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With this quarterly newsletter, La Strada International wishes to inform and update you on developments in the field of trafficking in human beings and the activities of La Strada International and the La Strada member organisations. We welcome your feedback and input. Please [e-mail us](#) by 1 March 2017 if you have news, information about your organisation, a new report or documentary or an outspoken opinion on (inter)national developments.



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## La Strada News !

### EC rejects LSI again as member of the EU Civil Society Platform on trafficking

In November, La Strada International was for the second time rejected as member of the EU Civil Society Platform, set up by the European Anti-Trafficking Coordinator in 2013. Although the platform was set up to be an open forum for discussion, the selection of the membership both in 2014 and in 2016 showed a lack of transparency and it remains unclear why LSI, an organisation with long-standing experience in monitoring European counter-trafficking policies, has not been selected. Although several LSI members and close partners have been accepted in the platform, it can be noted that among the selected networks focusing specifically on the issue of human trafficking, several very strong anti-prostitution networks have been selected, including the US-based Coalition against Trafficking in Women (CATW), which calls itself the world's leading abolitionist organisation. The rejection for membership in the platform has excluded LSI from access to relevant information and has negatively impacted on our mandate. In response to our query, the Office of the EU Anti-Trafficking Coordinator replied that our members should now update us instead. We believe that the Platform ideally should lead the way to facilitate exchange between different civil society actors representing diverse views, opinions and experiences. In particular, we are convinced that the platform can only be effective if it represents an all-inclusive network and involves organisations with different views, including on the legal regulation of informal and/or unprotected economic sectors, including domestic and care work and sex work.

## Justice at Last - Access to compensation for trafficked persons



In the framework of the [Balkans ACT NOW II project](#) which focussed on monitoring national anti-trafficking policies and the improvement of access to compensation for victims of human trafficking and other violent crimes, LSI and 32 other members and partners launched the [campaign](#) 'Justice at Last - Access to compensation for trafficked persons'. The aim of the campaign was to raise awareness of the right to compensation and urge European governments to implement [ten action points](#) that will remove obstacles and improve access to compensation.

Although compensation is a guaranteed right by the Council of Europe Convention and the EU Directive, in practice it remains woefully underutilised. There are many obstacles that prevent trafficked persons from seeking and obtaining compensation. There is lack of awareness among the police and judicial system and criminal and civil proceedings are often lengthy and costly. Traffickers are not found, not prosecuted or have moved their assets to avoid seizure and confiscation. The irregular status of a person, or their work in the sex industry, are other obstacles. Furthermore, even when trafficked persons are awarded a compensation claim, they are usually responsible for enforcing the order themselves.

As long as barriers to compensation exist, European Governments fail to fully implement their obligations under the Council of Europe Convention and the EU Directive to ensure victims' access to compensation. The BAN II project has been finalised this month. All publications developed in the framework of this project, including a monitoring handbook for NGOs, monitoring reports and feasibility studies for national compensation funds for the four Balkan countries are all accessible via the [project website](#).

## LSI hosts 4<sup>th</sup> DemandAT Project meeting in Amsterdam

On 3 and 4 November 2016, La Strada International hosted the 4<sup>th</sup> DemandAT Consortium project meeting in Amsterdam. DemandAT is an EU-funded project under the FP7, which examines demand-side measures against human trafficking. The project is coordinated by IMCPD, and involves altogether nine European partner institutions, including LSI and La Strada Czech Republic. The project started in January 2014 and runs until June 2017. The meeting served to discuss the progress of the second phase of the project, which included separate empirical research studies on domestic work, prostitution, globalised production of goods, campaigns and the role of law enforcement actors in addressing demand. Discussions focussed on how the concept of demand is used in addressing exploitation in the different sectors and by different actors and the usefulness of the term. Common findings of the different researches were defined and will be additionally explored in further research and for the policy briefs and final report. All final papers and policy briefs will be published between April and June 2017. A final conference where all findings will be discussed, is planned to take place in May 2017 in Brussels. For more information on DemandAT and already published reports, see the [project website](#).

