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Day labourers in Munich's train station district - from exploitation to human trafficking and forced labour?

Pracownicy jednodniowi w okolicach dworca kolejowego w Monachium - pomiędzy wykorzystaniem a handlem ludźmi i pracą przymusową?

Abstract: In the beginning of the 21st century, a day labourer market was established in the southern main station district of Munich. In August 2013, the market aroused negative public attention due to a petition from local businesspeople. Since then, the day labourers have been subject to surveillance and banishment. In 2019, a significant amendment to the Illegal Employment Act made day labourer markets illegal. It is known that day labourers offer their own labour to employers, who frequently deprive them of the agreed wage. This practice poses the question of whether these exploitative working conditions amount to human trafficking, forced labour, or labour exploitation. This question is explored in a case study analysis based on talks with day labourers and interviews with different actors in Munich's train station district.

Keywords: day labourers, day labourer market, exploitation of labour, forced labour, human trafficking, illegalisation

Abstrakt: Na początku XXI wieku na centralnym dworcu południowej części Monachium zaczął działać „rynek” dla pracowników jednodniowych (day labourers). Opinia publiczna szerzej o nim usłyszała w sierpniu 2013 roku w związku z krytyczną petycją lokalnych przedsiębiorców. Od tego czasu jednodniowi pracownicy – pochodzący głównie z Bułgarii – poddawani są kontrolom, podejmowane są również próby ich przeniesienia. W 2019 roku doszło do istotnej nowelizacji niemieckiej ustawy o nielegalnym zatrudnieniu, która skupiała się na kwestiach nielegalnego charakteru pracy

pracowników jednodniowych i zezwalała na wydanie wobec nich czasowych nakazów opuszczenia miejsca, ale także karanie ich grzywną za popełnienie wykroczenia administracyjnego. Warto postawić pytanie, czy ta nowelizacja miała sens w kontekście zamiaru ustawodawcy, którym było zapobieganie wyzyskowi i promowanie legalnych umów o pracę? Inną ważną kwestią jest to, czy kwestię pracy osób w szarej strefie można zredukować do uznania jej jedynie za „problem społeczny”? Pracownicy jednodniowi oferują własną pracę pracodawcom, którzy nierzadko pozbawiają ich uzgodnionego wynagrodzenia. Praktyka ta jest powszechna i skłania do postawienia pytania, czy takie wyzyskujące warunki pracy można traktować jako handel ludźmi i pracę przymusową? W niniejszym artykule pytania te zostały poddane analizie w oparciu o rozmowy z pracownikami jednodniowymi i wywiady przeprowadzone z różnymi osobami w jednej z monachijskich dzielnic.

Słowa kluczowe: pracownicy jednodniowi, rynek pracowników jednodniowych, wykorzystanie pracownicze, praca przymusowa, handel ludźmi, delegalizacja

1. Introduction

Even before the free movement in the European Union was extended to EU citizens from Bulgaria and Romania in 2014, a day labourer market—comprising people mainly from Bulgaria – was already established in the southern main station district of Munich. At first unnoticed, this market attracted negative attention in the local media for the first time in August 2013. Since then, the city of Munich, the police, and the customs authorities have been concerned with the day labourer market, which is located at a narrow and busy intersection near shops and restaurants. The market is a nuisance to the local traders, and a constant source of complaints coming from them. The day labourers feel stigmatised by the local traders and criminalised by the police. In August 2019, the crowding-out pressure for day labourers increased due to a change in the law on illegal employment (see Act to Combat Undeclared Work and Unlawful Employment). Subsequently, Section 5a of the Act forbids ‘a person to offer his or her labour as a day labourer in a public space within a group setting in a way that is likely to facilitate undeclared work or illegal employment to demand an illegal offer of labour by soliciting or accepting such an offer’ (own translation). Pursuant to Section 5a of the Act, violations may result in orders of temporary expulsion and bans on entering.

The day labourers accept jobs with changing employers to ensure the livelihood of their families living in Bulgaria. In Munich, they offer their labour for around nine euros an hour, (Landeshauptstadt 2019: 19) and perform mostly simple jobs in the construction, cleaning, and catering trades in the city and surrounding areas. The term “day labourer” is associated with the idea of short-term, illegal employment. In reality, many day labourers not only work for several hours per day, but also take up longer-term and legal employment (Riedner 2019: 64). Often, they do not want to settle in Germany, and see themselves as seasonal workers.

