IN THE MATTER OF

ARTICLE 4 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

AND

WHETHER AN OFFENCE OF SERVITUDE OR FORCED LABOUR IS REQUIRED TO GIVE EFFECT TO IT

AND

AN AMENDMENT TO THE CORONERS AND JUSTICE BILL

OPINION

INTRODUCTION

1. Liberty and Anti-Slavery International have suggested an amendment to the Coroners and Justice Bill, which has been tabled by Baroness Young and supported by others, in order to introduce clear, dissuasive and enforceable offences of servitude and forced labour. This would give clear effect to Britain’s obligations under Article 4 of the European Convention on Human Rights (ECHR) and the International Labour Organisation (ILO) Conventions on Forced Labour (Conventions 29 and 105).

2. It is not disputed that slavery and forced labour are still present in the United Kingdom, and that the United Kingdom has obligations under international law to render the extraction of forced or compulsory labour punishable penal offences. However, we are instructed that questions have been raised as to whether specific new offences of servitude and forced labour are required, or whether the elements of such offences are already contained in existing statutory or common law offences.

3. In our view, the existing criminal law offences pertaining to trafficking, the slave trade, false imprisonment and kidnapping are not apt to cover all offences of servitude. In order for the United Kingdom to comply with its obligations under Article 4 ECHR and the ILO, clear, dissuasive and directly applicable statutory criminal offences of forced labour and servitude are needed which penalise and permit effective prosecution of those who subject others to abuse and oppression. Without them, the United Kingdom is vulnerable to successful

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1 And indeed, developing in a new form of domestic slavery, which commonly includes features of physical and/or mental coercion which include confiscation of passports, circumstances bordering on imprisonment, physical and/or sexual violence, and illegal immigration status, which can give rise to fear of the outside world and serious ongoing sexual coercion: see the Council of Europe Parliamentary Recommendations 1523 (2001) adopted on 26th June 2001 and 1663 (2004) adopted on 22nd June 2004.
challenges in the European Court of Human Rights. We are aware of two such challenges in
the pipeline.

THE REQUIREMENTS OF ARTICLE 4 ECHR

4. Article 4 ECHR, incorporated into UK law by the Human Rights Act 1998, provides that “no
one shall be held in slavery or servitude”, or “be required to perform forced or compulsory
labour”. This must be read within the framework of other international law obligations. Article 25 of ILO Convention 29, also ratified by the United Kingdom, provides that

“the illegal exaction of forced or compulsory labour shall be punishable as a penal
offence, and it shall be an obligation on any Member State ratifying this
Convention to ensure that penalties imposed by law are really adequate and are
strictly enforced”.

5. The European Court of Human Rights (ECtHR) has held that Article 4 ECHR requires states to
have criminal legislation in force which offers sufficient practical protection to those held in
slavery or servitude or required to perform forced or compulsory labour, and which makes it
possible for the culprits to be punished. Such legislation must be sufficiently robust and clear
to be enforceable and enforced.

6. In a case called Siliadin v France\(^2\), the ECtHR held that Article 4 requires member states to
provide specific and effective protection for victims. The Court held that it was not enough
that states had in place legislation which might cover cases of servitude and forced labour.
The legislation must be sufficiently clear and specific to apply directly and obviously, and
must also be capable of realistic enforcement.

7. In the Siliadin case, a young Togolese girl was forced to work as an unpaid private servant for
families in France. The European Court found that the applicant had been subjected to
‘forced labour’\(^3\) and ‘servitude’\(^4\), had been obliged to provide services under coercion, and
to live on another’s property with no ability to change her situation.

8. In fact, there were two provisions in the French criminal code which were apparently
relevant to the circumstances, and under which prosecutions had (unsuccessfully) been
brought\(^5\). These criminalised the obtaining of performance of services for no payment, or
for manifestly disproportionate underpayment, and the subjection of another to living or
working conditions incompatible with human dignity\(^6\), and the French government sought to

\(^3\) Judgment para 120
\(^4\) Judgment para 129
\(^5\) Articles 225-13 and 225-14
\(^6\) Judgment para 46.
argue before the ECtHR that these made it possible to fight against all forms of exploitation through labour for the purposes of Article 4.\(^7\)

9. Yet notwithstanding the existence of these provisions and the bringing of prosecutions under them, the European Court held that there was a violation of Article 4 by the French State. This was because those legal provisions were not sufficiently clearly applicable to the circumstances, and were open to different interpretations. These provisions did not deal specifically with the rights guaranteed under Article 4, but concerned, in a much more restrictive way, exploitation through labour and subjection to working and living conditions incompatible with human dignity. The Court observed that the applicant, who had been subjected to treatment contrary to Article 4 and held in servitude, was not able to see those responsible for the wrongdoing punished under the criminal law. The French law provisions were therefore not effective to afford Ms Siliadin sufficient “practical and effective protection” against violation of her rights under Article 4, nor to make it possible for the culprits to be sufficiently punished.