## Work abroad may turn to be a trap



Animus Association/La Strada Bulgaria carried out for a second consecutive year a nationwide [awareness campaign](#) for the prevention of labour exploitation. The main purpose of the campaign is to inform people about the risks of trafficking and exploitation while looking for a job or working abroad. This year the campaign message is 'Work abroad may turn to be a trap' as hundreds of Bulgarians are exploited in different sectors, such as food processing, construction, agriculture and services in EU countries. The campaign message is communicated through animated banners in popular internet job websites, and posters distributed at thousands of locations around the country, such as employment offices, post offices, border checkpoints and Sofia airport. A preliminary evaluation of the campaign

shows that 69% of people who have seen the campaign reflect on the fact that there are risks of labour exploitation when they seek a job abroad. They have evaluated the campaign as very informative and timely.

### Improving access to specialised legal aid for trafficked persons in Bulgaria

An adequate system which ensures that trafficked persons are informed about their rights in criminal proceedings in an understandable manner and as early as possible is crucial for the effective protection of victims and the efficient prosecution and conviction of perpetrators. To this end, Animus/La Strada Bulgaria is working with the Dutch Helsinki Committee and partners in Romania and Hungary to improve access to legal aid for trafficked persons.

The project partners have gathered all relevant stakeholders and service providers in the legal and NGO field to discuss and elaborate a work plan how to create a legal aid system that includes specialised victim lawyers and to ensure that in the future all trafficked persons have access to quality legal aid as soon as there are reasonable grounds to believe they are a victim of trafficking. The project targets lawyers, service providers, state institutions, universities, legal aid bureaus, bar associations and other relevant actors in the national legal aid system and referral mechanisms for trafficked persons. It builds upon a previously implemented EU project and will try to consolidate the network of trained lawyers and address a major problem how to link trained lawyers with the state funded system of legal aid. Animus/La Strada Bulgaria organised three focus groups comprising professionals from the judiciary, law enforcement agencies, bar associations, human rights NGOs, and representatives of the National Bureau for Legal Aid and the National Commission for Combatting Trafficking in Human Beings in the period September - November 2016. The participants discussed recommendations and practical solutions to enhance access to specialised legal aid for victims of trafficking. In January 2017, a national conference is planned to advocate for legislative amendments and changes in the practice of assigning legal aid lawyers to victims of trafficking and develop a multi-institutional Action Plan.

### Do not give your time for free - Czech campaign launched to reach migrant women at risk



Since 2014, La Strada Czech Republic, LEFÖ (Austria) and Ban Ying (German) have been implementing the project 'Empowerment of Migrant Women at Risk of Exploitation, Trafficking or Enslavement'. The project built on the extensive complementary experience of partner organisations in various forms of outreach work, awareness-raising campaigns and advocacy activities and focused on three complementary parts of how to support the target group. Because migrant women are isolated from

common awareness raising measures, such as media, social networks etc, the project aimed to find alternative ways of informing them about their rights and ways of resolving abusive situations, as well as to offer them assistance through specialised services. Firstly, possibilities of alternative outreach work were tested. For example, in Austria, LEFÖ published a [brochure](#) informing migrant women of their rights and where to seek assistance. Secondly, the tailored services for migrant women were defined and implemented and thirdly, after the evaluation of the legislation, a strategy for further advocacy for the rights of migrant women was prepared.

Research conducted into the environments of the target group brought more detailed information about their specific needs, based on which existing specialised services can be further modified. Findings were discussed and shared at an international meeting held on 4 - 5 October this year in Prague, Czech Republic.

As part of the project, La Strada Czech Republic launched a national campaign entitled 'Do not give your time for free'. The campaign message, translated into six languages, aimed to reach migrant women working in hidden or enclosed environments such as households, cleaning services within gated hotels, diplomatic complexes, etc. The campaign was promoted on Facebook and on different websites through Google AdWords and has been seen by over one million people.

