



For Decent Work

Against labour exploitation

Equality Department

10th of May 2010



I. WHY A CAMPAIGN AGAINST LABOUR EXPLOITATION?

The UNION GENERAL DE TRABAJADORES – (The General Workers Union - UGT) is launching a state wide campaign against labour exploitation.

The General Workers Union (UGT) has for years been calling for the need to establish ways to detect labour exploitation and to systemise the protection of the victims of this form of exploitation. Progress has been made in this area since we first proposed this in 2003. But the progress made in this area is not enough as we see in our day to day trade union activities and in the cases that are made public by the media. The current economic and labour situation is one of the factors which contributes to the creation of an environment which is conducive to exploitation, further increasing the vulnerability of the working population.

On the other hand, Society's acceptance of informal work in certain industries or when it affects a particular group of workers, constitutes a means of perpetuating and justifying the violation of workers' rights which the UGT deems unacceptable.

We cannot forget that the informal economy, working conditions and standard of living are all closely linked. Without decent work and workers' rights which are being weakened or disappearing completely, work ceases to be an element which favours the social, economic and cultural participation of the citizens but an element of social exclusion which consequently endangers social cohesion. In an environment of tolerance which excuses or justifies informal work, it is more probable that the line is crossed between an infraction against social order and a criminal behaviour that violates workers' rights.

In our opinion, several factors impact on the low detection rates of incidences of serious labour exploitation, in its invisibility. Social tolerance, insufficient commitment from certain authorities, legislation in need of improvement, means of detection and prosecution which must be increased and the existence of groups of workers who are particularly vulnerable. Collectively these factors result in working conditions that attack the dignity of the workers and which are intolerable infractions of the labour and penal laws. The theoretical freedom to choose to be exploited, which some use to justify this situation is unacceptable to the UGT, in cases of suspected labour exploitation as much as in cases of sexual exploitation.

There can be no doubt that the group which is most vulnerable to exploitation is foreign workers. In the case of non EU nationals subject to immigration law, the irregular administrative situation, they are undocumented, fear of expulsion, lack of knowledge of their rights and their need to work to survive as they have no other source of income or social networks, are all elements which leave these workers in a position of total dependence and consequently, they are obliged to accept any working conditions. But it is not only undocumented foreign workers that



can be victims of labour exploitation particularly in the current economic and labour climate. Other groups are also vulnerable to exploitation.

UGT considers that this is the opportune moment to start to effectively tackle the most serious cases of labour exploitation in the Spanish labour market. We now have new tools at our disposal which did not exist a few months ago. On one hand, the reform of the Penal Code currently going through the General Courts, which categorises for the first time the crime of human trafficking with amongst others, the aim of exploiting these victims on the labour market; The latest reform of the Organic Law - O.L. 4/2000 relating to the rights and freedoms of foreigners and for their social integration includes the possibility of documenting both illegal immigrants who are victims of human trafficking and victims of labour exploitation if they cooperate with the authorities. It is time to adopt the measures necessary to develop these instruments in such a way that they serve to eliminate from our society behaviours that violate fundamental rights.

We have the opportunity to promote collective action between all the organisations and parties involved in order to prevent, detect and prosecute offences against workers' rights, that will break the dual system where some workers have rights and protection and others not. This action requires first and foremost the will and political commitment. But we must also communicate the message to our society that this is not just at a problem which concerns workers that suffer from exploitation but a social problem which affects us all.

I.1. Figures

According to figures from the State Public Prosecutor's Office, in 2008, 5,125 preliminary proceedings were brought for offences against workers' rights, 71% of these were cases relating to workers' working conditions and social security. Between July 2008 and March 2010, the number of young workers who were not affiliated to the social security reached 8.5%, amongst non EU workers the level rose to 15.04%. Since 2005, according to figures from Labour Inspections and Social Security, the number of immigrant workers affected by this has increased year on year from 9,535 workers in 2005 to 12,453 in 2008.



I.2. Some basic concepts

1. What is labour exploitation?¹

It is certain that this concept does not exist in our legal system but this principles and contents of the international definitions are used as a basic for title XV of the Penal Code (offences against workers' rights), which include very different types of criminal behaviour.

Article 311: the imposition of working or social security conditions that are harmful

312: illegal trafficking of workers

313: migration fraud

314: workplace discrimination

315: restrictions on trade union freedom

316 & 317: lack of health and safety measures

It is clear especially from Article 311 the difficulty in defining whether we are faced with a social infraction or a criminal act. An example of criminal behaviour is the slavery contract that a few years ago achieved notoriety in the Media. But this is also labour exploitation, another type of contract or labour relation characterised by non-payment of a salary, retention of a part of a salary or the payment of a salary lower than the minimum wage, abusive working hours, lack of safety measures at work, putting the workers in a social security system with inferior rights to what they would normally be entitled to by law for the job that they are doing.....

