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Sparkling nails, precarious circumstances. Working conditions in the Nail Industry in Switzerland and the risk of Human Trafficking for Labour Exploitation

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Executive Summary of the research by WAV

In recent years, specialised organisations and media from neighbouring countries have reported on networks that systematically bring people, especially from Vietnam, to Europe for the purpose of exploiting their labour. Particularly in connection with the destination countries of Great Britain, Germany, Belgium and the Netherlands. They often name nail salons as places of exploitation. Specialised organisations from Vietnam also report how Vietnamese people experience violence and exploitation on their way to and through Europe. There are reports of debts up to the five-figure range, which migrants have to pay off for the journey. The debts increase in the course of the journey and must be worked off in several stages. Also well documented are false promises regarding the work, accommodation and payment awaiting the migrants.

In Switzerland, few victims of human trafficking for exploitation of labour are currently recognised in connection with nail salons – although the industry can be considered vulnerable to exploitative conditions, as this research clearly shows.

Nevertheless - or perhaps because of this - several Swiss public authorities and professional organisations independently shared relevant observations and experiences in this context with the authors of the study:

- While the majority of nail studios in Switzerland are small enterprises, so-called "one-person studios", there are also larger salons with several employees. The research showed that many of these larger nail studios are run by people from the Asian and especially Vietnamese diaspora.
- According to the authorities, it is in larger studios that they repeatedly pick up workers with EU passports that are issued to other people. These are mostly passports from Eastern European countries.
- The individuals who came into contact with the authorities and specialised organisations in German-speaking Switzerland as potential victims of human trafficking for exploitation of labour in nail studios were mostly of Vietnamese origin. Some authorities also mentioned individuals from neighbouring countries (Thailand, Cambodia, Philippines, China).
- The knowledge of the Swiss specialised organisations regarding travel routes (via Russia and Eastern Europe) and exploitative situations (debts, working conditions) largely coincides with the experiences of foreign professional organisations. There are also several indications that trafficked persons are afraid to cooperate with the local authorities for various reasons, for example because perpetrator networks put pressure on them. This is also confirmed by a person of Vietnamese origin who has worked in the nail salon industry.

These findings suggest that there are also cases of human trafficking for exploitation of labour in Swiss nail salons. In any case, the question arises whether it can be assumed that a phenomenon well documented in Germany, Belgium, Great Britain and other countries, stops completely at the Swiss border. On the other hand, there are also aspects which suggest that Switzerland plays a subordinate role in connection with human trafficking for exploitation of labour in nail studios:

- In contrast to northern Germany, Belgium and the Netherlands, Switzerland is not geographically on the route to Great Britain, which is widely regarded as an important destination country. Various foreign specialised organisations dealing with the topic for years state that Switzerland has not played a role in their experience so far. Basically, it can be said that the research has come across individual cases of labour exploitation up to human trafficking in nail salons, but not on a large scale and not with the systematics as documented abroad.
- People from the nail salon industry indicate that the number of official controls has increased significantly in recent years. This makes it more difficult to employ people without valid papers. At the same time, this can cause other difficulties for those concerned (see below).

Furthermore, the research shows that various structural factors enabling human trafficking for exploitation of labour or increasing the risk for people to become victims of trafficking must be considered.

- For example, there are clear gaps in the law for effective employee protection for example; the nail salon industry is weakly regulated in Switzerland, even compared to related industries. There are hardly any unionization efforts. Although the industry is

subject to the Swiss Labour Law, the lack of binding minimum wages and the lack of recognised training and thus of a protected job title, sets the threshold of requirements to open a nail salon comparatively low. Also, binding hygiene regulations do not exist, although such regulations would be appropriate due to the work performed (use of chemicals, fine dust). All these factors favour the exploitation of workers, especially of workers who are employed as “unskilled workers” or as “interns” at low wages. Accordingly, the working conditions for many employees in nail salons are characterised not only by low wages but also by unaccounted social benefits, unclear working time regulations (e.g. work on call), non-granting of holiday compensation or competition clauses in the contract.

- In addition, there are numerous global contexts that multiply the risk of exploitation: The destruction of livelihoods due to climate change (particularly acute in Vietnam) and the related "desire" or pressure to migrate because of such or other hardships; or the recruitment and precarious employment of migrants in European countries, while migration laws for so-called third-country nationals remain restrictive.

Even though not all nail designers end up in an exploitative employment and many work in a self-determined manner, the above structural conditions increase the vulnerability of vulnerable people to become victims of labour exploitation and even human trafficking. Political and public-media focus plays a major role in whether, respectively which individuals are recognized as victims of trafficking.

- To date, there is little awareness of the situation of victims of trafficking for exploitation of labour among the Swiss. In addition, the focus of the authorities is not primarily on victim protection – this can lead to victims not being identified, not receiving support or even being punished for their activities or illegalized stay in Switzerland during the exploitation situation.

