

The Invisibility of Labour Trafficking in Spain. A Critical Analysis of Cases and Policies

La invisibilidad de la trata laboral en España. Un análisis crítico de la jurisprudencia y políticas públicas en la materia

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ABSTRACT

One of the most remarkable challenges concerning global migration policies nowadays has to do with impeding the trafficking of migrant workers for the purposes of labour exploitation. This paper aims to examine whether Spain has adequately fulfilled its obligations to prevent and prosecute labour trafficking and protect trafficking victims. To do so, it offers a critical analysis of public policies concerning labour trafficking, contrasting them with case-law and data regarding its implementation in practice. Thus, the most recent available data concerning inspection, investigation and prosecution of labour trafficking cases, as well as the identification and protection of labour trafficking victims in Spain is evaluated here. The results highlight the invisibility of human trafficking victims for the purposes of labour exploitation, partly caused by the lack of measures that specifically address this form of trafficking.

Keywords: Labour exploitation; forced labour; human trafficking; migration; criminal policies.

RESUMEN

Uno de los desafíos más notables de las políticas migratorias mundiales en la actualidad consiste en evitar la trata de trabajadores migrantes para la explotación laboral. Este trabajo tiene como objetivo examinar si España ha cumplido adecuadamente sus obligaciones de

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prevenir y enjuiciar la trata laboral y proteger a las víctimas. Para ello, ofrece un análisis crítico de las políticas públicas sobre trata laboral adoptadas hasta el momento, comparándolas con la jurisprudencia y datos sobre su implementación en la práctica. Con este objetivo, se evalúan los datos disponibles más recientes sobre inspección, investigación y enjuiciamiento de casos de trata laboral, así como la identificación y protección de víctimas. Los resultados destacan la invisibilidad de las víctimas de la trata de personas con fines de explotación laboral, en parte debido a la falta de medidas que aborden específicamente esta modalidad de la trata.

Palabras clave: Explotación laboral; trabajos forzados; trata de seres humanos; migración; política criminal.

1. Introduction

According to the International Labour Office (ILO, 2005), ‘human trafficking represents an opportunistic response to the tensions between the economic necessity of migrating, and the politically motivated restrictions on doing so’. Indeed, in a context of global inequalities and closed borders, in which most of the wealthier countries in the world depend on a supply of migrants to work in the less-protected sectors of their economies, the prevention of human trafficking becomes an issue of ultimate importance in global migration policies (Ollus and Jokinen, 2018; Plant, 2012; Thiemann, 2016). Although ‘vulnerability to labour trafficking is not restricted to migrants, and not all migrants are vulnerable to labour trafficking’ (Van Meeteren and Wiering, 2019b, p. 108), restrictive migration policies and labour regulations may contribute to the creation of conditions that render migrant workers more likely to be exploited (ILO, 2017; Thiemann, 2016).

It is estimated that, on any given day in 2016, 24.9 million people were in forced labour worldwide, that is, ‘being forced to work under threat or coercion as domestic workers, on construction sites, in clandestine factories, on farms and fishing boats’ (ILO, 2017, pp. 9-10). This figure has doubled since 2005, when at least 12.3 million people were victims of forced labour, out of which 2.4 million had been trafficked (ILO, 2005). These high rates in global estimations contrast with available data concerning victim identification and prosecution of labour trafficking cases. Within the European Union, there were an average of 23 registered trafficking victims per million inhabitants in 2016 (European Commission,

2018), which means that the estimated number of identified victims of all types of trafficking amounts to approximately 11,220 people. If we consider that labour exploitation was the purpose of trafficking for 26% of them (European Commission, 2018), we can estimate then that only 2,917 labour trafficking victims were identified in Europe in 2016. The percentage of labour trafficking cases prosecuted in the EU is also worrying, as it represents only 2% of all prosecutions for human trafficking (European Commission, 2018).

This disparity in data regarding labour trafficking suggests the existence of a dark figure that needs to be analysed carefully (Van der Leun, 2017). On the one hand, macro estimates highlighting the massive magnitude of human trafficking have been criticised for being unsustainable, as the clandestine nature of trafficking and the different coexisting definitions make it difficult to count (or even estimate) the total number of victims (Weitzer, 2014). Given the lack of research offering empirical data on labour trafficking (Cockbain, Bowers and Dimitrova, 2018; Zhang, 2012), these estimates can serve to attract media attention, funding and government support to a problem that is often overlooked. That could explain the outstanding rise in the reported number of people subjected to labour trafficking in the world in just a decade.

