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LABOR EXPLOITATION AS THE MOST COMMON FORM OF THE CRIME OF TRAFFICKING IN HUMAN BEINGS IN SPITE OF THE STATE BORDER CONTROL AND THE LABOR MARKET**

Abstract: Labor exploitation is the most common form of the crime of trafficking in human beings, second most prominent form of exploitation of victims, immediately after human trafficking for sexual exploitation. This paper provides an overview of the international legal framework and the national legal framework of the Republic of Croatia, which prohibits forced labor and trafficking in human beings for labor exploitation. It explores and analyzes all possible forms of labor exploitation: forced labor and servitude, debt bondage, and forced labor and servitude of children. It also examines final court decisions in order to obtain information on the accused and convicted offenders, and the sentences imposed. Reference has been made to the victims of labor exploitation, according to sex, age, citizenship, as well as the sectors in which the victims were exploited. In conclusion, based on the current situation, the author provides some proposals *de lege ferenda*.

Keywords: labor exploitation, trafficking in human beings, victims of forced labor, human rights violations.

1. Introduction

Trafficking in persons, which is part of organized crime, is one of the worst possible crimes against humanity and basic human dignity because victims, through various forms of abuse, have their basic human rights violated. Victims are deliberately abused because of their poverty and difficult financial situation

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from which they wanted to escape in order to ensure themselves a better life, by being deprived of freedom, with deep and sustained violation of their human dignity, without the ability to move freely or communicate with other people.

Originally, the Republic of Croatia was considered to be a transit country for trafficking in persons, and the victims were mostly girls and young women from Eastern Europe who would be sexually exploited and forced into prostitution in the countries of destination. However, over time, changes have been observed regarding other forms of exploitation, victims of other sex, and in the end, victims from other countries of origin. Thus, in recent years more and more victims of trafficking are men who are being exploited for labor. They are becoming one of the leaders on the scale of human trafficking for labor exploitation. The exposure of people to exploitation and abuse increases with systematic discrimination of people, inequality, human rights violations, increasing poverty in the country of origin, corrupt practices, war and violent conflict, lack of education, lack of jobs or inadequate employment.

Today Croatia is a country of final destination, i.e., a destination country, country of origin, but also a transit country for trafficking in women and children for sexual exploitation and trafficking of men, women and children for labor exploitation through a form of forced labor.¹

According to the UN Office on Drugs and Crime (UNODC) on Trafficking in Persons from 2014², women and girls represent 70% of the total number of victims. Furthermore, among the identified victims of sexual exploitation women are represented with 79% or with 53% of the recognized forms of exploitation on a global scale, while men account for 83% of the total number of identified victims of forced labor and 40% of the recognized forms of exploitation globally. Along with the illegal trade in drugs and weapons trafficking, it is one of the highest-paid forms of organized crime on a global level. According to the latest estimates of the ILO, illegal annual earnings from forced labor, which also include the earnings from money laundering, are around 150 billion USD, while it is estimated that about 90% of the victims are exploited in the private sector and that two-thirds of earnings comes from commercial sexual exploitation, which is considered the most profitable form of exploitation.³

1 Trafficking in persons report, June 2016, p.144., retrieved 20 Aug 2016, from <http://www.state.gov/documents/organization/258876.pdf>

2 Global Report on Trafficking in Persons 2014, United nations New York, 2014, retrieved 22 Aug 2016, from https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf

3 Report on the fight against trafficking in human beings in the EU's external relations (2015/2340 (INI)) of 13/06/2016, retrieved 22 Aug 2016, from <http://www.europarl.europa>.

An estimated 21 million victims are trapped in modern-day slavery. Of these, 14.2 million (68%) were exploited for labor, 4.5 million (22%) were sexually exploited, and 2.2 million (10%) were exploited in state-imposed forced labor.⁴ Forced labor takes place in many different industries. Of the 14.2 million trafficking victims exploited for labor: 7.1 million (50%) forced labor victims work in construction, manufacturing, mining, or utilities 3.4 million (24%) forced labor victims are domestic workers, 3.5 million (25%) forced labor victims work in agriculture.⁵

2. Concept and elements of labor exploitation as a form trafficking in persons

In legal doctrine and practice, there is still no single definition of the concept of labor exploitation, but it is considered to be a form of forced labor. According to the ILO Convention against forced labor⁶, the term forced or compulsory labor is defined as any form of work or service by a person who is under the influence of coercion and who has not agreed to that work voluntarily. In other words, the realization of two assumptions is needed: work has to be done under threat and that it is not voluntary. The threat may also relate to the mental and physical side of the personality. Consent of the person that was obtained under the influence of fraud or deception is irrelevant.

The concept of forced labor has the characteristics of trafficking due to the large number of victims of trafficking being abused for labor; however, victims of forced labor need not be exclusively the victims of the criminal act of trafficking in persons. Slavery is a form of forced labor where one person has absolute control over another. Child labor implies child forced labor if a child's work is carried out under duress by a third party or his or her parents, or if the child labor is a direct result of forced labor of parents.⁷

The International Labour Organization (ILO) has identified several indicators that can serve for identifying cases of labor exploitation.⁸

eu/sites/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0205+0+DOC+XML+V0//HR#title2

4 Human Trafficking by the Numbers, Fact Sheet: January 2016, Report from the International Labor Organization (ILO), According to a May 2014, retrieved 15 Aug 2016, from <http://www.humanrightsfirst.org/sites/default/files/TraffickingbytheNumbers.pdf>

5 *Ibid.*

6 Art.2/1; Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers, ILO, 2005

7 Forced Labour and Human Trafficking: Estimating the Profits, ILO, 2005

8 A global alliance against forced labour, International labour office, Geneva, p.6., retrieved 25 Aug 2016, from http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/