In addition to raids by customs and police checks, various social assistance services can be found nearby. As early as 2010, a nongovernmental organisation was formed, and since then has supported day labourers in conflicts with authorities, the police, and employers (Initiative 2016). In 2015, the municipality set up an advice café near the labour market especially for the day labourers. The advice café serves as a central contact point for EU nationals in precarious employment, and the social workers offer counselling, information, and qualification services. Support is particularly needed when employers withhold all or part of the wage and ignore their social security obligations¹. Without health insurance, the people concerned are dependent on the medical services of social institutions. At this point, different practices appear in a labour market that is characterised by both the autonomy to accept jobs and multiple exploitation. This makes it difficult to determine whether these practices of exploitation match the characteristics of the offences of human trafficking with the purpose of forced labour (Section 232 Criminal Code), of forced labour (Section 232b Criminal Code), or of exploitation of labour (Section 233 Criminal Code). Before this question is examined in detail, an overview of the relevant offences in Germany and the available police criminal statistics are given.

2. Legal framework in Germany

In its current version, human trafficking has been in force since October 2016 in Section 232 of the Criminal Code (see Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code), and replaced the previously applicable offences of 'trafficking in human beings for the purpose of labour exploitation' (old version: Section 233 Criminal Code), and 'promoting trafficking in human beings' (old version: Section 233a Criminal Code). The amendment served to implement the EU Directive (2011/36/EU) on preventing and combating trafficking in human beings and protecting the victims (and replacing Council Framework Decision 2002/629/HJA), for which the implementation deadline had already expired in April 2013. The essential regulatory content of the former 'trafficking in human beings for the purpose of labour exploitation' is now covered by the newly created offence of 'forced labour' in Section 232b of the Criminal Code and 'exploitation of labour' in Section 233 of the Criminal Code (Vogeler 2018: 69–70). The difference between the latter offences is that forced labour criminalises the act of causing

¹ Since the Coronavirus pandemic, the day labourers remaining in Munich have become even more dependent on social assistance due to the lack of available work. For this reason, the municipality expanded the free overnight shelter on the outskirts of the city to round-the-clock service.

a person to perform forced labour, while exploitation of labour criminalises the act of exploiting someone's labour itself (Bundestagsdrucksache 2016: 39). Exploitation of labour has a lower level of punishment than forced labour. This is due to the lesser unlawful content: whereas forced labour is based on an unfair influence over the victim's will to engage in or continue such employment, exploitation of labour consists in the mere exploitation of such a situation (Bundestagsdrucksache 2016: 39). The legal interest of these offences is the personal freedom to dispose of the labour force (Eisele 2019a: par. 9; Eisele 2019b: par. 1).

In line with the EU Directive, the German offence of human trafficking comprises the acts of recruiting, transporting, transferring, harbouring, or receiving another person. These acts are carried out by certain means for the purpose of exploitation, 'by taking advantage of that person's personal or financial predicament or helplessness on account of being in a foreign country' (German Criminal Code)². This therefore encompasses the means 'abuse of power or exploitation of the need for protection' mentioned by the EU Directive (Bundestagsdrucksache 2016: 24)³. Human trafficking using any other means mentioned by the EU Directive has an increased level of unlawful content, and these means include force, threat of serious harm, deception, abduction, gaining physical control, or encouraging a third party to gain physical control (Section 232 (2) Criminal Code). If the victim is under 21 years of age, such an act constitutes human trafficking, regardless of the means used (Section 232 (1) Criminal Code). Thus, the German legislature opted for a higher level of protection than that provided for in the EU Directive and other international regulations. The forms of exploitation (Section 232 (1) (1–3) Criminal Code) are also aligned with the EU Directive. In particular, Section 232 (1) (1) (b)) of the Criminal Code is of interest because of the purpose of the exploitation through employment.

According to the legal definition (Section 232 (1) Sentence 2 Criminal Code), exploitation through employment (Sentence 1 (1) (b)) pertains to 'if the employment, in serving the ruthless pursuit of profit, takes place under working conditions which are strikingly different to those of others performing the same or a similar activity (exploitative employment)' (German Criminal Code)⁴. The required disproportion is striking if the working conditions are obviously completely inappropriate when viewed as a whole. Not all working conditions must be worse: it is sufficient if this applies to an essential working condition (Renzikowski 2017a: par. 64). The wage is the most important indicator of a striking disproportion, and this is in comparison with the statutory minimum wage (Renzikowski 2017a: par. 65). Following the

² The translation was provided by Prof. Dr Michael Bohlander and is completely revised and regularly updated by Ute Reusch.

³ This seems questionable with regard to the 'abuse of power' (Bürger 2017: 176); apart from this, 'a position of vulnerability' pursuant to the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children [the Palermo Protocol] is criticised (e.g. Bergelson 2019: 199–215).

⁴ Translation provided by Prof. Dr Michael Bohlander.