However, it is also important to acknowledge that there are serious difficulties in identifying and prosecuting labour trafficking victims, which cannot be underestimated when explaining this alleged dark figure. International academic literature has pointed out several reasons to support this statement. Firstly, the fact that research and policies have almost exclusively focussed on sexual exploitation has diverted efforts from other forms of trafficking (Broad and Muraszkievicz, 2019; Cockbain et al., 2018; Meneses, 2019; Rodríguez, 2014; Skilbrei, 2017; Weitzer, 2014; Zhang, 2012). Human trafficking has been socially constructed as a problem related to the sexual exploitation of women and girls who present certain characteristics that real trafficking victims are supposed to have, overlooking those who fall outside this stereotypical conception (Broad et al., 2019; Meneses, 2019).

Secondly, detection and prosecution of labour trafficking cases is overly dependent on victims. Investigations do not usually begin unless victims report their own situation to law enforcement authorities, which is unlikely to happen since they often do not trust them,

and they fear sanctions and deportation for their irregular migration status (Barrick, Lattimore, Pitts and Zhang, 2014; Meneses, 2019; Van der Leun, 2017). Besides, some trafficked people are unlikely to come forward, because they do not identify themselves as victims, but rather as ‘active agents of their migration projects’, who may perceive ‘exploitative labour conditions as a necessary step in their upward labour market mobility’ (Van Meeteren and Hiah, 2019, p. 5). Sometimes they do not even know that they are being trafficked and exploited as they do not know their rights (Barrick et al., 2014; Meneses, Urío and Uroz, 2019). Men tend to be more ashamed of their victimhood and therefore less likely to express it due to the social pressure exerted on them to ‘not overreact’ and be ‘real’ men (Van Meeteren et al., 2019a). Regarding prosecution, cases often lack evidence other than victims’ testimony, and that means that charges will be dropped when victims lack credibility, are not willing to testify or simply cannot be found (Farrell, Owens and McDevitt, 2014; Skilbrei, 2017).

A third important factor that supports the existence of certain levels of undetected crime has to do with the difficulties in implementing laws that present serious definitional problems (Barrick et al., 2014; Weitzer, 2014; Zhang, 2012). Although the ‘purpose of exploitation’ is a key element in the international concept of human trafficking foreseen in the Palermo Protocol, exploitation is not defined in any international legal instrument. Each signatory country has different ways of interpreting and implementing the same definition of trafficking. Even within the same internal legislation, the boundaries between what constitutes decent work, labour exploitation and forced labour are far from being clear, both in theory and in practice (Skrivankova, 2010). In the same line, the distinction between trafficking and smuggling, and its interconnections with situations of exploitation are extremely complex.

To clarify this situation, in the last decades several methods have been tried for finding the best way to identify labour trafficking (Skrivankova, 2018). The ILO has developed a list of operational indicators, that is, a set of examples of different abusive situations that may amount to labour trafficking. The list, known as the Delphi method, is supposed to be used as a practical guide for professionals to determine the presence of

trafficking for labour exploitation (ILO, 2009). Enforcers will establish that labour trafficking took place when a combination of indications (usually more than two strong indications) is inflicted on a worker (ILO, 2009).

Indicators are the most commonly used method of identification in practice (Skrivankova, 2010). However, it has been argued that they can also be problematic, since ‘the majority of cases occupy the middle ground between the two extremes and are hard to fit into straightforward ‘exploitation yes/no category’’ (Skrivankova, 2010, p. 7). Exploitation processes are very dynamic and do not easily fit into clear-cut categories (Andrees, 2008; Van Meeteren et al., 2019a; Weitzer, 2014). They can begin as an acceptable work situation, which will gradually deteriorate into violations of labour rights, severe labour exploitation or even forced labour (Skrivankova, 2010). That is why many authors have highlighted the need to define exploitation as a continuum between decent work and forced labour, which recognises the existence of degrees of exploitation (Andrees, 2008; Meneses, 2019; Plant, 2012; Skrivankova, 2018; Skrivankova, 2010; Van Meeteren et al., 2019a). This would serve to include in the definition of trafficking cases in which the levels of coercion are different, but also cases in which the conditions change over time (Andrees, 2008).