Table1. Identifying forced labour in practice

IDENTIFYING FORCED LABOUR IN PRACTICE	
Lack of consent to (involuntary nature of) work	Menace of a penalty (the means of keeping someone in forced labour) Actual presence or credible threat of
Birth/descent into “slave” or bonded status	Physical violence against worker or family or close associates
Physical abduction or kidnapping	Sexual violence
Sale of person into the ownership of another	(Threat of) supernatural retaliation
Physical confinement in the work location – in prison or in private detention	Imprisonment or other physical confinement
Psychological compulsion, i.e. an order to work, backed up by a credible threat of a <u>penalty for non-compliance</u>	Financial penalties
Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.)	Denunciation to authorities (police, immigration, etc.) and deportation
Deception or false promises about types and terms of work	Dismissal from current employment
Withholding and non-payment of wages	Exclusion from future employment
Retention of identity documents or other valuable personal possessions	<u>Exclusion from community and social life</u>
	<u>Removal of rights or privileges</u>
	<u>Deprivation of food, shelter or other necessities</u>
	<u>Shift to even worse working conditions</u>
	<u>Loss of social status</u>

There is no doubt that in the world there is a need for the performance of work activities involving the least possible cost, and in this respect, the need to reduce the pay of the workforce in order to ultimately have less expensive products. This is precisely the main reason for labor exploitation used to achieve the maximum profit of employers in virtually all types of industries. In such an economic environment, unfortunately, socially vulnerable groups consisting of unemployed, migrants, adolescents and children suffer the most. However, in recent years, the number and labor exploitation of men and women is increasing.

3. International legal framework

The Universal Declaration of Human Rights contains provisions relating to the prohibition of slavery and human trafficking. The declaration was adopted and

proclaimed⁹ by General Assembly resolution of the United Nations 217A (III) of 10/12/1948.¹⁰ The provisions of the Declaration relevant to the prohibition of human trafficking and slavery are the following: Everyone has the right to life, liberty and security of person.¹¹ No one shall be held in slavery or servitude; slavery and the slave tradeshall be prohibited in all their forms.¹² Everyone has the right to freedom of movement and residence within the borders of each state and everyone has the right to leave any country, including his own, and to return to his country.¹³ Everyone has the right to seek and to enjoy in other countries asylum from persecution.¹⁴

The international legal framework relating to fighting and combating trafficking in persons is quite extensive. Historically, the most significant among the first international documents adopted in the first half of the 20th century are: the 1926 *Slavery Convention*,¹⁵ the 1930 *Forced Labour Convention*¹⁶ and the 1949 *Convention for the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others*.¹⁷ The preamble to the 1949 Convention states that prostitution and the accompanying evil of human trafficking for the purpose of prostitution are incompatible with the dignity and worth of human beings and that they threaten the well-being of individuals, families and communities. The following important international documents were adopted in the second half of the 20th century: the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*,¹⁸ the

9 The Universal Declaration of Human Rights, Official Gazette, No. 7/1971.

10 Decision on the Publication of the Universal Declaration of Human Rights, OG, Inter. Agreements 12/09

11 Art.3.The Universal Declaration of Human Rights, retrieved 15 Aug 2016, from <http://www.un.org/en/universal-declaration-human-rights/>

12 Art.4. *Ibid.*

13 Art.13. *Ibid.*

14 Art.14/1 *Ibid.*

15 Slavery Convention, Geneva, 25 September 1926, retrieved 25 Aug 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

16 ILO Forced Labour Convention, 1930 (No. 29), retrieved 25 Aug 2016, from http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms_346435.pdf

17 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Approved by General Assembly resolution 317 (IV) of 2 December 1949, retrieved 20 Aug 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>

18 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Adopted by a Conference of Plenipotentiaries convened by Economic

1957 *Convention on the Elimination of forced Labor*,¹⁹ the 1966 *International Covenant on Civil and Political Rights*,²⁰ the 1979 *Convention on the Elimination of All Forms of Discrimination against Women*,²¹ the 1989 *Convention on the Rights of the Child*,²² the 1996 *Resolution on Combating Trafficking in Persons*,²³ the 1997 *Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation*,²⁴ and the 1999 *Copnvention on the Worst Forms of Child Labor*.²⁵

*The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation*²⁶ underscores a multidisciplinary approach in the fight against trafficking in persons, as required by the need for countries to introduce the independent National Reporter to combat trafficking in persons who would supervise the work of state institutions in the fight against trafficking in persons and is committed to psychosocial protection of trafficking victims who are in shelters (Mađerić, 2008: 9-20). However, the disadvantage of this Declaration is its focus exclusively on trafficking in women.

and Social Council resolution 608(XXI) of 30 April 1956, retrieved 25 Aug 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>
19 C105 - Abolition of Forced Labour Convention, 1957 (No. 105), retrieved 20 Aug 2016, from http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105

20 International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, retrieved 25 Aug 2016, from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

21 Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, retrieved 25 Aug 2016, from <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

22 Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, retrieved 25 Aug 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

23 Resolution on trafficking in human beings, OG C032P.0088, retrieved 25 Aug 2016, from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51995IP0326:EN:HTML>

24 Ministerial Conference under the Presidency of the European Union, The Hague, 24-26 April 1997, retrieved 25 Aug 2016, from <http://legislationline.org/documents/action/popup/id/8747>

25 C182 - Worst Forms of Child Labour Convention, 1999, (No. 182), retrieved 25 Aug 2016, from http://www.victorproject.eu/media/uploads_file/2014/05/05/p18n5qjk611p9fi8rs121vq31d0625.pdf

26 *Ibid. fd. 23.*

The (SECI Agreement) Agreement on Cooperation to Prevent and Combat Trans-Border Crime was signed in Bucharest in 1999, which provides for cooperation between the countries of South Eastern Europe, members of the SECI, in the fight against trafficking in persons and all forms of cross-border crime.²⁷ The former SECI Center has since grown into the SELEC, an organization for coordination and joint action in the fight against organized crime in South Eastern Europe.

