| Chapter 6 |

Prohibition of Slavery and Forced Labour

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ABSTRACT

The chapter emphasises the continued relevance of Art. 4 of the European Convention on Human Rights (ECHR), which prohibits slavery, servitude and forced or compulsory labour. Despite formal abolition, modern forms of these practices, such as domestic servitude, debt bondage and human trafficking, persist in Europe. Art. 4 is structured around two central prohibitions: the absolute right not to be subjected to slavery or servitude and the prohibition of forced labour, with delimitations regarding work during detention or conditional release, military service, service required during an emergency or calamity and civic obligations. Furthermore, the ECHR imposes positive obligations on states, requiring them to implement effective legislative and administrative frameworks, take operational measures to protect victims and conduct effective and independent investigations.

The historical overview traces slavery and forced labour from ancient times to their formal abolition and highlights the first international efforts, such as the 1926 Slavery Convention and ILO Convention No. 29 on Forced Labour. A comparison with other universal and regional human rights instruments underlines their scope of protection and enforcement mechanisms, emphasising the ECHR's advantage in providing individuals direct access to the European Court of Human Rights (ECtHR), which issues legally binding decisions. The case law analysis examines key cases, such as Siliadin v. France, where the Court first condemned domestic servitude, and Rantsev v. Cyprus and Russia, which broadened Art. 4 to include human trafficking. It explores cases from Central and Eastern Europe, such as S. M. v. Croatia, M. and Others v. Italy and Bulgaria and Krachunova v. Bulgaria, shaping the Court's jurisprudence in these regions. Art. 4 provides a strong framework to combat slavery and forced labour, with the ECtHR acknowledging the evolving nature of such violations in modern society and interpreting the Convention as a living instrument.

KEYWORDS

ECHR, slavery, forced labour, human trafficking, case law

1. Introduction

Slavery and forced labour are often perceived as relics of the past or as issues confined to developing countries. While Mediterranean and Transoceanic slavery and forced-labour camps are viewed as historical events, the fight against these injustices

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continues in their modern forms.[1] To illustrate: 'As the Parliamentary Assembly of the Council of Europe has Pointed out, although slavery was officially abolished more than 150 years ago, 'domestic slavery' persists in Europe and concerns thousands of people, the majority of whom are women'.[2] Furthermore, 'The Court notes that trafficking in human beings as a global phenomenon has increased significantly in recent years'.[3]

Numerous international instruments prohibit slavery, servitude and forced or compulsory labour, as these practices violate the right to freedom and represent a denial of human dignity by reducing individuals to mere commodities or objects.[4] This paper centres on the protection provided by the European Convention on Human Rights (ECHR), prohibiting slavery and forced labour in Art. 4. A key part of the analysis is the case law of the European Court of Human Rights (ECtHR), which holds that 'together with Arts. 2 and 3, Art. 4 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe'.[5]

The analysis begins with a contextual assessment of Art. 4, outlining its rights and the state obligations (Chapter 2). This is further developed in the next two chapters (Chapters 3 and 4), starting with an overview of the evolution of these rights, followed by a comparison with other universal and regional human rights instruments. A deeper understanding is achieved through an in-depth analysis of ECtHR case law on Art. 4 in Chapter 5, focusing on cases from 16 Central and Eastern European countries in Chapter 6. Chapter 7 outlines the key findings of this paper.

2. Contextual Analysis of the Prohibition of Slavery and Forced Labour in Accordance With the ECHR

This chapter outlines the rights guaranteed in Art. 4 based on the textual analysis of the ECHR and the ECtHR's interpretation. While Chapter 5 delves into these rights through case law, this section emphasises the states' obligations, focusing on their positive obligations. Additionally, the connection with Art. 14 of the ECHR is briefly explored.

Para. 1 of Art. 4 declares that no one shall be held in slavery or servitude, while Para. 2 states that 'No one shall be required to perform forced or compulsory labour'. Para. 3 clarifies that the term 'forced or compulsory labour' does not include:

1 Moerman, 2010, pp. 86–87; Mantouvalou, 2006, p. 395. For the historical aspects of slavery and forced labour, see Drescher, 2009.
2 ECtHR, *Siliadin v. France*, App. no. 73316/01, 26 July 2005, Para. 111.
3 ECtHR, *Rantsev v. Cyprus and Russia*, Application no. 25965/04, 7 January 2010, para. 278.
4 *Siliadin v. France*, paras. 111, 112; Díaz Morgado, 2021, p. 76.
5 *Siliadin v. France*, para. 82.

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Art. 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 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.[6]

The Art. outlines two distinct prohibitions from which universally recognised subjective rights are derived. First, the right to not be subjected to slavery or servitude, which is absolute. It does not allow for exceptions or limitations, nor can states derogate from it, even in situations involving special risks to the state.[7] This is because the prohibition on slavery is widely accepted as a *jus cogens* (peremptory) norm and an obligation *erga omnes*, meaning that all states have a legal interest in its protection. This reflects the global commitment to preventing and addressing slavery.[8] Stemming from Para. 2 is the right not to be compelled to carry out forced labour. In Para. 3, the listed cases are not exceptions intended to limit the exercise of the right, 'but to 'delimit' the very content of this right'.[9] Therefore, the listed obligations do not fall within the definition of forced or compulsory labour.[10] Instead, it 'serves as an aid to the interpretation' of Para. 2.[11] However, in the right stemming from Para. 2, exemptions, limitations or derogations could apply during war or other public emergency threatening the nation.[12]

Notably, the ECHR does not define slavery, servitude or forced labour. Therefore, it was essential for the ECtHR to refer to international treaties widely ratified by the States Parties to define the categories.[13] While the detailed definitions will be examined in Chapter 5, one key Point must be emphasised here. The scope of Art. 4 has been significantly expanded through the ECtHR's evolutive interpretation, treating the Convention as a living instrument.[14] In response to the evolving slavery-like practices in modern society, the Court broadened the prohibition to cover human trafficking, which is now included *ratione materiae* in Art. 4. The Court considered the ECHR's context, objective and purpose, along with the international conventions against human trafficking. It emphasised:

6 Para. 3 Art. 4 ECHR.
7 Para. 2 Art. 15 ECHR.
8 Díaz Morgado, 2021, pp. 76–77; Kirchner and Frese, 2015, pp. 132–133; Shaw, 2017, pp. 92–93.
9 ECtHR, *Van der Mussele v. Belgium*, Application no. 8919/80, 23 November 1983, para. 38.
10 Rainey, McCormick and Ovey, 2021, p. 223.
11 *Van der Mussele v. Belgium*, para. 38.
12 Para. 1 Art. 15 ECHR.
13 Díaz Morgado, 2021, p. 77.
14 ECtHR, *Tyrer v. the United Kingdom*, Application no. 5856/72, 25 April 1978, para. 31; *Rantsev v. Cyprus and Russia*, para. 282.

> The context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions.[15]

The ECtHR concluded that 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.'[16]

As Schabas wrote, 'perhaps more than any other provision of the Convention, Art. 4 is essentially about positive, rather than negative, obligations. The Court interpreted the nature and scope of this obligation similar to Arts. 2 and 3 ECHR. However, in modern times, regarding slavery and servitude, the perpetrators are typically individuals rather than the State.[17] The State's positive obligations have been outlined by the Court primarily in relation to human trafficking; however, they extend to all forms of conduct covered by Art. 4. Three specific obligations have been identified: two substantive and one procedural.[18]

States must penalise and prosecute any act aimed at keeping a person in slavery, servitude or forced or compulsory labour. Hence, they must establish an effective 'legislative and administrative framework'.[19] Additionally, the obligation entails adopting adequate measures to regulate businesses commonly used as a cover for human trafficking. Immigration rules must 'address relevant concerns relating to encouragement, facilitation or toleration of trafficking'.[20] Furthermore, law enforcement and immigration officials should receive proper training on the issue.[21] This was highlighted in Cyprus, where *'artiste visas'* were exploited for trafficking women into prostitution; even the country acknowledged that the number of young women migrating to work in nightclubs was disproportionately high relative to its population.[22]

The second substantive obligation requires States to take operational measures to protect victims or potential victims of violations under Art. 4.[23] This duty arises when 'the State authorities were aware, or ought to have been aware that an identified individual had been, or was at real and immediate risk of being subjected to such treatment'. In such cases, the State must take appropriate actions to address the victim's situation. The Court reiterates in its case-law:

15 *Rantsev v. Cyprus and Russia*, para. 274.
16 Ibid., para. 282; Díaz Morgado, 2021, pp. 86–87.
17 Schabas, 2017, p. 206.
18 Harris et al., 2023, p. 292.
19 *Rantsev v. Cyprus and Russia*, para. 285.
20 Ibid., para. 284.
21 Ibid., para. 287.
22 Ibid., paras. 94, 290-293; Schabas, 2017, pp. 206–207.
23 *Rantsev v. Cyprus and Russia*, para. 286.