In face of this definitional chaos, it is not surprising that anti-trafficking laws are neither fully understood, nor fully applied in practice. Law enforcement authorities often lack training and specialisation to deal with labour trafficking cases (Barrick et al., 2014; Broad et al., 2019; Farrell et al., 2019; Meneses et al., 2019). Consequently, these cases are considered too complex and they tend to be prosecuted as other crimes that are easier to prove, which also explains why they are absent from prosecution statistics (Farrell et al., 2017; Skilbrei, 2017; Van der Leun, 2017).

This article analyses the current situation of labour trafficking in Spain in order to evaluate whether the international obligations to prevent and prosecute the crime and to protect its victims have been adequately fulfilled. To do so, the first section offers an overview of public policies concerning human trafficking in Spain, focussing on the criminal prosecution of situations involving labour exploitation. Subsequently, the implementation of these measures in practice is analysed by contrasting them with the most recent data available

regarding inspection, investigation and prosecution, including case-law. The results suggest the existence of a dark figure and help to explain it, contributing to the study of difficulties identified internationally, which have been presented in this introduction.

2. Human Trafficking Policies in Spain

Since the 1990s, when concerns about human trafficking re-emerged in Western countries, Spain has adopted several measures to fight against human trafficking². Since then, the response from the government has primarily focussed on the criminal prosecution of traffickers as a way of protecting the supposed interest of the State to control illegal migration, while victims' assistance and protection remained unattended (De León, 2010). Thus, although some forms of sex trafficking had been criminalised as aggravating modalities of smuggling since 2003, it was not until 2010 when human trafficking was finally criminalised as an independent offence. Organic Law 5/2010 introduced Article 177 bis into the Spanish Criminal Code, which foresees a definition of trafficking closer to that included in the Palermo Protocol, Warsaw Convention, and the EU Directive. For the first time, trafficking for purposes other than sexual exploitation was considered a crime, and it was recognised that victims could also be Spanish, nationals of EU Members, or regular migrants coming from third States.

Article 177 bis was ultimately modified in 2015. As a result of this reform, the current definition of human trafficking in Spain is the following:

Acts: The acts criminalised are the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over them. The act must have been committed within Spain, from Spain, in transit or with destination therein.

Means: Except when the victims are minors, the actions must have been committed using violence, intimidation, deceit, abuse of a position of superiority, necessity or vulnerability of the victim, or by means of the giving or receiving of payments or benefits to achieve the consent of a person having control over the victim.

² For further details about the evolution of anti-trafficking laws in Spain in English, see for instance: De León, 2010; Manrique, Arrieta and Manrique, 2011; Meneses et al., 2019.

Purposes of exploitation: Forced labour or services (note that labour exploitation is not mentioned), slavery or practices like slavery, servitude, begging; sexual exploitation, including pornography; exploitation with the purpose of performing criminal activities; the removal of organs; and the celebration of forced marriages.

The way Spain has criminalised labour trafficking presents two important distinctive features. First, the list of purposes of trafficking does not include labour exploitation, but only ‘forced labour or services’ (López, 2016; Rodríguez, 2014). Severe labour exploitation, even against human dignity, can never be the purpose of trafficking if the trafficked person has consented (Rodríguez, 2014). A preliminary draft bill written in 2008 did include an explicit reference to ‘labour exploitation’, but this term was ultimately deleted from the final version, which suggests that law-makers intentionally wanted to exclude from the scope of trafficking situations of labour exploitation that do not amount to forced labour (López, 2016; Pomares, 2013; Rodríguez, 2014). These situations are supposed to be redirected to the offences against the workers’ rights (Articles 311 and 312), which target the employer that forces workers into harmful working conditions, or detrimental Social Security terms (López, 2016; Pomares, 2013; Manrique et al., 2011). These offences foresee less harsh penalties than trafficking and do not allow for the criminal liability of legal persons. In theory, the distinction between forced labour and labour exploitation is clear: forced labour refers to the imposition of a certain labour or services, while labour exploitation means imposing certain working conditions to someone who has accepted a job (López, 2016; Pomares, 2013). As the results will illustrate, the distinction in practice is considerably more blurred.

