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**Securing the Prohibition
of Labour Exploitation in
Law and Practice:
Slavery, Servitude, Forced
Labour and Human
Trafficking in Italy, Spain
and the UK**

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Securing the Prohibition of Labour Exploitation in Law and Practice: Slavery, Servitude, Forced Labour and Human Trafficking in Italy, Spain and the UK

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Abstract

The fight against contemporary forms of slavery is a top priority in the current global agenda. This article reviews and assesses the domestic diversity of labour exploitation regulation. In part 1, the article reviews the concept of labour exploitation in international and European law, whilst part 2 provides an overview of three legal frameworks - Italy, Spain and the UK. A comparative analysis considers the extent to which these countries implement international legal obligations both in law and practice. Finally, the article seeks to promote cross-fertilisation of experiences and dialogue among legal practitioners, both domestically and between different countries.

Key words: human trafficking; forced labour; slavery; servitude; positive obligations

Securing the Prohibition of Labour Exploitation in Law and Practice: Slavery, Servitude, Forced Labour and Human Trafficking in Italy, Spain and the UK¹

Introduction

The fight against contemporary forms of slavery is a top priority in the current global agenda, as can be deduced from its inclusion as Goal 8.7 within the United Nations Sustainable Development Goals and the identification of labour exploitation as the predominant form of trafficking in several European countries including Belgium, Cyprus, Georgia, Portugal, Serbia and the United Kingdom.² The international legal framework aimed at tackling labour exploitation is broad, comprising a dense web of rights, obligations, and responsibilities drawn from human rights law. Despite the international legal consensus reached on the most serious forms of labour exploitation (hereinafter “labour exploitation” will be used as term which encompass all forms of exploitation recognised in law, namely, slavery, servitude, forced labour including child labour and trafficking in human beings for the purpose of labour exploitation), a key indicator as to the effective implementation of the law is the manner in which countries have incorporated the adopted international definitions into their own legal systems.³ This article will undertake an exploration of the implementation in law and practice of three European countries: Italy, Spain and the United Kingdom.

Whilst Italy has developed an integrated system aimed both at tackling the phenomenon and protecting victims, it has only recently reframed its legal framework to implement EU and international standards, and prosecutions for cases of labour exploitation continue to be rare. Interestingly, Spain prohibits trafficking in human beings while it does not envisage a crime of slavery unless it occurs within a widespread and systematic attack against the civilian population - the latter being an expansion of Article 7(1)(c) of the Rome Statute wherein enslavement constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with

¹ Labour exploitation is bad for its victims, for business and development. A better understanding of the legal framework, its complexities, overlaps and inconsistencies is intended to counter the current culture of impunity. The authors are extremely grateful to the unknown survivor who reviewed the article providing precious insights, calling for a real victims-centered approach taking care of real people with their hopes and fears.

² Council of Europe, *Group of experts on action against trafficking in human beings, 7th General report on GRETA's activities, covering the period from 1 January to 31 December 2017* (March 2018), 38.

³ Jean Allain, “No effective trafficking definition exists: domestic implementation of the Palermo Protocol”. In *The law and slavery. Prohibiting human exploitation* (Leiden: Brill, 2015), 265-294.

knowledge of the attack. Servitude and forced labour are not prohibited; instead, tangible cases of labour exploitation might be brought back under the umbrella of crimes against worker's rights. In the United Kingdom, the legal framework has recently undergone significant reform. In March 2015, the Modern Slavery Act received Royal Assent, consolidating the previous legal framework and adding a reporting requirement on private companies.

This article aims at reviewing and assessing these three legal frameworks diversely placed within the spectrum of regulation, specifically targeting labour exploitation. Both strengths and weaknesses will be highlighted, as well as best practices. Such a Euro-centric focus is deliberate due to the significant jurisprudence of the European Court of Human Rights, the dual regional framework tackling human trafficking (European Union and Council of Europe) and the diversity in national approaches, as demonstrated by the three comparative domestic settings. Ultimately, this article will be of use in other regional and domestic settings where legal reform is ongoing as close attention is being paid to efforts undertaken in European Member States and has been of inspiration for other countries (see for example, Australia⁴ and India⁵).

The article is divided into three sections. First, it reviews how the concept of labour exploitation is understood in international and European law, with reference to the jurisprudential evolution that has led to the articulation of positive obligations for States. The second section provides an overview of the three domestic legal frameworks. The final section, using the internationally acknowledged three-P framework—a human rights-based approach to anti-trafficking—outlines a comparative analysis of the law in practice will provide an implementation of the domestic legal frameworks.⁶ In the final section, the paper seeks to promote cross-fertilisation⁷ of experiences and dialogue among legal practitioners, both domestically and between different countries in order to enhance future legal and policy reform.

Labour exploitation in International and European Law

International and regional law conceptualises labour exploitation as slavery, servitude, forced labour and trafficking in human beings for the purpose of labour exploitation. The following overview of the concept of labour exploitation in

⁴*Ibid.*

⁵Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018.

⁶Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, (2002).

⁷Cross-fertilisation, the mixing of the ideas, customs, etc. of different places or groups of people, to produce a better result, (Cambridge Dictionary, 2018).

international and European law will work as the backdrop against which the three domestic legal frameworks will be assessed in section three.

Slavery: a property law paradigm?

The internationally agreed definition of slavery was crystalized in the 1926 UN Slavery Convention, conceived under the auspices of the League of Nations.⁸ Pursuant to Article 1(1), slavery is “*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*”. The prohibition of slavery has also been envisaged, although not defined, in various regional treaties. At European regional level it has been recognised within Article 4 of the European Convention of Human Rights (ECHR) and Article 5 of the European Union Charter of Fundamental Rights (EU Charter).

The prohibition of slavery has been established as a supreme rule of customary international law,⁹ and the International Court of Justice has defined protection against slavery as an *erga omnes* obligation and a *jus cogens* norm in the landmark case *Barcelona Traction* (1971).