> 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.[24]

The Court has linked 'operational measures' to the preventive and protective actions outlined in the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings (Anti-Trafficking Convention).[25] For example, in *Chowdury and Others v. Greece*, the State was found to have violated this obligation by failing to protect illegal migrant agricultural workers who were being grossly exploited, despite the authorities' awareness of the situation.[26] In contrast, in *T.I. and Others v. Greece*, no violation was found because the applicants, who had been sexually exploited, were promptly recognised as victims of human trafficking and their expulsion orders were suspended.[27] The procedural obligation requires States to ensure that when there is a 'credible suspicion' of a violation of Art. 4 rights, a prompt, effective and independent investigation is conducted, regardless of whether the victim or next-of-kin made a complaint. Typically, 'credible suspicion' arises from a complaint by the victim, and in the absence of such a complaint, the Court may be less likely to find the State in breach of its obligations.[28] The investigation must be independent and:

> capable of leading to the identification and punishment of individuals responsible, an obligation not of result but of means. (...) The victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests.[29]

Art. 4 violations frequently involve a transnational element. In trafficking, offences may occur in the country of origin, transit and destination, with evidence and witnesses spread across multiple jurisdictions. The ECtHR emphasised that in cross-border trafficking cases, States are obliged 'to cooperate effectively with the relevant

24 ECtHR, *C.N. v. The United Kingdom*, Application no. 4239/08, 13 November 2012, para. 68; *Rantsev v. Cyprus and Russia*, para. 287.
25 Adopted by the Committee of Ministers of the CoE on 3 May 2005, entered into force on 1 February 2008: 'The preventive measures include measures to strengthen coordination at national level between the various anti-trafficking bodies and to discourage the demand, which promotes all forms of exploitation of persons, including border controls to detect trafficking. Protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery.' ECtHR, *Chowdury and Others v. Greece*, Application no. 21884/15, 30 March 2017, para. 110.
26 ECtHR, *Chowdury and Others v. Greece*.
27 ECtHR, *T.I. and Others v. Greece*, Application no. 40311/10, 18 July 2019; Harris et al., 2023, pp. 292–293.
28 Schabas, 2017, p. 206; *Rantsev v. Cyprus and Russia*, para. 286; ECtHR, *V.F. v. France*, Application no. 7196/10, 29 November 2011.
29 *C.N. v. The United Kingdom*, para. 69.

authorities of other States concerned in the investigation of events which occurred outside their territories.'[30] Nevertheless, Art. 4 does not mandate that States establish 'universal jurisdiction over trafficking offences committed abroad'.[31]

It is common for allegations of Art. 4 violations to be accompanied by claims of breaches of other Convention provisions.[32] Art. 14 ECHR is important in this context, since it requires it to be read in conjunction with another right. Regarding Art. 4, specific challenges emerge due to its distinctive structure. The key issue is whether the matters outlined in Para. 3, which fall outside Art. 4's scope, can serve as grounds for claiming discrimination in the way a State regulates the activity.[33] Although the ECtHR determined in *Van der Mussele v. Belgium* that the requirement for a pupil advocate to perform *pro bono* work did not amount to forced labour under Para. 2 of Art. 4, it considered whether there was any discrimination between the groups obligated to perform such legal work. In this case no discrimination was found.[34] In *Karlheinz Schmidt v. Germany* the Court determined that compulsory fire service fell under the category of civic obligations, as outlined in Point (d) of Para. 3 of Art. 4. However, it examined whether this obligation was discriminatory, as it applied only to men. Despite Para. 3, considering the matters included within its terms, the ECtHR found a violation of Art. 14 in connection with Point (d) of Para. 3.[35]

3. A Historical Overview of the Prohibition of Slavery and Forced Labour

Slavery and forced labour have existed since ancient times and were often embedded in national legal systems. The British Parliament banned the slave trade in 1807, although the practice continued in most of the Empire until 1833. France abolished slavery and the slave trade at the time of the Revolution; however, it was reinstated and only fully abolished in 1848. Russia maintained serfdom until 1861, while the United States formally ended slavery a few years later.[36] International law thoroughly addressed the matter in the 1926 Slavery Convention, which briefly touched upon the issue of forced or compulsory labour.[37] In 1930, the International Labour Organisation (ILO) adopted Convention 29 on Forced Labour, which required ratifying states to

30 *Rantsev v. Cyprus and Russia*, para. 289; Schabas, 2017, p. 207.
31 ECtHR, J. and Others v. Austria, Application no. 58216/12, 17 January 2017, para. 14; Harris et al., 2023, p. 294.
32 Rainey, McCormick and Ovey, 2021, pp. 223–224.
33 Ibid., pp. 233–234.
34 Ibid., pp. 233–234.
35 ECtHR, *Karlheinz Schmidt v. Germany,* Application no. 13580/88, 18 July 1994; More on the subject: Rainey, McCormick and Ovey, 2021, pp. 233–234; Mowbray, 2007, p. 238. The ECtHR argued similarly in the case *Zarb Adami v. Malta*, Application no. 17209/02, 20 June 2006, para. 90.
36 Schabas, 2017, pp. 201-202. For the historical aspects of slavery and forced labour, see Drescher, 2009.
37 Art. 5 of the Slavery Convention, adopted on 25 September 1926, entered into force on 9 March 1927.

suppress the use of forced or compulsory labour in all its forms within the shortest possible period. Art. 2 of the Convention defines forced or compulsory labour and excludes certain types of work from this definition, a concept reflected in the ECHR.[38]

Despite these efforts, slavery and forced labour resurfaced in Europe in the 1940s under the Nazi regime during World War II. The International Military Tribunal noted that the Nazi government aimed 'to exploit the inhabitants of the occupied countries for slave labour on the very greatest scale'. The regime viewed slave labour 'as an integral part of the war economy, and planned and organized this particular War Crime down to the last elaborate detail'.[39] Key figures were prosecuted for the crime against humanity of enslavement under Art. 6(c) of the Charter of the International Military Tribunal and Art. II(1)(c) of Control Council Law No. 10.[40] In response to the atrocities of the two World Wars and the accompanying economic and social crises, two important instruments were adopted. The Universal Declaration of Human Rights (UDHR)[41] includes explicit prohibitions of slavery, the slave trade and servitude.[42] The ECHR prohibits slavery, servitude and forced or compulsory labour.[43]

While slavery in the 'traditional' form is widely viewed as a barbaric relic of the past, the fight against various forms of slavery is far from over. Contemporary slavery manifests in various ways, including human trafficking, debt bondage, forced prostitution and domestic servitude.[44] For instance, the decision in *Siliadin v. France*, which addressed domestic servitude, exposed one of the darkest aspects of labour and human rights protection in Europe.[45] Additionally, the ruling in *Rantsev v. Cyprus and Russia* recognised human trafficking as falling under the protection of Art. 4, expanding the scope and significance of this provision.