Federal Court of Justice's landmark decision on usury in 1997, the two-thirds limit was established, according to which a striking disproportion existed if the wage fell below the standard wage by one third (FCJ 1997; FLC 2009). However, the legislature tightened the limit to half in the recent reform on human trafficking without further reason; since this limit has not been reflected in the law, one may be curious whether the jurisdiction will follow it (Renzikowski 2017a: par. 66). In case an employer does not register foreign labourers for social security, the striking disproportion results from the need to prove their claim against the social security authorities. In particular, their illegal employment would be revealed: this could have a negative impact on their residence status and be sanctioned as an administrative offence (Renzikowski 2017a: par. 67). Accordingly, it is not necessary for the contract of employment to be valid. Consequently, it covers those cases in which the contract is invalid, so that it includes the illegal employment of temporary labourers (Eisele 2019: par. 36). Therefore, day labourers in the Munich station district who do not have a lawful contract can still be subject to exploitation in the sense of human trafficking, forced labour, or labour exploitation.

Problems arise with regard to other provisions. An adjustment is required with regards to usury, (Section 291 Criminal Code) especially in relation to labour exploitation, the provisions of the Law on Temporary Work, and the Act to Combat Undeclared Work and Unlawful Employment (Petzsche 2017: 245). In particular, the relationship between usury and the employment of foreign nationals without residence permits who are victims of human trafficking or forced labour (Section 10a Act to Combat Undeclared Work and Unlawful Employment) remains unclear: this offence has a much lower punishment than human trafficking and forced labour do (Petzsche 2017: 245). In contrast to this, the day labourers in the Munich station district are EU citizens and are usually allowed to stay in the city. Before the Munich day labourer market is discussed, police registered data on human trafficking, forced labour, and labour exploitation will be addressed.

3. Police registered data concerning labour exploitation and beyond in Germany

In Germany, the Federal Situation Report on Human Trafficking annually provides information on the situation and development of the phenomenon, based on reports from the state criminal investigation offices on recently concluded police investigations (Bundeskriminalamt: 2019). In 2018, a total of 21 investigations into labour exploitation were concluded; the numbers had almost doubled since the previous year, with 11 investigations taking place in 2017 (Bundeskriminalamt 2019: 19). As 2017 and 2018 were the first years following the amendment to human trafficking in the Criminal Code, police investigations were conducted

pursuant to the old or the new offences, depending on the date of their initiation (Bundeskriminalamt 2019: 20). In both years, the majority of police investigations fell under the new legislation, with 10 new legislation, and 3 old legislation investigations in 2017, and 19 new legislation and 4 old legislation investigations in 2018 (Bundeskriminalamt 2019: 20-21). Monitoring over a five-year period reveals small ups and downs in the number of cases concluded, rising from 11 in 2014 to 19 in 2015, and dropping down to 12 in 2016. As such, we cannot yet deduce any trends in further development under the new legislation.

While 180 victims were identified in only 11 investigations in 2017, this number dropped to 63 victims identified over 21 investigations in 2018 (Bundeskriminalamt 2019: 21). Over a five-year period, the average number of victims identified per year was 74, and in this sense, 2017 produced a remarkably high number due to conducting two broad investigations. Most of the victims identified came from Ukraine (27 victims), with the next most from Vietnam (9 victims) and Hungary (8 victims); no victim was a German national. In contrast to sexual exploitation, the vast majority of identified victims were male (54 victims, 85.7%). Similarly, suspects were largely male, with the police identifying 22 men out of 27 suspects in 2017 and 22 men out of 30 suspects in 2018 (Bundeskriminalamt 2019: 22). In 2018, German nationals had the greatest share of suspects identified (7), followed by 4 Vietnamese suspects, and 3 Russian and Romanian suspects. They often seemed to be employers and/or exploiters, and some were recruiters or people providing accommodation. The police mainly found labour exploitation in the construction sector and the catering industry (Bundeskriminalamt 2019: 21). Work for parcel services and in slaughterhouses is also known for exploitative labour conditions (Servicestelle 2020), but the Federal Situation Report provides no data on police investigations in these areas. During the Covid-19 pandemic, health authorities detected the virus frequently among workers in slaughterhouses; the virus brought their precarious working and living conditions into public awareness (Reimer 2020).

Although the police registered data on human trafficking is reliable, the small amount of data presented is disappointing. Therefore, the so-called 'dark figure' of unreported or hidden cases is probably very high and the significance of police statistics on the phenomenon rather low (Albrecht 2019: 37-39). The situation is even more difficult in the area of labour exploitation: the individuals concerned are often unaware of their victimhood, and third parties misjudge their appalling working conditions (Haverkamp 2018: 785; Bundeskriminalamt 2019: 19). Due to victims' lack of awareness and unwillingness to report, detection primarily depends on the frequency of police checks. Aside from the police, customs authorities are responsible for inspections concerning undeclared work and unlawful employment (Section 2 Act to Combat Undeclared Work and Unlawful Employment). In summer 2019, an amendment forbidding day labourer markets came into force in Germany (Section 5a Act to Combat Undeclared Work and Unlawful Employment). The customs authorities are not only responsible for inspections,

but also for issuing a temporary sending-off or a prohibition of access against day labourers who infringe the prohibition of day labourer markets.