The second peculiarity is the fact that trafficking is understood as a process towards exploitation, while the effective exploitative situation, if it takes place, will be punished as a separate offence. This differs from the legislation in other European countries where trafficking and exploitation are the same crime (Rodríguez, 2014). Apart from generating a punitive harshness that exceeds what is required in international and European legal frameworks, this does not present further difficulties in sexual exploitation: sex traffickers would be punished for trafficking and for offences related to forced prostitution. However, the Criminal Code does not include an autonomous offence of slavery, servitude or forced

labour, unless it occurs as part of a systematic attack against civil populations (Article 607.10). Thus, only the process that leads towards those forms of exploitation is punished as trafficking. The effective exploitation remains unpunished, unless it can be redirected to an offence against the workers' rights (Articles 311 and 312), which, as stated above, have been designed for less harsh situations. Besides, this leads to the paradoxical situation in which the process leading towards exploitation is more harshly punished than the situation of exploitation itself (Valverde, 2017; Villacampa, 2014; Rodríguez, 2014).

In order to comply with European anti-trafficking strategy, prosecution of traffickers was not enough, the enactment of measures to protect and assist victims was also necessary (Milano, 2016). The first step to guarantee victims' protection is to establish an adequate process of identification. In Spain this process is contained in the Regulation of Immigration Law and the Framework Protocol for the Protection of Trafficking Victims, both adopted in 2011. These norms state that the identification of the victim will be exclusively conducted by police units with specific training in the prevention and investigation of human trafficking. Organisations dedicated to the promotion and defence of the rights of trafficking victims may provide whatever information they consider relevant for this purpose, but they are not allowed to formally identify trafficking victims.

In order to facilitate coordination between the National Police, the Civil Guard and specialised social institutions, Instruction 6/2016 on the Action of State Security Forces in the Fight against Trafficking in Human Beings and in the Collaboration with Organisations and Institutions with Accredited Experience in Assisting the Victims foresees the creation of a Social Partner in Trafficking in Human Beings, a new figure that is supposed to entrench the established channels for informing State Security Forces about potential cases and make them more efficient (GRETA, 2017).

Once a victim has been identified, Immigration Law allows the possibility of granting a recovery and reflection period of a minimum of 90 days to human trafficking victims with irregular migration status. During this period, victims cannot be sanctioned or deported due to their administrative situation, so that they can decide if they want to collaborate in criminal proceedings. Besides, the State must provide for victims' subsistence, and guarantee their

safety, and the safety of victims' underage or disabled children, as well as, in exceptional cases, the safety of some of their relatives who are in Spain. At the end of the recovery and reflection period, the Administration must decide whether to provide assisted return or to grant the victim a residence and work permit due to exceptional circumstances. The permit will last up to 5 years, and it will involve the possibility of working, self-employed or for others, in any occupation, sector of activity and territorial scope. Besides, victims have the possibility of accessing a long-term residence authorisation.

Concerning victims' assistance, the Regulation of Immigration Law only includes a succinct reference to a public network of migration centres, which can eventually carry out assistance and social intervention tasks. On its part, the Framework Protocol for the Protection of Victims refers to a series of safety measures and resources at the victims' disposal such as convenient and safe accommodation; material, psychological and medical assistance; and interpretation and legal advice services.

Overall, all public policies against human trafficking in Spain need to be framed within the two subsequent Comprehensive Plans to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation adopted for the periods 2009-2012 and 2015-2018. These plans aimed to improve awareness raising, prevention and investigation, education and training, victims' assistance and protection, as well as coordination and cooperation (Villacampa, 2014). However, they were exclusively focussed on sexual exploitation of women. No similar measures have been adopted in regard to labour exploitation. The following sections will bring to light the consequences in practice of this total lack of political will to adequately combat labour trafficking.

3. Methodology and Sources

In order to evaluate the implementation of policies against labour trafficking in Spain, it was necessary to collect information about the following aspects: administrative inspections; victims' identification; police investigations; and prosecutions. The original idea was to include preventive measures other than Labour and Social Security Inspections in the

analysis, as well as the protection and assistance of trafficking victims. However, these objectives were abandoned because the Spanish government does not offer this information specifically for labour trafficking.

With the aim of finding information about these variables, the following sources were consulted:

- The Intelligence Centre for Counterterrorism and Organised Crime (CITCO) annual reports published in 2015, 2016, 2017, as well as assessment report for the period 2014-2018.
- The reply from Spain to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, published by GRETA on the 24th February 2017 (GRETA, 2017).
- The 2019 Annual report of the State General Prosecutor (FGE, 2019).
- The replies to two queries of data addressed to the Transparency Portal of the Ministries of Interior and Justice in May 2019 (TP, 2019).
- Case-law on human trafficking for the purposes of forced labour and offences against workers' rights.

