

Rights at Work – Final Conference: Tackling labour exploitation in Poland, Bulgaria, Romania & the Netherlands

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Understanding labour exploitation: seeking clarification in law and effective implementation in practice

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Overview

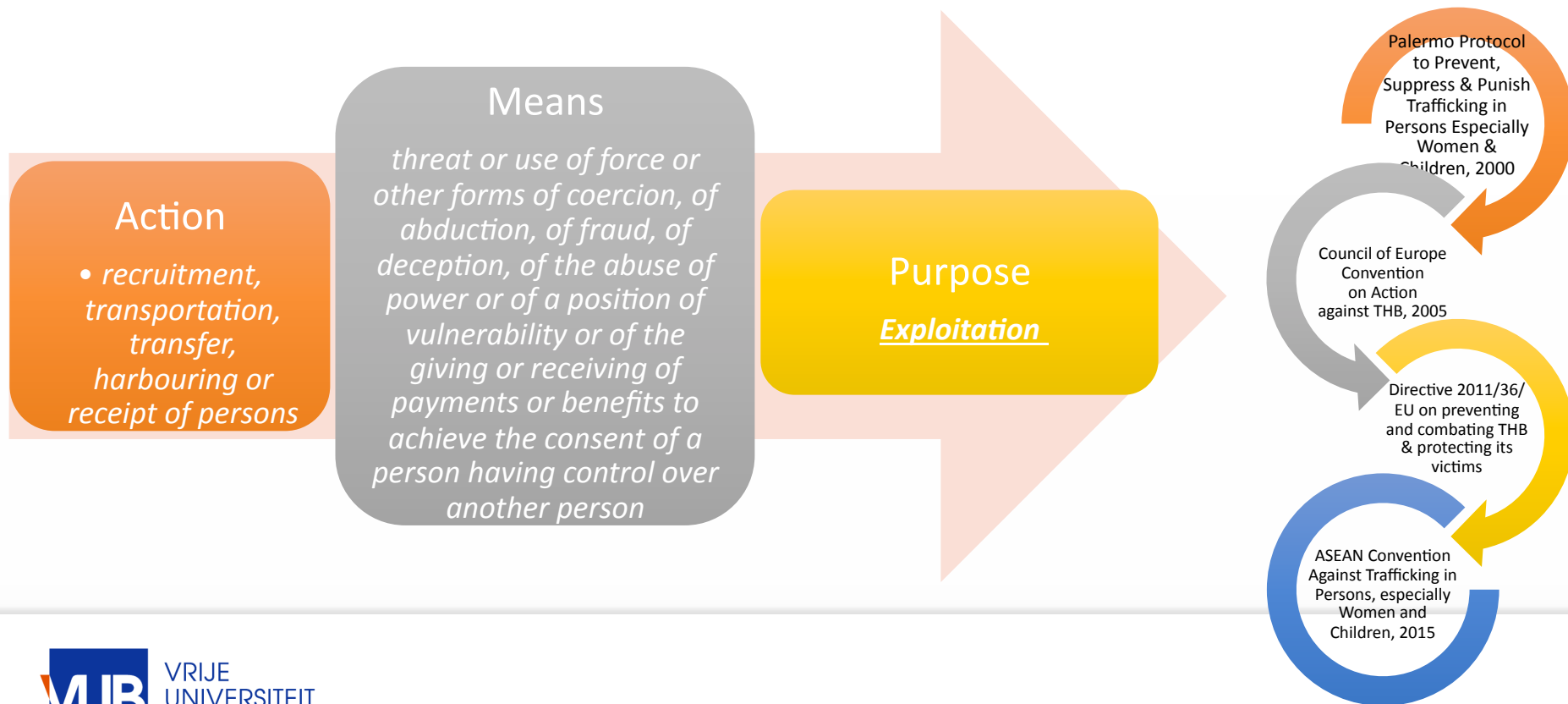
I. Understanding labour exploitation in law: human trafficking, slavery, servitude & forced labour