4. Comparison with Other Universal and Regional Human Rights Instruments Containing the Prohibition of Slavery and Forced Labour

To broaden the understanding of the prohibition of slavery and forced labour, it is essential to compare it with other universal and regional human rights instruments. The comparison is focused primarily on the scope of protection and enforcement mechanisms of different frameworks. Among universal instruments, this section considers the UDHR, the International Covenant on Civil and Political Rights (ICCPR),[46]

38 See Schabas, 2017, p. 202.
39 International Military Tribunal, *France v. Goering et al*, (1948), p. 450; Schabas, 2017, p. 202.
40 US Military Tribunal, *United States v. Krupp et al*, (1950), pp. 1396–1435; Schabas, 2017, p. 202.
41 Resolution of the General Assembly 217 A (III) of 10 December 1948.
42 Art. 4 UDHR.
43 Art. 4 ECHR. Regarding the drafting of the provision, see Schabas, 2017, pp. 203–205.
44 For more on the historical overview, see Allain, 2013, pp. 9–104, 109–117, 212–254, 257–272.
45 Mantouvalou, 2006, pp. 395–414.
46 Adopted by the General Assembly resolution 2200A (XXI), on 16 December 1966, entered into force on 23 March 1976.

the International Covenant on Economic, Social and Cultural Rights (ICESCR),[47] the ILO Conventions Nos. 29 and 105, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (the Supplementary Convention),[48] the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (the Palermo Protocol)[49] and the International Convention on the Elimination of Racial Discrimination.[50] It focuses on regional instruments pertinent to Europe, specifically examining the CoE Anti-Trafficking Convention, the European Social Charter (ESC)[51] and the EU Charter of Fundamental Rights (EU Charter).[52]

These instruments share the commitment to prohibiting slavery and forced labour. Similar to Para. 1 of Art. 4, Art. 4 UDHR declares that 'no one shall be held in slavery or servitude'. However, it adds that 'slavery and the slave trade shall be prohibited in all their forms'. Similar prohibitions can be found in Art. 8 ICCPR and Para. 1 of Art. 5 EU Charter. When defining slavery, the human rights bodies, including the ECtHR, refer to the Slavery Convention, stating that it means 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.[53] However, as the definition requires a genuine right of legal ownership to be exercised over a person, it is restrictive. Therefore, the ECtHR found a violation of the prohibition of servitude, and not slavery, in *Siliadin v. France* (Chapter 5.1).[54] The ECHR's prohibition is broadened to include servitude and forced and compulsory labour. The Supplementary Convention extends the prohibition by considering 'practices similar to slavery', including debt bondage, serfdom, forced marriages and institutions where a child or a person under 18 years of age is delivered by parents or guardians to another person for exploitation.[55]

Art. 5 of the Slavery Convention does not prohibit forced and compulsory labour; however, it requires states to take 'all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery'. It states that compulsory or forced labour may only be exacted for public purposes, adding that

47 Adopted by the General Assembly resolution 2200A (XXI), on 16 December 1966, entered into force on 3 January 1976.
48 Adopted on 7 September 1956 by Conference of Plenipotentiaries, convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 at Geneva, entered into force on 30 April 1957.
49 Adopted by the UN General Assembly resolution 55/25, on 15 November 2000.
50 Adopted by the UN General Assembly resolution 2106 (XX), on 21 December 1965, entered into force on 4 January 1969.
51 CoE, adopted on 18 October 1961. In this paper, the term European Social Charter is used to represent a set of instruments: the original 1961 European Social Charter, the 1988 Additional Protocol, the 1991 Protocol, the 1995 Additional Protocol providing for a system of collective complaints and the Revised European Social Charter (1996).
52 OJ C 326, 26.10.2012, pp. 391–407.
53 Art. 1 of the Slavery Convention.
54 Guide on Art. 4 of the ECHR, 2024, p. 8; Buckley, Kamber and McCormick, 2022, p. 83; Harris et al., 2023, pp. 286-287.
55 Art. 1 of the Supplementary Convention; Allain, 2013, p. 159–193.

where such labour exists, other than for public purposes, the states should 'put an end to the practice' as soon as possible. The ILO Convention 29 requires states 'to suppress the use of forced or compulsory labour in all its forms within the shortest possible period'.[56] In 1998, the ILO Commission of Inquiry established that the provision should no longer be interpreted as permitting forced labour while working towards its elimination. Instead, it is an obligation of immediate effect. The ILO views the prohibition of forced labour as a fundamental right that all Member States must uphold, regardless of their participation in relevant ILO conventions.[57] In response to evolving forms of forced labour, including its punitive use in the Soviet Union, ILO Convention 105 further outlines forms of unlawful forced or compulsory labour in Art. 1.[58]

Art. 2 of the ILO Convention 29 defines forced or compulsory labour 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.' Para. 2 sets out the delimitations, which influenced the drafting of Para. 3 of Art. 4 ECHR and Para. 3 of Art. 8 ICCPR. However, there are some differences in the respective instruments. In contrast to Point (a) of Convention 29, which excludes from forced labour work or service exacted in virtue of compulsory military service, the ICCPR and the ECHR extend it to 'any service of a military character'. Consequently, under these instruments, an individual who voluntarily enlists in the military for a specific term and later seeks to resign early is not considered to be subjected to forced labour.[59] Furthermore, ILO Convention 29 restricts the delimitation considering prison labour to 'work or service exacted from any person as a consequence of a conviction in a court of law'. However, the ICCPR and ECHR are not confined to imprisonment following a criminal conviction and extend to detainees, including situations where vagrants are compelled to work in vagrancy centres.[60] The EU Charter does not provide for delimitations and only states that 'no one shall be required to perform forced or compulsory labour'.[61]

The prohibition of forced or compulsory labour is protected by the ICESCR. Although Art. 6 ICESCR does not explicitly include the prohibition, the CESCR interpreted the right to freely choose or accept work to imply the right not to be forced in any way to exercise or engage in employment.[62] Similarly, Para. 2 of Art. 1 of the ESC, based on which the European Committee of Social Rights (ECSR) developed important

56 Para. 1 Art. 1 of the ILO Convention 29.
57 Saul, Kinley and Mowbray, 2016, pp. 345–346.
58 Ibid., p. 327.
59 Ibid., pp. 333–335.
60 ECtHR, *De Wilde, Ooms and Veryp v. Belgium*, Application nos. 2832/66, 2835/66, 2899/66, 18 June 1971; Saul, Kinley and Mowbray, 2016, p. 336.
61 Para. 2 Art. 5 of the EU Charter.
62 Saul, Kinley and Mowbray, 2016, p. 322; CESCR, General Comment no. 18 on Art. 6 of the ICESCR, E/C.12/GC/18.

practice, states the same prohibition.[63] While several factors suggest that the prohibition of forced labour requires immediate effect, the CESCR has not officially recognised it as such. Nonetheless, one could argue that it should not be subject to states' progressive realisation, since the prohibition in the ICCPR, as a civil right, has immediate effect. Therefore, the ICESCR should be interpreted in harmony with its counterpart Covenant.[64]

While delimitations are not explicitly regulated, Art. 6 ICESCR can encompass the various public interests on which work may be mandated according to ILO standards and the provisions of Paras. 3 of Art. 4 ECHR and Art. 8 ICCPR. Specifically, the ICESCR permits states to limit a right by law, as long as it aligns with the nature of the right and serves to promote the general welfare in a democratic society.[65] The CESCR has regularly invoked ILO standards; however, it took a more restrictive approach to prison labour, opposing forced prison labour and calling for the prisoner's consent.[66] Furthermore, contrary to the ECHR, the CESCR and the ILO have criticised states for compulsory labour of detainees for private actors.[67] The prohibition of forced labour as a form of discrimination is strengthened by Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, which ensures the right to freely choose employment without discrimination.[68]

In contrast to the EU Charter, which expressly prohibits human trafficking, the prohibition of human trafficking is not included in the ECHR directly. However, the ECtHR interpreted the Convention as a living instrument and defined the scope of Art. 4 to extend to human trafficking.[69] In *S.M. v. Croatia*, the Court referred to the Anti-Trafficking Convention and the Palermo Protocol, which defined human trafficking.[70] The Anti-Trafficking Convention primarily protects trafficking victims and ensures their rights, while seeking to prevent trafficking and prosecute those responsible. Regarding enforcement mechanisms, the ECHR offers an effective judicial mechanism through the ECtHR, allowing individuals and states to bring cases against states for violations of their rights. This direct recourse is a notable strength compared to other instruments. Additionally, the ECtHR's decisions are legally binding on the state parties to the ECHR. When the Court identifies a violation, the state must provide appropriate remedies, which may include compensation and, if necessary, amendments to national laws or practices.[71]

63 *International Federation of Human Rights v. Greece,* ECSR Complaint no. 7/2000, 15 December 2000; Saul, Kinley and Mowbray, 2016, p. 335. For an overview of the relevant ECSR practice, see Digest of the Case Law of the European Committee of Social Rights, 2022, pp. 50–57.
64 Saul, Kinley and Mowbray, 2016, p. 345.
65 Ibid., p. 333.
66 Ibid., p. 337.
67 Ibid., p. 338.
68 Ibid., pp. 328–329.
69 See Chapter 2.
70 Art. 4 of the Anti-Trafficking Convention and Art. 3 of the Palermo Protocol. See Chapter 5.4.
71 Mišič and Strban, 2021, p. 529.