10. The French government was therefore in breach of Article 4, having regard to the:

   “increasingly high standard being required in the area of the protection of human rights and fundamental liberties [which] correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.”\(^8\)

11. In a more recent case, \(KU v\ Finland\)\(^9\), the ECtHR re-emphasised that the positive protective obligations of member states of the Council of Europe requires them to provide a practical and effective legal framework to protect victims of crimes against violations of their human rights. \(KU\) concerned the positive obligations to protect the physical and moral integrity of a victim of criminal conduct under Article 8 ECHR. In that case, a person placed an advertisement on a dating site on the internet in the name of a 12-year old boy, without his knowledge, which claimed he was looking for an intimate relationship with an older boy to ‘show him the way’. No prosecution could take place because the internet service provider could not be compelled to identify the person or persons who had placed the advertisement.

12. The ECtHR held that the mere theoretical existence of a criminal offence of calumny was not sufficient to protect KU’s rights under Article 8, to the safeguarding of his physical and moral integrity, because “the existence of an offence has limited deterrent effects if there is no means to identify the actual offender and bring him to justice”. Practical and effective protection required effective steps to be taken to identify and prosecute the perpetrator, and because such steps could not be taken, there was no such protection in that case.\(^10\)

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\(^7\) Judgment para 76.
\(^8\) Judgment, paragraph 148
\(^9\) App No 2872/02, Decision 2\(^{nd}\) March 2009
\(^10\) Judgment, paras 46 and 49.
DOES ENGLISH LAW CONTAIN CRIMINAL OFFENCES WHICH PENALISE ENFORCED LABOUR OR SERVITUDE?

13. There are some offences in English law which may arise in some cases of servitude or enforced labour. But not all cases of servitude or enforced labour are covered by any of those offences.

14. In our view, there is no offence known to English law of subjecting another to servitude or forced labour which:
   a. clearly criminalises imposition of forced labour or servitude, in all the circumstances in which Article 4 requires signatory states to provide a remedy; or
   b. is sufficiently clear and robust to have dissuasive effect.

Trafficking legislation

15. Section 4 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004 makes it unlawful to traffic human beings. From 1st December 2004, when the provision came into force, it has been a criminal offence to arrange or to facilitate the arrival of a person within the UK for the purposes of forced labour exploitation, or to arrange or to facilitate travel within the UK of a person in respect of whom a person believes that such an offence may have been committed. Exploitation is defined as, among other things, being victim to behaviour which contravenes Article 4, and being induced to provide services or benefits in kind by ‘force, threats or deception’, or requested or induced to undertake such activities in specific, defined circumstances of vulnerability including a family relationship.

16. However, the trafficking legislation requires the perpetrator to be the person who ‘arranges or facilitates the arrival of a person to the UK for the purposes of forced labour exploitation’. The perpetrator is not guilty of the offence unless:
   a. they are involved in arranging or facilitating the arrival in the UK of the person who is to be subjected to servitude or forced labour, and unless they arrange the arrival expressly for that purpose, or
   b. they arrange or facilitate the movement of the victim within the UK believing that such an offence has already been committed by another.

17. For the elements of the offence to be proved beyond reasonable doubt, the prosecution must be brought against a person responsible for moving the victim into the UK, and prove that they did so with forced labour in mind, or against a person responsible for moving the victim within the UK, and prove that they did so knowing that someone else had brought them into the UK with forced labour in mind. Merely establishing that a person has been subjected to forced labour or servitude, and identifying the person who had subjected them to forced labour or servitude would not be sufficient to make out the elements of the offence.
18. These technical problems make it particularly difficult to prosecute all perpetrators of servitude or forced labour, in circumstances where long sub-contracting chains and informal economic sectors are structural factors which play a “major role in the exploitative employment relationship”\(^\text{11}\). They also make the offence almost impossible to prove. A vulnerable, exploited person is most unlikely to be able to identify who was responsible for moving her or him to the circumstances in which they were subjected to servitude, or to establish the state of mind of others in the chain. All they are likely to be able to prove is the circumstances in which they have been kept and forced to work.