At the beginning of the 21st century, two Optional Protocols were adopted in the field of combating trafficking in persons: *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* in 2000,²⁸ and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* in 2000.²⁹

The Brussels Declaration, signed at the European Conference on Preventing and Combating Trafficking in Human Beings, is the first document that fully regulates the problem of trafficking in human beings,³⁰ which is in favor of strengthening international cooperation in the fight against trafficking in persons both in the field of combating and in the field of preventing this crime.

The UN Convention against Transnational Organized Crime was signed in Palermo on 13/12/2000, with two related protocols: *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and *Protocol against the Smuggling of Migrants by Land, Sea and Air*, supplementing the UN Convention against Transnational Organized Crime,³¹ a particularly significant document which stipulates the obligation to criminalize trafficking in people in the national legislation of the signatory countries. *Protocol to Prevent, Suppress*

27 The agreement was ratified 27/08/ 2000, retrieved 27 Aug 2016, from <http://www.mup.hr/31.aspx>

28 *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, retrieved 27 Aug 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

29 *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, retrieved 27 Aug 2016, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

30 *Brussels Declaration on preventing and combating trafficking in human beings*, retrieved 27 Aug 2016, from <http://www.belgium.iom.int/STOPConference/Conference%20Papers/brudeclaration.pdf>

The Republic of Croatia has signed the Declaration in 2002.

31 The [Act](#) on Ratification of UN Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime, Act, OG, IA No 14/02, 13/03, 11/04

and Punish Trafficking in Persons, Especially Women and Children has replaced the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution from 1949. The UN convention is significant in that it represents a complete document that lists all forms of transnational organized crime and prescribes their punishment. Protocol I defines the notion of trafficking in persons³² and prescribes the various forms of exploitation of people where there is no division between men and women, and the victim may be exploited within the borders of its own country.

Of particular importance is the *Council of Europe Convention on Action against Trafficking in Human Beings*,³³ which applies to all forms of trafficking in persons within a state, but also across borders. It perceives trafficking in persons both as a violation of criminal law and as a violation of fundamental human rights, and provides its signatories a comprehensive legal framework to combat trafficking in persons: prevention, prosecution, and assistance and protection to victims of trafficking in persons. (Derenčinović, 2010: 53-72)

Finally, it is also worth mentioning the *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victim*, which replaces the Framework Decision of the Council of the European Union for the Suppression of Trafficking in Human Beings from 19/07/2002 (2002/629/JHA).³⁴ The Directive provides for stronger sanctioning of the crime of trafficking in human beings and the seizure

32 "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs, art.3.a. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, UN Convention Against Transnational Organized Crime and the Protocols thereto, United Nations, New York, 2004, p. 42.

33 Council of Europe Convention on Action against Trafficking in Human Beings, retrieved 27 Aug 2016, from https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp

The Republic of Croatia ratified the Convention of the Council of Europe in June 2007.

34 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; retrieved 20 Aug 2016, from <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

of illegally acquired assets from convicted persons for the crime of trafficking in human beings.³⁵

4. National legal framework of the Republic of Croatia

The Republic of Croatia actively participates in the fight against trafficking in persons by creating a coherent system, and has ratified the most important international documents listed in the previous section, which are incorporated in the Croatian regulatory legal framework. Since 2002, statistics on the number of victims of trafficking in persons are being recorded. The national legislative framework related to trafficking in persons includes the Criminal Code,³⁶ the Social Welfare Act,³⁷ the Foreigners Act,³⁸ the Criminal Procedure Act,³⁹ the Act on the Agency for Combating Corruption and Organized Crime,⁴⁰ the Act on the Liability of Legal persons for Criminal Offenses,⁴¹ the Act on International Legal Assistance in Criminal Matters,⁴² the Witness Protection Act,⁴³ the Act on Compensation to Crime Victims,⁴⁴ the Act on Compulsory Health Insurance and Health Care of Foreigners in the Republic of Croatia⁴⁵ and the Family Act.⁴⁶ The national framework of the Republic of Croatia includes a National Plan to combat trafficking in persons for the period from 2012 to 2015,⁴⁷ the Protocol

35 See more: Croatian Government - National Plan for Combating Trafficking in Persons for the period from 2012 to 2015, retrieved 27 Aug 2016, from https://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/NACIONALNI%20PLAN%20FINALNO.pdf

36 Criminal Code, OG. No 125/11, 144/12, 56/15 and 61/15

37 Social Welfare Act, OG No. 157/13, 152/14 and 99/15

38 Foreigners Act, OG No 130/11 and 74/13

39 Criminal Procedure Act, OG No 121/11, 143/12, 56/13, 145/13 and 152/14

40 Act on the Office for Combating Corruption and Organized Crime, OG No. 76/09, 116/10, 57/11, 136/12, 148/13, 116/10, 57/11, 136/12, 148/13

41 Act on Liability of Legal Persons for Criminal Offenses, OG No. 151/03, 110/07, 45/11, 145/12

42 Act on International Legal Assistance in Criminal Matters, OG No 178/04

43 Act on Witness Protection, OG No. 163/03, 163/03

44 Act on Compensation to Crime Victims, OG No. 80/08, 27/11

45 Act on Compulsory Health Insurance and Health Care of Foreigners in the Republic of Croatia, OG No. 80/13

46 Family Act, OG No. 103/15

47 National Plan for Combating Trafficking in Persons for the period 2012-2015, retrieved 27 Aug 2016, from https://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/NACIONALNI%20PLAN%20FINALNO.pdf

for the identification, assistance and protection of victims of trafficking,⁴⁸ the Protocol on the integration/reintegration of victims of trafficking,⁴⁹ the Code of Conduct for the voluntary return of victims of trafficking,⁵⁰ and Standard operating procedures of the Ministry of social policy and youth for victims of trafficking in persons.