Also, there are practically no testimonies from victims in the media and only few voices of specialised victim protection organizations are heard in the media. Accordingly, the public image of victims is characterized by stereotypical notions regarding all victims of exploitation and human trafficking, in this context especially of Vietnamese people.

How these results are to be weighted is discussed in the following Chapter.

FIZ Findings and Recommendations

Migration from Vietnam

The research commissioned by FIZ shows why people from Vietnam and neighbouring countries migrate. Poverty is an important driver. But climate change, the destruction of natural resources, soil salinization and major crop losses also force many people to seek their livelihoods elsewhere. Significantly, many people make the autonomous decision to migrate – at least initially. They migrate to places where there are already connections. For example to Europe where other people from Vietnam have been living for some time, having been recruited as workers in earlier years. Connections, often (family) networks build bridges.

Migration is expensive, particularly to Europe and especially for third-country nationals (non EU/EFTA). For third-country nationals legal migration to Switzerland is possible only in exceptional cases, e.g. for high-skilled workers. Switzerland's restrictive immigration policy does not prevent people from migrating – but it does prevent safe migration paths and escape routes and it drives people into dependencies that can be exploited by human traffickers. Traffickers

charge expensively for the arrangement of residence papers, work permits, visas and tickets and people end up in debt. The debts put them under pressure, they become vulnerable to blackmail and thus exploitable. Every stage of migration and residence costs money. Employment opportunities (in nail studios, etc.) to pay off debts seem redemptive, but in many cases they create further dependencies: The debts to be paid off are often excessive. The place of residence is linked to the place of work. The salary is often very low. The industry is little regulated. All these conditions lead to increased vulnerability.

The situation in Switzerland

The research also examines the situation in Switzerland. The local nail industry is characterized by a weak regulation. Although Swiss Labour Law applies, what is true for so many low-wage industries also applies here: What is written on paper does not always correspond to reality. There is no minimum wage, no collective labour agreement, and there are very few bureaucratic hurdles to opening and working a nail studio for employers as well as for workers (e.g. no infrastructure or training requirements). Accordingly, working conditions are often poor: low wages, long working hours, hardly any health protection.

The regulatory situation in the nail industry allows unqualified workers easy access to the labour market. The regulatory situation, however, does not guarantee worker protection. Sanctions against nail salon operators in this unregulated field are limited due to the lack of legal provisions.

- ➔ There is a need for labour law steps for improved employee protection in the nail industry, which take into account the particular vulnerability that arises from multiple dependencies. In addition to regulation, it would also be important to organize workers, as positive examples from the USA or other industries in Switzerland (e.g. care workers in Basel at Respekt@vpod) show.

The research also shows that in Switzerland there are hardly any cases of identified victims of human trafficking for the purpose of labour exploitation in nail studios, hardly any criminal proceedings and no convictions so far. Hardly any cases of human trafficking in this sector are uncovered. One possible reason is that there is little knowledge in Switzerland about human trafficking for labour exploitation in general, but also specifically in the nail industry.

Inspections by public authorities

The research shows that potential victims are under pressure: They have to pay off their debts, are threatened, have no knowledge of the language or their rights. In this situation, only few dare to defend themselves against exploitative conditions and the perpetrators.

- ➔ The decisive factor is what authorities focus on during inspection: The lack of residence papers, of permits or contracts can provide initial indications of exploitation. It is more important however that inspectors focus on working conditions, because this is where exploitative situations can become apparent.
- ➔ Furthermore, it is essential not to criminalize (potentially) exploited individuals in accordance with the non-punishment principle (e.g. for violations of residence or labour laws), but to provide them with support. They should be brought into contact with a specialized victim protection agency as soon as possible, so that it can help identify potential victims and protect and support them.

Criminal proceedings and laws

Making statements to the criminal prosecution authorities often involves a high risk for victims – especially if they are under pressure from third parties, but also if they fear the loss of their income, even if it is low. Nevertheless, the testimonies of trafficked persons are indispensable for the conduct of criminal proceedings for human trafficking. Therefore, victim protection is highly

significant. The experience of FIZ clearly shows that only victims who feel protected and supported dare to testify against the perpetrators.

It is also important that prosecution authorities examine the situation from the perspective of trafficking in human beings when there is a suspicion of exploitation. Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings defines "abuse of a position of vulnerability" as a coercive means of trafficking. But the Swiss Penal Law does not provide a clear definition: Article 182 StGB does not specify any coercive means, which makes the application of the provision difficult. Consequently, cases of labour exploitation are often prosecuted by criminal authorities under the heading of "usury" instead of human trafficking. In these cases, victims do not have access to the rights they would be entitled to as victims of trafficking. In the research, representatives of the authorities stated that they had to discontinue proceedings concerning human trafficking partly due to a lack of evidence and/or victims' statements. A more concrete definition of the crime of trafficking in human beings could facilitate both the collection of evidence and the protection of victims in such cases.

