Prohibition of slavery: a legal dodo or coelacanth?
The meaning of the prohibition of slavery and forced labour and it's interpretation by the ECHR
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1. Introduction

It's hardly an original observation, but at a first glance the prohibition of slavery, servitude and forced labour seems to be hardly relevant for this day and age. The mere wording - especially the terms 'slave' and 'serf' - of anti-slavery treaties, ILO Conventions and article 4 of the European Convention on Human Rights (ECHR) cans easily associated with the Roman Empire, the feudal society of the middle ages and cotton plantations in the Southern United of the 19th Century. Does this prohibition still have a real meaning in modern, democratic industrialized societies. Is it, however important it may be in and as a principle, no more than an expression of a fundamental value that has little meaning on a day to day basis?

Taking a closer look at the case law of the European Court for Human Rights (ECtHR) shows that the prohibition of slavery and forced labour, however archaic it might ring to the ears, has serious and far reaching implications for member states of the ECHR.

And, unfortunately, it's not just the legal journals that show that slavery is still a problem today. The ILO estimates that about 21 million people are still subject to forced labour.[2] Out of these, 4.5 million (22%) are in forced sexual exploitation, and 14.2 million (68%) in forced labour exploitation in activities such as agriculture, construction, domestic work and manufacturing.[3] For sure, the position of migrant workers in the sex industry and domestic workers is not to be envied, and the same goes for agricultural labourers.[4] The problem might be more large scale and wide spread elsewhere, but in so-called modern countries, such as the old member states of the EU, people are forced to work under appalling circumstances too. Their lack of education, their migrant status (rather: lack of legal immigrant status), their depency on family relationships and usually a combination of those factors make them vulnerable to exploitation. Exploitation that, in some cases, amounts to slavery of forced labour.

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[2] http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm
[3] http://www.antislavery.org/english/slavery_today/forced_labour.aspx
[4] M. Lewycka's *Two Caravans* (Penguin: 2008) offers a sometimes heart wrenching insight in the predicaments of Eastern European workers in the UK. A witness statement of a Polish immigrant can be found on http://www.antislavery.org/english/slavery_today/forced_labour.aspx: "I was recruited from at a soup kitchen at a park in London. They always target people with drinking problems because we are easier to manipulate are more easy to make bad decisions by believing their lies. They know we will never claim our rights. I was promised between £50 and £70 a day but instead was paid virtually nothing. I was tricked twice. The first time I worked for a month without pay, the second time for two months. I was transported to and from different jobs block-paving driveways. I wanted to leave but the gang who employed me were intimidating and I had heard that other men who had tried to leave were beaten up by the gang. Plus, we were in the middle of the countryside, miles from the nearest town."

Albin & Mantouvalou quote from a recent survey by a NGO working on migrant domestic workers in the UK:[5]

> "in 2010, 60% of those who registered with it were not allowed out unaccompanied, 65% had their passport withheld, 54% suffered psychological abuse, 18% suffered physical abuse or assault, 3% were sexually abused, 26% did not receive adequate meals and 49% did not have their own room. Their working conditions were exploitative: 67% worked seven days a week without time off, 58% had to be available 'on call' 24 hours, 48% worked at least 16 hours a day and 56% received a weekly salary of £50 or less."

It should be stressed here that forced labour occurs (and human trafficking) in 'normal' sectors of the economy as well as in marginal sectors as domestic services and prostitution. In Sweden there's a problem with berry pickers from Asia, to name just one example. [6] In the Netherlands a man was convicted because he exploited a sweatshop that produced an Indonesian delicacy, prawn crackers. The 'staff' had to live in small rooms above the workshop, with only matrasses for furniture and with four of five colleagues and a lot of cockroaches for company. For this privilege the master took a large part out of their wages. Furthermore, there was no means of ventilation in the living quarters, even though the rooms were hot because the crackers were drying there on radiators put on full blast.[7]

In this paper I try to set out the main characteristics and definitions of the prohibitions as laid down in the ECHR (2). In section 3 I will discuss recent case law on domestic workers (rather: slaves), section 4 deals with the positive obligations resting on member states to prevent slavery and forced labour and to protect victims. My concluding remarks (5) relate to the way the ECtHR has made the prohibition, at the same time, applicable and practicable for today's societies by means of its historic-teleological interpretation.