However, the ICCPR and the ICESCR rely primarily on state reporting, with the possibility of individual communications added with the Optional Protocols.[72] Nonetheless, the decisions of the Human Rights Committee and the CESCR, while influential, are not legally binding. The same can be concluded regarding the ESCR's decisions, which assess state compliance with the ESC based on periodic reports and collective complaints introduced with the Additional Protocol.[73] Similarly, the supervisory system of the ILO extends beyond the examination of periodic reports and includes the procedures for representations, complaints and complaints regarding freedom of association. However, the adopted recommendations are not legally binding, although they carry significant moral and political weight.[74]

While a more passive enforcement can be observed in the Slavery Convention and the Supplementary Convention, which depend on state cooperation and commitment without direct oversight, the Anti-Trafficking Convention introduced the Group of Experts on Action Against Trafficking in Human Beings (GRETA) to monitor the implementation by carrying out visits and publishing country reports.[75] GRETA members are nationals of States Parties to the Anti-Trafficking Convention and are selected based on their competence, ensuring geographical and gender balance. All 15 members are independent and impartial and serve a term of four years, renewable once. State parties are evaluated periodically (every 4 to 5 years), and the results are published as evaluation reports, which include a list of conclusions and proposals for action.[76]

While the decisions of the Court of Justice of the European Union (CJEU) are legally binding and provide an enforcement mechanism for cases brought to national courts of law by individuals, companies or Member States alleging violations of the EU Charter, the application of the Charter is limited. Its applicability is restricted to 'the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law'.[77] In summary, Art. 4 ECHR and various universal and regional instruments collectively affirm the prohibition of slavery and forced labour; however, they differ in their definitions, scope of protection and enforcement mechanisms. The ECHR's strong judicial framework contrasts with the more report-based approaches of other instruments. Moreover, these instruments are interconnected through their

72 Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the UN General Assembly resolution 2200A (XXI), on 17 December 1966, entered into force on 23 March 1976; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly resolution A/RES/63/117, on 10 December 2008, entered into force on 5 May 2013.

73 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, Strasbourg 9 November 1995.

74 ILO, ILO Supervisory System.

75 Art. 36 of the Anti-Trafficking Convention.

76 Action Against Trafficking in Human Beings, GRETA.

77 Art. 51 of the EU Charter.

enforcement mechanisms, as the supervisory bodies often reference each other's practices.[78]

Notably, international criminal law establishes individual criminal liability for specific forms of forced labour under certain circumstances. Art. 7(1) of the Rome Statute of the International Criminal Court[79] defines crimes against humanity to include enslavement, sexual slavery, enforced prostitution, persecution and other inhumane acts that cause great suffering. These acts must be committed as part of a widespread or systematic attack against a civilian population or a segment of it.[80] Furthermore, international humanitarian law, which applies during armed conflicts, prohibits forced labour in specific contexts. In international conflicts, prisoners of war cannot be forcibly conscripted to fight for the enemy or compelled to work on military preparations or operations, although they may be required to perform non-military tasks. Similarly, the conscription of civilians into the occupying power's military is prohibited, though they can be compelled to work in certain circumstances. The provisions of international humanitarian law that allow forced labour in non-military contexts can be viewed as *lex specialis* concerning human rights instruments. However, the relationship between the two sets of norms can be understood as follows: the prohibition on forced labour, as outlined in Art. 4 ECHR, does not encompass emergency services, which include wartime situations. In accordance with this argumentation, international humanitarian law provides specific regulations concerning forced labour during armed conflict.[81]

Business enterprises (companies) have an important role in protection of human rights as well, recognised internationally and regionally. The Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights in its Resolution of 16 June 2011, emphasising the responsibility of transnational corporations and other business enterprises to respect human rights.[82] This refers to internationally recognised human rights, including, at a minimum, rights in the International Bill of Human Rights (UDHR, ICCPR and ICESCR) and the ILO Declaration on Fundamental Principles and Rights at Work, covering the respect of prohibition of slavery and forced labour.[83] Moreover, the CoE's Committee of Ministers adopted a Recommendation to Member States on Human Rights and Business, setting out comprehensive standards and guidance to promote the effective implementation of the UN Guiding Principles.[84] Additionally, the EU Directive on corporate sustain-

78 See Saul, Kinley and Mowbray, 2016, pp. 322–349.
79 Adopted on 17 July 1998, entered into force on 1 July 2002.
80 Saul, Kinley and Mowbray, 2016, pp. 346–347.
81 Ibid., pp. 347–349.
82 esolution of the Human Rights Council No. 17/4 of 16 June 2011.
83 Para. 2 of the ILO Declaration on Fundamental Principles and Rights at Work, adopted at the 86th Session of the International Labour Conference (1998); Guiding Principles on Business and Human Rights, p. 13.
84 Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2016)3 on human rights and business.

ability due diligence[85] includes the duty to identify and address potential and actual adverse human rights and environmental impacts within a company's operations, its subsidiaries and, where connected to its value chain, the activities of its business partners. An adverse human rights impact means an impact resulting from an abuse of a human right listed in the Annexe to the Directive.[86] This includes the prohibition of forced labour and slavery, including human trafficking, which is defined in connection with relevant international instruments.[87]

5. A Case-Law Analysis of the ECtHR Respecting the Prohibition of Slavery and Forced Labour

As Díaz Morgado wrote, although the prohibitions outlined in Art. 4 ECHR and the rights stemming from them are undeniably important, the ECtHR had not been particularly active in its rulings until recently. It was with the landmark case of *Siliadin v. France*, where the ECtHR condemned a European country for the first time for violating Art. 4, that the Court began to engage in a comprehensive analysis of the Art.'s scope and implications in real and potential terms.[88] The case-law analysis in this chapter is structured around the key issues of Art. 4 ECHR, specifically the prohibitions on slavery, servitude, forced or compulsory labour and human trafficking. Since certain cases fall under more than one section, the facts are summarised at their initial mention, while the relevant aspects are discussed in each corresponding section.

5.1. Slavery

Para. 1 of Art. 4 prohibits slavery, yet it does not provide a definition. Consequently, in *Siliadin v. France*, the ECtHR referred to the Slavery Convention, which defines slavery as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.[89] The Court noted that this definition 'corresponds to the 'classic' meaning of slavery as it was practised for centuries'.[90] According to this interpretation, slavery requires a 'genuine right of legal ownership' over an individual, reducing them to an 'object'.[91] To date, the Court has not confirmed the existence of slavery in cases under Art. 4; however, two cases where this issue was considered are discussed.

85 EU Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. OJ L 1760, 5.7.2024, p. 1.
86 Point (i) of Point (c) of para 1 Art. 3 of the Directive no. 2024/1760.
87 Paras. 11 and 12 of Part I, Section I of the Annex to the Directive no. 2024/1760.
88 Díaz Morgado, 2021, p. 77.
89 Art. 1 of the Slavery Convention.
90 *Siliadin v. France*, para. 122.
91 Ibid.

In *Siliadin v. France*, the applicant, a 15-year-old girl from Togo, was brought to France in 1994 with a passport and a tourist visa. Her father had agreed that she would work for Mrs D. to repay the cost of her airfare, while Mrs D. was expected to regularise her immigration status and enrol her in a school. Instead, her passport was taken from her and shortly after she was 'lent' to Mr and Mrs B. to assist with childcare. For several years, she was forced to work 15 hours a day without pay or a day off, sleeping on a mattress on the floor in the baby's room. She managed to retrieve her passport and alert the authorities with the help of a neighbour in 1998. In her application, she complained of being subjected to domestic slavery. The Court determined that she had been deprived of her personal autonomy; however, this alone was insufficient to classify the treatment as 'slavery' since no 'genuine right of legal ownership' had been exercised over her.[92] A potential violation of the prohibition of slavery was examined but not established in *M. and Others v. Italy and Bulgaria*[93] as well, analysed in Chapter 6. The relevance of the 'classic' definition of slavery, accepted in the ECtHR's case-law, is questionable today concerning legal ownership. As *Buckley, Kamber* and *McCormick* suggest, it might be more appropriate to emphasise the intensity of compulsion and abuse exerted over the individual.[94]

5.2. Servitude

When determining the scope of servitude, institutions considered the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. The prohibition of servitude entails a 'particularly serious form of denial of freedom' and includes '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'.[95] This 'means an obligation to provide one's services that is imposed by the use of coercion'.[96] Servitude can be described as a form of abuse and exploitation somewhere between slavery and forced or compulsory labour. Even if a situation does not constitute slavery, it may amount to servitude.[97] However, the ECtHR regards servitude as an 'aggravated' form of forced or compulsory labour.[98]

> As a matter of fact, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Art. 4 of the Convention lies in the victim's feeling that their condition is permanent and that the

92 Guide on Art. 4 ECHR, 2024, p. 8; Buckley, Kamber and McCormick, 2022, p. 83; Harris et al., 2023, pp. 286–287.
93 ECtHR, Application no. 40020/03, 31 July 2012.
94 Buckley, Kamber and McCormick, 2022, p. 83.
95 *Siliadin v. France*, para. 123.
96 *Siliadin v. France*, para. 124.
97 *Siliadin v. France*, paras. 122–123.
98 ECtHR, *C.N. and V. v. France*, Application no. 67724/09, 11 October 2012, paras. 89–91; Buckley, Kamber and McCormick, 2022, pp. 83–84; Allain, 2013, pp. 160–162.

