

# Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in the Netherlands

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## Summary

In general the Netherlands is performing relatively well in terms of combatting trafficking in human beings (THB). Yet, the Dutch government still needs to make considerable effort to address the demand-side of THB and to take action in relation to forms of exploitation outside the sex industry. While generally attention for labour exploitation is on the increase, sector-specific attention is still required. The domestic work sector has been considered a risk sector for exploitation since 2008, yet attention for this sector remains scarce. Because the work takes place in the private household, domestic workers are in a vulnerable and isolated position and are therefore in need of specific attention to avoid exploitation. At the same time, the fact that the work takes place in the private realm and that the group of domestic workers is diverse poses serious challenges for the Dutch Government to tackle this particular form of labour exploitation. This report seeks to provide general insight into THB in DW in the Netherlands with special attention for demand side aspects, in order propose recommendations to the Dutch Government how it could step up its efforts to tackle THB in DW.



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## About the project

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Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. Responses to trafficking have traditionally focused on combating the criminal networks involved in it or protecting the human rights of victims. However, European countries are increasingly exploring ways in which to influence the demand for services or products involving the use of trafficked persons or for the trafficked persons themselves. **DemandAT** aims to understand the role of demand in the trafficking of human beings and to assess the impact and potential of demand-side measures to reduce trafficking, drawing on insights on regulating demand from related areas.

**DemandAT** takes a comprehensive approach to investigating demand and demand-side policies in the context of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches are studied in policy areas that address demand in illicit markets, in order to develop a better understanding of the impact that the different regulatory approaches can have on demand. Demand-side arguments in different fields of trafficking as well as demand-side policies of selected countries are examined, in order to provide a better understanding of the available policy options and impacts. Finally, the research also involves in-depth case studies both of the particular fields in which trafficking occurs (domestic work, prostitution, the globalised production of goods) and of particular policy approaches (law enforcement and campaigns). The overall goal is to develop a better understanding of demand and demand-factors in the context of designing measures and policies addressing all forms of trafficking in human beings.

The research is structured in three phases:

- Phase 1: Analysis of the theoretical and empirical literature on demand in the context of trafficking and on regulating demand in different disciplines, fields and countries. From January 2014–June 2015.
- Phase 2: Three in-depth empirical case studies of different fields of trafficking – domestic work, prostitution, imported goods – and two studies on different policy approaches: law enforcement actors and campaigns. From September 2014–December 2016.
- Phase 3: Integrating project insights into a coherent framework with a focus on dissemination. From January 2017–June 2017.

## Project Facts

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## **Country case studies - Introductory note**

This country report is part of the DemandAT project's case study on trafficking in human beings (THB) in the domestic work sector. The study was conducted in seven European countries (Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK) and this paper is part of a series of seven country reports.

The key objectives of the country research were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking, ii) examine the motivations and factors driving and shaping the demand as well as iii) examine the gaps in legislations and policies. The scope of the country reports is comprehensive, and aimed at gaining a better understanding of the phenomenon in the country, and do not focus only on the demand-side aspects.

The reports are based on desk research of available literature as well as case law review and interviews with key stakeholders. Secondary sources, such as reports by international organisations and NGOs, and academic articles, were consulted, as well as primary sources in the form of legal instruments and policy documents.

The working paper 'Trafficking in domestic work: Looking at the demand-side' (Ricard-Guay 2016) provided a common research framework within which to conduct the seven in-country case studies.

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## Introduction

In general, the Netherlands is performing relatively well in terms of combatting trafficking in human beings (THB). Yet, the Dutch government still needs to make considerable effort to address the demand-side of THB (BNRM, 2013:41-42). Also, in relation to forms of exploitation outside the sex industry, there are still steps to be made (BNRM, 2013:308; GRETA, 2014:58). Whereas, in the past years, attention for labour exploitation in general is on the increase, sector-specific attention is still required. One of the relevant sectors in the context of labour exploitation is the domestic work sector. Even though since 2008 it has been indicated a high-risk sector for THB by the Dutch National Criminal Investigation Department (KLPD), attention for the domestic work sector remains scarce (KLPD: 2008:70; BNRM, 2008:186; KLPD 2012:). Yet, because the work takes place in the private household, domestic workers are in a vulnerable and isolated position and are therefore in need of specific attention to avoid exploitation. At the same time, the fact that the work takes place in the private realm and that the group of domestic workers is diverse (i.e. live-in, live-out, in diplomat households, au pair) poses serious challenges for the Dutch Government to tackle this particular form of labour exploitation.

### *Objectives*

This national case study report aims at providing insight into the phenomenon of THB in the domestic work sector in the Netherlands with specific attention to demand-side aspects. The goals of this report is to describe the main features of THB in domestic work, identify factors that may fuel demand for purchasing cheap domestic work and analyse structural and contextual factors favouring THB in domestic work. The ultimate purpose of this report is to propose a set of recommendations to policy makers in the Netherlands to step up actions to combat THB for exploitation in domestic work, with a particular focus on addressing demand.

### *Methodology*

The case study is based on both a desk research and interviews. The desk research consisted first of an analysis of existing literature (reports, case-law analysis and academic articles) on THB for labour exploitation and domestic work. Literature on labour exploitation is analysed from 2005 onwards when it has been included in the definition of THB. Literature on domestic work (and migration) is from relative recent date (2004 onwards, see Van Walsum 2011b). Secondly, the national legislation and related policies have been examined. In addition, the relevant case law, on labour exploitation in general as well as specifically on THB for domestic work, has been studied. The desk study has been complemented with 15 qualitative interviews with important stakeholders. The interviewees are representatives of the judiciary, the government, NGOs, academia and trade unions. The interviews were held between June and September 2015. A list of the interviewees is included in the annex (Annex 1).

### *Outline*

The first chapter outlines the general trends of THB in the domestic work sector and the existing policies and approaches of the Dutch Government to tackle exploitation of domestic workers. Secondly, the relevant European and Dutch case law on THB for domestic work cases is discussed. The third chapter provides an overview of the main characteristics of THB in the context of domestic work, the key push and pull factors that facilitate THB in domestic work and the gaps in regulation and policies that still need to be addressed in order to combat THB in domestic work more effectively. In conclusion, recommendations are made to remedy the existing gaps in legislation and policies to enhance the approach to tackle THB in domestic work in the Netherlands, with specific attention to addressing demand.

# 1 Trafficking in human beings (THB) in the domestic work sector in the Netherlands

This section provides an overview of the Dutch context related to domestic work and THB. More specifically, the first part highlights the key features and trends of exploitation and THB in domestic work. The second part discusses the key legislations and policies concerning domestic work and THB.

## 1.1 THB in domestic work

The actual scope of THB in the domestic work sector in the Netherlands is unknown. The only reliable data is provided by Comensha, a victim support organisation who is responsible for the registration of victims of THB in the Netherlands. Comensha shares the information with the Bureau of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (BNRM), which annually publish the number of registered victims of THB.

In 2014, Comensha registered 1,561 THB victims (BNRM 2015:3)<sup>1</sup>. While most registered victims are still exploited in the sex industry, the number of victims of exploitation outside the sex industry is on the increase, with 16.6% of the total of victims in 2014 compared to 12.4% in 2013 (BNRM 2015:13). It has been suggested that the rise of registered THB victims outside the sex industry is a result of the increased attention for labour exploitation in recent years. Nevertheless, an increase in the number of victims in a specific sector does not necessarily reflect an increase in the actual exploitative practices in that particular sector but is much more the result of directed actions by law enforcement agencies that expose hidden practices (Interview IO7, BNRM 2015). By prioritising actions in some sectors over others, some exploitative practices remain outside the sight of enforcement agencies (and victim support organisations). This is also one of the reasons why the national rapporteur keeps on emphasising the importance of the flexibility of the law enforcement agencies in determining the sectors that need to be prioritised when it comes to anti-THB actions (Interview IO7, BNRM 2015). Based on the registered THB victims, the main sectors wherein labour exploitation occurred in 2014 were the hospitality sector, the domestic work sector, the transport sector, the shipping industry, and agriculture, horticulture and fishery sectors (BNRM 2015:13)<sup>2</sup>.

Comensha registers THB victims in the domestic sector under the category 'households as employers' (Interview NGO10, Comensha 2015)<sup>3</sup>. Although the number of registered victims in the domestic sector is not high, the percentage of victims has increased considerably over the past years. Whereas in 2012 only 2% of the total of 257 victims of exploitation outside the sex industry worked in households, this percentage increased in 2013 to 10% of a total of 178 victims in 2012, up to 14.3% of the total of 259 victims outside the sex industry in 2014 (BNRM 2014:11; BNRM 2015:13). This means that in 2014 a maximum of 37 registered victims of THB worked in a domestic household.

THB in the context of domestic work is generally not detected by law enforcement agencies but reported through NGOs and, only rarely, by victims themselves (Interview NGO12, Fairwork 2015; Interview NGO13, RESPECT Network 2015; Interview GVT4, Labour Inspectorate 2015). There are two reasons explaining this. Firstly, law enforcement agencies play only a limited role because of their restricted competences in private households (see

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<sup>1</sup> Comensha registers persons as THB victims if there is an indication of human trafficking. There does not need to be a criminal conviction in order to be considered a victim of THB.

<sup>2</sup> Outside the sex industry, the following categories are distinguished: culture, sport and recreation, forced criminality, wholesale and resale; hospitality; domestic work; industry; construction; transport and storage and agriculture, horticulture and fishery.

<sup>3</sup> Comensha indicated that a victim might fall under the rest category of 'other forms of services' but when any reference is made to domestic chores, this category will not be used (Interview NGO10, Comensha 2015).

section 1.2.3). This affects signalling and detecting exploitative practices in domestic work cases, and contributes to the vulnerability of domestic workers for THB (see section 1.1.2). In the second place, the domestic work sector is not considered a priority sector by policy makers and law enforcement agencies (Interview GVT9, EMM 2015; Interview MDM08, Taskforce Human Trafficking 2015; Interview NGO11, La Strada International 2015; Interview GVT5, Ministry of Justice and Security 2015). This means that cases are only brought to the attention of the Labour Inspectorate or the police by (self) reporting, but not through pro-active action. The absence of pro-active actions results in limited case law which again affects the likelihood of the sector being prioritised in the future, leading to a vicious circle in the approach against THB in domestic work (Interview NGO11, La Strada International 2015; Interview GVT5, Ministry of Justice and Security 2015).

The actual scope of the problem might be much broader than the figures of Comensha indicate. When considering the fact that many domestic workers, particularly those with an irregular status, are reluctant to report their situation, but prefer to leave the situation and find alternative work instead, as RESPECT Network indicated, then the number of victims might even be higher (Interview NGO13, 2015). Further, interviewees pointed out that some cases of forced/arranged marriage could also be considered human trafficking as the women were kept in the house and treated as domestic servants (Interview NGO12, Fairwork 2015; Interview O7, BNRM 2015). Yet, aid organisations consider these cases in a domestic violence context rather than in the context of human trafficking due to insufficient knowledge about the applicability of THB offence (Interview NGO12, Fairwork 2015). Finally, there are also cases of THB in domestic work that are not detected at all.

