



BRIEF

ALERT



Omissions of the State in the Case of Construction of the 'Linglong' Factory from the Rule of Law and Anti-Trafficking Perspective

Belgrade, December 2021



**#EY
ЗА ТЕБЕ**

03



Vietnamese workers have been hired to build the 'Linglong' factory in Zrenjanin, and they are in an extremely difficult position. They live in conditions unworthy of human beings, while the employment contracts they concluded in Serbia are unlawful in many different ways and aimed to exploit them for cheap labour. From the overall context and the established facts, it is clear that the workers were brought to Serbia as unprotected labour force. The circumstances of their entry into the country, and their residence and work permits (if they have them at all), are not known.

After the media reports and testimonies of some of the workers, the Chinese company issued a reaction statement. The competent Serbian authorities, however, failed to react to the allegations of civil society organisations about the existence of indicators that the crime of human trafficking is involved in this case. It is clear that the overriding goal of the state's (in)activity is to relativise the circumstances of the case and move them into the sphere of political conflict, which leads to the conclusion that the state has no capacities to respond properly to this crime, and that the principle of the rule of law is effectively subordinated to political decisions.

Time sequence of events

On 6 November 2021, the Vojvodina Research and Analytical Centre 'VOICE' published a [text](#) on the extremely difficult living conditions of 750 Vietnamese and Chinese workers engaged on the construction site of the 'Linglong' factory, stating that they live in inappropriate, dilapidated barracks that previously served as warehouses in the Zrenjanin industrial zone, without drinking water, hot water and heating, sometimes even without electricity. On 12 November, the 'N1' Television broadcast a news [programme](#) on the living conditions of 500 Vietnamese workers. They pointed out that some of them want to return to Vietnam, but their passports were confiscated and they can no longer get in contact with the Vietnamese agency that brought them to Serbia.

Representatives and volunteers of several civil society organisations went to visit the site. In a joint [statement](#) made on 15 November, 'ASTRA' and 'A11' stated that the circumstances of life and work of Vietnamese workers indicated potential trafficking in human beings for the purpose of labour exploitation. The next day, members of the private security [prevented activists from approaching Vietnamese workers](#), while on 17 November activists [managed](#) to take the worker who was fired for talking to the media out of the barracks. After that, the workers [went on strike](#). On 18 November, one of them [told the 'N1' television](#) that the labourers have received one salary for four months of work, that their employer has left them, and that they had handed over their passports and therefore could not leave the country. On the same day, the 'Linglong' company issued

a [statement](#) denying any connection with Vietnamese workers, stating that their passports have been returned and that they had been hired by a contractor.

On 18 November, the Office of the Protector of Citizens [informed the public](#) that workers do have residence and work permits, and the police issued a decision banning the use of two buildings for housing purposes due to the possible danger to the lives of workers housed in them. Most of the workers were then relocated elsewhere. In the [announcement](#) of 19 November, organisation 'Solidarna kuhinja' [Solidarity Kitchen] pointed out that workers are being forced to sign a statement that they are satisfied with the living conditions and accommodations, and that, in their new accommodations, they were being 'protected' by private security which prohibited any contact with them.

On 26 November, 'A11' [stated](#) that the management of the Chinese company 'Linglong' had taken some of the workers' passports, under the threat that no one in the group would be paid if they failed to surrender their documents.

