemented over the years 2012–2014 with the financial support of the Prevention of and Fight against Crime Programme European Commission – Directorate-General Home Affairs.

Following Andrees (2008) we see exploitation of migrant labour as a continuum of situations and acts, which range from less severe to more severe forms of exploitation. Trafficking for forced labour can be regarded as the most severe form of exploitation, while more subtle forms of coercion represent less serious forms of exploitation. Less serious forms of exploitation can lead up to more serious acts and create conditions where trafficking for forced labour may take place (e.g. David 2010). We argue that trafficking for forced labour takes place precisely in this context of exploitation of migrant labour in general. Therefore, in order for us to uncover and understand labour trafficking, we must scrutinize the broader context of exploitation of migrant labour.

In this report, we use the terms trafficking for (the purpose of) forced labour, trafficking for labour exploitation and labour trafficking as synonyms. We also use the term migrant worker to describe all foreign citizens working in Finland. We recognise that this is a heterogeneous group and comprises of people with very different backgrounds and residence statuses.

In our previous report (Jokinen et al. 2011a; Jokinen et al. 2011b)¹ we analysed the exploitation of migrant labour and trafficking for forced labour in Finland in a wide context. We used the ILO indicators of forced labour as a framework for analysing cases of exploitation in different sectors (ILO 2005). These manifestations of exploitation include physical or sexual violence or the threat of such violence; restriction of movement of the worker e.g. through confinement or through preventing contact with the host community; debt bondage or bonded labour e.g. stemming from the process of recruitment and transportation; withholding wages or refusing to pay the worker at all; retention of passports and identity documents, and threat of denunciation to the authorities. Our report showed that migrant workers in Finland have experienced variations of all these forms of exploitation. Most commonly they had encountered different forms of discrimination in wages. In addition, migrant workers had experienced threats, psychological pressure, isolation, long working hours, control of their use of their own money, retention of passports, and other forms of control. Debt due to high recruitment and travel costs were also reported. Our report also showed that poor working conditions are linked to poor level of accommodation, often organised by the employer. Through these means, the workers are kept in a position of vulnerability and dependency on the employer, thus preventing them from leaving their employment and seeking help. In our report we argued that if a worker's insecure status and dependent state have been exploited, both their work and free time have been controlled and they have not had a de facto chance to quit the job and leave, the case may amount to a situation of trafficking for forced labour (Jokinen et al. 2011a, 140).

¹The previous report was published in both English (Jokinen et al. 2011a) and Finnish (Jokinen et al. 2011b). The Finnish report was longer and more comprehensive than the English one. In this report, we primarily refer to the English version.

Since the publication of our earlier report, many cases of exploitation of migrant workers and trafficking for labour exploitation have been detected by the authorities. Efforts in Finland have been intensified since the publication of our report, as is further detailed below. Different actors, such as labour inspectors, trade unions and the police have increased their efforts to address the exploitation of migrant workers, as well as trafficking for forced labour. The input of the National Rapporteur on Trafficking in Human Beings has also been very important in raising awareness and promoting change in existing practices. We also know that our previous report has been widely read and seems to have had at least some impact on increased awareness of labour trafficking and actions taken to prevent and counteract it.

Our previous report provided a broad picture of the exploitation of migrant workers and of trafficking for forced labour in Finland. Our aim at the time was to show that labour trafficking indeed exists in Finland, and that efforts to prevent it must be taken. Considering the increased awareness and developments since 2011, our current report approaches the issues from a different perspective. Our aim is to provide new information on the vulnerabilities, factors, methods and channels that facilitate exploitation of migrant labour, ultimately resulting in trafficking for forced labour. On one hand we are seeking a more structural view of the phenomenon by attempting to understand the factors and structures that make it possible for exploitation to exist and continue. On the other hand, we are focusing on two selected sectors which employ a number of migrant workers and where migrant workers seem to be particularly vulnerable to exploitation. In order to provide a truly balanced account, we have attempted to give voice to both migrant workers and employers in both sectors.

The aim of this study is to analyse the overall practices and mechanisms that facilitate situations of exploitation of migrant labour and trafficking for forced labour. We are particularly interested in whether certain practices that increase a migrant's risk of ending up in a situation of exploitation and trafficking can be identified. Our overarching goal is also to analyse what could be done to prevent migrant workers from ending up in situations of exploitation and how to assist those who are exploited.

This report is aimed at grass-root level actors, who come in contact with exploitation of migrant workers in their daily work, as well as policy-makers who deal with migration, labour and crime prevention issues. It is not theoretical, but provides a descriptive and hopefully easily accessible account of the situation and the context of exploitation of migrant workers in the cleaning and restaurant sectors in Finland. We have aimed at combining a human trafficking perspective with the discussion on labour migration and the overall discussion on the terms of

employment and the existence of uncertain, irregular and precarious work. In this respect we hope that the report provides grass-roots actors and policy makers with new insights into how labour migration, labour exploitation and human trafficking meet and merge, and how various types of exploitation could be prevented.

Through this study we also want to present suggestions and recommendations for the prevention of the exploitation of migrant workers and ultimately trafficking for forced labour. This report attempts to both uncover structural mechanisms that facilitate exploitation and show concrete examples of situations of exploitation, in which migrant workers find themselves in Finland. The aim of the research is to provide new information on the specific vulnerabilities of migrant workers, and on the factors, methods and structures that facilitate their exploitation.

This report combines empirical findings with other sources of information. The findings are presented in dialogue with findings from other research, documents and reports. First we present the Finnish context with regard to trafficking for forced labour and exploitation of migrant workers. We briefly outline the legislative context, statistics of the phenomena, and present various actors involved in efforts to counteract trafficking. Next we describe the number of migrants in Finland, followed by an outline of the Finnish labour market policies and practices concerning the cleaning and restaurant sectors.

Chapter 2 presents our data and methods. This is followed by four empirical chapters. Our approach is to combine findings from our data with other sources of information and contrast them with one another. Chapter 3 outlines existing migration and employment policies in Finland, contextualising the societal situation in which exploitation of migrant workers, and ultimately trafficking for forced labour, takes place. Chapter 4 discusses issues relating to recruitment of migrant workers, including the channels and methods of recruitment, as well as exploitation taking place during recruitment. This chapter also includes information on work permits and how they relate to exploitative practices. Chapter 5 further contextualises the exploitation of migrant workers as taking place within the broader context of the grey economy and clandestine practices. In this chapter we outline forms of exploitation that take place in the cleaning and restaurant sectors. Chapter 6 focuses on prevention of exploitation. It first describes the problems migrant workers face when seeking help. Secondly the chapter outlines how employers intentionally exploit migrant workers, and how such practices could be prevented. The final chapter presents a summary of the results, as well as a discussion on the findings and some recommendations for further action.

1.2 The Finnish context concerning trafficking in human beings

1.2.1 Legislation concerning trafficking

TRAFFICKING IN HUMAN beings was criminalised in Finland in 2004 (Criminal Code Chapter 25, sections 3 and 3(a), 650/2004)). The provision largely follows the requirements of international treaties and their obligations.²

A person who:

1. by abusing the dependent status or insecure state of another person,
2. by deceiving another person or by abusing the error of that person,
3. by paying remuneration to a person who has control over another person or
4. by accepting such remuneration takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in Chapter 20(9)(1)(1) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial gain shall be sentenced for trafficking in human beings to imprisonment for a minimum of four months and a maximum of six years.

A PERSON WHO takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1 (1–4) have been used.

AN ATTEMPT SHALL be punished.

²Most notably the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

IN LINE WITH international obligations, the offence of human trafficking requires that three essential elements are fulfilled: the means, the act and the purpose. The offence of aggravated trafficking in human beings includes the use of violence, threats or deceit as a means of trafficking; the deliberate infliction of grievous bodily harm, a

serious illness or a state of mortal danger or comparable particularly grave suffering; that the offence is committed against a child younger than 18 years of age or against a person whose capacity to defend himself/herself has been substantially diminished, or that the offence has been committed within the framework of a criminal organisation. Enslaving, keeping another person in servitude, or engaging in transporting or trading in slaves is also considered aggravated trafficking. The sentence for aggravated trafficking in human beings is imprisonment for a minimum of two years and a maximum of ten years.

The Finnish Criminal Code also includes definitions of offences that resemble trafficking. These are aggravated pandering (Criminal Code Chapter 20, section 9(a)), aggravated arrangement of illegal entry (Criminal Code Chapter 17, section 8(a)), and extortionate work discrimination (Criminal Code Chapter 47, section 3(a)). The provision of extortionate work discrimination is commonly used in situations where migrant workers have been exploited at work. The provision was introduced in 2004 and is a labour offence under the Criminal Code. The offences of work discrimination (Criminal Code Chapter 47, section 3), employment agency offence (Criminal Code Chapter 47, section 6), unauthorised use of foreign labour (Criminal Code Chapter 47, section 6(a)), exploitation (Criminal Code Chapter 36, section 6) and aggravated extortion (Criminal Code Chapter 36, section 7)³ are also sometimes used in situations of exploitation of migrant labour.

In a hierarchy of criminal provisions, aggravated extortion falls between the offences of trafficking in human beings and extortionate work discrimination, with trafficking being the most serious offence. This hierarchy is evident in recent court rulings on cases of exploitation of migrant labour (Vantaa district court 28 September 2012; Varsinais-Suomi district court 22 March 2013). As we showed in our previous report (Jokinen et al. 2011a, 130–137), the distinction between trafficking in human beings and extortionate work discrimination is not simple, and cases with elements of trafficking have in the past been dealt with as extortionate work discrimination. This has been a notable problem, since trafficking is a violent offence against the person, whereas extortionate work discrimination is a labour offence. The sanctions in both offences also differ significantly: the penalty for trafficking is always imprisonment, whereas the penalty for extortionate work discrimination is usually a (relatively small) fine.⁴

To resolve some of these difficulties of definition and overlap, a working group under the Ministry of Justice presented in October 2012 a proposal for amending certain elements of the current trafficking provision. One of the goals of the working group was to come up with a clearer distinction between trafficking and extortionate work

³The offence can also be translated into English as aggravated usury or aggravated exploitation, however, in this report we use the term aggravated extortion.

⁴According to justice statistics, the average fine for extortionate work discrimination was 220 EUR in 2012 (Statistics Finland StatFin database 2013).

discrimination. The law proposal suggests amending the current wording so that forced labour would be considered as one form of demeaning circumstances (“demeaning circumstances, such as forced labour”). The elements of forced labour would also be further elaborated upon in the background texts to the law. Simultaneously, corporate criminal liability and the ban on business operations would be extended to cover also the offence of extortionate work discrimination. (Ministry of Justice 2012.)

1.2.2 Statistics on trafficking cases in Finland

WHEN THE OFFENCE of trafficking was introduced into the Finnish Criminal Code in 2004, the awareness of the offence was very limited and only very few cases had come to the attention of the authorities. Most of the identified cases in 2004–2007 concerned serious forms of sexual exploitation.⁵

The number of cases investigated as trafficking by the police has increased significantly since 2007 (Table 1). The statistics unfortunately do not differentiate between trafficking for sexual exploitation and trafficking for forced labour, but information from victim support providers show that most of the identified cases are related to labour trafficking (Joutseno reception centre 2012b; Joutseno reception centre 2010, see further statistics below). Finland differs from many other European countries in the sense that the majority of identified cases of trafficking concern labour exploitation rather than sexual exploitation. At the EU-level in 2008–2010, some 85 % of suspected trafficking offenders were suspected of trafficking for sexual exploitation (Eurostat 2013, 70–72).

⁵For a discussion on the evolution of the Finnish legislative basis and awareness of the phenomenon, especially as it relates to trafficking for sexual exploitation, see Roth 2010.

	2007	2008	2009	2010	2011	2012
Human trafficking	2	6	2	11	26	21
Aggravated human trafficking	1	2	2	2	6	4

TABLE 1. Preliminary police investigations into human trafficking 2007–2012. Source: Ombudsman for Minorities 2013, 25.

WHILE THE NUMBER of cases reported to the police has increased in recent years, the number of cases prosecuted and eventually convicted has remained low (Tables 2 and 3). As discussed in our previous report, there are various challenges in investigating cases of trafficking, and thus of securing sufficient evidence for prosecuting these offences (Jokinen et al. 2011a, 114–125).

	2006	2007	2008	2009	2010	2011
Human trafficking	0	0	1	1	0	3
Aggravated human trafficking	2	1	1	0	0	2
Extortionate work discrimination	3	1	10	6	23	8

	2006	2007	2008	2009	2010
Human trafficking	0	0	0	2	0
Aggravated human trafficking	0	5	0	5	0
Extortionate work discrimination	2	0	4	7	4

UNTIL 2012, ALL convictions for trafficking were for cases of sexual exploitation. The first conviction for trafficking for forced labour was in 2012 in relation to a case concerning the exploitation of a Vietnamese woman in a manicure salon and in domestic work in Helsinki (Helsinki district court 30 March 2012). As of June 2013, there have been five convictions for trafficking for forced labour.⁶

Since 2006, victims of trafficking have been entitled to assistance by the state-run system of assistance, which is managed by Joutseno reception centre. The number of victims assisted by the centre has increased many times in recent years (Figure 1). At the end of 2012 there were a total of 94 victims who had been accepted into the system of assistance (Joutseno reception centre 2012b).

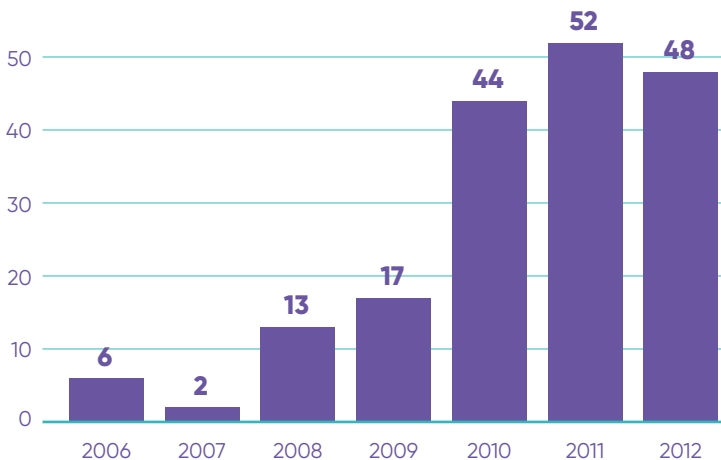


TABLE 2. Persons prosecuted in Finland for offences related to trafficking in 2006–2011. Source: Ministry of Justice 2012, 38.

TABLE 3. Trafficking convictions in Finland in first and second level courts 2006–2010. Source: Ministry of Justice 2012, 40.

⁶All of these convictions, however, are not legally valid, since some have been appealed. (Helsinki district court 31 March 2012; Pirkanmaa district court 29 June 2012; Pirkanmaa district court 28 December 2012; Pohjanmaa district court 28 January 2013; Pohjanmaa district court 15 May 2013.

FIGURE 1. Victims accepted into the system of assistance for victims of trafficking in 2006–2012. Source: Joutseno reception centre 2012a; 2012b.

The majority (65.5 %) of the victims assisted by Joutseno are victims of labour trafficking, while 31 % are victims of trafficking for sexual exploitation. The rest (3.5 %) are victims of some other form of trafficking. (Joutseno reception centre 2012b, 2.)

1.2.3 National efforts to counteract trafficking

FINLAND HAS SO far had two national plans of action against trafficking, the first in 2005 and a revised plan in 2008 (Ulkoasiainministeriö 2005; Sisäasiainministeriö 2008). An evaluation of the latter plan was published in 2011, and included recommendations for legislative amendments (Sisäasiainministeriö 2011). Since then, there has been no dedicated plan or comprehensive working group focusing on trafficking in human beings although other efforts to counteract trafficking have been undertaken.

The national system of assistance for victims of human trafficking was established in Finland in 2006. The system is coordinated by the Joutseno reception centre for asylum seekers and is based on the law on the integration of immigrants and the reception of asylum seekers (Act 1269/2006). In practice, victims receive support and services, including legal advice, crisis support, social and health services, accommodation, and subsistence support. Although the current system of assistance has functioned relatively well there has been also criticism, e.g. against whether the system is truly victim-centred, whether the threshold to enter the system is low enough, whether the principle of equality is fulfilled for victims of trafficking in different parts of the country, and whether the system should be managed by the asylum centre or by some other entity (see Jokinen et al. 2011a, 111–115). The legislative basis for providing assistance to victims of trafficking is currently being assessed by a working group under the Ministry of the Interior with possible amendments to the law forthcoming.

Finland established the position of a **National Rapporteur on Trafficking in Human Beings** in 2008 (the post is held by the Ombudsman for Minorities). This position has proven instrumental in increasing the awareness about and actions against trafficking in human beings in Finland. The National Rapporteur monitors the situation in Finland and issues recommendations to the authorities and government actors. The first report of the National Rapporteur in June 2010 presented several important recommendations for the authorities with the aim of improving Finland's efforts to counteract trafficking (Ombudsman for Minorities 2010). Many of the recommendations have been implemented, including the establishment of two inter-ministerial working groups looking at amending the criminal provisions relating to trafficking as well as the legislation governing the current system for victim assistance.

A working group by the Ministry of the Interior has recently proposed the establishment of a position of a **National Coordinator** on trafficking. The National Coordinator would be responsible for the overall coordination of all activities relating to human trafficking in Finland. It is expected that the National Coordinator will be appointed as of early 2014. (Sisäasiainministeriö 2013a.)

The **labour inspectors** of the Occupational Safety and Health Inspectorates of the Regional State Administrative Agencies are responsible for monitoring the use of migrant labour (henceforth we use the term “labour inspectorate” to refer to this organisation). There are currently a total of 17 labour inspectors specialised in monitoring the use of migrant labour. The inspections largely focus on whether the employers have fulfilled their legal obligations in line with the requirements of Finnish law. By law the labour inspectorate is obliged to report certain violations and offences to the police.⁷ However, trafficking in human beings is not included among these offences. This has caused some amount of discussion regarding the roles and responsibilities of labour inspectors, especially since labour inspectors have been instrumental in uncovering several cases of exploitation of migrant workers as well as trafficking for forced labour.⁸ At the explicit recommendation of the National Rapporteur, guidelines for the identification of victims of human trafficking and their referral to the victim assistance system were approved in 2012 by the occupational health and safety authorities (Ombudsman for Minorities 2013; Sosiaali- ja terveystieteiden ministeriö 2012).

In addition to labour inspectors, **trade unions** are responsible for monitoring the collective agreements. Some collective agreements (such as the collective agreement for the construction sector) give trade unions the right to carry out inspections at workplaces. Trade unions may also place certain employers under a blockage if there are serious flaws in how the collective agreement is implemented at a specific site (Juntunen 2011, 53–54). Trade unions therefore have a fair amount of formal power to oversee the labour conditions also of migrant workers (see Ristikari 2012, 22–23). Similarly, **employers' associations** are involved in the negotiation of collective agreements, guide their members in the implementation of the agreements, and supervise the interests of their membership. The employers' associations also promote healthy competition and condemn irregular economic practices that distort the functioning of the market economy.

In 2011 the police made a decision to prioritise the investigation of trafficking offences (HS 23 December 2011), which is clearly reflected in the statistics presented above. There is currently, however, no specialised police unit focusing on trafficking offences. In 2012, the Police Administration issued guidelines on how to intervene in

⁷Violations of the Aliens Act (section 185), an employer's violation of the Aliens Act (section 186), unauthorised use of migrant labour (Criminal Code Chapter 47, section 6(a)), work discrimination (Criminal Code Chapter 47, section 3), and extortionate work discrimination (Criminal Code Chapter 47, section 3(a)).

⁸ See e.g. the discussion during a national conference on trafficking for forced labour, held in February 2011.

offences of trafficking, including concrete indicators for the identification of victims and information on how to refer them to the system of assistance (Poliisihallitus 2012).

1.3 Migrants in Finland

THE TERM MIGRANT worker covers a variety of people with different residence statuses and permits, including EU/EEA and Swiss citizens and third country nationals. Migrant workers may reside in Finland on different immigration statuses which are usually based on employment (work permit; posted work) or studies (student permit) in Finland or on family ties with someone living in Finland, as well as on the grounds of international protection (status as refugee and asylum seeker). It is possible to work in Finland using any of these residence statuses after some requirements are met. For example, students can work for 25 hours a week on average during the academic term. Also asylum seekers have the right to work after having stayed in Finland for three months, if they have a valid travel document. If not, they have the right to work after six months. (Working in Finland 2013, 1.)

In addition, a foreigner can come to Finland with a visa to do seasonal work for up to three months (Aliens Act, section 81). EU citizens have the right to reside in the country for up to three months looking for work, after which they should register with the local authority. However, this does not concern short-term workers from Estonia who commute between Estonia and Finland. Also posted workers account for a large proportion of foreigners working in Finland. Posted workers are posted by their foreign employer to work in Finland for a limited amount of time.

So called undocumented or paperless (irregular) immigrants are persons who have overextended their visa or residence permit or have not registered their residence after the three month limit (EU citizens). This group also includes those arriving into the country using unofficial channels (e.g. human smuggling) and who do not subsequently seek asylum.

Because a large variety of different types of migrant workers are employed in Finland, it is extremely difficult to estimate how many migrant workers there are in Finland on any given day, let alone in a year. According to Statistics Finland, there were a total of 183,133 foreign citizens in the country in 2011, while the figure was 195,511 in 2012. In 2012, around 20 % of these were Estonians and around 15 % Russians. (Statistics Finland 2013a.)

There are reliable statistics on residence permit applications and permits issued to foreigners.

In 2012, the Finnish immigration service registered a total of 21,264 residence permit applications. The majority of them were based on family ties (40 %), studies in Finland (28 %) and employment in Finland (27 %). (Maahanmuuttovirasto 2013, 1.) The statistics on issued workers' residence permits reveal that the number of issued permits has decreased in 2012 (table 4). This is most likely related to the economic downturn.

Year	First permits	Extension permits	Total
2011	4,463	5,181	9,644
2012	3,827	4,851	8,678

TABLE 4. Initial positive decisions to issue a work permit 2011–2012. Source: Työ- ja elinkeinotoimisto 2011; Työ- ja elinkeinotoimisto 2012a; 2012b.

IN 2012, WORK permits were most commonly issued to persons from Russia, Ukraine and Croatia. Regarding Asian citizens, the permits were issued most commonly to migrants from China, Thailand and Philippines. The permits were especially issued to migrants working in food preparation, cleaning, gardening and other agricultural jobs. Also lorry drivers, welders and plumbers were among the most common professions, according to available statistics. (Työ- ja elinkeinotoimisto 2012a; 2012b).

There are no reliable statistics on the number of posted workers, since workers of companies registered abroad usually do not appear in any official statistics (e.g. Lith 2007). According to Hirvonen (2012), there were an estimated 31,000 posted workers in Finland in 2010. Two out of three posted workers came from Estonia, while the next two biggest groups were from Poland and Germany. Most of them worked in construction and a few thousand in the metal industry. (Hirvonen 2012.) The number of posted workers has increased in recent years, as there were an estimated 18 000 posted workers in Finland in 2007 (Lith 2007).

According to a recent Border Interview Survey, in 2012 there were approximately 59,000 migrants working in Finland whose permanent country of residence was other than Finland. About 30,000 of these migrant workers had their permanent residence in Estonia, 6,500 in Poland and 4,700 in Russia. The study shows that the number of foreigners travelling to a place of work in Finland has increased rapidly from 2008 to 2012. This information was gathered from foreign passengers at border crossing sites. (Statistics Finland 2013b, 2.)

According to statistics of the Ministry of Foreign Affairs, around 12,000 seasonal workers come to Finland each year to pick berries. Around 8,000 of these migrants are employed in berry farms,

and 4,000 pick wild berries.⁹ These seasonal workers come primarily from Russia (6,000 persons), Ukraine (3,500 persons) and Thailand (2,800 persons). (EMN 2011, 18.)

The number of asylum seekers in Finland fluctuated between 3,088 persons in 2011 and 3,129 persons in 2012. (Statistics Finland 2013a.)

Some estimates have been made of the number of undocumented migrants in Finland. In 2011, an estimated 4,000 undocumented migrants lived in Finland (YLE 7 September 2011). On the other hand, the Clandestino project estimates that between 8,000–12,000 paperless persons may be living in Finland (Leppäkorpi 2011, 28). Also the police have estimated that there are up to 2,000–4,000 irregular migrants in Finland (YLE 17 February 2013). No estimates exist on how many of these migrants work in the clandestine job market, but the police have encountered paperless persons working for example in the cleaning sector. (Ibid.)

1.4 Labour market policies in the cleaning and restaurant sectors

THE FINNISH LABOUR and social policy legislation concerning working life is built on a tripartite process of collaboration between the government and labour market organisations representing both employers and employees. There is currently no law on the minimum wage in Finland, since the wages are regulated by the collective agreements. Collective agreements cover the terms of Finnish employment relationships in most sectors, and are formed in negotiations between employer organisations or so-called employers' associations, and employee organisations i.e. trade (or labour) unions. (Ministry of Employment and the Economy 2012.) The legally binding collective agreements cover entire sectors in Finnish economy, and most sectors have their own agreement. Trade unions – and employers' organisations – therefore negotiate the terms of the collective agreements not only on behalf of their own members, but also for non-members, thus including also migrant workers. (Ristikari 2012, 22–23.) The stipulations made in the collective agreement are binding and thus concern also non-unionised members.

The cleaning and restaurant sectors were selected as the focus of this study because there are many migrant workers in both sectors, and several cases of exploitation and misuse of migrant workers have been detected in both. It is important to note that the main part of employers and actors in both sectors is legitimate and does not engage in any irregular or illegal practises. The majority of employers in both sectors are organised, i.e. part of the respective employers'

⁹This is not done in any formalised employment, since the pickers of wild forest berries are considered entrepreneurs and do not need to pay taxes from the profits made from selling the wild berries.

association. The employers in the cleaning sector are organised under Kiinteistöpalvelut ry, i.e. the Property Maintenance Association, while the restaurant sector is organised under Matkailu- ja Ravintolapalvelut MaRa ry, i.e. the Finnish Hospitality Association. All members of the associations are obliged to follow the standards, regulations and guidelines of the sector in question. However, both sectors also include a large share of unorganised entrepreneurs and actors, some of whom engage in misconduct and in exploitation of (migrant) workers. Our interest in this research is especially in pointing out such “grey” and irregular practices, in which the misuse and exploitation of migrant workers, and ultimately trafficking, take place.

1.4.1 The cleaning sector

THERE WERE 6,253 cleaning companies in Finland at the end of 2011, employing a total of 57,000 workers. The majority (70 %) of the businesses were small one-person companies, with one-fifth of the companies being larger (share-holder) companies. The turnover of the whole sector was 1.5 billion EUR, with these large companies accounting for 85 % of the turnover. (Verohallinto 2013, 2.) The Property Maintenance Association which is the employer's union in the cleaning sector has 400 company members, employing a total of 40,000 persons. The cleaning sector as a whole employs a large number of migrant workers. For example, in the Helsinki region estimates of the proportion of cleaners with a foreign background ranges from one third to one half (YLE 10 December 2012; HS 10 March 2013).

The cleaning sector can be divided into different sub-sectors including, inter alia, office cleaning; school, day-care and organisational cleaning; grocery store and shopping mall cleaning; hospital cleaning; hotel cleaning; subway and bus cleaning; ferry and other transport cleaning; airport cleaning; and construction-site cleaning as well as home cleaning.

The Property Maintenance Association estimates that the number of employees in the sector has doubled since the recession during the 1990s. The increase is a result of the development where also public sector actors have outsourced their cleaning and other related services to private companies. The growth of the cleaning sector can also be explained by the low threshold of entering the business as an entrepreneur: little capital is needed to start a cleaning company (Verohallinto 2013). The cleaning sector has also been the object of major structural changes. Most cleaning is now outsourced to professional cleaning companies, while only some 10–20 years ago cleaners were the employees of the organisations whose premises they were cleaning. The reason for the outsourcing has partly been the pressure from contractors to cut costs and to obtain more flexible services

than what permanently hired own cleaners could offer. As a result of the need to rationalise the work and make the services more competitive, the prices paid for such services have simultaneously decreased. Moreover, estimates made by Statistics Finland show that the wages paid in the cleaning sector have decreased in the Helsinki region because of the large proportion of migrant workers employed in the sector (YLE 10 December 2012).

The turnover in the workforce in the cleaning sector is high, with a high proportion of young, non-unionised, low-skilled, and non-Finnish speaking workers. All of these factors make the cleaning sector susceptible to illegal and irregular, “grey” practices. (Verohalinto 2013, 2–3.)

The current collective agreement for the cleaning sector is valid until the end of November 2013. The agreement outlines e.g. the overall terms of work, the daily and weekly working hours, absences and leaves, occupational safety and health. Most importantly, the agreement outlines the minimum hourly and monthly wages of employees in the cleaning sector. The current basic wages for a trainee in the cleaning sector are 1,340 EUR/month, with hourly wages of 8,33 EUR. The current basic wages in the highest category are 2,118 EUR/month, with hourly wages of 13,15 EUR. (PAM 2011.) Workers are also entitled to various forms of extra evening and weekend pay as well as other benefits depending on their employment status and hours of work.

1.4.2 The restaurant sector

THE HOSPITALITY SECTOR, which includes both hotels and restaurants, is a growth industry in Finland. The employer’s union in the sector, the Finnish Hospitality Association MaRa, has 2,400 member companies, which employ a total of 60,000 persons.

In 2008, migrants owned 1,440 restaurant or hotel businesses in Finland, making up about 13 % of all restaurant or hotel companies in Finland and employing a total of 5,000 persons. In 2008 the turnover of these businesses was about 3 % of the total sector. (Lith 2010a, 16, 28.) Most of the restaurants owned by migrants were located in Southern Finland, and most of these in the Greater Helsinki region (Lith 2010a, 29). About 70 % of these migrant entrepreneurs were from Turkey and Asia (China, India, Vietnam and Thailand) (ibid., 16).

The restaurant sector can be divided into subsectors, which include many different types of restaurants and catering services. There include e.g. lunch restaurants; fine-dining establishments; cafes; ethnic restaurants; pizzerias; pubs and bars; catering services, including services for schools, hospitals and other institutions, and fast food restaurants.

As with the cleaning sector, restaurant work is often the first entry point for migrant workers into the Finnish labour market. Also the threshold to start one's own business is low in the restaurant sector. The restaurant sector is particularly vulnerable to irregular economic practices, partly caused by the fact that most of the customers are private individuals, who do not need receipts for their meals. Breaches of societal obligations seem especially common in ethnic restaurants. (Lith 2010a, 2.) Indications of such breaches include sales without receipts, undeclared wages and non-payment of obligatory employers' fees (ibid., 31).

The current collective agreement for the hospitality sector is valid until the end of April 2014. The agreement outlines the terms of work, including types of work contracts as well as permanent and temporary work, working hours, and absences and holidays. The current basic wages for the lowest level of restaurant workers are 1,558 EUR/month or 9,80 EUR/hour, while the current highest basic wages are 1,902 EUR/month or 11,96 EUR/hour. In addition to this, workers may be entitled to various extra evening and weekend pay as well as other benefits depending on their employment status and hours of work. (PAM & MaRa 2012.)

2

Data and methods

The main aim of this research is to provide new information on the vulnerabilities, factors, methods and channels that facilitate exploitation of migrant labour, ultimately resulting in trafficking for forced labour. We particularly wanted to focus on exploitative recruitment and employment practices which can result in trafficking for forced labour.