2. Prohibition of slavery and forced labour

Article 4 ECHR contains the prohibition of slavery and forced labour:

"1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory
labour.
3. For the purpose of this Article the term "forced or compulsory
labour" shall not include:
(a) any work required to be done in the ordinary course of
detention imposed according to the provisions of Article 5
of this Convention or during conditional release from
such detention;
(b) any service of a military character or, in case of
conscientious objectors in countries where they are
recognised, service exacted instead of compulsory

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[5] E. Albin & V. Mantouvalou, The ILO Convention on Domestic Workers: From the Shadows to the Light, 42 ILJ 1 (2012), p. 69.

[6] Charles WOOLFSON, Petra Herzfeld OLSSON, & Christer THÖRNQVIST, Forced Labour and Migrant Berry Pickers in Sweden, International Journal of Comparative Labour Law and Labour Relations 28 (2), 2012, 147 ff.

[7] Rb. 's-Gravenhage (the Hague District Court) 3 May 2010, LJN BM3374.

military service;
(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
(d) any work or service which forms part of normal civic obligations."

Article 4 ECHR makes a distinction between slavery and servitude on the one hand (art. 4 section 1) and forced or compulsory labour (article 4 section 2) on the other. The prohibition of art. 4 section 1 is 'notstandsfest'; even in case of war or a public emergency the prohibition remains in force. Under such exceptional circumstances certain restrictions to the prohibition of forced labour are allowed, see art. 15 ECHR. Furthermore, section 3 of article 4 mentions some categories of compulsory work that do not fall within the ambit of article 4, e.g. military service and normal civic duties.

In its judgement in the Siliadin case the ECtHR ruled that slavery and servitude should be interpreted in line with the 1926 Slavery Treaty.[8] Under this treaty slavery requires the exercise of a genuine right of ownership and reduction of the status of the individual concerned to an "object".

The case concerns a young Togolese woman, who emigrated to France while she was a minor. She was accomopanied by a woman who took possession of Siliadin's passport in order to arrange for her education and residence permit, or so she said. After a while Siliadin was 'borrowed' to a coople as a domestic worker. Siliadin had to work 7 days a week and made long hours (15 hours a day). She did not receive any pay, her only time off was on Sundays during mass. It was made clear to Siliadin that she would be literally thrown out in the streets without papers if she refused to perform her duties. This would unavoidably lead to an existence as an illegal residence and perhaps expatriation to Togo.

The ECtHR held that Siliadin had not been subjected to slavery. An important criterion, i.e. execution of a genuine right of possession over a person as if he or she were an object, had not been met. The circumstances of the case, namely the working hours, the fact that she had not voluntarily chosen this specific job, Siliadins lack of means of support (no money and no education to speak of) and Siliadins isolated and vulnerable position lead the ECtHR to the conclusion that she was subjected to servitude. These factors precludes her from being able to change the situation she had to live (and work) in. The court took into consideration that she was completely dependent on and in the power of couple and had no freedom of movement at all. Servitude is having to perform work in a situation of (nearly) complete lack of freedom, e.g. the freedom to go where one wants to go and the freedom to dispose of one's possessions.

In the 1982 *Van Droogenbroeck* case the European Commission for Human Rights ruled that servitude requires a 'particularly serious form of denial of freedom.[9] In the case at hand, concerning an ex-detainee who had to work in the course of his socialization treatment, the Commission held that this criterion had not been fulfilled. In the recent cases of C.N. and V v. France and (another) C.N. v UK, also concerning domestic workers without residence permits, the ECtHR found that the prohibition of servitude had been breached. I will discuss those cases in more detail in section 4.

[8] ECtHR 26 july 2005, no. 73316 (Siliadin v. France).
[9] ECnHR 24 June 1982, no. 7906/77 (Van Droogenbroeck/Belgium).