Illegalities in the workers' contracts

Based on insight into the contracts the Vietnamese workers signed with their employers in Serbia, i.e. two Chinese companies registered in Serbia and working as subcontractors on the 'Linglong' construction site, there are a number of irregularities that point to labour exploitation:

- A lower amount of salary is agreed for a worker who does not meet the employer's criteria during the probationary period;
- The set working hours are in breach of the Labour Law: nine hours per day, six days per week. The contracted working time of 54 hours exceeds the maximum allowed working time of 40 working hours per working week;
- The amount of the base salary is agreed for 54 working hours per week, which is illegal;
- The employee's annual leave is regulated contrary to the Labour Law and amounts to 12 days per year, although the legal minimum in Serbia is 20 working days per year. The employee is allowed to use the annual leave after 12 months of work, which is contrary to the Labour Law;
- Trade union activity is cited as one of the reasons for dismissal from employment. Freedom of association, trade union membership and trade union activity is regulated by the Constitution of the Republic of Serbia, international instruments and the Labour Law, and is absolute and inalienable;



- An employee who unilaterally terminates the employment contract bears all the costs of his employment, as well as the cost of airline tickets, which is contrary to the provisions of the Law on Employment of Foreigners, as well as the provisions of the Labour Law governing compensation for damages.

According to [BIRN](#), the workers also signed additional illegal agreements with the employer, based on which they are charged RSD 650 for each day of justified absence from work, including absence caused by illness.

The provisions of the employment contract concluded by the Vietnamese workers in Serbia must also be interpreted in light of the provisions of the agreement (contract) they had signed in Vietnam with the agency that found them employment in Serbia. According to [BIRN](#), by signing these agreements the workers were forced to give up numerous rights, even the right to sue the agency. The agency, on the other hand, incorrectly informed them about the regulations and customs in Serbia.

Statements and reactions of state authorities and services

Reactions of the state authorities charged with the control of workers' rights and the investigation of circumstances in cases of suspected trafficking in human beings were mostly non-existent or apologetic at best. State officials focused exclusively on the analysis of the Vietnamese workers' living conditions and accommodations, concluding that the story actually aimed to [politically persecute investors](#). They did not address any other controversial elements presented by the media that pointed to human trafficking.

After the initial reaction of the employees in the office of the Protector of Citizens on 18 November, the Protector of Citizens visited the scene on 23 November and gave a [statement](#), saying that, in his opinion, there were no elements of the crime of human trafficking. However, he did not support this with any evidence. Given the lack of argumentation, and the fact that the overall assessment of the Vietnamese workers' situation was given without reference to the important [elements of the possible existence of human trafficking](#), it can be concluded that said assessment was arbitrary and superficial.

The Labour Inspectorate did not offer any specific statements regarding the circumstances. From the above mentioned media sources, it can be concluded that it has conducted extraordinary control and found irregularities in terms of safety and protection of workers' health, which happen to be the responsibilities of the employer. However, [BIRN article](#) mentioned that the labour inspectorate treated Vietnamese workers as workers that were temporarily sent to Serbia by a foreign employer, and that its responsibility included only control of the

safety and health at work, not employment contracts or working conditions. This, however, does not correspond to the established facts. The Protector of Citizens [told](#) the media that Vietnamese workers had residence and work permits. As foreigners, they concluded employment contracts with companies that are registered with the Business Registers Agency of the Republic of Serbia, and which - in terms of the labour law - are thus viewed as domestic employers. Article 11 of the employment contract signed by the workers in Serbia stipulates that the law of the Republic of Serbia shall be applied to all issues concerning the employment relationship under the contract, which is a general rule that stems from the Labour Law and the Law on Employment of Foreigners.

The Centre for the Protection of Victims of Trafficking in Human Beings has not yet commented on the case, although civil society organisations have informed it of all the circumstances.

Existence of elements (indicators) of human trafficking

The Republic of Serbia is a signatory to a number of international instruments that have been violated in this case: the United Nations Convention on Transnational Organised Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime; Council of Europe Convention on Fight Action against Trafficking in Human Beings; Convention 29 of the International Labour Organisation on Forced Labour; and Convention 105 of the International Labour Organisation on the Abolition of Forced Labour.

