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DE LOS INMIGRANTES



For Decent Jobs Against Labour Exploitation

Equality Secretariat

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I. WHY LAUNCH A CAMPAIGN AGAINST LABOUR EXPLOITATION?

UNION GENERAL DE TRABAJADORES (UGT) has launched a nationwide campaign against labour exploitation.

For years now, UGT has called for instruments to be put in place to detect situations of employment exploitation and systematise the protection of victims of this kind of exploitation. Some progress has been made since our first proposals in 2003, but they are insufficient, as we see every day in our union action, with some isolated cases occasionally getting media coverage. Today's economic and employment situation is one of the factors in an environment that is prone to situations of exploitation, generating greater vulnerability among the working population.

Social acceptance of irregular employment when it occurs in certain sectors or affects certain groups of workers merely perpetuates and justifies the undermining of the rights of the working population, which UGT cannot accept.

We should not forget that the “submerged economy”, working and living conditions are closely interlinked. With low-quality jobs and employment rights debilitated or denied altogether, work ceases to be a factor in encouraging people to get involved socially, economically and culturally, to become just another part of the process of social exclusion, which ends up by endangering social cohesion. In an environment of tolerance, that excuses or attempts to justify irregular employment, it is even more likely that the line between social infringements and actual crimes against workers rights will be crossed.

As we see it, several factors are involved in the failure to detect serious situations of labour exploitation — its invisibility. Social tolerance, insufficient commitment by some authorities, legislation that needs improving, means of detection and prosecution that need strengthening, and the existence of particularly vulnerable groups all lead to labour relations that undermine workers' dignity and constitute intolerable violations of employment and criminal law. The theoretical freedom of choice when it comes to being exploited — an argument alleged by some in an attempt to justify it — is unacceptable for UGT whether in a context of labour exploitation or sexual exploitation.

One of the groups most vulnerable to labour exploitation is without doubt the working population who have come from abroad. In the case of non-EU workers subject to Spain's legislation on foreign nationals, not having all their papers in order and their fear of being deported, ignorance of their rights and their need to work to survive, since they lack any other source of income or the support of social networks — all are factors that put these workers in a position of complete dependence, and consequently subject to working conditions of all kinds. But it is not only foreign workers without all their papers in order who are the victims of labour exploitation, especially



during an economic and employment situation such as we are experiencing today. Vulnerability applies to other groups as well.

UGT considers that now is the right time to address effectively the most serious situations of labour exploitation found in the Spanish labour market. We now have instruments at our disposal that were not available only a few months ago. Firstly, the reform of the Penal Code, currently being processed by parliament, for the first time includes human trafficking for purposes including labour exploitation as a specific crime. Also, the latest amendment of the Foreign Nationals Rights, Freedoms and Social Integration Act 2000 (No. 4/2000) covers the possibility of granting residency to the victims of human trafficking if they are immigrants without papers or victims of labour exploitation who assist the authorities. Now is the time for the necessary action to be taken to develop these instruments so that the goal of ending all behaviour in Spain that impinges upon basic rights can be achieved.

Among all the entities and agencies involved, we have an opportunity to prevent, detect and prosecute crimes against workers' rights, breaking the duality of a system in which some workers enjoy rights and protection while others do not. Such action calls, first of all, for political willingness and commitment, but there is also a need to convey to society the idea that this is not a problem to be faced individually by workers suffering from situations of exploitation, but a social problem that affects us all.

I.1. Some facts

According to data from the Spanish Department of Public Prosecutions, in 2008 there were 5,125 alleged criminal offences against workers' rights, 71% of which involved imposing harmful employment and social-security conditions on workers. Between July 2008 and March 2010, the loss of workers registered for social security stood at 8.5% for Spanish nationals, while among non-EU workers the figure was 15.04%. Since 2005, according to data from the Department of Employment and Social Security Inspections, the number of infractions found and foreign workers affected by them has grown steadily year after year, from 9,535 workers in 2005 to 12,453 in 2008.



I.2. Basic concepts

1. What is labour exploitation?¹

Although this concept does not exist as such in Spanish law, the principles and content of the international definitions are referenced in part XV of the Penal Code (criminal offences against workers' rights), covering crimes of several different types of crime:

Section 311: Imposition of damaging employment or social-security conditions

312: Illegal trafficking in labour

313: Fraudulent migration

314: Employment discrimination

315: Limitations on trade-union freedom

316 & 317: Lack of health and safety measures

Clearly, particularly in the case of section 311, there is a grey area between what constitutes a social infringement and an illegal, criminal act. One example of a criminal act would be the "slave contracts" that received a good deal of media attention several years ago. But labour exploitation also includes other types of contracts or labour relations that are characterised by the lack of remuneration, withholding more of the salary than is legally allowed, abusive working hours, the lack of health and safety measures in the workplace, assigning social-security arrangements that are inferior to those that the worker is legally entitled to in accordance with the job actually being done, etc.

