



AMERICAN UNIVERSITY OF ARMENIA

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TITLE

Whether the absence of the definition of “forced labor” can hinder to find and punish the cases of “forced labor”?

STUDENT’S NAME

NAREK CHOBANYAN

SUPERVISOR’S NAME

ARAM VARDEVANYAN

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Table of Contents

<u>LIST OF ABBREVIATIONS</u>	2
<u>INTRODUCTION</u>	3
<u>CHAPTER 1</u>	8
<u>DEFINITION OF FORCED LABOR</u>	8
<u>§ INTERNATIONAL PERSPECTIVE</u>	8
<u>§ FORCED LABOR DEFINITION IN ARMENIA</u>	12
<u>CHAPTER 2</u>	18

<u>FORCED LABOR INDICATORS</u>	18
<u>§INTERNATIONAL PERSPECTIVE</u>	18
<u>§ FORCED LABOR INDICATORS IN ARMENIA</u>	20
<u>CHAPTER 3</u>	24
<u>ENFORCEMENT MECHANISMS OF FORCED LABOR</u>	24
<u>§ INTERNATIONAL PERSPECTIVE</u>	24
<u>§ AN OVERVIEW OF THE LABOR INSPECTORATE IN BELGIUM AND FRANCE</u>	27
<u>§ LABOR INSPECTORATE IN ARMENIA</u>	29
<u>CONCLUSION</u>	31
<u>§ APPENDICES</u>32
<u>§ BIBLIOGRAPHY</u>	38

List of Abbreviations

ILO	International Labor Organization
RA	Republic of Armenia
CC	Criminal Code
LC	Labor Code
UNCTOC	United Nations Convention against Transnational Organized Crime
CoE	Council of Europe
GRETA	Group of Experts on Action against Trafficking in Human Beings
OSCE	Organization for Security and Co-operation in Europe
ECHR	European Convention of Human Rights
TVPA	Trafficking Victims Protection Act's
CSE	Commercial sexual exploitation
EE	Economic exploitation
UN	United Nations
NGO	Non-governmental organization
MLSA	Ministry of Labor and Social Affairs
UMCOR	United Methodist Committee on Relief

INTRODUCTION

“Human Trafficking is a modern-day slavery which involves recruitment, harboring or transporting people into a situation of exploitation through the use of violence, deception or coercion and forced to work against their will.”¹

There are different types of Human Trafficking such as forced begging, forced prostitution, forced criminality, domestic servitude, forced marriage, forced organ removal and forced labor. International Labor Organization (hereinafter ILO) estimates that nearly 20.9 million people in the world are subject to human trafficking and they all have one common feature: the loss of freedom.²

Human trafficking affects the lives of victims even long after the exploitation is over. It is a global issue and has no borders or religion. Despite the fact that slavery was present in our world since long time ago, human trafficking became an international phenomenon and violation of human rights in the beginning of the 20-th century. After that a lot of documents were signed and treaties were made between countries to fight against trafficking and eliminate it from the world.

The first document against trafficking was the Palermo Protocol supplementing the United Nations Convention against Transnational Organized Crime (UNTOC). The definition of trafficking in this document also recognizes labor exploitation as a form of trafficking.³ The next was the Council of Europe (CoE) Convention treaty which was more detailed and comprehensive than the Palermo Protocol. CoE first offered to create a monitoring group which will control the implementation of the convention obligations. This group was called Group of

¹What is human trafficking? available at <https://www.antislavery.org/slavery-today/human-trafficking/> (last visited 17 May 2018)

²Human Trafficking available at <https://polarisproject.org/human-trafficking> (last visited at 17 May 2018)

³ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> (last visited at 17 May 2018)

Experts on Action against Trafficking in Human Beings, also known as GRETA.⁴ The next documents were the Organization for Security and Co-operation in Europe's (OSCE) Action Plan to Combat Trafficking in Human Beings⁵ and EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (EU Directive).⁶

Although the above-mentioned documents are very comprehensive in nature and have had a high importance in the development of preventive means against trafficking and other means envisaged combating the latter, those lacked the definition of "forced labor." But, this problem was overcome when the ILO Convention No. 29 defined forced labor as:

"All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

In 1957 the ILO adopted another convention No. 105 which calls for immediate and complete eradication of forced labor. These two conventions are collectively called the "ILO Forced Labor Conventions".⁷

Also, the elimination of all forms of forced or compulsory labor is envisaged in all the principal regional instruments examined, including the *ECHR* (Article 4), the *American Convention on Human Rights* (Article 6), the *African Charter on Human and Peoples' Rights* (Article 5), the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (Article 4) and the *Arab Charter on Human Rights* (Article 10).⁸

The above-mentioned documents and contracts indicate that trafficking and forced labor is condemned in all parts of the world. Armenia also condemns forced labor and has signed many of the above-mentioned documents about which I will speak in the section "Forced labor in Armenia". But despite that, a lot of researches done in Armenia indicate that there is forced labor and trafficking present in Armenia. Also, a lot of Armenians are subjected to forced labor

⁴ CoE Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers on 3 May 2005, [CETS No. 197]. available at <https://rm.coe.int/168008371d> (last visited at 17 May 2018)

⁵ In 2003, the OSCE Ministerial Council endorsed the OSCE Action Plan to Combat Trafficking in Human Beings and established the OSCE Anti-Trafficking Mechanism, OSCE PC.DEC/557, 24 July 2003. available at <https://www.osce.org/secretariat/210391?download=true> (last visited at 17 May 2018)

⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 replacing Council Framework Decision 2002/629/JHA.

available at https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en (last visited at 17 May 2018)

⁷ OSCE-Organization for Security and Co-Operation in Europe, Mission to Bosnia and Herzegovina, Trafficking in Human Beings for the Purpose of Labor Exploitation. A reference paper for Bosnia and Herzegovina. July 2011 available at <https://www.osce.org/bih/106977?download=true> (last visited at 17 May 2018): p.18,

⁸ Giving Globalization a human face

International Labor Conference 101st session, 2012 First edition 2012: p.14, available at

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf (last visited at 17 May 2018)

and trafficking in other countries of the world. Armenia is mainly a country of origin for trafficking in persons. According to the Armenian authorities most of the victims of human trafficking are Armenian nationals exploited abroad. The main destinations for Armenian traffickers are the United Arab Emirates, Turkey and the Russian Federation. According to the same data in case of internal trafficking there was one case of child trafficking for the purpose of forced begging and 4 Chinese citizens were subjected to trafficking in 2014. Based on the data provided by the Armenian government the number of victims of trafficking is as follows: 14 people were subjected to human trafficking in 2012, 19 and 13 people were exploited in 2013 and 2014 respectively, from November 2015 to September 2016 the number of victims of trafficking was 23. According to the statistics, from 69 trafficking cases in 32 cases victims were women, 20 were men victims followed by children in 17 cases. In most of the cases people were subjected to sex exploitation (32 victims), then comes labor exploitation (30 victims), followed by removal of organs (6 victims).⁹

In 2002, with the view of increasing the public awareness on human trafficking, an advisory body on trafficking was established in Armenia. Later in 2004 the government adopted the National Action Plan to Combat Trafficking in persons. The ending result was that according to US Department annual reports Armenia was included in tier one which means that Armenia fully complies with the Trafficking Victims Protection Act's (TVPA) minimum standards.

The need to analyze the issue if the absence of the definition of forced labor can hinder to find and punish the cases of forced labor is of a high importance for the below-mentioned reasons.

First of all, a lot of researches show that according to international indicators there is more forced labor present in Armenia than stated by the government.

Second is that even justice practitioners' express different ideas on what can contribute to labor trafficking which violates the law on legal certainty. So, it will enable the law-enforcement authorities to distinguish forced labor from exploitation, slavery and violations of a labor code. And, it will enable people to understand when they are exposed to trafficking in Armenia and in other countries.