The domestic worker cases show that servitude is interpreted by the ECtHR in a factual way. The question is whether the freedom is restricted to such an extent that he is actually unable to change his circumstances and escape from his present conditions. Slavery has an additional requirement of a more legal nature, namely that the 'master' claims ownership over the worker. Slavery in article 4 has, in the opinion of the ECtHR, more or less the same meaning as in anti-slavery treaties of old. Servitude however is applied to cases, such as domestic work for illegal immigrants, that would in all likelihood not have been foreseen by the drafters of the anti-slave trade treaties of the 19th century and ILO Conventions. They probably understood 'serf' in its medieval, feudal sense.

The prohibition of forced and compulsory labour laid down in art. 4 section 2 ECHR is not read in strictly historical way, but in a historical teleological way. That that the different subject parts of the definition of forced and compulsory labour are not interpreted in their original, classical meaning. As a whole however the ECtHR sticks to a historically inspired very narrow interpretation of the prohibition of article 4 section 2. The roots of the prohibition lie in ILO Convention 29, which was destined to gradually (!) abolish compulsory labour that the colonial powers of the time imposed upon the inhabitants of Africa and Asia. Furthermore, ILO Convention 29 is meant to deal with abuse of prisoners as workers.

Given this background, the ECtHR, In other words, holds that an imposition of work needs to be atrociously excessive in order to qualify as forced or compulsory labour. Not all work that one is legally bound to perform is forced or compulsory labour in the sense of article 4 ECHR , however compulsory it may be. It is just work. By definition, work is compulsory, otherwise it would be a (renumerated) hobby.

Cases on article 4 are relatively rare in the case law of the ECtHR. Cases in which the court finds that there has been a breach of it are few and far between. The ECtHR to my knowledge found a breach of article 4 section 2 only in those cases, such as Siliadin, where it had concluded that article 4 section 1 had been breached already. Since the ECtHR considers slavery and servitude as a qualified, a worse form of forced labour it does not come as a surprise that the court holds that a breach of section 1 implies a breach of section 2. In the Rantsev case the court did not bother with the distinctions of article 4. Since the person involved was forced to work in the sex industry, the court held that having to do this work was infringing her right to human dignity and that therefore article 4 had been breached.[10]

In Rantsev the ECtHR reasoned as follows:

> "281. The Court considers that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere […]. It implies close surveillance of the activities of victims, whose movements are often circumscribed […]. It involves the use of violence and threats against victims, who live and work under poor conditions […]. It is described by Interights and in the explanatory report accompanying the Anti-Trafficking Convention as the modern form of the old worldwide slave trade […]. The Cypriot

[10] ECtHR 7 January 2010, no. 25965/04 (Rantsev v. Russia and Cyprus).

> Ombudsman referred to sexual exploitation and trafficking taking place “under a regime of modern slavery” […].
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> 282. There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes “slavery”, “servitude” or “forced and compulsory labour”. Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention. The Russian Government’s objection of incompatibility ratione materiae is accordingly dismissed.”

Having stated the restrictions above, it is noteworthy that the scope for application of article 4 section 2 is quite sizeable. This is most notably the case for compulsory labour, since forced labour is interpreted rather narrowly as well. The ECtHR defines forced labour as work that has to performed under a direct threat of physical or mental harm. Work at gun point, more or less. The appalling conditions and the nearly complete lack of freedom led the ECtHR to the conclusion that Siliadin had been subjected to forced labour.

Compulsory labour is work which is exacted from any person under the menace of any penalty. The element penalty is not restricted to criminal proceedings (and punishment), but entails loss of privileges, benefits and or benefits too. This makes the scope of article 4 section 2 quite broad, in theory at least. Article 4 section 2 has been invoked before the ECtHR is cases that would hardly (if not not at all) merit the qualification ‘hard labour’. To name a few examples: lawyers required to do pro bono cases in order to become or remain allowed to practice[11], a doctor obliged to be on call for emergencie services[12] s or recipients of income support or similar benefits having to accept for a job or participate in work experience programs on the pain of loss of benefits.[13] The claims in those cases have been rejected, even though the court held that the work had to be performed under the menace of a penalty. In practice article 4 is restricted to work under really appalling, degrading conditions. Even if that’s the case, a direct link needs to be present between the penalty to be imposed and the obligation to work. The ECtHR dismissed the claim of a French applicant, who stated that she was forced to work as a prostitute in order to pay off her large tax and national insurance debts. Even though those debts, in combination with her lack of training and experience in more regular lines of employment made it hard for her to quit working, the court held that she was not directly forced by the tax man (French state) to perform this specific job in particular.[14]