Article 388 of the [Criminal Code](#) contains a definition of the criminal offence 'trafficking in human beings'. In relation to the established circumstances of the case of labour exploitation of Vietnamese workers, it can be concluded that there are grounds for suspicion that certain elements of this criminal offence do exist:

- 1) Workers have been misled that they would be working under significantly better working conditions;
- 2) They have been misled about the conditions of their accommodations and the food they would be given;
- 3) The contractual obligations they accepted (which, as explained above, are unlawful in Serbia, but the workers could not have known this) effectively prevented them from quitting and terminating their employment contracts, i.e. returning to their home country, particularly in light of the fact that they were made responsible for transport and visa costs in the event of unilateral termination of the employment contract;



- 4) Someone had taken advantage of the fact that these people come from underdeveloped areas and had lived in difficult financial circumstances. Back in their home country, they were forced to sign agreements renouncing a number of rights and agreeing to work under conditions that indicate that their position was completely subordinated to that of their employer;
- 5) Upon arrival in Serbia, they signed employment contracts that are unlawful in many aspects, and were misled about this fact;
- 6) They are being unlawfully punished financially (e.g. for absence from work due to illness, for being late for work, etc.);
- 7) Their personal travel documents have been retained by the company that employs them;
- 8) Their movement was restricted; after they tried to relocate, individuals were detained by physical force in the barracks in which they lived. This physical detention continued with the engagement of private security, even at the locations to which the workers were transferred;
- 9) Contracted salaries were not paid regularly;
- 10) All the above was done in order to exploit their work, and has resulted in the establishment of a relationship similar to slavery.



Recommendations:

- Allow the Centre for the Protection of Victims of Trafficking in Human Beings to prepare an expert assessment of whether these workers are in fact victims of human trafficking;
- Examine all the circumstances of employment (especially the existence of work and residence permits) and work of the Vietnamese workers; the labour inspectorate should order the employer to eliminate any irregularities in the workers' engagement and the contracting of working conditions;
- Make it possible for workers to return to their home country if they wish to do so. If they want to stay in Serbia until the expiry of the contract, provide them with conditions needed for dignified life and housing;
- Take appropriate action against those responsible, in accordance with the established facts and circumstances of the case. For example, if workers were indeed issued work permits, prosecute the person who had issued these permits despite the fact that the contracts submitted by the employer were clearly unlawful;
- Prosecute all responsible persons if it turns out that there are elements of the crime of trafficking in human beings, primarily responsible persons with the employer (contractor).
- Enable effective mechanisms to prevent similar situations in the future, especially in light of the fact that this is not the first time that foreign workers have been exposed to unlawful treatment in the Republic of Serbia.

* This analysis was prepared by prEUgovor member organisation ASTRA - Anti-Trafficking Action in collaboration with Mario Reljanović, PhD.

About prEUgovor

Coalition prEUgovor is a network of civil society organisations formed in order to monitor the implementation of policies relating to the accession negotiations between Serbia and the EU, with an emphasis on Chapters 23 and 24 of the Acquis. In doing so, the coalition aims to use the EU integration process to help accomplish substantial progress in the further democratisation of the Serbian society.

Members of the coalition are:

Anti-Trafficking Action (ASTRA)

www.astra.rs

Autonomous Women's Centre (AWC)

www.womenngo.org.rs

Belgrade Centre for Security Policy (BCSP)

www.bezbednost.org

Centre for Applied European Studies (CPES)

www.cpes.org.rs

Centre for Investigative Journalism in Serbia (CINS)

www.cins.rs

Group 484

www.grupa484.org.rs

Transparency Serbia (TS)

www.transparentnost.org.rs

PrEUgovor's key product is the [semiannual report](#) on the progress of Serbia in Cluster 1.



Follow prEUgovor activities on:

 www.preugovor.org

 [prEUgovor](#)

 [prEUgovor](#)



This document has been produced with the financial assistance of the European Union, as part of the project "PrEUgovor Policy Watch: building alliances for stronger impact in uncertain future". The contents of this document are the sole responsibility of the prEUgovor coalition and can under no circumstances be regarded as reflecting the position of the European Union.