Our main research questions were the following:

- **WHAT PRACTICES/MECHANISMS/PROCESSES** facilitate situations of trafficking for forced labour?
- **CAN CERTAIN** practices be identified that increase a migrant worker's risk of ending up in a situation of trafficking for forced labour?
- **WHAT CAN** be done to prevent migrant workers from ending up in situations of exploitation?

Our questions relating to recruitment practices and the recruitment chain were the following:

- **ARE THERE** links between the use of recruitment agencies/actors and migrant workers ending up in situations of exploitation?
- **ARE WORKERS** aware of potential risks?
- **WHAT ARE** the workers' experiences of using recruitment agencies?

Our questions regarding the roles and responsibilities of employers were these:

- **WHAT STRUCTURAL** factors facilitate or enable exploitation of migrant workers?
- **IN WHICH** context does exploitation take place?
- **WHAT GAPS** (in administration/bureaucracy) facilitate exploitation?
- **WHAT PRACTICES** do employers engage in that result in exploitation of migrant workers?

TO ANSWER THESE questions, a variety of sources of information were used. The main source of information was interviews with experts and migrant workers. In addition, we collected selected court cases and pre-trial investigation materials regarding key cases, and also used information available through media sources. (For a more detailed account of a similar method, see Jokinen et al. 2011a, 48–60; Jokinen & Ollus 2011, 324–333).

2.1 Data and materials

2.1.1 Expert interviews

EXPERT INTERVIEWS WERE carried out in March–May 2013 using the qualitative thematic interview as the interview method. The interviewed experts came from a variety of different sectors, all dealing with issues relating to migrant labour. We focused on identifying experts who could tell us particularly about issues concerning the cleaning and restaurant sectors, or both. Our approach was to keep the interviews focused on some of the specific problems related to the recruitment of migrant workers, the roles and practices of the employers as well as prevention of exploitation. In order to ensure that the roles of employers would be included, we wanted to specifically interview different representatives of employers and employer's unions.

Altogether we conducted 21 interviews with 28 different experts in Finland. These represented employer's associations (three interviewees), a recruitment agency (one interviewee), two employers (two interviewees), trade unions (four interviewees), shop stewards in the cleaning and restaurant sector (two interviewees), a central trade union (one interviewee), the church (two interviewees), a migrant support agency maintained by the city of Helsinki (three interviewees), the asylum centre (two interviewees) as well as the police (two interviewees) and the border guard authority (one interviewee). In addition we interviewed a representative of the labour inspectorate (one interviewee), representatives of the permit and tax authorities (two interviewees) and one representative of the Federation of Municipalities (one interviewee).

Eight of the interviews were conducted in a group situation where the number of participants varied from two to six persons including the interviewers. Three of the interviews were conducted over the phone. All of the expert interviews were conducted by Anniina Jokinen (AJ) and Natalia Ollus (NO). One expert interview was conducted in English and the rest in Finnish. All interviewees were given an information paper about the interview in advance by email (Annex 1). At the beginning of each interview, the purpose and aims of the project were explained and we mentioned the issues that we were particularly interested in discussing during the interview. All respondents were assured of the confidentiality of the interview. The interviewees were asked for permission to record the interview, to which all consented. The interviews lasted between approximately 50 minutes and 1,5 hours, the average being an hour.

In preparation for the expert interviews, a problem-oriented general interview template was developed (Annex 2). This general framework, however, was greatly modified depending on the profile

of each respondent, so that they were asked questions relevant to their particular expertise or the sector they represented. We developed additional question for both the restaurant and the cleaning sector on the specific problems and practices that occur in these sectors. All interviewees were specifically asked also about their views and ideas for the prevention of exploitation.

The anonymity of the expert interviewees is protected by different means throughout this report. The respondent's name, and his/her exact professional title or place of employment are not disclosed. In the following chapters, direct quotes from the interviews are presented. These quotes have been modified so that names of persons and exact locations, colloquial expressions and other features that might help identify the speaker have been deleted or changed.

Otherwise, the interview excerpts have been kept as authentic as possible when translating them from Finnish into English.¹⁰

The interviewed experts were divided into six categories in order to prevent the identification of individual interviewees by combining interview excerpts.

The categories are:

1. employer's representatives (six interviewees),
2. trade union representatives (seven interviewees),
3. permit and inspection authorities (four interviewees),
4. police and border guard (three interviewees), and
5. migrant service providers (seven interviewees).

¹⁰ The translations have been done by Anniina Jokinen and Natalia Ollus. The translations are as accurate as possible, but some editing of the spoken language has been done in order to make the excerpts easier to read.

IN THE REPORT, interviewees are referred to by these categories, e.g. "trade union representative" or "migrant service provider". In writing the report we have attempted to give equal voice to all interviewed experts. We decided not to number the respondents to protect their anonymity due to the sensitive subject area, and because there are relatively few actors in Finland, who can easily be identified if the interview quotes were to be combined.

Contrary to the interviews we carried out in our previous research on trafficking for forced labour and the exploitation of migrant labour (Jokinen et al. 2011a), we did not ask any general questions about trafficking. Instead, we focused on the specific expertise of each interviewed expert in the context of exploitation of migrant workers in the cleaning and restaurant sectors. Since we modified the

interview template for each interviewee, each interview was very different from the others. We did not therefore aim for a saturation of data but instead at collecting different views and standpoints on recruitment and employment practices in the cleaning and restaurant sectors.

The expert interview data is quite comprehensive, but of course not all relevant actors could be interviewed for the purposes of this project. The interviewees do, however, represent a cross-section of the cleaning and restaurant sectors, and comprise several central actors who work with questions related to the exploitation of migrant workers and human trafficking, or who work with migrant workers or employ them. Many of these are persons who meet migrant workers as part of their daily work or who provide help to victims of exploitation, and thus who could talk about concrete cases of exploitation and highlight the specific problems that migrants have encountered.

2.1.2 Migrant worker interviews

THE INTERVIEWS WITH migrant worker were conducted in March–April 2013. Altogether ten interviews were conducted with eleven migrant workers. The interviewees were recruited by using existing contacts that we acquired primarily in carrying out our previous study (Jokinen et al. 2011a). Persons and agencies working with victims of human trafficking or with migrant workers were very helpful in identifying interviewees and in making arrangements for the interviews.¹¹ Without their help, it would probably have been quite impossible to locate persons to be interviewed. An information paper about the interviews explaining the project and the interviews (see Annex 3) was sent to these persons and agencies. They informed their clients about our research and asked whether they would like to participate in the study by consenting to an interview. We were not given anyone's contact details before the person in question had consented to be interviewed.

All the interviewed migrant workers had experienced different forms of labour exploitation while working in Finland. All had worked either in the cleaning or restaurant sector or in both. Some had experienced severe forms of exploitation while others did not have as bad experiences. All interviewed migrants, however, defined their experiences as exploitation and had sought some form of help either from the authorities, the trade unions or NGOs. Some of the interviewed migrants had been accepted into the official system of assistance for victims of human trafficking in Finland. The migrant workers came from Estonia, Russia as well as Africa and Asia.¹²

Two of the interviews were conducted in English, one in Finnish using an interpreter, four in Estonian and three in Russian. The

¹¹ We particularly want to thank Monika – Multicultural Women's Association in Finland, the labour inspectorate in Southern Finland and the Joutseno reception centre for helping us.

¹² We decided not to disclose the countries of origin of the Asian and African interviewees in order to protect their anonymity. For a discussion on the evolution of the Finnish legislative basis and awareness of the phenomenon, especially as it relates to trafficking for sexual exploitation, see Roth 2010.

interviews in English and Finnish were conducted by Anniina Jokinen and Natalia Ollus. The Estonian and Russian interviews were conducted by Anna Markina, our Estonian project partner from the University of Tartu who is fluent in both of these languages. Anna Markina conducted six out of seven interviews in Helsinki, while one interview was conducted in Estonia. One of these interviews was a group interview with two migrant workers. The interviews with migrant workers were loosely based on a thematic interview template developed as part of the ADSTRINGO project (Annex 4).

It was decided that it would be helpful if the Estonian and Russian interviewees could talk freely in Estonian or Russian with a person from a similar cultural background instead of with us conducting the interviews in Finnish using an interpreter. This proved to be a good choice since both the Estonian and the Russian interviewees spoke very openly about their life and experiences in Finland. Such ease of communication is important when you take into consideration the problems of communication that permeate the experiences of many migrant workers in general and also take note of the potential of information lost in interpretation. We have also noted the potential problems of using an interpreter in our previous study (Jokinen et al. 2011a, 52–53).

All the migrant workers were asked permission for the recording of their interviews and they consented to this. They were also given background information about the project and its goals and they were advised that they could at any time choose to not answer questions asked. All the interviews were recorded and transcribed. The Estonian and Russian interviews were translated into English by an Estonian translation company.

The Finnish and Estonian reports partly use the same interviews as data in the respective country studies. In order to avoid overlaps, the Finnish and Estonian researchers met in Tallinn in May 2013 in order to discuss the use of the interviews. Despite the different focus of the two studies, there is some slight overlap in the use of the interviews, and the same interview excerpts may therefore be used in both studies.

It is very important to take note of ethical considerations when interviewing victims of human trafficking and/or migrants who have experienced different forms of labour exploitation.¹³ The anonymity of the migrant interviewees is protected by different means throughout this report. Instead of referring to individuals, we have decided to group the interviewed migrant workers into two subgroups: Estonian/Russian workers (eight interviewees) and Asian/African workers (three interviewees). In the report the interviewed migrant workers are referred to using these two categories. No other information

¹³17 For further details on ethical issues relating to research on trafficking, see Zimmermann & Watts 2003 on recommendations for interviewing trafficked women; for information on interviewing returned labour migrants, see Andrees & van der Linden 2005; Andrees 2009.

is given about the background, gender or age of the migrant workers. When direct quotes from the migrant worker interviews are used, all references to names, exact locations or any other features that might help identify the respondent have been deleted or changed.

We decided not to number the interviewees to protect their anonymity due to the very sensitive subject matter and the small number of respondents. We instead decided to group the interviews into these two broad groups because the small number of interviewees might otherwise compromise their anonymity. We also decided to use these two categories in order to highlight on one hand the differences between the two categories and on the other, the similarities within the groups. There are some obvious differences between the migrants coming to Finland from afar rather from the neighbouring countries. Also the status of the migrant worker is dependent on their country of origin: migrants from Estonia are EU-citizens while migrants from Russia, Africa and Asia need a work permit or some other form of residence permit to work in Finland.¹⁶ The geographic proximity to Finland makes the group of Estonian and Russian workers more mobile and flexible in moving between Finland and their country of origin, while the workers from further away are less able to leave Finland.

2.1.3 Court data and pre-trial investigation material

COURT AND PRE-TRIAL investigation materials provide a detailed source of information on cases of exploitation of migrant workers and trafficking. Our approach was to keep the study focused on the restaurant and cleaning sectors. In order to do this, we selected two cases, one from each sector, for which we obtained the court judgment as well as the pre-trial investigation materials. The cases we selected were the Pirkanmaa Asian restaurant case and the bus depot cleaning company case in the Greater Helsinki region. They are described in more detail below.

¹⁶ Although Russian workers need a work or residence permit to work in Finland, contrary to Estonians, who are EU-nationals, we decided to group interviewed workers from these two countries together due to the geographic proximity of both countries. It should also be noted that this category includes Estonian nationals from Estonia, Russian nationals from Russia, as well as Estonian Russians, who have no Estonian nationality, and hold a so-called grey passport.

Asian restaurant case in Pirkanmaa

A VIETNAMESE COUPLE operated two Asian restaurants in the Pirkanmaa region in South Central Finland. Between the years 2006–2012 they recruited at least ten migrant workers, many of them couples, from Vietnam to work as cooks and waitresses in their restaurants. For example, one of the exploited cooks received starting wages of 500 EUR per month and had to work 6–7 days a week, up to 10–15 hours a day. The wages were raised by 100 EUR after each year of working in the restaurant. The waitresses got even lower wages which were at least in some instances paid to their husbands' bank accounts. The exploited workers lived in accommodation organised by the employers. Some also shared accommodation with the employers themselves and did household chores for them after work. The workers were dependent on the employers 24/7 due to debt and because they could not speak any languages other than their mother tongue and did not know about their rights as workers or the minimum wages that they were entitled to. The migrant workers were threatened and controlled psychologically by the employers, who said that they would be sent back to Vietnam if they were to complain. The couple was sentenced by the Pirkanmaa district court to imprisonment for 6 years and 10 months on eight counts of trafficking for forced labour, two counts of extortionate work discrimination as well as tax fraud and accounting offences. (Pirkanmaa district court 29 June 2012. R 12/2271; pre-trial investigation material 8330/R/55534/11)

Bus depot cleaning company case

A CLEANING COMPANY operating in the Greater Helsinki area employed tens of migrant workers and asylum seekers mainly from Sri Lanka and Morocco in order to clean busses during night time at various bus depots in 2009–2011. At least three of the migrant workers had had to pay recruitment fees to middlelevel managers, who themselves had a migrant background, in order to get employment. The workers worked during the night, cleaning and moving the busses, but without receiving proper extra pay for night and evening work. They were only paid for a certain amount of hours no matter how long it took to clean the busses. The workers were dependent on the work since it was linked to their work permits, and their right to reside in Finland was based on it. The middle-level managers controlled the workers and let them know that complaining would result in losing their employment. Also links to the arrangement of illegal immigration were suspected in the case, and this was investigated by the border guards. The owner of the cleaning company was sentenced by the Vantaa district court for aggravated extortion and work discrimination to a suspended sentence of 1 year and 10 months. One of the middle-level managers was sentenced for aggravated extortion, extortionate work discrimination and a working hour offence as well as accounting offences to a suspended sentence of 1 year and 3 months. Also the other middle-level manager was sentenced for aggravated extortion to a suspended sentence of 1 year and 3 months. The case has been appealed and is still before the Court of Appeal. (Vantaa district court 28 September 2012. R 12/2139; pre-trial investigation material 9186/R/61009/09.)

¹⁵ Two more judgments on trafficking for forced labour were passed in Pohjanmaa district court in early 2013. We have not, however, used these judgments as materials in this study since they concern exploitation in a wood processing plant (Pohjanmaa district court 28 January 2013) and in a plastic factory (Pohjanmaa district court 15 May 2013).

IN ADDITION, WE used some newer court judgments on trafficking for the purpose of forced labour and aggravated extortion.¹⁵

- **PIRKANMAA DISTRICT** court 18 December 2012. R 12/5728, ethnic restaurant case, trafficking in persons.
- **VARSINAIS-SUOMI DISTRICT** court 22 March 2013. R 12/1508, kebab restaurant and butcher's shop case, aggravated extortion.

We also refer to the first judgment ever given in Finland on trafficking for forced labour, passed in Helsinki district court in 2012. This case dealt with the exploitation of a Vietnamese woman in a manicure salon in Helsinki (Helsinki district court 30 March 2012, R 12/2465).

The court judgments and pre-trial investigation records were read carefully and analysed according to a thematic framework based on the ILO indicators (see also Jokinen et al. 2011a, 55–58). Special attention was paid to the recruitment of workers and the possible exploitative recruitment practices uncovered as well as to the channels used in recruitment and possible recruitment and placement fees charged. We also investigated the role of employers and tried to uncover indications of systematic exploitation and how such exploitation was organised and maintained by the employers.

2.1.4 Media materials

ON-GOING MEDIA MONITORING of newspapers and online media, including Helsingin Sanomat (referred to as HS in the text), Hufvudstadsbladet, Iltalehti, Ilta-Sanomat and PAM-lehti as well as YLE news was conducted in 2012–2013 with a special focus on the restaurant and cleaning sectors. Also the on-going discussions on migrant workers and the grey economy were followed. The media materials have mainly been used as background information on current issues associated with these themes, but also some direct information regarding exploitation cases and exploitative practices have been derived from the media. These are listed in the references.

¹⁶ After the meeting we decided to exclude the agricultural sector from further analysis, primarily because we considered two sectors to be sufficient for the purposes of this research.

2.1.5 Expert meeting

UNDER THE AUSPICES of the ADSTRINGO project, HEUNI organised a national expert meeting on 22 November 2012 in Helsinki. The meeting focused on the cleaning, restaurant and agriculture sectors,¹⁶ primarily because these sectors have a multitude of workers recruited from abroad, and although the clear majority of companies operate in accordance with laws and agreements, several known cases of exploitation have nonetheless been uncovered. Representatives of employers, trade unions, the labour inspectorate, employment authorities, recruitment companies and NGOs attended the meeting. The aim of the meeting was to discuss good practices in the prevention of exploitation of migrant labour, discuss problems encountered in these sectors, and to consider the roles and responsibilities of various actors. The aim was also to create a forum for networking and information exchange as well as to provide input for the research component by identifying suitable experts to be interviewed. A total of 21 participants attended the meeting. We first gave a presentation on the project and on trafficking for forced labour in Finland, after which the

participants gave a short statement relating to their own field of work. The meeting was concluded with a general discussion on how to best prevent exploitative practices in these sectors. We took detailed notes during the meeting. These notes form part of the research materials used in this study. After the meeting, some of the participants were interviewed for the study (see section 2.1.1).

2.2 Analysis

THE DIFFERENT STUDY materials and data were analysed thematically. The data from both the expert interviews and the migrant worker interviews was read carefully and coded using the ATLAS.TI programme. A total of 85 codes were created during the coding process and grouped under ten larger themes. After the coding, the selected themes and codes were taken out for further analysis. The themes were grouped and read through once more. The interview data forms the core of our study, since this data was analysed most carefully and thoroughly. We constructed the empirical chapters on the themes uncovered in the analysis of the interview data. The other sources of information, i.e. the court and pre-trial investigation data and the media materials, were used to provide additional information and details on e.g. forms of exploitation and irregular practices.

We have chosen to present our empirical findings together with references to the literature, such as research, reports, governmental documents and policy papers. The literature is used to support our interview findings and other data and is used to provide context for our findings.

The empirical findings are presented in the next four chapters. Chapter 3 starts with an overview of existing migration and employment policies in Finland. This chapter aims at contextualising the societal situation in which the exploitation of migrant workers, and ultimately trafficking for forced labour, takes place. Chapter 4 outlines recruitment mechanisms, describing the recruitment of migrant workers into the Finnish labour market, as well as exploitation taking place during recruitment and also during the work permit application process. Chapter 5 further contextualises the exploitation of migrant workers as taking place within the broader context of the grey economy and clandestine practices. This chapter also details the forms of exploitation that take place in the cleaning and restaurant sectors. Chapter 6 analyses and presents preventative measures so as to best tackle the exploitation of migrant workers, and ultimately trafficking for forced labour. The last chapter provides a summary of the results and presents our conclusions and recommendations.

3

Migration and employment policies in Finland

Discussions about the perceived threat posed by a shortage of labour have been ongoing in Finland since the 1970s (Forsander 2002). During the early 2000s, labour migration became seen as a solution to the problems caused by the aging population and the related decrease in the active labour force. In 2006 the Government introduced for the first time a specific and proactive labour migration policy, with migrant labour considered as a solution to the perceived labour demand, with an emphasis on attracting skilled and mobile labour. At the same time, government policies emphasised that labour immigration should be based on a genuine demand for labour. On a policy level, therefore, the governmental discussions have focused mostly on the positive aspects of migrant labour, although risks relating to uncontrolled migration have also been mentioned. (Ollus & Alvesalo-Kuusi 2012.)

THE NEW MIGRATION policy of the Finnish government of June 2013 calls for more flexibility in migration processes. The processing of work permits should become more flexible and clear and the permits process should better reflect the need to promote migrant labour as well as Finland's attraction as a destination for skilled labour. The policy also recognises that trafficking is related to migration, and promotes the prevention of trafficking, as well as the identification of and assistance to victims. (Valtioneuvosto 2013.)

As was shown in the introductory chapter, the number of migrant workers in Finland has increased in recent years, with the majority of the workers coming to fill less skilled or semi-skilled jobs (Asa & Muurinen 2010). There has been a discussion on the dualisation or the bifurcation of the labour markets, with a fear that migrant workers increasingly end up in poor working conditions and work that may be described as precarious (Könönen 2011). As such, the policies surrounding migration and labour migration are highly relevant also for the understanding of the context in which exploitation of migrant workers and labour trafficking emerge and take place.

In this chapter we present the context in which exploitation of migrant workers takes place in the Finnish labour market, and analyse the structural factors that facilitate such exploitation. We first describe the ongoing discussion regarding the need for migrant workers and the perceived shortage of labour in Finland. Next we analyse the ongoing debate concerning assessment of available labour in the

cleaning and restaurant sectors. The assessment procedure directly affects the possibilities that migrant workers have of acquiring work in Finland, and forms a framework for the regulation of labour immigration. The need for labour migration and how it is controlled is relevant also for the understanding of what facilitates and enables more serious forms of exploitation, such as trafficking. This is discussed in the final part of this chapter.

3.1 The perceived shortage of labour and assessment of available labour

THE NEED TO attract migrant labour to Finland is fuelled especially by concerns about the aging population and the perceived decrease in the active labour force, leading to a sustainability deficit. The ageing of the population will certainly affect the economy, but the future labour demands of different sectors is still unknown (Honkatukia et al. 2010). The shortage of labour was discussed at length in many of our expert interviews. There were diverging views among the experts regarding whether or not there is indeed currently a lack of labour and, consequently, a need to attract increasing numbers of migrant workers.

The representatives of employer commonly refer to the problem of matching the demand and the supply of labour, which is compounded by regional factors, and also affected by the current economic downturn.

This demand for foreign labour, it's clear that we'll need it. And we have this 20-year retirement process, so it is likely that it [the labour shortage] will explode already much earlier [than anticipated].

– Employer's representative

An analysis by the Bank of Finland, however, shows that the discrepancy between supply and demand has not decreased significantly despite the economic downturn, thanks to flexibilities in the Finnish labour market (Schauman & Vanhala 2011). There seems to be a lack of labour in specific sectors, such as the health care and social welfare sectors (EMN 2010, 103). At the same time, however, there are unemployed persons available in many sectors. A working group under the Centre for Economic Development, Transport and the Environment in the Uusimaa region in Southern Finland carried out a mapping of existing vacancies in the cleaning sector in the fall of 2012, and found that there are indeed both many vacant positions, as well as many unemployed cleaners, and that supply and demand do not meet (HEUNI

expert meeting 2012). Views differ with regard to the reasons of why supply and demand do not meet.

The divergence in views is evident especially between the representatives of trade unions and employers. A major issue of contention is whether or not there actually is a real labour shortage, or whether the problems of labour shortage are more structural and related to the quality and contents of the jobs on offer.

When the economy starts to improve and the number of people retiring will increase, then I think we will have that shortage. And we also unfortunately have this problem of meeting supply and demand, we have a lot of unemployed.

– Employer's representative

There is a fundamental divide in how the available employment opportunities are understood and portrayed. In the cleaning sector one of the problems is the way the work is scattered and organised, with contracts not offering full-time employment and with the work spread out at different hours of the day (see also 5.1.3). This means that even though there are vacant positions, the terms of work are not necessarily sufficient to attract available labour. According to the interviewed workers, the problem of supply and demand is a direct result of the poor working conditions offered (too few working hours, poor wages, temporary contracts etc). According to one interviewer worker, employers consciously exploit employees by offering poor contracts and terms of work.

There is no shortage of cleaners, and those employers know it. They give you 3 months and then they find a new person, they exploit the person, that person goes and then they find a new person. Just a few people get those permanent contracts.

– Asian/African workers

An interviewed trade union representative sees a specific rhetoric in use by employer's representatives, portraying Finnish workers as "lazy, drunks and unprofessional" and thus useless and unwilling to work. This expert calls for more attention to be paid to the types of work and contracts offered instead of just looking at the available labour and why they do not want to work. Several interviewed experts mentioned that for example in the cleaning sector a lot of jobs on offer are only part-time contracts. In addition, the interviewed trade union representative would like to see structural changes in employment

conditions (especially in the low-paid sectors) and improved recruitment and employment of migrants already residing in the country.

As demonstrated above, the discussions on migration policies and the perceived need for labour in Finland are controversial and difficult topics where different actors have diverging views. At the centre of the controversy lies the procedure for assessing the available work force before recruitment from abroad is allowed, a process which has caused considerable debate. The current Government programme of 2011 outlines that “the system of determining availability of labour on the domestic labour market will be maintained and the supervision of the labour market will be enhanced” (Government programme 2011, 46).

For certain sectors, an assessment of the available labour on the domestic market is carried out when an employer seeks a work permit for an employee from a country outside the EU/EEA. In practice, the assessment of the available work force means that the regional Employment and Economic Development Office checks that the conditions of work are fulfilled, i.e. that the wages are in line with the collective agreement and that the employer is capable of fulfilling his/her obligatory employer's duties. The Office also assesses whether there is available labour domestically for the advertised position. If suitable labour is available within a reasonable time-frame, then there are no grounds to grant a work permit for a foreign worker from outside the EU/EEA.

This assessment process is based on section 71 of the Alien's Act. The sectors in which such assessment is practised are determined by the regional Centres for Economic Development, Transport and the Environment in their regional guidelines concerning work permits for foreigners. The regional guidelines are informed by national guidelines issued by the Government. In October 2012, the Finnish Government issued its latest guidelines on the prerequisites for using migrant labour (Valtioneuvoston päätös 2012). In this document, the Government encourages the regional Centres to issue regional guidelines and to keep these guidelines up to date, taking into consideration the fluctuations and changes in the regional labour markets. For instance, employers are not allowed to require lower professional skills from foreign labour compared to what is required from labour available in Finland, and foreign labour must receive the same wages as similar labour available in Finland. (Ibid.)

In the Uusimaa region in Southern Finland, the most recent guidelines were issued in November 2012. The document list a number of professions in which the availability of labour has decreased, including various professions in construction as well as health care professionals, domestic workers and child carers, agricultural workers, and cleaners (Uudenmaan ELY-keskus 2012). For these sectors

migrant workers from outside the EU can be recruited without the assessment whether available (unemployed) labour already resides in the region. For the cleaning sector the prerequisite is that the worker is offered full-time employment (37,5h/week) on a continued contract, with wages in line with the collective agreement (ibid.). The recent inclusion of cleaners among those professions for which labour can be recruited from abroad without the assessment procedure has been particularly controversial.

3.1.2 The debate concerning assessment of available labour in the cleaning and restaurant sectors

THIS SECTION DEALS with the assessment of available labour in the cleaning and restaurant sectors, i.e. the two sectors covered by this study. Both sectors employ many immigrants, some of whom are recruited from abroad. As with the overall discussion on the shortage of labour, there are diverging views between trade unions and employers' associations also with regard to the need to assess available labour. This discussion is relevant for our further analysis on the conditions of employment – and situations of exploitation – in which migrant workers find themselves in Finland.

Section 71 of the Alien's Act stipulates that labour market organizations shall participate in the monitoring and assessing practices and in preparing the national and regional policies. In practice, therefore, representatives of both trade unions and employer's organisations should participate in negotiating in which professions or sectors the assessment of the available labour force should continue, and in which sectors such assessments are no longer needed. The recent decision to no longer require an assessment of the available labour force in respect of the cleaning sector has caused a heated debate between trade unions and employer's organisations.

The Central Organisation of Finnish Trade Unions (SAK) and the Service Union United (PAM) claimed after the Uusimaa guidelines were issued that there is available labour for cleaning work, and that the perceived shortage is not supported by statistics. Instead, the overall working conditions in the cleaning sector have become worse especially in the Greater Helsinki region due to increased competition (and a corresponding increase in the areas to be cleaned with decreased time available for the work) with a large staff turnover as a result. (SAK 15 November 2012.)

Statistics by the Confederation of Finnish Industries (EK), however, show that in the property sector organised under the employer's association (which includes cleaning work), 85 % of the employed persons have a permanent contract (working either full-time or part-time), and 68 % of staff are working full-time (either on

permanent or temporary contracts) (EK 2012).¹⁷ The employer's side states that overall, the conditions are not as bad as the unions claim. In a response to the criticism, the cleaning industry's employer's organization states that it is too simplistic to claim – as the trade unions are doing – that there would be available and willing labour for the cleaning sector. According to the cleaning industry's employer's organization the problem is that those (unemployed) who are offered cleaning work either do not want, or are unable to do the work. Without new labour (presumably from abroad), many vacant positions will remain unfilled. Instead of keeping the assessment process for the cleaning industry, the cleaning industry's employer's organisation calls for measures to ensure ethically sound employment conditions also for those who are recruited from abroad. (HS 31 August 2012.) One of the interviewed employer's representatives felt that work permit practices should be further developed to ensure that they work effectively.

The Confederation of Finnish Industries (EK) has stated already for some years that Finland is in a need of migrant labour. EK and the Federation of Finnish Enterprises (Suomen yrittäjät) submitted a statement in the current preparation of the new migration policy. The proposal should in their view explicitly state that no assessment of available work force is needed when considering the recruitment of any labour from outside the EU, arguing that the current practice of assessing the available labour force is based on a wish to protect the employment possibilities of Finnish workers but that such an argument is no longer valid in a global labour market. Furthermore, EK and the Federation of Finnish Enterprises point out that the current processes are contradictory with regard to the overall policy of promoting labour migration. (Sisäasiainministeriö 2013b, 30.) EK has previously also argued that no company would recruit labour from abroad unless there is a real need, since the recruitment costs are so high and the process very bureaucratic (EK 13 August 2010). An interviewed representative of an employer's organisations confirmed these views, and highlighted the impracticality of recruiting from abroad unless there is a real labour shortage.

¹⁷It should be pointed out that these statistics only refer to employees of organised employers. Often times migrant owned businesses do not belong to employers' unions and the employees of these companies are therefore not included in these figures.

I'm sometimes a little amused when the trade unions so loudly oppose this assessment of work permits. In reality companies don't do it if there is labour available in Finland. It is so expensive, cumbersome, difficult and laborious, that you don't do it if there is any in Finland. It is so much easier and cheaper to recruit from Finland. [...] When you find a couple of able-bodied and willing persons, then they don't want to do night work. Or they don't want to do this or that. In the end you only have one. You don't have many other options than to start looking from abroad. [...] There are a lot of those [on the dole] who can't work. [...] and then they apparently overload the system, that there would be all these unemployed.

– Employer's representative

In a response to the view presented by employer's organisations that workers are unwilling to take the jobs that are offered to them, an interviewed representative of the trade unions felt that this aspect is exaggerated and the problem lies in the poor working conditions offered.

NO: How about when employers argue that the available workforce is not able-bodied or doesn't want to take the offered jobs?

R: Of course I understand this, and they have a point. It is clear that there are those who are unable to work. But then there are probably also many of those who cannot accept the jobs because you can't survive on it, like these part-time jobs. I think it is an exaggeration. Clearly these exist, but it is maybe marginal. There are so many more unemployed who seek employment.

– Trade union representative

In a recent statement, the Central Organisation of Finnish Trade Unions (SAK) called for an analysis on why it has become more difficult to obtain labour for the cleaning sector, to understand why there is a need to recruit migrant labour: is there a real need or are the problems of availability of labour caused by poor working conditions and poor wages? The unions fear that the waiving of the assessment leads to worsened working conditions for migrant labour, and will negatively affect the overall labour conditions, with increased part-time work and inadequate wages for both migrants in Finland and those

recruited from abroad. Especially vulnerable are those recruited from abroad, who cannot fulfil the requirements for an extension of their work permit due to too few working hours and a low income (see also chapter 4.2). (Palkkatyöläinen 19 February 2013.)