### **1.1.1 Main characteristics and features of THB in domestic work**

#### ***General Characteristics of THB in domestic work***

In order to discuss the situations of domestic workers in the context of THB, the research should define what domestic work entails and determine under which circumstances domestic workers are particularly vulnerable to becoming a victim of THB. According to Article 1 of the ILO Convention 189 on Decent Work for Domestic Workers, a domestic worker is 'any person who engages in work performed in or for a household or households within an employment relationship' (ILO Domestic Workers Convention, 2011)<sup>4</sup>. Occasional or sporadic work is excluded from this definition. In the context of this research, situations of THB in domestic work occurring in non-employment relationships such as forced/arranged marriage or child labour will also be included (Ricard-Guay: 2015:26).

Domestic work may consist of cleaning, babysitting, home caring for elderly or disabled persons, doing groceries and gardening. The market for domestic work has a few specific characteristics. The employer is either a private individual or an (employment) agency and the work takes place in the private realm. The secluded character of the work environment makes the work attractive for illegal migrants or workers who do not want to report their income to the tax service, while at the same time making the work prone to abuse (OSCE 2010:10). Domestic workers are therefore particularly vulnerable to experience bad working conditions and exploitation. Particularly when it concerns irregular migrants, there is a tendency to accept circumstances they would not accept if their legal status had been different (Interview NGO13, RESPECT Network 2015). When discussing THB in domestic work, particular forms of domestic work are prone to abuse.

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<sup>4</sup> While the Dutch Government has expressed that they will not ratify the ILO Domestic Workers Convention, the definition used in the convention is still helpful in characterising this specific group of workers.

### 1.1.1.1

#### **Characteristics of THB in domestic work specific to the Netherlands**

The Netherlands does not have a long culture of outsourcing domestic work. In the past, primarily non- or part-time employed women were engaged in housework and family care at home as 'key figures in the project of post-war modernization and social reform' with the men of the households as the breadwinners (Van Walsum 2011a). Since the past decades Dutch households are increasingly relying on domestic workers, although the ideal of the housewife as 'caregiver and homemaker' is still strong (Van Walsum 2011b:144). The ideal is reflected in the high percentage of part-time working women in the Netherlands in comparison to other EU countries and the fact that Dutch families still hire domestic workers for limited hours, rather than on a live-in basis (SEOR 2004).

Currently, an estimated 13% of households employ a domestic worker and this percentage only involves the regulated market (Advies Commissie Dienstverlening aan huis 2014:i). Whereas 300,000 domestic workers are estimated to work in the regulated domestic work sector, the group of informal domestic workers might even be larger, but exact numbers are unknown. According to the organisation RESPECT Network, it is estimated that the group of informally working domestic workers includes an estimate of 150,000 undocumented migrants (Interview NGO13, 2015). Although in the large cities informal domestic work is mainly performed by (undocumented) migrant workers, not much is known about this particular group. In fact, while (undocumented) migrants have been working in Dutch households since the 1990s, there has only been limited research about their position (Van Walsum 2011b:142)

Most of the domestic work in the Netherlands falls completely within the private sphere. This means that there are no other parties or institutions involved, such as intermediaries or the government (Advies Commissie Dienstverlening aan Huis 2014:6). However, parts of the domestic work market are subsidised by the government, such as through subsidized care (Alpha helpers) the personal budget to hire care [*persoonsgebonden budget*] or guest parenting at home, financed through the Law on Day-care [*Wet Kinderopvang*]. Particularly in hiring care at home, there are individual cases known of fraudulent home care agencies that function as intermediaries and exploit the workers they have placed in private households (Interview EXP15, Academic Expert 2015). However, there is little known about this particular form of exploitative practices, which is a particular point of attention for those responsible for anti-trafficking policies.

Most domestic workers in the Netherlands are living-out, which means they are only hired for limited hours a week and have their own place to stay (Van Walsum 2011b:11). Live-in domestic workers, on the other hand, work for and live with their employer, adding to their dependency (and thus vulnerability). Live-in domestic workers include au pairs, domestic workers of diplomatic staff and (irregular) migrant workers, but may also include domestic servitude cases in the context of forced marriages. Although the live-out domestic worker theoretically has more possibilities to leave the situation in case of bad working conditions or even exploitation since they are not dependent on the employer for housing, in practice there might be circumstances in which live-out domestic workers do not feel they have a real and viable option to leave the workplace, for example because of their irregular status, adding to their vulnerability.

According to Comensha, the main forms of THB in domestic work that are detected in the Netherlands involve (1) au pairs; (2) live-in domestic workers at diplomatic households; and (3) living-in domestic (migrant) workers (including children) (Interview NGO10 2015). The latter category is very broad. As mentioned above, this does not mean that other domestic workers may not be vulnerable to exploitative practices.



When looking at the registered victims of THB for domestic work, it is difficult to make generalisation about the victims since there are only few cases. Therefore the subsequent information is merely indicative of the profile of victims of THB for domestic work in the Netherlands. In the cases identified over the last fifteen months, most cases concerned female victims. In classifying the countries of origin, a large group of victims originates from Indonesia and the Philippines, who worked as au pairs and in domestic households. Comesha indicated that the following circumstances added up to their exploitation: expectation that they will work as an au pair (limited hours of work, primarily cultural exchange) but end up doing all household chores and/or being available day and night; sleeping on the floor; not a private room to stay; getting restrictions in their free time or not allowed to go out at all; physical abuse; sexual abuse; not getting paid or very little (Interview NGO10 2015).

### **1.1.2 Main factors influencing demand in the context of THB in domestic work**

Pull factor in the Netherlands is the increased demand for cheap domestic workers due to the increased outsourcing of domestic work (Interview NGO12, Fairwork 2015). The increased outsourcing of domestic work is fuelled by societal developments such as the aging of the population as well as the increase of dual earner households (SEOR 2004; De Ruijter 2005). Further, there has been a general governmental policy to scale down the subsidised care and to promote (unpaid) family and home care [*mantelzorg*] instead. Since many people have to reconcile employment and care work, the latter is increasingly outsourced. While formal arrangements are considered costly, outsourcing is mainly done in the informal work sector. What further is important to note is that some of the cases involving THB in domestic work take place in a particular cultural context, wherein it was acceptable to subject family members or fellow nationals to certain working conditions that, according to Dutch standards, would amount to exploitation (e.g. Indian Mehak case section 2.2). In these situations there is demand for domestic workers from a particular country or region, which is mostly arranged in the family context.

What the above discussion shows is that the group of domestic workers that may be prone to abuse is very diverse and their situation may differ considerably, which affects the policy approach that is required to tackle THB in domestic work. One key element that came to the fore as an obstacle to increased attention for this specific group of THB victims is that the limited known cases each have their own distinctive characteristics, as will further become clear when discussing the case law in section 2.2, making it difficult to pinpoint a general theme around which an approach and policy can be built (Interview GVT5, Ministry of Security and Justice 2015; OSCE 2010). In the next section, it will be shown how the Dutch Government has dealt thus far with this heterogeneous group of domestic workers that may be prone to THB, including existing regulations on domestic work, relevant legislation and anti-trafficking policies and adopted measures to address demand. The section will be concluded with the key debates that have stirred government policy.

## **1.2 Government approach and responses to THB in domestic work**

For long, sexual exploitation has been the main area of concern for the Dutch Government, resulting in a far less developed approach to tackle labour exploitation. While labour exploitation has increasingly received attention in the past years, attention for the specific category of domestic workers has remained largely on the margins (Interview GVT5, Ministry of Security and Justice 2015; GRETA 2014).

From a legal perspective, it is irrelevant where (in which specific sector) exploitation has taken place to speak of THB in the Netherlands. Whether a situation constitutes exploitation is based on objectified criteria and it is irrelevant whether it occurred in the agricultural sector, the meat processing industry, or in the domestic work sector as long as the criteria for exploitation are

met (see section 1.2.2). Yet from a policy perspective, differentiation between the sectors where exploitation takes place does matter (Interview EXP15, Academic Expert, 2015 2015; Interview IO7, BNRM 2015). Sector specific policies are very important since each sector has its own dynamics and the circumstances under which the work has to be performed might be different. As Conny Rijken mentions: 'there is no 'one-size fits all' solution for policy makers to address exploitation in the different sectors'(Interview EXP15 2015:).

In the current policies towards THB and domestic work, the Dutch Government seems to categorise the group of domestic workers in three groups of domestic workers that may be prone to exploitative practices, being (1) au pairs; (2) live-in domestic workers at diplomatic households; and (3) regular domestic workers that work in private households (that do not fall in the first two categories) (Interview GVT3, Ministry of Social Affairs and Employment 2015; Interview GVT6, Ministry of Foreign Affairs 2015; Interview GVT5, Ministry of Justice and Security 2015)<sup>5</sup>. There is no policy in place to address the position of irregular domestic workers. In the Netherlands providing domestic work is not a valid ground to acquire a (temporary) visa. If third country nationals wish to work in the domestic work sector in the Netherlands they have to acquire a visa for another purpose (e.g. an au pair visa (1 year) or a tourist visa (three months)), after which they remain (without documents) in the country.

### **1.2.1 Regulations of domestic work**

The legal position of domestic workers in the Netherlands is poor compared to other workers. Heerma van Voss and Holtmaat even consider the Netherlands to be a third world country in this respect (2011:1622). Based on the existing regulation (Regulation on part-time Domestic workers, discussed below), domestic workers have far less social benefits and are therefore treated as second-class workers. Since mainly women are employed in the domestic work sector, Bijleveld and Cremers (2010) argue that this regulation is indirectly discriminatory against women. While generally domestic workers are not placed in an equal position as other workers, some specific regulations for domestic work are in place. Yet, since the sector is not well regulated nor well defined, domestic work has developed mainly in the informal sector (OSCE 2010). This means that the majority of the domestic workers in the Netherlands do not benefit from any of the regulations.

#### ***Regulation on part-time domestic workers***

When domestic workers work less than four days a week for a private household, then the Regulation on Domestic Services [*Regulerend Dienstverlening aan Huis*] may be applied (Ministry of Social Affairs and Employment 2011:1). The purpose of the regulation is to make it easier for private persons to formally hire another private individual to perform household tasks. As a result, the government does not impose the same obligations on private individuals as on formal employers, but does set some minimum rules (*Advies Commissie Dienstverlening aan Huis* 2014:6). Under the Regulation on Domestic Services, private individuals that factually function as employer for the domestic worker, are exempted from paying employee insurance contributions. Domestic workers need to be paid the minimum wage, have a right to holiday bonus of 8% and payment of wages during four weeks holiday. On the other hand, domestic workers do not receive pensions, only receive six weeks of wages in the event of illness and cannot rely on social security in case of illness, unemployment or occupational disability. While the regulation does provide the domestic worker with some safeguards, it still not level the position of domestic workers with other workers, particularly when it comes to social security, the exact reason why the ILO Domestic Workers Convention was adopted.

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<sup>5</sup> This is not an official categorization of the Dutch Government, although it has been confirmed in several of the interviews with government officials. It has to do with the fact for these groups' policies are in place and these policies are supervised by three different government institutions. While au pairs are under the control of the Immigration and Naturalization service of the Ministry of Security and Justice the live-in domestic workers at diplomatic households are part of the policy of the Ministry of Foreign Affairs. The remainder of the domestic workers falls within the competence of the Ministry of Social Affairs and Employment.

To see whether the ILO Domestic Worker Convention and the Regulation on Domestic Services could co-exist at the same time, the Dutch Government appointed a Special Commission. In response, to the findings of the Commission, the Dutch Government was of the opinion that ratifying the ILO Domestic Workers Convention would be at odds with the existing Regulation on Domestic Services. As a result, the Dutch Government has taken the position that it will not ratify the ILO Domestic Workers Convention (Cabinet Response to Parliament 2014). Interestingly, research has shown that the regulation is only known to less than half of the households that would benefit from it, and when it is known it is only partly applied (Panteia 2014:8). The Dutch Government has promised to improve the knowledge about the regulation through awareness campaigns and has done so through a one-week campaign in October 2015 (Cabinet Response to Parliament 2014).

