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Slavery and Beyond through the Lens of Judicial Reasoning – Criminal Justice and Human Rights Approaches and Perspectives

Practiced from the earliest beginnings of humanity, slavery and similar relationships continue to evoke scientific curiosity. The prohibition of slavery is an indicator of societal evolution and is incorporated into all major international human rights instruments and almost all national legal systems in the world. Reasoning in national and international courts is an important part of the necessity of slavery disapproval and condemnation. The central research question of this paper evolves around judicial reasoning in slavery case law, from a human rights law and criminal law perspective. Do we have an approach adequate to modern society's conditions? Emphasis is placed on observed slavery understandings and their (un)functionality in this area, as well as on differences in judicial reasoning with the consequence of (un)certainly of assessment criteria. The selected and compared judgements well reflect how a slavery ban is brought to life, what concept is accepted in court reasoning, what legal terminology and assessment standards are used and what are the factors indicative of slavery qualification. The found judicial connection of the definition of slavery with the nowadays legally impossible or unviable concept – ownership of a human being – directs us to research and to advocate for possibilities of more suitable legal solutions, adjusted to the spirit of time. This research focuses on the difference between the approach to understanding slavery within the perspective of human rights and criminal justice, with the latter perspective appearing more open to advanced ideas and further steps in the contemporary interpretation of slave relations.

1 Introductory Remarks on Slavery and Beyond

Nothing is “notably peculiar”¹ about slavery. In the history of humankind, it has been practiced since the earliest times. It was often embedded within the national legal order²

1 Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982): vii.

2 Roman law was the first system that regulated slavery in detail but with understanding of its “contrary to nature” characteristic. Antony Honoré, “The Nature of Slavery,” in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): 9, <https://doi.org/10.1093/acprof:oso/9780199660469.003.0002>.

with prohibitions starting from the beginning of the nineteenth century.³ Considering the strong nature of international and national bans, one might assume that slavery has been eradicated. Slavery prohibition belongs to *jus cogens* international crimes. It is of the highest rank, peremptory and non-derogable, placing upon states the obligation not to grant impunity to perpetrators.⁴ It has the *erga omnes* effect⁵ and it is the first human rights issue addressed on an international scale.⁶ Although the first association with slavery may be previous eras of history, present-day scholars often stipulate the unsuccessfulness of legal provisions in keeping pace with the evolving nature of slavery.⁷ We often encounter reports dealing with exploitation of vulnerability and modern slavery,⁸ stipulating the necessity of a more effective approach in suppression of the various contemporary forms of slavery⁹ and labelling slavery as one of the most egregious human rights violations.¹⁰ It all points to the weak effect of the great number of international provisions. The Declaration Relative to the Universal Abolition of the Slave Trade of 1815, the first international document that condemned the slave trade, came into force in 1927, and it is believed that between 1815 and 1957 some 300 international agreements

³ William A. Schabas, *The European Convention on Human Rights: A Commentary*, ed. Philip Alston and Vaughan Lowe (New York: Oxford University Press, 2015): 201.

⁴ M. Cherif Bassiouni, "International Crimes: Jus Cogens and Obligatio Erga Omnes," *Law and Contemporary Problems* 59, no. 4 (1996): 66–67.

⁵ International Court of Justice, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Second phase: 1970) | (February 5, 1970). "In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.": 32, paras. 33–34.

⁶ Lukas Knott, "Unocal Revisited: On the Difference between Slavery and Forced Labor in International Law," *Wisconsin International Law Journal* 28, no. 2 (2010): 212. After two millennia of existence it became a focus of abolition as a "global crusade", Seymour Drescher, "From Consensus to Consensus: Slavery in International Law," in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): 85.

⁷ Kevin Bales and Peter T. Robbins, "No One Shall Be Held in Slavery or Servitude": A Critical Analysis of International Slavery Agreements and Concepts of Slavery," *Human Rights Review* 2, no. 2 (2001): 18.

⁸ European Committee of Social Rights: Secretariat, "European Committee of Social Rights: Conclusions 2020," March 2021, 8, <https://rm.coe.int/esc-press-briefing-conclusions-2020-final-en/1680a1e05b> [accessed 21.09.2022]. Gulnara Shahinian, "Human Rights Council Twenty-Fourth Session, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Report of the Special Rapporteur on Contemporary Forms of Slavery," July 1, 2013.