Despite consensus on the literal terms, practical issues with regard to the interpretation of slavery continue to arise. Two positions can be identified, (i) an expansionist approach subsuming a breadth of practices within the meaning of slavery;¹⁰ and (ii) a narrower interpretation limited to ‘chattel slavery’,¹¹ with a wide range of intermediate positions.¹² Following scholars’ call for common legal standards,¹³ the Bellagio-Harvard Guidelines,¹⁴ drawing attention to the property

⁸Joel Quirk, *The Anti-Slavery Project. From the Slave Trade to Human Trafficking*, (Philadelphia: University of Pennsylvania Press, 2011) 23-81; Jean Allain, *The Law and Slavery. Prohibiting Human Exploitation*, (Leiden: Brill Nijhoff, 2015), 46-100.

⁹Anne Gallagher, “Using International Human Rights Law to Better Protect Victims of Trafficking: The Prohibitions on Slavery, Servitude, Forced Labor, and Debt Bondage”, in *The Theory and Practice of International Criminal Law Essays in Honor of M. Cherif Bassiouni*, ed. by Leila Nadya Sadat and Michael P. Scharf, (Leiden: Martinus Nijhoff, 2009), 410.

¹⁰For example, the approach followed by the Working Group on Contemporary forms of Slavery. See: See Office of the United Nations High Commissioner for Human Rights, David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, HR/PUB/02/4, New York and Geneva: United Nations, 2000), 51-54.

¹¹*Siliadin v. France*, case no. 73316/2001, ECHR [2005], 122.

¹²This has become a recurrent assertion within legal literature. See Nicole Siller, “Modern Slavery. Does International Law Distinguish between Slavery, Enslavement and Trafficking?,” *Journal of International Criminal Justice* 14, no. 2 (2016): 405-407; Esteban Pérez Alonso, ed., *El Derecho ante las formas contemporáneas de esclavitud* (Valencia: Tirant lo Blanch, 2017), 341-48.

¹³Jean Allain and Robert Hickey, “Property and the definition of slavery”, *International & Comparative Law Quarterly*, No. 61 (2012): 916.

¹⁴Research Network on the Legal Parameters of Slavery, *Bellagio-Harvard Guidelines On The Legal Parameters of Slavery*, 2012.

law paradigm, developed a contemporary interpretation of slavery: the exercise of powers attaching to the right of ownership and the control of a person tantamount to possession.

Servitude: the victim's feeling that the condition is permanent

The prohibition of servitude first appeared under Article 4 of the Universal Declaration of Human Rights of 1948. Although it had previously been addressed by the Temporary Slavery Commission's Report when developing the 1926 Convention, ultimately it was not included in the scope of the treaty, focused on slavery and slave trade.¹⁵ The subsequent work of the *ad hoc* Committee on Slavery established by the United Nations in 1949, and a report published in 1953 by the UN Secretary General, boosted the adoption of the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Herein, "*institutions and practices similar to slavery*" are tantamount to servitude,¹⁶ namely: debt bondage, serfdom, servile marriage (bride purchase, wife transfer and widow inheritance) and child servitude. Prohibition of servitude has also been envisaged within Article 4 of the ECHR and Article 5 of the EU Charter of Fundamental Rights.

The lack of a definition of servitude has led to its understanding as a "categorical, not definitional" concept,¹⁷ since the diversity of the four practices makes it difficult to find common elements. However, on the basis of the ECtHR case law, it has also been argued that servitude is a distinct and independent legal concept under human rights law.¹⁸ The landmark judgement of *Siliadin* (2005), provided useful insights regarding the concept of servitude as prohibited by Article 4(1) of the ECHR. It was considered as a "particularly serious form of denial of liberty" involving "in addition to the obligation to perform certain services for others, the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition".¹⁹ Importantly, the Court has stressed that

¹⁵League of Nations, Temporary Slavery Commission, *Report of the Commission*, A.19.1925.VI, (Geneva: League of Nations, 1925), 10-11.

¹⁶Jean Allain, "On the Curious Disappearance of Human Servitude from General International Law," *Journal of the History of International Law* 11, no. 2 (2009): 303-332.

¹⁷Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Leiden: Martinus Nijhoff, 2013), 145, 202.

¹⁸Vladislava Stoyanova, *Human trafficking and Slavery reconsidered. Conceptual limits and States' positive obligations in European law* (Cambridge: Cambridge University Press, 2017), 252.

¹⁹*Siliadin v. France*, case no. 73316/2001, ECHR [2005], 123.

servitude is an ‘aggravated’ forced labour, and that the distinguishing characteristic lies in the victim’s feeling that the condition is permanent and unlikely to change.²⁰

Forced or compulsory labour: a private sector issue

The ILO Convention No. 29 of 1930 establishes the prohibition of all forms of forced or compulsory labour. Forced labour is defined 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 himself voluntarily,*” subject to several State imposed exceptions.²¹ For the purpose of overcoming theoretical difficulties, a list of indicators both to assist identification of forced labour and forced labour as an outcome of trafficking have been developed.²²

Convention No. 29 was conceived in a time when a large part of the world was under colonial rule, while forced labour now mainly occurs within the private sector (90%).²³ It was recently supplemented by the 2014 Protocol. Wherein, the need for States to not only criminalise and prosecute forced labour, but also to take effective measures to prevent the phenomenon and provide victims with protection and access to appropriate and effective remedies is stressed.²⁴

Forced labour is prohibited by Article 4(2) of the ECHR and Article 5 of the EU Charter of Fundamental Rights, with definitional deference to Article 2(1) of the ILO Convention on forced labour. In *Chowdury and others v. Greece* (2017), the European Court specified that work imposed by exploiting the worker’s vulnerability (i.e. undocumented migrant) under a menace of a penalty (such as persistent and deliberate non-payment of wages) meets the definition of forced labour. While the European Court missed an opportunity to delineate the definitional boundaries of human trafficking and forced labour, the judgment has the merit of clarifying that restrictions upon freedom of movement are not a necessary element for qualifying a situation as either forced labour or human trafficking.²⁵

²⁰*C.N. and V. c. France*, case no. 67724/09 ECHR [2012], 91. This criterion has been rejected by Vladislava Stoyanova. See: Stoyanova, *Human Trafficking and slavery reconsidered*, 255-56.