4. Illegalisation of day labourer markets

The aforementioned reform of the Act to Combat Undeclared Work and Unlawful Employment worsened day labourers' potential to offer work. According to the newly inserted Section 5a, a person may not offer his or her labour as a day labourer in a public space from within a group in a way that is likely to facilitate undeclared work or illegal employment; soliciting or accepting such an offer also constitutes an impermissible offer of labour. The explanatory memorandum to the Act contains the definition that a day labourer 'is someone who is not in a permanent employment relationship, but who offers his labour, as a rule with changing employers, at short notice for a temporary period for payment and is not continuously⁵ employed (Section 27 (3) (1) Social Code Third Book)' (own translation; Deutscher Bundestag 2019: 49). This definition does not go far enough, because in practice the employment relationships are more diverse and also include longer-term contracts. The ban on offering and demanding labour was also based on the risk of exploitation for job seekers, especially for job seekers without a residence permit (Deutscher Bundestag 2019: 49). Day labourer markets are recognised as places which enable undeclared work and unlawful employment (Deutscher Bundestag 2019: 49). Violations against the ban constitute administrative offences for day labourers and employers. Day labourers may be fined up to 5,000 EUR for offering such labour (Section 8 (2) (6) in conjunction with Section 8 (6) Act to Combat Undeclared Work and Unlawful Employment) and employers up to 30,000 EUR for demanding such an offer (Section 8 (2) (7) in conjunction with Section 8 (6) Act to Combat Undeclared Work and Unlawful Employment).

During the legislative process, the new provision was met with considerable concerns. Critics argued that the intended closure of day labourer markets does not help those affected by it: due to their desperate living conditions in their home countries, many day labourers have no choice but to look for work in public to ensure a living for their families (Fudge 2018; DAV 2019: 5; KOK 2019: 6). If they are not offered other job opportunities or support, a displacement of the problem is to be expected (KOK 2019: 6). Apart from this, proper employment relationships are also negotiated on the day labourer markets. Otherwise, it cannot be excluded that several persons may be forced to offer their services there and thus become victims of human trafficking with special rights (KOK 2019: 6). Furthermore,

⁵ 'Employment is not continuous when it is limited to less than one week by its very nature or limited in advance by an employment contract' (Section 27 (3) (1) Sentence 2 Social Code Third Book).

there were concerns that the administrative offence of demanding may impede investigations into human trafficking, as investigators may be already satisfied detecting the administrative offence (KOK 2019: 7).

The prohibition, which has been in force since summer 2019, also relates to Munich's day labourer market. But already in 2016, the reform of human trafficking had already led to changes in police practice. Since the end of 2017, the police have been increasing overt and covert checks on day labourers, both at the day labourer market and at their sleeping places, and have not found evidence of human trafficking—no recruitment, control, or force against the day labourers has been found (Landeshauptstadt 2019: 18–19). Although the presence of persons or larger groups is generally allowed in public spaces, the police monitor the day labourer market by increased police presence on patrols, as well as by keeping in regular contact with nearby businesses and institutions (Landeshauptstadt 2019: 19). The customs authorities gained more powers from the amendment to the Act to Combat Undeclared Work and Unlawful Employment in 2019. Since then, they may temporarily expel a person who violates the prohibition of unlawful offer from a place, or temporarily forbid him or her to enter a place (Section 5a (2) Act to Combat Undeclared Work and Unlawful Employment). As a result, the customs authority has carried out more controls on the day labourer market (Landeshauptstadt 2019: 20). However, the police do not consider controls at the day labourer market to be meaningful and prefer checks at the workplace, where the employer is responsible (Landeshauptstadt 2019: 19). The customs authorities recognise the need for social support for day labourers, and are calling for an interagency solution (Landeshauptstadt 2019: 20–21). More recently, the municipality has tried to improve the living situation of day labourers and other homeless people: since April 2019, there has been a year-round overnight shelter, a new clearing house for people without health insurance, financing both the Migration and Work Information Centre, and socio-pedagogical support for German courses (Landeshauptstadt 2019: 23–24).

5. The situation of day labourers in Munich's train station district

Following the legal and factual framework, the empirical findings on day labourers in Munich's train station district are now at issue. Previous research on day labourers in Munich referred to a self-organised labour market that supports both the initiation of exploitation and the resistance against it (Riedner 2019: 64–65). The question of whether there is human trafficking, forced labour, or labour exploitation has not yet been explored. This also applies to the joint research

project 'Safety in Train Station Districts (SiBa)'⁶, in which this question was only pursued later during the interviews. Within the project, a survey of the safety situation and safety perceptions from different perspectives was conducted using various research methods (statistical data, citywide population survey, interviews, walks, and observations).