## What's going on ?

### Global Report on Trafficking in Persons

This week, the [2016 UNODC Global Report on Trafficking in Persons](#) was launched. It covers 136 countries and provides an overview of patterns and flows of trafficking in persons at global, regional and national levels, based primarily on human trafficking cases detected between 2012 and 2014. As UNODC has been systematically collecting data on trafficking in persons for more than a decade, trend information is presented for a broad range of indicators. The thematic chapter of the 2016 edition of the Global Report looks at how migrants and refugees can be vulnerable to trafficking in persons, en route or at destination. It also analyses the particular conditions of people escaping war, conflict and persecution.

Most countries have passed legislation that criminalises trafficking in persons as a specific offence; many have done so recently. The Global Report shows that there is a relation between how long a country has had proper anti-trafficking legislation on its books, and how many convictions it reports. Countries with longer-standing legislation, on average, record more convictions. Those with legislation adopted before December 2003 reported an average 29 convicted cases; those with later adopted legislation reported much fewer or no convicted cases. In 15% of the countries there were no convictions. The overall criminal justice response to trafficking in persons, which has historically been very weak, has not improved significantly. The Country Profiles present national-level data for the countries covered by this edition of the Global Report.

The comparison of the available registration figures reveal that in 2014, 51% of identified and registered victims were women; children comprised 28% of detected victims, and men - 21%, which shows that an increasing number of male victims is identified all around the world. There is a clear difference per region in reporting child victims: in sub-Saharan Africa 64% of the victims are children under 18, while in Eastern Europe and Central Asia this is only 8%. This might mean that there is a low detection of child victims in these regions.

Looking at global figures, women are for 72% exploited in the sex industry and men for 85% in other sectors. 43% of victims were trafficked domestically within national borders. As expected, victims are trafficked to many different countries; in Europe victims of 137 different citizenships were reported, while more than 500 different trafficking flows were detected between 2012 and 2014. The report further reveals broad similarities between citizenship of detected trafficking victims and citizenships of recently arrived migrants. Cross border trafficking flows often resemble regular migration flows. As for perpetrators, 63% of identified traffickers were men and 37% women, the number of women being higher than that in other crimes. Further, UNODC researchers found a lot of overlap in characteristics between victims and traffickers: they often come from the same place; same background and community.

### UN Women consultation on sex work

In September UN Women published a [call for submissions](#) to a 'Consultation seeking views on UN Women approach to sex work, the sex trade and prostitution', which will assist the development of a UN Women position on the issue. The deadline for submission was 16 October, which was later extended to 31 October.

Reaffirming support for the rights of sex workers and the need for sex workers to be consulted in matters affecting their lives, La Strada International joined a [submission](#) prepared by NSWP and CREA and co-signed by 190 sex workers rights, women's rights and human rights organisations, many of them based in the global South. It outlines five basic principles that UN Women should follow in order to develop a policy that is truly grounded in human rights. GAATW also made a [submission](#), signed by LSI and 24 other GAATW members, in which the Alliance stresses for the need for a clear distinction between sex work and trafficking and that the decriminalisation of sex work is the only policy that has the potential to improve the position of sex workers and reduce violence and coercion, including trafficking, in the sex industry.

Prior to the submissions deadline, the Global Network of Sex Work Projects (NSWP) expressed concerns about the consultation process and launched a [petition](#), urging UN Women to meaningfully consult with sex workers in the development of their policy. According to NSWP, the process 'is

biased towards those with privilege and will exclude the majority of sex workers in the global south who have limited access to the Internet; most of whom are not literate in the colonialist languages of the United Nations and are not familiar with UN treaties and documents that guide UN Women, and around which their consultation is framed.’