II. Non-definition of exploitation in law

III. Application in domestic criminal law: England & Wales and Belgium

IV. Preliminary comparative remarks

I. Understanding labour exploitation in law: human trafficking



I. Understanding labour exploitation in law: human trafficking

Legal instrument	Exploitation shall include, at a minimum.....
<ul style="list-style-type: none">• UN Palermo Protocol, 2000• COE Trafficking Convention, 2005• ASEAN Trafficking Convention, 2015 the exploitation of the prostitution of others or other forms of sexual exploitation, <u>forced labour or services, slavery or practices similar to slavery, servitude</u> or the removal of organs.
<ul style="list-style-type: none">• EU Directive, 2011 the exploitation of the prostitution of others or other forms of sexual exploitation, <u>forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities</u> , or the removal of organs.

I. Understanding labour exploitation in law: slavery, servitude & forced labour

Slavery	Servitude	Forced or compulsory labour
Article 1, International Convention to Suppress the Slave Trade & Slavery, 1926	Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, & Institutions & Practices Similar to Slavery, 1956	Article 2(1), ILO Convention No. 29 (Forced Labour), 1930
Article 4, European Convention on Human Rights, 1950		
<ul style="list-style-type: none"> • Exercise of powers attached to the right of ownership • Reduction of status of person to an object (Siliadin v France 2005) 	<ul style="list-style-type: none"> • Obligation to provide one's services that is imposed by the use of coercion • Obligation on the "serf" to live on the other's property • Impossibility of changing his status (Siliadin v France 2005) 	<ul style="list-style-type: none"> • Work performed involuntarily • Under the threat of a penalty • Restriction of movement not a necessary element (Chowdhury v Greece 2017)

II. Non-definition of labour exploitation in law

- Exploitation [in the human trafficking paradigm] is categorical and not definitional (Allain, 2013 & 2014)
- Setting minimum standards (Parkes, 2015): A compromise between ensuring implementation and political cooperation
- Exploitation as an unjust imbalance of power: taking unfair advantage of vulnerability/weakness in order to gain a benefit (UNODC Issue Paper, The concept of 'exploitation' in the Trafficking in Persons Protocol, 2015)
- Exploitation is "ambiguous", "fluid" (UNODC, 2015)
- Impact of non-definition in law
 - lack of understanding and confusion in terminology
 - fostering stereotypical understanding of labour exploitation
 - fragmentation & inconsistency in implementation
 - legal uncertainty

III. Application of exploitation in domestic criminal law

“Lawmakers, judges, legal professionals and policy makers have a difficulty in applying and understanding the multiplicity of forms of labour exploitation and legal provisions relevant to it.”

FRA, SELEX, 2015

- Purpose = Criminalisation: obligation to prohibit human trafficking, slavery, servitude and forced labour in domestic law
- Principle of legality: the behaviour which amounts to a criminal offence must be clearly defined in order to provide legal certainty (UNODC, Model Law against Trafficking in Persons, 2009)
- “The onus is placed on individual States to act within their own domestic jurisdictions [and] decide what constitutes [trafficking in persons] within their own jurisdiction.” (Allain, 2013 & 2014)
- “Piecemeal, uncoordinated, ineffective.” (Edwards, 2007-2008)

III. Application of exploitation in domestic criminal law

England and Wales

Trafficking in persons: arrange or facilitate the travel of another with a view to V being exploited
S2(1) Modern Slavery Act 2015

Holding another person in slavery or servitude
S1(1)(a) Modern Slavery Act 2015

Requiring another person to perform forced or compulsory labour
S1(1)(b) Modern Slavery Act 2015

Belgium

Trafficking in persons for purpose of exploitation
Article 433 quinquies Penal Code (Amended 2013)