The case law shows that the test is whether or not imposing work lies an excessive burden on the person concerned. All the circumstances of the case need be be taken into consideration, in conjunction. An important, but not decisive, factor is whether or not the worker voluntarily entered the position or profession to which the work he is required to do - such as pro bono work - is linked. (Under ILO Convention 29 work as a consequence of a job voluntarily entered into does not fall

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[11] ECtHR 23 November 1983, no. 8919/80 (Van der Mussele v. Belgium), ECtHR 18 October 2011, no. 31950/06 (Graziani-Weiss v. Austria).

[12] ECtHR 14 September 2010, no. 29878/07 (Steindel v. Germany).

[13] ECtHR 4 June 2010, no. 15906/08 (Schuitemaker v. the Netherlands).

[14] ECtHR 11 September 2007, no. 37194/02 (Tremblay v. France).

within the ambit of compulsory labour.)[15] Another important factor is the type and amount of the work required: is it mentally or physically strenuous or not? The claim of an Austrian detainee was rejected by the ECtHR mainly because his duties (cleaning/cooking) were of a light, domestic nature and similar to the tasks required of residents of other institutions (e.g. monasteries).[16] Had the work of this prisoner been pickaxing rocks in a chain gang, the conclusion would probably have been different. This Austrian case, as well as the pro bono lawyer cases, show that it's also relevant whether the worker receives some form of renumeration or compensation for the work exacted.[17] Member states do have a wide margin of appreciation as to the height of the renumeration, though. Another factor to be taken into consideration is whether the work, in terms of hours required and necessary recuperation, leaves enough room for gainful activities of one's own choice.

To sum up, the imposition of work needs to be reasonable, having regard to the weight of the burden to be borne by the worker on the one hand and the goal and interests of society as a whole served by imposing the work on the other.

3. Domestic Workers: case law

Most of the few cases in which the ECtHR held that article 4 had been breached concern domestic workers. Usually they were young immigrants living on the premises of their, for want of a better word, masters. Those ingredients usually are essential to a dangerous cocktail of dependency and exploitation that may even amount to servitude, forced and compulsory labour. Mantouvalou has argued that migrant domestic workers are in particular vulnerable to those inhumane working conditions.[18]

The landmark Siliadin case discussed above contains all of those characteristics and is, unfortunately, not the only example of 'modern slavery' in a domestic context.

An important element of the Siliadin case, to be discussed further In section 4, is that the ECtHR finds that article 4 has been violated not just because the applicant had to work in captivity. The violation is based on Frances's inadequate response to this violation. Article 4 entails a positive obligation to protect victims of - in brief – compulsory labour and to offer them an effective remedy against it's perpetrators. The Court held that the French state had not met it's positive obligation to protect Siliadin and offer her an effective remedy. A legislative and administrative framework needs to be in place in order to counteract compulsory labour. Siliadin was awarded damages and back pay by a civil court. The couple holding her was prosecuted, but not convicted of any crime. According to a French parliamentary commission the provisions of the Penal Code relating to modern slavery were open for multiple interpretation. The ECtHR held that French criminal law fell short of meeting the obligation to protect victims effectively.

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[15] The ECtHR quotes from ILO Convention 29 when deciding cases on art. 4, including the exception of work voluntarily entered into, and reasons that art, 4 contains the same definition, but its further considerations in Vander Mussele make clear that it does not consider 'voluntariness' as an exception as such.

[16] ECtHR 7 July 2011, no. 37452/02 (Stummer v. Austria).

[17] In her dissenting opinion in Stummer Judge Tulkens held that compulsory labour had been exacted, since the work was not covered by social insurance (old age pension). In my opinion social insurance is a relevant factor when determining whether the work is adequately compensated, but I would advocate a far wider margin of appreciation on the issue whether one is eligible for social security than Tulkens did.

[18] V. Mantouvalou, Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers, 35 ILJ 4 (2006), par. 3.