The UN Women policy on sex work is expected to be published in 2017. However, In preparation for the 61<sup>st</sup> session of the Commission on the Status of Women (CSW), UN Women convened an Expert Group Meeting on the CSW priority theme ‘Women’s economic empowerment in the changing world of work’, which took place in September. The group’s [report](#) makes specific recommendations for improving the working conditions of women. In relation to sex work, the report recommends the recognition of sex work as work and its decriminalisation.

### ILO Forced Labour Protocol enters into force



The ILO [Forced Labour Protocol](#), which was adopted by the International Labour Conference in 2014, entered into force on 9 November, a year after it gained its second ratification. This means that all countries that have ratified - Niger, Norway, United Kingdom, Mauritania, Mali, France, Czech Republic, Panama and Argentina - now have to [meet the obligations outlined in the Protocol](#).

‘The ILO Forced Labour Protocol has entered into force. It requires countries to take effective measures to prevent and eliminate forced labour, and to protect and provide access to justice for victims,’ said ILO Director-General Guy Ryder in a joint statement with the heads of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC).

The ILO, together with the ITUC and IOE are leading the [50 for Freedom](#) campaign with the aim of raising awareness about the issue and encouraging at least 50 countries to ratify the Protocol by 2018. The ILO has also published the brochure [ILO Standards on Forced Labour: The New Protocol and Recommendation at a Glance](#), in response to requests from ILO constituents for information about the new instruments and their provisions. It is intended as a reference for government officials and employers’ and workers’ representatives concerned with laws and policies on forced labour, as well as those responsible for the follow-up of ILO instruments. The brochure is also addressed to partners within the UN system, NGOs and other stakeholders interested in the new ILO instruments on forced labour and their promotion.

### European Commission publishes three reports on human trafficking

In December, the European Commission published two reports on preventing and combating human trafficking in the EU. The ‘[Report on the extent to which the Member States have taken the necessary measures to comply with the Directive](#)’ (Transposition Report) indicates that EU Member States still need to step up their efforts in addressing human trafficking. According to the Commission, there remains significant room for improvement, in particular concerning specific child protection measures, presumption of childhood and child age assessment, the protection before and during criminal proceedings, access to unconditional assistance, compensation, non-punishment, assistance and support to the family member of a child victim as well as prevention. This is confirmed by our partner NGOs, working on the national level, who still notice major bottlenecks in the implementation of the Directive in practice and will continue to monitor its adequate implementation and impact on the ground.

The findings of the ‘[Report assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings](#)’ (Users report) shows that ten EU Member States (MS) have established the knowing use of services of victims of trafficking as a criminal offence. Fifteen MS have put in place limited and selective criminalisation measures, focusing mainly on sexual exploitation and/or measures stemming from their obligations under the Employers Sanctions Directive. The report notes that almost no evaluations of these measures have been made by MS and there have been very few investigations, prosecutions and convictions for this offence, given the difficulty in proving the knowledge of the user. In the conclusion of the report, the Commission refers to ‘the challenge of discouraging demand’ which ‘implies to focus more on those who actually use the services of different forms of

trafficking with the knowledge that the person is victim of an offence’ and highlights many different actors, including ‘consumers, individuals knowingly purchasing products manufactured by trafficked victims, who ignore obvious signs of trafficking and labour/sexual exploitation, such as very low prices or signs of violence and intimidation’. LSI welcomes the broader use of the concept of demand by Member States, which currently focus mainly on the criminalising of clients of sex workers in general and/or only criminalise ‘the knowingly use of services of trafficked persons in the sex industry’, and strongly recognises the need to punish perpetrators. However, LSI is concerned about criminalising clients and customers, in particular as it is difficult to prove their knowing use of exploited labour, also as indicators like cheap products and services, do not necessarily imply exploitation or human trafficking.