In a relationship of labour exploitation, we find different ways of coercing workers: from violence to the restriction of his/her movements, in slavery due to debt, the retention of their salaries and/or of their documentation or threats of reporting them to the authorities.

¹ In reality labour exploitation is not defined in our legal system. On an international level, forced labour has been the area where the most work has been done by the 1930 ILO Convention 29 on forced labour and which defines forced labour as *all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*. But there is no doubt that new forms of intolerable violations of workers' rights have appeared. The concept of labour exploitation figures in the protocol in order to prevent, suppress and sanction human trafficking particularly of women and children and that supplements the United Nations Convention against Transnational Organised Crime, including forced labour as well as servitude and slavery. But in some countries, labour exploitation also extends to conditions incompatible with human dignity. Our penal code, taking in account the contents of Article 311.1 of the Penal Code will be related to this definition: *those who, by deception or abuse of position of necessity imposed on workers in their service or labour conditions detrimental to Social Security, abolish or restrict the rights which are recognised by law, collective agreements or individual contract*.



2. Who can be victims of labour exploitation?

Any member of the working population regardless of their nationality can be a victim but it is clear that there are groups which are potentially more vulnerable. Amongst foreign workers, particularly those who do not have authorisation to live or work in Spain, factors combine to increase their vulnerability; the possibility of being expelled from the country if their situation becomes known, does not favour the detection of labour exploitation or encourage them to report it.

But we cannot forget that foreigners with authorisation to work and live in Spain are also a very vulnerable group. The renewal of their permit and indeed their permanent residency in the country depends on having a job and workers from the European Union, in particular from countries from the most recent enlargements and Spanish workers in situations of special difficulty are also particularly vulnerable.

3. What is human trafficking for labour exploitation?

The description in the Penal Code project of the crime of human trafficking corresponds to the international definitions; it is a complex behaviour and is perceived as the new form of slavery in the XXI century. Its definition covers the following elements:

- What does it consist of?: in the capture, transport, transfer, welcome, reception or lodging. It is not necessary to have crossed borders, moved from one country to another, trafficking can take place within a country or in an atmosphere of freedom of movement such as the European Union, therefore it is not necessary for it to involve a border crossing.
- Why? In order to exploit the victim at work, for sexual exploitation or for the harvesting of organs.
- Using what means?: with violence, intimidation or deceit, abuse of a situation of vulnerability, necessity or of superiority to the victim.
- Who can be victims?: victims of human trafficking can be Spanish, legal or illegal EU and non-EU nationals.
- Do the victims consent? No, the means employed in human trafficking and the objective of exploitation, eliminate consent in cases where consent had been given. And when it concerns minors, one of the above means does not even have to be used, but the objective in itself of exploitation makes them victims of human trafficking.

Therefore, in cases of human trafficking, labour exploitation may be one of the objectives pursued by the traffickers.



4. What are the consequences of labour exploitation?

Labour exploitation has clear consequences for the victims but also for society as a whole. The absence of or the limitations of labour rights and fundamental rights in the most serious cases with the imposition of inhumane conditions, implies the loss of possibilities for social integration and even total invisibility as the victims do not participate in society. To this, you have to add the fiscal fraud associated with the informal economy, and above all that the existence of this type of behaviour puts into question social cohesion, the system of labour relations and the capacity of the State from a social and legal perspective to watch over the conditions and rights of the workers.

5. Why is it difficult to detect labour exploitation?

In many suspected cases, the victims, including EU citizens find themselves trapped, by debts to their exploiters, by the fear of losing their job, by the retention of their documents or in the most serious cases by threats and attacks by their employers.

In the case of illegal foreign workers, even though it is true that the in accordance with the "Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration", better known as the Law on Foreign Persons provides for the possibility that illegal workers who are victims of crimes against their labour rights may be able to acquire authorisation to live in Spain, this can only be applied for when the condition of the victim has been accredited with a judgement. The absence of protection mechanisms for possible victims of labour exploitation implies that, even though they cooperate with the authorities, they do not have protection or the possibility of gaining provisional papers and consequently legal work during the period that it takes to get a judgement that accredits them as victims.

Labour exploitation is generally invisible and takes places far away from the regular labour market, which makes it difficult to detect by organisations responsible for labour surveillance.