Finally, there is no a separate body which can detect cases of forced labor. In the past the Labor Inspectorate of the Ministry of Labor and Social Affairs was responsible for that but as a

⁹ GRETA(2017)1
CONFIDENTIAL

Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Armenia: p. 7, available at <https://rm.coe.int/16806ff1ad> (last visited at 17 May 2018)

result of reforms in 2013 the State Health Inspectorate was merged with the Labor Inspectorate of the Ministry of Labor and Social Affairs. And, there is no clarity regarding the tasks and obligations of the new body with regard to monitoring working conditions, preventing and detecting forced labor situations.

In order to answer the question different treaties and the obligations posed by them will be studied. Then, international best-practice will be studied. All the aforementioned laws will be presented in comparison with the Armenian laws.

In this paper the research question why we need to include the definition of forced labor in the criminal code of the Republic of Armenia will be fully examined and answered. The conclusion will be that including the definition in the Criminal Code will help law enforcement authorities to detect such cases. In order to reach this conclusion, the Master's paper will be divided into three chapters.

The first Chapter of the paper will analyze the internationally recognized definition of forced labor. This chapter will be divided into two subchapters. One will introduce the international practice of the definition of forced labor and the other will present the gaps in the Armenia law.

The second Chapter will show the indicators of forced labor. This chapter will also be divided into two subchapters. One will introduce the international indicators of forced labor and the other will present the indicators present in Armenia.

The third Chapter will answer the question how the law on forced labor can be enforced. This chapter also will be divided into two subchapters. One subchapter will refer to the international perspective on the function and principles of labor inspectorate, while the second part will be devoted to the necessity of creating Labor Inspectorate in Armenia.

CHAPTER 1

DEFINITION OF FORCED LABOR

§ INTERNATIONAL PERSPECTIVE

Although slavery is mostly abolished in the world it still exists in other forms. One type of the modern-day slavery is forced labor. People enter into forced labor through fraud and deception. Perpetrators of forced labor use menace of a penalty usually in the form of physical violence or death threats against him/her or his/her family. When trying to identify forced labor victims, it is important to verify both involuntariness and menace of penalty.¹⁰ Also, although most people associate forced labor with violence, in most of the cases traffickers use different ways to coerce persons to work.¹¹ They use retention of identity papers,¹² psychological coercion, abuse of the legal process, deception, or other coercive means to compel someone to work against their will.¹³

¹⁰ ILO- Declaration on Fundamental Principles and Rights at Work: Forced Labor and Human Trafficking: Estimating the Profits: Patrick Belser:

Special action program to combat forced labor: Declaration /WP/42/2005, p. 2, available at <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1016&context=forcedlabor> (last visited at 17 May 2018)

¹¹ Forced Labor available at <https://www.antislavery.org/slavery-today/forced-labour/> (last visited at 17 May 2018)

¹² What is forced labor, modern slavery and human trafficking available at <http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> (last visited at 17 May 2018)

¹³ What is modern slavery?

It is also very important to note that the type of “engagement” that links the employee to the employer determines forced labor and not the type of activity that the victim is performing. “A woman trafficked and forced into prostitution is in forced labor because of the menace under which she is working, not because of the sexual duties that her job demands or the legality or illegality of that particular occupation.”¹⁴

Forced labor as a modern-day form of slavery, is a violation of basic human rights which affects millions of people worldwide and can be found almost in all industries. Although not to be subject to forced labor is a fundamental human right and according to International Labor Organization (ILO), all the countries should work on elimination of forced labor in their countries¹⁵ 24.9 million people worldwide are subject to forced labor which also includes children. Global profits from forced labor reach US\$44.3 billion every year and it continues to thrive. Victims of forced labor work not only in illegal but also in legal industries. Among illegal industries is arms trade or panhandling¹⁶ and among legal industries forced labor is most often met in agriculture and fishing, domestic work, construction, mining, quarrying and brick kilns, manufacturing, processing, and packaging¹⁷

From the information mentioned above, we can conclude that perpetrators of forced labor use all the possible means to coerce people to work against their will. They use both physical violence and psychological coercion and force people to work either in legal or illegal industries. Moreover, among victims, there are also children and the profits from forced labor reach billions of dollars.

The ILO states that there are 3 broad forms of forced labor:

- Forced labor imposed by the state or by armed forces. This category is divided into 3 sub-categories: (a) forced labor exacted by the military or by rebel groups, (b) compulsory participation in public works, and (c) forced prison labor.
- Forced commercial sexual exploitation (CSE) by private agents;
- Forced labor for economic exploitation (EE) in agriculture, industry, and services, as well as in some illegal activities.¹⁸

available at <https://www.state.gov/j/tip/what/> (last visited at 17 May 2018)

¹⁴ *Supra Note 10, at 3*

¹⁵ *Supra note 12*

¹⁶ U.S. Department of Health and Human Services, Fact Sheet: Human Trafficking available at <https://www.acf.hhs.gov/otip/resource/fact-sheet-labor-trafficking-english> (last visited at 17 May 2018)

¹⁷ *Supra Note 11*

¹⁸ *Supra note 10, at 3*

Although there are a lot of documents condemning forced labor, Convention No. 29 of ILO on forced labor is the first and only primary international document that gives the definition of forced labor:

*“Forced labor of adults is a work for which a person has not offered him or herself voluntarily (the concept of “involuntariness”) and which is performed under the menace of any penalty (the concept of “coercion”) applied by an employer or a third party to the worker. The coercion may take place during the worker’s recruitment process to force him or her to accept the job or, once the person is working, to force him/her to do tasks which were not part of what was agreed at the time of recruitment or to prevent him/her from leaving the job. ”*¹⁹

This definition of ILO can be split into 4 different parts:

1. Unfree recruitment, which has two sub-categories: forced and deceptive recruitment. In case of forced recruitment, a person is obliged to work by force which is against their will. And, in case of deceptive recruitment, an employer uses false promises in order to coerce a person to work and this is involuntariness as if the employee was aware of the true working conditions he/she would not agree to work.
2. Work and life under duress. In case of work under duress, an employee is imposed to carry out tasks that can be excessive and violate the labor law of that country. In case of “life under duress”, degrading living conditions and limitations on the freedom of movement are imposed.
3. The impossibility to leave a job is another dimension here when leaving can impose penalty or risk to the worker. For example, if an employee cannot leave the job because of poverty it is not forced labor but, when there are some elements of involuntariness that can be regarded as a forced labor.
4. Penalty or menace of penalty (means of coercion) may be applied directly to the worker or to members of his or her family.²⁰

Also, the definition consists of four components:

1. any work or service, irrespective of the type of employment, lawful or illegal,

¹⁹ International Labor Office (ILO) Special Action Program to Combat Forced Labor (SAP-FL) International Program on the Elimination of Child Labor (IPEC) 2012 available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_150398.pdf (last visited at 17 May 2018)

²⁰ *Ibid*

2. any person - adults and children irrespective of nationality and race,
3. threat of punishment by depriving a fine or of rights, threats may be of different types, ranging from physical violence to psychological threats and
4. Voluntary consent - the employer's consent to the employment, and, where appropriate, the possibility of dismissing the work in the manner prescribed by law.²¹

From the ILO Convention No. 29 it is obvious that it tries to cover all possibilities of forced labor irrespective of race, country, industry, and type of coercing. Also, it states the indicators of forced labor which can help authorities of the country to find forced labor cases.

The next convention of ILO against forced labor is Convention No. 105 which effectively supplements Convention No.29 and aims at the complete elimination of forced or compulsory labor. Conventions No. 29 and No. 105 define the exceptions of forced labor.

In particular, No. 29 Convention of ILO mentions that forced labor is not absolute and forced labor can be used for: (a) military service, (b) when it is part of the “normal civic obligations of the citizens,” (c) convict labor performed for a public authority, (d) when necessary in “cases of emergency” and (e) “minor communal services” by members of the community for the community.²²

However, not all the means of forced labor used by the government are legal. Convention No. 105 of ILO prohibits the use of forced labor in certain circumstances. ILO Convention No. 105 states that forced labor can never be used for the purpose of economic development, as a means of racial, religious or other discrimination, political education, as a means of labor discipline, as punishment for the expression of political views, discrimination or punishment for participating in strikes. From this definition, one may come to the conclusion that forced labor is not just equivalent to low wages or poor working conditions and it is a restriction of the freedom of human beings and a violation of human rights.²³

From the aforementioned information, one can see that Conventions No. 29 and No. 105 effectively supplement each other and in case of exceptions clearly and comprehensively state all the exceptions that forced labor can or cannot be used.