The Croatian Criminal Code (Article 106) criminalizes trafficking in people and includes multiple forms of exploitation. Criminalized are offenses of trafficking in persons for sexual exploitation (prostitution or other forms of sexual exploitation and pornography), the conclusion of unauthorized or forced marriage, labor exploitation (forced labor or servitude), establishing slavery or similar status, taking body parts, use in armed conflicts or committing unlawful acts. The prison sentence of 1-10 years⁵¹ shall be imposed on anyone who by force or threat, deception, fraud, kidnapping, abuse of power or difficult situation or dependant relationship, giving or receiving financial compensation or benefits to achieve the consent of a person having control over another person, or otherwise recruits, transports, transfers, harbors or receives a person or exchanges or transfers control of the person for the purpose of exploitation. The same penalty shall be imposed on anyone who recruits, transports, transfers, harbors or receives a child, or exchanges or transfers control of the child for the sake of their exploitation⁵² and who, knowing that the person is a victim of trafficking in persons, uses their services, which are a result of one of the forms of their exploitation.⁵³ Consent of a victim to exploitation has no effect on the perpetration of the offense.⁵⁴ A qualified form, carrying punishment of imprisonment of 3-15 years,⁵⁵ is envisaged in case where the offense is committed against a child, when the offense is committed by an official in the course of practice, when the offense is committed against a larger number of persons or the life of one or more persons has been deliberately endangered. Criminalized acts also include retain-

48 Protocol for the identification, assistance and protection of trafficking in persons, retrieved 27 Aug 2016, from https://vlada.gov.hr/UserDocsImages//Sjednice/Arhiva//54_09.pdf

49 Protocol on the integration / reintegration of victims of trafficking, retrieved 20 Aug 2016, from https://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/PROTOKOL%20%20INTEGRACIJI%20-%20konacno.pdf

50 Rules of Procedure for the Voluntary Return of Victims of Trafficking, retrieved 27 Aug 2016, from https://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/Protokol%20povratak.pdf

51 Art.106/1 Criminal Code (CC) of the Republic of Croatia

52 Art.106/2 CC

53 Art.106/4 CC

54 Art.106/7 CC

55 Art.106/3 CC

ing, concealing, damaging or destroying travel documents or identity document of another person, which are punishable by imprisonment up to three years.⁵⁶

Trafficking in persons for labor exploitation is very closely related to the phenomena of labor migration, both legal and illegal. The Labor Act, entitled the fundamental obligations and rights arising from employment,⁵⁷ lays down the conditions governing the employment relationship in a way that prohibits the possibility of labor exploitation. The obligation of the employer in the employment relationship is to give the employee work and to arrange the payment of a salary for that work, while the employee is obliged to personally perform the work according to the instructions of the employer.⁵⁸ The employer has the right to specify the place and manner of performing the work, but the employer must respect the rights and dignity of the employees,⁵⁹ and the employer is obliged to ensure safe working conditions that do not endanger their health.⁶⁰ Any direct or indirect discrimination in the field of labor and working conditions, including selection criteria and conditions for employment, promotion, vocational guidance, vocational training and training and retraining, is prohibited by law.⁶¹ The Labor Act refers to the complementary provisions of other laws such as the Act on Prevention of Discrimination⁶² and the Gender Equality Act,⁶³ which protect the dignity of workers and prohibit any kind of discrimination.

Given the above, it can be concluded that the national legal framework complies with international instruments in this matter. On the other hand, one should consider simplifying the legal framework because of the clear presence of a number of legislative solutions that can lead to problems of their application in practice and make the procedure of protecting the rights of victims of trafficking in persons more difficult.

5. Trafficking in persons for labor exploitation

When talking about trafficking in persons for labor exploitation it is appropriate to initially clarify the distinction between the concepts of *labor exploitation* and *forced labor*. The concept of *forced labor* implies coercion and consequently,

56 Art.106/5 CC

57 Art.7. Labor Act, OG No. 93/14

58 Art.7/1 *Ibid.*

59 Art.7/2 *Ibid.*

60 Art.7/3 *Ibid.*

61 Art.7/4 *Ibid.*

62 Anti-Discrimination Act, OG No.85/08

63 Gender Equality Act, OG No. 82/08

the labor is executed under duress, i.e. it is not voluntary. Thus defined concept of forced labor might be more appropriate in the context of human trafficking than the concept of labor exploitation given that, in accordance with the adopted international documents, it includes an element of coercion. However, *labor exploitation* is not synonymous with the concept of forced labor, namely, the worker can work more than the legal maximum of 40 hours a week while being exploited for labor so that the employer does not need to hire another worker for the remaining work hours; therefore, such a worker has voluntarily agreed to such a workload, so we cannot talk about forced labor. Accordingly, we can say that labor exploitation is just one mutual segment with forced labor, so labor exploitation is a much more specific concept than forced labor. On the other hand, trafficking in persons for labor exploitation also refers to just one part of the concept of forced labor. It would be practical to opt for a unique concept especially as in practice both are used depending on how it is interpreted by the laws of individual states.