The list of different types of labour exploitation includes several ways in which workers are coerced, including violence, restrictions on their movements, servitude for debts, withheld wages or documentation, and threats to report them to the authorities.

¹ Labour exploitation is not precisely defined in Spanish law. Internationally, forced labour has been the concept that has been developed the most, following ILO Agreement 29 on Forced Labour (1930), which defines it as *any work or service required of an individual under any kind of threat for which the individual does not volunteer*. However, certain new forms of undermining workers' rights have emerged since then. The concept of labour exploitation is included in the protocol to prevent, repress and sanction trafficking in human beings, especially women and children, and it is supplemented by the United Nations convention against transnational organised crime, which includes not only forced labour but also servitude and slavery. In some countries, however, labour exploitation also covers work conditions that are incompatible with human dignity. Section 311.1 of the Spanish Penal Code turns to this definition: *those who, by deception or abuse of a situation of need, impose upon the workers in their employ working or social-security conditions that harm, suppress or restrict legally recognised rights, collective-bargaining agreements or individual contracts*.



2. Who are the victims of labour exploitation?

All workers can, regardless of their nationality, although it is true that some groups are potentially more vulnerable. A number of factors combine to increase the vulnerability of workers from abroad, especially those without Spanish work or residence permits: the possibility of being deported if their lack of papers becomes known neither fosters the detection of labour exploitation nor encourages its victims to report it.

But we should not forget that foreign workers who do have official permits to live and work in Spain are also vulnerable, since the renewal of their papers, and therefore being able to stay in the country legally, depends on having a job, while workers from other EU countries, especially those from the more recent Member States and even Spanish workers in situations of special difficulty can also be at risk.

3. What is human trafficking for the purposes of labour exploitation?

In its draft form, the criminal offence in the Penal Code is in line with the international definitions — a complex subject that is considered as the 21st-century form of slavery:

- What does it consist of? Capturing, transporting, moving, sheltering, receiving or housing people. It is not necessary for frontiers to be crossed from one country to another, but may occur within the borders of a single country or in a free-circulation zone such as the European Union.
- What for?: To exploit the victim at work, for sexual exploitation or organ-harvesting.
- By what means? By violence, intimidation or deception, abusing a situation of vulnerability, need or superiority over the victim.
- Who could be victims? The victims of human trafficking may therefore be Spanish, EU citizens or foreign nationals, with or without work and residency permits.
- Do the victims consent to it? No. The means used in human trafficking and the purpose of exploitation remove the validity of any apparent consent that may be given. And in the case of children, it is not even necessary for any of these means to be used — merely for the facts and purpose of the exploitation to turn them into victims of human trafficking.

Therefore, in cases of human trafficking, labour exploitation may be one of the ends that the traffickers pursue.

4. What are the consequences of labour exploitation?

Labour exploitation has evident consequences for its victims, but also for society as a whole. The lack or limitation of employment rights and, in the worst cases, basic human rights, with the imposition of subhuman conditions, means the loss of options



for social integration, if not the complete invisibility and isolation of its victims. And we must also factor in the tax fraud that is associated with the submerged economy, and above all the existence of such behaviour challenges social cohesion, the labour-relations system and the capacity of the social state and right to safeguard workers' conditions and rights.

5. Why is labour exploitation hard to detect?

On many occasions, the victims, including EU citizens, are trapped by debts owed to their exploiters, fearing the loss of their jobs, the seizure of their passports or, in the most serious cases, putting up with threats and violence from their employees.

In the case of workers from abroad without their papers in order, although it is true that the Regulations of the Foreign Nationals Act include the possibility of victims of crimes against workers' rights without papers to get permission to reside in Spain, applications can only be made after a court decision has confirmed their condition as victims. The lack of mechanisms to protect potential victims of labour exploitation means that, even if they collaborate with the authorities, they have no cover or chance to obtain provisional papers, and therefore a regular job, in the interim while waiting for the court decision to accredit them as victims.

Labour exploitation usually takes place in the shadows, isolated from the regular labour market, hindering its detection by the employment authorities.