In September, the Commission also published a [Comprehensive Policy Review of Anti-Trafficking Projects](#), aiming to examine how EC funded projects have contributed to the priorities of the Commission in this area. In total 321 anti-trafficking projects were directly funded by the Commission at a total of EUR 158.5 million during the period 2004-2015. 221 different principal grant holders received funding and ran activities in over 100 different countries worldwide. Two-thirds of funded projects and funding was awarded to principal grant holders located in EU Member States and one-third to principal grant holders located in non-EU countries. Just over half of funded projects were led by NGOs (57%).

Surprisingly, findings show that 60% of the grantees did not submit final narrative and financial reports, which LSI believes is compulsory and apparently only 5% of the reviewed 321 projects were externally evaluated. Further, the research showed that around 80% had only one project funded. Although no further explanation is provided for both findings, the latter seems to imply that EU funding often goes to new organisations and one-off projects. According to the evaluators, projects focusing on trafficking for sexual exploitation received much less money than projects focusing on labour exploitation. This statement is also repeated without any further explanation. As nowadays so many different projects are undertaken in the field, and the Commission might use the report to reconsider its future funding priorities, LSI would urge the Commission to take more efforts to ensure adequate impact assessments of projects and to evaluate how they contribute to address human trafficking effectively.

### Rights and Justice in the Context of Labour Migration: A civil society consultation

On 3-5 November, GAATW organised a three-day consultation entitled ‘Rights and Justice in the Context of Labour Migration’ in Bangkok. The aim of the consultation was to interrogate the barriers to, and identify opportunities for, access to justice for migrant workers, whose rights have been violated, including through trafficking. The consultation focused more on the situation in Asia, but benefited from the European experience too, through Evelyn Probst from LEFÖ’s presentation of the COMP.ACT project on access to justice and compensation for trafficked persons.



Participants discussed the current socio-economic and political context, which exacerbates people’s vulnerability to human rights abuses in general and in the context of migration, in particular. It was pointed out that globalisation, environmental degradation, conflict and gender-based violence have pushed many women from developing countries to migrate in search of livelihood, while austerity measures and migration control in destination countries have created a hostile environment to migrant workers. When women’s rights are violated in the process of migration there are very few opportunities for claiming justice, whether in the destination or origin country. Stigma, discrimination and pervasive patriarchal structures further prevent women from seeking and obtaining justice. However, participants - both service providers and advocates from national and international organisations - also shared success stories and discussed opportunities for future collaboration, advocacy and alliance building.

## UN Special Rapporteur on trafficking visits US

This month, the UN Special Rapporteur on Human Trafficking, Maria Grazia Giammarinaro visited the US, where she met with different stakeholders, governmental representatives as well as representatives from civil society. While acknowledging that the United States have developed an impressive number of laws and initiatives which focus on the protection of victims, she urged the US Federal authorities in her [end statement of the visit](#) 'to close any protection gaps by ratifying without any delay the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and pertinent ILO conventions'. In her statement, she further highlighted the 'disproportionate focus on sex trafficking as opposed to trafficking for labour exploitation. While authorities justify this imbalance by highlighting the apparent ease to detect sex trafficking, there is a need for Federal and State authorities to engage in a more proactive and systematic effort to prioritize the detection of trafficking for forced labor and labour exploitation'. Also importantly, she urged the US government to 'stop the practice of arresting persons - especially women, girls and LGBTI - engaging in prostitution', which has been strongly criticised for years by human rights, sex workers rights and anti-trafficking organisations.

## What's new ?

### Compendium of Good Practices to Fight Human Trafficking

To mark the 10<sup>th</sup> European Anti-Trafficking Day, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings published a new [guidebook](#) for national authorities based on examples of good practice from across the continent. The compendium highlights positive initiatives identified in over 50 country-by-country evaluation reports published by GRETA since the convention came into force in 2008. 'Examples of good practices have been gathered from countries of origin, countries of transit and countries of destination for victims of trafficking. For the first time, these have been brought together in one place to help authorities put an end to this horrendous abuse of human rights,' said Council of Europe Secretary General Thorbjørn Jagland.