People who have been trafficked for labor exploitation are typically made to work in sectors such as: agriculture, construction, entertainment, service industry and manufacturing.⁶⁴

Common features of trafficking in persons for labor exploitation are the following: they live in groups in the same place where they work and leave those premises infrequently, if at all; they live in degraded, unsuitable places, such as agricultural or industrial buildings; they are not dressed adequately for the work they do (they may lack protective equipment or warm clothing); they are given only leftovers to eat; they have no access to their earnings; they have no labor contract, work excessively long hours, have no choice of accommodation; they never leave the work premises without their employer and are unable to move freely; they are subject to security measures designed to keep them on the work premises; they are disciplined through fines, subjected to insults, abuse, threats or violence; they lack basic training and professional licenses.⁶⁵

The UNODC states the following circumstances as indicators that may serve for identifying cases of trafficking for the purpose of labor exploitation: notices have been posted in languages other than the local language; there are no health and safety notices; the employer or manager is unable to show the documents required for employing workers from other countries; the employer or manager is unable to show records of wages paid to workers; the health and safety equipment is of poor quality or is missing; the equipment is designed or has

64 United Nations Office on Drugs and Crime: Human trafficking indicators, retrieved 20 Aug 2016, from https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf

65 *Ibid.*

been modified so that it can be operated by children; there is evidence that labor laws are being breached; there is evidence that workers must pay for tools, food or accommodation, or that those costs are being deducted from their wages.⁶⁶

5.1. Forced labor

Forced labor is prohibited by law. Any form of forced labor is first of all in violation of the basic human rights guaranteed by the constitution, and then the rights in the field of labor law. The victim is usually forced to perform labor in poor working conditions that endanger their health and can be life-threatening. The definition of forced labor contained in the 1930 Convention of the International Labor Organization (ILO), no. 29, defines forced labor *as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered themselves voluntarily*.⁶⁷ Forced labor is, therefore, any voluntary work that is done under the threat of punishment. According to *Abolition of Forced Labor Convention, 1957 (No. 105)*, each Member of the International Labor Organization undertakes to suppress and not to make use of any form of forced or compulsory labor as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, as a method of mobilizing and using labor for purposes of economic development, as a means of labor discipline, as a punishment for having participated in strikes, as a means of racial, social, national or religious discrimination.⁶⁸ The 1957 Convention also completely prohibits forced labor in some exceptional circumstances. It should be noted that the 1930 Convention laid down certain exceptions relating to compulsory military service, normal civic obligations, lesser social labor, prison labor and work in the event of an emergency of war, calamity or threatened calamity (fire, flood, famine, earthquake, epidemic, invasion by animals, insects or vegetable pests), and any other circumstances that could endanger the life or well-being of the population.⁶⁹

Table 2 shows the typology of forced labor, which cites two divisions of forced labor by private companies: commercial sexual exploitation and forced economic exploitation of which a number of people are victims of trafficking.

66 *Ibid.*

67 Art.2/1 ILO Forced Labour Convention, 1930 (No. 29)

68 Art.1. C105 - Abolition of Forced Labour Convention, 1957 (No. 105), retrieved 20 Aug 2016, from http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312250

69 Art.2/2 ILO Convention No. 29.

Table 2. A typology of forced labour for statistical estimation⁷⁰

FORCED LABOR	
State-imposed	
Private-imposed	For commercial sexual exploitation
	For economic exploitation
	<i>of whom victims of trafficking in persons</i>

The UNODC specifies indicators that can be used for identifying persons trafficked for begging and petty theft: children, elderly persons or disabled migrants who tend to beg in public places and on public transport; children carrying and/or selling illicit drugs, have physical impairments that appear to be the result of mutilation; children of the same nationality or ethnicity who move in large groups with only a few adults; unaccompanied minors who have been “found” by an adult of the same nationality or ethnicity, move in groups while traveling on public transport: for example, they may walk up and down the length of trains, participate in the activities of organized criminal gangs; large groups of children who have the same adult guardian, who are punished if they do not collect or steal enough, who live with members of their gang, travel with members of their gang to the country of destination, live as gang members with adults who are not their parents, move daily in large groups and over considerable distances.⁷¹ The following can serve as an added criteria in detection of human trafficking for the purpose of begging: new forms of gang-related crime appear; there is evidence that the group of suspected victims has moved, over a period of time, through a number of countries; there is evidence that suspected victims have been involved in begging or in committing petty crimes in another country.⁷²

Trafficking in children and coercion of a child to voluntary and forced labor is one of the worst forms of child exploitation. Indicators that point to forced labor of children relate to situations in which the child is under the care of a person who is not a member of the family, but to whom a child contributes financially and is not able to leave that person.

5.2. Servitude

Forced labor is very often associated with certain households in which the victim is trapped and, therefore, forced to work and live. This form of forced

⁷⁰ Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005, p.10.,retrieved 20 Aug 2016, from <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>

⁷¹ United Nations Office on Drugs and Crime: Human trafficking indicators, retrieved 20 Aug 2016, from https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf

⁷² *Ibid.*

labor is called servitude. The downside of this kind of exploitation in terms of its disclosure relates to the inability to inspect and control private property as it is done with business premises. Subordinate victims in such private households are reduced to servants who perform all types of jobs and it is very difficult from their home position to seek help, given the omnipresent fear and physical restraint by the employer which is often accompanied by confiscation of identity and travel documents. Therefore, this form of exploitation requires special protection of victims who are *de facto* imprisoned and exploited for work as servants on private properties.