II. WHY TAKE ACTION AGAINST LABOUR EXPLOITATION NOW?

Combating labour exploitation is a priority for UGT and a necessity for Spanish society. We are unlikely to be able to aspire to changing our production model without addressing the facts of the submerged economy in Spain, and, within it, the most serious forms of infringement of workers' rights and even basic human rights.

a) Commitment from public authorities

Firstly, UGT proposes that the public authorities should make an explicit commitment to combat labour exploitation. A commitment that should take the form of instruments to favour coordination and cooperation in order to respond swiftly and effectively to possible cases of labour exploitation

UGT therefore proposes:

- Establishing a framework protocol for collaboration between the actors that are actively involved in combating labour exploitation, to include at least the General Legal Council, the Department of Public Prosecutions, the Ministry of Employment and Immigration and the Ministry of the Interior, plus an action protocol to allow such cases to be investigated quickly and properly, which trade unions and business organisations could adhere to, in order for it to be possible for regional partnership agreements to be reached .
- Complete the final draft of the Integrated Plan to Combat Human Trafficking for the Purposes of Labour Exploitation.

b) Protecting victims

For UGT the possibility of victims without papers to obtain the necessary permits is part of a basic system to protect victims and restore their severely damaged rights.

- In the coming amendment to the Regulations of the Rights, Freedoms and Social Integration of Foreign Nationals in Spain Act 2000 (LO 4/2000), develop the content of sections 59 and 59b in order for them to become instruments for the real protection of victims. UGT considers that the priority is to defend human rights and to help and compensate victims who cannot be made to choose between reporting and collaborating and obtaining papers or being sent back to their countries of origin.
- Include in the new Regulations of the Foreign Nationals Act the possibility of providing provisional work and residence permits for the victims of labour exploitation, and in no cases condition those permits on the exploitation being reported by the workers



themselves. UGT considers that the possibility of being deported should not be a factor in hindering the detection of these situations.

- Ensure that the authorities interpret as fairly as possible the possibility of issuing papers to the victims of human trafficking for the purposes of labour exploitation, according to their personal situation, and not just if they collaborate with the authorities.
- Develop the Witness Protection Act 1994 (No. 19/1994) effectively, in order for it to have sufficient scope both for victims and for those who report situations of exploitation.

c) Set up immediate coordination and cooperation instruments between employment inspectors, law enforcement and public prosecutors so that situations of labour exploitation can be detected and prosecuted.

- a) Strengthen the role of employment and social-security inspectors in the sectors and geographical areas that are most susceptible to these crimes.
- b) Equip employment and social-security inspectors, law enforcement and public prosecutors with sufficient material and human resources to assure a fast, effective response.
- c) Establish technical criteria for action by employment inspectors in possible cases of labour exploitation: inspectors must play a key role in detecting such cases. However, essential as coordination between these three actors is, it is also essential for the inspectors to apply clear criteria for detection and action, particularly when dealing with foreign victims without all their papers in order or in cases of human trafficking.

d) Building awareness among workers and society at large

- Devise information campaigns on labour exploitation and the submerged economy, paying special attention to the consequences for victims and for workers' rights, as well as for the labour-relations system and society as a whole.
- Take preventive action in places and sectors where repeated cases have been detected in which workers' rights have not been upheld.



ANNEX: NEW LEGAL INSTRUMENTS TO COMBAT LABOUR EXPLOITATION

I. HUMAN TRAFFICKING FOR THE PURPOSES OF LABOUR EXPLOITATION

I.1 RIGHTS, FREEDOMS AND SOCIAL INTEGRATION OF FOREIGN NATIONALS IN SPAIN ACT 2000 (No. 4/2000, OF 11 JANUARY), as drafted under L.O. 8/2000, of 22 December, L.O. 11/2003, of 29 September, L.O. 14/2003, of 20 November, and L.O. 2/2009, of 11 December

Section 59b. Victims of human trafficking. (Added under Act No. 2/2009)