Further, as indicated in the above, the majority of domestic workers work in the informal sector and do not benefit from the regulation at all. As a result one could question whether keeping the regulation for the sake of the domestic workers is the only reason for not ratifying the ILO Domestic Workers Convention. NGOs and the labour union FNV have fiercely criticised the position of the government, indicating that the decision not to ratify has much more to do with the substantial increase of social costs that would be the result of ratifying the ILO Convention (Interview NGO13, RESPECT Network 2015; Interview NGO12, Fairwork 2015; Interview TU14, FNV 2015). Not ratifying the ILO Domestic Workers Convention has been considered a missed opportunity to take into account broader issues related to the working conditions of domestic workers and the protection of their rights, which may (unintentionally) make them more vulnerable to exploitation in the context of THB.

### ***Policy on au pairs***

The Dutch au pair policy regulates au pairs in the Netherlands (IND 2013). Every year approximately 1500 au pairs come to the Netherlands for the purpose of cultural exchange (Advies Commissie Dienstverlening aan Huis 2014:5). The regulation is solely for third country nationals, who remain, for the duration of their stay, with a host family. In return for the facilities the host family offers, the au pair is allowed to perform light household tasks for a maximum of eight hours a day and 30 hours a week. The au pair receives maximum of €340 per month as allowance. What is important to note is that au pairs are not considered to be regular workers, since the main objective of their stay is cultural exchange. As a result, there is no work permit required for them to come to the Netherlands and the host family does not have to pay minimum wage for the household tasks performed. Yet, the policy is prone to abuse and there have been many reported cases of au pairs being in an actual employment relationship with their host family, while not being paid as such, leading to (potentially) exploitative practices (Interview NGO12, Fairwork 2015). One case of an au pair starting a civil procedure to receive minimum wage for the period she worked for a family, is described below (section 2.2.2). It should be noted that a research in 2014 has found that there are no signals of human trafficking in relation to au pairs (Schans, Galloway and Lansang, 2014:9). Interestingly, many of the THB victims registered by Comensha have worked as au pair. It might be that because these cases are not classified as THB cases in Court that the researchers came to this conclusion.

Au pairs may only apply through an agency, which is recognised by the Immigration and Naturalisation Service. The agency has a duty of care with respect to the au pair (IND 2013:4). This means the agency has to inform them about their stay in the Netherlands, maintain regular contacts with the au pair and see how the au pair is doing and if problems arise in the family, the agency needs to mediate or find an alternative family for the remainder of the stay of the au pair.

#### ***1.2.1.1 Policy on live-in domestic workers at diplomatic households***

Since 2009, the Dutch Government has a specific policy for live-in domestic workers at diplomatic households (OSCE 2010:66-67). The special procedure is established for the most

vulnerable working at embassies, being the live-in workers that come from third countries to work for a particular diplomatic household (Vienna Convention on Consular Relations 1963: Article 1). Their situation is vulnerable since their residence permit is linked to the employer and the employer enjoys immunity for its actions (Vienna Convention on Diplomatic Relations 1961). In 2014, an estimate of 170 live-in domestic workers were registered at the Protocol Department of the Ministry of Foreign Affairs (OSCE 2010:66). Excluded from the regulation are live-in domestic workers from EU countries. For them it is easier to leave and find another job, since their residence permit is not linked to the employer (Interview GVT6, Ministry of Foreign Affairs 2015). Further excluded are Dutch domestic workers at diplomatic households, including locally recruited employees with a similar background as the diplomat in question. They do not live in the household and are considered to be articulated enough to claim their rights and to leave if they do not like the work environment.

The main aim of the policy is to provide live-in domestic workers the necessary support when entering the Netherlands and throughout their stay and to encourage the employers to respect and adhere to the rules and standards regarding decent working conditions in the Netherlands. Within eight days after arrival, the diplomatic mission needs to register the live-in domestic worker at the Ministry of Foreign Affairs. The live-in domestic worker need to visit the Protocol Department to collect their identity card in person and will be informed about the mandatory labour rights in the Netherlands, both orally and on paper<sup>6</sup>. This information includes all relevant contact details of the Ministry, Police and NGOs they can approach when they think their rights are violated. Every year when their ID card is renewed, there will be an interview at the Ministry of Foreign Affairs. In case the Ministry is informed about breach of rights, the employer will be invited to the Ministry in an attempt to mediate the dispute. If there is suspicion of THB, the domestic worker will be brought in contact with the police and Social Affairs and Employment Inspectorate. The domestic worker will be offered victim protection under the B8 regulation, including shelter, medical care et cetera. During a reflection period of three months, victims may decide whether to lodge a criminal complaint. If the police want to pursue a criminal investigation, the Ministry and the Protocol Department will deliberate whether the sending state will be requested to waive the employer's diplomatic immunity. At that moment, most diplomats will be (voluntarily) withdrawn from their post. When there is no action taken in response, then as an ultimate measure the diplomat may be formally considered *persona non grata*, after which the sending state is obliged to withdraw the diplomat from the post (Vienna Convention on Diplomatic Relations 1963: Article 9). Victims of THB receive a temporary residence permit for the period of the criminal investigation/proceedings. Since in these cases criminal prosecutions are rare, the victim's right to residence will be withdrawn as soon as the investigation has been stopped. This link between prosecution and victim protection is a major drawback of the Dutch victim's protection system, which not only comes to the fore in cases where perpetrators enjoy immunity but also when cases are not brought to court or are dismissed (Interview EXP15, Academic Expert 2015).

### **1.2.2 Anti-trafficking policies and initiatives**

The Dutch Government has been active in developing a legal framework for action against trafficking, including adopting anti-trafficking legislation and national action plans (NAP Human Trafficking 2006; Taskforce on Human Trafficking 2011). Further, an integrated institutional framework is developed through, *inter alia*, the establishment of a Task Force on Human Trafficking. Finally, the Dutch Government has taken several anti-trafficking initiatives that are (indirectly) of relevance for the domestic work sector as well.

#### ***Labour exploitation: the crime of THB and other relevant provisions***

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<sup>6</sup> Since May 2010, a brochure in several languages ('Welcome to the Netherlands') is created to inform about rights and who to contact in case there is an alleged breach of their rights.

With respect to human trafficking and labour exploitation specifically, the Dutch Government is bound by the Palermo Protocol (2001), the Council of Europe Convention on Trafficking in Human Beings (2004) and the EU Directive on Combatting THB, which replaces the EU Framework Decision on THB (2010). In addition, the Dutch Government is party to the UN Convention on the Elimination of All Forms of Discrimination against Women (which deals specifically with THB in Article 6) and the UN Convention on the Rights of the Child (which deals specifically with THB under Articles 34 and 35) and its additional Protocol. Further, with respect to labour exploitation, the Dutch Government is party to the ILO Conventions on Forced Labour and Child Labour (ILO Convention no 29 1930; ILO Convention no 105 1957; ILO Convention no 182 1999). Finally, the Dutch Government has explicitly indicated that it will not ratify the ILO Convention on Decent Work for Domestic workers (Cabinet's Letter to Parliament 2014: 2-8).

THB is criminalised under article 273f of the Dutch Penal Code (DPC), the most lengthy (and complex) provision of the DPC (included in Annex II). The provision integrates international instruments and the old Article 250A DPC, which solely prohibited sexual exploitation (Houwerzijl & Rijken 2011). Exploitation is only criminalised under article 273f DPC. Therefore when one speaks of labour exploitation, of which domestic work forms part, it is always in the context of the crime of THB. This means that forced labour can only be prosecuted if the elements of trafficking are present. With respect to the element of exploitation the provision follows the definition of the international instruments indicating that: '*exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude*'. Surely, to speak of THB, elements other than exploitation need to be satisfied as will be discussed below (i.e. act of trafficking, means of coercion, intent, see section 2.2).

The terminology used in article 273f DPC is derived from international instruments and is not further defined in the provision or its legislative history (Explanatory Memorandum 2003). The Dutch legislator has left it to the judiciary to further define terms as exploitation, abuse of authority arising from factual circumstances, or abuse of a vulnerable position, which have led to legal uncertainty with respect to certain elements of the crime (Houwerzijl & Rijken 2011). Thus, while labour exploitation, including DW, is criminalised since 2005, case law was limited due to the undetermined elements in the provision. It took until 2009 when the Supreme Court in the Chinese Restaurant Case gave further criteria to determine what constitutes a situation of exploitation, after which the number of criminal cases concerning labour exploitation steadily increased<sup>7</sup>.

The Public Prosecution Services (PPS) has discretion to decide whether or not to prosecute (the discretionary principle, Articles 167 and 242 of the Dutch Code on Criminal Procedure). The Public Prosecutor will deliberate whether he or she thinks that the prosecution will be successful. If this is not the case under the THB provision (article 273f DPC) then the prosecutor might consider other (less serious) criminal provisions to come to a successful conviction in the respective case. In most cases, other criminal provisions are violated as well, which the Office of the Prosecutor cannot leave unnoticed. These can be either crimes that are connected to human trafficking and/or crimes that are commonly committed alongside human trafficking. One could think of coercion (art. 284 DPC), assault (art. 300 DPC) illegal deprivation of liberty (art. 282 DPC), forgery of documents (art. 255 DPC), falsification of travel documents (art. 231 DPC) illegal employment (art 197b-197d DPC)<sup>8</sup>, money laundering (art. 420bis DPC), and maybe even participating in a criminal organisation (art. 140 DCP) or human smuggling (art. 197 DPC) (Heemskerk & Rijken 2011:82). A suspect of labour exploitation may then in

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<sup>7</sup> Supreme Court of the Netherlands, 27 October 2009, LJN: BI7097.

<sup>8</sup> Apart from criminal prosecution for illegal employment, the Aliens Employment Act (article 2(1)) also allows for the imposition of administrative fines in case employers hire foreign nationals without a working permit. This applies to situations involving both formal and informal employment relationships.

the end not be prosecuted for THB (article 237f DPC) but only for forgery of documents (art. 255 DPC), which has, of course, consequences for the punishment imposed.

### ***Institutional framework: key stakeholders***

Key institutions in the context of THB for exploitation in the domestic work sector include: the Ministry of Security and Justice (responsible for the overall Dutch THB policy); the Ministry of Social Affairs and Employment (responsible for work and income, including labour exploitation and thus domestic work), the Ministry of Foreign Affairs (responsible for domestic workers at diplomatic households), the Labour Inspectorate (detecting and investigating labour rights violations, part of the Ministry of Social Affairs and Employment); the Immigration and Naturalisation Services (responsible for the au pair policy); the Public Prosecution Service (responsible for bringing THB cases involving domestic work before the court); the National Rapporteur on Human Trafficking (advise government on THB policy and research into the character and size of THB in the Netherlands), Comensha (NGO responsible for registration and coordination of shelter and assistance to victims); Fairwork (NGO on modern slavery), RESPECT Network (self-organisation of undocumented domestic migrant workers), the labour union FNV (raising awareness and lobby for better labour rights for undocumented domestic workers who can acquire a special FNV membership) (For more elaborate discussion on stakeholders involved see Deegan & Van Doornick 2015:150-153).