II. WHY ARE WE TAKING ACTION AGAINST LABOUR EXPLOITATION NOW?

The fight against labour exploitation is a priority for the UGT and a necessity for Spanish society. It is difficult to aspire to change the production model unless we address the reality of the informal economy in Spain and within this area the most serious violations of workers' rights and even fundamental human rights.

a) Commitment from the Public Authorities

UGT proposes that the Public Authorities should firstly make their commitment and their will to fight against labour exploitation explicit. A commitment that should be made concrete by instruments that favour the coordination and the cooperation that will allow for a rapid and effective solution to possible cases of labour exploitation.

For this, the UGT proposes:

- To establish a Protocol partnership agreement between the parties directly involved in the fight against labour exploitation, as a minimum, the General Council of the Judiciary, the State's Public Prosecutor's Office, the Ministry of Labour and Immigration and the Home Office, accompanied by a protocol of action that will allow for a rapid and effective investigation of these behaviours to which trade unions and industry associations could sign up to and which could make possible the signing of collective agreements at regional levels.
- To develop once and for all a comprehensive plan to fight against human trafficking for labour exploitation.

b) Protection for the victims

For the UGT, the possibility for illegal foreign victims to get documented is part of a basic system of protection for the victims and the restitution of their rights which have been seriously violated.

- To develop the contents of Articles 59 and 59 bis in the next revision of the Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration" in order that they can function as real instruments for the protection of victims. The UGT considers that the priority is the defence of human rights and the care for and compensation of some victims who should not be compelled to make the choice between reporting and collaborating and receiving the proper documentation or returning to their country of origin.
- To capture in the revised Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration the possibility of giving provisional documents to victims of labour exploitation and not making this subject to, in all cases, a report by the worker



him/herself. The UGT considers that the possibility of being expelled from the country should not be an element that makes these situations difficult to detect.

- Make sure that the authorities interpret in a fairer manner the possibility of documenting victims of human trafficking for labour exploitation taking into account their personal situation and not only when they collaborate with the authorities.
- Adequately develop the law 19/1994 for the protection of witnesses and expert witnesses in criminal cases so that it protects both the victim and the person who reports the situation of labour exploitation.

a) Establish immediate coordination and instruments of cooperation between the Inspection, the Forces and the Bodies of the State Security Services and the State's Public Prosecutor's Office that allow for detection and prosecution in situations of labour exploitation.

- a) Reinforce the actions of the Labour Inspector's Committee and Social Security in those sectors and geographical areas that are most susceptible to incidences of this criminal behaviour.
- b. To provide the Labour Inspector's Committee and Social Security, the Forces and Bodies of the State Security Services and the State Public Prosecutor's Office with the adequate tools and resources to allow them to respond quickly and effectively.
- c) Establish technical criteria for the Labour Inspector's Committee to act in suspected cases of labour exploitation: the inspection must play a fundamental role in the detection of these types of behaviours. But cooperation between these three bodies is also indispensable and it is also important that the inspectors have very clear criteria to detect and act in these suspected cases, particularly when they come across illegal foreign victims or in suspected cases of human trafficking.

- Raising awareness amongst workers and society

- Develop information campaigns on labour exploitation and the informal economy stressing the consequences for the victims, for workers' rights and indeed for the system of labour relations and society as a whole.
- Carry out preventative measures in the places and activity sectors where they have repeatedly discovered situations that infringe workers' rights.



**ANNEX:
NEW LEGAL INSTRUMENTS
IN THE FIGHT AGAINST LABOUR EXPLOITATION**

I. TRAFFICKING OF HUMAN BEINGS FOR LABOUR EXPLOITATION

I.1 ORGANIC LAW 4/2000, OF 11 JANUARY, CONCERNING THE RIGHTS AND FREEDOMS OF FOREIGNERS IN SPAIN AND THEIR SOCIAL INTEGRATION, as established by O.L. 8/2000, of 22 December by O.L. 11/2003, of 29 September, by the O.L. 14/2003, of 20 November and by the O.L. 2/2009, of 11 December.