²¹ Հարկադիր աշխատանքի և աշխատանքային թրաֆիկինգը
Հայաստանում. փորձնական հետազոտություն

OSCE in Armenia, US Department of State Anti-Drug Trafficking and Law Enforcement Bureau
available at <https://www.osce.org/hy/yerevan/212566> (last visited at 17 May 2018)

²² ILO Convention No. 29 available at
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (last visited at 17 May 2018)

²³ *Supra note 12*

Although forced labor is universally condemned a lot of people are still subject to it in a lot of countries of the world. Moreover, among the number of victims are a lot of children, migrants, and women who are subject to forced labor not only by private individuals, but also by states in violation of international standards. This means that a lot of work should be done in order to completely eliminate forced labor in the world. Furthermore, in order effectively fight against forced labor it is very important to differentiate between forced labor and slavery, and forced labor and labor exploitation. Each of them has its indicators that help authorities to differentiate among them.

Forced labor and slavery are very similar but they are not the same in the international law or in practice. The difference between historical and modern-day slavery is that nowadays one person does not own another person and in case of forced labor which is also called labor trafficking,²⁴ people are coerced to work or provide labor services through the use of violence or intimidation.²⁵ Also, slavery in the past was controlled by the government but today's governments have little influence on forced labor and it is mainly employer-employee relationship.²⁶ Moreover, another difference between forced labor and slavery is that all slavery involves forced labor but not all forced labor involves slavery. Also, slavery is forbidden internationally without exceptions but in case of forced labor, there are exceptions. In case of slavery, the victim has no rights and they are recognized by the community as a separate category of people. Moreover, slaves are born as a slave and that's permanent but in case of forced labor, the victims do not inherit it.²⁷ There is also a difference between their international definitions which are as follows:

Slavery is defined by the UN conventions as:

*“The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”*²⁸

Forced Labor is defined by No. 29 Convention of ILO as follows:

²⁴Labor Trafficking

available at <https://humantraffickinghotline.org/type-trafficking/labor-trafficking> (last visited at 17 May 2018)

²⁵ *Supra note 12*

²⁶Monitoring International Labor Standards: Quality of Information: Summary of a Workshop (2003)

Chapter: 4. Information and Indicators of Forced Labor, available at <https://www.nap.edu/read/10660/chapter/5#36> (last visited at 17 May 2018)

²⁷ Issue paper 2: February 2011

SLAVERY, FORCED LABOR, DEBT BONDAGE, AND HUMAN TRAFFICKING: FROM CONCEPTIONAL CONFUSION TO TARGETED SOLUTIONS

Ann Jordan

Program on Human Trafficking and Forced Labor

Center for Human Rights & Humanitarian Law, p. 2, available at

<https://www.issuelab.org/resources/15356/15356.pdf> (last visited at 17 May 2018)

²⁸ UN Slavery Convention, art. 1(1) available at

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx> (last visited at 17 May 2018)

*“Forced or compulsory labor shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him voluntarily”.*²⁹

Turning to the difference between forced labor and labor exploitation, it is important to note in case of the latter people work in exploitative conditions and receive low wages but they are not subject to physical or psychological trauma. Also, they have a chance to leave the job.³⁰

From the information mentioned above we can come to the conclusion that it is very important to understand the differences between forced labor and slavery, and labor exploitation and forced labor. Although they are very similar they are totally different in nature and different punishments are applied for each of them. So, in order to fight against forced labor effectively, the authorities should define the aforementioned situations and include the definition of forced labor in the criminal code.

§DEFINITION OF FORCED LABOR IN ARMENIA

Armenia has ratified different international treaties that prohibit forced labor or put an obligation on the state to abolish all forms of forced labor. Among them are the Universal Declaration of Human Rights; United Nations Convention Against Transnational Organized Crime and the Protocols Thereto; International Labor Organization’s Conventions C029-Forced Labor Convention 1930 (No. 29) and C105 Abolition of Forced Labor Convention, 1957; Slavery Convention and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. All these documents prohibit forced labor and slavery:

Article 4 of the Universal Declaration of Human Rights states that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.³¹

Article 3 of the United Nation’s Convention prohibits forced labor as an international crime and gives the definition of it:

“a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of

²⁹Supra note 21

³⁰Supra note 26, at 5

³¹ United Nations: Universal Declaration of Human Rights available at <http://www.un.org/en/universal-declaration-human-rights/> (last visited at 17 May 2018)

the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;”³²

The Slavery Convention prohibits all forms of slavery and forced labor.³³ Article 1 of the ILO Convention No. 29 states:

“1. Each Member of the International Labor Organization which ratifies this Convention undertakes to suppress the use of forced or compulsory labor in all its forms within the shortest possible period.”³⁴

Article 2 of the ILO Convention No. 105 states:

“Each Member of the International Labor Organization which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labor”.³⁵

Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery states:

“Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices (Debt bondage, Serfdom etc.), where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:”³⁶

So, one can see that Armenia has ratified various international treaties that put an obligation to abolish all forms of forced labor. In Armenia, we have a separate law on

³² United Nations Office of Drugs and Crime, Vienna: UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO available at https://www.unodc.org/documents/middleeastandnorthafrica/organisedcrime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf (last visited at 17 May 2018)

³³ Slavery Convention Signed at Geneva on 25 September 1926 available at http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.13_slavery%20conv.pdf (last visited at 17 May 2018)

³⁴ *Supra note 21*

³⁵ C105 Abolition of Forced Labour Convention, 1957 available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105 (last visited at 17 May 2018)

³⁶ United Nations Human Rights Office of the High commissioner: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx> (last visited at 17 May 2018)

identification and assistance of persons trafficked and exploited.³⁷ Also, the relevant provisions of the Constitution, Labor Code and Criminal Code also prohibit the forced labor. Specifically, Article 57 (5) of the Constitution of the Republic of Armenia states: First of all, article 57 (5) of the Constitution of the Republic of Armenia states:

“Compulsory or forced labor shall be prohibited. The following shall not be considered as compulsory or forced labor:

(1) work performed, in accordance with law, by a sentenced person;

(2) military or alternative service;

(3) any work required in emergency situations posing danger to the life or well-being of the population.”³⁸

Article 3 of the Labor Code of the Republic of Armenia (hereinafter RA) states that one of the principles of labor legislation is:

“The prohibition of any type of forced labor and violence with respect to employees;”³⁹

The first part of Article 132 of the criminal code of the Republic of Armenia states that:

“ Recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of sexual exploitation or forced labor, by means of the threat or use of force, of fraud, of using the dependence, of blackmail, of threat of destruction or damage to property, if this was done for mercenary purposes, is punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labor for up to 1 year, or arrest for up to 2 months, or imprisonment for the term of 1 to 4 years.”⁴⁰

So, as it can be seen Armenia has done a lot to fight against forced labor. Armenia has ratified the main international documents against trafficking and has criminalized trafficking and forced labor. Nevertheless, in the light of the above-analyzed subchapter, the above-mentioned regulations are not enough for the complete elimination of forced labor. To be more precise, there are no common indicators of forced labor in the Armenian laws and the law-enforcement authorities have difficulties to identify forced labor. Therefore, there arises a need to include a definition of forced labor in our Criminal Code which will not only help our law-enforcement

³⁷Law on identification and assistance of persons trafficked and exploited.