What is particularly important to note with respect to domestic work is that the labour inspectorate is much more restricted in its competences compared to other forms of labour. The controlling inspectors are allowed to visit any workplace but are restricted to enter private households. The investigative inspectors are not allowed to enter either of the two (workplace and private house), unless they have Permission to Enter of the Public Prosecutor (Law on Entry 1994: Article 2). Such permission is granted when there is a reasonable suspicion that there are indications of serious breaches of labour rights, to the extent that a criminal proceeding might be warranted. Once this permission is granted, they have a legal title to enter any place, and have far reaching investigative competences. While they have had domestic work cases (which included both formal and informal work arrangements) these are thus not detected by the controlling inspectors but rather brought to the attention of the labour inspectorates by victims (after escaping a situation) through NGOs, in particular by cultural mediators (Interview GVT4, Labour Inspectorate 2015; on the role of cultural mediators see further section 1.2.1). The limited competence of the labour inspectorate is a serious obstacle in exposing exploitative practices in the domestic work sector.

To tackle THB, cooperation and exchange of information are crucial. The Dutch Government has adopted a multi stakeholder approach (the barrier model), which entails cooperation of relevant partners at the national and local level, to prevent and repress the crime of THB as well as to get more insight in the underlying structures and the structural factors that facilitate THB (BNRM 2007:154; GRETA 2014:22)<sup>9</sup>. In the context of human trafficking this has materialised in the Taskforce on Human Trafficking, which currently includes more than 20 stakeholders<sup>10</sup>. The Taskforce is established in 2008 and its main purpose is to bring all relevant stakeholders together to ensure a comprehensive implementation of the Dutch anti-trafficking policy and for all stakeholders to inform each other about their actions with respect to THB and the challenges they come across. While sporadically issues related to domestic

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<sup>9</sup> The barrier model involves identifying obstacles that can prevent perpetrators to commit human trafficking. Barriers include entry (including recruitment), housing, and identity (including psychological attainment). An integrated approach in which all barriers are tackled is most effective.

<sup>10</sup> Currently the following stakeholders are involved: Public Prosecution Office, Ministry of Security and Justice, Ministry of Social Affairs and Employment, Ministry of Health, Wellbeing and Sports, Ministry of Foreign Affairs, Municipalities – Amsterdam, Rotterdam, The Hague, Utrecht and Alkmaar – VNG (coordinating organisation for municipalities), Police, Naturalisation and Immigration Service, KMAR (border control), LIEC, Judiciary, National Rapporteur Human Trafficking, Comensha, Chamber of Commerce, Youth Care.

workers have been discussed (i.e. the issue of au pairs and the changes in the procedure to strengthen their position), exploitation of domestic workers is not considered a priority (Interview MDM8, Taskforce 2015). In fact, there is no sector-specific attention for labour exploitation. Rather, labour exploitation in general is prioritised and discussions focus on increasing attention for the phenomenon at large. The debate did not seem to have trickled down to specific problems in the sectors in which labour exploitation takes place. What still is a point of improvement is that currently only the NGO Comensha is part of the Taskforce, and predominantly for its role in registering victims and coordinating the shelter rather than to provide a civil society voice to the Taskforce. In acknowledgement of the fact that detecting domestic work cases is mainly done through civil society organisations, enhancing NGO representation would be an acknowledgement of the limitations of the authorities and the added value of civil society organisations in getting attention for THB cases that are more off radar for the authorities.

### ***Specific anti-trafficking initiatives relevant to DW***

Currently the Dutch Government is prioritising labour exploitation in its policies. This is reflected in the numerous initiatives that are launched to raise awareness about labour exploitation and to tackle the phenomenon, but also in the planned actions during the upcoming EU Presidency of the Dutch Government in the first half of 2016<sup>11</sup>. The Dutch Government, among others, has chosen the topic of labour exploitation for the EU presidency, since the approach to labour exploitation still needs to be stimulated. In January 2016, a EU Conference on labour exploitation is organised, during which a manual will be presented on best practices in addressing labour exploitation, which can be used by the EU Member States for inspiration to strengthen their own policies and approach. It is not meant to prescribe a particular approach to tackle labour exploitation in the handbook, but to give an overview of all the organisations involved and the instruments that can be used in strengthening the approach to labour exploitation. Currently input from all EU Member States is collected for the manual through workshops for various organisations (Interview GVT5, Ministry of Security and Justice 2015)<sup>12</sup>. The conference will be followed by Council recommendations on labour exploitation.

Further, in following the GRETA report of 2014, the Ministry of Social Affairs and Employment will be commissioning a study on the nature and scale of labour exploitation, the sector and nationalities affected and will work to increase awareness regarding labour exploitation among municipalities and health organisations. The latter action is commissioned to Fairwork (Interview GVT3, Ministry of Social Affairs and Employment 2015).

The Ministry of Social Affairs and Employment has also financed the NGO Fairwork to expand and improve assistance to possible victims of labour exploitation, for instance by using cultural mediators (GRETA 2014:25). Particularly in the domestic work sector, cultural mediators can play a key role in detecting cases. The NGO Fairwork has several cultural mediators that serve as the eyes and ears in a particular migrant community, while at the same time are active in informing migrants about their rights and where to turn to in case problems arise. The specific characteristics of domestic workers (isolation, cultural context) makes this approach a very successful one, which is also recognised by the Labour Inspectorate that receives reports of serious breaches of labour rights in the domestic sphere mostly through these cultural workers (Interview GVT4, Labour Inspectorate 2015).

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<sup>11</sup> Since the DemandAt Report on Dutch Government responses to the demand-side in the context of THB discuss anti-trafficking initiatives relevant to labour exploitation in detail, this report will just focus shortly on those that are of relevance to domestic workers (see Deegan & Van Doornick 2015).

<sup>12</sup> Including Police services; labour inspectorates; immigration services and NGOs.

While a specific awareness raising campaign has been launched in the agricultural sector, no sector specific campaign in relation to domestic work has been adopted nor is foreseen<sup>13</sup>. However, in 2015, Meld Misdaad Anoniem [Report Crime Anonimously – hotline] did launch an awareness raising campaign against labour exploitation in the cleaning sector<sup>14</sup>. The objective of the campaign was to recognise signals of labour exploitation, creating awareness about the problem and stimulating that information will be reported. Although this campaign was focused on the formal cleaning sector, it raises awareness for domestic workers as well and provides opportunities for follow up actions, where a connection can easily be made with the position of domestic workers.

Further, the Ministry of Social Affairs and Employment has indicated that it has commissioned a general public awareness campaign about labour exploitation (which includes domestic work) that will be launched in the fall of 2015 (Interview GVT3, Ministry of Social Affairs and Employment 2015). Yet it is unclear at this stage whether domestic work will be singled out in the campaign as an example of a sector where labour exploitation takes place.

### **1.2.3 Policies and measures addressing the demand-side**

Some (policy) measures can be indicated which aim to influence the employers decision to employ a person under particular circumstances (i.e. to address the demand side). One of the first actions that was taken to address demand in the context of exploitation of domestic workers was not initiated by the Dutch Government but by the NGO Fairwork. The campaign 'Cheap Workers' aimed at making people aware that a low hour rate could be an indication of modern slavery. Via the website the impression was made that people could hire, amongst others, a domestic worker for €2,50 per hour. Once they would choose that option (and thus indicate that they were interested in hiring a domestic worker for such a low rate), information was provided about why this could amount to modern slavery. Interestingly by far most people clicked on hiring domestic worker as the website keeps track of the choices of people<sup>15</sup>.

For two of the identified groups of domestic workers vulnerable to exploitive practices (i.e. au-pairs and live-in domestic workers at diplomatic households) policies are adopted and reinforced to clarify their position and to strengthen their rights (discussed in the above, section 1.2.1). The increased monitoring (live-in domestic workers at diplomatic households) and strengthened obligations are aimed at ensuring that employers respect the rights of the employees and as such may impact the demand for cheap domestic workers. With respect to au pairs, the regulation was adjusted after media reported of the exploitation of Filipino au pairs that had to pay a deposit of €1400 to the au pair agency. Based on these practices the government has adjusted the policy for Au Pairs: agencies are only allowed to ask for a deposit of a maximum of €34 euro. In order to strengthen the position of au pairs further, a legislative proposal was tabled to reduce the number of working hours from 30 to 20 (to highlight the objective of cultural exchange rather than performing light domestic chores) and to make a language course obligatory (to make them less dependent). Yet the legislative proposal stranded. One of the adjustments that is adopted is that the host family and the au pair are not allowed to be relatives.

Further, the criminalisation of irregular employment could be considered a means to address demand since perpetrators run the risk of being prosecuted for employing irregular migrants. Currently there is a legislative proposal to criminalise the client when the person should reasonably have known that the sex worker he or she visits is forced to do so. This places a

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<sup>13</sup> "Being a Good Employer" (2013) <http://www.lto.nl/dossiers/Goed-werkgeverschap>

<sup>14</sup> 'Meld Misdaad Anoniem Start campagne tegen uitbuiting van schoonmakers in de horeca' (28 May 2015) <http://www.meldmisdaadanoniem.nl/archives/6139>

<sup>15</sup> [www.goedkopearbeidskracht.nu](http://www.goedkopearbeidskracht.nu)



responsibility on the part of those visiting sex workers, since they are compelled to refrain from making use of their services (or else run the risk of being prosecuted for it) and report it to the relevant authorities. The EU Directive and the CoE Convention try to compel Member States to also criminalise the use of (products from) labour exploitation. This would mean in the case of the exploitation of domestic workers that there is an extra criminal provision that would be solely focusing on the exploitative part whereby the acts of trafficking and means of coercion would be irrelevant, leading to easier convictions in these cases. Problematic with domestic workers is that in most instances the employers are both end users as well as perpetrators. The government has not indicated that it is considering criminalising the use of products distracted from labour exploitation. NGOs have expressed doubts about the feasibility and usefulness of such criminalisation (Interview NGO4, La Strada International 2015). This would then go as far as criminalising consumers for buying vegetables or jeans that are produced under exploitative conditions, which is in practice unattainable.

#### **1.2.4 Key debates**

Domestic work has not only been at the margins of attention from the government but also from many other stakeholders in the field. The characteristics of the sector (isolated and in the private realm) make it difficult to reach domestic workers and this affects the involvement of relevant stakeholders. The adjustments in the approach of the government to tackle exploitative practices in the domestic sector have been mainly the result of cases that were displayed in the media or brought to the public attention otherwise. The Ministry of Security and Justice admits that they have to respond to cases that are brought forward by the general public. This is why sexual exploitation keeps on receiving ample attention (Interview GVT5 2015). For THB in domestic work cases, the media should therefore be made aware of their role as watchdog, particularly since signalling appears to be problematic.

The Mehak case of 2007 stirred the debate about the applicability of the non-punishment principle. In this case (see section 2.2 below), three victims of human trafficking were also convicted of murder of the two-year-old Mehak, who died of beatings that were ordered by the house owner who exploited them. Despite attention for the applicability of the non-punishment principle, no further action was taken (Dettmeijer-Vermeulen & Esser 2013).

One of the key debates that shed light on the position of domestic workers in the Netherlands was the drafting process of the ILO Domestic Workers Convention and the assessment by the Dutch Government whether or not to ratify. The negotiations within the ILO on the Domestic Workers Convention have been instrumental in providing a platform to put the position of domestic workers in the Netherlands at the table. Particularly the Trade Union FNV, but also RESPECT Network, have been very active in this period and although the government has indicated that it will not ratify the Domestic Workers Convention, will continue to lobby for ratification (Interview NGO13, RESPECT Network 2015; Interview TU14, FNV 2015). The Trade Union, who has a unique membership for undocumented domestic workers, is also active in the broader context of the rights for cleaning personnel.