The discussion on the assessment of available labour is also relevant for the restaurant sector, where there is a discussion on whether there is a lack of cooks in general and of cooks for ethnic restaurants in particular. One interviewed employer's representative pointed out that the unemployed cooks in Finland, when invited to job interviews in ethnic restaurants, are unable to prepare the required dishes or unwilling to work in general.

[The assessment] should perhaps be eased a bit, because there is real shortage of labour in some positions and all the time in assisting positions. What happens is that in Finland Finnish people don't want to clean or wash dishes anymore, but yet in the employment office there are these people who could do the work. They should perhaps consider a bit whether it [the assessment] is always needed.

– Employer's representative

While it may seem that trade unions in general oppose recruitment from abroad, this is in fact not the case, at least according to an interviewed trade union representative. This expert emphasized that the unions do not oppose migration or migrant labour, but they are instead concerned with the structural problems created by some sectors becoming less valued and unattractive, with poor working conditions as a consequence.

It is just because of these structural reasons in the sectors with low wages. The oversight doesn't work and the legislation doesn't work. This is why it is so much easier to exploit these vulnerable persons from third countries. But nowadays also Finnish citizens are being exploited.

– Trade union representative

While the concerns about a bifurcation of the labour market do not seem to be shared by employer's representatives (see e.g. HS 29 May 2013), there is a wish on both sides to prevent exploitation. The biggest divide seems to be with regard to the role and impact of the workforce assessment. The unions fear a worsening of the overall working conditions in the sector and therefore see the assessment

as an important tool in preventing an influx of foreign workers who end up in exploitative conditions. The employer's side sees the assessment as a bureaucratic process that more or less hinders the free flow of needed labour. What seems clear, however, is that the problems of meeting supply and demand in the cleaning and restaurant sector are indeed related to the structural problems of poor and unattractive employment conditions and the risk of a bifurcation of labour markets, where migrants fill up positions that no one else wants to take.

3.2 Exploitation leading to trafficking?

THE PERCEIVED AND real need for migrant labour is in many aspects at last partly ideological as much as it is practical. Another issue is whether there is a need to make structural changes in order to ensure that the employment contracts offered and the terms of work are reasonable and feasible. The structural changes for instance in the cleaning and restaurant sectors relate partly to the development during the recession in the early 1990s, when the status of less valued jobs decreased, unstable jobs became more common and income disparities started to increase (Salmenhaara 2008; see also Asa & Muurinen 2010).

The Finnish researchers Himanen & Könönen (2012), who have written on the subject of precarious work, are critical of the assessment of labour. In their view the assessment process has made it more difficult for the most vulnerable migrants in Finland (often the paperless) to legalize their status in the country. The legal position improves if a person whose application for asylum has been rejected can obtain a work permit based e.g. on cleaning work.¹⁸ Himanen & Könönen claim that in the cleaning sector the assessment process has not been successful in limiting the supply of labour, and that the structural problems of the cleaning sector cannot be solved by limiting this supply. (Himanen & Könönen 2012).

Sweden stopped assessing foreign labour in December 2008. As a result, the number of migrant workers in low-paid sectors of work has increased (Vogiazides & Hedberg 2013). Swedish studies have indicated that stopping the assessment procedure has led to a situation where migrant workers are ready to take a job offer in order to secure a work permit. As a result the buying and selling of work permits has been uncovered (LO 2013, 27–28; Vogiazides & Hedberg 2013), ultimately leading to the risk of trafficking for labour exploitation.

The bifurcation or dualisation of the labour market into precarious work and other forms of work is closely linked to an increased risk of severe forms of exploitation and trafficking. If trafficking for

¹⁸In the case concerning the bus depot cleaning company, some of the workers received a work permit after their asylum claim had been rejected (Pre-trial investigation material 9186/R/61009/09; Vantaa district court 28 September 2012).

labour exploitation takes place in the context of general exploitation of migrant workers, the poorer the working conditions of the most vulnerable, the greater the risks and opportunities of extreme forms of exploitation. Instead of stopping the assessment of available labour in sectors such as the cleaning or restaurant sector, there is a need to ensure the possibility of employment of migrants already residing in Finland, especially including those in precarious positions (such as undocumented migrants). The amendments made to the Aliens Act in 2012 (449/2012), make it possible to issue a temporary residence permit to an irregular migrant worker i.a. if they have been subjected to exploitative working conditions or have been working as a minor (Chapter 4, section 52(d)). There are no public statistics available on whether this possibility has yet been used in practice. Further, amendments made in 2011 make it possible to issue a work permit to a migrant who has arrived in Finland without a valid residence permit but has secured a job based on the grounds that not issuing such permit could be unfounded or unreasonable (Chapter 4, section 49).

4

Recruitment of migrant workers and work permits

The number of migrant workers in Finland has increased in recent years, although exact statistics are lacking (Hirvonen 2012). This increase is related to conscious policies as was shown above: since the early 2000s, Finnish government policies have promoted labour migration as a solution to the perceived threats posed by the aging population, the decrease in the active labour force and future adverse economic development. Migrant labour has been portrayed as promoting prosperity, and policies have thus focused on enabling easy entry of wanted and needed migrants. The main emphasis has been on skilled migrant workers, who would fill the gaps in the national labour supply. (Ollus & Alvesalo-Kuusi 2012.) In reality, however, there has been an increase in migrant labour in low-skilled, low-paid and poorly valued employment (Asa & Muurinen 2010).

THE RECRUITMENT OF migrant workers in Finland can be divided into two main categories: recruitment of those already residing in Finland, and recruitment of workers from another country (for both high- and low-skilled labour). Those already residing in Finland may be in the country because they are, for example, asylum-seekers or students, because of family reasons, or because of some previous employment (see chapter 1.3).

Recruitment of labour may take place either through official sources (such as the employment services of the Ministry of Employment and the Economy or the European Employment Services EURES), through direct contacts, or through informal sources (Raatikainen 2004, 21). As we already showed in our previous report, recruitment of migrant workers can be divided into organised, larger-scale recruitment through various recruitment companies, and less organised, informal means of recruitment, especially through friends, family and acquaintances (see also Jokinen et al. 2011a).

The shifts in the global economy and production patterns have affected the economy and employment market also in Finland. As a result, there are divisions in the labour market, placing some groups of migrants in particularly vulnerable positions of misuse and exploitation. Recruitment plays an important role in how migrant workers gain access to the labour market and into which jobs they are hired.

In this chapter we describe the context in which recruitment of migrant workers into the Finnish labour markets takes place, and analyse the mechanisms of recruitment. We also discuss the work permit procedures and how the process may facilitate exploitative practices. We first describe the rationale of labour migrants wanting to come to Finland, and then outline recruitment taking place through recruitment companies as well as through family and friends. This is followed by a discussion of (illegal) fees that migrants may have paid to obtain work in Finland. We also describe some good practices with regard to recruitment. Finally the chapter outlines the work permit procedure, how permits may be used as a means of exploitation, and how this dissuades them from disclosing their experiences of exploitation to the authorities when applying for an extension of their permit.

4.1 Recruitment mechanisms

4.1.2 Rationale for coming to Finland

BOTH THE INTERVIEWED experts and the interviewed migrant workers in Finland emphasised that economic reasons are an important rationale for seeking work in Finland. This applies both to those coming from further away as well as to those coming from nearby countries, such as Estonians seeking work in Finland.

If you get 2,70 [EUR] in Estonia and get offered eight [EUR] [in Finland], then it is a big difference.

– Estonian/Russian worker

The difficulties in getting a job in the home country, together with the prospect of finding a job in Finland that pays more than similar work in the home country, is naturally a major reason for seeking work in Finland. Interviewed migrant workers considered work in Finland as an opportunity to improve one's life and many are willing to compromise regarding the employment and the conditions, as long as they can earn more than at home. One of the employer's representatives noted with reference to certain countries in Asia, where migrant labour is common, that the readiness to leave one's family behind should not be moralised upon. In this person's opinion, and considering the options, Finland is still one of the better choices.

They will leave in any case as they don't have work there, and if their standard of living will improve [by working in Finland]. Of course it is tragic, but their life over there is no walk in the park. I would rather see that they come here than go somewhere to Saudi-Arabia, where they will be beaten. In a way then, we in Finland offer them quite good conditions. If they leave anyway, why not come to Finland. We have work to offer them.

– Employer's representative

A representative of the trade unions was critical about the structural factors that cause labour migration, and the consequences of the desperation in which some of the migrant workers find themselves.

It shouldn't be an end in itself, saying that you should move like mad. When it is voluntary, then it's fine. But if people are forced to move, that is if the push factors are stronger than the pull factors, if people are forced to move because they cannot survive in their own countries. When the situation is so desperate, then it may happen that the person takes whatever working conditions.

– Trade union representative

The interviewed representatives of employers seem to prefer to recruit a person who is a resident or citizen, or already residing in the country, who is well integrated, and who speaks the local language(s), or at a minimum, English. As explained by one employer, this is deemed to be easier, cheaper and simpler than the costly process of recruiting a specific person for a specific position from abroad. This view was, however, contested by several references in our data. There are examples in the cleaning sector where workers with no Finnish or Swedish language skills, and possibly also very poor English skills, have been recruited, despite the official positions of the employers stating the contrary. This may of course be caused by the general lack of labour, or the unwillingness of available labour to work under the conditions offered, thus causing a situation where the language preferences cannot be upheld.

The lack of language skills causes problems especially when signing work contracts, but also in the carrying out of the actual work. One concern raised by the interviewed experts is workplace safety and the risk of accidents and mistakes if the employees do not speak or understand Finnish or English.

Inadequate language skills among migrant workers recruited to Finland have also been uncovered e.g. in the ethnic restaurant sector. In all of the convictions for trafficking for forced labour in Finland, the exploited employees have not spoken Finnish, Swedish or English (e.g. Helsinki district court 30 March 2012; Pirkanmaa district court 29 June 2012; Pirkanmaa district court 18 December 2012). The recruitment of workers with inadequate language skills may thus for some employers be a conscious decision, since it is easier to exploit a person who cannot make him/herself understood outside of the remit of employment.

4.1.3 Recruitment through recruitment and employment service companies

RECRUITMENT COMPANIES AND employment service companies can be divided into those that mainly focus only on recruitment of labour from abroad and/or from Finland, and those that in addition to recruitment also provide temporary (agency) workers to companies in need of labour and thus function as the employer of these workers. In 2011 the private employment service sector provided employment for approximately 100,000 workers in Finland. Calculated in full-time employees, the entire sector employs around 25,000 workers, with the majority of them (23,000) being temporary agency workers. About half of the members of the Private Employment Agencies Association (HPL) that provide hired personnel have used foreign workers. In 2010, 17 % of HPL member companies brought foreign labour to Finland.

The interviewed experts point to different types of recruitment and employment services. The smaller companies often start with a person who has his or her own experience in the field, and who then sets up his/her own recruitment company, since the business is relatively easy to enter into. The large recruitment and staffing companies operate on a larger scale both doing actual recruitment and providing staff for client companies. Recruitment through recruitment and employment service companies can be divided into two main forms: recruitment of migrants already residing in Finland, and recruitment from abroad. Migrants residing in Finland – especially if they lack language skills and higher education – may be recruited through various recruitment and employment service companies to the cleaning and restaurant sectors, but also to other forms of temporary work. Explicit recruitment from abroad can further be divided into shorter-term rented work and longer-term employment. The shorter-term rented/temporary agency workers often come from Finland's neighbouring countries (mainly Estonia). They work for some months and then go back to their home country.

The longer-term explicit recruitment of workers from abroad does not seem to be so common in Finland. The cost is high and the process is cumbersome and bureaucratic, and the mere acquisition of a work permit may take unreasonably long (see also chapter 4.2). One individual recruitment could cost up to 6,000–8,000 EUR, according to one interviewed expert. The labour demand for which foreign recruitment is practised should therefore be based on a longer-term, rather than short-term need. Such recruitment has so far only been applied to certain sectors and positions, such as health care staff (nurses, doctors), the restaurant sector (cooks) and certain industries (metal workers). The employers' representatives pointed out that their preference is to recruit for longer-term contracts, with the idea that the person who is brought to Finland should stay in the country, if not permanently than at least semi-permanently. Preference is therefore given to persons who indicate a willingness to stay longer. This is also the reason why explicitly recruited persons often first get a contract with the recruitment company, through which they are placed in the client company as rented staff, and only later move onto become the employees of the client company.

Interviewed experts overall emphasised the importance of ethical recruitment of migrant workers and the responsibilities of the recruiter. This includes ensuring that the employer is legitimate and trustworthy, and that the employment into which the workers are recruited is full-time and adequately remunerated. Interviewed employer's representatives pointed out that the examples of exploitation that have been uncovered in the recruitment sector (see e.g. Jokinen et al. 2011a, 67–69) should be seen as problems caused by unorganised employers and recruitment companies. Various middlemen and others who benefit from recruitment should not be identified with professional companies, according to employers' representatives. Attention should instead be paid to the unregulated and problematic actors in the field, who do not follow the agreed rules. In 2009 the Private Employment Agencies' Association (HPL) published its Rules for the recruitment of foreign employees for the personnel services sector. The rules function as a code of practice, with the aim of ensuring that the member companies of HPL undertake to act ethically and lawfully when recruiting foreign employees. They also aim to improve the status of foreign employees in Finland, and include issues such as the prohibition of recruitment fees, ensuring of adequate permits and skills, contracts, guidance, occupational safety and freedom of association. (HPL 2009).

All of the interviewed representatives of employers and employment service companies emphasised the challenges of finding reliable, ethical and skilled partners in the country of origin. Reliable

partners lessen the problems of corruption and of ensuring that the workers are not charged illegal fees (illegal fees will be dealt with in more detail below). Several interviewed experts mentioned that Finnish companies have consciously avoided recruitment from certain countries due to the problems of corruption and the problems of ensuring that the recruited workers are not exploited at the recruitment stage. The further away the country of recruitment is, the bigger the risks with recruitment, as mentioned by one expert.

You need to have good contacts there and local help. [...] How do you ensure that someone is a reputable partner? You can't say for sure. I guess it comes with experience. And of course you need to interview the workers and ensure that no fees are charged. Create an atmosphere of trust with your own employees. [...]
Externally all may look good, but it is learning through trial and error.

– Employer's representative

As we showed in our previous report, in 2008 there was a major case of recruitment of Chinese workers for the cleaning sector, in which there were problems with the working conditions in Finland, in addition to which the partners and intermediaries in China had charged the workers various fees (Jokinen et al. 2011a, 67–69). This case illustrated the problems in ensuring that the workers are not given false information about the work, or charged illegitimate fees. It seems that since this case, the recruitment companies have tried to improve their recruitment practices. There is, however, a need for even clearer rules and regulations.

For example, a large recruiting and employment service company in Finland has received publicity in recent years through its recruitment of nurses and cooks from South-East Asia, with the recruitment of nurses starting in 2008 (HS 19 January 2008). In 2008, an investigative TV-programme revealed that the company's partner in South-East Asia had charged the recruited nurses illegal placement fees of thousands of euros (Ulkolinja 13 February 2008). As a result, the company changed its recruitment practices in order to ensure that no misconduct takes place. The recruitment is a multi-layered procedure, involving the travel of a representative from Finland to personally interview all potential employees and administer several skills tests. The company also emphasises to the migrant workers that no fees are charged during the process. (HEUNI expert meeting 2012.)

Representatives of employers, especially those that recruit migrant workers from abroad, highlighted in our interviews the need for

comprehensive contractual clauses with the partner companies in order to rule out problems and to clarify responsibilities. Any legitimate fees should be clearly stipulated in the contracts, and if any additional fees are charged, this should be a ground for terminating the cooperation and for payment of damages. Once the workers have arrived in Finland, a close and open relationship to the employees is created in order to ensure that any complaints or problems are noted.

There are currently many efforts to improve the quality of recruitment practices of migrant workers to Finland. The Ministry of Employment and the Economy is running a programme financed by the European Social Fund to develop services for the recruitment of migrant labour. The programme aims to develop guidance to migrant workers and employers engaged in recruitment from abroad. A guide on international recruitment to Finland was published in 2012. The guide provides concrete information on how start a recruitment process from abroad, how to choose countries and partners, how to conduct interviews, how to organize work permits and how to settle in Finland.¹⁹ (TEM 2012.)

The strategy for immigration 2020 includes a section on ethical recruitment (Valtioneuvosto 2013, 13). It is not clear from the strategy whose responsibility the preparation of guidelines on ethical recruitment should be and who should monitor their implementation. There is a need for further information and instructions on what is meant by ethical recruitment, how to take into consideration the situation in the country of origin (in order to avoid brain-drain), and how to prevent illegal/unlawful payments. It is also important to avoid bilateral recruitment agreements with countries with poor human rights situation or evident corruption.

4.1.4 Recruitment by relatives, acquaintances and word-of-mouth

THE SECOND MAJOR recruitment modality is through relatives, acquaintances and word-of-mouth. This applies especially to ethnic restaurants, where the recruitment of relatives and friends seems to be intentional and systematic. As one employer's representative pointed out, there is often a close relationship between the worker and the employer, such as the worker being a close relative. This raises questions about the rationale of the recruitment: is it for the purpose of finding needed labour, or to enable the entry into the country of a specific person? One interviewed expert mentioned a case where a person sought asylum in Finland and immediately went to work in a restaurant owned by his relative's restaurant. In addition, as we showed in our previous report, the close relationship between the worker and the employer may increase the worker's dependency on

¹⁹ As regards recruitment fees, the guide notes that even if a partner is reliable, it cannot always be avoided that those seeking employment pay the recruiter for the chance of securing an interview. The guide recommends that as far as possible, such situations should be anticipated through contractual clauses or fines.

the employer, and thus his/her vulnerability to exploitation and abuse.

The recruitment of asylum seekers was mentioned by several interviewed experts. One interviewed police and border guard representative referred to cases that have come to the attention of the authorities which indicate that especially in the case of asylum seekers from some parts of Africa, a specific employment, often in the cleaning industry or restaurant sector, has been organised for them in Finland.

Chinese and Vietnamese restaurants in Finland are examples of organised, systematic recruitment, often of relatives and acquaintances, or of people from the home village, recruited by relatives of the owner of the restaurant. Such recruitment was practiced in a case which led to the second conviction in Finland for trafficking for forced labour. Two Asian restaurants owned by the same couple in Pirkanmaa had recruited several workers from Vietnam. One of the recruited workers said that his family and the family of one of the perpetrators were acquainted in Vietnam, and this is how he came into contact with the employer. The employers claimed that they had repeatedly advertised for open cooks' positions in Finland, but the vacancies could not be filled, so they instead recruited from Vietnam. One of the defendants travelled to Vietnam personally to recruit staff. The workers were promised 500 EUR a month for the first year, and the possibility that their families could join them in Finland after a couple of years. In the end, the workers ended up working for several years for low pay, being controlled by the employer and having little contact with the outside world. (Pirkanmaa district court 29 June 2012; Pre-trial investigation material 8330/R/55534/11.)

Both the interviewed migrant workers and employer's representatives confirmed that in the cleaning sector much of the recruitment happens through word-of-mouth. Other migrants recommend employers or companies to their peers and friends. Friends also recommend one another to employers especially if they have a good relationship with their superiors.

We have a good reputation among employees. Information spreads this way and I think regardless of the nationality, the information moves at incredible speed ... they directly give the number and [encourage] to ask whether there would be work available, and say that I gave the number and I recommend you.

– Employer's representative

R: I've worked in three cleaning companies and they were all through my friends.

AJ: So your friends recommend places?

R: Yeah, they recommend places where they work and where the possibilities are.

– Asian/African worker

The best thing is to use your acquaintances, then it's more reliable. Then that person knows whether to recommend that company or not.

– Estonian/Russian worker

Other migrants also provide information on what are good recruitment practices, and what to avoid.

At first I advise them that when they are going to an interview and it takes place at a café or in a car then this is the first bad sign. If they don't conclude an employment contract then don't expect to be paid. At first ask for the office.

– Estonian/Russian worker

Various NGOs, but also churches and asylum centres also assist migrants in finding work, since it is in the interest of these organisations to assist their clients in getting employment. One interviewed expert mentioned that of asylum-seekers in Helsinki, about 25 % work, most of them in temporary employment in cleaning, in delivering newspapers and in restaurants, especially pizzerias. Such employment is often acquired through other country- men or acquaintances.

The role of middle-level management, who themselves have an immigrant background, as recruiters is evident from the interviews. The middle-level managers possess a lot of power: employers trust them and they may consequently have the right to recruit and hire staff. Often the middle-level managers hire workers from the same ethnic background as themselves. At the same time, the owner of the company may not be aware of exactly how the middle-level managers use their powers, and the possible problems related to this.

The role of middle-level managers in recruitment and as facilitators of exploitation was highlighted in many parts of our data. Some interviewed experts claim that the higher level managers are unaware of what is going on at the lower levels, while others say that the managerial level is well aware of the situation. There were also accounts

of problems or direct discrimination between middle-level managers and workers of different ethnic background.

In the case of cleaners at a bus depot in the Greater Helsinki region, two middle-level managers were in a central position in recruitment. The company did not advertise for new posts but instead recruited workers directly from the reception centre for asylum-seekers, while others were relatives of the middle-level managers and were recruited directly from the home-country. The middle-level managers, themselves of foreign origin, possessed power and privileges, and were in addition to recruitment responsible for guidance and discipline at the work place and were used as interpreters between the owner of the company and the employees. The workers were paid just below the stipulated minimum wage, but there were accounts of extortion in connection with the extension of work permits (see chapter 4.2.2). The two middle-level managers as well as the owner of the company were all sentenced for aggravated extortion (in addition to other offences). The owner of the company claimed that the reason for recruiting the migrant workers was that she was helping people who wanted to have better living conditions, and as such, she was doing them a favour (Pre-trial investigation material 9186/R/61009/09, 276; Vantaa District Court 28 September 2012).

Our data did not provide information on the possible involvement of organised criminal groups in the recruitment of workers to Finland. There was one anecdotal account of a case where one migrant in Finland went for a job interview and disappeared without any contact to his family. This could be an indication that the person may have been kidnapped or fallen victim to a number of serious offences.

Box 1. Estonian workers

THE RECRUITMENT OF Estonian workers shows specific characteristics mainly due to the proximity between Finland and Estonia. Employment opportunities in Finland are advertised in Estonia, but also Estonian workers advertise their available labour. Newspaper advertisements functioned as the main source of information some years ago, but have now been replaced by the Internet. Advertisements on Facebook and other forms of social media were also mentioned. There are also companies that specialise in recruitment, offering both the possibility to place one's CV online, as well as open positions in various countries (see e.g.: www.cvkeskus.ee). Word-of-mouth is an important source of information. Friends and acquaintances with contacts in or experiences from Finland recommend employers. Many of the interviewed Estonian workers highlighted a preference for Estonian-owned companies in Finland. Workers may for instance look online for cleaning companies with Estonian names among management. At the same time, some of the interviewed workers said that Finnish companies might be better than Estonian ones: "an Estonian's favourite dish is another Estonian".

THERE IS ALSO recruitment through large recruitment agencies or employment service companies in Finland. The large companies in Finland usually have local Estonian contacts who recruit workers to Finland on rented labour contracts (an on-call contract with the right to refuse a work offer is common – the person takes

temporary jobs in different companies, such as restaurants, and if a good match is found, then a longer fixed-term contract is made). One employer's representative mentioned that the short distance between Finland and Estonia is both positive and negative: the positive aspect is that the workers are flexible with regard to the employment they accept, but negative because the short distance to Estonia means workers may not commit for long periods of time.

There are really good workers in Estonia, but Estonia is only 70 km away. The threshold to go back is really low. [...] It is cheap to come here from Estonia. They don't risk anything and it doesn't take a lot of investment [on the worker's behalf]. Just pack your backpack and come here. Many have relatives or acquaintances they can stay with. ... That's why it is not so critical for them what kind of contract they get, and if there is no work, they can go back.

– Employer's representative

4.1.5 Recruitment fees and other fees

THE PREVIOUS HEUNI report contained data that showed some examples of situations where migrant workers had paid recruitment or other fees in order to come to Finland (Jokinen et al. 2011a, 69–71, Jokinen et al. 2011b, 82–85). It is clear that the situation has now changed: there are many more accounts of recruitment or other fees having been paid at different stages of the recruitment and the search for work in Finland in both the restaurant and cleaning sectors.

Recruitment and placement fees charged by private employment agencies are prohibited through ILO Convention No. 181 on Private Employment Agencies of 1997. The Finnish law on labour force services prohibits the charging of employment services (Law on labour force services, Chapter 4, section 16) and the Finnish Criminal Code criminalises the charging of fees for employment agency services (Chapter 47, section 6, Employment agency offence).

A recent case in which fees were charged is that of the bus depot cleaning company. The company recruited migrant workers especially among asylum-seekers. Some of the workers testified that they had paid the middle-level manager 1,300 EUR to grant them a job in the company. Having received the job, the asylum-seeker could apply for a work permit. In addition to paying for the position, the workers paid fees to keep the employment and for accommodation. In addition, there was underpayment of wages and threats against the workers. However, the workers did not want to complain because they feared losing their jobs. In this case there was also evidence that some of the workers had been recruited for the work already in their home country, before travelling to Finland to apply for asylum. (Vantaa district court 28 September 2012.) This points to the organisation of (illegal) entry into the country for the purposes of employment, although the workers initially entered the country as asylum-seekers.

As one interviewed representative of the police and border guard explained, there are instances where illegal entry into the country or smuggling is combined with recruitment for a specific employment. In addition to entry into the country, the recruited person is also promised employment. Smuggling organisations are naturally interested in ensuring that their costs are repaid, and therefore a “package deal” including employment may be offered.

NO: To what extent is the organisation of employment part of the activities of smuggling operations?

R: For the professionals, who have elaborate systems, yes this is part of it. This is how they secure the money for themselves. It is 100 % certain that they don't take any risks that the [smuggled] person would perhaps get a job organised. If they can point to a job and then profit from it, then you earn double yourself and in this way secure the money.

– Police and border guard

The representative of the police and border guard argued that there is a clear structure or organisation in such cases, which is compounded if the organisers in the country of origin and country of destination are related and thus act in even closer cooperation. The combination of organisation of illegal entry and the organisation of employment and the charging of fees not only for smuggling, but also for employment, is a phenomenon which may increase in the future.

The phenomenon of charging excessive fees for securing employment in Finland is not uncommon, especially among Asian restaurants (see also Jokinen et al. 2011b, 115–117; 128–129).

In my understanding they are connected so that if a person from China wants to come to Finland to work in a Chinese restaurant, this person has no chance of getting a job in any of the Chinese restaurants in Finland unless he/she pays the employer a handling fee. It seems that this is some kind of cartel or generally accepted [practice]. Everyone here knows that you have to pay this handling fee if you intend to work in Finland. The only difference is how much the employer charges in handling fees.

– Police and border guard

The “handling fee” for securing a job in a Chinese restaurant may fluctuate between 10,000–40,000 EUR according to the interviewed representative of the police and border guards. The fee is not in any proportion to any possible costs actually incurred for the recruitment and/or travel to Finland. Instead, the excessive recruitment fees effectively place the worker in a situation of debt. In one case of a Chinese restaurant operating in Finland, referred to by a representative of the police and border guard, a member of the restaurant owner's family recruited workers in China directly from a school for cooks. All

workers were asked to pay 10,000 EUR in handling fees. They were also told in detail what to say at the embassy/consulate when applying for a work permit, and they then received flight tickets to come to Finland to work in the restaurant owned by the relative of the recruiter. The employees then started repaying the recruitment fee through their labour.

In a similar vein it may be argued that very low wages paid by employers can be seen as compensation for recruitment and hiring costs and thus as an indirect recruitment fee. In the two judgments on trafficking for forced labour in the restaurant sector in Finland, the employees received very low wages (e.g. 500–700 EUR/month the first years in the Pirkanmaa restaurant case, then gradually increasing). (Pirkanmaa district court 29 June 2012; Pirkanmaa district court 18 December 2012). In these cases the employees paid for the “costs” of recruitment through their labour and therefore their wages during the first years were so low.

Interviewed experts maintained that in the Philippines and China it is common to pay recruitment or placement fees very early in the recruitment process. Some placement fees are legal in the Philippines, but also many fraudulent and illegal fees are paid. One interviewed expert noted that such fees place the migrants in a difficult position of debt.

They are up to their ears in debt, when they have first paid some local recruitment company for even being listed as a migrant worker seeking employment abroad. Then they have borrowed the money and it is a debt of honour to repay it. We saw this in one case with cleaning workers.

– Permit and inspection authority

There are also indications that asylum seekers may pay some fees to friends and acquaintances so that they organise employment e.g. in (ethnic) restaurants (see also chapter 5.2.2).

Another form of payment is the re-payment of part of the wages in cash to the employer, which we noted in our previous report (Jokinen et al. 2011a, 96–98). It seems that such re-payment of wages still continues. One of the interviewed representatives of permit and inspection authorities referred to cases where employers have charged fees from Estonian workers, arguing that the repayment is a compensation for recruitment costs or time spent assisting the worker to integrate into Finnish society. The monthly repayment may be for example 200 EUR for helping in taking care of e.g. banking and tax matters, with an additional monthly fee charged for the recruitment. Fees as high as 500–600 EUR were also mentioned by one of the interviewed experts.

Then we have these younger employees, I have noticed this among workers in the cleaning sector. Estonians who have come here to work for a Finnish company, with an Estonian person [in charge] or as the manager. They have to pay some of their wages back. Some specific amounts, for which they are in debt because they got to come here to Finland.

– Permit and inspection authority

As was pointed out by Kask and Markina (2011, 283–283) Estonian labour facilitation companies commonly charge fees for uploading CVs online or other services, which according to Estonian law should be provided free of charge. Also some of the Estonian workers we interviewed had paid fees of 100 EUR to have their CV uploaded on these websites and to get recruited through one of these companies.

R: I paid 100 EUR and sent my CV.

AM²⁰: Did they explain to you what that money was paid for?

R: She said rent was expensive, and phone expenses were quite high, too. She was getting in touch with employees, so she had to pay phone expenses, and sometimes business trips as well. [...] She promised to send me to Norway, then to Sweden to a fish factory. Then she called and said she would send me here [Finland] to do the cleaning.

– Estonian/Russian worker

²⁰ Anna Markina.

Illegal recruitment fees are closely related to fees charged for receiving a work contract, which is needed for registration of EU nationals in Finland or for applying for a work permit if the person is not an EU/EEA citizen, and fees charged for receiving Schengen visas (see also 4.2).

Unreasonably high recruitment fees and the resulting debts are a major cause of making migrant workers vulnerable to exploitation and forced labour. Migrant workers often take out loans to be able to cover the recruitment fees, and in order to pay back, they are willing – or forced – to continue working no matter what the working conditions. Illegal and irregular recruitment practices therefore directly increase the risk of exploitation of migrant workers in the country of destination.

Irregular recruitment practices, including the charging of illegal and excessive fees, are directly linked to trafficking in persons. To

distinguish between “mere” exploitation and trafficking, the International Labour Organisation (ILO) has developed a set of operational indicators to assess whether a specific worker should be considered a victim of trafficking, or as an exploited migrant or a victim of deception and exploitation (ILO 2009). With regard to recruitment, the ILO identifies three conditions that may indicate a situation of trafficking: deceptive recruitment, coercive recruitment and recruitment by abuse of vulnerability. In addition to recruitment, the ILO has identified exploitation and coercion and abuse of vulnerability at destination as indicators of a potential situation of trafficking. Depending on how many elements are present in the situation, and how strong these elements are, an assessment may be made of whether a person is a victim of trafficking, or of exploitation.