<http://www.arlis.am/DocumentView.aspx?DocID=121001>

³⁸ Constitution of the Republic of Armenia available at

<http://www.parliament.am/parliament.php?id=constitution&lang=eng> (last visited at 17 May 2018)

³⁹ Labor Code of the Republic of Armenia available at <http://www.parliament.am/legislation.php?lang=eng> (last visited at 17 May 2018)

⁴⁰Criminal Code of the Republic of Armenia available at

<http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng> (last visited at 17 May 2018)

authorities to have common criteria on forced labor, but also raise public awareness and eliminate forced labor.

The absence of the definition of forced labor creates a lot of difficulties for Armenia. During one of the interviews, in contrast to the Government's position that the ratification of the convention and the existing definition in the convention are sufficient for its application in practice, the participants stated that by including the definition of forced labor with its respective indicators in the state law would be an efficient mechanism for fighting against forced labor. Meanwhile, the absence of it could generate issues connected with the identification of victims of forced labor and the process of assessment of such cases, thus, giving ground for the exploiter to avoid punishment.⁴¹

Another problem arising from the absence of the definition of forced labor which generates the requirement to include the definition of forced labor in the criminal code of the RA is that justice practitioners express different ideas on what can contribute to forced labor. One of the practitioners expressed the idea that abusive or deceptive recruitment, lack of freedom of movement, very little or no payment can contribute to forced labor. The other justice practitioners stated that the elements of forced labor are that people work under the menace of a penalty, and in their views when there are deceit and no coercion then it is not forced labor. Also, among the interviewees, there was a practitioner who said that the Armenian legislation on labor trafficking is not sufficient and there are no common criteria for forced labor which will enable law enforcement authorities to distinguish it from poor working conditions.⁴²

This can also be a reason why on the one hand we have just a few cases of forced labor in datalex.am,⁴³ but, on the other hand, the researches done in Armenia indicate that more people are subjected to forced labor in Armenia. In datalex.am only 5 cases of forced labor are mentioned and 7 seven people were convicted.⁴⁴

In the first case Edik Tamazyan was convicted for forcing a teenager to beg in different places of Yerevan in 2011, and then he received and managed the money by his own earned by begging of a child.⁴⁵

Christine Nersisyan and Rafik Markosyan were convicted for transporting another woman from Armenia to Russian Federation for the purpose of forced labor in 2011.⁴⁶

⁴¹ *Supra Note 20, at 215*

⁴² *Ibid*

⁴³ An online judicial information system

⁴⁴ available at <http://www.datalex.am/?app=AppCaseSearch&page=default&tab=criminal> (last visited at 17 May 2018)

⁴⁵ *Ibid*

⁴⁶ *Ibid*

In the next case, a person was convicted for forcing two students from the special school of Gyumri to beg and give him the money earned by begging in 2007-2008. Garik Hovhannisyan was also convicted for forcing children to beg in Yerevan.⁴⁷

Although different justice practitioners stated different ideas on including the definition of forced labor in the Criminal Code (hereinafter CC) of RA, when I had a written interview with the Head of the Department of Legal Provision and Statistics of the RA Investigative Committee, Ph.D., associate professor David Tumasyan to the question, whether there was any case that law-enforcement authorities had different opinions on forced labor definition, answered that:

- Actually no, if the evidence is insufficient, it is dropped, and if there is a disagreement, it is reasoned by arguments.⁴⁸

Not having the definition of “forced labor” the Armenian Criminal Code has also other missing points. First of all, it does not mention what is “abuse of vulnerability”. The legislative authorities state that it depends on the circumstances and state that it is a situation “where a person had no other real or acceptable alternative than to submit to the abuse”. Moreover, the vulnerability can be of different kinds: Physical, psychological, social or economic. In other words, it is a situation when a person agrees to be exploited and this is a violation of Human Rights.

The next drawback is that the Armenian CC does not specify that the exploitation of criminal activities can be regarded as a form of exploitation.

Also, one of the most important drawbacks is that the Armenian CC does not mention the irrelevance of the victim’s consent. The consent of a victim is important in other stages of human trafficking such as if victims refuse to self-identify as they consider that they consented to exploitation; when taking a decision on whether to investigate and prosecute a case as trafficking where the victim apparently consented to exploitation; when deciding on the penalty for offenders where there are assertions of consent.⁴⁹

As a conclusion, from this chapter, we can see that although Armenia has ratified the main international documents against trafficking and condemned forced labor in the Armenian Constitution and laws, we still have a lot of drawbacks in our law and the main drawback is that we do not have the definition of forced labor. This means that in 2 totally similar circumstances one person can be convicted for forced labor and the other one not as the justice practitioners can use different criteria on forced labor. Besides, the absence of the definition also hinders police

⁴⁷ *Ibid*

⁴⁸ Full interview can be seen in Appendix 1

⁴⁹ *Supra Note 9, at 33*

and other relevant authorities to find and punish perpetrators of forced labor. Maybe this can be the reason why we have just 5 cases of forced labor in Armenia which according to different researches done by international and local organizations, does not show the real picture in the country.

Moreover, Programs Coordinator at UMCOR Armenia Foundation also agrees that we should include the definition of forced labor in the CC of Armenia. During the interview with her to the question whether we have the definition of forced labor in the Criminal Code of the Republic of Armenia answered that:

- Yes, because although we have an article on trafficking in the Criminal Code of the Republic of Armenia, and, also a law on trafficking, that laws are very broad. Law-enforcement bodies should refer to international conventions for forced labor definition, but there is no effective mechanism for that. The conventions are not used even by the courts and are used more by advocates. Furthermore, punishments also should be different from trafficking punishments and be milder.
- Moreover, there are also no indications of forced labor and because of that some cases do not reach the courts or are dropped. Furthermore, although UMCOR Armenia (The United Methodist Committee on Relief) has translated the ILO indicators into Armenian which UMCOR gave also to the Police but there are no common indicators in Armenia.⁵⁰

CHAPTER 2

INDICATORS OF FORCED LABOR

§ INTERNATIONAL PERSPECTIVE

Data collection is very important to combat forced labor and to understand the nature and extent of the problem in order to inform policy-makers and find solutions to the issue. Besides,

⁵⁰ Full interview can be seen in Appendix 2.

there are situations that are very similar to forced labor but in reality, it can be just a violation of labor code, or there can be slavery situations which are also condemned.⁵¹ Also, indicators can help law-enforcement authorities, labor inspectors, NGOs, and trade union officers to identify victims of forced labor that need urgent assistance.⁵²

There are two ways to collect data: the first way is through interviews with perpetrators and victims of forced labor, and, the second way is through anonymous population surveys.⁵³ But, in order to collect data we need a set of indicators which we can apply to understand whether there is forced labor. So, ILO mentions 4 sets of operational indicators to ascertain whether a person is subjected to trafficking or not. Each set is a structured list of indicators relevant to the following dimensions of the trafficking definition:

1. Deceptive recruitment (or deception during recruitment, transfer and transportation): 10 indicators
2. Coercive recruitment (or coercion during recruitment, transfer and transportation): 10 indicators
3. Recruitment by abuse of vulnerability: 16 indicators
4. Exploitative conditions of work: 9 indicators
5. Coercion at destination: 15 indicators
6. Abuse of vulnerability at destination: 7 indicators⁵⁴

Each indicator is qualified as strong, medium or weak. But, indicators are not the same for all the victims. For instance, an indicator can be strong for a child and weak for an adult. A person can be regarded as a victim of trafficking when the dimension includes at least:

- Two strong indicators, or
- One strong indicator and one medium or weak indicator, or

⁵¹ Sedex- Introduction to Forced Labor and Forced Labor Indicators, Version 2.0, June 2017, p. 27 available at <https://www.sedexglobal.com/wp-content/uploads/2016/03/Sedex-Guidance-on-Operational-Practice-and-Indicators-of-Forced-Labour.pdf> (last visited at 17 May 2018)

⁵² ILO-indicators of forced labor. Special action program to combat forced labor, p. 2, available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf (last visited at 17 May 2018)

⁵³ ILO-Hard to see, harder to count
Survey guidelines to estimate forced labor of adults and children
Special Action Program to combat Forced Labor
International Program on the Elimination of Child Labor
available at http://www.ilo.org/global/docs/WCMS_182084/lang--en/index.htm. (last visited at 17 May 2018)

⁵⁴ For more indicators see Appendix 3 and 4

- Three medium indicators, or
- Two medium indicators and one weak indicator.