> situation is unlikely to change. It is sufficient that this feeling be based on the abovementioned objective criteria or brought about or kept alive by those responsible for the situation.[99]

In *Siliadin v. France*, the ECtHR determined that the applicant was held in servitude based on several factors. She was required to perform forced labour for nearly 15 hours every day, was a minor and was vulnerable and isolated. She lacked a passport, had no regularised immigration status, no means of supporting herself, restricted freedom of movement, no free time, no access to education and was entirely dependent on those with whom she lived.[100]

Similarly, *C.N. and V. v. France* involved two sisters from Burundi who moved to France to live with relatives. The Court examined their circumstances and determined that only one had been subjected to servitude and forced labour. The ECtHR highlighted that this sister believed that her legal status in France was tied to her staying in the household and she had neither attended school nor received any training that could have offered her prospects for paid work. Additionally, she had no days off or leisure activities and felt that her situation was permanent, given its duration of four years. In contrast, the second sister had not been subjected to servitude, noting that she attended school and engaged in activities outside the household.[101]

C.N. v. the United Kingdom concerned a woman from Uganda who fled to the United Kingdom (UK) to escape sexual and physical abuse. A relative, P.S., assisted her in reaching the UK; however, confiscated her passport and travel documents. C.N. started working for an elderly couple, being on call around the clock, with only one afternoon off each month. Her wages were paid to P.S., who kept most of the money and gave C.N. a small portion. After three and a half years, she collapsed during a bank visit and was subsequently hospitalised and housed by local authorities. The ECtHR found a violation of Art. 4 ECHR and emphasised that domestic servitude was a distinct offense, separate from trafficking and exploitation. It encompassed a complex set of dynamics, including overt and subtle forms of coercion, designed to force compliance. Therefore, domestic law must include a specific offense that explicitly prohibits domestic servitude.[102]

5.3. Forced or Compulsory Labour

Para. 2 of Art. 4 ECHR prohibits forced or compulsory labour; however, it does not provide a definition and 'no guidance on this Point is to be found in the various Council of Europe documents relating to the preparatory work of the European Convention'.[103] When interpreting the provision, the ECtHR looked at ILO Convention 29 on forced

99 *C.N. and V. v. France*, para. 91.
100 See Buckley, Kamber and McCormick, 2022, p. 84; Mowbray, 2007, p. 237.
101 See Buckley, Kamber and McCormick, 2022, p. 84.
102 *C.N. v. the United Kingdom*, paras. 80-81. See Buckley, Kamber and McCormick, 2022, p. 91.
103 *Van der Mussele v. Belgium*, para. 32.

labour,[104] where Art. 2 reads that 'the term forced or compulsory labour shall mean 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'. It applies to work exacted by the state or privately. The Court took this definition as a 'starting Point' for its interpretation,[105] focusing on three elements: (1) the performance of labour, (2) exacted from a person 'under the menace of any penalty' and (3) for which the person 'has not offered himself voluntarily'.[106] The ECtHR underlined that 'sight should not be lost of that Convention's special features or of the fact that it is a living instrument to be read 'in the light of the notions currently prevailing in democratic States". Consequently, the modern interpretation of the ILO concepts[107] or other pertinent (international) sources[108] guides the Court in defining the scope of the provision.[109]

Regarding the performance of labour, the ECtHR adopted a broad interpretation of the concept of labour, referring to the French term *travail* and clarifying that it encompasses 'all' or 'any' work or service. This is supported by the definition provided in ILO Convention 29, Point (d) of Para. 3 of Art. 4 ECHR and the name of the ILO, whose activities extend beyond manual labour.[110] Additionally, the labour does not need to be formally recognised as an 'economic activity'. Consequently, domestic work in someone else's household[111] and the provision of sexual services under coercion[112] are deemed as labour.

Concerning labour exacted from a person 'under the menace of any penalty', the term 'forced' relates to physical or mental coercion, while 'compulsory' refers to work that a person has undertaken unwillingly.[113] Here, 'penalty' needs to be understood broadly, encompassing formal punishments and any equivalent measures that carry a similar level of perceived threat.[114] In *C.N. and V. v. France*, the Court noted that ILO practice established that 'penalty' may 'go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal'.[115] However, in *Adigüzel v. Turkey*,[116] the ECtHR underlined that the risk of having one's salary deducted or being dismissed for refusing to work outside working

104 Ibid.
105 Ibid.
106 Buckley, Kamber and McCormick, 2022, p. 85; Harris et al., 2023, pp. 287–288.
107 ECtHR, *S.M. v. Croatia*, Application no. 60561/14, 25 June 2020, para. 301.
108 ECtHR, *Stummer v. Austria*, Application no. 37452/02, 7 July 2011, paras. 130–131, where the ECtHR referred to the European Prison Rules.
109 Buckley, Kamber and McCormick, 2022, p. 85.
110 *Van der Mussele v. Belgium*, para. 33.
111 *Siliadin v. France*.
112 *S.M. v. Croatia*.
113 *Van der Mussele v. Belgium*, para. 34.
114 Ibid., paras. 34-35.
115 *C.N. and V. v. France*, para. 77; see also *Siliadin v. France*, para. 118; Buckley, Kamber and McCormick, 2022, p. 86.
116 ECtHR, App. no. 7442/08, 6 February 2018.

hours was insufficient to conclude that the work was required under the threat of a penalty.

Regarding labour for which the person 'has not offered himself voluntarily', whether labour was 'offered voluntarily' was addressed in *Van der Mussele v. Belgium*. The applicant was a pupil advocate who was required to provide free legal services to assist indigent defendants. Although the first two criteria were satisfied, since the work constituted labour and the risk of being struck off the list of pupils was considered 'the menace of a penalty', the Court did not find this to be forced labour. It underlined that 'the applicant's prior consent, without more, does not therefore warrant the conclusion that the obligations incumbent on him in regard to legal aid did not constitute compulsory labour'.[117] Additional factors were taken into account: the services provided were within the scope of the normal activities of an advocate, the profession offered certain benefits, such as the exclusive right of audience and representation, and the services contributed to professional training. Hence, the Court determined that the 'burden imposed on the applicant was not disproportionate', as he was appointed to approximately 50 cases during his pupillage while having sufficient time to handle his paid work, which included around 200 cases.[118]

The proportionality test was not passed in *Chitos v. Greece*,[119] which concerned an army medical officer forced to pay a fee to the State to resign before the end of his period of service. His medical training was provided by the State and was free. The ECtHR acknowledged that it was the legitimate and integral duty of a military medical officer to continue serving for a certain period after completing training and the terms of early release fell within the State's margin of appreciation. Nevertheless, the Court found that the fee amount and the requirement for immediate payment for early release placed a 'disproportionate burden' on the applicant, negating his consent and resulting in 'forced or compulsory labour'.[120]

Chowdury and Others v. Greece considered 42 applicants, who were Bangladeshi nationals recruited in Greece to work at the main strawberry farm in Manolada without a Greek work permit. Their employers failed to pay the wages and obliged them to work in difficult physical conditions under the supervision of armed guards, who shot at them when they protested non-payment of wages. The ECtHR emphasised that the 'prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour'. Whether an individual voluntarily offers themselves for work is a question that must be examined in light of all the relevant circumstances. Consequently, the Court concluded that if an employer abused their power or took advantage of the workers' vulnerability to exploit them, the workers could not be considered to have offered themselves for work voluntarily.[121]

117 *Van der Mussele v. Belgium*, para. 36.
118 Ibid., para. 39.
119 ECtHR, *Chitos v. Greece*, Application no. 51637/12, 4 June 2015.
120 Harris et al., 2023, p. 288.
121 *Chowdury and Others v. Greece*, Para. 96; Harris et al., 2023, pp. 288–289.