The strongest indicator of deceptive recruitment is that the worker has been deceived about the nature of the job, location or employer. Other, medium-level indicators include deception about conditions of work, content of the work contract, housing and living conditions, legal migration status, travel and recruitment conditions, and wages (ILO 2009). Coercive recruitment include violence as its strongest indicator, followed by abduction, confiscation of documents, debt bondage, isolation, confinement or surveillance, threats against the victim (of denunciation, of violence), violence against the family, and withholding of the victim’s money. Indicators of recruitment by abuse of vulnerability include abuse of the worker’s difficult family situation, illegal status, lack of education or language, or lack of information, control, providing the victim with false information about the law, the attitudes of the authorities, or successful migration, psychological and emotional dependency, personal situation, as well as the general context of the person. (ILO 2009.)

Following the ILO model, indicators of deceptive recruitment can be found in our data. These are mostly related to medium-level indicators such as deception about terms of employment, wages and working hours which differ from the promises made during the recruitment process. Also vulnerability of the worker’s difficult position in the home country (e.g. debt and family situation) may have been exploited when the job offer was made. The ILO indicators, however, do not include fraudulent, excessive or illegal payments as an indicator of possibly deceptive or fraudulent recruitment. As indicated above, however, it is clear that such fees increase the risk of exploitation of migrant workers. The higher the debt, the more vulnerable the workers are to exploitation and trafficking.

4.2 Work permits

IT HAS BEEN established that so far in most cases the identified victims of labour trafficking and persons who have encountered labour exploitation in Finland have possessed the necessary workers' residence permits or other legal grounds for staying in the country (Jokinen et al. 2011a).²¹ The current permit system requires that a migrant wanting to work in Finland must first find a job and then apply for a first permit which is valid for a year after which an extension permit must be applied for. Before granting an extension permit, the authorities check whether the promised terms of employment have been met and whether the migrant has earned enough to cover the minimum income in his/her sector of work.²² Also the assessment of available labour is made in many sectors (see chapter 3.1).

We have highlighted the different problems and challenges related to the process of issuing work permits in our earlier study and will not thus go into such detail here (see Jokinen et al. 2011a, 73–75). Instead we have approached the question of work permits from the point of view of recruitment, prevention and the desperation that many migrants feel about needing to stay in Finland at no matter the cost.

4.2.1 Recruitment and work permits

GETTING A WORK permit is a very lengthy process for both the employer wanting to recruit a migrant worker and for the workers themselves. After amendment of the law, the migrants must now apply for the permit in person, which means that employers cannot apply for the permits on their behalf (Aliens Act 631/2011). The application must be made at the Finnish embassy/consulate where the applicants are also interviewed. Applying for the first permit is also quite expensive, since it costs 500 EUR. It was mentioned by several experts that this is potentially a risky endeavour in terms of costs for an applicant who has to finance his/her travel to another country to visit a Finnish embassy/consulate and pay the fee of 500 EUR for the permit when they cannot be certain that they will actually receive the permit in the first place. If the employer pays for such expenses, the employee is already in debt when coming to Finland, which makes them especially dependent on the employer and potentially exposes them to exploitation (e.g. Jokinen et al. 2011a). On the other hand if the employer does not help cover such costs, it is quite common that prospective migrant workers borrow money from family, friends or the bank, which again causes pressure for the migrant worker to pay back the debt as soon as possible.

According to the interviewed experts, getting the work permit may take up to 6–9 months. There is currently no maximum time

²¹ This does not apply to EU/EEA-citizens or Swiss citizens who do not need work permits to work in Finland.

²² The minimum wages are 1134 EUR/month if there is no collective agreement in the sector of work. Otherwise the minimum income is calculated based on the sector-specific collective agreement. For example, the minimum in the restaurant sector is 1558 EUR/month and the minimum for cleaning work is 1340 EUR/month. (PAM & MaRa 2012; PAM 2011).

limit how long this may take. Interviewed employer's representatives mentioned that this is a major problem for the employers interested in hiring migrant workers. The same problems exist when the worker applies for an extension permit. One interviewed employer described the permit confusion as a jungle where no one provides the employer with information on how long a person can continue working with the first permit when they have applied for an extension, or whether their application might have been refused.

One problem is [...] that when their resident permit expires and they bring us the certificate that they have applied for a new permit before the old one has expired. Then according to law they have the right to work in Finland, but for how long? [...] Getting a new permit may take half a year, 8 months, a year. How can we know if this person has gotten a negative decision? We have made this decision after asking from a lot of different places and getting a lot of answers that such a certificate is valid for us for half a year. After that you have to bring a certificate with a new date that the issue is still ongoing. Like I said, this is quite a jungle.

– Employer's representative

According to law, the first permit is valid until a decision on the extension permit has been made, if the application has been filed before the first permit has expired (Aliens Act 631/2011). Similarly, the first permit is valid even if the application for an extension permit has been refused, if you have appealed this decision within 30 days of its issuance. (Ibid.) A work permit issued by another EU country is not valid in Finland. This practice had, however, caused confusion for some of the interviewed employers.

4.2.2 Exploitation with work permits

BOTH EXPERTS AND victims of exploitation have highlighted the potential for exploitation when it comes to work permits (see also Jokinen et al. 2011a, 74). Because the residence of migrants in Finland in these cases is dependent on them having a job, they are very much dependent on their employers who seem to exploit this dependency quite blatantly.

A residence permit is a lever. If you don't have permits, if you don't do as you're told, then you're out of here. I think it's like a shackle.

– Police and border guard

They are stuck with those companies, because in order to live here you need to prove that you are still working, so the employer is their only way to stay in the country.

– Asian/African worker

Even though most migrants have such work permits that do not tie them to a certain employer and only to certain sectors, there is some confusion about this.²³ Based on our interview data, migrant workers are sometimes given false information about their work permits by their employers, for example leading them to think that they cannot change jobs even within the same sector. It is also important to note that if migrant workers who have sector-specific work permits want to change jobs between different sectors, they need to apply for a new work permit which again takes time and patience. It may in some instances also be unsuccessful, as was explained by a migrant service provider.

The immigration police may demand, because their first residence permit was based on this particular company, that when they went to renew they are expected to come with a contract from that same company. They may be denied or the whole renewal of their residence permit may be dropped because of the change of company.

– Migrant service provider

²³According to the Alien's act, work permits for migrant workers are usually sector-specific, and workers may freely change jobs within the same sector (see also Jokinen et al. 2011b, 90–91).

Finding a full-time job that is not below the minimum income level for getting an extension permit is not necessarily very easy and the exploitative employers know this. There are several examples in our data of how the employers for example make the migrants work up to 12 hours a day, even 7 days a week, but only pay for 37,5 hours a week without any compensation for overtime or extra pay for evening, night and weekend work (e.g. Pirkanmaa district court 29 June 2012; Pirkanmaa district court 18 December 2012). This practice was mentioned as being common especially in ethnic restaurants, including kebab restaurants and pizzerias. It is, however, almost impossible for the permit authorities to catch these kinds of cases when everything looks to be in order on paper.

Of course we see, if we know that some restaurant is open seven days a week from lunch time until late in the evening. And every month the wages are exactly the same minimum as in the collective labour agreement, then we get suspicious that is this person really always just working in the morning shift? Then we contact the labour inspectorate that can check this out and see if everything is okay there.

– Permit and inspection authority

Exploitation with the number of working hours seems to be another variation of this. Many migrants seem to struggle in getting enough working hours in the week since they have flexible working hours in their contract (see also chapter 5.1.3). If the migrants do not get enough working hours, they do not get an extension on their work permits because the minimum income has not been met.

The employer knows that their residence permit is dependent on their job. If they go somewhere to complain, then they don't get enough hours and then certain authorities start to inquire whether you have a valid visa for being here.

– Trade union representative

A matter of concern is that interviewed migrant service providers mentioned that there are also migrants (including undocumented migrants) who work for free for months hoping to get a work contract, so that they can apply for a worker's residence permit in the first place. Such people are thus working without a contract or even wages just so that they could first get a contract and then apply for a residence permit.

The situation is sad, because the person will need a work contract to apply for the work permit so they are willing to do anything in that sense so that they will get the work contract or to apply for the work permit. So it doesn't matter for how long the person has to stay in that situation just hoping that well, I will get a work contract and then if I apply for the work permit then I can look for other areas within the job. So most of the ethnic employers they are able to take people without a work permit, because there is an immigration demand, this contract before giving you the work permit.

– Migrant service provider

It was suggested by some experts that there are some instances where the migrants have had to pay for work contracts, so that they could apply for a work permit. It is unknown whether persons buying contracts ever work for the employers issuing such job contracts. It was also mentioned that asylum seekers who have had their application rejected are also potentially a very vulnerable group to such form of exploitation. Migrants wanting to stay in Finland may thus need to pay for getting a job (which can be considered also a variation of a recruitment fee), work for free before getting a job contract, or have to agree to lower wages or returning some of their wages back to the employer in order to pay back their debt for getting a job and subsequently the work permit.

In a way, this is encouraged by the system. Getting the work permit is conditional on having a job first. So when you are told that you have to have a job first, then people go to get a job without a work permit. This is what the authorities are encouraging. Because of this system, people end up working without a permit and with less pay or bad conditions.

– Migrant service provider

According to interviewed experts, there are at times cases where the papers indicate that a person has worked for months or even years without a work permit. In such cases, both the employer and employee are fined for a work permit offence. Issuing a work permit is a separate matter, and so it does not necessarily mean that the person who has worked previously without a work permit would have their application rejected, according to an interviewed member of the police and border guard. Similarly also in Sweden, there have been cases where migrant workers have had to pay for work permits (LO 2013, 27–28; Vogiazides & Hedberg 2013).

4.2.3 Disclosing exploitation when applying for an extension permit

WHEN IT COMES to prevention of labour exploitation and trafficking for forced labour, it is highly problematic that the victims of such exploitation rarely disclose their experiences to the authorities when applying for an extension to their work permit after having worked in Finland the first year. The application for an extension permit is submitted to the police in person. This could be an opportunity to disclose exploitation encountered. It is, however, not necessarily in the best interest of the exploited migrant worker to report any of the problems they have with their employer, such as having to return part

of their wages in cash to the employer, because they would be risking their residence permit and thus the ability to stay in Finland.

The interviewed police and border guard representatives openly admitted that the migrants rarely trust the authorities with such information unless they are ready to quit the job altogether or are at the limits of their strength. Migrants are often afraid of the authorities and gaining trust is difficult and time-consuming.

We don't hear about these cases [of exploitation]. We can see what we can check, the total wages from their bank statement that is how much they're paid and the job contract, what it reads. We don't know how much the person works in reality. They don't tell us about that. For them, getting the residence permit is more important than telling [us]. Only a very small proportion of people who are already totally psychologically and physically exhausted come and tell us that they have been exploited.

– Police and border guard

The language issue is another major hurdle in disclosing experiences of exploitation when applying for an extension permit from the police. Many victims of the most serious cases of exploitation that have been detected by the authorities do not speak any languages other than their own mother tongue. It was explained by an interviewed police and border guard representative that in principle the police can offer services in English, Finnish and Swedish, and if a person is unable to understand any of these languages, they should bring their own interpreter when submitting a residence permit application.

When you come to submit a residence permit application, you yourself must bring an interpreter if you don't understand any of these languages. So they themselves must bring that person who explains what they want at the counter.

– Police and border guard

Only if the police decide that they need to interview the person in more detail about something in their application, i.e. carry out a permit investigation, will they provide a registered interpreter for the hearing. It is of course very problematic if the migrant worker's employer acts as an interpreter in a situation where the worker is applying for the extension. This has been also recognised by the immigration police as a red flag of a potentially problematic situation.

Many times these [employers] want to come to interpret, but we always take an outsider, so that we can make the situation as objective as possible.

– Police and border guard

Instead of disclosing their experiences to police or other authorities, many migrant workers facing exploitation seem to be willing to suffer the poor working conditions and terms of employment for five years, after which they can apply for a continuous residence permit (see also Jokinen et al. 2011a, 74). This strategy also came up in the interviews with migrant workers.

These people stick to the job and therefore, they shut their eyes to a lot of things. Everybody hopes that if they suffer for 5 [years], get a residence permit for themselves, and they will have everything going in another way.

– Estonian/Russian worker

Several of the interviewed victims mentioned that they are surprised that people who have a criminal record or have a poor financial record are allowed to establish their own companies and employ workers who then end up in difficult situations because of poor or missing wages. It was mentioned in the expert interviews that perhaps the authorities should more rigorously check the backgrounds of those who seem to mainly hire foreigners. As regards the issuing of work permits, the interviewed authorities said the background of the employer is usually checked in detail only in very suspicious cases and even then they have the right to check only certain things from registers (e.g. tax debt, credit problems, insurance). The authorities can see whether the employer has been banned from business operations, but other potentially questionable practices of the employer are not necessarily identified if the worker does not disclose this. Such details do not necessarily affect the decision whether or not to grant the worker a residence permit.

If you have a tax debt or an employer has committed crimes, it does not necessarily mean that you can't hire someone to work for you. Of course if you have a business ban, then of course not. But otherwise, if you have for example been found guilty of human trafficking, but all the terms of employment are okay in the work contract, then sort of we don't have grounds [to refuse the application]. If all the documents submitted look okay, then we have to grant the permit. Of course we investigate and clarify. It's not like working in an assembly line, but we must familiarise ourselves that everything is in order for granting the permit.

– Police and border guard

The authorities do keep some records of suspicious employers, but if the employer corrects their practices on paper, there is no reason not to issue a work permit for a migrant they employ if the terms of employment seem proper on paper and no other documents (like the migrants' bank statements) prove otherwise.

Of course it is very problematic from the point of view of the worker that if such details are identified, the worker's application is refused, but nothing happens to the employer who has exploited the worker in the first place. It is thus the victim who suffers while the employer can continue their exploitative practices and recruit new people to be exploited (see also chapter 6.2.3). This is of course a very questionable consequence of prevention. It would therefore be important to identify such cases when the first permit is under consideration, and not when the worker is already in Finland and has already been subjected to exploitation. As a preventative action it would also be important to give the workers information about the Finnish standards and terms of employment when the extension permit is applied for.

From the point of view of prevention, encouraging migrants to report the exploitation they encounter would be very important. Why, however, would the migrants disclose the abuse if all they can be offered is rejection of their application for a residence permit and they lose their job and right to stay in Finland?

5

The grey economy and exploitative practices in the cleaning and restaurant sectors

The exploitation of migrant workers usually takes place within the larger context of the grey economy and clandestine practices which exist in many sectors. The tax authorities define the grey economy as a practice of organisations to abdicate their legal responsibilities such as payment of taxes, obligatory pension-, accident- and unemployment insurance, or custom duty fees.

A TYPICAL EXAMPLE of the manifestation of the grey economy is irregularities in the payment of wages, e.g. the payment of wages without tax (undeclared labour), wages below the minimum wages, non-payment of obligatory extra pay for evenings and weekends, or the payment of wages for only a certain number of hours although the worker worked many more hours. Especially in the ethnic restaurant sector there may be many more workers actually working in the restaurant, while only a few persons are registered as official employees.

This chapter first presents problematic practices in the cleaning sector, including views first of the employers and then of the migrant workers themselves. In the latter part of the chapter we present exploitative practices in the restaurant sector, especially ethnic restaurants. The focus, however, is on the cleaning sector, since the most of our interviewees discussed this sector. This is due partly to the fact that we could not locate and interview employers of ethnic restaurants, or other (largely unorganised) restaurant entrepreneurs.

5.1 The cleaning sector

IN THIS CHAPTER we first contextualise the exploitation taking place within the cleaning sector in terms of extreme competition and sub-contracting chains, and analyse the factors that facilitate exploitative practices. We then examine in particular the experiences of migrant workers, with a focus on the different contracts in use and how

migrants struggle in balancing their either too small or too big work load and scale of work.

5.1.1 Extreme competition

IN FINLAND, THE grey economy, i.e. undeclared turnover, wages and revenue in the real estate, cleaning and security sector amounts to almost 26 million EUR annually, with most illegal practices taking place in smaller companies. Undeclared wages amount to almost 15 million EUR. (Hirvonen et al. 2010, 37.) The illegal practices include e.g. use of undeclared and undocumented workers, underpayment of wages, non-payment of obligatory extra pay for weekend, evening and overtime work, as well as overlong working days with no rest days in between (see e.g. PAM 18 May 2012; Riihijärvi 2013, 25).

The cleaning services, especially in municipalities, have increasingly become the focus of competition. As the cleaning companies aim to increase their profits, the result is a reduction in the time and cost allocated to the work to be performed, and thus a reduction in the level of wages of cleaners and a tightening of their working conditions (Tarkkonen 2010). As in the restaurant sector, the wages and personnel costs make up the main share of the costs of cleaning services. It is thus evident that if savings are needed, they will be taken from the workers' wages, and thus also from how the work is dimensioned. As a result, the time allocated to carry out certain cleaning is often underdimensioned in order to press down the overall cost of the cleaning. This problem of underdimensioned cleaning contracts was highlighted by the interviewed trade union representatives and also by one employer's representative.

It's true that at this moment big cleaning companies make bids at prices that are impossible to fulfil.

– Employer's representative

Several interviewees mentioned that the cleaning services are nowadays structured so that the basic cleaning is often offered at cost, which creates little or no profits for the cleaning company. The profit is instead made through offering additional elements, such as special cleaning or even security or reception services.

Another problem identified by our interviewees is that those buying the cleaning services often focus only on the price, and do not always fully comprehend what exactly is included in the bid (especially if the basic bid offers only very basic services). Several experts questioned this practice of always preferring the cheapest bid instead of assessing also other elements.

The cheapest bid is always the one where the area to be cleaned has been reduced. The one who accepts this offer usually sits somewhere else than where the cleaning is carried out. The person just looks at the bottom line.

– Trade union representative

Another trade union representative blamed the employers for the cheap bids, which place undue pressure on the employees, but also blamed those who choose the cheapest bids, thus placing employers in a position where the cost-cutting is ultimately taken out of the wages of the workers.

I claim it's the greed of the employers. The wish to do the work as cheaply as possible. The work and the targets are put up for bids a lot. Often the cheapest bid is the best and it's taken. But where does the cheapness come from, the employer seeks savings from the employee's wages. The other permanent costs are so permanent that the only flexibility is the wages. When you pay less you save and get contracts.

– Trade union representative

Also the employers' side calls for more responsibility among those buying cleaning services. Those responsible for the cleaning contracts should understand what they buy and what they pay for.

The clients should understand that you need to buy also on other [dimensions] than the price. If you want quality, it's worth paying more. When there's more money, it has positive effects also on the workers' working conditions and level of wages. [...] A huge problem is that the procurement expertise among customers is insufficient. They don't understand what they buy, what they want to buy, at what price that can be offered. That's a major problem

– Employer's representative

This view is confirmed also in a study of the cleaning sector, according to which especially public organisations are largely still unable to consider factors other than the price in tenders and procurement (Tarkkonen 2010, 79).

A major structural change in the cleaning sector has occurred also with regard to when the work is carried out. Cleaning work is no

longer carried out during the day or evening, but often in the mornings, in the evenings or at night.²⁴ This places a burden on the cleaning companies, when customers want the cleaning to take place exactly at the same time, meaning that a large labour pool is needed for these few hours. This affects the working contracts and working conditions of the cleaning workers, as we will show in subsequent chapters.

5.1.2 Subcontracts and long chains

ANOTHER ISSUE THAT emerged in the cleaning sector is the use of subcontracting chains. The practice resembles that in the construction sector (Lith 2010b), where the winner of a tender may subcontract parts of the tender to another company, which in turn subcontracts it to another one. Problems arise when the subcontractors provide services clearly under a reasonable payment level, again affecting the wages and working conditions of the employees ultimately carrying out the work.

The provision of overly cheap deals seems to be a practice that in particular small cleaning companies owned by immigrants in Finland engage in. This theme was often mentioned in the expert interviews.

When there is a big cleaning company and they sub-contract the jobs to immigrant-owned cleaning companies where there is often only one person, the owner of the company is the cleaner. So he is getting a sub- contract and so they are reducing the prices in this way and the big company gets a certain margin and then the one person who has his own company gets a smaller amount and then maybe again saying that ok I get as much and as many contracts as I can. Suddenly he is having too many and then again sub-contracts to someone else, you can do this and I can give you this. Again the price goes lower and lower.

– Migrant service provider

Several of the interviewed migrant workers had experienced similar situations where the work was contracted on to the next company in the chain, minimising the wages of the migrant workers at the lowest level of the chain.

²⁴ However, cleaning work has traditionally also been carried out at night, but night-time wages are more expensive for the employer. Early morning work (6–8am) is cheaper for the employer because no extra wages have to be paid.

He passed the work on. But he already took a bit of the money from in between. Then the next one took some money. There was nothing left for the workers. Everybody wanted a big bite out of it.

– Estonian/Russian worker

A trade union representative mentioned a situation in which the main contractor sold the work to a subcontractor. The workers did not know that the service had been sold to a subcontractor, and ended up receiving no wages although they in effect continued to carry out the work. In addition to the poor wages and working conditions at the end of the subcontracting chain, there are also problems of the main contractor not knowing who ultimately carries out the work. An employer's representative had negative experiences using subcontractors in cleaning work. Despite strict agreements regarding the conditions of subcontracting and lists of workers to be used by the subcontractor, there were instances when the subcontractor had further subcontracted the work to another company.

There were chains [of subcontracts]. We couldn't know who were working there or how wrong they were treated.

– Employer's representative

This particular employer consequently decided to stop using subcontractors, as they could not be assured of the conditions under which the workers were performing the tasks. Another company that decided not to use subcontractors is HOK-Elanto, a major co-operative corporation (see Box 2). One of the reasons is the major challenge in ensuring proper oversight of such subcontracting chains.

Box 2. HOK-Elanto

THE HELSINKI COOPERATIVE Society Elanto (HOK-Elanto) is a retail co-operative owned by 560,000 customer-owners in the Greater Helsinki region. HOK-Elanto operates in the Greater Helsinki area with 300 stores, and is one of the largest restaurant operators in the Nordic countries (www.hok-elanto.fi). The cleaning of all the stores has been outsourced to cleaning companies. As of the beginning of 2013, HOK-Elanto has decided that none of the contracted cleaning companies are allowed to use subcontractors in HOK-Elanto's stores. The reason for this ruling is that during earlier occasional inspections, instances were identified in which the cleaners actually working in the stores were not listed among the employees of the subcontractor. In addition, there were problems with the documentation required by the Act on the Contractor's Obligations and Liability when Work is Contracted Out. Due to these problems, HOK-Elanto decided to completely ban the use of subcontractors. (PAM 17 August 2012.)

THE ACT ON the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) stipulates that the contractor is obliged to check certain aspects of the subcontractor before entering into a contract.²⁵ The obligation to check these elements of the subcontractor only covers the first level of a contract, i.e. the contractor is not obliged by law to also check possible subsequent subcontractors hired by the first subcontractor (see e.g. Hirvonen et al. 2010, 5). There has been discussion on whether or not the contractor's liability should in fact cover the whole subcontracting chain, with references made to the Dutch model that covers the whole subcontracting chain (HS 1 May 2013). Such a model was called for also by one of our interviewed employer's representatives. Another interviewee felt that it would be important that at least the chains are as short as possible.

As short chains as possible - that would be good in terms of oversight. Then we would know who implements the contract. The contractor is responsible for the functioning of the chain in the end.

– Permit and inspection authority

²⁵ These include proof of registration with the tax authority, with the Employer Register, and the VAT Register; provision of an extract from the Trade Register; a certificate of tax payment or of tax debt; certificates of pension insurances taken out and of pension insurance premiums paid; and an account of the collective agreement or the principal terms of employment applicable to the work.

THE OCCUPATIONAL SAFETY and Health authorities have special inspectors who check these documents and who can give so-called negligence fees if there are breaches (in line with sections 9–12 of the Act). One interviewed permit and inspection authority representative mentioned that such a fee can be ordered for instance if the cost of the subcontract is severely underdimensioned. However, it is sufficient that the subcontractor provides documentation regarding what collective agreement is followed in the payment of wages, but no proof of the actual payment of wages – or the amounts – is required by law. In practice, then, the employer may pay the worker wages that differ from what has officially been announced. Such misuse may be intentional but it may also be unintentional and caused by ignorance. This was pointed out by one interviewed permit and inspection authority representative.

The most important is that does the employer of the subcontractor understand him/herself what s/he has informed us. One should add a paragraph that the subcontractor should clarify what collective agreement is followed and how much wages the workers are to be paid. What does this mean.

– Permit and inspection authority

An employer's representative mentioned that they had required documentation beyond what is demanded by law, but that all documentation is easy to falsify and does not provide any guarantee of what happens in reality. Of the 700–900 annual inspections carried out by the Occupational Safety and Health authorities inspectors, in about 50 % there are some problems with the documentation (Harmaan talouden selvitysyksikkö 2012, 5). There is also a website (tilaajavastuu.fi), which provides a service for companies wanting to check their subcontractors. The website provides the necessary information for a fee, and companies can also sign up on the website as “trustworthy partners”. However, this website was also criticized by an employer's representative, since a green tag indicating that the company is a “trustworthy partner” does not guarantee that everything is in fact in order.

5.1.3 Zero contracts and part-time work

THE CLEANING SECTOR employs many migrant workers particularly in the Helsinki area. The cleaners are often third-country nationals, particularly asylum seekers and students. (Riihijärvi 2013, 25.) There were many references in the expert and migrant worker interviews to the different types of work contracts and the amount of work listed in them. Many migrant workers seem to struggle with different

variations of part-time work contracts and the lack of enough working hours to be able to earn enough money for their up-keep. This seems to be especially true when it comes to different branches of the service sector where part-time work is quite common in general (TEM 2013).

As has been already established above, for example in the cleaning sector the cleaning companies have had to allocate their work force more carefully due to increased competition over prices, so that they can manage to navigate between the number of commissions and the number of employees as flexibly as possible. This has been done by hiring part-time labourers with different, more flexible work contracts. (Verohallinto 2013, 3.)

Lilja and Savala (2013, 18–19) note that 39 % of employment contracts in the hospitality, restaurant and leisure sector were part-time contracts in 2007–2010 and that the proportion of part-time contracts has increased in recent years. The same study concludes that only 6 % of work contracts in the cleaning sector were part-time (Ibid.) However, the data concerning cleaners used in the calculations does not include the types of contracts that are hour-based (wages are paid based on the number of hours worked) and only includes data on cleaners with fixed monthly wages (Verohallinto 2013, 3). Thus the proportion of part-time contracts used in the cleaning sector is much higher in reality.

Huotari and Pitkänen (2013) surveyed temporary agency workers and their employers in a study commissioned by the Ministry of Employment and the Economy. Among the surveyed workers (N=3,024), 16 % had so-called zero contracts where the working hours were not fixed and no minimum amount of work was guaranteed in their work contract. 69 % of the workers with such contracts worked for 0–20 hours per week. Such contracts were most common among persons aged over 60 or under 20 years of age. (Ibid., 33–34.)²⁶ Unfortunately, no mention of the ethnic background or migrant status of the respondents can be found in the study. It would be interesting to see whether such contracts are more common among migrant workers than among Finnish citizens since there are many signs of this in our data.

In particular migrant workers working in the cleaning sector may have work contracts that list their hours of work as being from zero to 37,5 hours a week or from zero to 20 hours a week, for example. So called zero contracts demand ultimate flexibility from the workers; they can never be sure how many hours they work in any given week. They could work full hours one week and have no hours in the next. It has also been decided that no work permits are to be granted to a person who only has a zero contract. In fact work permits are granted to migrants working from outside the EU/EEA countries in the cleaning

²⁶ Students and older (e.g. retired) persons can of course benefit from the ultimate flexibility of the zero contract, as it enables them to take as much or as little work as their life situation permits. Unfortunately, for many migrant workers the zero contracts are the only possibility for gaining some employment. In their situation, the flexibility is not a choice, but it is imposed on them due to their more vulnerable position (see e.g. Könönen 2011).

sector only if they have a full-time (37,5 hours a week) and continuing contract and their wages are aligned with the collective labour agreement within that sector (Uudenmaan ely-keskus 2012). Migrants with so-called zero work contracts are thus usually already in the country on some other grounds e.g. as students or asylum seekers. However, there have been cases where the working hours of migrant workers have been decreased and their contracts have been changed from full-time to part-time contracts.

Interviewed trade union representatives commented that zero contracts make the migrant workers vulnerable to exploitation and bind them to employers in many ways. They listed many problems related to these types of contracts.

R1: Work is flexible, if there's no work, there's no obligation to offer them any and when there's work, then it's done. There's no obligation.

R2: If you're a nasty person, then your hours are zero.

R1: If you have a full-time contract and you're sick, then the employer must pay your wages, but when you have a zero contract, then some one else can do your job instead and the risk is kind of on the employee's side.

R3: I think it's exploitation if you take a large number of employees working small total hours, so that they're all at the borderline of their livelihood. This causes them to fight for the extra hours with each other. Because they have nothing else, they're negatively bound to the firm. Employers don't want few people with full-time contracts so that they could make a living.

– Trade union representatives

As shown in the interview quote, there can be many benefits for the employers if they use zero contracts. They can benefit from the flexibility of contracts in many ways especially with regard to fluctuating amounts of work. It is also easier for the employer to organise the work among part-time workers when the biggest need for cleaners is early in the morning and late in the evening. The use of zero contracts instead of fixed part-time contracts was, however, recognised as being unfair by one of the interviewed employers' representatives as well.

I think that 0–37,5 [contract] is serious exploitation. You oblige the worker to be in constant readiness. You may have zero hours this week and then Monday you're called to come to work today. Of course a person must have other life – otherwise you'd be driven crazy.

Employer's representative

According to the interviewed employer's representative it is better to issue a contract with fixed amount of hours, even if that amount would be quite low, than to use a zero contract. Additional hours could be offered to people with fixed part-time contracts if there was more work in one week than expected or one of the workers is on sick leave.

It was commented further by another trade union representative that cleaning companies have such heavy competition over contracts that they make use of different types of contracts in order to maximise their profits.

It's cheaper for the employers. There's three, four big cleaning companies that compete with each other, they play around with these work contracts. When the cheapest [bid] wins. Zero-contract people can work full-time for three weeks with these contracts and then have nothing.

– Trade union representative

According to the interviewed employers, the system of zero contracts is caused by the demands of the buyers of cleaning services. The buyers want cleaners to clean offices or stores early in the morning when they are empty or alternatively in the evening after the premises have been closed. Also according to trade union representatives, the busiest hours for cleaning are in the morning between 6–8 am when a lot of cleaners are needed, but the need for labour is considerably smaller during the day. Doing the work in the morning between 6–8 am is also the cheapest option in terms of wages, since no evening extra pay need be paid to the workers.