After assessing all the dimensions, all 6 indicators should be combined to identify the victims of trafficking. The aforementioned indicators serve to facilitate the identification of the victims of human trafficking for the purpose of labor exploitation.⁵⁵⁵⁶

Additional behavioral indicators for labor trafficking includes the following:

- being unpaid, paid very little, or paid only through tips
- being employed but not having a school-authorized work permit
- being employed and having a work permit but clearly working outside of the permitted hours for students
- owing a large debt and being unable to pay it off
- not being allowed breaks at work or being subjected to excessively long work hours
- being overly concerned with pleasing an employer and/or deferring personal or educational decisions to a boss
- not being in control of his or her own money
- living with an employer or having an employer listed as a student's caregiver
- a desire to quit a job but not being allowed to do so⁵⁷

The aforementioned indicators and its dimensions help to understand whether a person was or is subjected to forced labor as a lot of people do not understand that they were/are subjected to forced labor. Moreover, the questions should be very ethical taking into account the special situation of a person as a lot of people are reluctant or fearful to answer questions. So, these indicators structured by ILO takes into account all the factors and are used in all the countries that have ratified ILO conventions against forced labor. As a result, these indicators help to get the real picture of the situation in the country.

⁵⁵ International Labor Organization: Indicators of Trafficking of adults and children for labor Exploitation available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105884.pdf (last visited at 17 May 2018)

⁵⁶ *Supra note 7, at 24*

⁵⁷ Labor trafficking. When employers force someone to work using threats, harm, restraint, abuse of the legal process, extortion, or financial harm. available at <https://www.mass.gov/service-details/labor-trafficking> (last visited at 17 May 2018)

§ FORCED LABOR INDICATORS IN ARMENIA

In Armenia, there are no indicators of forced labor identification and only recently the Ministry of Labor and Social Affairs (MLSA) and the UMCOR Armenia Foundation have decided to develop indicators for victim identification. The ending result is that they found 31 cases of forced labor in Armenia which were not recognized previously.⁵⁸ So, we can see that using indicators are very important and Armenia needs to use internationally recognized indicators that are very thoroughly structured and are used in all the member countries of ILO.

In 2015 a Commission on the identification of victims of trafficking on human beings and exploitation was established. The function of the Identification Commission is to identify as victims of trafficking persons who have been detected and referred to it by other bodies or persons who declare themselves to be victims of trafficking. The organization or the person who referred the file of the supposed victim to the Commission is responsible for the file containing the information of the victim. The Ministry of Labor and Social Issues, the Police and NGOs which have concluded memoranda with the Anti-Trafficking Council on co-operation on trafficking issues are responsible for pre-identification of victims. The decision in the Commission is made by simple majority. But, the Ministry of Labor and Social Issues states that there is a difficulty to make a decision as there are no common indicators of forced labor or labor exploitation.⁵⁹

In case of labor trafficking people rarely report complaints and even if they do so law enforcement authorities fail to identify it as a forced labor as by Armenian legislation it is very difficult to differentiate between forced labor and other types of labor exploitation. It is because law-enforcement agencies still do not use special indicators to identify victims and detect offenders. The Armenian law does not provide criteria for distinguishing between forced labor and poor working conditions. Police identify victims of forced labor through investigative operations in which either people self-identified themselves or their relatives applied for help. They mentioned that they do not have any special list of indicators to detect labor trafficking offenses or to find the victims of forced labor.⁶⁰

In case of border guards, they also do not have any list of indicators and they mostly use basic profiling techniques and some behavioral and body language indicators. It is not enough

⁵⁸ ASSESSMENT REPORT ON TRAFFICKING IN PERSONS IN THE REPUBLIC OF ARMENIA-International Organization of Migration (IOM), The UN Migration Agency [http available at http://www.un.am/en/agency/IOM](http://www.un.am/en/agency/IOM) (last visited at 17 May 2018)

⁵⁹ *Supra note 9, at 21*

⁶⁰ *Supra note 54*

for the detection of human trafficking and the result is that during the last few years the border guards have not detected any case of trafficking in persons.⁶¹

In case of victim self-identification, people often have feelings of shame, fear of stigmatization, fear of being punished, and fear of reprisal by the trafficker and lack of trust in the authorities. In case of male victims, they do not want to be recognized as a victim as they are ashamed that they were not successful. Very often they reject any kind of assistance and do not want to make any complaint as they are afraid to lose that minimum that they have by forced labor.⁶² Also, the victims are also reluctant to be recognized as a victim as they live with the employer in a small community and, also, afraid to lose that minimum income. So, the case is dependent on the victim declaration which rarely occurs in Armenia for the aforementioned reasons. Moreover, there is also a view that law enforcement authorities are reluctant to recognize such cases as trafficking for forced labor as the authorities are often from the same community with the offender and avoid testifying against their neighbors.⁶³ In most of the cases, people even do not understand that they are victims of forced labor and do not report about it. The reason for that can be lack of awareness of human trafficking.⁶⁴

For the aforementioned reasons it is very important for Armenia to have a set of indicators to find forced labor and differentiate clearly between forced labor and other labor exploitation situations as in case of forced labor it is a criminal offense, but, in case of a violation of the LC of the RA it is an administrative offense.⁶⁵ Researches done in Armenia by NGOs and different organizations show not only that in most of the cases it is not a forced labor but a violation of the labor code (hereinafter LC), they also show the real picture in the country and that we have more forced labor cases than it is stated.

According to one of the researches forced labor is also present in the Armenian army and the definition of forced labor also hinders to find forced labor and punish perpetrators there, as those, guilty of forced labor are convicted for abuse of the official position but not for forced labor. Although not many soldiers are subjected to forced labor but it is a fact that forced labor is also present there. Soldiers are most often subjected to forced labor by army officers and to a lesser extent by other soldiers. Among the reasons for performing forced labor ordered by the officers soldiers most often mentioned fear of physical violence, that it was not difficult for them

⁶¹ *Ibid*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Supra note 9, at 12*

⁶⁵ Forced Labor and Labor Trafficking

in Armenia: Pilot Study, Summary: OSCE, US Department of State-International Narcotics and Law Enforcement (INL) Bureau, p. 16 available at <https://www.osce.org/yerevan/212571?download=true> (last visited at 17 May 2018)

to do it and that not to face difficulties in the future. So, this can amount to forced labor as defined by the definition of ILO. It is also interesting that soldiers have the right to complain their superiors' command, but they can do it only after executing the command. Also, according to the same research only 8.9% of the victims were permanently subjected to forced labor.⁶⁶

So, from the aforementioned research we can conclude that forced labor is also present in the Armenian army and the absence of the definition of forced labor also hinders to find forced labor cases there. Although a small number of soldiers are subjected to forced labor but it requires an urgent solution.

Another research done in Armenia shows that there were 734 failed cases to fulfill the requirements of the RA Labor Code among 470 observed jobs. The most common violations were that the employer did not provide a copy of the labor contract, or, the employees were compelled to do larger volumes of work and were not paid for that. The team also identified 119 cases of forced labor related to coercive or deceptive recruitment, work or life under duress, and the impossibility of terminating the contract in accordance with legal requirements.⁶⁷

In case of Coercive or Deceptive Recruitment the researchers found 28 instances based on the following indicators:

- Deception about the real location of a job:
- Deception about the potential employer/type of entity:
- Deception about the real volumes of the job:
- Deception about the size of the remuneration:
- Deception about the real nature of work:
- Deception about the real duration of a workday:

In case of impossibility to terminate the contract the offenders often used penalty, the menace of penalty, threats of having serious material losses in case of leaving the job voluntarily. The researchers found 14 such cases in Armenia.⁶⁸

Another research done in Armenia confirmed that in most of the cases there is a breach of Labor Code and not labor trafficking or forced labor. In case of debt-bondage situations when the person works for no or very little wage to repay the damage or loss caused to the employer it is

⁶⁶ The fight against trafficking and forced labor in the armed forces of the Republic of Armenia
Training Manual
Erevan 2016

⁶⁷ *Supra note 60, at 18*

⁶⁸ *Ibid*

not established that they are responsible for that damage. In some cases, the value of their work even exceeds the supposed damage.⁶⁹

So, we can come to the conclusion that Armenia needs to have and to use indicators in order to find forced labor cases and punish perpetrators. The indicators can be included in the definition of forced labor. Although most of the researches show that mostly labor code is violated which does not amount to forced labor, it also shows that forced labor is present in Armenia and in Armenian army, and that in order to eliminate forced labor, it is important to have indicators of forced labor. That can help law-enforcement authorities to differentiate between forced labor and other violations.