Examples include identification of victims by multidisciplinary teams in Moldova, awareness-raising in Romania, the provision of compensation to victims in the Netherlands, a six-month reflection period in Norway and many more.

### Surveilled. Exploited. Deported. Rights Violations against Migrant Sex Workers in Europe and Central Asia



On 16 November, ICRSE launched its third [Intersection Briefing Paper](#) 'Surveilled. Exploited. Deported. Rights Violations against Migrant Sex Workers in Europe and Central Asia', as well as a [Policy Brief and Recommendations on Migrant Sex Workers Rights](#).

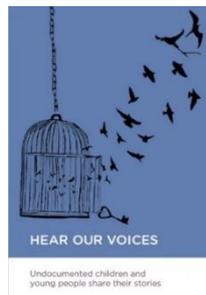
The Briefing Paper explores how criminalisation of migration, criminalisation of sex work and lack of economic and employment opportunities make migrant sex

workers vulnerable to exploitation, violence and other human rights violations.

This Briefing Paper was launched in Brussels at a Seminar on the Rights of Migrant Sex Workers which was the conclusion of a three-day Action Meeting bringing together migrant sex workers, sex workers' rights organisations, service providers and human rights organisations. The Seminar was a powerful event where migrant sex workers spoke publicly of their living and working conditions. Different allies, including La Strada International, PICUM, Amnesty International and Médecins du

Monde, re-affirmed their commitment to the sex workers' rights movement. More information is available on [the ICRSE website](#).

### HEAR OUR VOICES' - Undocumented Children and Young People from Europe Share their Stories



Ahead of Universal Children's Day on 20 November 2016, PICUM launched a [collection of testimonies](#), which highlights the challenges faced by children and young people considered irregular or undocumented migrants and the strength it takes to overcome them day by day.

Bringing together a range of individual stories and testimonies in different formats, from around Europe, the booklet presents personal perspectives on some of the pervasive impacts that immigration control measures can have on the well-being and development of children and young people. It also gives a platform to their voices and resilience.

### Examining Modern Slavery Legislation across the UK

A new [report](#) by the UK Anti-Trafficking Monitoring Group (ATMG) says victims of modern slavery identified in England and Wales are at a big disadvantage compared to those in Scotland and Northern Ireland. The report, entitled 'Class Acts?', examined three laws introduced in 2015 to tackle modern slavery: the Modern Slavery Act in England and Wales, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act in Northern Ireland, and the Human Trafficking and Exploitation Act in Scotland. The research highlights significant differences in the three Acts, and points to victim protection as being the area of greatest concern. While the laws in Scotland and Northern Ireland both include the minimum international standards of support and assistance for victims and place a duty on the authorities to provide this support, the Modern Slavery Act does neither, instead leaving support entitlements to be set out in statutory guidance. This means that victims identified in England and Wales now have fewer support entitlements guaranteed in law than those in Scotland and Northern Ireland.

'Anti-Slavery International has for years stressed that victim protection is the key to successful anti-slavery response, not only because protecting the rights of victims of a serious crime is an obligation of the state, but also because when properly supported, victims are more likely to feel able to help authorities bring the perpetrators to justice,' said Klara Skrivankova, UK and Europe Programme Manager at Anti-Slavery International. The report ends with recommendations to the UK government concerning victim identification and assistance, prosecution of traffickers, data collection and protection and the overall coordination of anti-slavery efforts.

### IOM publishes report on trafficking of men in Ukraine, Belarus and Moldova

An [IOM study](#), funded by the Ministry of Foreign Affairs of Norway, on trafficking in men from Ukraine, Belarus and Moldova, shows that the risk of falling prey to traffickers does not depend on victims' education and place of residence.