All the qualitative and quantitative data obtained from these sources were analysed, compared and classified in different categories corresponding to the four above-mentioned factors. This process faced a serious obstacle: the existence of contradictions and inaccuracies in official data. Some of these contradictions are caused by the use of different data-collection methods by different institutions. For instance, some sources include cases of trafficking for the purposes of begging in labour trafficking. Once data collection was finished, the results were contrasted to a desk review of existing literature on the topic.

4. Findings

4.1. Inspections

When official reports inform about measures carried out in order to prevent labour trafficking, they exclusively refer to administrative inspections carried out by the Labour and Social Security Inspection, whose officials are able to visit workplaces where potential labour trafficking cases may take place. These checks include several aspects regarding the labour

situation of workers: Social Security records, work permits, wages, working hours, contracts, prevention of occupational risks etc. (GRETA, 2017). However, labour inspectors are not allowed to identify trafficking victims or initiate criminal investigations straight away (Rodríguez, 2014). If it is ascertained that the crime has been committed, labour inspectors must inform the State Security Forces, who would formally identify the victims and start the corresponding investigation.

Table 1.

Number of administrative inspections carried out per year

<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<i>4312</i>	<i>4582</i>	<i>5102</i>	<i>5075</i>

Source: CITCO, 2018

As shown in Table 1, the number of inspections has slightly increased since 2015. In 2018 more than five thousand inspections in workplaces were carried out, in which 11,738 people were inspected (CITCO, 2018). This figure needs to be evaluated in relation to the total number of workers in the country. At the end of 2018, the number of workers registered in the Spanish Social Security System amounted to 18,914,563 persons, according to the Spanish National Institute of Statistics (INE). This means that only 0.06% of workers had their working conditions checked by an inspector, a percentage that would be even smaller if we could quantify and include undeclared work.

The main nationalities of workers inspected in the period 2015-2018 were Spanish (39,2%), followed by Moroccan (15,2%), Romanian (10,7%), Chinese (9,5%) and Pakistani (2,9%) (CITCO, 2018). The first three foreign nationalities, together with Italians, occupy the first positions in the list of foreign workers registered in Spain at the end of 2018 according to the INE. For this reason, it is reasonable that their nationals were subject to more inspections.

Concerning the sectors where these inspections took place, the information is only available regarding 2016, when the focus was on the hospitality industry (38%), agriculture

(32%) and the commercial sector (30%) (CITCO, 2016). Although these sectors are usually prone to trafficking, the absence of other sectors like domestic service, construction and fishing, which are reportedly prone to exploitation, is noteworthy (ILO, 2017).

4.2. Victims' Identification

Although the number of inspections has steadily increased between 2015-2018, there has not been a correspondent rise in the number of identified victims.

Table 2.

Number of labour trafficking victims identified per year

2015	2016	2017	2018
134	25	58	94

Sources: GRETA, 2017; CITCO, 2018

Table 2 shows that there was a drastic fall in 2016, when only 25 victims were identified. There is no official information available regarding the identification of labour trafficking victims before 2015, even though this form of trafficking has been a criminal offence in Spain since 2010. The reports do not clarify whether this is because the information was not gathered or because no cases were identified.

The deficiencies in identification become patent when we compare the numbers of labour trafficking victims with those of trafficking for the purposes of sexual exploitation.

Table 3.*Number of human trafficking victims identified per year, sex and type of exploitation*

	2015	2016	2017	2018
Sexual exploitation	133	148	155	128
Female	129	144	133	123
Male	4	4	22	5
Forced labour	134	25	58	94
Male	97	19	47	74
Female	37	6	3	20
Begging	-	1	3	-
Forced marriages	-	-	3	-
Exploitation of criminal activities	-	-	1	-

Sources: GRETA, 2017; TP, 2019

Table 3 shows that, except for 2015, the number of sex trafficking victims identified in Spain has always far exceeded that of labour trafficking victims. The resulting gap is highly remarkable: according to the analysed data, labour trafficking victims represent 35.2% of all trafficking victims identified in the period 2015-2018, while sex trafficking victims amount to 63.9%.