⁶⁹*Supra note 54*

CHAPTER 3

ENFORCEMENT MECHANISMS OF FORCED LABOR

§ *INTERNATIONAL PERSPECTIVE*

Worker initiated complaints are very important to find some violations but it is not enough to solve the problems in the workplace. First of all, the worker initiated complaints most often come when it is already too late to have the greatest impact on the problem and most of the workers are affected. Also, these complaints include not all the problems as employees report the problems that affect them, and, a lot of problems, maybe more important, for some reasons are not reported. In other words, they solve only specific problems. So, although they should address the complaints and start investigations, they should not have purely a reactive role. If a government of a country wants to reach the objective of ILO which is: “*to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work*”, they should understand that they will deal with different companies with different characteristics, and make policies having this in mind.^{70 71}

So, we need an independent body which will supervise companies and industries and find forced labor cases. In the international best-practice, that body is the labor inspectorate which should have enough rights to supervise different industries and find forced labor.

Labor inspectorate was first created in the nineteenth century in Britain. At first, the aim of labor inspectorate was to supervise health and morals of apprentices in factories. Then, in

⁷⁰ International Labor Review, Vol. 147 (2008), No. 4

A strategic approach to labor inspection

David WEIL*, available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1564-913X.2008.00040.x> (last visited at 17 May 2018)

⁷¹ Labor inspection: A guide to the profession, p. 313,

available at http://www.ilo.org/safework/info/publications/WCMS_108665/lang--en/index.htm (last visited at 17 May 2018)

Labor Inspection. A guide to the profession. Wolfgang Von Richthofen. International Labor Office-Geneva

1833 the aim was changed and “people of high standing” started to supervise the working hours in different industries and this was the birth of modern-day labor inspectorate, after which European countries started to adopt laws and create labor inspectorates. After the First World War, the ILO was created which then created different international instruments for labor inspectorate but they were not-binding and not comprehensive enough. Only after the Second World War, more comprehensive documents were drafted which were also binding for member states.⁷²

Two Conventions of ILO deal exclusively with Labor Inspectorate: the first comprehensive document was the labor inspection convention which was adopted in 1947 (No 81) and associated Recommendations (Nos. 81, 82 and 85). Then, in 1969 another Convention was adopted by ILO: the Labor Inspection (Agriculture) Convention No. 129. These conventions state the principles of labor inspectors. Although these principles were created nearly 50 years ago they are still valid and applied today. The first principle is that labor inspectorate is the responsibility of the government to supervise the compliance with laws and standards. So, although they have a lot of rights as a public body they also have a set of duties. The second principle which is also very important is that the labor inspectorate and employees and workers should cooperate with each other. The third principle is that labor inspectorate should also cooperate with other bodies such as universities, experts, institutions etc. The fourth principle is that labor inspectors should concentrate on the prevention of violations. Finally, the fifth principle is that labor inspectorate should supervise as many workplaces as possible.⁷³

Convention No. 81 defines that labor inspectors should have the power to “freely enter any workplace liable to inspection; carry out inquiries freely, and in particular to question people; examine documents and take samples; make orders with a view to remedying effects and deciding whether they are appropriate; give warning and advice, or institute or recommend proceeding”.⁷⁴ Convention No. 129 deals with the agricultural sector and based mostly on Convention No. 81. The difference is that Convention No. 129 was adopted 20 years later after No. 81 and has some innovations taking into account the special characteristics of the agricultural sector. Also, the ILO Convention 81 (also Convention 129 on Labor Inspection Agriculture) on Labor Inspectorate contains all the features of a best-practice labor inspectorate. The provisions of the convention are:

⁷² *Ibid*

⁷³ *Ibid*

⁷⁴ *Ibid*

- Labor Inspectorate should be applied to all the workplaces in the country and supervised by a central authority
- Labor Inspectorate should check the compliance of employers with the laws (such as employment of children, wages, health and safety, forced labor) and other matters that seem appropriate, and inform about it to relevant authorities
- Labor Inspectors should be independent of authorities and external influences
- Adequate number of Labor inspectors should be in the country to ensure compliance with laws in all the workplaces of the country and be effective to check workplaces, the number of employees etc
- They should be legally empowered and have adequate offices, transportation facilities, and measurement material
- They should have the power make inspections as often and as thoroughly as they feel is appropriate to ensure compliance with laws
- Inspectors should cooperate with other governmental bodies, workers, and private institutions engaged in labor inspections to achieve the operative performance of labor inspectorate.
- Adequate penalties should be applied if they find violations⁷⁵

The range of topics that labor inspectors may cover includes:

- Occupational health and safety
- Wages, overtime payments, and salary records
- Labor rights and anti-discrimination measures
- Social security contributions
- Employment of children, women, and workers with special needs⁷⁶

Finally, Protocol to Convention No. 81 reaffirms the aforementioned principles for the non-commercial sector.

To come to the conclusion, we can see that ILO mentions Labor Inspectorates as a means to find forced labor and supervise different industries. ILO mentions that Labor Inspectorates

⁷⁵ A mapping report on Labor Inspection Services in 15 European countries

A SYNDEX report for the European Federation of Public Service Unions (EPSU) 2012, p. 7, available at

https://www.epsu.org/sites/default/files/article/files/EPSU_Final_report_on_Labour_Inspection_Services.pdf (last visited at 17 May 2018)

⁷⁶ *Ibid*

should have enough rights to carry out inspections and ensure compliance with laws. Moreover, they should be independent of the government and external influences and have adequate offices, transportation facilities, and measurement material. So, nothing should hinder them from finding violations of the laws and forced labor.

In the international best-practice, there are also other best-practices that are very important for creating a labor inspectorate. First of all, in the international best-practice, 4 principles are very important when drafting policies.

- Prioritization- this will help the inspectorate to manage limited resources more effectively. The aim of this principle is to find out where the most violations reside and concentrate more on that part of the industry.
- Deterrence-through deterrence the influence of labor inspectorate can be significant. The employers should understand that expected costs of not complying with laws and regulations are enough to comply voluntarily. Also, expectations for investigation and consequences can motivate employees to report violations.
- Sustainability- this principle represents a measure whether the previous interventions affect continuing compliance in the long run.
- Systemic effects-geographic, industrial and/or product-market effects are more important than local effects.⁷⁷

Also, in the international best-practice, there are two types (models) of labor inspectorate in Europe. In some of the countries such as Greece and Italy, there is one labor inspectorate but there are also two types of labor inspectors: inspectors whose responsibilities are social and labor legislation and inspectors who deal with health and safety and working conditions. In other countries like France, Poland, and Spain there is no such separation for their day-to-day activity and they have the whole spectrum of competences entitled by law.⁷⁸

Moreover, the Labor Inspectorate can be differentiated by their powers of injunction: labor inspectorates that have the power to start an administrative procedure and labor inspectorates that have the power to draft a report and send it to the competent authority to start a legal prosecution process. In most of the countries the two types of systems co-exist and whether to start an administrative or criminal procedure depends on the gravity of the violation. But,