From 2010 to 2015, the IOM Missions in Ukraine, Belarus and Moldova provided assistance to 3,330 men who were trafficked for labour exploitation. 2,417 male victims were identified in Ukraine, 774 in Belarus and 139 in Moldova. In both Ukraine and Belarus, there have been more male than female victims of trafficking identified by IOM since 2012. 'The number of men who are falling prey to traffickers in the region may be significantly higher than reported, as many do not ask for assistance,' said Manfred Profazi, Chief of the IOM Mission in Ukraine. 'The aim of the research was to better understand the situation with trafficking in men in Ukraine, Belarus and Moldova, in order to enhance their response to the issue.' The study shows that the main push factor for men from all three countries to take risky job offers is the widespread closure of the factories where a significant part of local population traditionally worked. Another push factor is the significant difference in wages offered in the local job market, compared to those in the Russian Federation - a major destination country for trafficking victims from Ukraine, Moldova and Belarus which accounts for 80 percent of trafficking cases examined in the study. More than half of male victims of trafficking surveyed by IOM were exploited in the construction sector. One-fifth of the respondents worked in agriculture - at greenhouses and seasonal vegetable and fruit picking (Ukraine and Belarus), as well as shepherding (Moldova). The majority of the respondents (78 percent) indicated that they were exploited only once, 14 percent twice and 8 percent three times. One out of five respondents confirmed their readiness to leave home again if promised

employment, however in a different country. The results of the study confirm the need for large-scale prevention campaigns, targeting men as an at-risk group, and raising awareness of their rights, the implications of crossing a border, requirements for working in countries of destination, and safety measures that can be taken before departure to avoid falling victims to human trafficking.

## What's new on the web ?

### New website ICAT

The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) is a policy forum mandated by the UN General Assembly to improve coordination among UN agencies and other relevant international organisations to facilitate a holistic and comprehensive approach to preventing and combating trafficking in persons, including protection and support for victims of trafficking. ICAT recently launched a [new website](#) where all publications of the last three years of ICAT can be found, including a new [issue brief](#) on the difference between trafficking and smuggling and migrants; and a [recent publication](#) on monitoring impact of anti-trafficking work 'Building effective counter-trafficking responses using accumulated knowledge and a shared approach to monitoring, evaluation and learning.

### Stand Up for Migrants' Rights Today



On the occasion of International Migrants Day, 18 December, the Office of the High Commissioner for Human Rights published [a series of stories and videos](#) that offer a glimpse into the human rights situation and experiences of migrants in transit. More people than ever are on the move and the challenges raised by large-scale movements of refugees and migrants fuel our call for a renewed global commitment to uphold and protect the human rights, safety and dignity of migrants and refugees.

## What's happening where ?

21 January 2017 - International conference of TIE Netherlands on international 'grass root' trade union work, Amsterdam, the Netherlands

2-3 March 2017 - European Migration Forum, Brussels, Belgium

3-4 April 2017 - OSCE Alliance conference around the topic of child trafficking, Vienna, Austria

9-10 May - Final conference DemandAT project, Brussels, Belgium

22-26 May - 26<sup>th</sup> session of the Commission on Crime Prevention and Criminal Justice, Vienna, Austria

May 2017, PICUM annual meeting, Brussels, Belgium

June 2017, PICUM event on domestic and care work, Brussels, Belgium

## What's on your mind ?



### The Employers Sanctions Directive - a blessing for undocumented migrant workers?

Jan Knockaert

Jan Knockaert is Director of OR.C.A. - Organisation for Undocumented Workers. OR.C.A. informs undocumented workers about their labour rights and assists them whenever they want to enforce those rights. OR.C.A puts the perspective of undocumented workers on the table whenever 'undeclared work', labour migration, and other hot issues are discussed.

Since the transposition of [Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#), better known as the Employers Sanctions Directive, labour rights of undocumented migrants are part of EU law. Civil society will never praise this directive and with good reason: it is not meant to guarantee the rights

of undocumented migrant workers but to be part of EU legislation concerning migration control. This becomes very obvious when we analyse the [report](#) that the European Commission submitted to the Parliament in 2014. We will find the number of inspections carried out by the member states and how many undocumented migrants were found during these visits. But we won't be able to find how many undocumented migrant workers got their wages actually paid.