Some sectors of cleaning are especially common among migrant workers. For example, the cleaning of grocery stores or cleaning of passenger ships are sectors within the over-all cleaning sector that in general employ many migrant workers. Often such jobs are the most precarious ones: they have exceptionally short working hours and the work may be heavier than office cleaning, for example. An interviewed employer commented that Finns are not willing to work just for a few hours in the evening. The length and timing of the cleaning of stores is defined by the grocery stores themselves. They expect

the service counters and the premises to be cleaned between 8–10 pm in the evening or between 6–8 am in the morning. An interviewed employer explained that in order to fill that need, a cleaning company may have to employ up to eight people for that two hour period. It is not possible to have one person clean the store for 7,5 hours instead. It was the experience of both interviewed experts and migrant workers that such cleaning jobs are the easiest to get in the first place.

I think the migrants find themselves in those areas, because they don't have other options. Those jobs are relatively easy to get.

– Asian/African worker

An interviewed employers' representative placed some responsibility also on the migrant workers themselves who are willing to sign such zero contracts.

Is it already a bit stupid of the worker that they start to work with this zero contract? I wouldn't dare [to do it] myself if I had a contract like that. I would say that it [the contract] needs to read something else, but can they [migrant workers] demand – that's another question. I don't think it's a problem that such contracts are offered – it's more of a problem if it's not explained what it means. Every one has the right to decide whether they take such an uncertain contract or not. [...] But you must be told that there are weeks with no hours. Are you going to manage? Calculate and think.

– Employer's representative

It is of course a difficult choice between signing a zero contract or having no job at all. Although it is true that each employee should understand the contents of their work contract before they sign it, many of the migrant workers have no other choice than to take the jobs that are on offer, despite the obvious poor working conditions. The interviewed migrant service providers in particular emphasised that migrant workers want to believe that if they show that they are good workers they will get rewarded with more hours and a better contract. For similar reasons migrant workers may even be willing to work for reduced wages or enter different kinds of “internships” or other work trial schemes where they work for free. There is a risk that unscrupulous employers may take advantage of such willingness and make a profit out of the exploitation of “interns” or other unpaid “helpers”.

Box 3. Internships for free

THE PHENOMENON OF "internships" and work trial schemes seem to be quite a common problem encountered by both interviewed migrant workers and migrant service providers. These were reported to take place among the smaller, unorganised cleaning companies as well as in ethnic restaurants. The idea behind such practices is that the employer wants to test whether a person is a good worker and worth hiring. At the same time the employers get free labour out of the arrangement.

So when I went there we had a few days of training, like 3 days. Very long hours. Sometimes we started at 3 till about after midnight. They said it was about training and stuff like that. There were 8 of us and the guy said that after the training period he would choose among those people. So after those days, those long hours he said "ok, I will be selected" and another friend was selected, the guy I was talking to. That was it. Those days we worked, we were not paid.

– Asian/African worker

When we were working there he basically told us first that he would train us for which he will not pay us. Of course we accepted the terms that he gave us.

– Asian/African worker

THE INTERVIEWED EXPERTS had also heard about such schemes in the

restaurant sector where a person might work for free for months in the hope of securing a job in the restaurant.²⁷ In such instances, the motivation of the migrant workers to continue working must be seen from the point of view of their wish to stay in Finland. Thus securing a job could allow them to file an application for a work permit.

There are some restaurants that have this kind of practice that they take a few people to work for free, like 5 people, and say that I take you for 2 months or 3 months to work for free like training and then the best person will get the job. So one of the 5 will get the job there, and then again he takes another 5 people and says the same that you work here for free and one of you get a job and if they are lucky they will be the one who gets the job. It is a kind of a nice offer, but at the same time there is a lot of free labour for the restaurant with that system.

– Migrant service provider

SUCH SCHEMES ESPECIALLY target asylum seekers and undocumented migrants who are very desperate to stay in Finland no matter what the price (see also chapter 4.1.5).

²⁷ Also especially young Finnish students may work for free in restaurants in order to secure a job.

5.1.4 Not receiving enough hours or having too much work – the problem of scaling the work

ONE OF THE biggest problems of migrant workers having zero contracts is the uncertainty of the amount of work offered in any given week and thus having enough income to be able to get by in Finland. This constant struggle in order to get enough working hours was quite a common problem among the migrant workers we interviewed. On the other hand, some migrants seemed to have so much work that they risked serious exhaustion. This issue was also mentioned in the interviews conducted with the migrant service providers.

Some are active and liked it, they do really long hours. Some then work only a couple of hours a few times a week.

– Migrant service provider

The interviewed migrant workers emphasised how many employers evaluate the workers based on how hard-working, diligent and humble they are. It was their experience that migrants deemed to be good workers get a lot of hours while people who have complained or for example refused to take extra work one time struggle with getting more than a few hours a day or per week.

It was so that if you opened your mouth and said that something is not to your [the employer's] liking, then you were immediately influenced through [the amount of] work. You were not given any work until you said to everybody that yes, yes, this is how it should be. Then you got lots of work. But when you said that you are tired and want to leave earlier on that day, then for five weeks several jobs were taken away.

– Estonian/Russian worker.

The uncertainty of work came up a lot also in the study of temporary agency workers by Huotari and Pitkänen (2013). It was the experience of many temporary workers that complaining about having too few hours to work was risky since it may lead to having the hours cut entirely. The surveyed workers also mentioned that they did not know how many hours they would work each day, since they were often either asked to stay longer or go home earlier. Many of the workers mentioned that they were stressed about not knowing whether there would be enough work in the next month and whether they would have enough money to pay their bills. (Ibid., 59–60.)

When it comes to the cleaning sector, another major issue seems to be related to the sizing of the work in relation to the number of hours given to the workers to finish their tasks. Many migrant workers and trade union activist mentioned that in their experience, it is common that the work is overscaled. This is especially the case with hotel cleaning, but is relevant also in many other sectors of cleaning.

Box 4. Hotel cleaning

HOTEL CLEANING IS a special branch of cleaning, which nowadays employs a number of migrant workers, according to interviewed experts. In recent years, the tendency had been to reduce the hours of work the hotel cleaners have available to clean a room to an absolute minimum. According to a magazine of the Service Union United (PAM), hotel cleaners may have to clean up to 20 rooms in just 5 hours. The union has calculated that using the normal pace the cleaners can clean a maximum of 15 rooms in 6 hours, which means that the cleaner walks at a speed of 4,8 km per hour. However, some employers may demand their workers clean as many as 30 rooms in six hours. This means that the cleaner should actually run at a speed of 9,6 km per hour. Thus the amount of work is seriously overscaled in relation to the time it has to done, and many cleaners end up using also their coffee and lunch breaks or even finish the job on their own time, so that they can fill a "daily quota". (PAM-lehti 8 March 2013.)

THE INTERVIEWED TRADE union representatives emphasised that the employer cannot actually say how many rooms a person must clean; they just have work at a normal pace and then go home after the working hours are done, but in practice especially migrant workers stay overtime to finish their work.

There's an awfully lot of Estonian and Russians among the hotel cleaners. The amount of rooms they have to clean during the work day or in an hour is unreasonably large as a result of competitive bidding. You can't really talk about coping with the work load.

– Trade union representative

THE CURRENT COLLECTIVE agreement in the cleaning sector does not refer to the possibility of work being paid as piece-work (by the number of rooms) (Kiinteistöpalvelualan työehtosopimus 2011–2013). This means that the wages of the hotel cleaner cleaning 30 rooms in 6 hours instead of 15 rooms is the same, even though s/he has to work at a double pace. Such developments are the result of extreme competition over the prices of hotel cleaning and the tendency to outsource the hotel's own cleaners to private companies, as was explained by trade union representatives. The employer's representative also emphasised the responsibility of the buyers of cleaning services (i.e. the hotels) who accept the bids with the lowest price without any consideration of factors other than the price.

SEVERAL INTERVIEWED MIGRANTS mentioned that they were given such large areas to clean that it was impossible to finish the work in the time allocated for them.

I knew I couldn't do it in that period of time, but I said ok I needed this job, I can't complain now. So I waited a little bit, I worked for about 1 week and I told the employer that ok I can do this but I need more time. He said if I can't do it then he can find somebody who will do it. So I was like ok that's not a problem.

– Asian/African worker

Complaining about the scaling of work would in this migrant worker's experience lead to losing the job. An interviewed trade union representative as well as some employers' representatives emphasised that the workers are not in any way obliged to finish the job in the location by staying there longer than paid for; they should simply report to their immediate superior that they did not have enough time to finish the work, and go home.

NO: Do they [migrant workers] report?

R: No, they do the work. If you're a bad employee, then you're either fired or you're given such a place [to clean] that they know you're going to resign. They play around with that.

– Trade union representative

As comes up in the quote above, migrant workers rarely report unfinished work to their superiors. In fact, not only do the migrant workers do some of the remaining work in their own free time, they ask their family members, friends or even children to help finish the work, so that they could keep the job and be considered as hard-working and good employees. Such practices were mentioned by the migrant workers themselves as well as interviewed experts.

I've noticed that they ask their relatives to help, or kids, spouses. They come and help because having the job is most important. They want to hang on to it. [...] Just today I had a case where this employee's friend came to help her/him, and he/she gave some of the wages to her. Just so that this person was able to do the job.

– Permit and inspection authority

A variation of this phenomenon was discussed also in a wider context of exploitation. There are some signs that migrants employed in the cleaning sector might pass on their own work duties to their friends or other contacts. They might organise the work so that their friend would do some of their shifts in case they themselves were sick or had something else during that particular time.

My friends would be working somewhere and then they would take some days off and said [to me,] ok go and work in my place. Of course it was illegal, but then what am I supposed to do. So that's how I would survive for one year.

– Asian/African worker

Also at least one interviewed employer had encountered some examples of this. This came up when a stranger was found cleaning a location instead of the person who was hired to there. To prevent such instances, the employers of organised cleaning companies have issued identity cards with pictures and taxation number to their employees, so that an outsider could not be mistaken for an employee. This also the policy required by the employer's union (see also chapter 6.2.5). A similar practice has been mandatory in the construction industry since 2012, according to law (1231/2011). The mandatory tax number was introduced in order to combat the grey economy in the construction sector (Vero 2012).

In situations where someone else carries out the work on behalf of the contracted employee, at least some portion of the wages would usually be paid to the "friend" doing the work, but there is still

a risk of exploitation present. Interviewed migrant service providers had also heard of instances where the entire job was passed on to a paperless, undocumented migrant with considerably lower wages. Such instances have also been reported in the media (YLE 17 February 2013; YLE 7 September 2011).

Box 5. Undocumented migrants

UNDOCUMENTED MIGRANTS ARE a group of people who are extremely vulnerable to labour exploitation due to their difficult status. There are some estimates that the total number of undocumented migrants in Finland fluctuates between 2,000 and 4,000 persons, but generally many sources indicate that the size of this group in Finland is smaller than in many other EU countries. (YLE 17 February 2013; YLE 7 September 2011.) The term undocumented or irregular migrant refers to people who are staying in the country without a valid residence permit. They can be people whose previous residence permit or tourist visa has expired or who have arrived in the country through unofficial channels or via a human smuggling organisation, for example (e.g. Al Omair & Heikinheimo 2013). Technically also EU citizens can become irregular migrants if they do not register their stay in Finland with the local authorities within the first 3 months of their stay. It is important to note that paperless migrants are not only those who have been explicitly smuggled into the country, but also a regular migrant may become an undocumented migrant simply due to the expiration of his/her legal permit to stay in the country.

AN INTERVIEWED REPRESENTATIVE of the police and border guard mentioned that the number of undocumented migrants may be increasing in Finland. This would primarily be due to the poor economic situation in Southern Europe.

It's purely because things are not good in Southern Europe. Greece, Italy, Spain etc, they don't have jobs even for these irregular migrants. They deport them saying you have one month to get out of here. [...] So when these guys are wanted [by the police], and they have no grounds for staying in the country, they come up here in the North. Sweden, Finland, Norway, these are the countries they want to come to.

– Police and border guard

THE INTERVIEWED EXPERT further elaborated that such people know that it does not make sense for them to seek asylum in the Nordic countries because they would only be returned to their first country of entry into the EU due to the so-called Dublin II regulation²⁸ (Council Regulation (EC) No 343/2003). Therefore, such people do not even seek asylum but try to find any jobs available in order to sustain themselves and their families.

They are left there as so-to-speak unknown persons and you would think that exploiting them is super easy. All you need to do is say "I'm going to call the police, are you going to do that job or not?" So it's a big lever. You don't even have the chance to complain anywhere.

– Police and border guard

UNDOCUMENTED PERSONS ARE often willing to do any work and explore many possibilities of finding work (e.g. YLE 17 February 2013). They try to find work among various networks, especially among their own countrymen or persons with a similar ethnic background. It was mentioned by interviewed migrant service providers that they had encountered instances where an undocumented migrant does someone else's job for only a fraction of the wages that they should be receiving.

²⁸The regulation is based on the principle that only one EU Member State is responsible for examining an asylum application. The objective is to avoid asylum seekers from being sent from one country to another, and to prevent abuse of the system by the submission of several applications for asylum by one person. Council Regulation (EC) No 343/2003.

Then there are cases where an undocumented person is doing the job permanently when another person gets their wages and this undocumented person gets just a fraction of the wages, some pocket money. Then this person who has the contract can take another job. They can take many jobs and just find undocumented persons to do the actual work.

– Migrant service provider

AN INTERVIEWED EMPLOYER'S representative mentioned that it is difficult to monitor whether a person who has signed the contract actually does the job themselves and that such problems could occur in instances of sub-contracting, where the cleaning contract is sold to another company or entrepreneur.

SIMILARLY, A DANISH study on exploitation of migrant workers in the cleaning sector reveals two cases where undocumented migrant workers of African origin paid a middleman to "lend" them a European identity. Through this identity they received a Danish personal ID number, which enabled them to seek employment in Denmark. The two interviewed workers explained that they paid 3,000 DKK/month each (about 400 EUR/month) for the borrowed identity. Through the identity they were able to secure fully legal and contracted employment in a big cleaning company. (Mygind Korsby 2011, 31–32; 41.) Also the Finnish police have, according to media sources, found undocumented migrants working in the cleaning industry (YLE 17 February 2013).

IN SOME INSTANCES, it seems that the migrant workers get certain basic wages based on fixed amount of hours no matter how long they work in reality. An interviewed migrant worker had encountered such a case where their employer told them explicitly when they started the job that they would be paid only for five hours of work while in reality finishing the cleaning would take up to eight hours or even more.

R: [H]e paid for five hours a day, five days a week.

NO: How much did you in reality work?

R: Sometimes I worked for like 12 hours or 15 hours. Some days I worked for the minimum, so a day it was 8 hours.

– Asian/African worker

In contrast to such migrant workers who were struggling with having too few hours of work, some of the interviewed migrant workers had also been struggling with too many hours of work without any compensation for overtime.

R1: At the beginning everything was normal. But then the boss got greedy and then it was work, work and work. It was all voluntary, at the beginning we also asked for work to do. But if you worked 40 days straight and even more. And when you then ask for a day off, then you are looked at with a blank face and told that you haven't done any work, what day off do you expect.

R2: 12 to 14 hours every day.

R1: There was even more, even 20-hour shifts. The boss was greedy. Did not pay for extra hours. This is how the problems started.

– Estonian/Russian migrant workers

This seems to be particularly relevant also for migrants working in ethnic restaurants who often work many more hours than they are paid for. As was indicated in our previous report, it seems to be a quite widespread practice in ethnic restaurants (Jokinen et al. 2011a; see also chapter 5.2.2). It is of course very alarming if such practices take place in the same cleaning companies – i.e. while others are struggling with too much work, others have too little work to support themselves and their families.

5.2 The restaurant sector

IN THIS SECTION we first contextualise the exploitation taking place within the restaurant sector in terms of the grey economy and undeclared labour and analyse the factors that make exploitation possible.

We then focus in particular on the practices of labour exploitation occurring in ethnic restaurants and discuss the recent cases of labour trafficking and exploitation that have taken place within this sector.

The restaurant sector covers many different types of restaurants and catering services, and includes a large variety of different pubs, ethnic restaurant and fast food restaurants. It has been noted that underpayment of wages is common together with other forms of tax evasion and avoidance of obligatory payments in the restaurant sector in general (e.g. Hirvonen et al. 2010). The lost tax revenues in the restaurant sector are high: according to a report by the Audit Committee of the Parliament, in 2008 the restaurant sector had undeclared, non-taxed revenues of 670M EUR (ibid., 3).

The interviewed employers' representatives emphasised that the problems of the grey economy concern especially the unorganised employers. The organised employers highlight that illegal and irregular practices hinder healthy competition in the restaurant sector, and is thus negative for the whole sector.

Underpayment, working hours violations, that is round-the-clock days and with underpayment of wages. We are very negative about this, because it hampers the operations of our members. It distorts competition. It's a very negative phenomenon.

– Employer's representative

The underpayment of wages and the use of undeclared workers are particularly common in ethnic restaurants, where the low prices directly indicate that the restaurant cannot be making any profits (Hirvonen et al. 2010, 50; Keskusrikospoliisi 2011, 2). The police have noted that often also disturbances of the peace, serving alcohol to drunken customers and other such problems occur in restaurants which engage in practices related to the grey economy (Ibid., 9). Regarding ethnic restaurants, the police note that restaurant sector as a whole has a tax debt of 120–150 million EUR a year. Businesses owned by migrants accounted for 11 % of these tax debts in 2008, while such businesses only accounted 2–3 % of the annual turnover within the restaurant sector as a whole. (Keskusrikospoliisi 2011, 9–10.) The use of undeclared labour and the underpayment of wages in the restaurant sector were reported also in our previous report (Jokinen et al. 2011a). An interviewed expert noted that the difference between the actual costs and the undeclared wages easily becomes very high.

So an hour of work, including all fees, holiday wages and everything is about 22–25 EUR per hour, depending on the restaurant. So if you pay 7 EUR per hour under the table, it makes quite a big competitive advantage.

– Permit and inspection authority

The high personnel costs are seen as the main reason for the existence of illegal practices in the restaurant sector (Hirvonen et al. 2010, 52). The payment of wages “under the table” may thus be attractive especially to smaller restaurants with a small turnover. Such practices have come up in particular in ethnic restaurants in addition to exploitation of migrant workers (see also chapter 5.2.2). To minimise the staff costs and to better react to fluctuating demand for services, many firms in the restaurant sector also employ workers through temporary work agencies. Migrant workers are employed in particular in dish washing and other assisting positions through temporary work agencies who lease them to restaurants.

Box 6. Agency workers

MUCH AS IS the case with the cleaning sector, also within the restaurant sector different forms of zero and part-time work contracts are used. It was mentioned by interviewed experts that many migrant temporary workers have “on-call” or “called when needed” agency contracts, which do not specify any minimum hours of guaranteed work per week. Instead, the workers get a call or a text message when there is work available for them. While such contracts do not oblige migrants to take the job when they are called, interviewed migrant workers mentioned that a refusal to take the offered hours would decrease the likelihood that they would get the best jobs or more calls for work in the future.

I have friends who have those kinds of contracts like “zero to”, many of them. Mostly it’s in the restaurant sector like dish washers, they have “zero to”, these zero contracts. They can just call you and say that today you go to work and maybe next week no work or until they call you.

– Asian/African worker

THE INTERVIEWED EMPLOYERS' representative argues that the use of such contracts is dictated by the nature of the restaurant sector and the fluctuating demand for labour that is caused by the shifts in the daily number of customers.

Due to the nature of the sector, we have people on these "called when needed" contracts, who don't have any agreed hours of work in their contract. They are used a lot in this sector because the demand changes greatly from day to day and in volume. Demand is usually centred around weekends and evening. Then we have lots of sick leaves, have large groups of customers and orders coming to one restaurant, they need staff quickly. We must have this kind of reserve, when it is needed separately.

– Employer's representative

AN INTERVIEWED MIGRANT worker mentioned that dish washing jobs are given to people with a migrant background because the job is hard, the working conditions are poor and Finnish people do not want these kinds of jobs or contracts. "Of course we immigrants have difficulties in having a job, so of course we basically have no choice than to do those", concluded an interviewed Asian/African worker.

5.2.1 Sales without taxes

THE USE OF undeclared labour is the most common manifestation of the grey economy in the restaurant sector, with unaccounted or undeclared sales of food and alcohol coming second and third (Hirvonen et al. 2010, 50). According to an interviewed expert, the sales margin for a restaurant that also sells alcohol should be somewhere around 70–75 %, with wages accounting for about 30 % of the turnover. The same interviewed expert estimated roughly that the lower threshold for a restaurant (open from morning until late at night) should be a minimum of 400,000 EUR in turnover, but a third of all restaurants have an annual turnover of only 250,000 EUR. Part of the explanation may lie in the fact that many owners of small restaurants work long hours themselves without pay, but the other explanation is that restaurants hide their income, i.e. that part of the turnover is never entered into the accounts or registered.

The most common way is that the till is not used at all, or the sale is removed from the till.

– Permit and inspection authority

This interviewed permit and inspection representative mentioned that sales can be removed from the till for example by redirecting card payments from the till to other, unaccounted bank accounts, by using blind accounts and by subtracting amounts from the sales before closing the books for the day. Also other interviewees highlighted sales without receipts as a particularly problematic issue in the restaurant sector.

Selling “outside the till” is probably the biggest [problem], since this is a cash business. This all customers can see for themselves in certain restaurants.

– Employer's representative

It seems that it is especially smaller restaurants, such as pubs, that engage in selling without receipts (Hirvonen et al. 2010, 50).

Of course we have a lot of honest pizzerias, honest pubs, a lot of them. There are these chains, chain pizzerias, chain pubs, but also private ones, that take care of their business perfectly, and then in their neighbour they sell a pizza and pint for a fiver. That's no good.

– Employer's representative

The illegal practices are seen to skew competition and prices, and contribute to an overall erosion of the economy. At the same time, part of the problem is also caused by the demand for cheap services. An interviewed employers' representative also called into question the responsibility of consumers in buying cheap pizzas or drinks.

It is unfortunate that the customers do not care. There has been discussion among the public that there are always two sides in the grey economy. Of course you can't pass the responsibility to the customers. But it is true that if they weren't there or people would not frequent there, then of course there would not be supply or demand either.

– Employer's representative

There has been an on-going discussion in the media on issues related to ethical consumption and the responsibility of consumers in making

sure that the products they use are not manufactured through the use of “slave labour” (e.g. Apu 21 January 2013). At the core of the illegal and irregular practices lie the misuse and exploitation of workers. Migrant workers are the most exposed and also the most vulnerable and in this sense there is a clear link to more serious exploitation, such as trafficking.

5.2.2 Ethnic restaurants – signs of systematic exploitation?

They're all sort of relatives there. These – I've thought – the worst places are not far away. They're not somewhere in the woods. They're near here, we simply just don't know.

– Permit and inspection authorities

Some of the most serious cases of trafficking for forced labour and labour exploitation identified in Finland have taken place in ethnic restaurants (see also Jokinen et al. 2011a). In 2012 district courts passed judgments on trafficking for forced labour in two cases concerning Asian restaurants (Pirkanmaa district court 29 June 2012; Pirkanmaa district court 18 December 2012). In addition, one case concerning kebab restaurants proceeded to court as aggravated human trafficking, but the defendant was acquitted on the charges of trafficking. Instead, the court found enough of evidence of aggravated extortion for conviction (Varsinais-Suomi district court 22 March 2013). The victims in these cases have been Asian migrant workers as well as asylum seekers from the Middle East. It is our intention to analyse in this section how systematic the exploitation taking place in ethnic restaurants is and why serious forms of exploitation of migrant workers may occur in such establishments.²⁹

The term “ethnic restaurants” applies to at least two different groups of restaurants: Asian restaurants and kebab restaurants and pizzeria style fast food restaurants. According to Lith (2010a, 28), there were around 1,440 migrant owned businesses in the hospitality and restaurant sector and they employed around 5,000 persons in 2008.³⁰ Three out of four of these restaurants were owned by migrants from Asian countries (e.g. Vietnam, Thailand, China and India) and Turkey (Ibid.). In 2009, there were an estimated 3,900 migrant owned businesses in the Uusimaa region in Southern Finland. Nearly 60 % of these businesses were established after the year 2005 despite the economic recession, which caused a halt to the increase of immigrant businesses in the capital region after 2007. Most of the immigrant businesses are

²⁹ It may also be that police and other authorities especially monitor and control certain sectors and actors within the sectors. It may be that ethnic restaurants are particularly monitored by authorities, and this could explain why so many cases of exploitation have been uncovered in this sector.

³⁰ Such statistics do not, however, include businesses owned by migrants who have been granted Finnish citizenship, which is likely affecting the statistics presented here (Lith 2010, 28).

found in the trade sector, but the hotel and restaurant sector comes in second. (Uusimaa Regional Council 2011, 5.)

Ethnic restaurants often sell their products at very cheap prices. In such cases profits are typically made by exploiting employees through the payment of low wages and wage discrimination (Keskusrikospoliisi 2011, 9–10; Lith 2010a, 33). The turnover of these ethnic restaurants consists primarily of food items because the proportion of alcohol sales is lower than in the restaurant sector in general. (Keskusrikospoliisi 2011, 9–10.) Lith maintains that the use of clandestine labour, sales without taxes and the neglect of various social welfare obligations are not rare in ethnic restaurants (Lith 2010a, 33).

Already in the recruitment chapter, it was noted that both of these types of restaurants often recruit their own relatives or people from their own home village in the home country. This may be a risk for migrant workers working in such places. As reflected in interviews, the family bond may make migrants particularly vulnerable to exploitation in the expert interviews.

It's really a problem concerning ethnic restaurants. It can be so that officially ethnic restaurants only have one employee when in reality 5–6 persons may work there. Easily. It's like out of this world, the pressure from family or relatives. There's no possibility of refusing to work, because it's like putting the family to shame. They don't feel like they're only working, but it's the obligation of that person [to work] because they belong to this family.

– Trade union representative

It was also the experience of permit and inspection authorities that often migrants working in ethnic restaurants are related. When the owners change, the new owners usually again recruit new family members which may be a way of circumventing immigration regulations.

It's totally clear that one comes to work in some relative's restaurant in Finland. Then they open a new restaurant and again relatives are brought to work in that new restaurant.

– Permit and inspection authorities

Some of the relatives or friends brought into the country are not officially working in the restaurant (e.g. Riihijärvi 2013, 26; Aluehallintovirasto 2010b, 2). Instead, they are just “helping” for free or in

exchange for food because they want to “spend time with family and friends”, according to interviewed experts. Also “free internships” take place in ethnic restaurants where migrants work for reduced wages or for free in the hope of securing a job in the restaurant in the future (e.g. Varsinais-Suomi district court 22 March 2013; see also box 3).

An interviewed representative of the permit and inspection authority also mentioned that a new phenomenon is to bring young Estonian women to work in kebab restaurants and pizzerias in Finland. These young women may also be married to the owners of the restaurants or be their girlfriends. They do not disclose their working conditions or terms of employment, the interviewed permit and inspection authority explained, and so uncovering possible exploitative practices (including sexual harassment and abuse) is difficult for the authorities.

In many instances in particular Asian restaurants are owned by a couple who then employ (distant) relatives to work in their establishment (Pirkanmaa district court 29 June 2012; Pirkanmaa district court 18 December 2012). An interviewed representative of the police and border guard argued that the owners of these Asian restaurants are networked and share information relating to wages, placement fees etc and that low wages are often explained by the fact that the employees are in fact paying back debts that the huge recruitment fees have cost them. (see also 4.1).

They pay back debts from that super huge placement fee they apparently have paid due to their unawareness, so that they can come to work in Finland. You have to pay a huge fee for the residence permits.

– Police and border guard

THIS NETWORKING AND change of information by restaurant owners could explain why ethnic restaurants in different parts of Finland seem to be paying very similar (low) wages to their workers and use the method were the workers have to return part of the wages paid to their bank account back to the employer in cash (see also Jokinen et al. 2011a, 97–98).

Such practices took place in the aforementioned case of the Asian restaurant in Pirkanmaa. In the Pirkanmaa restaurant case, the exploited Vietnamese cooks testified during the trial that their starting wages had been around 500 EUR a month and had risen to 600 EUR in the second year and then to 700 EUR in the third year. They had worked up to seven days a week, 12 hours a day and on the weekends without any mandatory extra pay or overtime compensation. The employees had been forced to return a part of their wages

to the employer in cash. This procedure was very systematic, in that the workers were given a piece of paper detailing the sum of money they had to withdraw from their bank account after a certain period and return to their employer in cash. The workers were advised not to show this piece of paper to anyone and ordered to then destroy the paper afterwards. The employees had not been given any particular reason for such a practice, but some had heard that it might have something to do with taxes. (Pirkanmaa district court 29 June 2012; pre-trial investigation material 8330/R/55534/11.) Also one of the interviewed migrant workers had experienced a situation where s/he had to return money to the employer in cash.

The wages were paid to my account, but I always had to go to the bank and withdraw all of it. At the beginning of the month they paid XXXX [EUR] to my account, but I was allowed to keep only XXX [EUR] and had to return the rest.

– Asian/African worker

Also instances where the employer has had access to employees' bank accounts directly or have retained their bank cards have been uncovered in Finland (e.g. Jokinen et al. 2011a, 98–99). An interviewed representative of the police and border guard elaborated that exploited workers may not even know which bank their account is in and their bank cards may be stored in the cash register of the restaurant.

They have a bank account and everything looks okay in the eyes of the tax authorities that they have received wages and paid taxes. But the bank account and the bank card are in practice in the hands of the employers. They empty the account the next day after they have paid the wages.

– Police and border guard

A variation of such practices had also been encountered by an employer's representative who told about a case where the employer explained that s/he was simply "borrowing" money from the employee by using such means of returning part of the wages.

S/he [the employer] explained that they have a Chinese culture of assistance. This worker lent money to the employer and they in "great cooperation" agreed about this because the plan was to open a new restaurant and this would guarantee a job and create opportunities to work later on. S/he said that by that day s/he would return the money. This was explained by the employer. No matter the truth, it can't work like that!

– Employer' representative

Several interviewed experts thought that paying certain fixed term wages is a common method of wage discrimination practiced in ethnic restaurants. This means that migrants may work up to 12 hours a day, 6–7 days week, but only receive certain basic wages without any mandatory extra pay for evening, night, Saturday and Sunday work or overtime (see also Jokinen et al. 2011a, 91–96).³¹ The restaurant owners may also forge a work schedule and records of working time, so that it seems that everything is in order. Often times no such mandatory records are even kept, as noted by labour inspectors (e.g. Aluehallintovirasto 2010a; Riihijärvi 2013, 25–26) or they do not include any exact dates or times, just that the person works "every day" (HS 26 May 2013.)

Our data quite clearly demonstrate that the practice of underpayment of wages or having to return part of the wages in cash is a very systematic and calculated way in which the unscrupulous employers try to mislead different permit and inspection authorities in the restaurant sector. For example if the authorities responsible for issuing work permits would find out about such practices, the workers would not have their extension permits renewed due to the regulations on the minimum income (see also chapter 4.2). Such practices also hinder the police investigation and securing of evidence (Jokinen et al. 2011a, 116–122), but for example electronic monitoring and wire tapping are ways of collecting evidence on the nature and forms of exploitation occurring in ethnic restaurants.