²¹Article 2, LO Convention No. 105/1957.

²²International Labour Office, *ILO indicators of forced labour* (Geneva: ILO, 2012).

²³International Labour Office, *ILO global estimate of forced labour. Results and methodology* (Geneva: ILO, 2012).

²⁴Article 8, Protocol 2014 to Forced Labour Convention 1930 & Recommendation No. 203.

²⁵*Chowdury and others v. Greece*, case no. 21884/2015, ECHR [2017], 123.

Trafficking in human beings: a criminal justice approach

The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (Palermo Protocol) defines trafficking in persons as:

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.²⁶

The forms of labour exploitation which, *at a minimum*, fall within the material scope of the definition include, forced labour or services, slavery or practices similar to slavery, and servitude. In this regard, the Palermo Protocol simply reiterates the internationally prohibited forms of labour exploitation and refers to the aforementioned international instruments for definitional purposes. However, inclusion of the phrase “at a minimum” in the provision suggests that other “lesser” forms of exploitation could also be relevant to the offence of human trafficking.²⁷ As with all other forms of labour exploitation requiring prohibition, the Palermo Protocol adopts a strong criminal justice approach to tackling human trafficking²⁸ with State parties required to criminalise the offence of trafficking in persons in their domestic legal frameworks.

In Europe, Article 4 of the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings (2005) replicates the Palermo Protocol definition. Where it differs is in the emphasis on human trafficking as a violation of human rights imposing stronger legal obligations on Member States to deal with victim protection and prevention strategies (Articles 13-26). Nevertheless, some provisions serve a dual purpose and seek to strengthen the criminalisation of human trafficking by facilitating both investigations and prosecutions (e.g. the provision of a residence permit after the 30 days reflection period, generally to assist with ongoing investigations). The text of the ECHR does not specifically

²⁶Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime.

²⁷United Nations Office on Drugs and Crime, *Issue paper - The concept of 'exploitation' in the Trafficking in persons Protocol* (Vienna: UNODC, 2015).

²⁸Marie Segrave, Sanja Milivojevic, Sharon Pickering, *Sex Trafficking: international context and response*, (Cullompton: Willan, 2012) 18; Susan Kneebone, “Protecting trafficked persons from *refoulement*: re-examining the nexus”, in *Contemporary issues in refugee law*, ed. Satvinder Singh Juss and Colin Harvey (Cheltenham and Northampton: Edward Elgar, 2013), 149.

prohibit human trafficking. However, the European Court, in recognition of the living instrument doctrine, has extended the material scope of Article 4 to include trafficking in persons (*Rantsev*, 2010).²⁹ Article 5, para. 3 of the EU Charter of Fundamental Rights, unlike the ECHR, includes the prohibition of human trafficking. The EU anti-trafficking framework in EU Directive No. 36/2011, transposed in all EU Member States,³⁰ takes a more expansive approach than the CoE Convention by expanding the list of forms of exploitation to include forced begging and exploitation of criminal activities.

An overview of selected national legal frameworks against labour exploitation

This section will determine the extent to which the above international legal standards are implemented in the binding instruments of three national legal frameworks under scrutiny, i.e. Italy, Spain and the United Kingdom.

Italy

Italy prohibits slavery, servitude (Article 600 CC) and trafficking (Article 601 CC) as defined at the international level while the prohibition of forced labour is not explicit under Italian criminal law.³¹ The national legal framework has evolved over the years in light of Italy's obligations under international law. Since 1998, Italy has developed a victim rights-centred approach recognised as a best practice in the field.³² In particular, Article 18 of Legislative Decree No. 286/1999 provides *all* victims of violence or severe exploitation, whose safety is endangered, (regardless of migration status) with a long-term programme of assistance and social integration, as well as with a residence permit for humanitarian reasons.³³ Following the increasing attention on labour exploitation in sectors such as agriculture, Law No. 199 of 2016 introduced Article 603 *bis* CC, the so-called "caporalato" provision (illegal gangmastering). Accordingly, a key priority is to "*tackle caporalato (especially in the agricultural and construction sector) and*

²⁹*Rantsev v. Cyprus and Russia*, case no. 25965/2004, ECHR [2010]

³⁰European Commission, *Report from the Commission to the European Parliament and the Council. Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, Com(2016) 267 final (19 May 2016).

³¹As amended by Legislative Decree No. 24/2014 transposing Directive 2011/36/EU.

³²Letizia Palumbo, Alessandra Sciarba, *The vulnerability to exploitation of women migrant workers in agriculture in the EU: the need for a human rights and gender based approach*, (Brussels: European Parliament, May 2018), 58.

³³Following Law No. 132/2018, the humanitarian permit as such as been abolished. Thus, since 5 October 2018 victims of trafficking or serious exploitation are provided with a residence permit 'for special cases'.

other forms of exploitation, forced labour, child labour, slavery and irregular work, with particular focus on migrants and victims of trafficking.”³⁴

Despite the fact that most of the criminal proceedings related to Article 600 CC concern cases of sexual exploitation, Italian jurisprudence has always used the slavery offence to punish cases of severe labour exploitation.³⁵ However, in order not to render slavery banal, it has to be proven beyond any reasonable doubt that “*victims had no possibility to determine themselves in life choices*”.³⁶

Since 2016, where cases do not meet such a high threshold, Article 603 *bis* CC envisages the prosecution of whoever directly employs or recruits workers for third parties under exploitative conditions, taking advantage of the workers’ state of need. Criminalising labour exploitation as a stand-alone offence might result in better protection for workers. Importantly, the provision includes some indicators to identify cases of labour exploitation, namely: 1) repeated payment of wages excessively below the level fixed by national collective agreements or anyway disproportionate to the quantity and quality of performed work; 2) repeated violation of regulations concerning working time, weekly-off, compulsory leave, holidays; 3) violations of safety and hygiene regulations in the workplace; 4) demeaning working conditions, methods of surveillance or housing conditions. However, despite the high correlation between the domestic definition of trafficking and the Palermo Protocol,³⁷ this provision is rarely employed. GRETA³⁸ observed that the detection of victims of human trafficking for the purpose of labour exploitation is particularly complicated in Italy due to the significant size of the informal economy in certain sectors and the high numbers of irregular migrants working in them, in particular agriculture, construction, and the textile industry.³⁹ Finally, it is also worth noting that Article 25 *quinquies* of Legislative Decree No. 231/2001 has introduced the so-called administrative liability of the legal person both for slavery and trafficking, and more recently for labour exploitation under Article 603 *bis* CC. The sanction provided is a monetary penalty from 400 to 1,000 quotas, based on the severity of the facts, the degree of responsibility of the body as well as on the activities carried out to cancel or reduce the consequences of the fact and to inform the supervisory body about the offence. The amount of each

³⁴Italian National Action Plan on Business and Human rights 2016-2021 (December 2016), 7.