An administrative case has stirred the debate again about the way in which the police takes preference of a migration approach rather than a criminal law approach when encountered with a potential case of THB for labour exploitation involving irregular migrants. The police is, together with the Kmar, responsible for identifying irregular victims of THB and offering them the protection regime under the B8 regulation, including the opportunity to get a temporary residence permit for the duration of the criminal investigation/proceedings if victims decide to cooperate. In this case, a bus company reported to the alien police that several black women took off early in the morning and got on the bus late at night in one of the richest areas in the Netherlands. After further investigation, the police halted the women and found out they were illegally residing in the Netherlands and soon after starting to deport some of them. The case was brought before the Court because it was disputed whether the police had sufficient

objective information to use their competence to halt them (i.e. reasonable suspicion that they had committed a criminal offence)<sup>16</sup>.

Interestingly the whole discussion concentrated on their illegal status and not on the work they had to perform (cleaning houses) and under which circumstances (at least for long hours), which might be indicative of exploitation. Since the police should offer victim protection already with the 'slightest indication of THB' they should have been granted protection under the B8 regulation. Rather these women were threatened with deportation or were actually deported. The victims have not been treated as victims of possible exploitation and no one has spoken to the employers directly. The victims have been arrested, but the employers did not even receive a fine. The case exposes the prejudice that exists on the part of law enforcement and that while a policy is in place that would have protected these victims from the outset (the B8 regulation), this policy is not always followed in practice.

## 2 Case law review

### 2.1 Key European cases

The case law from the European Court of Human Rights (ECtHR) has been instrumental in shaping the national legislation on THB since the decisions have had consequences for the positive obligations of Member States, including the Netherlands, under article 3 and 4 of the European Convention on Human Rights (ECHR) (Sasse van Ysselt 2013:1697-1698). In addition, the Dutch courts use the case law of the ECtHR to give substance to elements of the crime of THB that are undefined by the Dutch legislator (see section 1.2.2; Explanatory Memorandum 2003).

In 2005, the ECtHR decided for the first time in *Siliadin v France* on a trafficking case involving domestic work, although it was discussed as a case of forced labour/servitude. The Court emphasised that States have a positive obligation under Article 4 of the ECHR to criminalise and prosecute actions that hold any person in slavery, servitude, or forced or compulsory labour. The ECtHR further gave expression to the terms forced labour, servitude and slavery. A similar case concerned the case of *C.N. and V. v France*<sup>17</sup>. In this case the Court affirmed its earlier *Siliadin* judgement and determined that France violated article 4 ECHR by not providing adequate criminalisation and prosecution.

In the *Rantsev* case of 2010, the ECtHR (in reference to the Palermo Protocol and the Council of Europe Convention on Combatting Human Trafficking) explicitly placed human trafficking under the scope of article 4 ECHR<sup>18</sup>. This means that human trafficking is considered a severe human rights violation, namely an absolute right from which no derogation, based on article 15 (2) ECHR, is allowed. Secondly, the Court expanded the positive obligations of States under article 4 ECHR. The Court decided that the positive obligations did not only include criminalising, detecting and prosecuting these cases but also include prevention, protection of victims and international cooperation, including investigating human trafficking.

In the THB in domestic work case of *M. and others v. Italy and Bulgaria* of 2012, the Court further determined that human trafficking should not only be considered in the context of article 4 ECHR but also as inhumane and degrading treatment in the sense of article 3 ECHR<sup>19</sup>. An

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<sup>16</sup> District Court The Hague, 5 July 2011, LJN:BR:3410

<sup>17</sup> ECHR, *C.N. and V v France*, (11 October 2011) ECtHR 2013/54/

<sup>18</sup> ECHR, *Rantsev v Cyprus and Russia*

<sup>19</sup> ECHR, *M and others v. Italy and Bulgaria* (12 July 2012) EHRC 2012/221.

obligation to investigate human trafficking could therefore not only be derived from article 4 (following from Rantsev) but also from article 3 ECHR.

Finally, in the case of *C.N. v. United Kingdom* of 2013, also involving domestic work, the Court merely affirmed earlier judgements in coming to that verdict<sup>20</sup>.

## 2.2 Key national case law

In the Netherlands, there have been few convictions in THB cases involving the exploitation of domestic workers<sup>21</sup>. These cases include the Mehak Case (2007; 2010), the case of the mentally disabled victim (2011), the case of the psychiatric patient (2009), the Brazilian Case (2014) and the Cinderella Case (2015). Two other cases - the Polish cleaners (2011) and the Moroccan Bride (2011) - led to an acquittal for human trafficking, but are relevant in determining the limitations of what constitutes exploitation in the sense of THB for domestic work cases (Lestrade & Ten Kate 2009: 866). After shortly introducing the facts of the respective cases, it will be explained how the separate elements of the crime of THB (Article 273f Dutch Penal Code) have been satisfied. Since there only have been few successful convictions, the below discussion is merely indicative of how relevant elements of THB are interpreted in the context of domestic work.

### *The Mehak Case (2008)*

The Mehak case has been the oldest but also the most exceptional case concerning exploitation in the domestic sphere and was also the first conviction for labour exploitation<sup>22</sup>. The Mehak case involved an Indian couple who lived with their two children in the Netherlands. They took a girl in from India by promising the father that in exchange for the household chores performed she could go to school and secure a better future. In reality she had to work constantly, was under continuous threat and was not allowed to do anything else then to work for them, for a minor payment of €50 per month (that was sent to her father) apart from cost for living. After a few years, the couple took in some family members (a couple and their baby daughter Mehak) who had to work in the household too. The daughter Mehak was considered to be possessed by the household owners and particularly the mother was summoned regularly by the aunt to beat the child because of the bad luck she brought to the family. In this case, eventually three victims of human trafficking (for which the aunt and uncle were convicted) have been convicted themselves for the conscious mistreatment of the two year old Mehak, which was ordered by the aunt, resulting in serious bodily harm and ultimately in her death (i.e. murder)<sup>23</sup>.

### *Polish cleaners case (2007)*

In this case, the suspect recruited poor Polish women to clean houses in the Netherlands<sup>24</sup>. Once in the Netherlands, the suspect negotiated the work agreements with the household owners since the Polish women could not speak the language. The women were not paid or under the minimum wage and lived together in a house arranged by the suspect. The women lived in fear in the house since there were rumours about rape by Arabs and the suspect did not do anything to take the fear away and as such abused the lack of knowledge about their legal position. Despite all this, some women returned to Poland or started to work in the domestic sector for themselves. While there was a situation of deceit, poor working conditions and multiple dependencies, the court determined that there were no excessive circumstances that led to an infringement of fundamental human rights. Therefore, the suspect was acquitted of THB charge.

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<sup>20</sup> ECHR, *C.N. v. United Kingdom* (3 November 2013) EHRC 2013/73.

<sup>21</sup> These list consists of the published criminal cases and the unpublished cases discussed in literature.

<sup>22</sup> District Court the Hague, 14 December 2007, LJN:BC1195 (Mehak case- aunt), LJN:BC1761 (Mehak case-uncle); Appeal Court The Hague, 19 January 2010, LJN:BK9372 (Mehak case-uncle).

<sup>23</sup> Non-punishment principle is not applied in this case. Court of Cassation, 6 December 2011, LJN:BP9394.

<sup>24</sup> Rb 's-Gravenhage 5 oktober 2007, LJN BB5303.

### *The case of the psychiatric patient (2009)*

In this case, the perpetrator was an aid worker who was assigned to the victim (a psychiatric patient) to assist her with her daily activities<sup>25</sup>. Eventually a relationship developed which resulted in the victim moving in with the perpetrator. She was unable to deal with her own (financial) situation and as a result, she was under complete control of the perpetrator. She signed a contract that she had to do everything the suspect asked her to do: she was not allowed to be in contact with family and friends, he controlled her finances, she had to be sexually available, and she had to perform domestic chores at the house. Although she voluntarily moved in with the perpetrator, the court argued that this was irrelevant because of the means used (abuse of a vulnerable position; abuse of authority arising from factual circumstances). The victim did not see a real alternative than to live with the perpetrator. While one could only speak of exploitation when there is an excessive abuse of fundamental human rights, the court determined that an accumulation of less severe breaches of fundamental rights would also amount to exploitation and convicted the aid worker for human trafficking.

### *The case of the mentally disabled victim (2011)*

In this case, the perpetrator had the mentally disabled victim, who functioned at the level of a ten year old, completely under his control for a period of 4 months until the victim's guardian took out the victim out of the house of the perpetrator<sup>26</sup>. Although the perpetrator and victim both had their own house (neighbours) and the victim worked at a social workplace, all time before and after work he needed to be available to make coffee, breakfast, clean the house and do domestic chores. If he was not performing these tasks well, the victim was beaten or had to pay the perpetrator for the faults the victim made. The victim did not have the psychological strength to take distance from the perpetrator. Therefore, the Court convicted the perpetrator for human trafficking.

### *The Moroccan Bride (2011)*

The case concerned an arranged marriage after which the victim came to the Netherlands (voluntarily) to live with the suspect (Lestrade & Ten Kate 2009: 866, 860)<sup>27</sup>. Upon arrival, she had to perform domestic chores for the suspect and his family members, which severely limited her in her personal freedom. Further, the violence used against her violated her physical integrity. The circumstances were such that it was impossible for her to leave the situation. The Court decided in this case that it was unable to establish that the suspect moved the woman to the Netherlands with the primary objective of exploiting her (intent). Therefore, the suspect was acquitted of human trafficking<sup>28</sup>.

### *The Brazilian Case (2014)*

In this case, the suspect moved two women illegally from Brazil to the Netherlands to work for one and a half year excessively hard (seven days a week) without payment other than cost of living in her household. The suspect used violence, intimidated the women, humiliated the victims and took their passports. The women were locked in the house, were beaten and had to sleep on a garbage bag on the floor. One victim was not given medical care after the suspect had burned her chest with boiled water. As punishment, they were given little or expired food. The language barrier, fear for the police, and not knowing their way in Dutch society accumulated to the women's inability to ask for help. The perpetrator was convicted for human trafficking.

### *The Cinderella Case (2015)*

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<sup>25</sup> Rb Leeuwarden 10 February 2009, *LJN* BH2373 en Hof Leeuwarden 6 October 2009, *LJN* BJ9385.

<sup>26</sup> Amsterdam Court of Appeal 14 January 2010, 21-002724-08 Supreme Court 20 December 2011 *iLJN*:BR0448;

<sup>27</sup> District Court of Rotterdam (3 December 2008) *unpublished*;

<sup>28</sup> This has been an unpublished case discussed in literature by the public prosecutor. Therefore it is unknown to the author whether the suspect was accused of other criminal offences than THB.

The Cinderella case is the most recent case and involved a Turkish family who kept their Turkish niece (with irregular status) in their household. The victim came with the family after her mother fell victim of honour killing by her father and uncle for seeing other men. After their imprisonment, the daughter was left behind and her uncle and aunt took her to live with them in the Netherlands. But rather than being treated as one of their children, the victim had to perform household tasks and had to take care of the (eventually) four children, from the age of twelve and for the duration of seven years, until she escaped and reported to the police. During that period she did not go to school, did not have health insurance, or received any medical assistance. She had to be constantly available, she was threatened with deportation once she would report to the police and she was beaten if she did not perform the tasks the way in which it had to be performed. She was not paid other than in the form of cost for living.