It is unclear whether this occurs because sex trafficking is more prevalent in our society, or because law enforcement authorities are more aware of and trained to identify these cases. However, it seems likely that these numbers are the consequence of a series of anti-trafficking policies that, among other deficiencies, have exclusively focussed on sexual exploitation, resulting in the invisibility of those trafficked to be exploited in other sectors. For instance, police and labour inspections usually occur in places where prostitution is practised, with much less attention paid to places where labour exploitation exists (Faraldo, 2017).

In addition, when considering the sex of the victims, Table 3 shows that most people identified as sex trafficking victims are women, while men represent most victims of labour trafficking. Female victims of labour trafficking amount to only 21.2%, while men constitute

76.2%. This gender gap may have to do with the fact that those sectors where women are likely to be exploited, such as domestic service, tend to be more hidden from inspections. The main nationalities of the victims are: Romania, Portugal, China, Moldova and Vietnam (CITCO, 2018).

In general, and this affects all types of trafficking, the identification process has been heavily criticised. The designation of the police as the only agency in charge of identification is 'highly problematic' (Rodríguez and Waisman 2017, p. 511). Police units responsible for the identification of trafficking victims are also entrusted the fight against clandestine migration, which makes victims reluctant to report their situation, as they fear sanctions or deportation (Faraldo, 2017; Milano, 2016; Rodríguez et al., 2017). On top of this, both the EU and the Spanish Ombudsman have warned that the training of border police is insufficient and that there are not enough proactive mechanisms to identify victims: victims are expected to report their own trafficking situation (Defensor del Pueblo 2012; Milano 2016). A recent study, in which several professionals working in the identification and protection of trafficking victims were interviewed, showed that many of them stated that they did not know the contents of the Framework Protocol for the Protection of Trafficking Victims. Eight out of twenty-eight officials interviewed said that they did not even know what they were being asked for (Torres and Villacampa 2017).

Unfortunately, there is no information available regarding what happens to labour trafficking victims once they are identified. For example, it is not known how many recovery and reflection periods, or work and residence permits are being granted to labour trafficking victims with an irregular migration status. Nevertheless, it is expected that the protection and assistance offered to them faces a general problem: it is granted on condition that they cooperate with criminal proceedings (Faraldo, 2017; Milano, 2016).

4.3. Police Investigations

Table 4.

Number of police investigations for sex and labour trafficking per year

	2013	2014	2015	2016	2017	2018
Sex Trafficking	129	154	74	69	107	91
Labour Trafficking	11	11	15	8	10	12

Source: FGE, 2019

Table 4 shows the number of police investigations for sex and labour trafficking initiated annually between 2013 and 2018. As was the case with victims' identification, the prevalence of sex trafficking is also present in police investigations. The average number of investigations for labour trafficking per year is 11, while it rises to 104 when it comes to sex trafficking.

As stated above, these investigations can start when labour trafficking is identified during an administrative inspection. However, only 43% of the investigations are initiated at the labour inspector's request. Most of them (52.45%) started because labour trafficking victims reported their own situation. The remaining investigations (4.47%) were initiated due to the cooperation between international police units (FGE, 2019). This information confirms one of the deficiencies in the detection of victims pointed out earlier: victims are expected to report their own situation, which is unlikely to happen due to their lack of trust in the police and the risk of being deported that they face when they have irregular migration status.

4.4. Prosecution

If the number of police investigations for labour trafficking seems low (around 11 each year), the number of convictions is even lower. As explained in section 2, labour trafficking was criminalised in Spain in 2010. For this reason, there is only available data from 2011, when there were no convictions. The data provided in Table 5 show a global increase in human trafficking convictions since 2015, perhaps because of the reform of the Criminal Code,

which broadened the definition of trafficking. Among other novelties, this reform introduced two new purposes of exploitation: forced marriage and the exploitation of criminal activities. Nevertheless, convictions for these new forms of trafficking have been very rare so far.

Table 5.

Number of human trafficking convictions per year by type of exploitation

	2011	2012	2013	2014	2015	2016	2017	2018
Sexual exploitation	-	2	5	8	18	27	32	36
Forced labour and services, including begging	-	-	-	-	2	3	5	9
Forced marriage	-	-	-	-	-	-	-	4
Exploitation of criminal activities	-	-	-	-	-	5	-	4

Sources: GRETA, 2017; TP, 2019

As has been a constant during the whole study, the prevalence of sex trafficking is also remarkable when we look at convictions. According to this data, 19 persons have been convicted for labour trafficking (including begging) in Spain since 2015, in comparison to 128 individuals convicted for sex trafficking. The Spanish Government itself recognises that there are still serious problems in identifying and prosecuting cases of trafficking for the purposes of forced labour, slavery and similar practices (GRETA, 2017).