⁷⁷ *Supra note 64*

⁷⁸ *Supra note 66, at 13*

another issue is that in some of the countries it takes a lot of time to start a procedure and in most of the cases labor inspectors spend most of their time on procedures instead of visiting workplaces.⁷⁹

§ An overview of the Labor Inspectorate in Belgium and France

In Belgium and France, Labor Inspectorates are the best examples of best-practice. In Belgium, for example, there are Labor Inspectorates in a few levels which can effectively supervise different industries in the country and find forced labor and violations of the labor code. There are Labor Inspectorates under the responsibility of the Federal Department of Social Security and the National Social Security Office and they focus mainly on social security issues. Moreover, there are also inspection services at regional and community level whose competences include the control on the legal status of workers including migrant workers, the promotion of employment aids and the authorization of part-time employment agencies. Every region should prepare an action plan which should include priorities, provide guidelines and operational criteria for inspectors. Also, they have access to vital information such as statistics to do risk assessment and find out companies where targeted controls are justified. Moreover, they can start an inspection following the complaint from the worker or worker's organization or, carry out unplanned inspections.⁸⁰

Labor inspectors in Belgium are responsible to assure the compliance of employers with:

- labor laws and social security legislation;
- employment issues;
- the implementation of collective agreements;
- industrial relations;
- Individual employment relationship.

Also, they should check:

- safety at work;
- health protection;
- psycho-social stress caused by work;
- ergonomics;
- hygiene at work;

⁷⁹ *Ibid*

⁸⁰ *Ibid.*

- work-related accidents;
- Environmental issues...⁸¹

Every region should prepare an action plan which should include priorities, provide guidelines and operational criteria for inspectors. Also, they have access to vital information such as statistics to do risk assessment and find out companies where targeted controls are justified. Moreover, they can start an inspection following the complaint from the worker or worker's organization or, carry out unplanned inspections.⁸²

In France also there a labor Inspectorates in a few levels. Labor Inspectorate is organized in the Ministry of Labor and a lot of bodies work with each in the national, regional and departmental levels to make sure the compliance with labor legislation. Labor inspectors can enter any workplace to carry out an inspection at any time of the day or the night even if the employer is not in the workplace. Also, they can question employees and the employer, with or without any witness on any issue concerning the implementation of labor legislation. If they find a violation their actions include:

- Simple warning
- Improvement notice with a deadline
- Reports addressed to the penal courts in case of severe violations of labor legislation, punished by the penal authority;
- Prohibition notice
- Report addressed to the labor court in case of danger for workers in order to obtain the implementation of provisional measures aiming to make the danger cease.⁸³

So, it is obvious from the aforementioned information that Labor Inspectorates have a lot of rights in Belgium and France which is enough to carry out inspections and find forced labor. It is important to note that they have the right to enter freely to any workplace at any time which will not give employers to have time and prepare everything for the visit.

§Labor Inspectorate in Armenia

In Armenia, there is no a labor inspectorate which will detect cases of forced labor or labor exploitation. In Armenia, the State Health Inspectorate was merged with the Labor Inspectorate of the Ministry of Labor and Social Affairs in 2013.⁸⁴ Before reforms, Armenia had

⁸¹ *Ibid.*

⁸² *Ibid*

⁸³ *Ibid.*

⁸⁴ *Supra note 54*

150 labor inspectors and if finding a violation of the Labor Code of the RA, Labor Inspectorate had a mandate to resolve the problem and impose an administrative punishment and in case of criminal activity, an inspector could refer the case to the Prosecutor's Office.⁸⁵ Currently, there is no clarity regarding the tasks and obligations of the new body with regard to monitoring working conditions, preventing and detecting trafficking situations. So, most experts think that there is lack of effective monitoring which creates additional risks for contributing to forced labor.⁸⁶

The aforementioned reforms in labor inspectorate created additional difficulties for Armenia to fight against trafficking. The interviewees criticized that the RA government's decision was replaced by the current RA law on the State Labor Inspectorate, which was adopted in 2005 on the basis of the ILO Convention on Labor Inspection in Industry and Trade, ratified by the Republic of Armenia on March 24. In the legal system of the Republic of Armenia according to the legal status of the legal acts, the legal act with lower legal force, including the decisions of the Government of the Republic of Armenia, must comply with the laws and adopt them on the basis of the latter and their implementation and cannot pursue another purpose than the implementation of the law, whereas in this case the exact opposite occurred. In addition, the RA Labor Code clearly states that the functions, rights, and obligations of the State Labor Inspectorate are defined by law. However, The Law of the Republic of Armenia "On State Labor Inspectorate" was annulled by the HO-256-N law adopted on 17 December. The participants also mentioned that from October 2013 to October 2014, the State Labor Inspectorate did not do any inspections due to the above-mentioned structural changes, and any inspections and studies related to forced labor did not take place even during the operation due to the absence of a legal definition of the term. Experts underlined that it is necessary to develop appropriate checklists based on the term and indicators specified by the law for inspections by inspectors.⁸⁷ Also, Armenia has also ratified number 81 convention of ILO according to which all the member states are obliged to create a system of labor inspection which should assure the protection of employees during working hours and compliance with the law. The ILO emphasizes the importance of the labor inspectorate in fighting against forced labor.⁸⁸

In case of trade unions "In 2005, the Labor Code, which has come into force, has somewhat limited the role and importance of trade unions in employee-employer relations,

⁸⁵ Republic of Armenia Law Enforcement Anti-Trafficking Training Needs Assessment, p. 28, available at <https://www.osce.org/yerevan/30894?download=true> (last visited at 17 May 2018) REPORT. December, 2007

⁸⁶ *Supra note 54*

⁸⁷ *Supra Note 20, at 219*

⁸⁸ *Ibid.*

which has essentially affected the reputation of trade unions, and hence the number of members. At present, the trade unions' "control" function is of a formal nature because they have no legal leverage to influence the employer's decisions, even with the right of consultative vote. The employer on his own initiative is free in his / her decisions when dismissing an employee or disciplinary sanction of the employee and is not restricted by the trade union opinion, as there is no such legislative requirement."⁸⁹

CONCLUSION

This paper illustrated the significance of the problem and the international definition of forced labor. Then, it represented the gaps in the Armenian law. After which the research question has been thoroughly analyzed.

Given what has been outlined in the present paper regarding forced labor it should be highlighted that there is a need to make amendments in the CC of RA and include the definition of forced labor in it, as based on the researches done in Armenia the indicators of forced labor are also present in Armenia. One of the researches mentioned in the paper stated that the absence of the definition hinders law-enforcement authorities of RA to use similar indicators for forced labor, and, which means that there is no legal certainty. Moreover, there is a problem of victim self-identification, as a lot of people do not understand the nature of forced labor.

Besides, during one of the researches done in Armenia the researchers found a lot of cases of forced labor which were not punished. Furthermore, because of the absence of the definition of forced labor there are difficulties to differentiate between forced labor and slavery, and, forced labor and labor exploitation. To understand the differences between these cases is very important as, first of all, there is significance difference between the punishments.

⁸⁹ *Ibid.*

But, including the definition of forced labor in the CC of RA is not enough to eliminate forced labor. There is a need of an independent body which should have enough powers to make inspections and flag out forced labor cases. As we can see, in the international best-practice that body is “Labor Inspectorate”. Apparently, labor inspectors should have enough power to make inspections when they want and where they want in the country and detect also cases of forced labor and not compliance to the law. Moreover, although in RA we have a labor inspectorate it have not done any inspections since incorporation, and, for detecting forced labor they are useless. So, we need also a new labor inspectorate, which, with the help of the definition of forced labor, will help law-enforcement authorities totally eliminate forced labor in Armenia.

To conclude, the main problems of forced labor in Armenia are the absence of the definition of forced labor and the absence of an effective labor inspectorate.

APPENDIX 1

- 1) Was there any case when law-enforcement authorities had difficulties to understand whether the person was subjected to forced labor?

Yes, they were, but the difficulties were overcome by presenting evidence. If any attribute are not justified in the course of the investigation, in that case we do not say that it is difficult to understand, but rather that the evidence is insufficient or vice versa, there are no features of forced labor.