### **Elements of THB: Acts of trafficking**

The act of trafficking (recruiting, transporting, moving, accommodating or sheltering', Article 273f (1)(1) DPC)) is the element which has proven to be not problematic when prosecuting THB cases (Van Krimpen 2011: 497). Moreover, under article 273f (1)(4) DPC, no act is required when a person forces or induces another person by one of the means to make himself/herself available for performing work or services. In all successful cases (Mehak case, case of the Psychiatric Patient, case of the Disabled Victim, Brazilian Case and Cinderella Case) the acts of trafficking involved harbouring a person. Although in the Mehak case there were indications that the perpetrators had not only exploited but had also had been involved in getting the victims to the Netherlands, only in the Brazilian case there was sufficient proof that the perpetrator was also involved in getting the victims to the Netherlands.

### **Elements of THB: Means of coercion**

The means of luring a person into a situation of exploitation that are proven in these cases are 'the use of violence', 'the use of coercion', 'the abuse of authority arising from factual circumstances' and/or 'the abuse of a vulnerable position'. The first two means are considered severe (violent) means of coercion, whereas the latter means are seen as 'soft' means. Particularly the means related to the abuse of authority arising from actual circumstances' and/or 'the abuse of a vulnerable position' proved to be difficult for Courts to apply. In effect, this resulted in successful convictions in only the more severe cases of servitude, but not in cases of forced/compulsory labour.

In the Cinderella and Mehak cases, the abuse of authority arising from factual circumstances and abuse of a vulnerable position were established. In the Brazilian case, the use of violence was added. In the two cases involving Dutch victims (the psychiatric patient case and the case involving a mentally disabled victim) only the abuse of authority and the abuse of a vulnerable position were included.

With respect to the 'the abuse of a vulnerable position', the Courts determined that a combination of illegal residence, a poor economic position and inability to speak the Dutch language created a vulnerable position. This has been the case, in the Cinderella case, the Mehak case and the Brazilian case. In the cases involving Dutch victims (psychiatric patient and disabled victim) decisive was the fact that these victims had mental problems, which led to the complete control of the perpetrators over the victims, who both felt they did not have a real option to leave the situation.

Whether the 'authority arising from factual circumstances' or the 'vulnerable position' needed to be consciously abused or whether conditional intent was sufficient was unclear until the judgement of the Supreme Court in the Chinese Restaurant Case in 2009<sup>29</sup>. In this case, the Supreme Court decided that it is not necessary for the victim to be placed into the exploitative situation by the employer (victim may have offered him or herself voluntarily for the work) and

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<sup>29</sup> Supreme Court, 27 October 2009, LJN:BI7099408

there is no need for conscious abuse. It is sufficient to show conditional intent of the suspect to the abuse of its authority and the vulnerable position of the victim: that the perpetrator recognises the vulnerable position and takes advantage of this position.

What is interesting to note is that before the Supreme Court gave guidance to the 'softer means of coercion', the cases had to include violent means of coercing someone into an exploitative situation. The Courts were upholding a high threshold, which resulted in the fact that only the most severe cases that amounted to servitude were successful before the Court. By giving guidance to the means of abuse of authority and vulnerability, increasingly cases wherein no actual force (other than psychological force) was used could also lead to a successful conviction, such as in the case of the psychiatric patient. This opened the door for cases of forced/compulsory labour.

### **Elements of THB: Intent to exploitation**

What has been the most difficult element of the THB provision is the element of (intent to) exploitation. In article 273f (2), the Dutch legislator has decided what, at a minimum, constitutes exploitation, being: '*at least the exploitation of another in the prostitution and other forms of sexual exploitation, forced or compulsory labour or services, slavery and with slavery or servitude like practices*'. As discussed earlier, exploitation is not further defined. The explanatory report of article 237f DPC only refers to the example of an extreme long working week for disproportionately low pay in poor working conditions<sup>30</sup>. Therefore, it is clear that there needs to be an excessive abuse of work conditions to speak of labour exploitation. Not all abuses of labour or service relations should be considered THB, which led to an acquittal in the Polish cleaner's case. Yet Courts have struggled with the question how excessive the facts and circumstances needed to be to qualify as exploitation (Van Krimpen 2011; Lestrade & Ten Kate 2011). In the Chinese Restaurant Case, the Supreme Court determined that the qualification in each case may differ (depending on the specific circumstances of the case) but that some factors are decisive in the assessment of a situation. Relevant factors include the nature and duration of the work, the restrictions imposed on the individuals concerned, and the economic benefit to the employer. The Supreme Court further emphasised that for weighing these factors the generally accepted standards in Dutch society should be adopted (e.g. about the maximum of working hours, minimum wage, etc). Amounting to exploitation in the above discussed cases are: excessive work hours, little or no payment, lack of privacy, confiscation of passports, inability to leave the house, feeling there is a real option to leave the situation, use of violence or threat thereof, great dependency on the exploiter (under full control), no access to medical assistance. What the Moroccan bride case showed is that in cases of arranged (or forced) marriage it is difficult to determine the case of THB even if there are exploitative practices, since it has to be proven that the suspect (i.e. the husband) moved the woman to the Netherlands with the primary objective to exploit her.

## **2.3 Key challenges in implementing legal provisions and in legal proceedings**

In general, it is known that it is very difficult to gather objective evidence in THB cases. While there have been some successful convictions in THB cases involving the exploitation of domestic workers, in general many cases are not even brought to court by the Public Prosecutor or are dismissed (Interview MGO12, Fairwork 2015; Interview GVT4, Labour Inspectorate 2015; Interview JUS2, Lawyer 2015). Key challenges in successful prosecuting cases involving the exploitation of domestic workers are (1) acquiring substantial evidence; and (2) difficulties in the application of the provision on trafficking,

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<sup>30</sup> Parliamentary Documents II 2003/04, 29 291, no. 3, p. 18.

With respect to human trafficking cases, in general the problem is to provide sufficient evidence that someone is actually exploited. Only the testimony of the victim is insufficient. There needs to be substantial evidence to support the testimony of the victim to come to a successful conviction. Particularly for THB involving the exploitation of domestic workers, the isolation of the victims for the duration of the exploitation, makes gaining additional evidence difficult (Interview JUS1, Public Prosecutor 2015). Further, when the domestic worker is exploited in a family context, victims may be reluctant to testify (Interview IO7, BNRM 2015).

Another indicated challenge is the difficulties in the application of the THB provision (Interview JUS1, Public Prosecutor 2015). Exploitation is more easily accepted in cases of sexual exploitation than in cases of labour exploitation on the grounds that it is easier to establish that the physical integrity of the victim is violated. Particularly in cases when there is no actual violence used, it is more difficult to establish THB. Further, in domestic work cases in family context, it might be more problematic to establish the intent to exploitation, as witnessed in the case of the Moroccan bride.

In case the public prosecutor dismissed a case, a lawyer (on behalf of the victim) can start an Article 12 procedure (complaint about non-prosecution of a criminal case).

## **2.4 Other remedies for persons who have been trafficked or exploited in domestic work**

A person has to be identified as victim of THB if there is only the 'slightest indication' that the person is a victim of THB and will then be offered protection. In case a victim does not hold a valid residence permit, only the police and the Royal Dutch Marechaussee (Kmar) can determine the person a possible THB victim within the framework of the Residence Regulation for THB, provided in the Aliens Decree 2000 and the Aliens Circular 2000. The presumed victim should be informed about the possibility of the three-month reflection period. After that period, temporary residence is only provided once the irregular victim decides to cooperate with the criminal proceedings and the criminal investigation or case is still on-going.

As far as remedies are concerned, there are multiple ways in which victims can be remedied after being trafficked in the Netherlands (BNRM 2007: 58-61; BNRM 2009: 466; BNRM 2012: 135-136)<sup>31</sup>. Victims may be compensated for losses they have suffered (material damages in the form of, *inter alia* loss of income, medical costs, damage to property) and/or the injury endured (immaterial or emotional damages)<sup>32</sup>.

### ***Compensation in criminal proceedings***

A first option to secure damages is that victims can join criminal proceedings and file a civil claim for damages as an aggrieved party (BNRM 2012: 135). In this way, victims do not have to start a separate civil procedure, which is more time consuming. The victim has to establish the likelihood of loss rather than prove it and does not necessarily have to be present during the hearing. Disadvantage of a (mere) joined civil claim is that collecting the claim remains a responsibility of the victim. A court may also order for compensation – the second option to secure compensation – which has the advantage that the compensation will be collected by the Central Fine Collection Agency (CJIB) rather than by the victim as is the situation in case of the victim filing a civil claim for damages as aggrieved party. If within 8 months after the court's verdict becomes final the perpetrator has not (fully) paid the awarded compensation, then the Dutch State will be burdened with paying the compensation to the victim instead. With

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<sup>31</sup> While compensation through mediation is discussed as an option, the character of the crime makes it unlikely that this compensation method is chosen and therefore is taken out of this discussion.

<sup>32</sup> Article 51f Dutch Code of Criminal Procedure: 'Everyone who has directly suffered damages by the criminal offence can join the criminal proceedings as injured party and claim compensation'.

a court order for compensation the victim will thus receive compensation regardless of whether the perpetrator is able or willing to pay in the set timeframe. Payment by the State will not relieve the perpetrator from paying compensation to the State. The court order for compensation can be requested by the victim (in addition to the civil claim) but may also be requested by the Public Prosecution Service (PPS) or ordered *ex officio* by the court. The Supreme Court has, for example, used its discretion to impose a compensation order in the case of the mentally disabled man who had been exploited, amongst others, for domestic work<sup>33</sup>.

Fairwork revealed in 2013 that in many THB cases compensation for victims was not requested or not granted during criminal proceedings (Heemskerk & Willemsen 2013). However, according to the Public Prosecutor on THB cases, the situation is improving. Since a few years, victim participation in criminal proceedings is on the increase, particularly due to the fact that increasingly compensation is awarded and for higher amounts (Interview JUS1, Public Prosecutor 2015).

In three criminal cases on THB for the purpose of exploitation of domestic work compensation has been awarded. In the case of the Psychiatric Patient and the Mehak case, no civil claim was submitted. In the Brazilian case a total of €45,792.99 was granted to the two victims of THB. The largest part of the compensation covered material damage (loss of income) and a small portion (1/3) immaterial damage. In the Cinderella case, the Court has granted a civil claim of €30,400 to the victim. In the case concerning the mentally disabled victim the Court has ordered a compensation of €500 *ex officio* (without the victim explicitly requesting it).

#### ***Compensation through the Violent Offences Compensation Fund***

When criminal cases against the suspects are dismissed, not brought to court or the suspects get acquitted, a victim of human trafficking may appeal to the Government-funded Violent Offences Compensation Fund [*Schadefonds Geweldsmisdrijven*]. Since 2012, victims of human trafficking may also rely on this fund when objective indications suggest that there is reasonable ground to believe that human trafficking has taken place<sup>34</sup>.

#### ***Compensation through civil proceedings***

Victims may also prosecute via a civil procedure and claim the payment of the income that they have not received for the work performed. An obstacle to civil procedures is the fact that it will burden the victim with litigation costs and the duration of the proceedings. An example of such a case involved an au pair, who after her year of stay, came back to work for the family and was underpaid<sup>35</sup>. She started a civil procedure and the family had to pay her the remainder of the salary based on the minimum wage of the Netherlands. The exact amount is still undecided as further information was requested to clarify elements of her claim.