Also in respect of kebab restaurants and pizzerias, cases have come up where migrant workers and particularly asylum seekers are working for wages as low as 2–3 EUR/hour even though they work up to 6–7 days a week and up to 12 hours a day (e.g. Varsinais-Suomi district court 22 March 2013). In particular asylum seekers (and undocumented migrants) may do such work in the dark labour market, which means that their wages are paid under the table. Such a practice was used in the case of the Turku kebab restaurant and butcher's shop where the owner explained to a migrant worker that he was the only official worker in the place, and that all the others were working

³¹It must be noted though that such practices have also been uncovered among Finnish chefs in several fine dining restaurants in Helsinki in the spring of 2013. The chefs were paid certain fixed wages no matter how many hours they worked. It was argued that working for free is a common way for professional chefs to accumulate the culinary skills and expertise they need (HS 9 May 2013). It should be pointed out that the wages of these chefs were of course much higher than those paid to exploited migrant cooks.

in the dark, undeclared market. This was apparently because “official employment” would cause trouble for the business. (Varsinais-Suomi district court 22 March 2013, 125.)

Asylum seekers

ASYLUM SEEKERS ARE one group of people who, according to some interviewed experts, work in the dark labour market. Some work there because they do not yet have official permission to work, which according to law they gain after three months if they have identity documents, and after six months if they do not.

THEY MAY GET the work permit [paper proving they have the right to work] after three months, if they give their documents or their identity. If they didn't have any documents then it takes six or nine months for them to get the work permit. In that sense it becomes a long process for them. (Migrant service provider)

MOREOVER, ASYLUM SEEKERS do undeclared work because they have no other options for securing a job. It was mentioned by interviewed experts that such work exists both in the restaurant and cleaning sectors. Another interviewed migrant service providers mentioned that they have encountered cases where asylum seekers work in pizzerias for wages as low as 2-3 EUR per hour or have “internship” arrangements. “They feel that it's better than nothing”, an interviewed migrant service provider explained. Securing a decent job is difficult for asylum seekers because they have difficulties in opening a bank account or in getting a tax deduction card which is mandatory in any regular place of work.

It's almost impossible to get a tax deduction card. First you have to go to a registry office to ask for a paper that says you can't get an identity number. Then you have to take this paper and the work contract to the tax authorities and humbly say that I'm planning on staying in Finland and need a tax deduction card. A normal tax deduction card. Not one where the tax percentage is 60 or 50 %.

– Migrant service provider

SUCH CONCRETE OBSTACLES make asylum seekers particularly vulnerable to labour exploitation and different exploitative practices. Asylum seekers may also be in debt to the organisers of human smuggling operations for their services in transporting them into EU Schengen area, which makes them desperate to find in order to work to pay back the debt. For example, in the case of the Turku kebab restaurant and butcher's shop, the employer recruited at least two of his relatives to work in his business. According to the workers, he also organised and paid for their journey to Finland in the hands of human smugglers. The workers would seek asylum and start work in the restaurant and butcher shop immediately afterwards in order to pay for the debt caused by that their smuggling operation. The court, however, did not find enough evidence of the smuggling aspect in the case. (Varsinais-Suomi district court 22 March 2013.)

Underpayment of wages in the restaurant sector is also often accompanied by different tax violations such as sales without taxes (see chapter 5.2.1) and failure to withhold taxes from the employees' earnings (e.g. Lith 2010a, 33). Also neglect to pay mandatory pension, accident and unemployment insurance or organise mandatory work health care services commonly occur in ethnic restaurants. (Työsuojelupäällikkö.fi 23 April 2013; Riihijärvi 2013, 25.)

Moreover, the ownership of businesses in the restaurant sector changes often: many restaurants only operate for a couple of years and are then sold or closed. For example out of the 1,300 businesses opened in 2006, only about 40 % were operational at the end of 2010. (Keskusrikospoliisi 2011, 11.) Interviewed permit and inspection authorities noted that the owners of ethnic restaurants change quite often.

They sell those restaurants to each other. The owners and persons in charge change. An employee buys it. Or an employee buys a new one and then they look for more employees again.

– Permit and inspection authority

This is in line with research by Lith, who has noted that ethnic restaurants are often transferred between family members and friends using different names, which may indicate that this is done in order to

misuse social benefits and allowances, such as the so-called start-up money for opening a new business (Lith 2010a, 34). Some of the interviewed experts maintained that such practices are also used to wipe clean details entered into various registers (i.e. corporate register and corporate liability register) and enable the new owner to start fresh without any notations or credit problems, for example. In addition, Lith (2010a, 34) maintains that money laundering may take place in ethnic restaurants.

Many interviewed experts pointed out that the dependency of the workers in ethnic restaurants on their employers is exceptionally deep. This is also demonstrated in the court and pre-trial investigation materials of the Asian restaurant case, which detail how the employees had to rely on the employers in everything: translating their post; paying their bills, taking them to the bank or doctor and so on (Pirkanmaa district court 29 June 2012; pre-trial investigation material 8330/R/55534/11). As one interviewed migrant worker explained, they simply did not know how they could manage on their own without understanding Finnish.

Accessing the restaurants is also difficult for the different authorities due to language and culture barriers (e.g. Keskusrikospoliisi 2011, 12; Jokinen et al. 2011a, 119–121). For example labour inspectors face difficulties in trying to communicate with restaurants owners and staff when conducting inspections in ethnic restaurants.

Usually these Chinese restaurants [owners] don't speak Finnish or English. It's quite common that Chinese restaurants are owned by a father and a mother. The children may have gone to school here in Finland and they come join us or they are asked. Even very young ones help in interpretation. Such restaurants may have been functioning already for over 10 years.

– Permit and inspection authority

A survey conducted among restaurant owners found that owners feel that the authorities do not dare intervene in malpractice occurring in ethnic restaurants (Laitinen 2005, 14). In fact, ethnic restaurant owners rarely belong to employers' associations, several interviewed experts noted. They are therefore also excluded from the control of the employers' association and often times lack even basic information on for example the collective agreements, the changes made in the mandated minimum wages and the principles for the calculation of wages in general.

An interviewed employers' representative elaborated that often ethnic restaurants owners become members or try to join

employers' associations only after they have encountered problems and have received complaints.

They usually become members at that stage when problems occur. Then they are often totally helpless, that where can we find the correct wages and then we bring out the collective agreement and read it and show it. The question is that they have no clue what is the minimum wage and where you can find it. Then they become members.

– Employers' representative

It would benefit both employers and employees if the owners of such restaurants were aware of the regulations and the contents of collective agreements in the first place. Often the owners of ethnic restaurants may not even be aware of the existence of employers' associations, since no such unions exist in their home country (YLE 21 May 2013). To our knowledge, the employers' association in the restaurant sector has not organised any specific campaigns targeting ethnic restaurants. Such campaigns could be a good way of disseminating information about the employers' association and further their aim in providing accurate information and assistance to employers. According to recent news, however, a growing number of ethnic restaurant owners are now becoming members of employers associations (YLE 21 May 2013).

It has been established previously in this chapter that the problems and exploitation of migrant workers encountered in ethnic restaurants often seem to be very systematic and thus intentional. In many cases, therefore, for example the underpayment of wages is not merely an honest mistake due to lack of knowledge about the different mandatory wage compensations to which the workers are entitled. (See also chapter 6.2.1)

5.3 Flexibility and dependency: the context for exploitation

Finns tend to think that if I do this job, I want to work for seven hours in one place and I don't need to move anywhere. Migrants are flexible.

– Employer's representative

The theme of the flexibility of migrant workers came up constantly in the interviews. This same topic has also been noted in other

studies. The Finnish researcher Könönen interviewed employers in the cleaning and restaurant sectors regarding their views on employing migrant workers. The employers considered migrant workers to be very flexible regarding working hours and emphasised that they were motivated and hard-working employees who were less likely to change jobs than Finns. (Könönen 2011, 58.) On the other hand these strengths can be seen as signs of the particular dependency of migrant workers on their employers: they are flexible and less demanding than Finns because they cannot afford to complain or demand better wages and contracts.

Flexibility combined with desperation and dependency on their employer make migrant workers vulnerable to exploitation. The interviewed migrant workers saw a difference in the way native Finns are treated in the working life and the way migrant workers are treated.

They [migrants] are more flexible in the sense that they can work without a contract. You can call them at any time and they will come. That's the flexibility that the employers exploit. We usually say that you won't go tell a Finn to go work without a contract, so employers know that. You won't tell a Finn to repeat his work. They go for the people who will, and those people are mostly migrants.

– Asian/African worker

Particularly some of the representatives of trade unions see that the ultimate risk of such flexibility is the bifurcation of the labour markets (see also chapter 3).

You can't support yourself with these part-time contracts and zero contracts. The working conditions are bad and so. They look for labour [from abroad] that is willing to do the work, because people living in this country can't do it because you can't make a living out of it.

– Trade union representative

Moreover, the high turnover among workers in particular in the cleaning sector has already been interpreted by some of the interviewed experts as a sign of the worsening conditions within the sector. Also the interviewed employers' representatives saw the high turnover as a risk, since each new recruitment and hiring of a new person is not free of change, and is in fact quite expensive for the employers. At the

same time the high turnover was mentioned as benefitting those employers who want to evade the costs of having to pay seniority allowances, retirement costs and different industrial health-related costs that aging workers would cause. Having young and inexperienced workers can reduce the overall wage costs. Unscrupulous employers reportedly can cycle migrant workers indefinitely, issuing only temporary contracts to the workers, as was explained by an interviewed Asian/African worker.

The employer brings in new people all the time and then gives them trial periods, only they don't extend it. When I stopped in this company I went to the next company and they gave me three months and after that it stopped. They bring in some new person and give the person three months, it stops, and they can call you again and give you a new contract for three months. So the idea is that they don't take people permanently or anything. They just want to keep recycling so they don't have any responsibilities.

– Asian/African worker

Such temporary or short-term contracts increase the dependency of the migrant workers on their employers in particular if their right to reside in the country is based on working in Finland (e.g. Keskusrikospoliisi 2011, 12).

There is an on-going discussion in the interview data on the issue that there is always another person waiting in line behind the door to be exploited. It is based on the fact that unscrupulous employers always seem to find new persons to exploit, as was explained by a trade union representative. The employees who question the practices of such employers are laid off and a new person is found to take their place. This was commented upon by one trade union representative, who ironically expressed frustration with the situation.

The employers' side uses this expression that "we've got people lined up behind the door". It's like no matter what you do, it doesn't make any difference. We always laugh at this, that no can do, there's a line behind the door, I might as well just go home.

– Trade union representative

This theme also came up in the migrant interviews. An interviewed Estonian/Russian worker told about an instance where he/she asked about the wages and was given the following response from her employer.

R: We went to ask for it, then we were told that we can go back to Estonia, that there are ships going.

AM: This is such a universal answer everywhere.

R: Yes, the ships come and go. This was always the answer. There were many people who were even willing to work for five [EUR].

– Estonian/Russian worker.

It is no miracle that often migrant workers juggle between such issues as whether complaining about the wages or terms of employment are worth the risk of losing the job and the small income. Often it is not in the best interest of the worker to complain. Also the police have noticed the phenomenon, an interviewed representative of the police and border guard explained.

This one guy went to say that hey, I want more pay, that it's horrible working at such low wages when I do such and such work and am a good employee and a hard worker. Then the employers say, okay we must think about it and then informed him that "your work contract has been terminated". They sent him back to [Asian country X] and they refuse to pay any more wages. Then the employee's worst fear is realised: they have to leave.

– Police and border guard

It must also be concluded that such practices used by unscrupulous employers ultimately help sustain a cycle of exploitation of migrant workers. The cycle of exploitation simply begins all over again when a new person is hired to replace an old one. In the next chapter we discuss the ways in which such exploitation can be prevented.

6

Prevention of exploitation of migrant workers and trafficking for forced labour

Many migrant workers seem to be weighing the pros and the cons of disclosing their experiences of exploitation to the authorities versus the risk of losing their job, their means of income and perhaps even the right to reside in Finland as a result of their disclosure. Migrant workers are often not only thinking about their own individual situation but also about the situation of their family in their home country, who are often dependent on their wages in Finland. It is therefore important to understand that migrant workers carefully consider whether disclosing exploitative practices is worth the risk and what is the outcome of such disclosure.

SIMILARLY, THE AUTHORITIES are in an important position in uncovering instances of exploitation and misuse of migrant labour. However, it seems that the existing mechanisms of oversight and monitoring are insufficient for intervention in different forms of exploitative practices. One particular problem seems to be the lack of tools for intervention and prevention, including sanctions.

In this chapter we discuss the difficult issue of migrants seeking help and disclosing labour exploitation to the different authorities or organisations. We first outline which migrant workers are particularly vulnerable to exploitation, and why. This is followed by a discussion on where migrant workers have sought help, their experiences with trade unions, and how the awareness of migrant workers of their rights and services could be enhanced. The second section of this chapter deals with examples of intentional exploitation by employers, and how the authorities and others try to tackle this. The chapter then outlines the lack of sanctions, and presents examples of how to improve current practices. Finally the responsibility of contractors and the role of inspections and oversight are discussed.

6.1 Seeking help and disclosing labour exploitation

6.1.1 Migrants at risk

A PERSON'S MIGRATION status and the basis for their residence permit are very relevant matters when it comes to looking for help and reporting exploitation. It was mentioned by the interviewed experts that undocumented migrants and asylum seekers in particular are in a very vulnerable position when they encounter labour exploitation. One of the main problems is that there are few places of assistance and support where they are not requested to show their ID and thus disclose their (irregular) migration status.

Identifying instances of exploitation of undocumented workers is therefore particularly difficult because it is often not in the best interest of such workers to disclose their experiences to the authorities and risk revealing their migration status to the police or the border guard authorities. Migrant service providers emphasised that gaining trust in such instances is extremely difficult.

People don't want to tell that much, if we try to ask, they kind of get scared. We would like to gain their trust so that they wouldn't think that you can't come here, they start grilling you and asking about all sorts of things.

– Migrant service provider

Both migrant workers and service providers suggested that undocumented workers would be more likely to use services offered by non-governmental organisations rather than turn to the authorities.

People would go to non-governmental organizations more freely. Somebody who is undocumented would not go to the labour inspectorate. So NGOs have a big role to play.

– Asian/African worker

Unfortunately, in Finland no specialised non-governmental organisation is solely focused on the issues of migrant workers or promoting their rights.³² In recent years, so-called Global Clinics have been established in Helsinki, Oulu and Turku in order to offer health services to undocumented migrants (YLE 23 April 2013). There are also some groups promoting migrants' rights such as the the Vapaa liikkuvuus ("Free Movement") network, but more targeted services could be made available. Another interviewed migrant service provider emphasized

³²In many countries there are different services and information service points targeting migrant workers, such as the Migrant Rights Centre in Ireland that offer advice and assistance especially to migrant workers.

that there must be a way to guarantee that when and if an undocumented migrant seeks help from the authorities they are not just deported from the country without any consideration given to the ordeal they have gone through.

I think the other thing is also to protect the illegal immigrants so that they are able to speak about their ordeal. If they are being exploited and they know that if they go to immigration to report or tell about what has happened then they are going to be taken away. Then they will not do it, so they remain in that situation. There should be a kind of protection for them. A part of a policy to protect them that if they speak, then they should find a way not to be deported.

– Migrant service provider

As regards asylum seekers, it was mentioned by interviewed permit and inspection authority representatives that they are often also quite reluctant to seek help from the authorities for example because of previous experiences of corruption in the home country.

These asylum seekers, it's even harder for them to find an authority or I guess they don't really trust authorities but [trust] their employer instead. How can they find such a contact who they can get in touch with? They have a completely different situation.

– Permit and inspection authority

Also migrants with a worker's residence permit may hesitate in contacting the authorities if this entails losing their job and having to find another firm with a (full-time) contract within the same sector (see also chapter 4.2).

6.1.2 Where to seek help?

You write reports, you complain, but at the end nothing happens.

– Asian/African worker

When migrants decide to seek help or look for a place that could provide them assistance or reply to their questions about wages or terms of employment, many do not know where such services are provided. It was mentioned in several of the interviews that migrant workers lack knowledge about the different authorities, service providers and trade unions which could help persons in their circumstances.

I actually asked around in Estonia whether anybody knew who to turn to in Finland.

– Estonian/Russian worker

R1: They don't really know where to go.

R2: Really, like several times each day we refer people to the labour inspectorate. That means that they don't know that such a national and free place exists where they should go. First I ask, though, that are you a member of a trade union and if they are, that do you know that you should have this shop steward at your work place.

– Migrant service providers

It is also clear that in particular migrant workers who lack language skills and are able to communicate perhaps only in their native tongue have problems finding out about the existence of different services and accessing them. Such problems concern in particular migrants from Asian countries, according to interviewed experts, but also for example Estonian workers may find it difficult to access services unless they can speak Finnish.

My language was also quite poor at the time. It's difficult to express yourself in Finnish if you have to deal with such matters.

– Estonian/Russian worker

Even though I went to the police, tried to make myself understood, but, you know, there was no interpreter.

– Estonian/Russian worker

Most services offered by the different authorities and trade unions are available in Finnish, Swedish and English and sometimes also in Russian, but the variety of languages offered could be expanded. For example, the labour inspectorate in Helsinki employs an Estonian-speaking labour inspector whose phone number is circulated among the Estonians working in Finland. Also different trade unions employ Estonian, Russian and Chinese-speaking officials, but this could be used even more widely. (see also chapter 6.1.3).

There are some good practices in respect to services targeted for migrant workers in the Helsinki area. They are presented in the boxes below. It must, however, be pointed out that both of these services are maintained either by the authorities or by the city of Helsinki and are thus not offered by non- governmental organisations.

This may present too high of a threshold for some migrants who want to avoid all official services, such as undocumented migrants or migrants who have been threatened with the authorities by their employers (see also Jokinen et al. 2011a, 78–80).

In To Finland

“IN TO FINLAND” is a shared service point of the Social Insurance Institution of Finland (Kela) and the Tax Administration, intended for advising migrant workers in Finland. In addition to migrant workers, they provide services for entrepreneurs and students from other countries, along with agencies or companies hiring or bringing in employees from outside Finland.

THE STAFF AT the service point in central Helsinki offer services in a multitude of languages and provide advice on social security and taxation issues. Migrant workers can for example apply for a tax card and the worker-specific tax number currently required in the construction industry. Migrants coming to work in Finland for less than a year can also obtain at the service point a Finnish personal identification number without having to visit the local register office.

Virka Info

“VIRKA INFO” IS a public information service located in the City Hall of Helsinki. The centre offers general information and advice on living and working in the Helsinki area as well as special advice and guidance on migration issues. The centre gives practical guidance and advice to people moving to Helsinki from abroad on issues such as residence permits, citizenship, EU citizen residential registration and social security. In addition to Finnish and Swedish, Virka Info offers service and guidance in English, French, Russian, Chinese, Bulgarian, Arabic, Somali, Kurdish, Turkish, Dari and Persian (Farsi). Virka Info also serves as a Citizens' Advice Office of the Finnish Immigration Service, the Helsinki Register Office and the Police.

BASED ON STATISTICAL information collected by Virka Info, a clear majority of their clients, almost 80 per cent, are third-country nationals. The number of clients advised by the service has increased rapidly between 2011 and 2012, indicating a clear need for such a service (see Table 5).

Year	Total	EU citizens %	Third country nationals %	Nordic citizens %
2011	2 832	19,7	79,9	0,3
2012	3 797	17,7	79,5	2,8

VIRKA INFO ALSO maintains statistics on what questions their clients have and what kind of assistance they need. As can be seen from the table below, issues related to work and residence permits are among the most common topics that migrants ask about.

Residence permits, registration, citizenship	1 947
Clarifying decisions or processes made	1 739
Work and working life (looking for a job, occupational health and safety, internships)	697
Social insurance (Kela)	508
Social affairs (social service and guidance)	505
Housing	485
Filling in forms	459
Family life (children's school, day care, relationships)	322
Education-related issues	303
Studying Finnish language	297
Police and court issues (criminal and civil cases)	265
Finances (taxes, debts, bills, bank and consumer issues)	253

TABLE 5. Clients by background at Virka Info in 2011–2012. Source: Virka Info 2013.

TABLE 6. Most common themes asked by Virka Info clients during 2012. Source: Virka Info 2013.

Approaching the police is even harder for many exploited migrant workers than contacting services offered by the labour inspectorate, the tax authorities or the municipality. The interviewed representatives of the police and border guards mentioned that often only migrants who are at the limits of their strength or had lost their job contact the police on their own to report their experiences of labour exploitation. This can be explained by the fact that migrants may be afraid of the police in general or have bad experiences in dealing with them in the past in their home country, for example. An interviewed migrant service provider mentioned that they have forwarded cases to the police after the migrant in question has first learned that the Finnish police is not corrupt in the first place.

It also has happened that when people learn about the legal system and rights and that this kind of abuse or corruption is not really permitted. Then the people have asked me to inform the police. Sometimes I have passed information on in that way.

– Migrant service provider

The issue of trust is particularly important when it comes to interaction between the victims of exploitation and the authorities responsible for investigating such offences. Already in our previous report the interviewed authorities mentioned that gaining the trust of the victims is very important when it comes to securing evidence during the criminal investigation (Jokinen et al. 2011a, 119–122).

We have such problems that they [migrant workers] may tell us something, but they inform us that they don't want to be the only ones who are the plaintiffs. They want others to come forward as well and talk about the living circumstances and working conditions and how they have been recruited and what kind of work contracts there are and what placement fees they've had to pay and everything. [...] They are very timid indeed.

– Police and border guard

According to an interviewed representative of the police and border guard, they have also experienced instances where victims of labour exploitation have wanted to withdraw their cases because they did not want to risk losing their job. Such cases are problematic because often the offences in question are subject to public prosecution. The police cannot drop such a case if there is already evidence

of an offence, even if the victims decide that they are not willing to talk about their experiences. Such withdrawals may also be a sign of threats made by the employer (see also Jokinen et al. 2011a, 78–80). Of course in such cases, it is very likely that the migrant workers end up losing the job after all if the employer is arrested by the police.

Some interviewed migrant workers had also sought help from legal aid to which they had been referred by the labour inspectorate or other authorities. Unfortunately the experiences of both interviewed migrants and migrant service providers on the use of services of legal aid were quite negative.

Just yesterday I had a case where the client hadn't received any wages. The firm went bankrupt. Then s/he went to the labour inspectorate and the labour inspectorate said that go to legal aid. Then s/he went to legal aid, the employee in legal aid said that they can't get in touch with anyone from this firm. S/he came to me and asked what now, s/he hasn't received wages and the legal aid says they can't do anything. The firm still exists in the registry of the National Board of Patents and Registration of Finland. I say to try to make a report of an offence. What can I do? Try to make a report of an offence, there's no other way.

– Migrant service provider

Two interviewed migrant workers had had their cases dropped by the legal aid office for reasons that were not explained properly to them.

R: I went to legal aid in [street X]. The legal aid office there. The lawyer dropped the case.

AJ: Why?

R: She said well we can take it to court and the employer can claim something that I can't prove. I'm still young, I can find another work and stuff that I should just let it go.

– Asian/African worker

Some of the interviewed migrants had managed to recover their missing wages from pay security. It was, however, brought up by interviewed migrant service providers that not all migrant workers find out about the possibility in time, since the applications for wages due must be submitted within three months.

Overall the interviewed migrant workers expressed their frustration in not getting enough information from the authorities about whether their case had been taken under investigation or what was happening and what were the grounds for taking different decision. It was suggested by an interviewed migrant that a simple email saying that “we have received your email and decided to take the following action” would be a big improvement instead of having no information at all on what was happening or not happening.

Some of the interviewed migrant workers had been accepted into the system of assistance for victims of trafficking which is coordinated by the Joutseno reception centre. The interviewees were generally happy with the services that they had received through this system. Similar views were expressed in our earlier study (Jokinen et al. 2011a, 113–115.)

Experts from the police and border guard told of instances where migrants were reluctant to enter the official assistance system for victims of trafficking due to fears of losing their job and consequently their wages.

We went over these details, what it means if you enter this trafficking assistance system. When the person found out that it means that they stop working and get no wages, they cannot send any money to their home country, they did not want to enter. S/he said it was too big a price to pay.

– Police and border guard

Another interviewed expert had similar experiences. The victims are sceptical regarding the assistance system because they are uncertain what it means in practical terms to be within the system.

It's indeed difficult when they are in serious need, but they are too afraid to start the process if when they are told about the assistance system and that they get different kinds of support: legal, medical and food and housing. Still they have this huge prejudice about starting the process. [...] They are afraid somehow of the assistance system, that they don't know for sure even when we elaborate and sell and market it.

– Police and border guard

Such views expressed by the migrants emphasise the importance of transparency of different services and the need to offer something concrete to the victims of labour exploitation, so that they can be

certain that it is indeed worth the risk of contacting the authorities and seeking justice for themselves. Too often help is sought only after the situations of exploitation have escalated and the victims are exhausted (see e.g. Brunovskis & Surtees 2007). This was also confirmed in the interviews conducted with migrant workers.

Further, it is certainly alarming that many interviewed migrant workers mentioned that after they had decided to complain about the exploitative practices encountered, they did not really get any help or clarity in their particular experience. Instead the migrant workers had been passed around among the different authorities with no clear result or direction.

I had to write down complaints in many places. Basically I laid complaints in every possible place I could lay hands on. [...] So I wrote a complaint to the tax office, but the tax office said that this is not our business and you need to go to the police. Then I went to the police and they said that ok this is not our business and said that you should go to the lawyer, the legal aid.

– Asian/African worker

Of course if the migrant workers were encouraged to file complaints and disclose their experiences to the various authorities, they should be able to have confidence that the process results in something positive for themselves or for society at large.

The authorities they don't really provide much help in my opinion and from my experience.

– Asian/African worker

This is a theme of utmost importance when it comes to prevention of labour exploitation and trafficking for forced labour – if the results of disclosing exploitation are negative, how could migrant workers be encouraged to report their experiences to different authorities?

Moreover, many of the migrant workers we interviewed emphasised the importance of standing up for their rights. Many had learned their lesson and felt that after encountering exploitative practices they were now more aware of their rights as workers in Finland, where to seek help and how to make sure they receive proper wages and a legitimate employment contract. They also expressed views that by raising these issues, seeking justice and eventually suing the unscrupulous employers they were promoting the collective good while at the same time also sending a message to employers and the public that such practices are wrong.

Even if I don't get my money back, but the crime stops it's better for the greater public.

– Asian/African worker

However, the migrant workers we interviewed in this study were all particularly active in seeking help for themselves, which is illustrated by the fact that they had already used a variety of services. Many migrant workers are not in a similar position and thus the role of the authorities and other organisations is important in seeking out those in need. Next we discuss the role of the trade unions in helping migrant workers and the experiences of migrant workers in dealing with trade unions in more detail.

6.1.3 Migrant workers' experiences of trade unions

THE ROLE OF the trade unions is crucial when it comes to promoting the rights of workers. The issue becomes trickier when the question concerns the rights of migrant workers who are not necessarily union members. There is an on-going debate within the trade union movement on serving the common good and thus also non-members, versus serving the needs of members only (e.g. Ristikari 2012; Alho 2008) Many migrant workers in Finland do not necessarily know about the existence of trade unions in Finland and the benefits of union membership which include i.e. better unemployment benefits and legal aid. This came up in the interviews conducted with migrant workers as well as in the expert interviews.

Since this report focuses on the (private) restaurant and cleaning sectors, the most relevant trade union is the Service Union United (PAM). It is a trade union for those working in the private services sector. PAM has over 230,000 members. Based on a study commissioned by PAM, almost 40 per cent of their migrant members had joined the union based on the recommendations given by a friend or a family member (Ritari 2013, 20–21). This was also confirmed by the interviewed trade union representatives.

It is so that if one joins today, tomorrow three of his/her friends come. This Finnish system of labour market is such that the workers are quite alone. They can't afford to hire a lawyer. There's also fear about the role of the trade union. Do I dare to join and what does it leads to? Am I labelled somehow? Do I ever get a job if the employer finds out that I'm a union member?

– Trade union representative

At the end of 2012, 8,000 PAM members had a migrant background, as suggested by the fact that their mother tongue was not Finnish, Swedish or Sami (which are the official languages of Finland). The proportion of migrant members has increased quite rapidly: ten years earlier, in 2002, only 800 members had a migrant background. (Ritari 2013, 5.) In the local office of PAM in Helsinki, a majority of clients seeking help have a migrant background, interviewed experts maintained.

It was suggested in the interviews that trade unions should provide services in multiple languages, especially in Estonian and Russian instead of just in Finnish, Swedish and English. It was the experience of some of the interviewed experts that migrant members often remain invisible in the union. It was sometimes even frustrating for trade union activists to see how reluctantly migrant workers would fight for their rights at work.

I've tried to say especially to those who belong to the union that they could for example try to further these matters as a class action suit, but they by no means want this. They just want to work so that no problems come up.

– Trade union representative

It has been also noted by Ritari (2013, 22) that only 28 % of migrant PAM members had used any of the services provided by the trade union. This could be explained by the difficulties related to language skills, as it was suggested by the interviewed experts that some migrant who are trade union members do not feel like they can really access the services offered by the union because they cannot use their mother tongue in communicating their problems. Some trade unions, such as PAM, have also organised Finnish language courses for their migrant members (e.g. Ritari 2013, 6).

In her doctoral thesis, Tiina Ristikari (2012) studied the views of trade unions towards migrants. She found that the question about whether to advocate for migrants' rights or to insist on the equal treatment of all members not only divides unions at large, but also there exist differing opinions on this question within individual unions. (Ibid., 133–134.) There were signs of this debate also in the expert and migrant worker interviews. It was the experience of some experts that the unions do not help non-members or are very reluctant to do anything before they have been members of the union for 3–6 months. In most trade unions the workers must be paying members of the union for six months before they are entitled to free legal aid provided by the unions. This is of course very problematic in

situations where the exploited migrant worker has not even known about the existence of trade unions or of such benefits.

It's kind of a problem that these clients only come at the stage where the game is already almost over, even the union can't help then.

– Permit and inspection authority

However, some of the interviewed migrant workers had been helped by PAM even though they had not been members at the time.

But later I learned that the trade union PAM is a trade union for cleaners. That you don't have to be a member, that you simply turn to them and they help you.

– Estonian/Russian worker

Also more negative views were expressed about the work trade unions do in helping migrant workers. In particular some of the interviewed migrant service providers reported negative experiences that their clients had had. Some migrant workers had even been union members but without any information on what it means to be a union member, what kind of services they could get and how they should proceed when complaining about a case.

There are trade union federations in Finland. Some told me that they joined. I don't know if 20 euros or something like that is then deducted as the membership fee. It helps if you become homeless, or helps financially. It should help. But if you're there for the first time, it doesn't help.

– Estonian/Russian worker.

Overall, many of the interviewed migrant workers had very good experiences of trade unions after they had decided to become members. They had received advice on their terms of employment, wages and back pay issues as well as concrete legal help and assistance.

Many people don't go to the union. They think, oh, why do I need this. But you get a lot of help from there. The unions are different, but you still get legal advice, you can ask. You go there, you can ask for advice, information.

– Estonian/Russian worker

I have reported two employers to [trade union X], of course [trade union X] stood on my side and I got my money.

– Asian/African worker.

The role of trade unions in promoting the rights of migrant workers and their ambivalence regarding their responsibilities towards those who are not members are themes that will certainly continue also in the future. It would be important for the trade unions to find new ways of offering services to migrant workers and engaging them in different ways. Mobilising the networks of migrants themselves would be a good way for trade unions to disseminate information about workers rights to a wider set of migrant communities and raise awareness about issues of work discrimination and exploitation. Next, this theme is analysed in greater detail.