³⁵Article 600 CC, titled ‘Reduction or maintenance in a condition of slavery or servitude’.

³⁶Italy, Court of Cassation, Decision No. 13532/2011; Italy, Court of Cassation, Decision No. 24057/2014.

³⁷Article 601 CC.

³⁸Group of Experts on Action against Trafficking in Human Beings (GRETA), the independent expert body established as part of the monitoring mechanism responsible for assessing and improving the implementation of the obligations contained in it.

³⁹Council of Europe (2018), 34.

quota — that may go from a minimum of 258.00 euros to a maximum of 1,549.00 euros — is defined by the judge considering the economic and assets status of the entity to ensure the efficacy of the penalty. If the entity or one of its organisational units is permanently used for the sole or main purpose of enabling or facilitating the commission of the crimes under Articles 600, 601 and 603 *bis* CC, the revocation of the company's licence to operate applies. In order to avoid penalties, companies shall adopt and effectively implement a compliance model, based on the analysis of the corporate context, that meets certain requirements.⁴⁰ The company, therefore, should proceed with a risk assessment to map all the possible areas of risk. In particular, the model might provide for an appropriate due diligence process carried out throughout the entire supply chain.

Spain

The Spanish Criminal Code (CC) provides for the offence of trafficking in human beings in accordance with the EU Directive No. 36/2011 (Article 177 bis CC). Slavery is only prohibited when occurring within a widespread and systematic attack against the civilian population.⁴¹ As for servitude and forced labour, the Spanish Criminal Code remains silent. Thus, as the Spanish CC does not provide for specific labour exploitation offences beyond the context of crimes against humanity, offences against worker's rights are applicable.⁴² The definition of human trafficking in Article 177 bis CC meets the normative standards established within the CoE Convention, including the three components required:⁴³ an action, the use of certain means and the purpose of exploitation, including the imposition on the victim forced work or services, slavery or practices similar to slavery or servitude or begging.⁴⁴ The irrelevance of consent if any of the

⁴⁰Articles 6 & 7 of the Legislative Decree No. 231/2001.

⁴¹Article 607 *bis*, para. 1.10 CC.

⁴²Ministerio de Justicia, Fiscalía General del Estado, *Circular 5/2011 sobre criterios para la Unidad de actuación especializada del Ministerio Fiscal en materia de extranjería e inmigración*, 2011; Alberto Daunis Rodríguez, *El delito de trata de seres humanos: el art. 177 bis CP* (Valencia: Tirant lo blanch, 2013), 114-119; Esther Pomares Cintas, *El Derecho Penal ante la explotación laboral y otras formas de violencia en el trabajo* (Valencia: Tirant lo blanch, 2013), 124-142; Josune López Rodríguez, *Conceptualización jurídica de la trata de seres humanos con fines de explotación laboral* (Pamplona: Aranzadi, 2016), 172-183; Ana Belén Valverde Cano, *La protección jurídico-penal de las víctimas de las formas contemporáneas de esclavitud a la luz del derecho internacional, europeo y nacional* (Madrid: Editorial universitaria Ramón Areces, 2017), 81-92.

⁴³Council of Europe, Group of experts on action against trafficking in human beings, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round*, GRETA(2018)7 (2018), paras. 222-239.

⁴⁴Article 177 *bis*, para. 1 (a)

means are used is also explicitly envisaged,⁴⁵ and even when not resorting to any of the means listed, if one of the actions is perpetrated with regards to minors for the purposes of exploitation, it shall be deemed human trafficking.⁴⁶

For victims of trafficking, Article 177 (11) provides for a non-prosecution clause for criminal offences committed while being exploited.⁴⁷ And more generally, the protection and assistance of trafficked victims is developed within the Framework Protocol for Protection of Victims of Human Trafficking⁴⁸ and Law 4/2015 on the Statute of Victims of Crime, which also applies for victims of slavery, servitude and forced labour. For issuing residence permits to victims of human trafficking (regardless of cooperation of the victim in criminal proceedings), Article 59 bis (4), of the Law 4/2000 on the Rights and Freedoms of Foreigners in Spain is the relevant provision.

When it comes to slavery, servitude and forced labour, it will be necessary to resort to crimes against workers' rights that makes a distinction between the workers with regular and irregular administrative status.⁴⁹ If victims are Spanish nationals, EU citizens or third-country nationals with work permits, Article 311 CC envisages imprisonment of between six months and six years to those who, by means of deception or abuse of a situation of need, impose on the workers in their service, working or social security conditions that are detrimental to, suppress or restrict the rights granted to them by law, by collective bargaining agreements or by individual contracts.

Conversely, if victims are third-country nationals without a work permit, Article 312(2) CC establishes imprisonment from two to five years for those who employ them under conditions that negatively affect, suppress or restrict the rights recognised by legal provisions, collective bargaining agreements or individual contracts.

It is important to note the wide range of behaviours involved: from the most severe forms of exploitation to breach of individual contract. Consequently, to distinguish it from a mere violation of administrative law, the judiciary requires a “*plus of harm*” when interpreting these two provisions, that is to say a *substantive*

⁴⁵Article 177 *bis*, para. 3

⁴⁶Article 177 *bis*, para. 2

⁴⁷Whose application in each case will require a ‘proportionality test’, according to the Prosecution service document: Ministerio de Justicia, Fiscalía General del Estado. *Circular 5/2011 sobre criterios para la Unidad de actuación especializada del Ministerio Fiscal en materia de extranjería e inmigración*, 2011.