The case of C.N. and V. v. France concerns two sisters who fled to France form Burundi during the ethnic violence there, in which they lost some of their closest family members. They were taken in by family residing in France, Burundian diplomats no less. The elder sister (C.N.) met with a fate quite similar to Siliadin. She had to make long hours, one of her main tasks being taking care of the handicapped daughter of her family and other domestic tasks. She was poorly fed, if at all, on left overs and had to sleep in a cellar. (With in inappropriate attention for detail, the parties before the ECtHR have discussed whether the concrete partly sparsely furnished damp subterranean actually was a cellar of not).[19] Her family threatened to send her and her younger sibling back to Burundi if she would not cooperate. Referring to its Siliadin judgment, the ECtHR finds that C.N. was subjected to servitude and compulsory labour. As far as her sister is concerned, the court held that article 4 had not been violated. The court reasoned that she was allowed to go to school and that the tasks she had to perform did not exceed the duties one normally has to perform in a family relation. In contrast, the elder sister had to perform tasks that, had she not been present, her family would have had to engage a hired help for. Obligatory or not, it seems that simple domestic tasks, if limited in duration, do not qualify as work (gainful employment) and are therefore excluded.

As in the Siliadin case, the ECtHR found France's response to the violation of article 4 lacking. In this case only one of the 'masters' was successfully prosecuted, and received a modest fine. The other master was acquitted by an court of appeals, the public prosecutor did not appeal this judgment at the French Supreme Court (Cour de Cassation). Modern slavery needs to be criminalized in the statute books, but that's not enough. The state needs to apprehend perpetrators and ensure a conviction, perhaps even a prison sentence.

The case of C.N. v. UK shows strong similarities with the other two cases. C.N. fled to the UK in 2002 and was 23 years old at the time. She was helped by a family member, who provided her with a false passport and visum, which he took from her upon arrival. Via an intermediary she was put to work as a domestic/carer for en elder couple. The intermediary and the family member received payments, C.N. did not. She had to work 7 days a week, having a few hours off one Sunday per month. In 2006 C.N. fled and reported her predicament to the authorities. Her claim that she had been subjected to compulsory labour was not investigated deeply by the police or the immigration authorities. The police stated that there was no evidence of exploitation and that the requirements of the prohibition of human trafficking under section 4 of the Asylum and Immigration Act 2004 had not been met. During the proceedings in her application for asylum, C.N.'s story was held to be incredible. In December 2007 she was admitted to the POPPY-project, a government funded project providing housing and support for victims of human trafficking.

The ECtHR holds that the complaints lodged by C.N. did give rise to a credible suspicion of domestic servitude, but that the national authorities (wrongly) focused on the question whether or not she had been subjected to human trafficking as defined in the Asylum and Immigration Act. I quote the central considerations of the ECtHR:

> "78. Nevertheless, the Government have submitted that the reason no action was taken following investigation of the applicant's complaints was not the absence of appropriate legislation but rather the absence of evidence to support the facts alleged by her. In short, the domestic authorities simply did not believe the applicant's account. The Court must

[19] C.N. and V. v. France, par. 10.

therefore consider whether the lack of specific legislation criminalising domestic servitude prevented the domestic authorities from properly investigating the applicant's complaints, or whether her complaints were properly investigated but no evidence was found to support them. In carrying out this assessment, the Court reiterates that it is not its task to replace the domestic authorities in the assessment of the facts of the case.

79. The Court recalls that the investigation into the applicant's complaints was commenced by the Metropolitan Police Human Trafficking Team, a police unit specialising in the investigation of human trafficking offences. On 26 September 2007 they informed the applicant's solicitor that there was "no evidence of trafficking for domestic servitude". Likewise, on 5 September 2008 they noted that there was "no evidence to substantiate the applicant's allegation that she had been trafficked into the United Kingdom". She had been well looked after by the K family, although there had been a dispute over money and it may have been that "her cousin kept more than he should have done". Again, on 18 September 2008 the police stated that "it was decided that there was insufficient evidence to substantiate the allegation of trafficking and thus further investigation was not warranted" and on 25 February 2009 they noted that "there is no evidence that would support exploitation of any kind". Later, on 27 March 2009, the police recorded that "there is no evidence to show that this female is/was a victim of slavery or forced labour". Finally, on 12 August 2009 the police wrote to the applicant's solicitor, indicating that her case did not appear to constitute an offence of trafficking for the purposes of exploitation and that they were "not aware of any specific offence of forced labour or servitude".