Article 59 bis. Victims of the trafficking of human beings (Added by the Organic Law 2/2009)

1. The relevant authorities will adopt the measures necessary to identify victims of human trafficking in accordance with the provisions of Article 10 of the Council of Europe's Convention to combat trafficking in human beings of the 16 May 2005.
2. The relevant administrative body responsible for the hearing of a disciplinary procedure, when they believe that adequate reasons exist to believe that the illegal foreign worker has been a victim of human trafficking; will inform the person affected about the provisions of the current article and will escalate this to the relevant authority for their decision about the possibility of allowing a period of recovery and reflection, in accordance with the existing legislation. This period of recovery and reflection should be a minimum of 30 days and this will be sufficient to allow the victim decide if they wish to cooperate with the authorities to investigate the crime and where appropriate, instigate criminal proceedings. During this period, they will be awarded temporary residency and any criminal proceedings which may have been initiated will be suspended or where appropriate, the execution of an expulsion order will also be suspended. Also during this period the relevant authorities will ensure that the alleged victim has the means to live and if necessary will ensure the safety and protection of the person involved.
3. The period of recovery and reflection can be refused or revoked where there is a risk to public order or when the claim for victim status is fraudulent.
4. The relevant authority can declare the victim exempt from administrative responsibilities and can help him/her with their choice between returning to their country of origin, work and residency authorisation in exceptional circumstances when it is considered necessary because of the cooperation with the investigation or the legal cases or bearing in mind their personal situation and can help them to integrate into society in accordance with the current Law. Similarly, as the procedure can award residency and work au-



thorisations under exceptional circumstances, a provisional residency and work authorisation can be awarded in accordance with the terms of the law.

During the processing of the authorisations referred to in the paragraph above, the alleged victim can be exempted from having to present any documents where obtaining these documents could constitute a risk to the victim.

5. The provisions of the current article will also apply to foreigners who are minors, taking into account their age and maturity and in every case, the interests of the minor must be paramount.
6. Laws will be developed to outline cooperation with non-profit, non-governmental organisations whose objective is the welcome and protect victims of human trafficking.

I.2 ORGANIC LAW PROJECT WHICH MODIFIES ORGANIC LAW 10/1995, of 23 November, of the Penal Code.

“TITLE VII bis
On the trafficking of human beings”

Thirty-seventh.

An addition will be made to Article 177 bis, which will read as follows:

1. An offender convicted of human trafficking will be punishable by a prison sentence of between five and eight years whether it be in Spanish territory, in transit to or with Spain as their destination, using violence, intimidation or deceit, or abusing a position or superiority, necessity or the vulnerability of the national or foreign victim, to capture them, transport or move them, welcome them, receive them or lodge them with any of the following objectives:

- a) The imposition of forced labour or services, slavery, practices similar to slavery, servitude or begging.
- b) Sexual exploitation including pornography.
- c) The extraction of their organs.

2. Even when the type of exploitation is not listed in the previous section, it will be considered as human trafficking whichever of the actions indicated in the previous section when it involves a minor and the aim is exploitation.

3. The consent of a victim of human trafficking will be irrelevant when they have been victims of any of the means outlined in the first section of this article.

4. The more severe sentences as outlined in the first part of the article will be imposed when:

- a) The trafficking put the victims in grave danger
- b) When the victim is a minor



- c) When the victim is particularly vulnerable on account of an illness, a disability or their particular situation.

If one or more of these circumstances occurs concurrently, the sentence applied will be at the higher end of the punishment scale.

5. A more severe sentence than that outlined in section 1 of this article and complete disqualification for a six to twelve year period will apply to those who abuse their position of authority, an agent of the State or public servant. Furthermore, if one or more of the situations outlined in Section 4 of this article occurs concurrently, the sentence applied will be at the higher end of the scale.

6. Sentences at the higher end of the punishment scale will be imposed in accordance with section 1 of this article and a special disqualification for professional, trades, industry or commerce for the duration of the sentence when the guilty person is found to be part of an organisation or an association of more than two people, including those of a transitory nature, that dedicated themselves to such activities. If any of the circumstances outlined in Section 4 of this article happen concurrently, sentences at the higher end of the scale will be awarded. If this happen in concurrence with Section 5 of this article, the more severe sentences outlined in this article will be imposed.

When it involves the bosses, administrators or managers or said organisations or associations, the sentence at the higher end of the scale will be applied or the crime could be elevated to the next more serious category of crime. In each case, the sentence will be elevated to the next more serious category if any of the circumstances outlined in Section 4 or Section 5 of this article occur concurrently.

7. In accordance with the provisions of Article 31 bis if a person is found guilty of the crimes covered by the Article, he will receive a fine of between three times and five times the profit that he made. Using the rules established in Article 66 bis, the judges and the courts will also be able to impose the sentences in points b) to g) of Section 7 of Article 33.

8. Provocation, conspiracy and encouraging someone to commit the crime of human trafficking will receive a less severe sentence by one or two levels to the actual crime.