⁴⁸For an unofficial English version submitted by the Spanish authorities to GRETA for the Second Round, see: <https://rm.coe.int/168070ac7e>.

⁴⁹Which has led to some legal doctrine to see Article 312.2 CC as an instrument to combat illegal migration. See Pomares Cintas, *El Derecho Penal ante la explotación laboral*, 94-96.

limitation or elimination of the labour rights legally recognised.⁵⁰ However, owing to the ambiguity of the scope of the abuses covered, there has been a lack of consistency in its judicial interpretation.⁵¹

Taking this framework into account, the point here is whether such a legal framework is adequate to afford practical and effective protection against treatment falling within the scope of Article 4 ECHR.

Drawing on Stoyanova's study of positive obligations emanating from Article 4 ECHR as developed in ECtHR case law,⁵² it may be argued that neither the definition in Article 177 bis nor Articles 311 and 312(2) CC meet the high standards required of the contracting parties.⁵³ Although the ECtHR has not categorically required specific labels of slavery, servitude and forced labour within States' domestic law,⁵⁴ what implicitly emerges from the ECtHR case law is the requirement of specific criminalisation thereof, with also certain benchmarks regarding the content and the quality of the definitions.⁵⁵ In *Siliadin v. France*, the ECtHR held that 'the member States' positive obligations under Article 4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in [...] a situation [of slavery, servitude or forced labour]'.⁵⁶

Importantly, in *Siliadin v. France* and *C.N. and V. v. France*, one of the major reasons for finding the national criminal law inadequate to effectively prosecute the conducts described in Article 4 were that the relevant criminal law provisions were open to very different interpretations by the judiciary.⁵⁷ Also, in *C.N. v. the U.K.*, the ECtHR explicitly envisaged that applying other legislative provisions criminalising certain aspects of slavery, servitude or forced labour, such

⁵⁰Supreme Court case law (Judgement Nos. 3389/2017, 247/2017 and 494/2016).

⁵¹For example, regarding the elements of the crime described in 311 CC, there has been a lack of agreement in how to interpret the term 'abuse of situation of need'. The judiciary sometimes has considered that this term is consubstantial to every labour relationship, and sometimes it is required a more concrete abusive situation. For an analysis of the case law on crimes against workers' rights see Mirentxu Corcoy Bidasolo and Mir Puig, ed., *Comentarios al Código Penal* (Valencia: Tirant lo blanch, 2015), 1100-1112.

⁵²Stoyanova, *Human Trafficking and Slavery Reconsidered*. 319-426.

⁵³*Siliadin*, para. 148.

⁵⁴The ECtHR has been careful to not to instruct how a criminal offence should be defined within the national legislation. In *Siliadin*, paras. 147-148; *C.N. and V. v. France*, para. 107; and *C.N. v. the U.K.*, case no. 4239/08, ECHR [2012], para. 76, the ECtHR draws its conclusions on the basis of the interpretation and the effects of those interpretations in concrete cases, not prescribing a specific definition.

⁵⁵*X and Y v. the Netherlands*, case no. 8978/80, ECHR [1985], para. 27; *Siliadin*, para. 144 and *C.N. and V. v. France*, para. 107. See also Stoyanova, *Human Trafficking and Slavery Reconsidered*, 338-51.

⁵⁶*Siliadin*, para. 112.

⁵⁷*Siliadin*, para. 147.

as threats or illegal detention, leaves victims of conduct prohibited by Article 4 without any remedy.⁵⁸

In sum, building on the ECtHR's doctrine on positive obligations, Article 4 is not neutral concerning the assessment made at the national level of the different possible legal basis for prosecution. Specific criminal labels of slavery, servitude and forced labour are necessary because they have an impact on how these abuses are interpreted.⁵⁹ States could be in breach of Article 4 when definitions of these crimes are ambiguous, as with Articles 311 and 312(2) of the Spanish Criminal Code.

The United Kingdom: England, Wales, Scotland and Northern Ireland

In the UK, the legal framework was recently reformed to consolidate the existing provisions prohibiting slavery, servitude, forced labour and human trafficking. The criminalisation of labour exploitation in the UK is subject to three separate pieces of primary legislation: *Modern Slavery Act 2015 (England and Wales)*; *Human Trafficking and Exploitation (Scotland) Act 2015*; and *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*.

Prior to this reform, the offence of human trafficking for sexual exploitation, had been criminalised in 2003⁶⁰ the scope of which was extended in 2004 to include slavery, forced labour, the removal of organs, the provision of all types of services and benefits.⁶¹ The stand-alone offence of slavery, servitude or forced and compulsory labour was introduced in Section 71 of the *Coroners and Justice Act 2009* following a finding of the ECtHR of non-compliance with the positive obligation "to adopt criminal law provisions which penalise the practices referred to in Article 4 [ECHR] and to apply them in practice".⁶² Such a piecemeal approach was subject to reactions from GRETA who considered that the domestic legal framework needed to be addressed in order to be in full conformity with the CoE Convention.⁶³ Thus, the enactment of the newly consolidated legislation in

⁵⁸C.N. v. *the U.K.*, para. 76.

⁵⁹Stoyanova, *Human Trafficking and Slavery Reconsidered*, 340-1.

⁶⁰Section 57-59 Sexual Offences Act 2003 England, Wales and Northern Ireland; Section 22 Criminal Justice (Scotland) Act 2003, as amended by the Criminal Justice and Licensing (Scotland) Act 2010.

⁶¹Section 4 Asylum and Immigration (Treatment of Claimants) Act 2004 extending to Scotland as amended by Section 46 Criminal Justice and Licensing (Scotland) Act 2010.

⁶²C.N. v. *the U.K.*, para. 89.