Four Companies v. Austria[122] determined that an employer deducting social security payments or income tax from an employee's salary did not constitute forced or compulsory labour. Similarly, in *Schuitemaker v. Netherlands*,[123] the requirements set by the Social Assistance Act to obtain and accept any kind of labour, irrespective of its suitability, by reducing benefits if she refused to do the work, was not considered a violation of Art. 4 ECHR. In *X v. Germany*,[124] there was no violation when the notary received reduced fees when acting for non-profit organisations. Additionally, in *Antonov v. Russia*,[125] no violation was found regarding the employee transferring to another job.[126]

5.3.1. Delimitations

As the ECtHR wrote in *Van der Mussele v. Belgium*, the four sub-Paras. of Para. 3 of Art. 4 ECHR, 'notwithstanding their diversity, are grounded on the governing ideas of the general interest, social solidarity and what is in the normal or ordinary course of affairs'. Considering the fundamental significance of the protection under Art. 4, the delimitation clause must be strictly construed.[127]

(a) Work during detention or conditional release: Forced or compulsory labour does not include work done in the 'ordinary course of detention' imposed according to Art. 5 ECHR or during conditional release from such detention. The provision applies to work during detention following a court conviction and work required of detained minors[128] or vagrants.[129] The wording 'work required to be done in the ordinary course of detention' pertains to the purpose nature and scope of the work,[130] with the ECtHR considering the standards prevailing in the Member States.[131]

In the *Vagrancy cases*,[132] the applicants were deemed vagrants and detained in vagrancy centres, where they were required to work in exchange for a low wage. They complained about being forced to work for an unreasonably low payment and under the threat of disciplinary sanctions. However, no violation of Art. 4 was found because the work did not exceed the permissible limits under the ECHR, as intended for the rehabilitation of vagrants, and was similar to practices in several other CoE Member States. Furthermore, the ECtHR determined that Art. 4 did not address the

122 Application no. 7427/76, Judgement 27 September 1976.
123 Application no. 15906/08, Judgement 4 May 2010.
124 Commission decision, 1979. See Guide on Art. 4 ECHR, 2024.
125 Application no. 38020/03, 3 November 2005.
126 See Harris et al., 2023, p. 289.
127 *Chitos v. Greece*, para. 83; Buckley, Kamber and McCormick, 2022, p. 87.
128 *X v. Switzerland*, Application no. 8500/79, 14 December 1979.
129 *X v. Germany*, Application no. 770/60, 1960. Harris et al., 2023, p. 289.
130 Ibid., 2023, p. 289.
131 *Stummer v. Austria*, para. 128.
132 ECtHR, *De Wilde, Ooms and Veryp v. Belgium*, Application nos. 2832/66, 2835/66, 2899/66, 18 June 1971.

issue of remuneration for prisoners' work. The matter was considered in *Zhelyazkov v. Bulgaria*[133] and *Floroiu v. Romania*,[134] discussed in Chapter 6.

The applicant in *Stummer v. Austria* had spent 28 years in prison. He argued that European standards had evolved to the Point where prison work without affiliation to the old-age pension system could no longer be regarded as 'work required to be done in the ordinary course of detention'. The ECtHR observed that although an absolute majority of Member States affiliated prisoners to their national social security systems or offered them specific insurance schemes, only a small majority affiliated working prisoners to the old-age pension system. Therefore, Austrian law aligned with the development of European law, as all prisoners received health and accident care and working prisoners were included in the unemployment insurance scheme, although not in the old-age pension system. It stated that while Rule 26.17 of the European Prison Rules encouraged the inclusion of working prisoners in the national social security systems where possible, it reflected an evolving trend and did not impose an obligation under Art. 4 ECHR. Therefore, there was insufficient consensus regarding the affiliation of working prisoners to the old-age pension system.[135]

In *Meier v. Switzerland*,[136] the applicant, a prisoner, was required to work after the retirement age. The Court found that there had been no violation, as there was a lack of sufficient consensus among CoE Member States concerning compulsory work for prisoners beyond retirement age. Therefore, it highlighted that the Swiss authorities had a significant margin of appreciation and no absolute prohibition could be derived from Art. 4 ECHR.

(b) Military service or substitute civilian service: Subpara. (b) of Para. 3 of Art. 4 ECHR determines that forced or compulsory labour does not include service of a military character or in countries where conscientious objectors are recognised as service exacted instead of compulsory military service. As confirmed in *Chitos v. Greece*, 'service of a military character' did not include voluntary enlistment in the armed forces; therefore, it did not apply to career servicemen.[137]

Johansen v. Norway[138] explained that if a state mandated compulsory civilian work as an alternative to military service, it could implement measures to ensure that this work was completed or impose sanctions for non-compliance. In *Bayatyan v. Armenia*,[139] the ECtHR indicated that a conscientious objector who declined to perform civilian work may be detained for the length of their military service.[140] The case *W., X., Y. and Z. v. the United Kingdom*[141] contributed to the distinction between

133 Application no. 11332/04, 9 October 2012.
134 Application no. 15303/10, 12 March 2013.
135 See Guide on Art. 4 ECHR, 2024; Grabenwarter, 2014, pp. 56–57.
136 Application no. 10109/14, 9 February 2016.
137 *Chitos v. Greece*, para. 87.
138 Application no. 10600/83, 14 October 1985.
139 Application no. 23459/03, 7 July 2011.
140 Harris et al., 2023, p. 290.
141 Application nos. 3435/67, 3436/67, 3437/67, 3438/67, 19 July 1968.

forced or compulsory labour and slavery and servitude. The applicants, four minors aged 15 and 16 years, enlisted in the British navy for nine years. They sought to be discharged for different personal reasons; however, the national authorities denied their requests. It was held that any claims asserting that their service constituted forced or compulsory labour had to be dismissed under Subpara. (b) of Para. 3 of Art. 4. However, this provision does not entirely preclude such service from being assessed under the prohibition of slavery or servitude. Hence, it was concluded that the young age of the applicants, who had enlisted with their parents' consent, did not warrant classifying their normal military condition as 'servitude'.[142]

(c) Service required during an emergency or calamity: Forced or compulsory labour does not include 'service exacted in case of an emergency or calamity threatening the life or well-being of the community'. In *I. v. Norway*,[143] which dealt with the applicant serving a year in the public dental service in northern Norway, two members of the European Commission of Human Rights (Commission)[144] which decided on the admissibility of applications before Protocol No. 11 to the ECHR entered into force on 1 November 1998) were of the view that this service was reasonably demanded of the applicant to address an emergency that threatened the well-being of the community and did not amount to forced or compulsory labour.

In *S. v. Germany*,[145] the Commission determined that the obligation for a holder of shooting rights to assist in the gassing of foxholes during an epidemic was justified, even if considered compulsory labour. This justification was based on Subpara. (c), which permitted the imposition of services in situations where an emergency or calamity threatened the life or well-being of the community, and Subpara. (d), which allowed for services that were part of normal civic duties.[146]

(d) Normal civic obligations: 'Any work or service which forms part of normal civic obligations' is not included under forced or compulsory labour. In *Steindel v. Germany*,[147] the ECtHR found that a physician's participation in emergency medical service did not constitute compulsory or forced labour and concluded that part of the application was inadmissible as it was ill-founded. The Court considered:

> (I) that the services to be rendered were remunerated and did not fall outside the ambit of a physician's normal professional activities; (II) the obligation in issue was founded on a concept of professional and civil solidarity and was aimed at averting emergencies; and (III) the burden imposed on the applicant was not disproportionate.[148]

142 See Guide on Art. 4 of the ECHR, 2024, pp. 13–14.
143 Application no. 1468/62, 1963.
144 The Commission decided on the admissibility of applications before Protocol No 11 to the ECHR entered into force on 1 November 1998.
145 Application no. 9686/82, 4 October 1984.
146 See Guide on Art. 4 of the ECHR, 2024, p. 14; Grabenwarter, 2014, p. 57.
147 Application no. 29878/07, 14 September 2010.
148 Guide on Art. 4 of the ECHR, 2024, p. 15.