19. Section 4 does not provide a penal sanction for the mere fact of subjecting another to forced labour or servitude, without involvement in the movement of the victim. Yet Article 4 ECHR is intended to protect against the labour or servitude itself, not the passage or movement. We consider that the section 4 offence suffers from defects at least as grave as those which rendered the provisions of the French criminal code inadequate to ensure a full and sufficient deterrent to behaviour contrary to Article 4 ECHR.

20. We are instructed that there have been very few successful prosecutions under section 4 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004 during the five years in which it has been in force. Given that we are aware of a number of cases in which the police have been asked to investigate such offences, and given the evidence from organisations like Kalayaan and the Poppy Project as to instances of forced labour or servitude in Britain, and that there have been a number of successful employment tribunals where breaches of minimum wage legislation have been enforced for such victims, this is itself indicative that the section 4 offence is not an effective dissuasive criminal sanction for behaviour which breaches Article 4 ECHR standards. Moreover, it fails to offer a practical and effective remedy to victims of a crime of oppression, which infringes the physical and moral integrity of its victims, sufficient to comply with Article 8 ECHR.

Antislavery legislation

21. Similar objections apply in relation to those provisions of the Slave Trade Acts of 1824, 1843 and 1873 which are still in force. They make trade or dealing in slaves an offence, but do not expressly make it an offence to hold a person in servitude or subject them to forced labour.

False imprisonment

22. The common-law offence of false imprisonment consists in the unlawful and intentional or reckless restraint of a victim’s freedom of movement from a particular place, that is, unlawful detention which stops the victim from moving as he or she would wish to move\(^\text{12}\).


\(^{12}\) Archbold ‘Criminal Law’, para 19-331.
However, the offence involves the unlawful intentional or reckless restraint of a victim’s freedom of movement from a particular place – *R v Rahman* (1985) 81 Cr App R 349.

23. This is not apt to cover all cases of servitude or enforced labour. Not all cases of servitude or enforced labour involve such restraint. As the ILO Conventions make clear, there are circumstances in which workers work under psychological duress, because they have been put in fear of the outside world, or have had their passports confiscated, or work under debt bondage, or under a coercive family relationship, rather than being physically prevented from moving away from the place of work.

24. Moreover, it is not apt to address the mischief which Article 4 requires to be criminalised. The offence of false imprisonment can be committed without any element of subjection of another to servitude or forced labour. It offers no effective dissuasion or protection for, or penalty for, the added element of abuse which is the subjection to servitude or forced labour.

**Kidnapping**

25. Kidnapping is also a common-law criminal offence. It is committed where a person is taken or carried away by force or fraud without the consent of the person carried away and without lawful excuse. Since consent obtained by a fraudulent stratagem is not regarded as true consent, many offences which involve the subsequent imposition of servitude or forced labour may commence with kidnapping. But that does not mean that the existence of a common-law offence of kidnapping is sufficient to comply with the United Kingdom’s positive obligations under Article 4 ECHR.

26. Firstly, the courts have held that it is implicit in the offence of kidnapping that there be some element of deprivation of liberty of the person taken or carried away, during the taking. Some instances of servitude or forced labour may start with the victim willingly going to the place where they are intended to work, under the false impression that they will have a ‘legitimate job’. Others, indeed, may start with some legitimate employment in a situation which subsequently mutates into servitude or forced labour. In such cases, no offence of kidnapping will have been committed.

27. Secondly, the courts have also held that the offence of kidnapping is complete once the victim has been taken and carried away from the place where they used to be. There is no continuing offence of concealment. Thus, the common law offence of kidnapping is again focussed on movement. It does not focus on the mischief of Article 4, which is the subjection of a person to a continued course of abuse or oppression by subjection to servitude or forced labour.

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14 *R v Wellard* 67 CrAppR 364 CA
28. The existence of an offence of kidnapping is therefore also inadequate to constitute compliance with the United Kingdom’s positive obligations under Article 4 ECHR.

CONCLUSION

29. We do not imagine that any politician, of any party, would consider it unnecessary to have in place penal legislation which complies with the United Kingdom’s obligations under Article 4 ECHR, and which provides redress to victims, and penalties for perpetrators of so grave a crime of abuse and oppression. The issue is only whether it is necessary for such an offence to be specifically created, or whether existing provisions of the criminal law already cover all circumstances of servitude and forced labour.

30. For the reasons set out above, we do not consider that the existing provisions of the English criminal law provide effective protection and penalties for servitude and forced labour. The introduction of such offences is necessary, both to protect the victims of serious abusive crime, and in order avoid findings by the ECtHR against the United Kingdom of violations of Article 4 ECHR.

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