1. The corresponding authorities shall take the necessary steps to identify the victims of human trafficking, as provided under section 10 of the Council of Europe Convention on Combating Human Trafficking of 16 May 2005.
2. The competent official bodies to investigate criminal offences, when they consider that there are reasonable grounds to believe that a foreign national without the relevant permits has been the victim of human trafficking, shall inform the interested person about the provisions of this section and forward to the competent authority for a decision the relevant proposal to grant a grace period, in accordance with the procedure provided under the applicable regulations. Such grace period shall have a duration of at least thirty days and shall be sufficient for the victim to decide whether they wish to cooperate with the authorities in the investigation of the criminal offence and, as the case may be, subsequent criminal proceedings. During such period, the person shall be allowed to remain temporarily and any action brought against the person shall be suspended or, as the case may be, the execution of any deportation or return order issued shall be suspended. Furthermore, during such period the competent authorities shall provide for the person's subsistence and, if necessary, security and protection.
3. The grace period may be denied or revoked for reasons of public order or if it is learned that the condition of victim has been improperly invoked.
4. The competent authority may declare the victim to be exempt from official responsibility and may, if the person so wishes, assist the person to return to their country of origin or grant residence and work permits in exceptional circumstances, if it is considered necessary owing to the person's cooperation in an investigation or criminal proceedings, or in consideration of their personal situation, and facilities for their social integration, in accordance with the terms of this Act. Furthermore, upon the resolution of the procedure to grant residence and work permits in exceptional circumstances, a provisional



residence and work permit may be granted under the terms set out in the corresponding regulations.

In the processing of such permits the requirement to furnish any documents the obtaining of which might suppose a risk for the victim may be waived.

5. The provisions of this section shall also be applicable to foreign nationals who are minors, taking their age and maturity into account and, in any case, ensuring that the greater interests of the minor shall prevail.

6. Regulations shall be developed in respect of the conditions for the collaboration of non-profit non-government organisations specialising in offering shelter and protection to the victims of human trafficking.

I.2 BILL TO AMEND THE PENAL CODE ACT (No. 10/1995, of 23 November).

“PART VII b

On human trafficking”

Thirty-six.

Section 177b is added, drafted as follows:

“1. A penalty of five to eight years’ imprisonment for human trafficking shall be imposed upon any person who, in Spain, from Spain, in transit or destined for Spain, using violence, intimidation or deception, or abusing a situation of superiority or need or vulnerability of the Spanish citizen or foreign national, captures, transports, moves, shelters, receives or houses such Spanish citizen or foreign national for any of the following purposes:

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

2. Even if none of the means listed in the previous subsection are used, any of the actions indicated in the previous subsection shall be considered to constitute human trafficking if effected in respect of minors for exploitation purposes.

3. The consent of a victim of human trafficking shall be irrelevant if any of the means indicated in subsection 1 of this section have been used.

4. The immediately higher degree of penalty provided under subsection 1 of this section shall be imposed if:

- a) the victim is gravely endangered by the trafficking;
- b) the victim is a minor; or
- c) the victim is particularly vulnerable owing to illness, disability or circumstances.



If one or more of these circumstances apply, the penalty imposed shall be from the upper half of the range provided.

5. The immediately higher degree of penalty provided under subsection 1 of this section and full disqualification of between six and twelve years shall be imposed upon those who perform the acts while abusing a position of authority, as the agent or fan authority or as a public servant. If any of the circumstances provided under subsection 4 of this subsection should also apply, the penalties imposed shall be from the upper half of the range provided.

6. The immediately higher degree of penalty provided under subsection 1 of this section and special disqualification to practise the profession, trade, industry or commerce for the duration of the sentence shall be applied if the person convicted is a member of an organisation or association of more than two persons, including temporary organisations and associations, specialising in carrying out such activities. If any of the circumstances provided under subsection 4 of this subsection should apply, the penalties imposed shall be from the upper half of the range provided. If any of the circumstances provided under subsection 5 of this subsection should apply, the penalties imposed shall be from the upper half of the range provided.

In the case of the leaders, managers or supervisors of such organisations or associations, the penalty imposed shall be from the upper half of the range provided, which may be raised to the immediately following degree. In any case the penalty shall be raised to the immediately higher degree if any of the circumstances provided under subsection 4 or the circumstance provided under subsection 5 of this section should apply.

7. If, under section 31b, a legal person is responsible for the criminal offences included in this section, the penalty of between triple and quintuple the profit obtained shall be applied. In accordance with the rules established in section 66b, the courts may further impose the penalties included in subsections 7b to 7g of section 33.

8. Any provocation, conspiracy or proposition to commit the criminal offence of human trafficking shall be penalised with the penalty one or two degrees lower than that corresponding to the full offence.

9. In any case, the penalties provided under this section shall be imposed without prejudice to those corresponding, as the case may be, for criminal offences under section 318b of this Code and any other offences effectively committed, including those constituting the corresponding exploitation.