A comparison of Table 4 and Table 5 shows that there are many more police investigations than actual convictions. Between 2013 and 2018 there were 67 police investigations for labour trafficking (excluding begging). Most of these investigations were closed, and only 11 cases ended up in court. Out of those 11 cases, only two ended up with convictions for trafficking for the purposes of forced labour (FGE, 2019).

The first case containing a final conviction for labour trafficking was the Judgment of the Provincial Court of Seville nº 536/2015, upheld by Order of the Supreme Court nº 597/2016. This case involves two Romanian citizens living in Spain who agreed to persuade three countrymen to move to Spain from Romania, where they lived in extreme poverty, under the false promise of a job in fruit picking and tree pruning. The victims were promised

an employment contract, receiving 700 euros per month, in addition to accommodation and maintenance. However, upon arrival they were forced to perform diverse tasks, such as stealing fruit, peeling copper wires and carrying several arduous domestic tasks like unclogging toilets with their own hands without gloves, without receiving any remuneration. They were kept in very precarious housing and maintenance conditions. They had to sleep on mattresses on the floor in a room of a barn, without heating or blankets, with no windows and very poor living conditions. They were fed only once a day with leftovers from what the defendants and their relatives had eaten, and they were constantly threatened and beaten up. The Court considered that the defendants had recruited, transported and harboured the victims, by means of deception and threats, with the aim of subjecting them to forced labour and practices similar to slavery. Thus, they were found guilty of three offences of human trafficking and, consequently, sentenced to five years in prison for each offence.

The second case was the Judgment of the Provincial Court of A Coruna nº 473/2016, confirmed by Judgment of the Supreme Court nº 196/2017. In this case, the defendants, two Portuguese citizens, recruited four Spanish men at risk of social exclusion, who suffered from mental and physical illnesses, by offering them the possibility of helping the defendants in a series of works related to the cleaning and construction of their housing facilities and the maintenance of the fairground they managed, without specifying the economic conditions under which these tasks would be performed. Once the victims had agreed to move to the place where the defendants lived, in the outskirts of the city, they were forced to perform several tasks such as carrying firewood, iron, cardboard and doing housework, without receiving any remuneration. The defendants also kept the social benefits received by the victims. They were accommodated in a trailer, without hot water and toilets, and they were mistreated, not only physically but also psychologically. Due to the fear they felt towards the perpetrators, they did not escape, despite wishing to put an end to this situation.

The judges considered that the defendants had recruited, transported and hosted the victims, abusing their situation of vulnerability, with the aim of subjecting them to forced labour and services, under conditions of total subjugation and servitude, and therefore both defendants were found guilty of four crimes of human trafficking and sentenced to eight

years in prison. Unlike the previous one, this case presents a very atypical situation: a case of internal trafficking that does not involve the crossing of borders, and in which the victims are not migrants, but Spanish nationals.

As stated above, the fact that these are the only two convictions for labour trafficking in Spain in almost ten years since the introduction of this offence in the Criminal Code is another sign of the invisibility of labour trafficking in Spain. One possible explanation for the low number of convictions is the overreliance on victims' testimony as the sole evidence to achieve a conviction, without supporting it, for instance, with an adequate patrimonial investigation of the trafficker (Torres et al., 2017). In this sense, the State General Prosecutor (FGE, 2019) points out that 'once the victims have been released from the traffickers, they either leave Spain disregarding criminal proceedings [...], or they do not stand by their original complaint' (p. 31). Thus, even if victims' testimonies are generally used in the form of pre-constituted evidence³, reaching a condemnatory judgment is something very exceptional (FGE, 2019).

Without denying the validity of these arguments, the lack of convictions for labour trafficking should not be understood as total impunity for these behaviours. This dark figure can be explained by the difficulties of obtaining evidence to find someone guilty of labour trafficking, but also because, as explained above, these cases are often punished as other (less serious) offences, with which law enforcement authorities are more familiar or which present less evidentiary difficulties. Thus, a brief analysis of case-law suffices to find examples of potential labour trafficking cases that are being redirected to offences against worker's rights, criminalised in articles 311 and 312 of the Spanish Criminal Code.