⁶³Council of Europe, *Group of experts on action against trafficking in human beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom Second Evaluation Round*, GRETA(2016)21 (2016), 5.

2015 was considered as a significant shift towards a holistic approach to tackling labour exploitation.

The clear distinction between slavery, servitude and forced labour in international law has been highlighted (section 2), however the domestic provision does not distinguish between the different practices, consolidating them into one provision with one punishment. Also, the material scope of the offence is not specified with deference to the understanding of slavery, servitude and forced or compulsory labour, according to the jurisprudential interpretation of Article 4 ECHR, in accordance with the international legal standards and definitions. Despite the consolidation of the legal framework, differences exist between the domestic human trafficking offences, leaving a patchwork of provisions that are not only in conflict with the international definition but also with each other. Firstly, in England, Wales and Northern Ireland, the individual must **arrange or facilitate the travel** by *recruiting, transporting or transferring, harbouring or receiving, or transferring or exchanging control over* another individual (emphasis added). Such a two-tiered understanding of the action element — requiring the facilitation or the arrangement of the travel of another in combination with another action⁶⁴ — is in stark contrast to the international and regional (and Scottish) understanding of trafficking in persons which does not require any movement.⁶⁵ Secondly, whilst the consent of the individual is irrelevant in all jurisdictions, there are differences as to what the consent refers. For instance, in England, Wales and Northern Ireland the consent refers to the travel and not to any of the other actions,⁶⁶ whereas in Scotland, the consent refers to *any* of the relevant actions.⁶⁷ Thirdly, the legislation for all three jurisdictions includes a separate provision that outlines the meaning of exploitation for the purposes of the offence of trafficking in persons. However, in contrast to the EU Directive and CoE Convention, the forms of exploitation are explicit and constitute an exhaustive list. Therefore, in all jurisdictions, trafficking for the purpose of labour exploitation is limited to three forms of exploitation: slavery, servitude and forced labour. Yet, it remains to be seen how the courts will interpret “*the securing of services or benefits*,” as this could be applied to a situation of labour exploitation.

In addition to the consolidation of the criminal framework, the UK legal reform led to some good practices in tackling labour exploitation. The supply chain transparency clause in Section 54 of the Modern Slavery Act 2015 places a

⁶⁴Ibid, 65.

⁶⁵Section 1, Human Trafficking and Exploitation (Scotland) Act 2015.

⁶⁶Section 2(2) Modern Slavery Act 2015, Section 2(5) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

⁶⁷Section 1(3) Human Trafficking and Exploitation (Scotland) Act 2015.

reporting obligation on businesses to outline the measures taken to ensure that their supply chain is free of modern slavery. However, the strength of this provision is hindered as companies do not face any penalty for non-submission of the report, and indeed for reporting that they have not taken any steps to ensure that their business is not complicit in exploitation.⁶⁸ The defence of non-prosecution for victims of slavery and trafficking who have engaged in criminal activity and the provision of support and assistance regardless of cooperation of the victim in criminal proceedings (Italy and Spain above) demonstrates the extent to which the legislation seeks to be victim centred. However, whilst victim protection is a desired aim of the legislation, subsequent legal provisions, such as the confiscation of wages as proceeds of crime in instances of illegal employment⁶⁹ may hinder the identification of potential victims in the first instance. This is particularly of concern for those with an irregular status who may already fear approaching authorities and may be in contradiction to the non-punishment defence available to trafficking victims.⁷⁰

Application of the law in practice: a comparative analysis

While having discussed three legal frameworks diversely situated within the spectrum of regulation, the remainder of the article engages in a comparative analysis of the application of the law in practice by employing the globally accepted model for effective anti-trafficking law and policy responses, the three P's (prohibition, prosecution and protection).

i. Prohibition. The article observes a strong influence of the international and European legal frameworks on national law when it comes to the development of offences that prohibit forms of labour exploitation.⁷¹ The analysis of the national legislation demonstrates that all countries have undertaken recent legal reform in order to seek compliance with EU law. However, despite the clear shift towards aligning domestic legislation with international obligations, the material scope of the provisions is still not always consistent with the international and regional understanding of labour exploitation. For instance, the requirement of movement in England, Wales and Northern Ireland limits the applicability of human trafficking (section 2) and in Spain, the need to demonstrate a “widespread and systematic

⁶⁸National Audit Office, Report by the Comptroller and Auditor General, Reducing modern slavery, HC 630 Session 2017-2019 15 December 2017, 26-27.

⁶⁹Section 34(3), Immigration Act 2016.

⁷⁰Section 8 Modern Slavery Act 2015; Council of Europe (2018), 65.

⁷¹Office of the High Commissioner for Human Rights (2002), Guideline 4.

attack against the civilian population” leads to a very narrow domestic understanding of slavery. Where domestic interpretation remains strict, and in the absence of specific offences, the introduction of alternative offences such as the new Italian provision on labour exploitation (Article 603 *bis* CC) or Article 311 and Article 312.2 of the Spanish Criminal Code could provide an opportunity to ensure the protection of workers from exploitation.

It is also possible for existing criminal offences to be employed at the prosecutorial phase where appropriate, including offences against the public order, such as fraud; sexual offences; and offences against the person, such as false imprisonment, threats, injuries, coercion.⁷² Such an approach is used in practice in prosecutions to fill any legislative gap.⁷³

These issues give rise to two concerns: first, it may establish an excessively wide margin of interpretation for the courts. Second, it might lead to different treatment of victims depending on whether they can prove that they have also been subjected to other offences which often, but not necessarily, accompany the offences of slavery, servitude or forced labour. It is once again relevant to reiterate that the ECtHR found such an approach to be inadequate, as it did not afford practical and effective protection against treatment falling within the scope of Article 4 of the Convention, as explained in the previous sections.⁷⁴

ii. Protection. The analysis primarily identifies two good practices among the States to tackle labour exploitation: first, the increasing attention on legal persons and the creation of models of corporate responsibility shifting from the traditional focus on individual liability and State action, especially in Italy and the UK. Second, a more victim-centred approach with legal provisions foreseeing non-prosecution for criminal offences committed while being exploited (required by Article 26 CoE Convention and Article 8 of the Trafficking Directive), and the issue of resident permits for trafficked victims regardless of cooperation of the victim in criminal proceedings.