The common characteristics of people who have been trafficked for the purpose of domestic servitude are as follows: they live with a family but do not eat with the rest of the family, have no private space, sleep in a shared or inappropriate space; they are reported missing by the employer even though they are still living in the employer's house; they never or rarely leave the house for social reasons, they never leave the house without the employer; they are given only leftovers to eat; they are subjected to insults, abuse, threats or violence.⁷³

5.3. Debt bondage

Debt bondage is one of the forms of labor exploitation by using coercion and the existence of the debt with the aim of keeping a person in a subordinate position. Debt bondage or bonded labor is a common situation in which the workers are recruited in such a way that they borrow from their employer and accept the initial debt as part of the conditions of employment. The initial debt refers to given accommodation, food and other opportunities that the employer indicates as secured. Costs incurred by lending to people who work do not mean intrinsically debt bondage, but the growing high costs are a binding element of the obligation to return, which leads to exploitation. In most cases, persons who are subjected to debt bondage are workers who have emigrated to another country. This is due to: abuse of contracts, inadequate laws on hiring and employment of migrant workers, intentional infliction of exploitative and often illegal costs and debts to workers in the country of origin (OSCE, 2011:23). Misuse of the contract is not an indicator that this is forced labor; however, the use of threats, force or restrictions with the intention of keeping certain persons as workers is a form of forced labor.

73 *Ibid.*

6. Court practice - research and analysis

6.1. Perpetrators of a criminal act of trafficking in persons

Table 3 shows the number of charged, indicted and convicted persons for the crime of trafficking in persons in 2015 and 2014. In 2015, there was a slightly fewer number of charged persons (14) as compared to those charged (17) in 2014, but there was a larger number of indicted persons (7) in 2015 than in 2014 (5). However, more convicted persons were recorded in 2014 (4) relative to those convicted in 2015 (2).

Table 3. Criminal charges, indictments and convictions for a criminal offense under Article 106. CC RH⁷⁴

Art.105 CC RH TRAFFICKING IN PERSONS		
	2014	2015
CHARGES	17	14
INDICTMENTS	5	7
CONVICTIONS	4	2

6.2. Victims of trafficking in persons for the purpose of labor exploitation

Victims of trafficking in persons for the purpose of labor exploitation are mainly used in factories, manufactures, mines, plantations and for the work to private households (Božić, 2012: 115). Working conditions can often endanger the life of workers, such as: work with dangerous machinery or tools; work with dangerous chemicals; work underground, under water, works on huge heights or in confined spaces; work with heavy loads; work in an unhealthy environments with noise, high or low temperatures.⁷⁵ Labor exploitation of men refers to *Dirty, Difficult and Dangerous Jobs*.⁷⁶

Table 4 presents (strong, medium and weak) indicators pointing to labor exploitation.⁷⁷

74 Central Bureau of Statistics, adult offenders, application, prosecution and conviction in 2014, retrieved 20 Aug 2016, from http://www.dzs.hr/Hrv_Eng/publication/2015/SI-1551.pdf, Central Bureau of Statistics, adult offenders, application, prosecution and conviction in 2015, retrieved 20 Aug 2016, from http://www.dzs.hr/Hrv_Eng/publication/2016/SI-1576.pdf

75 Questions and answers on Children in hazardous work retrieved 20 Aug 2016, from http://www.ilo.org/ippec/Informationresources/WCMS_155246/lang--en/index.htm

76 Combating Trafficking in Women and Children: A Gender and Human Rights Framework retrieved 20 Aug 2016, from http://www.childtrafficking.org/pdf/user/unifem_gender_and_human_rights_framework.pdf

77 Trafficking in human beings for the purpose of labour exploitation, OSCE, retrieved 15 Aug 2016, from <http://www.osce.org/bih/106977?download=true>

Table 4. Indicators of exploitation

STRONG	MEDIUM	WEAK
Excessive number of work days or hours	Poor living conditions	No access to education
	Hazards at work	
	Low or no wage	
	Failure to comply with the law or the signed contract	
	Absence of social protection (contract, social security)	
	Very poor working conditions	
	Manipulation of compensations	

In the Republic of Croatia, in the period from 2002 until today, there were a total of 222 registered victims of trafficking, 148 of whom were Croatian citizens.

Table 5 Number of victims of human trafficking from 2002 to 2015⁷⁸

YEAR	NUMBER OF VICTIMS OF TRAFFICKING IN PERSONS
2002	8
2003	8
2004	19
2005	6
2006	13
2007	15
2008	9
2009	8
2010	7
2011	14
2012	11
2013	29
2014	37
2015	38
Total	222

Table 5 shows the number of victims of trafficking in the past 14 years. If we look at the last year, 2015, there were 38 identified victims of trafficking, while 35 victims were Croatian citizens, which supports the theory of human trafficking within the state. In 2014, almost half of the identified victims were minors, while in 2015 the situation was completely different given that only 4 minors were identified.

⁷⁸ From: Ministry of Interior, retrieved 15 Aug 2016, from available on: <http://www.policija.hr/31.aspx> Trafficking in persons in Republic of Croatia from 2014 to 2015, http://www.hck.hr/upload_data/txt_editor/Azil%20i%20migracije/Trgovanje%20ljudima/Sazetak.pdf,

Table 6 shows the number of identified victims of human trafficking according to the country of origin in 2014 and 2015. There was an equal number of victims of trafficking recorded in 2014 (37) and 2015 (38). Most victims were from Croatia, while there was also a small number of Hungarian and Romanian citizens.