The following information is based on three talks (whilst walking) with nine day labourers, interviews with three social workers and two businessmen, and four ad hoc interviews with staff from shops and hotels. Nearly all the people concerned have a migrant background; the interviews were held in Turkish and/or German⁷. Semi-structured interviews included narrative elements and selected topics derived from the findings of a previous citywide population survey (Przyborski, Wohlrab-Sahr 2014: 126–132). In addition, ethnographic interviews were conducted with day labourers, tradespeople, customers, and residents (Strübing 2013: 100–102). The qualitative content analysis of Mayring (2016) was chosen because the previous empirical and theoretical knowledge allowed the development of a category system. The categories provided information about how the interviewees perceived the public space in the station district and its safety, who included or excluded whom, and how they legitimised social and spatial inclusion and exclusion.

In the case study, the day labourers in Munich came from the same area in Bulgaria, and usually know each other well. They belonged to a Turkish-speaking minority, which is despised in their homeland and exposed to various forms of discrimination. Their families still lived there, and most of them did not want to migrate to Germany. Several day labourers had experience with work in other major German cities, or even in other European countries. They preferred to stay in Munich because there are far better chances of getting temporary jobs, although the living conditions are worse: many day labourers lived on the streets, depended on the social aid of welfare as the city is expensive, and had poor health. Due to the discrimination in their home country, they had no connection to Bulgarians, or even former day labourers living in Munich. Past day labourers who had detached from the day labourer market sought to distance themselves from their former peers.

The day labourers had experienced considerable hostility from the Turkish community in the train station district. The Turkish tradespeople excluded them, and resented the fact that external observers perceived the day labourers as Turkish due to them speaking the same language. The Turkish community regarded them as criminals or social deviants. Women especially felt unsafe to go past groups of 10 to 15 men occupying the entire pavement. As a whole, most of the inhabitants

⁶ Funded by the Federal Ministry of Education and Research from August 2017 until December 2020; more information available at: <https://uni-tuebingen.de/en/faculties/law/lehrstuehle-und-personen/lehrstuehle/lehrstuehle-strafrecht/stiftungsprofessur/haverkamp-rita/research-projects/siba/> [17.11.2020].

⁷ Thanks to my assistants Kaan Atanisev and Ina Hennen for carrying out the interviews; the interviews were transcribed and analysed with MAXQDA.

and the tradespeople (publicly) ranted about them and maligned them. Occasionally, it was emphasised that there had been no incidents with the day labourers, like violence or other crime. Residents and employees near the day labourer market felt disturbed by the noise and the smell of cigarettes, alcohol, and garbage through their open windows. Further conflicts would arise from day labourers sitting on stairs, and in the entrance areas of the surrounding houses. The day labourers themselves did not feel accepted as equal citizens, but rather like unwelcome guests. They were not invited to events in the neighbourhood and were chased away from shops, even if they had previously bought something to eat there. Since the day labourer market still existed, several businesspeople were considering leaving the intersection or the train station district. From their perspective, the municipality tolerated the day labourer market, reinforcing the feeling among them and their customers that the day labourers can just do as they please.

Otherwise, shop keepers and hotel owners profit from day labourers, because shop keepers need customers and hotel owners want cheap cleaning staff. Several tradespeople understood the day labourer market as a crime scene for evasion of social security contributions and called for special powers for the police and municipal security services. This blame was primarily directed at employers and disregarded the fact that day labourers are often victims of their employers. All of the day labourers reported being deprived of their wages at least once. Turkish and Croatian employers in particular were noted for not paying them correctly. The day labourers did not understand why they are exploited and badly treated by 'their own people'. With German employers, there would be far fewer problems. Residents repeatedly noticed disputes between the day labourers and their employers about the correct payment of wages. Despite this, many day labourers appeared to be illiterate, and therefore did not know for certain what they signed in the cases of a written contract, and whether the verbal agreements and the actual working hours did not match. In court, they then have difficulty proving this. However, various employers would like to hire the day labourers as legal workers, but often fail because of language barriers and missing documents from the day labourers.

The day labourers receive support at the advice café of the Information Centre for Migration and Work. During the daytime, they are able to rest and even sleep there in the case of shift work, meet each other, and get advice on different matters, in particular on the employers who have cheated and exploited them. The advice café provides information about work opportunities and helps them to find proper employment in cooperation with the Federal Employment Agency; this was accomplished in 18 cases in 2017. Some day labourers need more support because they find themselves in further trouble when the police or the municipal security service pick them up drunk near the main train station, in spite of the ban on alcohol in the surrounding area. The police then send them off, but several day labourers do not understand the order for lack of German and for illiteracy in the case of a written order in Turkish; these infringements are then subject to an administrative fine. Therefore, some of these individuals might find themselves in

a vicious circle of poverty and debt. Local tradespeople established somebody from a private security service to be a 'guide'; this was first financed by the municipality and later by themselves. This guide is a Bulgarian who also speaks Turkish, the language of the day labourers. According to the local tradespeople, his task is to de-escalate the situation at the day labourer market and to mediate between the day labourers and the tradespeople. The interviewed business people valued both the advisory café and the guide as useful measures.