Yet the effective application of measures of assistance and protection of victims of severe forms of exploitation is hindered by several considerations which are present, in greater or lesser extent, in the three States. First, a focus on human trafficking for the purpose of sexual exploitation, and much less efforts dedicated when it comes to other forms of severe exploitation⁷⁵ leading to the exclusion of

⁷²Amy Weatherburn, *File study of modern slavery cases in England and Wales*, part of doctoral research (on file with author).

⁷³*C.N. v. The United Kingdom*, para. 56.

⁷⁴*Ibid.*, 76.

⁷⁵Council of Europe, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round* (2018), paras. 16, 168, 195.

access to protective measures for trafficked persons who were not subject to sexual exploitation.⁷⁶ This is not the case in the UK, where access to the National Referral Mechanism is guaranteed to all victims of modern slavery offences.⁷⁷

More generally, all jurisdictions prevent full protection of irregular migrants from exploitation, by legal provisions that are designed to prevent illegal migration. Consequently, in the UK, the focus on immigration and illegal working offences leads to concerns about the willingness of victims to come forward,⁷⁸ and the restriction of access to services such as housing could result in increased dependence being placed on exploitative employers who often provide sub-standard living conditions and restricts the ability to escape. Similarly, the crime of irregular entry or stay under Article 10 *bis* of the Italian Consolidated Immigration Act may result in impunity for exploiters, making (undocumented) migrants more vulnerable to human rights abuses. As a consequence, victims of trafficking in Italy have often been categorised as irregular migrants, thus not identified as victims.⁷⁹ Particular challenges arise when identifying victims in mixed migration flows, in particular with regards to cases where the victims have been exploited outside of the jurisdiction of the State. And in Spain, the access to assistance and protection mechanisms is hampered by two considerations: first, it still remains in practice heavily reliant on the victim's cooperation in criminal investigation,⁸⁰ and second, is hindered by the deficiencies in victim detection mechanisms, especially as part of border control procedures.⁸¹

iii. Prosecutions. It is finally interesting to assess the overall impact of national legislation by referring back to the original objective when drafting and being developed as part of the legislative process. Indeed, in all three countries, one of the principal aims of consolidating the criminal legal framework was to assist in

⁷⁶In Spain, trafficked persons for non-sexual forms of exploitation are only eligible for protection of the general regime of victims' rights under Law 4/2015 on Statute of Victims of Crime. This is not the case in Italy, where - however - there still is a tendency to identify victims of sexual exploitation, while victims of labour exploitation have received so far less attention.

⁷⁷European Commission, *Report from the Commission to the European Parliament and the Council. Second report on the progress made in the fight against trafficking in human beings (2018) as requires under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, Com(2018) 777 final (3 December 2018), 2.

⁷⁸Council of Europe (2016), 39.

⁷⁹UN Special Rapporteur on Trafficking in persons, especially women and children, *Report of the Special Rapporteur on trafficking in persons, especially women and children - Joy Ngozi Ezeilo. Mission to Italy*, UN Doc., A/HRC/26/37/Add.4, (1 April 2014), 33.

⁸⁰Council of Europe, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round* (2018), paras. 139, 151.

⁸¹*Ibid*, paras. 147-9.

facilitating and increasing the identification of victims and the successful prosecution of labour exploitation offences. In all three jurisdictions prosecutions remain low: as in Italy⁸² and Spain,⁸³ convictions are exceptional and in the UK, acknowledging the rise in referrals and crime reporting, prosecutions have increased⁸⁴ but overall remain low.⁸⁵

Prior to prosecution, it is important that alleged cases of exploitation are reported and brought to the attention of the authorities. In all countries, as a result of increased awareness of labour exploitation, reporting and referrals to National Referral Mechanisms have increased. However, in some instances, the data recorded does not always cover all forms of labour exploitation, but only refer to trafficking. For instance, in Italy no official data is available on serious forms of exploitation in the country (i.e. illegal employment of third country nationals under particularly exploitative working conditions, labour exploitation under Article 603 *bis* CC, slavery and servitude). Only data concerning trafficking is recorded, although not always made publicly available. This was the situation in Spain until 2015, when data collection was mainly focused on cases of human trafficking for purpose of sexual exploitation. However, as of 2015, cases involving labour exploitation are also collected.⁸⁶ In Italy, for the legislative objective of increased prosecution to be achieved, comprehensive data disaggregating labour trafficking cases should be provided.⁸⁷ Conversely, in the UK referrals to the National Referral Mechanism have increased.⁸⁸ As a result of a new requirement to refer all NRM cases to the police, there has also been a marked increase in the number of crimes

⁸²Associazione per gli studi giuridici sull'immigrazione, *La tutela delle vittime di tratta e del grave sfruttamento: il punto della situazione oggi in Italia* (2015), <http://www.asgi.it/notizia/look-out-report-sfruttamento-lavorativo-tratta-italia>; U.S. Trafficking in persons Report 2016, 214-216. In 2014 Italian authorities investigated 2,897 suspected traffickers (3,803 in 2013), 824 were prosecuted (1,024 in 2013), 169 were convicted and appeals courts affirmed convictions of 184 defendants (representing a significant increase from the 74 traffickers convicted and 108 convictions upheld in 2013).

⁸³Center of Intelligence against Terrorism and Organised Crime (CITCO), *Balance Sheet 2017 on Prevention and Fight Against Human Trafficking in Spain* (2017).

⁸⁴Crown Prosecution Service prosecuting and convicting more cases of rape, domestic abuse, sexual offences and child abuse than ever before. See Crown Prosecution Service, *Violence against Women and Girls Crime. Crime Report 2015-16*, (September 2016).

⁸⁵National Audit Office, (2017) 43. In 2016, 80 defendants were prosecuted under the Modern Slavery Act for 155 modern slavery offences, rising from 26 in the previous year for 27 offences.