80. While the Court notes the credibility concerns voiced by the domestic authorities, it cannot but be concerned by the investigating officers' heavy focus on the offence of trafficking for exploitation as set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. In particular, it observes that the investigation into the applicant's complaints was carried out by a specialist trafficking unit and while investigators occasionally referred to slavery, forced labour and domestic servitude it is clear that at all times their focus was on the offence enshrined in section 4 of the 2004 Act. As indicated by the Aire Centre and the Equality and Human Rights Commission in their third party interventions, domestic servitude is a specific offence, distinct from trafficking and exploitation, which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance. A thorough investigation into complaints of such conduct therefore requires an understanding of the many subtle ways an individual can fall under the control of another. In the present case, the Court considers that due to the absence of a specific offence of domestic servitude, the domestic authorities were unable to give due weight to these factors. In particular, the Court is concerned by the fact that during the course of the investigation into the applicant's complaints, no attempt appears to have been made to interview S. despite the gravity of the offence he was alleged to have committed (see, by way of comparison, M. and Others v. Italy and Bulgaria, no. 40020/03, §§ 104 - 107, 31 July 2012). For the Court, the lacuna in domestic law at the time may explain this omission, together with the fact that no apparent weight was attributed to the applicant's allegations that her passport had been taken from her, that S. had not kept her wages for her as agreed, and that she was explicitly and implicitly threatened with

> denunciation to the immigration authorities, even though these factors were among those identified by the ILO as indicators of forced labour.
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> 81. Consequently, the Court finds that the investigation into the applicant's complaints of domestic servitude was ineffective due to the absence of specific legislation criminalising such treatment."

The ECtHR holds that criminalizing offences (e.g. human trafficking, false imprisonment, kidnapping) that may serve to deal with modern slavery is not enough. The court demands specific legislation. As of 6 April 2010, holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour is a criminal offence under Section 71 of the Coroners and Justice Act 2009.[20]

4. Positive obligations

The cases of domestic servitude make clear that the ECtHR infers an obligation to thoroughly investigate, to criminalize specifically and to effectively prosecute those responsible for slavery and servitude.

In the French cases, as well as in the Rantsev case, the ECtHR offered the Member States of the ECHR some leeway. It is up to the national authorities how to allocate scarce collective resources to investigations of possible violations of article 4. In Rantsev the Court reasons that: "Bearing in mind the difficulties involved in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities."[21] Still it must investigate, with appropriate speed, when a credible suspicion of a violation arises. A member state is not to wait on a complaint by the victim or a family member. States have an active duty to act upon signals of possible violations. The ECtHR refers to international treaties and EU legislation on human trafficking, e.g. the 2000 Palermo Protocol. [22] It transposes the obligations mentioned in those instruments, e.g. awareness training of immigration authorities, protection programs for alleged victims of human trafficking, to the ECHR. To put it differently, under article 4 member states are obliged to be 'sensitive' to possible cases of slavery. From that it follows that the measures and policies laid down in international anti human trafficking instruments should be put in place.

Having regard to the French cases, it seems that the ECtHR demands a conviction. Having slavery forbidden in the statute books or investigating possible cases is not enough. Those who are guilty should end up in jail. The court was not satisfied by the acquittal Siliadin case, the modest fine for one of the masters in the case of C.N. fell apparently short of the standard set by court. It's quite remarkable that the ECtHR comes down so heavily on the national authorities, almost taking their place in deciding whether or not to investigate and establishing what punishment would fit the crime. In the case of C.N. v. the UK, it seems to me, the ECtHR does not literally say but implicitly holds that the national authorities were wrong not to have established a reasonable suspicion. The investigation apparently falls short of the standards required by the ECtHR. The implied message

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[20] V. Mantouvalou, Modern slavery: the UK response, 39 ILJ 4 (2010).
[21] ECtHR 7 January 2010, no. 25965/04 (Rantsev v. Russia and Cyprus) par. 284.
[22] protocol to prevent, suppress and punish Trafficking in persons, especially women and Children, supplementing the United Nations Convention against transnational organized crime, Palermo 2000.

here is that the ECtHR, had it been responsible for investigating the complaints of C.N., it would have found grounds for reasonable suspicion. The French case show that, once the ECtHR has established article 4 has been violated, the national authorities are under an obligation to prosecute and convit, perhaps even condemn the perpetrators to a prison sentence. Of course, we're dealing with exceptional cases here – I hope, but it is still at variance with the principle that it's up to national authorities to decide how to ensure human rights are upheld.