6. Discussion

One interviewee from a social institution said

I have observed so often that beggar gangs ... are always at the same place ... at a certain time, ... someone goes by and collects the money from them and gives them something to eat. I have observed this so often. These are ... gangs and there is somebody ... [keeping] the people under pressure.

From observing this every day, the interviewee's suspicion has been strengthened that the begging in the train station district is organised and that the beggars are victims of those who profit from it. Consequently, there are hints that beggars might be victims of human trafficking, forced labour, or exploitation of labour (Section 232 (1) (1) (c)), Section 232b (1) (3), Section 233 (1) (2) Criminal Code), though the police have no further evidence for this assumption. Such concerns for the day labourers were not expressed in the interviews. However, the term 'exploitation' was often used, though it remains unclear what the interviewees exactly meant by this.

Before going into more detail about exploitation, we will first explore the background behind day labourers leaving their homeland. The mostly male day labourers receive poor education and vocational training in Bulgaria. Given the unfortunate economic situation, and being in a minority on the receiving end of multiple levels of discrimination, they have no prospects for employment, so they seek success abroad. They live with their families in precarious conditions and wish to provide a decent living for them. The fact that Munich is a location with good job opportunities has spread by word of mouth. Most of the day labourers seem to know each other because they lived in the same region of Bulgaria, and many of them have closer ties as friends or relatives. These relationships also facilitate the decision to seek temporary or longer-lasting work in Munich, as they are still connected with peers who share the same background at home and the same experiences in Munich. Although the living conditions force them to leave their country, their decision appears to be based on free will. They are aware that life is very hard in Munich, but at least they are able to make a living for their families. Several of them have tried their luck in other German cities, or even in

other European countries, but prefer to stay in Munich due to better employment prospects. At this point, no signs of human trafficking concerning recruitment in Bulgaria can be traced, and the same applies to their journey to Munich and to other German and European cities. They are solely responsible for their transport or transfer, travelling either together in groups or alone. They have connections at these different places, but they decide themselves where to go and where to stay for job seeking. Once again, human trafficking by transportation or transfer, harbouring, or receiving another person does not seem to be an issue here.

A lot of day labourers have no fixed abode and no health insurance during their stay in Germany. To save money, they spend their nights in parks or in a huge emergency shelter located in Munich's suburbs. They are not entitled to benefits under the relevant German benefit system, unless they have been in the country for five years and are capable to earn a living (Section 7 (1) Second Book of the Social Code). The five-year period begins with registration as a resident in the population register. Lacking a registration, most of them therefore do not acquire the right to receive benefits after five years. When day labourers seek a job or have a rest, they meet on the streets in the train station district or in various welfare institutions. At most of the welfare institutions, they receive social assistance in numerous matters.

Support is provided, especially for problems with employers who pay too little or even withhold wages⁸. Conflicts of this kind occur frequently between employers and day labourers; sometimes these disputes go to the labour court, where day labourers are reliant on social and legal support. The mere absence of a residential address prevents day labourers from asserting their rights (Borgards 2006: 158–159). According to research on the mobilisation of rights, the affected persons who exercise their rights greatly depend on mediating bodies; in particular, legal agents are able to provide them access to legal institutions and to represent their interests (Wrase 2013: 9). This function is fulfilled by a nongovernmental organisation that supports day labourers in conflicts with employers and in the labour court (Initiative 2016). In the labour court, it is difficult to prove the withholding of wages because not only it is one statement against another statement, but the employer also has a better starting position in terms of credibility and assertiveness (Riedner 2015: 4–5). It is easier for the employers to claim the opposite if the agreements were only made orally or if the signed employment contract does not correspond to the hours worked. Hence, a great disparity between *de jure* and *de facto* existing rights can be observed (Lockwood 1996: 537; Cyrus, Kip 2014: 35).

However, it is not uncommon to find longer-term and relatively secure employment relationships. Yet some day labourers are missing the necessary documents for a secure job because they simply do not have them or the documents have been lost or stolen. As unskilled workers, day labourers are mainly active in low-wage

⁸ Section 266a of the Criminal Code criminalises withholding wages and salaries. Due to the focus on human trafficking, forced labour, and labour exploitation, the offence is not discussed in detail here.

sectors such as construction, cleaning, and catering. The terms of employment in these areas are diverse, ranging from extremely low wages and a lack of labour rights to secure employment with fair salaries.