## **3 Discussion of results**

### **3.1 THB in domestic work: Observations on types of situations and conditions**

#### *Scope and perception*

<sup>33</sup> Supreme Court, 20 December 2011, iLJN:BR0448

<sup>34</sup> 'Schadefonds past beleid mensenhandel aan' (17 Oktober 2012). In accordance with article 17 EU Directive on Human Trafficking.

<sup>35</sup> District Court Midden Nederland, 21 January 2015, ECLI:NL:RBMNR:2015:196.



As discussed in the first section the actual scope of the phenomenon is unknown. This is due to the marginal attention paid to this particular group, which has resulted in limited detected cases. What is particularly relevant in the context of THB in domestic work is the lack of recognition of domestic work in society, which is reinforced by the government's approach and policies which place domestic work on the outskirts of the labour market as well. While the existing regulation has secured some rights for domestic workers, it is still far from recognising domestic work as any other job, with the same rights attached.

#### *Victims and perpetrators*

As shown above, the group of victims of THB in DW is not homogenous, which is an obstacle to setting up a comprehensive policy. The government currently distinguishes in its policy: (1) au pairs; (2) live-in workers at diplomatic households and (3) group of domestic workers that do not fall under the first two categories. Yet, when considering the legal cases and the cases brought forward by stakeholders in the field, the third group of domestic workers is too diverse to be considered a sub-category.

Based on the above analysis, this group includes: (irregular) live-in migrant domestic workers (irregular) live-out migrant domestic workers, (irregular) migrant domestic workers who work directly for the household or through an intermediary; irregular minors (in family or cultural context); national domestic workers that are under complete control of the perpetrator. Further, there have been some indications of situations of forced or arranged marriages that could be considered THB (because of the exploitation taking place). Hitherto, there have not been any successful convictions in this respect. At the same time, while there are considerable numbers of former au pairs being registered as victims of THB, this is not reflected in the legal cases<sup>36</sup>.

In all the criminal cases discussed, the perpetrators were private individuals who hired domestic workers directly. Yet, some of the interviewees discussed cases of victims of THB in the domestic work sector, who worked through an intermediary or a home care agency (Interview EXP15, Academic Expert 2015; Interview NGO12, Fairwork 2015). These cases, however, were not (successfully) brought before court.

In all criminal cases, the perpetrators created a form of dependency, financially or emotionally, and fear of the authorities was present in case the victims had an irregular status. Perpetrators also created or stimulated some form of loyalty, specifically in cases of domestic servitude (i.e. severe form of labour exploitation). A relationship materialises because the victim is living in the household of the perpetrator, is taking care of the children and so forth.

Finally, it is clear that there is still very little known about the profile of the victims and perpetrators and that in order to create a comprehensive policy, much more research is needed into this particular phenomenon.

#### *Recruitment*

In the cases discussed, the victims either were Dutch and knew the perpetrator personally or were migrants and came directly at the invitation of the family they end up working for. In the case of Mehak, there were agreements between the father of the minor and the family she would work for in the Netherlands. As shown in the above, many of the domestic workers are migrant workers and many of them are undocumented. They did not necessarily come to the Netherlands to work in the informal domestic work sector. There is a group, who started to do this work because their situation did not offer them any other choice. Many of the workers did come to the Netherlands through legal routes, either on a tourist visa, or they had a dependent status (diplomats, au pairs) or they applied for a refugee status but that was refused (Interview

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<sup>36</sup> Victims are registered when there is the 'slightest indication of THB'. Whether the case actually is brought to Court is dependent on many other factors (see section 2.2.1). Due to e.g. difficulties in obtaining evidence the case may be dismissed. Therefore there is a discrepancy between registered victims of THB and actual THB criminal cases.

NGO13, RESPECT Network 2015). People's status thus became irregular due to circumstances and domestic work is one of the few jobs, especially for women, which can be performed without having papers.

#### *Means of coercion*

In the domestic work cases involving THB the use of coercion, the use of violence, the abuse of authority arising from actual circumstances and/or the abuse of a vulnerable position were established. As discussed in the above, in the Cinderella and Mehak cases, the use of coercion, from factual circumstances and abuse of a vulnerable position were established. In the Brazilian case the use of violence was added. In the two cases involving Dutch victims (the psychiatric patient case and the case involving a mentally disabled victim) only the abuse of authority and the abuse of a vulnerable position were included. While initially the violent forms of coercion were required to come to a successful conviction, currently the softer forms of coercion also lead to convictions of the crime of THB.

In following the criminal cases, the following factors add to the vulnerability of victims of THB in domestic work: isolation, high degree of dependency on the employer; imbalance of powers; irregular status; being tied to the employer through residence permit; inability to speak the language; being unknown to the society; lack of information about their rights; lack of work contract.

#### *Circumstances determining exploitation*

Interestingly all convicted cases of THB in domestic work involved servitude as qualified form of forced/compulsory labour. This raises questions as to whether cases of forced/compulsory labour in the context of domestic work are not considered serious enough to be brought before the Court (dismissed) or whether these cases are not reported. This is a point of attention.

In the case of labour exploitation, the circumstances of the particular situation are decisive. The following factors should be weighed (based on the generally accepted standards in the Netherlands): the nature and duration the work; the dependency of the victim to the employer and the economic gain. It has become apparent that there needs to be an excessive abuse of work conditions to speak of labour exploitation. Not all abused of labour or service relations should be considered trafficking (Polish cleaners case). A series of smaller breaches may still amount to excessive abuse of work conditions (psychiatric patient case).

The following factors led to the determination of exploitation in the domestic workers cases: excessive work hours, little or no payment, lack of privacy, confiscation of passports, inability to leave the household, feeling there is a real option to leave the situation, use of violence or threat thereof, great dependency on the exploiter (under full control), no access to medical assistance.

### **3.2 Key motivation factors and demand-side dimension**

In the case of migrant domestic workers, it is important to realise why people come to the Netherlands in the first place, which is mostly for economic reasons. People have no or limited future in their country of origin and do not see another option than to work in another country. In many cases these are female workers who are responsible for providing for their family, including children, in their country of origin. While it might be that they will work for less, as the Dutch labour laws would require, it is always more than what they would have earned if they would have stayed in their country of origin. Interestingly, many stakeholders indicated that informing them about the possible exploitative situations they might encounter will not prevent them from going. They just hope that their situation will be different than the situation they are warned for. Therefore, discouraging measures might not resort effect since people will migrate anyhow. Measures should therefore focus much more on informing about their rights in the

Netherlands and where to go (other than authorities) in case their rights get violated. Further, ways to facilitate the supply to address the demand through legal channels could be explored. Through formalised procedures, the position of the workers is exposed, and therefore exploitative practices might be easier tackled.

General pull factor in the Netherlands is the increased demand for cheap domestic workers (Interview NGO12, Fairwork 2015). The way in which their work is valued is very much determined by the prevailing perception in society that domestic work is not real work, and therefore should be valued differently. This perception is strengthened by the government's policies that confirm that domestic work is considered second-class work since the rights granted to domestic workers are less than those granted to 'regular'. When seeking to address the demand side, it is important to take this prevailing perception as a starting point. Changing the perception (effectuating 'mentality change' as indicated by the RESPECT Network, Interview NGO13 2015) could improve the general position of domestic workers, making them less vulnerable to abuse.

In some sectors, influencing demand may be more actively tackled since a third party determines the demand, namely the consumer. What is particularly tricky in influencing demand within private households is that, in most cases, the employer is the exploiter and the end user (consumer) at the same time. The question is then whether these employers would be the right addressees of an anti-THB in DW campaign (Interview IO7, BNRM 2015). Since they consciously exploit the workers, it is more difficult to influence their behaviour through awareness raising (Interview NGO12, Fairwork 2015). One argument put forward is that awareness raising in this context is therefore more useful when addressing those who can detect and report cases than when addressing the demand side (Interview GVT6, Ministry of Foreign Affairs 2015). The usefulness of awareness raising campaigns in influencing demand therefore seems to be sector dependent. The likelihood of getting caught is another factor that may impact the type of demand in this context.

Awareness raising may influence demand in cases where the violation of labour rights by the private household is less severe and when there is general lack of knowledge about the regulations in place (see section 1.2.1 explaining that more than half of the households that fall under the Regulation on Domestic Services have poor or even very poor knowledge about it). The knowledge should be increased on both sides, on the part of the employer and on the part of the employee. Awareness raising could focus on increasing knowledge. Although the Dutch Government has indicated action in this respect, it has not been put in practice (Parliamentary Response 2014).

One of the most radical ways in which the demand side in the context of THB in the domestic work sector could be addressed is to ensure that the group of domestic workers from outside of EU (non EU nationals) can migrate legally to the Netherlands (an approach the RESPECT Network is lobbying for: Interview NGO13, RESPECT Network 2015; Interview NGO12, Fairwork 2015). The RESPECT Network argues that people are in a dependent position because of the fact that they are either undocumented or that their residence status is linked to their employer. Yet, it is to be questioned whether a legal residence status will guarantee compliance with labour law. It could be argued that it would, at a minimum, reduce the vulnerability of this particular group of domestic workers.

One argument that came out from some of our interviews is that demand related policy directed towards those who consciously exploit people will be much more difficult. They will not stop just because more awareness is created. For this group it might work preventively if it becomes known that you cannot get away with it easily. Eventually it is all about the risk of being caught. If the risk is high, demand is less. While this is more a deterrence approach than a demand oriented approach, it will affect demand indirectly (Interview EXP15, Academic Expert 2015).

### 3.3 Key gaps in legislations and policies

The Dutch Government has been proactive in stepping up its approach to tackle labour exploitation in the past years. It seems as if their approach is based on progressive insight: increasingly new steps are taken to tackle the phenomenon (Interview MDM8, Comensha 2015). Since the approach is still in its early stages, there is still a lot of work to be done. The attention for domestic work is limited. Therefore, the Dutch Government should step up raising awareness about the phenomenon among the general public, developing more sector specific approaches, including for the domestic work sector, and ensuring the proper implementation of the existing policies and regulations (Interview NGO10, La Strada International 2015). Further, some existing policies need to be scrutinised critically to see whether its existence is not a mere case of window dressing.

An important area where there is still much to gain is strengthening the position of domestic workers generally, to avoid that they end up in exploitative practices (Bijleveld & Cremers 2010; Interview TU14, FNV 2015; Interview NGO13, RESPECT Network 2015; Interview EXP15, Academic Expert 2015). Currently it seems as if more attention is directed toward the more extreme situations under the heading of THB, so after the exploitation has already taking place. What is particularly interesting from the perspective of the demand-side is that a mere human trafficking approach focussing on the most excessive (individual) situations, is taking attention away from the broader discussion of the position of domestic workers in terms of their rights, migration issues, demand/supply and the value attached to the work performed.

The first step of the government to take is to acknowledge the demand for domestic workers in the Netherlands and the fact that supply for this demand comes from other EU countries and outside of Europe (Interview NGO13, RESPECT Network 2015). Arguments that the unemployed would be able to meet the demand disregard the reality of the unemployed not wanting to perform this type of work. Acknowledgement of the need of society for cheap and unskilled labour (i.e. domestic workers) and steps towards facilitating addressing the need should be considered. In countries such as Italy, there has been in the past mechanisms for migrant domestic workers to come and work in the country (through the quotas system). The Dutch government should at least take an effort in considering whether this option is useful in the Dutch context as well.