Table 6. Number of identified victims of human trafficking according to the country of origin in 2014 and 2015⁷⁹

Number of victims - 2014	Country of origin	Number of victims - 2015	Country of origin
3	Bosnia and Herzegovina	2	Bosnia and Herzegovina
33	Croatia	35	Croatia
1	Romania	1	Hungary
TOTAL 37		TOTAL 38	

Table 7 shows the identified victims of trafficking by type of exploitation and by gender in 2014 and 2015. In Croatia, the first place is taken by victims of sexual exploitation, while the victims of labor exploitation are second. Accordingly, the increasing number of victims are women.

Table 7. Identified victims of trafficking by type of exploitation and by gender in 2014 and 2015⁸⁰

Form of exploitation in 2014	M	F	Form of exploitation in 2015	M	F
Labor	4	3	Labor	-	-
Sexual	4	27	Sexual	-	38
Transit	1	2	Transit	-	-
TOTAL	9	32	TOTAL	-	38

Table 8 shows the number of identified victims of trafficking in persons according to age and sex in 2014 and 2015. Most of the victims were in the age group of up to 30 years; however, in 2014 most of the victims were women aged up to 18 years, while in 2015 most of the victims were women aged 19-30.

79 From: Ministry of Interior of Republic of Croatia

80 *Ibid.*

Table 8. Number of identified victims of trafficking in persons by age and sex in 2014 and 2015⁸¹

Age 2014	M	F	Age 2015	M	F
0 - 18	4	18	0-18	-	4
19 - 30	5	3	19-30	-	17
31-40	1	2	31-40	-	9
41-50	-	-	41-50	-	6
Other	2	2	Other	-	2
TOTAL	12	25	TOTAL	-	38

7. International cooperation of states in the combat against trafficking in persons and labor exploitation

Crime as the most dangerous negative social phenomenon has not been eradicated; in fact, it has survived all evolutions and revolutions, adapted to the changed circumstances and developed into new and more dangerous forms. Contemporary forms of crime are characterized by great diversity and mobility because this phenomenon knows no boundaries and physical barriers. And beyond that, criminals and criminal organizations connect and unite for easy operation and acquiring illegal material benefits. This is especially true for organized crime which has a transnational character, while the mafia organizations get linked to achieve extra profits and easy money. A particularly illustrative example from the recent past is the war in former Yugoslavia, which was no obstacle for criminals to continue their criminal activities and to take advantage of war conditions for joint action.

The international community has long been aware that an effective fight against organized and other forms of crime cannot only take place within national borders but also on a wider international scale, with the common commitment of the countries and international organizations. In addition to the measures and actions that countries are taking at the national level, measures at the international level are also very important, which according to their character and nature are normative and operational. (Nikač Ž, 2015: 65-78) The identical approach is used when it comes to human trafficking and labor exploitation as a specific form of this crime. These are activities, measures and actions that are established at the multilateral, regional and bilateral level.

81 *Ibid.*

At the multilateral level, a number of international documents were adopted relevant to the suppression of human trafficking and labor exploitation. In addition to the "parent" documents, undoubtedly the most important act is the Palermo Convention,⁸² which is the main software for the operation of the judicial authorities, the police and the specialized agencies in the fight against transnational organized crime. The Convention is a revolutionary current document since it establishes special investigative techniques and methods, special bodies trained for the fight against organized crime, multi-agency approach and is committed to the harmonization of national legislation and harmonization of court practice.⁸³

At the regional level, of special importance in the fight against transnational organized crime and its forms, embodied in the Police Cooperation Convention for Southeast Europe (PCC SEE) and the SELEC Convention (Southeast European Law Enforcement Center).⁸⁴ The main objective of these documents is to facilitate communication between states and their specialized services, the harmonization of national legislation and the harmonization of court practice. This also applies to trafficking in persons and labor exploitation as a specific form of this offense.

At the bilateral level, countries are mainly opting for the conclusion of popular cooperation agreements that are in the function of implementation of multilateral agreements, but they can be independent international legal documents. Such is the case with all the republics of the former Yugoslavia which have concluded agreements on mutual police and criminal judicial cooperation, which especially emphasize the cooperation of states and their authorities in the fight against organized crime. (Nikač, Juras: 2015: 283-302)

Operational measures to fight organized crime include cooperation of states and their bodies and specialized international organizations. The best-known types and forms of cooperation are related to the exchange of information, the joint police operations and joint investigation teams as well as liaison officers. In the case of trafficking for labor exploitation, there is a great significance of the activities of border police, specialized international organizations (e.g. FRONTEX in the EU) and the specific national agencies (e.g. labor inspectorates) because they exercise control and supervision of migrant flows and migrants at the border and within the territory of a country. Another significant development is the cooperation of judicial authorities of the state, especially the attorney's office

82 Op.cit. in note 32.

83 Op.cit. in note 29.

84 Božić V, Nikač Ž, *Criminal incriminations based on the United Nations Convention Against Transnational Organized Crime in the Criminal Legislation of the Republic of Croatia and the Republic of Serbia*, Proceedings of the international conference, Faculty of Security in Skopje, 2016, retrieved 25 Sep 2016, from <http://www.fb.uklo.edu.mk/>

for organized crime and criminal courts, which cooperate during the extradition proceedings and certain procedural legal actions (delivery of files, requests, witness hearings, hearings of injured parties, expertise, etc.).