Nevertheless, the low-wage sector, especially when combined with the day labourer market, is vulnerable to exploitative conditions. The hiring of temporary workers ensures high profits for employers because manpower is extremely flexible and only creates costs when needed (Riedner 2019: 65). Even if these employment relationships entail considerable disadvantages (e.g., homelessness and no health insurance) for the day labourers, they are able to quit bad jobs immediately and to find a new occupation just as quickly (Riedner 2019: 65). However, all of the day labourers who were questioned had already experienced exploitation several times, particularly with regard to their wages. The question arises whether this exploitation amounts to an 'exploitative employment' (Section 232 (1) Sentence 2 German Criminal Code).

The required striking imbalance is given if this is easily obvious to a person familiar with the relevant factors; this means that the working conditions must be completely unreasonable compared to other employees (Eisele 2019a: par. 40). In case of an imbalance, it does not matter whether the wage seems to be appropriate from the victim's point of view (Eisele 2019a: par. 39). Most of the sectors where day labourers are usually employed are subject to a minimum wage (Section 1 Act Regulating a General Minimum Wage), that is the reference point to determine the striking imbalance. While the case law demands an undercutting of at least one third of the minimum wage or the usually paid collective wage (Eisele 2019: par. 40), the legislature has considered an undercutting of half of the minimum wage in recent legislative materials (Deutscher Bundestag 2018: 28), which means a worsening for day labourers (Petzsche 2017: 242). Several day labourers told the police that they earn around nine euros gross per hour (Landeshauptstadt 2019: 19), which was in line with the minimum wage in 2019 (€9.19 gross per hour pursuant to Directive to Adjust the Level of the Minimum Wage⁹). The day labourers' statements from the interviews are vague, so that a striking imbalance is undoubtedly affirmative if the wage is withheld completely. In other cases, concerning unpaid overtime or underpaid wages, more precise information is required to determine a striking imbalance. Likewise, the required employer's ruthless pursuit of profit might be certain only in the cases of withholding wages. In the context of human trafficking and forced labour, the police neither found any recruiting and control, nor coercion against the day labourers (Landeshauptstadt 2019: 19).

Following on from this, if there is an exploitative employment, the question is posed as to whether it constitutes forced labour (Section 232b Criminal Code) or exploitation of labour (Section 233 Criminal Code). While forced labour criminalises the initiator, exploitation of labour follows forced labour and penalises

⁹ Since 1 January 2020, €9.35 Euro gross per hour pursuant to the Second Directive to Adjust the Level of the Minimum Wage.

the profiteer of the work performed. The act of forced labour is such that the offender causes the victim to engage in exploitative employment. Therefore, the initiative of the victim is not enough; rather, the perpetrator must be the driving force for creating the exploitative employment (Renzikowski 2017b: par. 20). In this regard, there are doubts about the day labourer market: according to descriptions, the employers often have a choice between several job-seekers who advertise their qualities and express a desire to work for them. Negotiations on wages and working hours also take place on an individual level. However, day labourers tend to accept worse working conditions and lower wages if they have been waiting for a job for a long time. Yet, the act of causing does not seem to be dominant due to the day labourers themselves offering their labour.

A more worthwhile investigation is that of the exploitation of labour. According to this offence, an employer is punishable if he or she accepts the offer of a person who is in a personal or financial predicament, and/or who is helpless on account of being in a foreign country, to employ him or her under exploitative conditions (Renzikowski 2017c: par. 16). There is a personal or financial predicament if the person concerned is in a serious but not necessarily life-threatening need or distress of a personal or economic nature (Deutscher Bundestag 2018: 24). Therefore, the victim might be limited in his or her options to decide and act (Eisele 2019a: par. 14). A predicament can be assumed in cases of distressing poverty and poor social conditions in the home country of the person affected, and also in cases of personal circumstances, such as needing to earn a living for their family (Eisele 2019a: para. 15). In their home country of Bulgaria, the day labourers are unemployed and have no occupational prospects; they live with their families in oppressive poverty and bad social conditions. Their only way to assure a decent life for their family is to go abroad and earn a living with jobs that do not require training. In addition to there being a clear case for predicament-level helplessness, simply being in a foreign country can also be considered in cases where the victim is not able to escape exploitative employment because of the particular difficulties of being in a foreign country, given the specific situation, and his or her personal abilities (Deutscher Bundestag 2018: 25). Cases of such helplessness are language or communication difficulties, no knowledge of the living conditions or possibilities for legal protection, as well as financial problems caused by being a foreigner (Eisele 2019a: par. 18). The day labourers are often illiterate, have no mastery of the German language, and are not able to assert their rights before the court. Nevertheless, the question arises whether the day labourers are helpless, considering the support amongst each other and their ability to quit a bad job and quickly find a new one. It can be argued that the day labourer market not only enables exploitation, but also allows the day labourers to oppose it (Riedner 2019: 65).