10. Any penalties imposed by foreign courts for criminal offences of the same nature as those provided under this section shall produce the effects of reoffending, unless the criminal record has been or may be cancelled under Spanish law.

11. Without prejudice to the application of the general rules of this Code, the victim of human trafficking shall be exempt from any penalty for any offences committed under circumstances of being exploited, provided that the victim's involvement in such offences



was the direct consequence of the situation of violence, intimidation, deception or abuse to which the victim has been subjected and provided that such situation is in sufficient proportion to the criminal act performed.”

II. LABOUR EXPLOITATION

II.1 RIGHTS, FREEDOMS AND SOCIAL INTEGRATION OF FOREIGN NATIONALS IN SPAIN ACT 2000 (No. 4/2000, OF 11 JANUARY), as drafted under L.O. 8/2000, of 22 December, L.O. 11/2003, of 29 September, L.O. 14/2003, of 20 November, and L.O. 2/2009, of 11 December

Section 59. Collaboration against organised networks. (Drafted in accordance with Act No. 2/2009)

1. Any foreign national illegally in Spain and the victim, damaged party or witness to an act of illicit human trafficking, illegal immigration, labour exploitation or illicit labour trafficking or exploitation for the purposes of prostitution abusing the person's situation of need, may be held exempt from any official responsibility and shall not be deported if the person reports the perpetrators of or accessories to such trafficking or cooperates and collaborates with the relevant authorities by providing essential details or testifying, as the case may be, in the corresponding criminal proceedings against such perpetrators.

2. The competent official bodies responsible for investigating the criminal case shall inform the interested person about the provisions of this section, in order for them to decide whether to opt for this route, making the relevant proposal to the authority that will resolve the case, which may Grant a provisional residence and work permit to the foreign national, in accordance with the regulated procedure. The investigator shall report on any actions in respect of this subsection to the authority responsible for preparing the criminal proceedings.

3. Any foreign nationals who have been exempted from official responsibility may be provided, at their choice, with assisted repatriation to their country of origin or permission to reside and work under exceptional circumstances, as well as facilities for their social integration, in accordance with the provisions of this Act, in all cases safeguarding their security and protection.

4. If the Ministry of Public Prosecutions learns that a foreign national against whom a deportation order has been issued has been cited in criminal proceedings as a victim, injured party witness and their presence is considered to be essential for the relevant court proceedings, notice thereof shall be given to the relevant government authority in order for the cancellation of such deportation order to be assessed and, in the event that such order has already been executed, the procedure shall be the same, authorising their return to



Spain for as long as may be necessary, without prejudice to the option to take any of the measures provided under the Witness Protection Act 1994 (No. 19/1994, of 23 December).

5. The provisions of this section shall be equally applicable to foreign nationals who are minors, taking into account their age and maturity and, in any case, ensuring that the greater interests of the minor shall prevail.

6. Regulations shall be developed in respect of the conditions for the collaboration of non-profit non-government organisations specialising in offering shelter and protection to the victims described in subsection 1.

II.2 ROYAL DECREE 2393/2004, OF 30 DECEMBER, APPROVING THE REGULATIONS OF THE RIGHTS, FREEDOMS AND SOCIAL INTEGRATION OF FOREIGN NATIONALS IN SPAIN ACT 2000 (No. 4/2000, OF 11 JANUARY)

SECTION 3

Temporary residence in exceptional cases

45. Temporary residence permits in exceptional circumstances (10).-1- Under section 31.3 of Act No. 4/2000, of 11 January, in consideration of any exceptional circumstances involved, a temporary residence permit may be issued to foreign nationals in Spain under the circumstances described in this section, provided that the applicant does not act in bad faith.

4. A permit may be granted on humanitarian grounds under the following circumstances:

a) Foreign nationals who are victims of the criminal offences described in sections 311 to 314 of the Penal Code, crimes involving the aggravating factor of having being committed for racist, anti-Semitic or any other discriminatory motives described in section 22.4.^a of the Penal Code, or criminal offences involving domestic violence, in the terms provided under Act No. 27/2003, of 31 July, regulating the Order to protect victims of domestic violence, provided that a conviction for such criminal offences has been obtained.

5. Without prejudice to the provisions of the previous subsections, a permit may be granted to persons who collaborate with the authorities, police, prosecutors or courts, or if reasons of the public interest or national security are involved to justify the need to authorise residence in Spain. For these purposes, such authorities may recommend to the relevant bodies that a residence or work permit be issued to any person who is in any of these circumstances.