⁸⁶However, as noted by the GRETA Report, the figures do not reflect the real scale of the phenomenon due to the absence of a comprehensive approach to detecting and combating all forms of human trafficking. See Council of Europe (2018), paras. 16 and 17.

⁸⁷U.S. Department of State, *Trafficking in Persons Report - June 2017*, 2017, 221-223.

⁸⁸National Crime Agency, *National Referral Mechanism Statistics - End of Year Summary 2016* (7 April 2017), 3, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file> (1745 in 2013 to 3805 in 2016).

reported.⁸⁹ However, the impact on such increases are taking a toll on the workload of police forces who have raised concerns about the complexity of ‘modern slavery’ investigations and the impact on resources.⁹⁰

Barriers to effective investigation and prosecution of slavery and trafficking include the complexity of the case which can lead to a lack of access to evidence, and impediments to accessing victims and their testimony, including the reluctance of victims themselves to cooperate for fear of further harm (i.e. imprisonment or deportation).⁹¹ One area of best practice in this regard, that encourages and facilitates effective prosecution, is the provision of a renewable residence permit to those who have received a positive conclusive grounds decision when their personal situation warrants it or when they are co-operating with the authorities in criminal investigations or proceedings and their presence in the country is required for this purpose.⁹² Italy goes even further providing, since 1998, for the issue of a special residence permit to third-country nationals subject to violence or serious exploitation without requiring the victim’s co-operation in criminal proceedings.⁹³ Besides, victims will not decide to report exploitation if they know that, once the trial is over, they will have to leave the country and go back to their State of origin, where other members of the same organization are waiting to punish and kill them.⁹⁴ The rationale behind unconditional protection is, thus, simple: information from victims is crucial to really fight the exploiters. Such approaches are recognised as a best practice in the field,⁹⁵ though a victims-centred approach is still more an exception than a rule.

Operational and societal challenges to eradicating this phenomena exist, such as low incentives for conducting costly, time-consuming and often dangerous transnational investigations and a social acceptance of some forms of exploitation, that is reflected in the lack of political will to eradicate such phenomena.⁹⁶ Some of these barriers can be overcome by pursuing a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by

⁸⁹National Audit Office, (2017) 43., 159% increase in England and Wales from 870 in 2015-16 to 2,255 in 2016-17.

⁹⁰Ibid.

⁹¹Office of the High Commissioner for Human Rights (2002), Guideline 5.

⁹²Ibid, Guideline 4; Article 14(1), COE Convention.

⁹³Article 18, Consolidated Immigration Act, 1998.

⁹⁴Rosa Raffaelli, *The Protection of Trafficking Victims: Does Criminal Law Really Require the Sacrifice of Human Rights?*, STALS Research Paper, 13/2008, http://www.stals.sssup.it/files/STALS_Raffaelli.pdf.

⁹⁵Organisation for Security and Co-operation in Europe, *Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Italy from 17-18 June and 15-19 July 2013* (2013), para. 9.

⁹⁶Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, *Stolen freedom: the policing response to modern slavery and human trafficking*, October 2017.

encouraging regular and co-ordinated multi-agency inspections: a recommendation explicitly given to Spain and the UK.⁹⁷

Concluding Remarks

A strong national legal and policy framework compliant with international standards is widely recognised as the foundation for an effective criminal justice response against labour exploitation.⁹⁸ However, a criminal justice response alone is insufficient.

A complex set of responses is required that intertwine issues of law enforcement, border control, and human rights, also tackling the root causes of the phenomenon. States should also support due diligence by both private and public sectors to prevent and respond to the risk of labour exploitation (see provisions for corporate entities in Italy and UK). This is crucial because companies have an increasing business interest (e.g. reputational risk) in not being linked to slavery, servitude, forced labour and human trafficking, especially in the context of increasing global supply chains.⁹⁹

Conducting such comparative analysis of the legal frameworks identifies areas where there are still deficits in the full compliance with international legal obligations, as a result of competing interests such as “crimmigration”.¹⁰⁰ Nevertheless, for the overall effectiveness of anti-trafficking law, it is important to ensure that a criminal justice response is holistic by ensuring compliance with a human-rights based 3Ps approach.

Italy should rigorously investigate and prosecute labour exploitation cases with a special attention to those sectors known for high incidences of undeclared work (e.g. agriculture, construction and the textile sector)¹⁰¹; provide adequate long-term funding to NGOs assisting victims of labour exploitation; and implement nationwide awareness-raising campaigns.

Spain should review its legislation to fully comply with international standards and effectively protect victims of labour exploitation. Not having specific criminalisation may lead to non-investigation of situations which meet the

⁹⁷Council of Europe (2016) 42; Council of Europe, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round* (2018), paras. 90, 110, 145, 151.

⁹⁸Anne Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press, 2010), 370-413.

⁹⁹Henry Petersen, and Fred Lemke, “Mitigating Reputational Risks in Supply Chains”, *Supply Chain Management* 20, no. 5 (August 2015): 495-510.

¹⁰⁰Juliet Stumpf, “Two profiles of Crimmigration Law: criminal deportation and illegal migration”, in *Globalisation and the challenge to criminology*, ed. Francis Pakes (London: Routledge, 2013).

¹⁰¹Council of Europe (2018), 34.

threshold of slavery, servitude or forced labour, which could eventually result in a failure of the State to accomplish the positive obligations under Article 4 of the ECHR.¹⁰²

The UK should develop a comprehensive monitoring and evaluation framework for effective implementation of anti-trafficking laws across all jurisdictions;¹⁰³ ensure implementation of special measures for victims to ensure a victim centered approach to participation in criminal proceedings and make sure that subsequent migration law does not adversely impact upon the modern slavery framework.

All three countries have adopted law and policy measures to tackle labour exploitation, however, this article has identified areas where further reform could be beneficial to ensuring that all persons subjected to exploitative working conditions are identified and protected. Exploitation training should be mandatory for all law enforcement, migration officers and social workers to improve responses to victims, ensuring they are not prosecuted as irregular migrants.

¹⁰²See case law of Article 4, European Court of Human Rights.

¹⁰³National Audit Office (2017).

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