6.1.4 Raising the awareness of migrant workers on their rights and available services

AJ: So what do you think should be done about these problems, what would help migrant workers who encounter such problems and exploitation?

R: The first thing is information. In my opinion, the first thing is that they should be informed. Migrant workers need information on what to do in case this happens. They just need to know that ok if they feel something is wrong then they should know where to come to complain.

– Asian/African worker

One of the biggest obstacles in preventing labour exploitation is that migrants do not know about their rights as workers in Finland. As one interviewed migrant worker explained, s/he simply did not know anything about the existence of minimum wages, collective agreements or laws regulating working time. It was also the experience of many other migrant workers that at first they did not know about the different services available in Finland and where you can ask for advice or assistance in issues concerning labour exploitation. Dissemination of such information is therefore of utmost importance in order to prevent labour exploitation and trafficking for forced labour.

There was discussion in the expert interviews that migrant workers would need to be given information about their rights at the earliest stage possible: already at the stage where they are applying

for a worker's residence permit, for example. This was emphasised by many interviewees, particularly the representatives of the police and border guard.

They should be given – no matter what country they're from – also in writing, first they should be told and then given [a leaflet] in written format so that they could read it. Perhaps even advice that hang on to this and don't give this paper to anybody. If you're for example applying for a work permit for a restaurant in Finland, then already in the residence permit interview you would be instructed who to contact in Finland if you have bad working conditions – first you contact the labour inspectorate and then the police. [...] So that they would have some ammunition and not be in a position of slave in Finnish society for the first year. It boggles my mind how unaware these people are.

– Police and border guard

Another possible opportunity for giving information about workers rights was deemed to be the stage when migrants apply for an extension of their residence permit from the police. Although the scarce resources of the police do not enable them to make sure that migrant workers know about their rights, they could give such persons a small leaflet containing some basic information and contact details of labour inspectorate, for example. Such a brochure should be available in multiple languages.

The fact whether this person knows about overtime compensations or annual leave isn't passed on anywhere. It's undeniably one matter which we could have the desk officer give a brochure about. It's not possible that the desk clerk would start explaining the labour law from A to Z there. [...] But of course some kind of brochure, it's not a bad idea at all, that we could pass on to them.

– Police and border guard

The Joutseno reception centre, which manages the official system of assistance to victims of trafficking, and the Finnish immigration service have produced an information booklet on workers' rights targeting asylum seekers as part of the Hapke -project.³³ The aim of the project is to improve the identification of trafficking in persons among asylum seekers. The booklet contains information about the right of

³³The development project of the vulnerable asylum seekers' service provision system in Finland (HAPKE).

asylum seekers to work, their rights and responsibilities in respect of working in Finland as well as information on the contents of work contracts, working hours, wages and collective agreements, for example. The booklet also gives information about trade unions and places to contact if problems arise at work, including the contact details of the labour inspectorate and the assistance system for victims of trafficking. (Working in Finland 2013.)

A considerable amount of information is available also online. For example, the Info bank is an online portal targeting migrants. The website gives information about issues such as Finnish society and culture, residence permits, housing, studying Finnish, finding employment, education, health care and social services in at least 15 languages. Also many trade unions have their websites available in at least English and Russian, for example. The problem is that not all migrants facing exploitation have access to the internet in the first place, or they prefer to access information in ways other than reading something in written format.³⁴ It was discussed in the expert interviews that while there is a lot of information available online and different authorities have produced all kinds of different information leaflets and brochures, the problem is that such documents do not necessarily really reach their target groups or serve their particular needs.

The interviewed migrant workers themselves emphasised the importance of dissemination of information through informal channels, contacts and ethnic groups. It was the experience of many interviewees that information spreads best by word-of-mouth.

In the African community, information is what Africans know. Somebody hears something. If somebody has a problem then somebody calls the next person and the person gives his own advice and own experience. There is no information coming from the outside. It's hard to get information from the outside. If somebody goes out, they get information and he brings it in. So it's good to have some system where information reaches directly so people get it.

– Asian/African worker

Particularly the migrant service providers also emphasised the importance of offering services in person, not just online. It was their experience that migrant workers often have problems interpreting the information available from different sources and putting it into practice, applying it to their own situation or circumstances.

³⁴ It must also be noted that some migrants may be illiterate or partially illiterate.

R1: A person who reads this [website] doesn't know what concerns their particular situation. [...] When they read they want to know what they are entitled to just currently.

R2: It must be tailored to their situation.

R3: [...] the situation in life always dictates what information you remember and what you don't need you forget it. That's why it's important that always when people come to ask about different things [we bear in mind] their particular situation and now it's this, what we do now.

– Migrant service providers

It is very important that targeted services are available for migrant workers, whether they are offered by the different authorities, the municipalities, trade unions or non-governmental organisations. It is equally important that the services available have a low threshold and that they can offer advice and assistance in multiple languages. As we noted already in our previous report, it is unfortunate that there is no non-governmental organisation focusing on the rights of migrant workers (Jokinen et al. 2011a). Nor is there a telephone hotline for migrant workers wanting to ask advice about their terms of employment, wages or other such matters in multiple languages.³⁵ For example, in Estonia the NGO Living for Tomorrow maintains a hotline for victims or persons seeking help and advice on working abroad and other such issues. It was the experience of both interviewed experts and migrant workers that services offered by non-governmental organisations would be easiest to get in touch with also for migrants in the most vulnerable position (e.g. undocumented migrants).

³⁵ The Joutseno reception centre maintains a phone service for victims of trafficking, but many times the problem is that victims do not identify themselves as victims of trafficking and they would not call such a phone service. Instead they want to ask whether their terms of employment are legal and whether their wages are correctly calculated.

They kind of need some sort of impartial – what ever it could be – for instance the municipality or something. That the migrant could experience it as impartial would require a lot of groundwork. The police are kind of impartial now, but people coming from those third countries, they can have very critical views about the police. There's corruption and everything, and in general if they may feel that state and municipality officials are all corrupt.

– Police and border guard

Moreover, the co-operation between different authorities and actors could be intensified, so that a migrant worker accessing one service could also hear about other such services and other actors that could be of use to them. It would make sense to create and intensify contacts between reception centres, trade unions, and different information service points and the labour inspectorate for example. Trade unions could also cooperate with the assistance system for victims of trafficking in cases where there are signs of serious exploitation, i.e. forced labour. The interviewed experts also argued that information-sharing between different authorities should be improved, since currently different existing registers do not really “talk” with each other. This could reduce the bureaucracy of the system which from the point of view of migrant workers impedes the process of getting help and making complaints.

Next we will look at the factors that facilitate continued exploitation of migrant workers in Finland from the perspective of the employers, the authorities and existing practices.

6.2 Prevention of exploitation and the role of the authorities and employers

6.2.1 Intentional exploitation

AN IMPORTANT ASPECT of prevention is the roles and responsibilities of employers who actually employ migrant workers. Although as we have stressed many employers operate in a legitimate manner, we have in this study wanted to focus on understanding the exploitation that does exist and how systematic the means of exploitation are. It is clear from our data that the exploitation that the migrant workers have experienced takes place in the context of intentional misuse and abuse. This is compounded by a lack of sanctions and problems of oversight, which make it possible for unscrupulous employers to continue their illegal practices.

Although much of the abuse is intentional, this might not always be the case: such misuse may in part be unintentional, as was explained by one of the interviewed Estonian/Russian workers. The interviewee had encountered a situation where the employer was ignorant about the employer’s obligations and was therefore not able to run his/her business in line with laws and regulations. Also a migrant service provider explained that abuses are not necessarily intentional. Therefore there seems to be a certain element of altruism, or of wanting to assist fellow countrymen, combined with a wish to make a profit out of it.

I think it's both, but it is mainly intentional. The intention may not be bad; it's mixed with doing good and helping as well. So it may be out of a good heart and then saying that ok I am taking a risk so maybe I should be getting something extra, because I am taking this risk, but I am helping this person.

– Migrant service provider

In order to avoid mistakes caused by ignorance and a lack of information, one interviewed employer's representative suggested that everyone who founds a company in Finland should receive basic information on the rights and obligations of entrepreneurs at the stage when the company is registered with the Finnish Trade Register. Also some of the interviewed Estonian/Russian workers mentioned that their employers were not familiar with Finnish regulations and their mandatory obligations as employers. One interviewed employer's representative pointed out that it is not always easy even for a Finnish employer to know all the rules and regulations regarding the employment of migrant workers. Therefore concrete and easily accessible information should be provided also to employers.

We have this "In To Finland" service, they have a lot on links and other information, but we need a one-stop service where all information could easily be found. Anything that you could imagine that you need when you employ [people], and especially when you employ foreign workers. It's such a jungle of information and permits. That in itself hampers [employers] from both-ering [to follow the rules].

– Employer's representative

Another employer's representative saw a distinction between small mistakes, such as not remembering to pay the annual obligatory raises in wages, and intentional, continuous exploitation.

This underpayment of wages that goes on for years, that's certainly systematic. It's no longer ignorance. The amounts are too big.

– Employer's representative

However, our data shows that most of the problems are not caused by misunderstandings, ignorance and mistakes, but by intentional abuse (see also chapter 5.2.2). As one of the interviewed workers saw it, those who exploit migrant labour do indeed know that the practices in which they are engaged are wrong.

I think they do it because they know the people are vulnerable. I think everybody knows that if the job is eight hours, you give somebody pay for five hours is wrong.

– Asian/African worker

The intentionality and systematic nature of the exploitation becomes evident also when looking at the convictions for trafficking for forced labour and aggravated extortion that have been passed in Finnish courts of law (see e.g. Helsinki district court 30 March 2012; Pirkanmaa district court 29 June 2012; Pirkanmaa district court 18 August 2012; Vantaa district court 28 September 2012; Varsinais-Suomi district court 22 March 2013). In all of these cases, the courts have found that the exploitation taking place had been intentional and illegal in nature. The employers have received quite considerable financial profits from systematic underpayment of wages. In some cases the exploitation lasted for several years (e.g. Pirkanmaa district court 29 June 2012). Exploitation is also often linked to a disregard for occupational health and safety issues.

Disregard for occupational safety and health

THE OCCUPATIONAL HEALTH and safety of migrant workers was discussed in the expert interviews. According to some studies, migrants are more likely to be working in sectors with existing health and safety concerns (e.g. McKay et al. 2006). In particular new migrants who have limited knowledge of the local health and safety system may have an increased risk of work-related accidents and health problems. (Ibid.) In particular undocumented workers may have poor working conditions and rarely report such conditions or work-related accidents to any authorities or service providers (Iras-torza 2013).

IN PARTICULAR LANGUAGE problems may compromise the occupational health and safety of migrant workers and hinder the training of workers (see also Mattila et al. 2010). Such views were also presented in the expert interviews. An interviewed trade union representative told about an instance where a retail mall had to be evacuated due to a serious emergency. Because of language problems, the cleaners, who were migrant workers, did not understand that they should leave immediately.

The middle-level manager called the employee and tried to say in bad English that you have to evacuate. The employee just says that no, I'm going to finish my work. The security guards and property maintenance understood and left, but the cleaners stayed. No one cared about them. [...] It's a work safety risk. All instructions and product descriptions are in Finnish.

– Trade union representative

THERE ARE SIGNS in the data that migrant workers may lack proper training on how to use for example the toxic detergents and substances that are used in cleaning. In the case of the bus depot cleaning company, the cleaners were driving buses in the depot area without proper driver's licences and ended up damaging the buses and endangering other workers (PAM-lehti 15 June 2012). One of the cleaners was also accused of destroying an interior panel of a bus because he had used the wrong type of detergent (Vantaa district court 28 September 2012).

ALSO THE RUSH, and working up to 12 hours a day 6–7 days a week, may compromise the health of migrant workers and make them more prone to accidents at work (Jokinen et al. 2011a, 100–101). Such accidents are particularly common among cleaners, farm workers and construction workers (Eskola & Alvesalo 2010, 33). There are also instances in our data where migrant workers have had to work while they were ill or in pain. One interviewed worker told about such an instance.

AJ: Did you have to work while ill.

R: Yes. Sometimes I was ill and another employee got me some Burana [pain medication]. The employer said that the flu is better cured while working.

– Asian/African worker

OTHER INTERVIEWED MIGRANT workers also mentioned having accidents at work or on their way to work. Such examples show that poor terms of employment may also be reflected in the actual work safety of migrant workers and can compromise their health and well-being in the long term.

Next we will present some of the challenges in targeting exploitation in terms of existing policies and practices of employers and the authorities, and present some suggestions for improvement.

6.2.2 Lack of sanctions

IF EXPLOITATION OF migrant labour is to be prevented, it seems clear that an additional focus should be placed on recognising the exploitation of migrant workers as an offence that needs to be appropriately sanctioned. Police investigations relating to illegal migrant labour have tended to focus on offences against the state (such as tax evasion) or offences against other companies (such as fraud) instead of focusing on offences by employers against migrant employees (Eskola & Alvesalo 2010). Also the sanctions for offences that involve the exploitation of migrant labour seem relatively lenient. For example, the sanction for extortionate work discrimination is most commonly a small fine: in 2011 the average fine imposed by Finnish district courts and courts of appeal for the offence of extortionate work discrimination amounted to 220 EUR (Statistics Finland StatFin database 2013a).

The topic of inadequate sanctions or measures to curb exploitation was also raised in many of the expert interviews. The lack of sanctions was highlighted in particular by trade union representatives and representatives of the authorities, but not so much by employers. One interviewed representative of the police and border guards pointed out that harsher sanctions are the only way of responding to those who engage in misconduct and compared the situation to that of airlines. When airlines started receiving fines for transporting persons travelling without valid documents, the problem of undocumented travellers on airplanes largely disappeared. The incentive to comply was clearly financial and this applies also to labour exploitation, according to the interviewed expert.

It's money that makes the world go round. That's clear.

– Police and border guard representative

An interviewed permit and inspection authority representative called for the right for labour inspectors to give on-the-spot fines to employers who do not comply with the regulations, e.g. by not having up-to-date work shift lists. Imposing immediate fines would also be a more effective method than involving the police and long criminal investigations into the matter (HS 11 October 2012). These views were echoed by one of the interviewed workers.

For example in my case they [labour inspectors] found that that company did not pay me for X days. They should have the power to tell the company to pay me or receive a fine. But they don't have that power and the companies know that the labour inspectorate cannot do anything.

– Asian/African worker

The need for heavier fines was also raised by a trade union representative, who suggested that fines should be in proportion to the company's size.

If a company's management thinks that we can pay less than the minimum wages, because it is [more] likely that we in this way will make a profit than that we would have to repay the wages. How would this way of thinking change if there would be the risk of 10 % of your turnover, or 200,000 EUR in corporate criminal liability?

– Trade union representative

The Criminal Code stipulates that the fine for corporate criminal liability is between 850 and 850,000 EUR (Criminal Code Chapter 9, section 5). The current proposal for the amendment of the Criminal Code in relation to the offence of trafficking in human beings and related offences by the Ministry of Justice also includes a proposal to include extortionate work discrimination among the offences for which corporate criminal liability could be used as a sanction (Ministry of Justice 2012). This issue was also raised by interviewed experts in our previous study (Jokinen et al. 2011b, 176–177).

Another problem with lack of sanctions is the issue of not having enough work, i.e. of employees receiving too few hours of work (see also chapter 5.1.3). According to the Employment Contracts Act, the employer is obliged to first offer additional work to existing part-time workers before new part-time staff is hired (Employment Contracts Act 55/2001, Chapter 2, section 5). A worker who has not been offered such additional work is entitled to seek compensation for the hours that s/he did not receive. This of course requires that the employee is aware that s/he was not offered extra hours but other workers were hired instead, and in addition the employee should be aware of the possibilities of demanding compensation and be able to initiate the process. This is often not the case with migrant workers, who often lack awareness of their rights and are not members of the trade union, which could assist them in such situations. One interviewed

trade union representative therefore called for the application of corporate criminal liability also in situations where the employer does not fulfil the obligation to offer additional work, and to introduce a hefty fine as a deterrent in such situations.

Trade unions have also been calling for the right for unions to raise class action suits. In 2012 a member of the Social Democratic group in Parliament submitted a law proposal to introduce class action suits in civil matters (LA 85/2012 vp). The proposal is currently with the Parliamentary Law Committee. An interviewed trade union representative explained why such a right would be needed:

The right to use class action suits would be the most important [sanction]. I think that all these underpayments, the obligation to offer additional work, and what not, they should be sanctioned in a way that if you consider a company with a turnover of two million euros, if that company pays one worker their due wages, that's nothing more than a mosquito's pee in their operations. When it's not sanctioned in any way, why would they not try it again. The long-term benefit is so big.

– Trade union representative

One additional sanction that has been discussed recently is the criminalisation of underpayment of wages. The Finnish Parliament is currently considering a proposal by a member of Parliament (Social Democrat Party) to amend the Criminal Code with the aim of criminalising the underpayment of wages. The proposal outlines that employers should follow the existing collective agreements, with fines or a maximum penalty of 6 month imprisonment for intentional or negligent breaches of the law. (LA 15/2012 vp.) The current Minister of Finance (who is also the chairperson of the Social Democratic Party) has supported the proposal to introduce fines against those employers who do not pay wages in line with the collective agreement (MTV3 12 July 2013a). Employers' representatives oppose the proposal, arguing that employees have the possibility of demanding their wages by suing the employer in court, or through the offence of extortionate work discrimination (MTV3 12 July 2013b).

The Service Union United (PAM) criticises the employers' view, since even if the court case is successful, the outcome of the trial would only be that the employer pays the employee the wages that the employee should have received already in the first place, in line with the collective agreement. In this sense, the current practice does not impose any sanctions on those employers who underpay their

workers. In addition, the cases that go to court are only the tip of the iceberg of the grey economy in the service sector. (PAM 13 July 2013.)

From the perspective of protecting the rights of employees, it seems that it would be important to consider sanctions that on one hand could be given more swiftly and on the other, that would have a deterrent effect.

6.2.3 Bankruptcies and the ban on business operations

SEVERAL OF THE interviewed migrant workers had experienced situations where the (mainly cleaning) company that they had worked for had gone bankrupt and the workers had been left without wages. Some of the workers had been able to recover their wages through pay security (see also chapter 6.1.2), which is a government-financed wage guarantee for employees who have outstanding wages due to the employer being unable to pay (e.g. due to bankruptcy). This was confirmed by one of the interviewed permit and inspection authorities.

AJ: So part of this strategy is that you go bankrupt and then you leave the wages unpaid?

R: Yes, directly to pay security. The employer may him/herself say that go straight to pay security, s/he is not able to pay anything.

– Permit and inspection authority

Many of the interviewed workers also wondered how companies that have gone bankrupt in Finland are still able to continue operating under another name.

And then the company closes down ... goes bankrupt. Then it starts up again, but with another name. And they start recruiting trainees again.

– Estonian/Russian worker

This specific case points to a situation where certain employers intentionally misuse the system for their own benefit. An interviewed representative of the permit and inspection authorities explained that if the company has no funds, no one will take care of the liquidation, since it would cost too much. The bankruptcy thus becomes a mechanism to avoid paying outstanding taxes and other obligatory fees. This was commented on by one of the interviewed experts.

That's how you get rid of your old sins. The business itself laughs that these are those tax-free operations. These are those tax-free restaurants.

– Permit and inspection authority

In 2012 a total of 172 restaurants and 62 cleaning companies were declared bankrupt (Statistics Finland StatFin database 2013b). Entrepreneurs with an immigrant background were twice as likely to end up bankrupt compared to Finnish entrepreneurs, according to a survey by the newspaper Taloussanommat. The most common bankruptcies are among Estonian construction companies and ethnic restaurants. (Taloussanommat 30 November 2010.)

In addition to bankruptcy, misuse in managing and running a business may result in a ban on operating a business. In July 2012 there were 1150 persons under a ban on business operations in Finland. The majority of these companies were in the construction sector. Many of those under the ban, however, continue engaging in business operations in both Finland and Estonia although the Ban on Business Operations Act stipulates that a person who has been banned from operating a business is not allowed to manage a business, not even using a middleman (section 4). Annually some 30–40 persons are caught for violation of such a ban. (Verohallinto 2013.) There was at least one example of such a company in our research data, where a person on whom such a ban had been imposed as a result of exploitation of migrant workers, still continued operating a business either directly or indirectly. An interviewed expert explained that oversight is difficult.

Such a company can be a partner, provided that the sentenced person has been moved to other tasks. The problem may be that the sentenced person is in effect the actual decision-maker although s/he is not officially involved in the activities in any way. But how do you prove this, so that it would be legally binding for instance to terminate the contract? These are really tricky questions. Companies and persons engaging in such fiddling behind the scenes are really cunning and they know the intricacies of the law and are able to navigate in such a way that the papers always look clean. It's easy to use these shell companies and to always start a new company and in that way hide the tracks. Oversight is indeed difficult.

– Police and border guard

An interviewed trade union representative felt that the process of having a ban imposed on a person is cumbersome and takes too long, and in the end the ban is only valid for a few years. This expert called for more sanctions and mechanisms in order to target those who engage in problematic practices.

The problems of oversight are well known. The Ministry of Justice has recently suggested amending the law so that a person guilty of extortionate work discrimination could have a ban on business operations imposed on him or her by the court (Ministry of Justice 2012).³⁶ The Tax Authority has recently in its investigation of persons under the ban suggested intensifying efforts to oversee the ban and to publish a register online of all persons on whom the ban is imposed (Verohallinto 2013). Such a public registry of companies engaging in misconduct was supported also by one of the interviewed workers.

R: I think that when such things are happening, it should be published. The names.

NO: Sort of like name-and-shame?

R: Yeah, the name of the company and the name of the people involved. I think that should be done. Even if you can't publish it, it should be made public. I think that will go a long way to solve many things.

– Asian/African worker

One interviewed representative of the permit and inspection authorities, however, thought that such a name-and-shame practice conducted by the authorities would not be in line with the basic principles of the rule of law. Some trade unions keep public listings of companies that have been declared boycotted due to non-payment and underpayment of wages. For example, the Finnish Construction Union publishes the names of such suspect companies regularly, so that their members can watch out for themselves and avoid such companies.

In the construction sector, a recent law amendment enables the imposition of a negligence fee if a contractor subcontracts a company that is under the ban and in situations where it is known that the subcontractor does not intend to fulfil its obligations (Act on the Contractor's Obligations and Liability 469/2012, section 9). Such a negligence fee could also be introduced into other sectors apart from the construction industry in order to enhance oversight and control.

³⁶Already in 2009 the owners of a Chinese restaurant in Eastern Finland received a nine months suspended sentence for extortionate work discrimination and a five year ban on operating a business (Savonlinna District Court 20 February 2009).

6.2.4 The responsibility of contractors

It is possible to provide false information in [submitting] a bid [for a contract]. Lie. They're not going to tell in the bid if they intend to use undeclared labour for the actual work. It's difficult, since the contractor should be able to trust the information in the bid. But nothing guarantees that the information is correct.

– Permit and inspection authority

Several interviewed experts mentioned that one way of addressing problems of maltreatment of workers is that contractors should take more responsibility over inquiring about the contents and conditions of the contracts.

Personally I think that the contractors should perhaps find out more and demand more. As long as there are companies and sectors which, when they order services, don't really find out what common sense already tells you, that is that there's something fishy here, it is that long that there's going to be the grey economy. One shouldn't take the easy way out. The prices must be realistic and all papers must be in order.

– Employer's representative.

The price of the contract is not the only criterion for choosing a specific tender. According to the Act on Public Contracts, which governs the actions of public entities (such as municipalities and cities), the price of the contract is not the sole criterion. The selected tender can either have the lowest price or be the most economically advantageous, meaning that in addition to price, also e.g. quality, technical merit, functional characteristics, environmental characteristics, and cost-effectiveness are taken into consideration (section 62 of the Act on Public Contracts 348/2007). The European Commission is also currently in the process of modernising public procurement in the European Union, including a proposal for a new Directive on public procurement. Ethical selection criteria are, however, not included either in the Finnish Act on Public Contracts or in the new EU Directive.

There are, however, examples where actors at least in theory agree to consider also the ethical aspects of contracting. For example, the city of Helsinki has introduced a strategy of global responsibility in which they pledge to combat i.a. practices of the grey economy and to raise awareness of trafficking in persons and exploitation of migrant workers among those who are responsible for making

acquisitions for the city and accepting bids (Helsinki 2012, 5.) The Service Union United (PAM) has published a pamphlet on fair procurement, which highlights elements of ethical tendering and procurement, including how to take into consideration not only the price, but also the working conditions, wages, rights of the workers, quality of the work, the payment of obligatory fees, oversight etc. (PAM 2012).

In the cleaning sector the price is often the decisive factor, as has been noted above, but it does not need to be the only factor. It is fully possible to include also other elements into contracts, such as the obligation to provide evidence of wages paid. The contractor can also him/herself oversee the work being carried out, e.g. through unannounced spot checks. The city of Helsinki has introduced the practice of such “surprise inspections” into the sub-contracting companies and the services they are buying (Helsingin kaupungin tarkastuslautakunta 2010, 11). At least one major contractor has tasked a private security company to check whether the cleaners working in particular sites are listed as employees of the cleaning company (PAM 17 August 2012). Such practices could allow the contractor to identify illegal practices, undocumented workers or potential problems first hand.

One of the interviewed migrant workers suggested that contractors should demand not only a list of employees, but also their contact details, so that the contractor could be in touch with the workers directly.

I think one way to do that those given the contract, it can be a law that says that for every employer you need to give me a register of employees. Then now if you get the register of employees, the person giving the contract can now contact the employees. I mean e-mail is easy, you send one e-mail and it goes to everyone.

– Asian/African worker

It is of course not always feasible to expect contractors to be in direct contact with each worker, but from the perspective of the migrant workers, it may be useful for them to know that they themselves can also contact the contractor in case there are problems. A concrete solution to solving the problem of bidding is to introduce a common template for bids. This is already used by some companies in the cleaning sector.

From the perspective of contractors, one interviewed permit and inspection authority representative emphasised the need of oversight already at the beginning of the bidding process in order to remove the “bad apples” already at that stage.

As regards the prevention of labour exploitation, many strategies suggested by experts and migrant workers in this chapter could be potentially very valuable ways of combating exploitation which may ultimately lead to trafficking for forced labour. It is often the contractors who have the best chance of uncovering such practices and discontinue contracts with unscrupulous companies. Financial consequences and sanctions seem to be the most efficient in intervening in such irregular practices.

6.2.5 The role of oversight and inspections

SEVERAL OF THE interviewed experts emphasised the need for additional oversight to be carried out by the authorities and government bodies in order to prevent the exploitation of migrant workers in the cleaning and restaurant sectors. This is in particular the view of interviewed employers' representatives, who highlighted the roles and responsibilities of the authorities in tackling labour exploitation.

R: Of course this cleaning sector is a sector where it's easy to commit abuses unless they are monitored.

– Employer's representative

NO: What do you think should be the mechanisms to prevent the grey economy?

R: Inspection activities and increasing them. I don't know if the authorities could also increase their mutual cooperation. In any case, more oversight activities.

– Employer's representative

The same employer's representative called specifically for more resources for the labour inspectorate, and more inspectors. This expert also felt that the monitoring should especially target smaller restaurants, such as the ethnic restaurants, where problems are more common.

The current Government programme and the programme to prevent the grey economy and economic crime stipulate that the number of labour inspectors focusing on migrant workers should be increased (Government programme 2011). As a result, there are currently 17 labour inspectors focusing solely on migrant workers as compared to nine previously. There clearly is a need for even more inspectors, since it seems that many of the exploitative practices that the migrant workers encounter can only be uncovered through visits to and checks of the actual working places.

The employers' association in the cleaning sector (Kiinteistöpalvelut ry) has introduced a tax identification number for all employees of companies that are members of the association. This follows the current practice in the construction sector, where by law all workers on construction sites must carry a visible ID-card that includes their personal tax number. The idea behind the tax ID is that all workers on site can be identified and the credibility of the company can be verified through registry data from the tax authority. (Kiinteistöpalvelut ry 24 September 2012.) However, as one interviewed migrant worker pointed out, the use of the tax ID is a good measure in principle, but the measure mostly seems to target illegal or unregistered workers. While the measure indeed increases oversight, and control over who are working in any given company is welcome, the measure in itself does not solve the possible problems of exploitation occurring in the workplace.

In addition, to curb undeclared sales in the restaurant industry, there has been a discussion of the introduction of so-called 'black boxes' to be attached to the cash machine, in order to prevent misuse. The tax authority recommends that the introduction of cash machines that cannot be manipulated, together with an obligation for restaurants to always provide a receipt for purchases (Harmaa talouden selvitysyksikkö 2013). 'Black boxes' are in use in Sweden, and they store information on all transactions relating to the cash machine. In Sweden the tax authority also has the right to access the information and can thus check whether there have been sales "outside of the till". However, the Finnish employers' association in the restaurant sector, MaRa opposes the introduction of such a box in Finland, as it is deemed to be too expensive for restaurants to install such a machine and also too easy to manipulate it. The association instead promotes the obligation to always provide a receipt for all restaurant purchases. (Vitriini 2013, 50; Taloussanommat 16 March 2012.)

There are many good examples of measures to prevent the grey economy and the related exploitation of migrant workers. The 'Grey economy, black future' -campaign ("Harmaa talous, musta tulevaisuus") is a multiagency campaign by governmental and non-governmental actors (including trade unions and employers' associations), that aims at awareness-raising among the general public in Finland. The campaign has for instance focused on raising awareness about the responsibility of customers not to buy services which are overly cheap.

To truly prevent the grey economy and the exploitation of migrant workers in particular, it is important to have a holistic approach. There is need for proper and efficient oversight, the dissemination of information to both employers and employees, adequate legislation, as well as a public discussion on the premises and values under which work is carried out – and at what cost – in today's society.

7

Discussion and recommendations

7.1 Summary of main results

THIS REPORT APPROACHES trafficking in human beings for the purpose of forced labour from a broad perspective. As we showed in our previous report (Jokinen et al. 2011a), trafficking for forced labour takes place in the context of exploitation of migrant labour. Labour exploitation can be conceptualised as a continuum of situations and acts which range from less severe to more severe forms of exploitation. Trafficking for forced labour is the most severe form of exploitation, while more subtle forms of coercion represent less serious forms of exploitation (see Andrees 2008). Less serious forms of exploitation can be a breeding ground for more serious acts, leading up to trafficking for forced labour (e.g. David 2010).

The research was limited to two sectors which employ many migrant workers and where exploitation of migrant workers has been uncovered: the restaurant sector and the cleaning sector. However, the use of migrant labour is not in itself an indicator of irregular or exploitative practices in the workplace. The data comprises a variety of sources. Thematic interviews were conducted with various experts (N=28) including representatives of employers, trade union activists and migrant service providers. Also migrant workers (N=10) who themselves had experienced different forms of labour exploitation were interviewed. In addition, the data includes five court judgments on trafficking for forced labour and aggravated extortion, and

pre-trial investigation materials from two cases, media materials from the Finnish news media over the years 2011–2013 as well as information gathered at an expert meeting organised by HEUNI in 2012.