III. Application of exploitation in domestic criminal law

Legal instrument	Exploitation is categorical and exhaustive
Section 3, Modern Slavery Act 2015, England & Wales	<p>Slavery, servitude and forced or compulsory labour</p> <p>Sexual exploitation Removal of organs etc</p> <p>Securing services etc by force, threats or deception</p> <p>Securing services etc from children and vulnerable persons</p>
Article 433 quinquies, Criminal Code (amended law of 13 April 2013), Belgium	<p>Exploitation of prostitution or other forms of sexual exploitation</p> <p>Forced begging</p> <p>Work or services in conditions contrary to human dignity</p> <p>Removal of organs</p> <p>Forced criminality</p>

ENGLAND & WALES: Judicial understanding of labour exploitation in law

- Human trafficking is “facilitation & arranging **travel** into/in UK” + intention to exploit. No means
- Stand alone offences interpreted according to Article 4 ECHR, *Siliadin v France* [2005]
 - “**Hierarchy of denial of personal autonomy**”.....“in **descending order of gravity**, therefore, “slavery” stands at the top of the hierarchy, “servitude” in the middle, and “forced or compulsory labour” at the bottom.” *R v SK* [2011] EWCA Crim 1691, para 24
- Mutually exclusive concepts?
 - **Indictment**: parallel or alternative offences
 - **Sentencing**: sentence can be higher for forced labour than for servitude “where the circumstances were broadly similar, slavery was the gravest offence, followed by servitude, followed by forced or compulsory labour, but it was wrong to suggest that a sentence for forced labour would always be lower than for the other offences” *R v Connors* [2013] EWCA Crim 368, para 23
- Exploitation is....
 - **Misunderstood in contemporary setting**: “Denial of geographic freedom.” [UK12]
 - **Restricted in interpretation**: Exploitation in THB is slavery or servitude OR subjected to force, threats, or deception designed to enable another person to acquire a benefit of any kind. [UK8]
 - **Conflated**: “she was merely an object to be used abused and cast aside at will.. this is a classic case of forced labour [UK9]

BELGIUM: Judicial understanding of labour exploitation in law

- Transposition of EU Anti-trafficking Directive, but only two elements as means are an aggravating factor. No stand alone offences.
- Trafficking in persons for the purpose of providing work or services in conditions contrary to human dignity
- Human dignity = sufficiently broad to cover all forms of labour exploitation required by European and international law [BE13]
- Conditions contrary to human dignity [Exposé des motifs]

Combination of conditions as “indicators” of exploitation

- precarious living **and** working conditions [BE4, BE5, BE11, BE16, BE21, BE24]
- low pay [BE4, BE5, BE6, BE11, BE16, BE18, BE21, BE24]
- non-payment of regular wages [BE5, BE8, BE16, BE17, BE21]
- lack of social security protection [BE4, BE5, BE11, BE16, BE21, BE26]
- dependence upon employer [BE5, BE16]
- excessive hours [BE6, BE8, BE11, BE18, BE24]
- no days off [BE21]
- excessive hours regulated only by the employer [BE5, BE16]
- virtual impossibility to claim any rights in respect of his employment relationship [BE5, BE16]
- dangerous working environment/lack of health & safety [BE6, BE8, BE10, BE17]
- physical & verbal abuse [BE8]

IV. Preliminary Comparative Remarks

Similarities

Exploitation is criminal e.g. not social penal law violations

Objective standards of country of exploitation

Consent (upon recruitment) is irrelevant

Indicators used to determine existence & severity of exploitation (e.g. sentencing)

Means are not constituent element of THB

(Abuse of) vulnerability is a key factor

Totality of situation e.g. living AND working conditions, vulnerability

Differences

Sources for interpretation: supranational [UK] v national [BE]

THB: Focus on process [UK] v actual exploitation [BE]

Victims' rights: nationals, EU nationals & undocumented TCNs

Indictment: social penal law, immigration offences [BE] v offences against person, sexual offences & fraud [UK]

Public v Private: focus on labour inspection, less intervention in domestic/private domain [BE]

Cultural dimensions: houseboy practices, domestic violence, arranged marriage, treated as family member

Thank you

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