We need to keep in mind here that the definition of human trafficking in Spain does not include 'labour exploitation' in the list of purposes, but only 'forced labour or services, slavery or slavery-like practices', which excludes from the scope of trafficking contemporary forms of exploitation at work that in other countries would be considered labour trafficking. Thus the line between trafficking and these work-related crimes is very blurred.

³ Pre-constituted evidence is a piece of documentary evidence of acts that are impossible to transfer to oral proceedings in the form of normal evidence.

One of the most flagrant examples of this tendency is the Judgment of the Provincial Court of Albacete nº 177/2018. This judgment explains how two Spanish men recruited immigrants to work in a farm under the following conditions: ‘absolute lack of payment of their wages, *subjecting workers to a situation of semi-slavery* (emphasis added), taking advantage of their state of need [...], accommodating them in animal pens that did not meet the minimum health and hygiene conditions, feeding them with hard bread or leftovers, with working hours exceeding 8 hours, without weekly breaks and without any holidays’. It is highly questionable here that the Court, despite recognising that migrants had been recruited, abusing their situation of necessity, to work under conditions that amounted to ‘semi-slavery’, does not see a situation of human trafficking.

Similarly, the Judgment of the Provincial Court of Valladolid nº 78/2018 punished two Romanian citizens living in Spain who convinced a countryman to move to Spain to work in agriculture. ‘Once in the country of destination, he had to live with [the recruiters], who would negotiate working conditions with employers and would collect and keep [the victim’s] remuneration, informing him that he had generated a debt for the transport [to Spain], plus accommodation and living expenses, which he had to pay through his work in the fields’. In this case, the Court explained that these facts, which took place in 2014, would have constituted human trafficking if it were not for the fact that labour trafficking was criminalised in Spain one year later. As explained above, this statement is completely inaccurate since labour trafficking was not criminalised in 2015, but in 2010. The case will probably be overturned by the Supreme Court in appeal. Nevertheless, this mistake supports two hypotheses that have been repeated throughout this paper. First, law enforcement authorities, including judges, lack specific knowledge of laws regulating labour trafficking. Secondly, the distinction between decent work, labour exploitation and forced labour is terribly blurred in practice.

5. Conclusions

The analysis of the implementation of criminal policies and case-law regarding labour trafficking in Spain confirms that the levels of identification and prosecution of this crime are very low. Several reasons can explain the invisibility of labour trafficking victims in this country.

Firstly, the fact that for decades human trafficking policies have exclusively focussed on sexual exploitation has left labour trafficking completely forgotten. The adoption of two Comprehensive Plans to combat sex trafficking has made law enforcement authorities more familiar with, and therefore more prepared to identify and prosecute this form of trafficking. Therefore, labour trafficking victims represent 35.2% of all trafficking victims identified in the 2015-2018 period, while sex trafficking victims amount to 63.9%. This trend is also present in police investigations; the average number of investigations for labour trafficking per year is 11, while it rises up to 104 when it comes to sex trafficking. The difference is even higher in prosecutions: 19 persons have been convicted for labour trafficking (including begging) in Spain since 2015, in comparison to 128 individuals convicted for sex trafficking.

Secondly, the number of labour inspections, which covers only 0.06% of workers is clearly insufficient to identify potential trafficking cases. The burden of identification cannot be put solely on victims. At the moment, almost 53% of investigations started because labour trafficking victims reported their own situation, even though they had to do it to the same authorities who can deport them for their irregular migration status.

Thirdly, the way in which human trafficking is criminalised in Spain is confusing and leaves many contemporary forms of severe exploitation of migrants outside the scope of trafficking. Many potential labour trafficking cases are being redirected to offences against workers' rights, which contributes to the low rates of prosecution. It would be useful to include labour exploitation within the purposes of trafficking, clarifying its meaning to recognise the existence of several degrees of exploitative practices that can be criminal.

Finally, it is crucial to recognise that labour inspections do not suffice as a preventive mechanism. Prevention starts by designing and implementing labour regulations and

migration policies that do not create or exacerbate situations of vulnerability that traffickers could take advantage of. This is a highly ambitious objective, but perhaps the simple adoption of a much-needed comprehensive plan to combat labour trafficking would be the first step towards achieving it.

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