The case of C.N. v the UK makes abundantly clear how far the ECtHR is willing to go in combatting one of the most heinous human rights violations. In this case the UK had put measures and policies in place in line with those recommended in Rantsev. In Rantsev the ECtHR held:

> "287. Bearing in mind the difficulties involved in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities […]. It is relevant to the consideration of the proportionality of any positive obligation arising in the present case that the Palermo Protocol, signed by both Cyprus and the Russian Federation in 2000, requires States to endeavour to provide for the physical safety of victims of trafficking while in their territories and to establish comprehensive policies and programmes to prevent and combat trafficking […]. States are also required to provide relevant training for law enforcement and immigration officials […].

At the time of the events, human trafficking was penalized, policies had been adopted and the immigration office had been trained. A specialized anti human trafficking department had been establishes within the immigration service. The Court states in Rantsev (and reiterates in C.N.) that states have an obligation of means not of result in case of human trafficking:

> "288. Like Articles 2 and 3, Article 4 also entails a procedural obligation to investigate situations of potential trafficking. The requirement to investigate does not depend on a complaint from the victim or next-of-kin: once the matter has come to the attention of the authorities they must act of their own motion (see, mutatis mutandis, Paul and Audrey Edwards v. the United Kingdom, no. 46477/99, par. 69, ECHR 2002-II). For an investigation to be effective, it must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of individuals responsible, an obligation not of result but of means. A requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency. The victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests (see, mutatis mutandis, Paul and Audrey Edwards, cited above, par. 70 to 73)".

Nevertheless, it seems to me that the obligation as seen by the ECtHR gets very close indeed to an obligation of result. In C.N. v. the UK does not say it does repalce, but in actual fact does replace the national authorities in investigating a claim. The claim was credible in the opinion of the court and therefore the national authorities fell short of the standard required. Furthermore, the Court held that having anti-human trafficking legislation and 'general' criminal law protecting personal freedom was not enough. A specific statutory provision needs to be in place.

The attitude of the ECtHR towards violations of article 4 amounts to a paradigm shift in the human rights discourse. Broadly speaking human rights were invented to protect citizens from an oppressive state. In this field, and in the field of crimes against humanity in general, states are legally bound to use their powers to oppress violators of human rights. [23]

5. Concluding remarks

Time and again the ECtHR has reasoned that the ECHR is a living instrument which must be interpreted and applied so as to make its safeguards practical and effective. However old and obsolete the wording of article 4 ECHR may appear, the court has made it applicable to cases of 'modern slavery'. The ECtHR does so, however, with caution. Drawing inspiration from anti-slavery treaties and ILO-conventions, the scope for article 4 is limited to really the worst cases of degrading exploitation of fellow humans. Even though the prohibition of art. 4 section 2 is not interpreted grammatically, the ECtHR is not willing to apply this provision to cases where workers are put under a certain or even considerable amount of pressure to perform a particular task. The court goes back to the roots of the prohibition and finds that cases of modern slavery, in which personal freedom is severely infringed upon or completely taken away, falls within the ambit of article 4. In its definition of positive obligations under article 4, the ECtHR leaves the old documents behind and refers to international instruments relating to human trafficking in order to stipulate in more detail what states need to do.[24]

[23] W. Schabas, The three charters : making international law in the post-war crucible (inaugural lecture Leiden University 25 January 2013), p. 5-6, see. https://openaccess.leidenuniv.nl/handle/1887/21152

[24] A technique also applied in ECtHR 7 July 2011, no. 37452/02 (Stummer v. Austria); international treaties on the legal position and treatment prisoners prisoners played an important role in the Court's ruling on art. 14 ECHR (non-discrimination).