In other cases, the Court and Commission concluded that normal civic obligations encompassed compulsory jury duty,[149] obligatory fire service or a financial contribution payable instead of the service,[150] obligation to conduct free medical examinations[151] and the requirement for companies, as employers, to calculate and withhold taxes, social security contributions and similar deductions from their employees' salaries and wages.[152]

5.4. Human Trafficking

The ECtHR first held that human trafficking fell within the scope of Art. 4 in *Rantsev v. Cyprus and Russia*. The applicant was the father of Oxana Rantseva, a 21-year-old Russian woman who died in Cyprus, where she had gone to work in March 2001. She was granted a temporary residence and work permit under the 'artiste' visa. She started work in a cabaret on 16 March; however, she left the employment after three days. On 28 March 2001, at around 4 a.m., Rantseva was seen at a discotheque in Limassol, Cyprus. Her former employer was notified and, with the help of a security guard, he took her to a police station where she was briefly detained. The police, having determined that she was not in Cyprus illegally, instructed the employer to collect her or she would be released. He retrieved Rantseva, along with her passport and documents, and brought her to an apartment at around 5:45 am, where she was placed in a bedroom against her will. At 6:30 am, Rantseva was found dead on the street below.

Interpreting the ECHR as a living instrument, the Court broadened the scope of prohibition of Art. 4 ECHR to include human trafficking, as it is not compatible with a democratic society and the Convention's values (Chapter 2). The Court observed that, like slavery, human trafficking was inherently based on the exercise of powers akin to ownership for exploitation. It treated individuals as commodities to be bought, sold and subjected to forced labour. It often involved strict surveillance of victims' activities, restrictions on their movements and the use of violence and threats. The Court concluded that Cyprus had violated its positive obligations under Art. 4 ECHR on two grounds: first, by failing to establish an adequate legal and administrative framework to combat trafficking, particularly due to the existing 'artiste' visa regime, and second, by failing to take operational measures to protect the applicant's daughter from trafficking, despite credible suspicions that she might have been a victim. Additionally, it found that Russia had violated Art. 4 ECHR by failing to investigate how and where the applicant's daughter was recruited, particularly by not taking steps to identify those involved in her recruitment or the methods used.

This key ruling was confirmed and further developed in *S.M. v. Croatia*. In September 2012, the applicant filed a criminal complaint against T.M., alleging that during

149 *Zarb Adami v. Malta*, Application no. 17209/02, 20 June 2006.
150 *Karlheinz Schmidt v. Germany*, Application. no. 13580/88, 18 July 1994.
151 *Reitmayr v. Austria*, Application. no. 23866/94, 28 June 1995.
152 *Four Companies v. Austria*; Guide on Art. 4 of the ECHR, 2024, p. 15.

the summer of 2011, he had coerced her into prostitution. T.M. had initially contacted her on Facebook, posing as a family friend and offering to help her find a job. After meeting in person, T.M. pressured her into providing sexual services, claiming it was temporary until he could secure her proper employment. T.M. controlled her actions, driving her to meet clients and later renting a flat to keep her under constant surveillance, threatening to install cameras. The applicant feared T.M., who had physically punished her when she resisted. In September 2011, she escaped and sought refuge with a friend; however, T.M. continued to threaten her through messages. She reported having around 30 clients, earning approximately HRK 13,000, half of which she gave to T.M.

The ECtHR determined that Art. 4 ECHR was violated due to the inadequacies in the Croatian authorities' investigation into the applicant's claim of forced prostitution. The Court found that Art. 4 was applicable because elements of trafficking and forced prostitution were arguably present, such as coercion, deception and the abuse of power over a vulnerable person. Specifically, the alleged abuser was a policeman, the victim had been in public care from the age of 10 years and she was certain that the abuser would help her find a job. The Court criticised the authorities for failing to thoroughly investigate the allegations, including neglecting to interview key witnesses, which left the case to hinge on the applicant's testimony against that of her alleged abuser. These failures significantly hindered the authorities' ability to accurately assess the nature of the applicant's exploitation.

The ECtHR underlined:

> The notion of 'forced or compulsory labour' under Art. 4 of the Convention aims to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether, in the particular circumstances of a case, they are related to the specific human-trafficking context. Moreover, any such conduct may have elements qualifying it as 'servitude' or 'slavery' under Art. 4.[153]

The Court contextualised the issue of human trafficking within the broader framework of the ECHR. It specifically highlighted that while trafficking was covered under Art. 4 ECHR, this, 'however, does not exclude the possibility that, in the particular circumstances of a case, a particular form of conduct related to human trafficking may also raise an issue under another provision of the Convention', such as Arts. 8 and 3.[154] It further clarified that an issue of human trafficking under Art. 4 may only arise if all three elements of the international definition, as outlined in the Anti-Trafficking Convention and the Palermo Protocol, are present: (1) an action, such as recruitment, transportation, transfer, harbouring or receipt of persons, (2) the means, including threats, the use of force, coercion, abduction, fraud, deception, abuse of power or

153 *S.M. v. Croatia*, para. 300.
154 Ibid., para. 297.

vulnerability or the giving or receiving of payments to secure control over another person and (3) an exploitative purpose, such as exploiting the prostitution of others, forced labour, slavery or similar practices. The Court noted that under Art. 4, human trafficking encompassed national and transnational trafficking, regardless of any connection to organised crime.[155]

Other human trafficking cases, which have been decided on their merits, concerned domestic service (*J. and Others v. Greece*),[156] agricultural work (*Chowdury and others v. Greece*),[157] construction work (*Zoletić and Others v. Azerbaijan*)[158] and forced marriage (*M. and others v. Italy and Bulgaria*).[159] *J. and Others v. Austria* concerned the Austrian authorities' investigation into allegations of human trafficking made by two Filipino nationals who had worked as maids or *au pairs* in the United Arab Emirates. The applicants claimed that their employers had confiscated their passports and exploited them, a situation that continued during a brief stay in Vienna, where they eventually escaped. After filing a criminal complaint in Austria, the authorities determined that they lacked jurisdiction over the offences committed abroad and chose to discontinue the investigation regarding the events in Austria. The applicants argued that they had been subjected to forced labour and human trafficking and the Austrian authorities had failed to conduct a thorough and effective investigation. The Court determined that the authorities had taken all the steps that could reasonably be expected under the circumstances; therefore, no violation of Art. 4 was found. The ECtHR emphasised that Art. 4 ECHR did not obligate States to establish universal jurisdiction over trafficking offences committed abroad.

Zoletić and Others v. Azerbaijan dealt with 33 applicants, who had been recruited from Bosnia and Herzegovina to work as temporary construction workers in Azerbaijan. Their passports were taken away and they lived in dormitories without drinking water, running hot water, gas or heating. They were not provided with medical care, had to follow strict rules and were not allowed to leave their accommodation without written permission. The Court found a breach of the prohibition of forced or compulsory labour in the procedural aspect, concluding that the Azerbaijani authorities had not fulfilled their obligation to initiate and carry out an effective investigation into the applicants' allegations of forced labour and human trafficking.

When examining the ECtHR's case law on human trafficking, the recent decision in *Krachunova v. Bulgaria*[160] is particularly significant, as the Court upheld the victim's right to seek compensation for pecuniary damage from her trafficker under Art. 4 ECHR (detailed analysis in Chapter 6).

155 Ibid., paras. 290, 296, 303; Guide on Art. 4 of the ECHR, 2024, pp. 6–7.
156 Also: *C.N. and V. v. France*, *C.N. v. the United Kingdom*. See Chapter 5.2.
157 See Chapter 2 and the first part of Chapter 5.
158 App. no. 20116/12, 7 October 2021.
159 See Chapter 5.1.
160 Application no. 18269/18, 28 November 2023.

6. An Analysis of the ECtHR Case Law Regarding 16 Central and Eastern European Countries

Not many cases have been decided on the merits regarding Art. 4 ECHR from the 16 Central and Eastern European countries; however, a few significant cases have emerged. One notable example is *S.M. v. Croatia*, discussed in Chapter 5.4. Here, the ECtHR made important advancements in its stance on human trafficking. *M. and Others v. Italy and Bulgaria*, *Zhelyazkov v. Bulgaria*, *Floroiu v. Romania* and *Krachunova v. Bulgaria* were briefly mentioned in Chapter 5. They are further analysed here. Furthermore, *Bucha v. Slovakia* and *Mihal v. Slovakia* are addressed in the chapter, though the ECtHR's involvement was limited to decisions on admissibility in these instances. The analysis focuses exclusively on Art. 4 violations, even though some cases address violations of multiple ECHR Arts.