- ➔ Police and law enforcement agencies need to be better trained and specialized in identifying victims of trafficking for labour exploitation.
- ➔ There is an urgent need to concretize the existing criminal offense of human trafficking in Art. 182 with regard to the means of coercion, as these are often not sufficiently taken into account and included, especially in cases of human trafficking for the purpose of labour exploitation.

In Germany, in addition to the offence of "human trafficking", there is also an offence of "labour exploitation". Various parties have called for such an additional offence in Switzerland as well.

- ➔ From the perspective of victim protection, it is essential that such an offence guarantees support for victims in accordance with the Victim Assistance Act. This should create the possibility to protect individuals affected by labour exploitation, even if not all criteria or elements of trafficking for labour exploitation are clearly present.

Roots of exploitation

Precarity in the nail salon industry is not based on failures of individuals, but is conditioned by power inequalities within the global capitalist system. The poverty gap between the Global North and the Global South, the demand for cheap labour, coupled with restrictive migration laws in the richest countries are structurally favorable conditions for trafficking in human beings, especially for the purpose of labour exploitation.

- ➔ Legal labour opportunities and legal migration routes are urgently needed to overcome these mechanisms. This is the only way to prevent spirals of indebtedness and the dependencies they create. Only then will the risk of exploitation and human trafficking be reduced.

The findings from the study "Sparkling nails, precarious circumstances" regarding the nail industry can also be extended to other sectors that exhibit similar structural conditions: for example, agriculture, logistics, gastronomy, hairdressing salons or housekeeping.

- ➔ Recognizing exploitation and trafficking in human beings requires political will, a shift in perspective away from "illegal migration" or "illegal activity", towards enshrining and improving implementation of victims' rights, and more awareness-raising, networking and media work on human trafficking for exploitation of labour.

Looking at the prevailing narratives

Media coverage of labour exploitation in nail salons in German-speaking Switzerland is strongly characterized by a narrative of law enforcement. Voices of people working under precarious conditions in the industry are not to be found.

The public discourse on work in nail salons is shaped by stereotypes, as is often the case when those affected rarely have their say. Media reports on the topic of labour exploitation or human trafficking in nail salons usually refer to Vietnamese people in a general manner. Professionals – including the authorities – often talk about Vietnamese people in general, even if the people in question have European passports. The narrative of "Vietnamese secrecy" is invoked by many sides. Allegedly "Vietnamese secrecy" makes it difficult to work with victims or even to identify them as such. A similarly culturalizing argument is used to explain why Vietnamese nail designers in particular work in Swiss nail studios under poor working conditions: It is claimed that Vietnamese people are "dexterous, hard-working and undemanding". Therefore, they would not experience certain situations as labour exploitation, or they were simply used to different standards.

- ➔ Instead of referring to such simplified and degrading culturalized explanations, the causes of the situation of exploitation should be considered. For example, there should be more discussion and reporting on *why* people make their way to Europe, *why* they are affected by labour exploitation or even human trafficking. The focus should also be on why they agree to precarious working conditions and how migration laws and gaps in workers' protection in Europe and in Switzerland make these conditions possible in the first place.

Furthermore, it would be interesting to follow the boom of cheap manicure and pedicure in Switzerland and critically relate the increasing demand to the poor working conditions. It should be noted that this demand also secures an income for numerous people. Against this background, it is important to seek the perspectives and experiences of the people affected and to meet the apparently high demand within dignified working and migratory conditions.

The recommendations at a glance

- For the nail industry
 - Improved employee protection in the nail industry, including promotion and support of trade union (self-)organisation.
- For official inspections of the nail industry
 - Law enforcement should focus on working conditions and indications of exploitation. Prevent criminalization of potential victims.
 - Improved identification of victims of human trafficking for labour exploitation and early cooperation with specialized victim protection organizations.
 - Training for law enforcement agencies on the specifics of human trafficking for labour exploitation.
- For victim protection
 - Strengthening of victims' rights in the Criminal Code: Clarify Criminal Code Article 182 StGB on Human Trafficking (specify means of coercion)
 - and/or introduce a separate offence of labour exploitation that gives victims access to assistance services even if they cannot be fully identified as victims of human trafficking.

- Political will to anchor victim protection rights of trafficked persons instead of criminalizing them.
- For migration laws
 - Create legal labour and migration channels. They reduce dependency, exploitability and vulnerability.
- For specialized agencies
 - Do more awareness-raising, networking and media work.
- For the media
 - Instead of culturalizing patterns of explanation, focus on structural reasons for the vulnerability of migrating persons