It follows from the above that it is difficult to determine whether there are crimes related to human trafficking committed against day labourers. In some cases, hints are found that some employers might be punishable for the exploitation of labour when they withhold wages, or pay insufficient wages due to the day

labourer's financial and personal predicament and/or helplessness on account of being in a foreign country. Considering that the analysis is based on a case study, more information is needed.

7. Conclusion

Very little knowledge exists about human trafficking with the purpose of labour exploitation and/or forced labour in Germany. The Federal Situation Report has an anecdotal character, noting that the dark figure is huge, but well-founded methodological estimations are lacking. Apart from that, human trafficking is an intricate offence due to its preparatory nature that is both difficult to identify and to prove. The phenomenon

is a triangle with a complex interplay between its constituent points: first an alleged reality, second a concept ('human trafficking'), and third several legal regulations ... [However,] a clearly defined phenomenon does not seem to be in the background. Whereas the legislation in relation to some other kinds of crimes identifies and labels the wrong clearly, in the case of trafficking, the criminalisation is more of a *constitutive act constructing* [emphasis in the text] – through the choice of elements – a wrong" (Haverkamp et al. 2019: 2, 5).

Most empirical studies focus on (the purpose of) sexual exploitation (KOK 2011: 47), and only a few empirical studies give explorative insights into the subject (Cyrus et al. 2010; KOK 2011; FES 2015; Mitwalli 2016; GIHR 2018: 5). Counselling centres with a focus on labour exploitation have been very well-frequented for years (GIHR 2018: 5). Workers from Eastern Europe complain about wages being far below the minimum wage and degrading accommodations (GIHR 2018: 5). Due to the increased numbers of Covid-19 infections, the working and living conditions of harvesters and workers in slaughterhouses entered the public spotlight in the spring and summer of 2020. In the course of this exposure, politicians committed themselves to better protecting foreign workers in the low-wage sector (Plaß 2020). So far, however, it is not clear which improvements in the working and living conditions of the people concerned will result. Labour exploitation is multifaceted and happens in many different places. One place of labour exploitation concerns the day labourer markets, and for this study the one in Munich particularly.

According to the case study, the Bulgarian day labourers are a Turkish-speaking ethnic minority in the main station district of Munich, and they are confronted in their home country by massive discrimination. They are less educated than the average Bulgarian population, and illiteracy is not infrequent amongst them. At home, they have no opportunities in the job market, and they live with their

families in poor living conditions. To go abroad is the only way for them to make a living for their families in Bulgaria. Largely men of working age, joined by a few women, seek jobs in other countries and stay where they find plenty of work. The day labourer market in Munich mainly consists of people who come from the same Bulgarian town and know each other quite well. They are familiar with one another and support each other as much as possible in Munich. Due to the scarce and expensive situation on the rental market, they try to save money in Munich and live on the streets, relying on welfare offers. Despite their precarious living conditions at home, they are not recruited or transported by human traffickers from Bulgaria to Munich or other areas. They decide themselves to leave the country and know roughly what they are getting into, and so there are no signs of human trafficking.

The employment and working conditions are heterogeneous in this case study: few of them succeed in obtaining a steady and well-paid occupation, most of them have different jobs of varying durations. Usually, they carry out simple work in the construction, cleaning, and catering industries, which belong to the low-wage sector. Their hourly wage often approaches the minimum wage. Nevertheless, there is continuous dispute between day labourers and employers about wages after the work is performed. All day labourers have had negative experiences with employers who either did not pay at all or paid less than agreed. In these cases, they do not get what they are entitled to. Only a few, mostly supported by German social workers or volunteers, try to enforce their claims in court, which is difficult in view of the verbal contract between the employee and the employer and the structural imbalance between them (GIHR 2018: 5). In cases of no or too little payment, it is suspected that the employer may have committed exploitation of labour if he or she took advantage of the day labourer's personal or financial predicament or helplessness on account of being in a foreign country. However, many questions remain open so that there can be no satisfactory answer as to whether exploitation of labour took place. In this regard, on the one hand there is a need for further research, and on the other hand for more targeted law enforcement. In this context, the illegalisation of the day labourer market seems—as often criticised—counterproductive, since the employers remain in the shadows and only have to fear a few controls in the workplace.

Labour exploitation is a high priority for the Group of Experts on Action against Trafficking in Human Beings (GRETA). Although in their second evaluation round concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany (GRETA 2019: 61) GRETA recognised progress with regard to identifying human trafficking for the purpose of labour exploitation, they still considered immediate action. When it comes to preventing labour exploitation, there should be training for all actors of law enforcement, efforts to raise awareness among both the public and the foreign workers, and cooperation with trade unions, civil society, and the private sector, amongst other improvements (GRETA 2019: 62). Additionally, GRETA

recommends increased efforts to promote and fund further research (GRETA 2019: 64). The case study of day labourers confirms these conclusions and also reveals the need for more awareness concerning labour exploitation among the day labourers themselves as well as all other actors in the main station district of Munich.

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