Although there is reason for concern, the Directive still contains some important provisions for undocumented migrant workers. Concerning their wage, it states that undocumented migrant workers are entitled to the same salary that nationals would receive for doing the same work. Member states also have to ensure that there are effective mechanisms to file a complaint. In very specific cases, member states can even decide to give a temporary residence permit valid for the period of investigation of a case. Another remarkable aspect is that member states have to presume that the undocumented migrant worked for his/her employer for at least three months. So undocumented workers always have the right to claim three months back wages except if the employer can prove that they worked there less than three months. The legislator was also aware of the problem of subcontracting and tried to tackle this. Not only the direct employer can be held accountable to pay the back wage but also the main contractor and any intermediate subcontractors may be liable.

Denmark, Ireland and the United Kingdom opted out of this directive and we can see the difference in legislation. In 2009 the Migrants Rights Centre Ireland (MRCI) supported the case of [Mohammed Younis](#), who had worked for seven years in a restaurant for salary of €0,51 an hour. MRCI helped Mr Younis leave his situation and take his case to the Rights Commissioner and the Labour Court, which awarded him €92,634.42. His employer appealed this decision and the High Court ruled in his favour, because an undocumented worker cannot have a valid contract. This decision would be impossible if the Employers Sanctions Directive applied to Ireland. Luckily for Younis the Supreme Court has now overturned the High Court decision. In the UK, new policy has been announced that goes even further against the labour rights of undocumented migrants. Wages paid to undocumented migrants will be seized from them as proceeds of crime. Insane measures like these are impossible in the rest of the EU where the Directive has been transposed.

With all its faults the Employers Sanctions Directive does give a basic protection for the labour rights of undocumented migrants. Without it, other member states would likely go in the same direction as the UK. The Directive seems to acknowledge the rights of undocumented workers and protect them against legislation that dismantles these rights. But what's its impact for the labour rights of undocumented migrants in countries that did transpose it?

Let's look at the Belgian case, where the Directive was transposed in 2013. The new aspect for Belgium was the three months' wage rule and the liability of the contractor and all the intermediate subcontractors. After three years of implementation the result seems meagre. Organisation for Undocumented Workers (OR.C.A.) has been involved in 61 complaints since the transposition; only in one case the three months' provision was applied. The provision on subcontracting has never been applied. Can we speak of an effective complaint mechanism if this is the result? Undocumented migrants are not informed about their labour rights. So when there is a labour inspection in the work place they declare that it is their first day of work (as the employer instructed them to do). If subsequently they receive information about their labour rights and want to tell the truth about their employment, their initial statement is used against them in court. If they are no longer working for their employer when they file their complaint the burden of proof seems very often too high. The Directive has made it clear that undocumented migrant workers are in the first place workers that have the same labour rights as nationals. But in the workplace, we see no impact of this Directive. They don't succeed in claiming their unpaid wages. Employers only get sanctioned for a single day of employment and the contractors and intermediate subcontractors escape their responsibility. So it is no wonder that the European Commission only reports the number of inspections and the number of undocumented migrants that were found during inspections. The Directive's main aim is migration control and not a labour rights approach.

If we want to see a real impact of the positive aspects of the Directive, the European Commission needs to require more data of its member states. Not only how many undocumented migrants were found in the workplace but also how many of them received back payment and what wage they were paid. The Directive demands that member states create 'an effective complaints mechanism'

but it's unclear what this means. Is a complaint mechanism 'effective' just by the fact that there is a possibility to file a complaint? This would not be my interpretation. PICUM launched the publication 'Undocumented migrant workers: guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse'. One of the key criteria for an effective complaint mechanism is a firewall between labour inspection and migration control. We will only see a change of the reality in the workplace if there is a real commitment of member states to protect the labour rights of ALL workers.



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