9. In each case, the sentence provided for in the article will be imposed without prejudice, where appropriate, for a crime against article 318 bis of the Code and any other crimes carried out; including other components of the corresponding exploitation.

10. The sentences of judges and foreign tribunals for crimes of the same nature as outlined in this article will be considered as recidivism except if the previous sentence has been overturned or could be done so in accordance with Spain Law.

11. Without prejudice to the application of the general rules of this Code, the victim of human trafficking will remain exempt from penalties on account of any legal infractions



that they may have committed when they were being exploited, their participation in these infractions will be considered as a direct consequence of the situation of violence, intimidation, deceit or abuse that they were subjected to and that the situation is proportionate to the criminal act committed.

II. LABOUR EXPLOITATION

II.1 ORGANIC LAW 4/2000 OF 11 JANUARY CONCERNING THE RIGHTS AND FREEDOMS OF FOREIGNERS IN SPAIN AND THEIR SOCIAL INTEGRATION, as established by O.L. 8/2000 of 22 December by the O.L. 11/2003 of 29 September, by the O.L. 14/2003 of 20 November and by the O.L. 2/2009 of 11 December.

Article 59: Partnership/collaboration against organised networks (drawn up in accordance with Organic Law 2/2009)

1. A foreigner who is illegal in Spain and is a victim, affected by or a witness to an illegal act of human trafficking, illegal immigration, labour exploitation or illegal trafficking of workers or exploitation through prostitution, abusing their position of need, will be considered exempt from any administrative responsibility and will not be expelled if they report the perpetrators or accessories to this trafficking or cooperates or collaborates with the relevant authorities, supplying essential details or testifying where appropriate against the perpetrators.
2. The relevant administrative authorities responsible for the case file will inform the person involved about the provisions of the article so that they can decide if they wish to follow this path and they will make the request to the relevant department to allocate a provisional residency and work permit to the foreigner in accordance with the regulations. The person responsible for the case file will inform the legal authorities who are handling the criminal case about the decisions that the person has made in this regard.
3. For foreigners who have remained exempt from administrative liability/responsibility they can help them based on their choice, to return to their country of origin or in exceptional circumstances a residency and work permit and the necessary facilities for their social integration, in accordance with the current law which ensures, where appropriate, their safety and protection.
4. When the Public Prosecutor's Office has knowledge that a foreigner, against whom an expulsion order has been raised, appears in legal proceedings as a victim or as a witness and his/her presence is considered essential to the judicial proceedings, a request will be made to the relevant government authority not to execute the expulsion order on the basis that if this was executed it would be prejudicial to the case. If the expulsion has already been executed, an application will be made to allow their return to Spain for the duration of the legal proceedings, without prejudice to the



possible adoption of any of the provisions of Organic Law 19/1994 of 19 December for the protection of witness and experts in criminal trials.

5. The provisions of this article will also apply to foreign minors, taking into account the age and the maturity of the minor and in every case ensuring that the interests of the minor are paramount.
6. Laws will be implemented to govern the terms of cooperation between non-governmental, non-profit organisations that welcome and protect victims of the crimes outlined in the first section.

II.2 ROYAL DECREE 2393/2004 OF 30 DECEMBER, WHICH APPROVED THE PROVISIONS OF ORGANIC LAW, OF 11 JANUARY CONCERNING THE RIGHTS AND FREEDOMS OF FOREIGNS IN SPAIN AND THEIR SOCIAL INTEGRATION.

THIRD SECTION

Temporary residency in exceptional circumstances

45. Temporary residency in exceptional circumstances can be awarded in accordance with Article 31.3 of the Organic Law 4/2000 of 11 of January, with regard to the exceptional circumstances that exist; a temporary residency permit can be awarded to foreigners living in Spain in the circumstances determined by this article, if the application is made in good faith.

4. An authorisation can be granted on humanitarian grounds in the following circumstances:
 - a) To foreign victims of the crimes defined in Articles 311 to 314 of the Penal Code, in crimes which have been exacerbated by racial, anti-semitic motives or any other form of discrimination as defined in Article 22.4.^a, or violent crimes in the home in accordance with Law 27/2003 of 31 July, the law which protects victims of domestic violence, subject to a judgement being issued for said offences.
5. Without prejudice to what has been established in the previous sections, an authorisation can be awarded to persons who cooperate with the administrative, police, legal and judicial authorities or in the public interest or in the interest of national security which justify their residency in Spain. In these cases, the authorities listed above can make a request to the relevant authority for the allocation of a residency or work permit to people who find themselves in any of these circumstances.