In combating organized crime, a special role is played by specialized international organizations; the leading agency is undoubtedly the International Criminal Police Organization (INTERPOL). Member States shall participate in the work of the organization through its bodies and forms of work, including in particular the National Central Bureau (NCB) in order to perform the daily exchange of information. The organization has specialized operational departments to combat all forms of transnational organized crime, trafficking in human beings and all its modalities (sexual exploitation, labor exploitation, forced labor, etc.). On the Continent, the most significant is the European Police Office (EUROPOL), which is organized at the EU level but has significant cooperation with non-EU countries, with which periodic meetings are held for the purpose of establishing joint actions against organized crime. There are also several non-governmental international organizations that have a supporting role in the formation of joint actions, measures and actions in combating emerging forms of crime (SEPCA - Southeast Europe Police Chiefs Association, MARRI - Migration, Asylum, Refugees Regional Initiative, PF - Police Forum).⁸⁵

Therefore, because of the weight and the actuality of the problem of human trafficking for the purpose of all forms of exploitation, international cooperation is imperative for the survival of the international system, and hence it imposes obligations on the states. Croatia, as a full member of the EU, has specific obligations to the organs and bodies of the EU, as well as in the implementation of a common foreign policy set out in the work relating to illegal immigration. This means a significantly better control of government (Croatia) and external borders (EU) in cooperation with all agencies and services at national, regional and EU level.

8. Conclusion

Trafficking in persons with the intention of labor exploitation represents the crudest violation of fundamental human rights and as such must be rated and qualified. It should not be treated only through non-compliance with labor law or viewed in the context of illegal migration. Putting the aforesaid into practice requires increased activity of the country in the field of justice and prosecution of this type of crime, as well as adequate assistance and protection of victims of labor exploitation as a form of human trafficking. It is necessary to provide a complete support system for the victims of trafficking for labor exploitation,

85 Op.cit. in note 51.

which includes the right to information, the right to medical and psychological care, the right to legal assistance and the protection of privacy. Consequently, first of all, it is necessary to strengthen and improve the methods to ensure timely identification of victims of trafficking for labor exploitation. Second, it is necessary to conduct public campaigns and education of potential migrants on labor exploitation as a possible form of human trafficking.

Given that labor exploitation is related to black labor market, it is necessary to reinforce the Labor Inspectorate control of employment agencies who mediate in finding jobs for both legal and natural persons. It is necessary to impose and monitor the flow of money that is gained through this type of criminal activity in order to prevent its legalization. Trafficking in persons for labor exploitation affects the labor market and all activities; therefore, it is necessary to impose daily monitoring and control of the labor market to avoid the black market economy as much as possible.

In combating human trafficking for the purpose of labor exploitation, an important role is played by specialized bodies, the police, the prosecution and the court, which must cooperate with each other impeccably. In addition to the multi-agency approach, a versatile international cooperation with neighboring countries, as well as cooperation at the EU level, is needed at the national level. The Republic of Croatia has a special responsibility because its territory is, on the one hand, on the eastern external border of the EU and, on the other hand, it borders with the countries of former Yugoslavia and resists the current migrant crisis, which has seriously threatened the system of the states of the old continent.

Finally, it is certain that the harmonization of legal standards and uniform legal practice greatly contributes to combating this form of human trafficking. In that respect, it equally combats other related crimes such as forgery of documents, illegal entry, movement and stay in Croatia, another Member State of EU or signatories of the Schengen Agreement, crimes of fraud and other crimes.

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**RADNA EKSPLOATACIJA KAO NAJČEŠĆI OBLIK KAZNENOG
DJELA TRGOVANJA LJUDIMA UNATOČ KONTROLI
DRŽAVNIH GRANICA I TRŽIŠTA RADA**

Rezime

Radna eksploatacija najčešći je oblik kaznenog djela trgovanja ljudima, drugi po redu oblik iskorištavanja žrtava, odmah poslije trgovanja ljudima u svrhu seksualnog iskorištavanja. U radu će se dati pregled međunarodnog pravnog okvira i nacionalnog zakonodavnog okvira Republike Hrvatske kojima je zabranjen prisilan rad i trgovanje ljudima u svrhu radnog iskorištavanja. Istražit će se i analizirati svi mogući oblici radne eksploatacije: prisilni rad isluženje, dužničko ropstvo te prisilni rad i sluzenje djece. Istražit će se i pravomoćne sudske odluke kako bi se dobili podaci o optuženim i osuđenim počiniteljima i izrečenim kaznama. Ukazat će se na žrtve radnog iskorištavanja, prema spolu, dobi, državljanstvu kao i prema grani u kojoj su žrtve iskorištavane. Zaključno, na temelju utvrđenog postojećeg stanja pokušat će se navesti prijedlozi de lege ferenda.

Ključne riječi: *radna eksploatacija, trgovanje ljudima, žrtve prisilnog rada, kršenje ljudskih prava.*

Faculty of Law,
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Introductory Note

The International Scientific Conference “Legal, Social and Political Control in National, International and European Union Law”, held on 19th and 20th May 2016 at the Faculty of Law, University of Niš, gathered a large number of foreign and local experts in different areas of law. The choice of the Conference topic reflects an endeavour of legal science to contribute to the development of legal, social and political control, to improve the quality of protection of both natural and legal entities in all domains of social relations, and to reduce the growing disparities and inequalities among people at the global and local level.

There is a general consensus that the Conference proceedings demonstrate a high level of scientific attainment, both in terms of the authors’ choice of topics and contents of the submitted papers. The best evidence is the publication of more than 60 scientific articles, which have been published in two thematic collections of papers of the Law Faculty journal: “Collection of Papers of the Law Faculty in Niš”. The first thematic collection comprises 47 papers in English and the second one includes 14 papers in Serbian. The publication of these collections of Conference proceedings is an expression of an effort to make the research results available to the general public in order to foster scientific and professional debate on theoretical and practical issues important for the community at large.

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