- 2) Was there any case that law-enforcement authorities had different opinions on forced labor definition?

Actually no, if the evidence is insufficient, it is dropped, and if there is a disagreement, it is reasoned by arguments.

- 3) What do you think, does the absence of the definition of forced labor hinders the detection of forced labor cases?

From a criminal point of view, it is not an obstacle, as the relevant ILO conventions have been ratified and applied directly in the Republic of Armenia.

- 4) In which areas of the economy of Armenia is forced labor mostly used?

Mostly agricultural work and begging

- 5) What are the functions of the new labor inspectorate? Have they found any case of forced labor? Or, have they made any inspections since incorporation?

New indicators have been developed for them to detect both forced labor and the worst forms of child labor.

- 6) Do we need a labor inspectorate with new functions? And, should they have the right to enter workplaces without any preliminary notice?

Certainly, their functions should be extended to some extent that they can make inspections with no warnings, entry into the apartment, and other operational features.⁹⁰

APPENDIX 2

- 1) Should we have the definition of forced labor in the Criminal Code of the Republic of Armenia?
 - Yes, because although we have an article on trafficking in the Criminal Code of the Republic of Armenia, and, also a law on trafficking, that laws are very broad. Law-enforcement bodies should refer to international conventions for forced labor definition, but there is no effective mechanism for that. The conventions are not used even by the courts and are used more by advocates. Furthermore, punishments also should be different from trafficking punishments and be milder.
 - Moreover, there are also no common indications of forced labor and because of that some cases do not reach the courts or are dropped. Furthermore, although UMCOR Armenia has translated the ILO indicators into Armenian which UMCOR gave also to the Police but those indicators should be adapted for local situation. There are no common indicators in Armenia for human trafficking cases as well.
- 2) Do we need a new Labor Inspectorate and whether that Inspectorate should have broad powers?
- 3) I agree that we should have a new labor inspectorate which should have enough powers to make inspections in order to check contracts, other documentation, indicators of forced labor, and, also, be independent and not subject to any Ministry. What do border troops of the Republic of Armenia do in order to find forced labor cases?
 - They just ask a few specific questions as they have limited time and functions in this regard.
- 4) Who mostly make reports to the police?

⁹⁰ David Tumasyan: Head of the Department of Legal Provision and Statistics of the RA Investigative Committee, PhD, Associate professor

Mostly relatives make reports on forced labor cases, and also, organizations like UMCOR find and make reports to the police.

- 5) Besides, in Armenia there is a problem of itinerant families who work for some food in cattle breeding, and when one of the animals dies or is being lost that families are responsible for that. In this way they accumulate a lot of debt and as these families and their children are mostly not literate, have no place to live, and have limited or even no other opportunity foremployment they are easily deceived and forced to do required type and quantity of work. There were a few such cases in Armenia that did not reach the court.⁹¹

APPENDIX 3

Indicators of trafficking of adults for labor exploitation

INDICATORS OF DECEPTIVE RECRUITMENT

Strong Indicator

- Deceived about the nature of the job, location or employer

Medium Indicators

- Deceived about conditions of work
- Deceived about content or legality of work contract
- Deceived about family reunification
- Deceived about housing and living conditions
- Deceived about legal documentation or obtaining legal migration status
- Deceived about travel and recruitment conditions
- Deceived about wages/earnings
- Deceived through promises of marriage or adoption

Weak Indicator

- Deceived about access to education opportunities

INDICATORS OF COERCIVE RECRUITMENT

⁹¹ Viktoria Avakova

Programs Coordinator

UMCOR Armenia Foundation

14 K.Ulnetsu St., Yerevan 0037, Armenia

Tel: +(37410) 24 81 41

Mob: [+\(37491\) 403176](tel:+37491403176)

e-mail: viktoria@umcor.am

www.umcorarmenia.am

Strong Indicator

- Violence on victims

Medium Indicators

- Abduction,
- forced marriage,
- forced adoption or selling of victim
- Confiscation of documents
- Debt bondage Isolation,
- confinement or surveillance
- Threat of denunciation to authorities
- Threats of violence against victim
- Threats to inform family,
- community or public Violence on family (threats or effective)
- Withholding of money

INDICATORS OF RECRUITMENT BY ABUSE OF VULNERABILITY

Medium Indicators

- Abuse of difficult family situation
- Abuse of illegal status
- Abuse of lack of education (language)
- Abuse of lack of information
- Control of exploiters
- Economic reasons
- False information about law, attitude of authorities
- False information about successful migration
- Family situation Personal situation
- Psychological and emotional dependency
- Relationship with authorities/legal status

Weak Indicators

- Abuse of cultural/religious beliefs
- General context
- Difficulties in the past
- Difficulty to organize the travel

INDICATORS OF EXPLOITATION

Strong Indicator

- Excessive working days or hours

Medium Indicators

- Bad living conditions
- Hazardous work Low or no salary
- No respect of labor laws or contract signed
- No social protection (contract, social insurance, etc.)
- Very bad working conditions
- Wage manipulation

Weak Indicators

- No access to education

INDICATORS OF COERCION AT DESTINATION

Strong Indicators

- Confiscation of documents
- Debt bondage Isolation, confinement or surveillance
- Violence on victims

Medium Indicators

- Forced into illicit/criminal activities
- Forced tasks or clients
- Forced to act against peers
- Forced to lie to authorities, family, etc.
- Threat of denunciation to authorities
- Threat to impose even worse working conditions
- Threats of violence against victim
- Under strong influence
- Violence on family (threats or effective)
- Withholding of wages

Weak Indicator

- Threats to inform family, community or public

INDICATORS OF ABUSE OF VULNERABILITY AT DESTINATION

Medium Indicators

- Dependency on exploiters
- Difficulty to live in an unknown area

- Economic reasons
- Family situation
- Relationship with authorities/legal status

Weak Indicators

- Difficulties in the past
- Personal characteristics⁹²

APPENDIX 4

How to use the indicators

The final set of indicators resulting from the survey can be easily translated into a practical assessment guide for organizations that have contact with potential victims or questionnaires for researchers or people in charge of designing surveys on trafficking. One indicator can be translated into one or more questions, the answers to which can be used to determine the presence or absence of the indicator.

For each potential victim, each of the six dimensions of the trafficking definition is assessed independently from the others. The result of the assessment is positive if the dimension is present for the potential victim, negative if not. In order to be assessed as positive, a dimension must include at least:

- Two strong indicators, or
- One strong indicator and one medium or weak indicator, or
- Three medium indicators, or
- Two medium indicators and one weak indicator.

After an assessment is done for each dimension, the final analysis involves combining the six elements to identify the victims of trafficking. In the case of children, in accordance with the Palermo Protocol, the presence of deception and coercion is not necessary to characterize a case as trafficking.

A full scale test of these indicators took place in Moldova in the second half of 2008. A special module on labor migration was introduced into the regular Labor Force Survey and a sampling process was designed to capture a large number of returned migrants to which the additional module was then administered. Questions captured information about the recruitment

⁹² ILO- Operational indicators of trafficking in human beings Results from a Delphi survey implemented by the ILO and the European Commission First published in March 2009 Revised version of September 2009 available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf (last visited at 17 May 2018)

process, conditions of work, living conditions and the possibility to leave the job. Responses were then matched against the Delphi indicators of trafficking.

The final analysis of the dataset gave the ratio of migrants to victims of deceptive or coercive recruitment, exploitation, and coercion at destination. Based on the results, migrants were qualified as successful migrants (no deception, no exploitation, no coercion), exploited migrants (exploitation without deception or coercion), victims of deception and exploitation (without coercion) and victims of trafficking for forced labor (deception, exploitation and coercion).⁹³

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14 K.Ulnetsu St., Yerevan 0037, Armenia, Tel: + (37410) 24 81 41

Mob: + (37491) 403176

e-mail: viktoria@umcor.am

www.umcorarmenia.am

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