With respect to domestic work generally, the Dutch Government's approach currently fails to value domestic work as regular work. In this way the government keeps intact the circumstances that make the work prone to abuse. The government has indicated not to ratify the ILO Domestic Workers Convention, since there is a regulation for domestic workers in place, (i.e. the regulation on Domestic services). The rights that are granted under the regulation are, however, limited. Even if the regulation would have been sound, there is a general lack of knowledge about the regulation. While the government has indicated improving the knowledge about the regulation among the general public, there is no indication that it will critically look at the content of the regulation from the perspective of the rights of the workers. A reconsideration of the value of domestic workers similar as regular workers would necessarily imply adjustments to this regulation too.

Currently the role of law enforcement agencies in detecting cases of THB in domestic work is limited, due to their restricted competences with respect to private households. Yet, the fact that detection is difficult in these cases does not mean that the government can hide behind these restrictions and do nothing else instead. Therefore the competences of the labour inspectorate with respect to private households could be reconsidered or expanded. Since the mandate of the Ministry of Social Affairs and Employment includes the domestic work sector with regard to work and income, it needs to be creative in developing, investing and/or stimulating other ways of contributing to detect domestic work cases. Although the private

realm needs more privacy protection than a public work place, private individuals chose to make their homes work environment, which justifies some competence for the labour inspectorate. Another option would be that the labour inspectorate would at least be explicitly instructed to ring doors and to speak with the workers at the doorstep.

A good example is the Ministry's initiative to secure money for the NGO Fairwork to invest in cultural mediators. As discussed in the above, these mediators prove to be instrumental in detecting cases and for victims to find their way out of an exploitative situation. The government could consider funding these mediators more structurally as a way of (indirectly) contributing to signalling labour violations they cannot signal through the labour inspectorate. Further, the government should invest more in awareness raising campaigns that pay attention to domestic work specifically. Currently there is a general lack of attention for the domestic work sector in the awareness raising campaigns on labour exploitation.

What remains problematic, also from the perspective of detecting cases, is the connection of victim protection with the criminal proceedings (Interview EXP15, Academic Expert 2015). It does not only affect the victim's willingness to report situations, particularly if they have an irregular status, but it also might affect reporting by others since they might be of the opinion that it is better not to report the situation since it is uncertain whether the workers are better off when reporting the case (i.e. whether protection takes place and for how long). The fact that irregular migrants once exposed will eventually be deported to their country of origin is an obstacle in reporting exploitative practices.

With respect to the au pair policy, it has to be critically assessed whether the policy as such is as optimal as it could be. The introduced special duty of care for intermediaries towards the au pairs has been an improvement in the sense that they carry the responsibility to mediate once the au pair is experiencing problems with the host family, and even have to look for an alternative host family for the remainder of the period of stay of the au pair in case the problems appear insolvable. Yet, for the placement of an au pair in another family, the other host family needs to pay mediation costs similar as one would have to pay if an au pair was hired for the full duration of the time (a maximum of a year). Therefore, host families are reluctant to host an au pair for the duration of a few months, if for the same costs they could hire someone for a year. This makes it at times factually impossible for au pairs to move from one host family to another in case there are problems (Interview NGO12, Fairwork 2015). This could be addressed by reducing mediation fees are allowed in case the au pair remains in the alternative host family for less than a year.

Further many stakeholders are of the opinion that it is not so much the Dutch policy itself that needs adaptation, but that much more effort should go through implementing the existing policy correctly (e.g. Interview NGO11, La Strada International 2015). One of the examples is the case of the African irregular domestic workers in Bloemendaal discussed in the above where the police should have offered them victim protection under the B8 regulation because there were reasons to believe the situation could amount to trafficking. Yet the police was only concerned with their irregular status and subsequently deporting them.

## **4 Concluding remarks and key messages for policy makers**

While understanding that the specific characteristics of the sector – in the private realm, secluded from the outside world – make it difficult for the government to take certain measures and actions to prevent and tackle this issue, relevant stakeholders may adopt some more creative approaches to still be able to address the issue while at the same time respecting the specific circumstances under which the work takes place.

### **Addressing the demand-side of THB in DW**

In order to address demand effectively, first more research is needed into the profile of the employers. To be able to develop measures that target the demand-side, it needs to be clear in the first place who is targeted and what the main goal of the campaign should be. After further research is conducted, targeted awareness campaigns could be launched based on the research outcomes that may include increasing the knowledge of both domestic worker and employers about the regulations in place. Further awareness raising campaigns for the general public should be used to focus on a mentality change in considering domestic work as real work, with actual rights attached.

### **More in-depth research into THB in domestic work**

This research has been a first attempt to provide more insight into the dynamics of THB for domestic work in the Netherlands. Yet, much more in-depth research is needed to get a more comprehensive view of the phenomenon, including on the profile of the victims and perpetrators, the role and position of (irregular) migrant workers in the domestic work sector. Also, further analysis of criminal cases would be relevant.

### **Strengthen and enhance identification of cases of THB in domestic work**

One of the greatest obstacles in detecting exploitative practices in private households is the limited competence of the labour inspectorate. Yet when people decide to make their house a workplace, at least some form of work conditions monitoring is justified. The competence could include, at a minimum, the explicit competence to ring doors and ask questions to the domestic worker and the employer. The labour inspectorate could further examine other ways to better identify and reach out to domestic workers, including less traditional ways as the use of social media. To be able to perform some form of control despite its limited competences.

Since most domestic work cases come to the attention of law enforcement through NGOs and cultural mediators specifically, the Government could consider investing structurally in this human capacity, in compensation of the fact that law enforcement itself is restricted to proactively detect cases. Further, since NGOs are closer to this particular group of victims, it would be a true added value for NGO's to have a more prominent representation in the Taskforce on Human Trafficking, since they can bring these issues to the attention of all relevant stakeholders.

Finally, the research has shown that forced marriage cases may also be cases of THB in domestic work if all elements of THB are satisfied. Yet, currently there is still insufficient knowledge with first line aid workers that these situations may also be qualified as THB. In acknowledgement of the possible link between the two phenomena, more attention may be given to this understudied area of concern and expertise could be strengthened in order to better identify these situations.

### **Reducing vulnerability: Guaranteeing rights for domestic workers**

*Raise awareness of employers and domestic workers about the Regulation on Domestic Services*

More awareness is needed (both among domestic workers and the households that fall under the regulation) about the existence and content of the Regulation on Domestic Services (Cabinet's Letter to Parliament 2014). With the launch of a one-week campaign in October 2015 the Dutch Government has made a first step into creating more awareness, yet more action is still required, which may also be initiated by other stakeholders such as NGOs or the Labour Union.

*Assess the decision not to ratify ILO Convention on its merits*

The Dutch Government should critically assess whether its position not to ratify the ILO Domestic Workers Convention still has merits. By not ratifying the ILO convention, the Dutch Government continues to consider domestic work different than regular work, with lesser rights attached. Since the government acknowledges the limitations of the regulation on Domestic Services, it could, at a minimum, see how the rights of domestic workers can be strengthened, whether by adjusting the existing Regulation or adopting a new regime altogether.

*Examine amending au pair policy to enhance protection of au pairs*

Currently au pairs are allowed to change host family in case problems have risen. The au pair agency has to find another family. Yet in practice another family is not easily found since host families need to pay similar mediation fees for an au pair that remains for a short period than an au pair that remains in the family for the full year. To make the change between families an actual option in practice, reduced mediation fees may be considered in case a host family will host an au pair for a shorter period than the maximum of one year.

*Consider legal migration routes for Domestic workers*

In the long term, there will be an increased reliance on domestic workers for private cleaning and care work and that demand will likely not be met in the future. Relevant stakeholders should therefore not shy away from a more in-depth debate about the future and how the Netherlands will deal with the increased demand for domestic workers, considering all options based on experience of other EU countries. The government may consider, among other options, the possibility of allowing for regular migration routes for Domestic workers into the Netherlands, similar to, for example, Italy.

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## Annexes

### Annex 1 List of interviews

	<b>Sector</b>	<b>Position</b>	<b>Organisation</b>	<b>Date of Interview</b>	<b>No of interview</b>
1	Judicial	National Public prosecutor on THB	Public Prosecution Service	09-07-2015	JUS1
2	Judicial	Lawyer	Law firm	10-08-2015	JUS2
3	Government	Senior Policy Officer on Labour Relations	Ministry of Social Affairs and Employment	18-06-2015	GVT3
4	Government	Advisor Inspection SZW, Detection	Labour Inspectorate	28-07-2015	GVT4
5	Government	Senior Policy Officer on International THB Policy	Ministry of Security and Justice	24-07-2015	GVT5
6	Government	Senior Policy Officer on THB	Ministry of Foreign Affairs	20-07-2015	GVT6
7	Independent Organisation (IO)	Researcher labour exploitation and administrative enforcement	National Rapporteur on THB and Sexual Violence Against Children	03-07-2015	IO7
8	Multi-disciplinary mechanism	Partner in the Taskforce (Comensha)	Task Force Human Trafficking	27-07-2015	MDM8
9	Government		Expertise Center Human Trafficking and Human Smuggling	03-06-2015	GVT9
10	NGO	Counsellor/Advisor	Comensha	02-07-2015	NGO10
11	NGO	International Coordinator	La Strada International	09-07-2015	NGO11
12	NGO	Policy Officer	Fairwork	30-06-2015	NGO12
13	NGO		RESPECT Network	27-07-2015	NGO13
14	Trade Unions	Legal Policy Advisor	FNV	6-07-2015	TU14
15	Expert	Associate professor on THB	Intervict – Tilburg University	8-06-2015	EXP15

## **Annex 2 Article 237f Dutch Penal Code**

1. Any person who:
  1. by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the abuse of authority arising from factual circumstances, by the abuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
  2. recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
  3. recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
  4. forces or induces another person by the means referred to under (a) to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
  5. induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
  6. wilfully profits from the exploitation of another person;
  7. wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
  8. wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;
  9. forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;

shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding eight years and a fifth category fine\*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.
3. The following offences shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine\*, or either of these penalties:
  - a. offences as described in the first paragraph if they are committed by two or more persons acting in concert;

- b. offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.
- 4. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine\*, or either of these penalties.
- 5. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding eighteen years and a fifth category fine\*, or either of these penalties.
- 6. Article 251 is applicable mutatis mutandis.

\*A fifth category fine is a fine of maximum € 81.000.

## **About the author**

Eefje de Volder is a PhD Researcher at the Department of European and International Public Law of Tilburg University and has an educational background both in cultural anthropology and in law. For her master thesis in cultural anthropology, she conducted 5 months research in Pattaya, Thailand, into the coping strategies of women working in the sex tourism in Pattaya, Thailand.

Eefje has worked extensively with Dr. Conny Rijken, who is an internationally renowned scholar in the field of human trafficking. Together they published successfully on the role of the EU in relation to trafficking. In addition, Eefje has assisted Dr. Conny Rijken in a 16-month project commissioned by the EU Commission on 'Facilitating Corporate Social Responsibility to Prevent Trafficking in Human Beings'. Further, Eefje has, together with Conny Rijken and Stefanie Jansen-Wilhelm, conducted an independent evaluation of the first evaluation round of GRETA (Council of Europe).

## **Addressing demand in anti-trafficking efforts and policies (DemandAT)**

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#### FURTHER READING:

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