Exploitation of migrant workers must be understood in the more general context of employment and migration policies in Finland. These policies firstly regulate how many and what types of migrants enter Finnish job markets. Finnish Government policies have for some years promoted migrant labour as the solution to the perceived labour demand, which is a result of the aging population. The emphasis of governmental policies has been on attracting skilled and mobile labour. However, at the same time, the reality is that the majority of migrant workers coming to Finland enter the labour market in low-skilled positions in the service sector. The influx of migrant workers into these sectors is regulated through the so-called assessment of the available labour on the domestic market, a process which is linked to the granting of work permits to foreign workers. Our study shows the conflicting views that exist among employers and trade unions firstly regarding whether there is indeed a shortage of labour in the cleaning and service sectors. Secondly, the interviewed experts also disagree over how the possible discontinuation of the current assessment procedure would affect the general standards of work in these sectors in general and whether the risk of exploitation of those most vulnerable would increase.

Recruitment of migrant workers covers two different groups of migrants: those already residing in Finland in different statuses and those residing in another country. Most migrant workers coming to Finland seek work due to economic reasons. Work in Finland is seen as an opportunity to improve one's life and living conditions and many are willing to compromise regarding the employment and the conditions, as long as they can earn more than at home. Recruitment of migrants is carried out either via recruitment and employment service companies or via relatives, acquaintances and word-of-mouth. When it comes to serious cases of exploitation and trafficking, the latter method seems to be a more common way of securing a job in Finland. Our data revealed several cases where migrant workers have had to pay unreasonably high recruitment and placement fees. Such practices make the migrant workers particularly vulnerable to exploitation, since they are often in debt to their employer. Also deceptive recruitment practices were uncovered, for example in relation to the terms of employment, working hours and the wages.

Migrants from third countries must apply for a worker's residence permit if they want to come to Finland for work. In order to file an application for the work permit, the migrant must already have secured a job in Finland. Getting the work permit is a lengthy and

potentially costly procedure for both the migrants and their employers. Examples from the data show that migrant workers are exploited in different ways when it comes to work permits. Because their residence in Finland is dependent on having a job, migrant workers are reluctant to disclose to the authorities exploitative practices they have encountered. Unscrupulous employers may give misleading information about the contents of the work permits to migrant workers and give them the impression that they cannot change jobs or that their work contract will not be renewed if they complain about the terms of employment. From the viewpoint of prevention, it is problematic that migrants who disclose their experiences of labour exploitation to the authorities may risk their extension permit and right to reside in Finland, if their residence permit is dependent on having that very same job in which they were exploited.

In the cleaning and restaurant sectors, the exploitation of migrant workers seems to take place within the larger context of the grey economy and various clandestine practices. This research first analysed the situation in the cleaning sector and outlined the terms of extreme competition and sub-contracting chains that affect the working conditions of migrant workers. Due to extreme competition over bids in the cleaning sector, the prices are low and employers try to make savings and profit via reducing the personnel costs, which make up the main share of costs of cleaning services. Although we find that most employers in the sector (and in the restaurant sector) do abide by the laws and collective agreements, our data revealed a number of cases where this effort to reduce personnel costs leads to exploitation. Exploitative practices distort free competition and are overall condemned by employers' associations. Savings are also made by reducing the time allocated to carry out certain tasks and thus increasing the workload of the workers. Problems arise when work is contracted out to subcontractors, who provide services clearly under a reasonable payment level, again affecting the wages and working conditions of the employees ultimately carrying out the work at the end of the chain. According to the data, such sub-contractors are often small, unorganised and in many instances migrant-owned companies in the cleaning sector.

These mechanisms for reducing the costs of cleaning reflect directly upon the terms of employment in the cleaning sector. Many migrant workers struggle with different zero or part-time contracts and many have experienced having either too little or too much work. Examples from our data show that for many migrant workers, complaining about such issues had led to situations where the number of working hours offered was cut, resulting in financial problems for the interviewed migrant workers. Also the sizing of the work often causes

problems, since in many instances the areas for which the workers were responsible were so large that they were not able to finish the work in the time they were paid for and instead had to finish the work in their spare time. In addition, the interviewed workers had encountered practices where they had to “intern” or work for free for some days in order to show that they are “good workers” before securing a job. According to interviewed migrant service providers, such schemes are especially common among asylum seekers and undocumented migrants who are particularly desperate to obtain a job.

Regarding the restaurant sector, the grey economy manifests itself especially in different tax offences such as sales without taxes, underpayment of wages and avoidance of obligatory payments and insurances. The illegal practices are seen to skew competition and prices, and contribute to an overall erosion of the economy within the restaurant sector. At the same time, part of the problem is also caused by the demand of consumers for cheap services. The most serious cases of exploitation of migrant workers and labour trafficking so far uncovered in Finland have been in ethnic restaurants: in Asian restaurants and kebab restaurants and pizzerias. These are often owned by migrants who exploit their own countrymen through low wages and long working hours. Exploited migrants may work up to 12 hours a day, 6–7 days week, but only receive certain basic wages without any mandatory extra pay for evening, night, Saturday and Sunday work or overtime. In some cases wages as low as 500 EUR/month have been paid to cooks. As in our previous study, this research shows many examples of how workers have had to return part of their wages in cash to the employer. Such practices seem systematic and calculative and a way in which unscrupulous employers try to mislead different permit and inspection authorities in order to maximize their profits.

In this report, prevention of labour exploitation is analysed from the point of view of both migrant workers and employers and the authorities. Many migrant workers seem to be weighing the pros and the cons of disclosing their experiences of exploitation to the authorities versus the risk of losing their job, their means of income and perhaps even the right to reside in Finland as a result of their disclosure. In particular asylum seekers and undocumented migrants are vulnerable to exploitation due to their poor status in society.

Our research shows that migrant workers are often unaware of their basic rights and obligations: they do not know their rights as employees in the Finnish system, nor do they know where they could find help. They have problems understanding the Finnish tripartite system with collective agreements that stipulate the minimum wage, and how the responsibilities of dealing with rights and obligations in the labour market are divided among the different authorities and

institutions. Raising awareness among the networks of the migrants themselves is extremely important, since information on the existence of i.a. trade unions or labour inspectorate is disseminated via such networks and ethnic communities. Although relevant information may be available online and in different leaflets and booklets, in particular the interviewed migrant service providers emphasised the importance of offering services in person and in multiple languages.

The data reveals that in many cases the exploitation of migrant labour is intentional and systematic in nature. The motivation of exploitative employers is largely based on money and profit-making. The lack of sanctions further undermines the ways in which the authorities can intervene in the practices of unscrupulous employers. Interviewed experts made several suggestions for improving the system and responding more effectively to labour exploitation. These include financial sanctions and the right of labour inspectors to give fines to unscrupulous employers, and placing more emphasis on the responsibility of the contractor in monitoring its sub-contractors or companies offering services. In addition, the representatives of trade unions promoted the right for unions to bring class action suits. Suggestions were also made to criminalise the underpayment of wages as a potential way of combating labour exploitation. In addition, business bans could be used more often in cases where the employer has been found guilty of exploitation of migrant workers. Several of the interviewed experts also emphasised the need for the authorities and government bodies to conduct more oversight activities in order to prevent the exploitation of migrant workers in the cleaning and restaurant sectors.

7.2 Discussion on the findings

THE FINDINGS OF this study show that the situation in Finland with regard to exploitation of migrant labour is no different from what it is in other parts of the world. The International Labour Organisation (ILO) has noted that the “number of migrants in an irregular situation is rising, fuelled by the growth of informal forms of employment, shortages of workers for dirty, demeaning and dangerous jobs (“3D-jobs”) and lack of opportunities for regular labour migration” (International Labour Conference 2004). This reality for many people in different parts of the world should be acknowledged in preparing migration and labour policies as well as in seeking to prevent exploitation and misuse.

In this report we decided to focus on two sectors: the cleaning and the restaurant sectors. Both sectors are part of the service industry, and migrants make up a large share of the employees in

both. Both are labour-intensive sectors, where labour form a large part of the overall costs. Since it is difficult to incur savings on other costs such as material costs and taxes, the goal to maximise profit may lead to a situation where employers save especially in the labour costs. Furthermore, on one hand there seems to be a lack of labour in some sectors, and on the other an oversupply of unemployed persons. The problem seems to be one of matching the supply and demand of labour at a time of an economic downturn. The nature of both the cleaning and restaurant sectors is such that there is a large demand for labour at certain hours of the day, or certain days of the week (early mornings and evenings in cleaning work; lunchtime, evenings, Fridays and Saturdays in restaurant work). This leads to a situation where a labour reserve, often working on part-time contracts, is needed to respond to this fluctuating demand. Migrant workers are seen as a flexible labour reserve, available for such part-time and on-call-when-needed work. Due to their difficulty in acquiring other (more permanent, full-time and better paid) positions, many migrant workers are willing to take such disadvantageous contracts, largely as a result of their circumstances in Finland. These circumstances may include their precarious residence status, lack of required language or other skills, lack of a formal recognition of previous education and degrees (leading to a situation where migrants cannot get jobs that correspond to their education), discrimination and racism, and the simple need to sustain themselves and their families. Many migrant workers, especially from third countries (i.e. outside the EU/EEA), wish to stay in Finland, and they may thus accept work at any terms.

It may seem that at times this report deviates quite far from the issue of trafficking in persons for the purpose of forced labour. However, we argue that a focus solely on trafficking for forced labour makes it difficult to see and understand the larger structural and contextual factors that facilitate exploitation of migrant workers. As we argued above, trafficking does not take place in isolation from the larger context of exploitation of migrant workers. From the point of view of attempting to prevent human trafficking, it is necessary to see and address the mechanisms under which this exploitation is possible.

In our previous report (Jokinen et al. 2011a) we outlined in detail the manifestations and forms of exploitation that migrant workers have experienced in Finland. We analysed these forms of exploitation of migrant labour using the ILO indicators of forced labour as our frame of analysis, including physical or sexual violence or the threat of such violence; restriction of movement of the worker e.g. through confinement or through prevention of contact with the host community; debt bondage or bonded labour e.g. arising from the process of

recruitment and transportation; withholding wages or refusing to pay the worker at all; retention of passports and identity documents, and threat of denunciation to the authorities (ILO 2005, 20–21). All these forms of exploitation were uncovered in our previous study, together with additional types of abuse. In our view, our earlier account is still largely valid: the forms of exploitation inflicted upon migrant workers in Finland have remained more or less the same. The most common forms of exploitation of migrant workers still seem to be types of underpayment, discrimination in wages, indebtedness to and dependency on the employer, psychological control of the workers, and an overall lack of alternatives, hindering the worker from leaving the abusive work situation (see Jokinen et al. 2011a).

This is why in this report we have not gone into such detail in presenting concrete forms of exploitation. Instead we have presented a more in-depth analysis of aspects of recruitment and the practices of employers as well as structures that facilitate exploitation. We have tried to give more voice to migrant workers themselves, who have experienced exploitation in Finland. We thus try share their views on why they have ended up in these abusive situations, what keeps them in these jobs and how they themselves see that such exploitation should and could be prevented. Our report shows that the migrant workers we interviewed are active subjects who continuously calculate the risks and benefits of the work, and whether they should stay or try to leave the employment. When experiencing exploitation, the workers often assess whether it is worth disclosing their experiences to the authorities, since it is likely that the only outcome is that they will lose their job, without receiving compensation or remedies for lost wages and experienced abuse.

To balance the views presented by migrant workers, we have in this report also wanted to give voice to representatives of employers and recruitment agencies. The view presented do not necessarily represent all employers and recruiters, since we were able to only interview organised employers who belong the formal employers' associations. From detected cases of trafficking for forced labour and exploitation of migrant workers we know that many of the unscrupulous and abusive employers are unorganised, i.e. they do not belong to the respective employer's associations. Many of the employers engaging in illegal practices also have a foreign background themselves (especially in the ethnic restaurants).

It is important to note that the majority of employers and recruitment agencies in Finland are law-abiding and do not engage in exploitation or misuse. This does not mean that exploitation does not occur among organised employers. There is still a need for increased awareness about the existence of exploitation of migrant labour, as

well as forms of self-regulation to tackle those who engage in illegal and exploitative practices. One major challenge in tackling exploitative practices seems to be the lack of sanctions. In the most extreme cases, the lack of efficient intervention methods makes it possible for unscrupulous employers to continue their abuse over many years, continuously recruiting new workers.

In addition, it seems that the existing oversight mechanisms in Finland are largely based on ensuring that the required documentation is in order, instead of attempting to actually finding out whether the obligations are fulfilled in reality. In many instances the papers may be in order in order to mislead the authorities while the reality in the workplace is different.

One key challenge is how to detect cases of exploitation. Exploited workers do not necessarily disclose their experiences to the authorities, such as the police, because they cannot be certain that such disclosure will lead to any benefits for them or an improvement in their situation. From the perspective of prevention, it is problematic that migrant workers do not disclose their experiences, since this is one of the only avenues of receiving information about exploitation. In addition, undocumented migrants and asylum seekers possess specific vulnerabilities that facilitate exploitation. All these groups of migrants pose a challenge to the authorities: how and whether to acknowledge them in the first place, and how to respond to their specific needs. It seems that the best way of supporting exploited migrant workers and vulnerable populations is through non-governmental organisations that provide services with a low threshold. Unfortunately there are few such organisations. One potential actor who could take on board this group of migrants is the trade union movement. Trade unions have both the expertise and often first-hand experience about the problems in the labour market. Many trade unions today also have members with a migrant background: the unions could utilise this membership to a greater extent and train migrant members to provide peer support and thus also access communities that might otherwise be difficult to find and enter.

In order to prevent exploitation, it is important to tackle the exploitative practices already from the very outset of labour migration (or trafficking chain) in the source country. From the perspective of a destination country this is often very challenging, especially as much of the exploitation in recruitment take place among unorganised recruiters, such as family, friends and acquaintances. There is an inherent contradiction also in the prevention of recruitment: efficient prevention of irregular and illegal recruitment practices would mean that the person would not be able to migrate at all. However, from our perspective labour migration is welcome, and willing migrant workers

should have the right to access the (Finnish) labour market. It is the conditions under which they are recruited and in which they work that should be in line with the general standards of work in the country of destination.

As has been noted, the current government strategies and policies focus on the positive aspects of migration, without acknowledging the risks and side-effects of labour migration from the perspective of the migrant workers. Policies should also include efforts to ensure that migrant workers can work under fair and decent circumstances, even in low-skilled positions and labour-intensive sectors. Some argue that at least migrant workers receive better wages than they would in their home country. However, the point is that migrant workers should receive the same wages as do local workers in the destination country, and they should be able to work under the same terms of employment, with the same rights and responsibilities.

The problems that migrant workers experience in Finland are directly related to the restructuring of work and production as well as the larger changes in the economy and the effects of globalisation. All of this has affected how work is organised and contracted out in today's societies. Increased competition is pressing down prices (both nationally and internationally) and ultimately the price is paid by the most vulnerable workers. The effects of these global changes can be felt and seen also in Finland, as this study shows. One may argue that it is not only the exploitative or "unscrupulous" employers in the cleaning and restaurant sectors who benefit from the general weakening of the bargaining power of employees and the overall diminishing standards of employment in the low-paid sectors of the economy, but it is the entire business, including the legitimate actors and organised employers.

There is a need to raise awareness among contractors and consumers, but also to increase the efficiency of oversight mechanisms by the authorities. The existing good practices of legitimate and responsible employers and recruitment agencies in different sectors should receive more attention. Ethical conduct in business should be made a valuable asset in the current competitive market economy. All in all, the most efficient means of preventing labour exploitation and trafficking is cooperation among all actors: government, non-governmental and civil society, trade unions, employers and migrant workers themselves. Increased oversight, improved dissemination of and access to information, and adequate legislation are crucial. In addition, there is a need for an enhanced public discussion regarding the circumstances under which work and services are performed. Ultimately it is a question of societal values and acceptance: how much are we willing to pay for goods and services? Who benefits from overly cheap prices, and who must suffer the consequences?

7.3 Recommendations

IN THE FINAL section of this report, we present some concrete recommendations for different actors and suggestions for how to prevent exploitation of migrant labour as well as trafficking for forced labour.

Approaches towards labour migration

THE POLICIES THAT promote labour migration should also acknowledge the problems of exploitation and trafficking. Migrants should not be seen as a "commodity", but as active agents who seek better employment opportunities for themselves.

- **IF MIGRANT LABOUR** is to be attracted to Finland, integration services need to be further developed, including language training and information on rights and obligations. This prevents exploitation and vulnerabilities.
- **THE WORKING AND** employment conditions offered to migrant workers should be adequate and in line with the respective collective agreements. Where possible, full-time employment should be

offered to migrants in the cleaning and restaurant sectors and contracts should not be changed to become part-time, once a work permit has been obtained.

- **A RESTRICTIVE APPROACH** to the removal of the assessment of available labour should be maintained for the time being. The assessment should
- **REMAIN IN PLACE** in sectors where workers are vulnerable to abuse as well as employers known to have exploited employees in the past.
- **FURTHER EFFORTS TO** ensure employment of migrants already residing in the country should be undertaken.

Recruitment practices

ONE OF THE challenges of prevention is that many of the problematic practices have emerged among workers recruited by individuals and relatives. This small-scale recruitment is more difficult to address and to influence than if the recruitment of migrant workers is organised through large, organised companies. Therefore the preventative mechanisms need to take into

consideration both types of recruitment, and the risks and potential problems involved in both.

- **INFORMATION TO THOSE** wishing to come to work in Finland should be provided at the stage where applications are made for a visa.

- **ETHICAL RECRUITMENT GUIDELINES** should be prepared for sectors that employ a number of migrant workers and these guidelines should be promoted among employers and recruitment agencies.
- **EMPLOYERS AND RECRUITMENT** companies wanting to recruit workers from abroad should use only reliable and accredited recruitment companies and partners.
- **RECRUITMENT AGENCIES SHOULD** make contracts that forbid their partners

from asking for recruitment fees and if this is done, the contract should immediately be terminated.

- **RECRUITMENT AGENCIES SHOULD** make sure that the employer/client company for which they are recruiting is reliable and has enough assets to pay for wages and offer full-time work in Finland.
- **RECRUITMENT COMPANIES SHOULD** make sure that the persons they recruit have not had to pay recruitment fees at any stage in the country of origin.

Work permits

THE CURRENT SYSTEM of issuing work permits to migrant workers, especially from third countries, could be used to disseminate information to workers, as well as to uncover exploitative practices.

- **THE PROCESS OF** acquiring work permits should become more predictable and there should be a maximum time limit during which work permits have to be issued.
- **THE HIGH PROCESSING** fee for the first permit could be lowered or returned in cases where no permit is issued, since this may expose migrants to exploitation.
- **A SHORT INFORMATION** leaflet could be given to a person applying for a work

permit or an extension to their permit, which contains some basic information on their rights as workers in Finland and information on where to seek help in their own language.

- **WHEN A PERSON** applies for an extension permit from the police, the police could personally interview at least some selected migrant workers, especially if the permit is for a high risk sector (e.g. ethnic restaurants). This would enable the police to better assess whether the terms of employment of the applicants have been met or whether they have encountered exploitative practices.
- **IN CERTAIN INSTANCES** when the extension permit is refused due to exploitative practices of the employer (e.g. the

minimum income has not been met), the migrant workers should be given a flexible period during which they have the right to look for another job.

- **NEW WORK PERMITS** should not be issued to employers who have not been fulfilling their duties as employers and

whose employees have had their applications for extension permits rejected because of this. There should also be a probation period during which work permits are not granted on behalf of employers who have been sentenced for extortionate work discrimination, aggravated extortion or trafficking in persons.

Employers' roles and responsibilities

EMPLOYERS HAVE A key role to play in preventing exploitation of migrant workers. Although much of the exploitation seems to take place among unorganised employers, also the organised employers have a responsibility to ensure that recruitment and the conditions of work are of a certain standard in their respective sector.

- **EMPLOYERS SHOULD ASK** whether people they are hiring have had to pay anything for getting the job (both recruitment from abroad as well as from Finland, especially if the person is an asylum seeker, for example.)
- **EMPLOYERS SHOULD MAKE** sure that the people they hire understand their terms of employment when they sign the contract.
- **ONE WAY OF** ensuring that employees understand the terms of employment as well as their broader rights and obligations would be to provide a comprehensive introduction to the work and also opportunities to attend language

courses. Work instructions and manuals should be provided in a language that the workers can understand.

- **EMPLOYERS SHOULD ENSURE** that also migrant workers understand the concept and contents of occupational health and safety regulations and standards.
- **AS FAR AS** possible, employers should offer full-time contracts or fixed-part time contracts and avoid issuing "zero-contracts", i.e. contracts with no guaranteed amount of working hours.
- **EMPLOYER'S ASSOCIATIONS SHOULD** make additional efforts to attract migrant entrepreneurs to become members of employer's associations. The associations could also enhance the distribution of information about employers' rights and obligations and the existing collective agreements to employers who are not yet members of the association. This includes information and materials also about workers' rights, trade unions and life in Finland.

Contractors

- **CONTRACTORS SHOULD ENSURE** that their knowledge of contracting rules and stipulations is sufficient.
- **IN SELECTING A** bid, contractors should not only focus on the price, but also take into consideration the overall conditions and terms under which the work is carried out. This includes thorough checking of the background of subcontractors and ensuring that the wages to be paid to workers are in line with the minimum wages in the collective agreement.
- **CONTRACTORS SHOULD MAKE** use of their power to impose additional monitoring and oversight over subcontractors. This could include e.g. additional background checks, surprise checks of work sites, as well as additional documentation regarding wages and taxes paid. Additional clauses and requirements could be introduced into contracts.
- **IN SITUATIONS WHERE** oversight is not possible, contractors should limit their subcontractors from further subcontracting the work. If breaches of such limitations are uncovered or if exploitation is detected, the contractor should terminate the contract.

Services for migrant workers and coordination among organisations offering such services

- THERE STILL SEEMS** to be a lack of targeted services for migrant workers. In particular, there should be more information provided to migrant workers on their rights and obligations, and on how and where to seek help.
- **AWARENESS OF THE** rights of workers in Finland should be improved among migrants. Already when migrants are applying for work/residence permits, they should be given a leaflet about their basic rights and about places they can contact when in need of help or advice.
 - **TO IMPROVE MIGRANTS'** awareness of their rights, their own networks should be utilised to a greater extent than before. Migrants' own networks and ethnic communities should be engaged in the dissemination of information.
 - **A LOW-THRESHOLD SERVICE** point where migrant workers could seek advice and help should be established. Such a migrant information centre could be run by trade unions, NGOs or other civil society actors. It could offer support for workers in order to ensure that the employment and their work contract is legitimate and that the working conditions are adequate.
 - **LEGAL ASSISTANCE TO** migrant workers

should be ensured, also for those who are not members of the trade unions. It is important to improve migrant workers' access to justice and to keep them informed information about the proceedings.

- **THE ACCESSIBILITY AND** transparency of existing services provided to migrant workers should be enhanced in order to ensure that they understand what is happening and how things are proceeding. It would be important that the person could access information from

one or a few points of service instead of having to visit numerous authorities. Any services provided should be available in multiple languages where possible

- **DESPITE INCREASED KNOWLEDGE** of labour exploitation among different actors, many key agencies do not cooperate sufficiently and their data is not compatible or cannot be shared due to data protection regulations. The appointment of a national coordinator for anti- trafficking efforts is expected to lessen the problems of coordination.

Trade unions

TRADE UNIONS POSSESS expertise and information on the situation in the labour market. They also have direct contacts with employees, including migrant workers. This places them in a unique situation as both providers of information, and as actors who can intervene and assist in situations of misconduct.

- **TRADE UNIONS COULD** take a more prominent role in providing direct assistance to all migrant workers, regardless of whether they are members or not. This could include the establishment of a telephone helpline or a service point for migrant workers who need information on their terms of work or situation in Finland.
- **TRADE UNIONS COULD** train members with a migrant background to act as

peer support persons in order to provide information to (ethnic) workplaces and communities that might otherwise be difficult to access.

- **THE COOPERATION BETWEEN** trade unions and other service providers should be further enhanced. This could include cooperation with actors such as the church, migrant service providers (e.g. In To Finland and Virka Info) and the official system of assistance for victims of trafficking. Trade unions could also increasingly direct victims to the system of assistance.
- **THERE IS A** need to develop the practices of the authorities and others who potentially come into contact with migrant workers. This should cover a wider range of authorities than previously considered,

and could include e.g. alcohol inspectors, tax inspectors, fire inspectors, and health inspectors who should learn to identify indicators of exploitation and trafficking.

- **THERE IS STILL** a need to increase the number and resources of labour inspectors focusing on inspecting the terms of employment of migrant workers. The reporting of trafficking in human beings should explicitly be included in their mandate.

Sanctions

THE LACK OF adequate sanctions and tools seems to be a barrier to the efficient tackling of labour exploitation in Finland.

- **LABOUR INSPECTORS COULD** be given the right to impose on-the-spot fines to employers who violate the employers' obligations, e.g. who do not keep up-to-date working hour lists or lists of employees, who violate employment health care provisions etc.
- **EXTORTIONATE WORK DISCRIMINATION** should be included among the offences for which corporate criminal liability can be used as a sanction.
- **THE FINES FOR** corporate criminal liability for exploiting migrant workers could be enhanced. The fines could e.g. be in proportion to the overall turnover of the company in question in order to have a true deterrent effect.
- **IT SHOULD BE** made possible for trade unions to initiate class action suits in some situations of labour exploitation.
- **THERE SHOULD BE** additional sanctions for entrepreneurs who repeatedly declare bankruptcy and ask employees to claim their wages from pay security.
- **THE BAN ON** business operations should be used more often and enforcement should be stricter.
- **IN SITUATIONS WHERE** a person has been sentenced for exploiting migrant workers and/or trafficking, the possible proceeds of the offence should be confiscated and directed to victims as well as to the authorities to strengthen their capacity to respond to such exploitation.

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Annex 1

Infopaper for expert interviews

**Recruitment of migrant workers and the
prevention of Exploitation in the cleaning and
restaurant sectors**

THE EUROPEAN INSTITUTE for Crime Prevention and Control, affiliated with the United Nations (HEUNI) coordinates an international project that aims at preventing the exploitation of migrant labour in Finland and the Baltic Sea region. The project is a continuation of an earlier research project on labour trafficking in Finland. The research showed that exploitation of migrant labour is often difficult to identify and to intervene. More information is especially needed on how workers end up in situations of exploitation.

The aim of the project is to map the practices and problems in the recruitment of migrant workers, and to come up with good practices for preventing exploitation of migrant workers. The project will publish a research report on Finland, Estonia, Lithuania and Sweden and also prepare guidelines for employers and recruiters on how to identify and prevent labour trafficking and exploitation.

One part of our research comprises of expert interviews. We would like to discuss with experts from different sectors on issues related to recruitment of migrant workers and think about ways in which the exploitation of migrant workers could be prevented. We would also like talk about the problems that have occurred in different sectors and think about the roles and responsibilities of different actors. Your answers are very important and valuable, and we are very grateful for your participation.

The interviews will be confidential and HEUNI staff is bound by secrecy rules. We will not share any personal information with outsiders. In the final publication the information will be presented in such a manner that you can not be recognised. Participation in the interview is voluntary. You are free to withdraw from the interview at any point or decline to answer any particular question if you want.

If you have any questions about the project or the interviews, please contact us. You can also find more information on: www.heuni.fi.

Natalia Ollus

Senior Programme Officer

Anniina Jokinen

Researcher

Annex 2

Introduction and Research Findings

**Anniina Jokinen
and Natalia Ollus**

Indicators on trafficking for forced labour

IN THIS RESEARCH, we have approached exploitation of migrant labour from the perspective of a continuum of situations and acts, which range from less severe to more severe forms of exploitation (Andrees 2008). Trafficking for forced labour can be regarded as the most severe form of exploitation, while more subtle forms of coercion represent less serious forms of exploitation. These less serious forms of exploitation can lead up to more serious acts and create conditions where trafficking for forced labour may take place (e.g. David 2010). We argue that trafficking for forced labour takes place precisely in this context of exploitation of migrant labour in general. Therefore, in order for us to uncover and understand labour trafficking, we must scrutinize the broader context of exploitation of migrant workers. We recognise, however, that migrant workers are a heterogeneous group within the four countries studied, including both EU/EEA-citizens and third country nationals, as well as asylum-seekers and undocumented migrants. Despite this, we use the term migrant worker to denote the broad group of people who seek employment outside their own country. Furthermore, in the research, the terms trafficking for forced labour, trafficking for labour exploitation and labour trafficking are used interchangeably.

Forced labour does not necessarily entail trafficking. Forced labour may exist without trafficking, but many jurisdictions require that for the crime of labour trafficking to be fulfilled, there must be exploitation that amounts to forced labour (or equivalent exploitation). Trafficking for forced labour hence exists where trafficking in human beings and forced labour overlap. Overall, both crimes can be seen to take place in the context of exploitation of (mainly migrant) labour (see Figure 1).

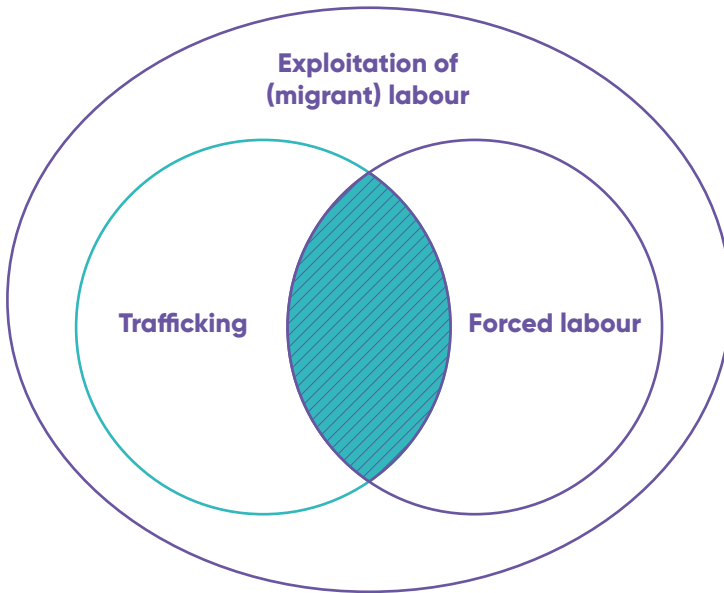


FIGURE 1. Trafficking in human beings, forced labour and the exploitation of (migrant) labour (building upon Hauchère 2010).

THERE IS NOWADAYS an increasing body of case law emerging on trafficking for forced labour. One of the difficulties identified also in our previous research is that the definition of forced labour and its interpretation is challenging to criminal justice and other actors. Trafficking for forced labour is often seen through stereotypes, or only very serious cases are recognised (see Jokinen et al. 2011a). It is therefore important to see the totality of the situation of the exploited person and to identify also the subtle forms of control of movement and those indicators that show that the employee is dependent on the employer.

In this research we have utilised the ILO indicators on forced labour and trafficking in helping us conceptualise exploitative forms of recruitment and practices of employers (ILO 2005; ILO 2009). Indicators of forced labour include physical or sexual violence or the threat of such violence, restriction of movement of the worker, debt bondage or bonded labour, withholding wages or refusing to pay the worker at all, retention of passports and identity documents, and the threat of denunciation to the authorities (ILO 2005, 20–21). In addition, trafficking in human beings can be analysed also based on whether forms of deception or coercion were used during recruitment or transportation, whether the recruitment took place by abusing the person's vulnerability, whether exploitative conditions prevailed at work, and whether coercion or abuse of the vulnerability of the migrant worker occurred at destination. (ILO 2009.) In this research, the indicators were used loosely in conceptualising exploitative recruitment practices as well as the practices of employers and their role in exploitation of migrant workers.



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affiliated with the United Nations