M. and Others v. Italy and Bulgaria[161] involved an alleged trafficking of a minor girl. The applicants, of Roma origin and Bulgarian nationality, claimed that after arriving in Italy to seek work, their daughter was detained by private individuals at gunpoint, was forced into marriage, work and theft and sexually abused at the hands of a Roma family in a village. They claimed that the Italian authorities had failed to investigate the events adequately. Regarding the violation of the prohibition of human trafficking, the Court found insufficient evidence to support the allegation. The *post facto* submitted medical records were inadequate to prove beyond a reasonable doubt that the first applicant had suffered any ill-treatment or exploitation, as described in the definition of trafficking. Hence, no violation of the prohibition of human trafficking was established and Bulgaria's responsibility was not engaged. Additionally, there was no evidence indicating that the first applicant had been subjected to servitude or forced or compulsory labour. Servitude would imply the presence of coercion to provide services, while forced or compulsory labour implied the presence of physical or psychological constraints.

Regarding the prohibition of slavery, the Court stated that, even if the applicant's father had received a sum of money for the alleged marriage, under the circumstances, this payment could not be viewed as a price for the transfer of ownership, which would invoke slavery. The Court noted that marriage carries deep-rooted social and cultural significance that can vary widely between societies and such a payment could reasonably be interpreted as a traditional gift exchanged between families, a practice common in many cultures. Hence, the ECtHR concluded that there was insufficient evidence to prove slavery.[162]

161 ECtHR, Application no. 40020/03, 31 July 2012.

162 Guide on Art. 4 of the ECHR, 2024, p. 8; Buckley, Kamber and McCormick, 2022, p. 83; Harris et al., 2023, pp. 286–287.

In *Bucha v. Slovakia*[163] and *Mihal v. Slovakia*,[164] the applicants asserted violations of the prohibition against forced or compulsory labour. However, the applications were deemed inadmissible, as they were ill-founded. In *Bucha v. Slovakia*, the applicant, a lawyer appointed to represent a client under a free legal scheme, argued that the Constitutional Court had deviated from its usual practice by denying him compensation for costs associated with his participation in an oral hearing. In *Mihal v. Slovakia*, an enforcement judicial officer contended that not being reimbursed for expenses incurred while attempting to enforce a court decision constituted forced labour. However, the ECtHR concluded that the burden imposed on the applicant had not been excessive, disproportionate or unacceptable.

Zhelyazkov v. Bulgaria and *Floroiu v. Romania* considered Point (a) of Para. 3 of Art. 4, specifically, the issue of remuneration for prisoners' work. In *Zhelyazkov v. Bulgaria*,[165] the applicant's unpaid prison work was deemed to fall within Subpara. (a). He was convicted of minor hooliganism for insulting a prosecutor and was sentenced to two weeks in detention, during which he worked for an infrastructure development municipality project. While the Court noted a developing trend towards compensating prison work and acknowledged that the work took place before the 2006 European Prison Rules were introduced, it observed that the amount of work was modest. In *Floroiu v. Romania*,[166] the applicant received a sentence of five years and ten months for theft. At his request, he was allowed to work on maintaining the prison's vehicle fleet during his imprisonment. As this work was considered essential for the prison's daily operations, he did not receive a wage; instead, he was granted a reduction of 37 days from his sentence as compensation. The applicant filed a complaint for non-payment for his work in prison. According to domestic law, prisoners could choose between two types of work after being informed of their conditions. The ECtHR observed that, given the significant reduction in the sentence, the work he performed was not entirely unpaid. Consequently, it determined that his work could be regarded as 'work required to be done in the ordinary course of detention', as defined in Subpara. (a).

Krachunova v. Bulgaria[167] concerned human trafficking. The applicant, a 26-year-old woman, following a dispute with her parents, moved in with X, a man whose main occupation at that time was to drive prostitutes to and from their places of work. Initially agreeing to sex work out of financial necessity and curiosity, she faced multiple arrests while working on Sofia's ring road and experienced a troubled relationship with X, who eventually threatened and manipulated her into continuing the work despite her desire to leave, culminating in her seeking police assistance to escape. In court, the applicant attempted to obtain compensation for the earnings from sex work because, instead of receiving direct financial compensation, X took all her earnings, providing her with the necessities and some pocket money.

163 Application no. 43259/07, 20 September 2011.
164 Application no. 31303/08, 28 June 2011.
165 Application no. 11332/04, 9 October 2012.
166 Application no. 15303/10, 12 March 2013.
167 Application no. 18269/18, 28 November 2023.

This arrangement kept her financially dependent on him, while he controlled her identity card to ensure that she could not escape. The Bulgarian courts denied her compensation, arguing that her involvement in prostitution implied that returning her earnings would contradict 'good morals'. The applicant asserted that there was no legal path for her to reclaim the income from her sex work that had been taken from her. The Court determined that this constituted a violation of Art. 4 ECHR, as the Bulgarian courts did not adequately consider her rights concerning the interests of the community. It emphasised that States must provide avenues for trafficking victims to claim compensation for lost earnings, referencing international treaties, such as Para. 6 of Art. 6 of the Palermo Protocol and Para. 3 of Art. 15 of the Anti-Trafficking Convention, which mandate that States Parties should, in their domestic legal system, provide for the right of victims to compensation. This marked the first instance where the Court recognised a trafficking victim's entitlement to seek compensation for pecuniary damage from her trafficker under Art. 4 ECHR.

7. Summary and Conclusion

This contribution highlights the enduring significance of Art. 4 ECHR. Despite the formal abolition of slavery, its modern forms, including domestic servitude, debt bondage and human trafficking, persist in Europe. The ECtHR, through Art. 4 ECHR, combats these practices by enshrining the right to freedom from slavery and forced labour as one of the core values of democratic societies in Europe.

Art. 4 ECHR is structured around two prohibitions. The first establishes the absolute right not to be subjected to slavery or servitude, while the second concerns forced or compulsory labour, with certain delimitations regarding work during detention or conditional release, military service, service required during an emergency or calamity and civic obligations. The lack of explicit definitions within the ECHR required the ECtHR to rely on other international treaties to clarify these terms. It adopted an evolutive approach, interpreting the ECHR as a living instrument that must adapt to modern circumstances, leading to the inclusion of human trafficking within the scope of Art. 4 ECHR. However, the ECHR imposes significant positive obligations on states. Governments are required to implement effective legislative and administrative frameworks, take operational measures to protect victims or potential victims and ensure that in a case of a 'credible suspicion', an effective and independent investigation is conducted.

The historical overview of slavery and forced labour traced their existence from ancient times to their formal abolition worldwide. It highlighted the first international efforts to address these issues, particularly through the 1926 Slavery Convention and the ILO Convention on Forced Labour No. 29. The comparison of Art. 4 ECHR with other universal and regional human rights instruments discussed the varying scope of protection provided by these instruments and their enforcement mechanisms. It underlined the advantages of the ECHR's judicial framework, allowing individuals

and states to bring claims directly before the Court, which issued legally binding decisions.

Key cases concerning slavery, servitude, forced or compulsory labour and human trafficking were analysed. They emphasised that although the Court's activity under Art. 4 ECHR was initially limited, its scope progressively expanded. The landmark case *Siliadin v. France* was the first time that the ECtHR explicitly condemned modern forms of exploitation within a European state. Although the Court found that no 'genuine right of legal ownership' had been exercised over the applicant and the situation was not classified as slavery, it concluded that the case constituted (domestic) servitude. The evolutive interpretation of the ECHR was emphasised in *Rantsev v. Cyprus and Russia*, where the Court expanded the scope of Art. 4 ECHR to encompass human trafficking. This significant development in the ECtHR's jurisprudence on human trafficking was reinforced in *S.M. v. Croatia*, which continued to shape the legal framework on the matter.

The prohibition of slavery and forced labour, enshrined in various international and European legal instruments, applies to Central and Eastern European countries. However, the ECtHR has addressed this in only a limited number of cases, involving certain countries. This contribution included the analysis of notable ECtHR judgments, such as *M. and Others v. Italy and Bulgaria* and *Krachunova v. Bulgaria*. The international community underlines the need for a holistic international response to persistent violations, understanding that the phenomenon impacts the whole society. Therefore, the response must be reinforced and supported both regionally and nationally.[168] The ECHR framework, through Art. 4 ECHR and the ECtHR case law, provides a strong legal basis for combating slavery, forced labour and human trafficking in Europe. Its strengths lie in its binding judicial decisions and interpretation of the Convention as a living instrument. However, it faces limitations concerning implementation and international cooperation, particularly in addressing complex transnational issues. Nonetheless, the ECHR remains a vital instrument in protecting human dignity and combating modern forms of exploitation.

168 Borg Jansson, 2014, p. 61.

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