⁹ In the Report by the Secretary General Thorbjørn Jagland for the Ministerial Session of the Council of Europe, it is emphasized that trafficking for the purpose of labour exploitation is on the rise across Europe and there is a need for renewed action based on common European standards. Thorbjørn Jagland, "Ready for Future Challenges-Reinforcing the Council of Europe," 2019: 26, <https://rm.coe.int/168093af03> [accessed 21.09.2022].

¹⁰ Human Rights Council, "Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/39/52," July 28, 2018: 4, www.cfr.org/interactives/modern-slavery/#!/section6/item-38 [accessed 21.09.2022].

were implemented to suppress slavery.¹¹ Despite the prohibition of slavery, various human rights documents do not provide a definition of slavery. The Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the European Convention on Human Rights and Fundamental Freedoms of 1950, the American Convention on Human Rights of 1969, and the African Charter on Human and Peoples' Rights of 1981 are among them. At this time, the “baseline for understanding slavery”¹² is found in article 1(1) of the Convention to Suppress the Slave Trade and Slavery of 1926 that defines slavery by stating that “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”¹³ This is the agreed upon definition of slavery in international law.¹⁴ It was reiterated 30 years later in article 7a of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,¹⁵ adding that a “slave means a person in such condition or status.”¹⁶ The most prominent part are the powers attached to the right of ownership meaning that ownership appears to be the baseline of slavery but, as Allain rightfully says “this is not an accurate reading of that phrase”,¹⁷ as we will see later. Despite the passage of time, there has been no consensus about the need to change the definition of slavery. Bales and Robbins even describe the

11 David Weissbrodt and Anti-Slavery International, “Abolishing Slavery and Its Contemporary Forms, Office of the United Nations High Commissioner for Human Rights, HR/PUB/02/4 2002” (New York/Geneva, 2002): 3. Bales and Robbins, “‘No One Shall Be Held in Slavery or Servitude’: A Critical Analysis of International Slavery Agreements and Concepts of Slavery”: 18.

12 Jean Allain and Robin Hickey, ‘Property and Definition of Slavery,’ *International and Comparative Law Quarterly* 61 (2012): 916. Bales and Robbins, “‘No One Shall Be Held in Slavery or Servitude’: A Critical Analysis of International Slavery Agreements and Concepts of Slavery”: 19.

13 United Nations, “Slavery Convention, 46 Stat. 2183, Treaty Series 778” (1926), <https://www.ohchr.org/en/professionalinterest/pages/slaveryconvention.aspx> [accessed 21.09.2022].

14 Jean Allain, “The Definition of Slavery in International Law,” *Howard Law Journal* 52 (2009): 239. Schabas, *The European Convention on Human Rights: A Commentary*: 207.

15 Neither convention predicts provisions on authority for receiving State Parties’ reports on the fulfilment of their obligations. The 1956 Convention designated these tasks to the UN Economic and Social Council. With UN Resolution 6/14 of 28 September 2007 the special rapporteur for slavery was appointed by the Human Rights Council. Urmila Bhoola and Kari Panaccione, “Slavery Crimes and the Mandate of the United Nations Special Rapporteur on Contemporary Forms of Slavery,” *Journal of International Criminal Justice* 14, no. 2 (2016): 368.

16 United Nations, “Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, UNTS 266, I. Nos 3822–3833 (1956),” <https://www.ohchr.org/en/professionalinterest/pages/supplementaryconventionabolitionofslavery.aspx> [accessed 21.09.2022]. This Supplementary Convention also referred to servile status (practice analogue to slavery) which includes debt bondage, serfdom, and “unfree forms” of marriage and child exploitation, etc. Bales and Robbins, “‘No One Shall Be Held in Slavery or Servitude’: A Critical Analysis of International Slavery Agreements and Concepts of Slavery”: 24.

17 Allain, “The Definition of Slavery in International Law”: 241.

definition as controversial,¹⁸ so the interpretation is not without question.¹⁹ Society's circumstances have certainly influenced the understanding of slavery by conditioning a need for a contemporary context, exigency of consideration of an unprecedented scope of exploitation relations, appearance of cases without previous similarities or known patterns and appearance of migration social conditions, among others.

Reflections on the notion of 'modern' or 'contemporary' slavery refer to a set of concepts: traditional slavery, servitude, debt-bondage, serfdom, forced marriage and forced labour,²⁰ and trafficking in human beings. However, there are arguments about which practices should be considered slavery regardless of context.²¹ The authors suggest article 1 of the Slavery Convention should be seen as the common denominator upon which every state could agree. It is connected to the legal concept of ownership, leaving other forms without evidence of the master-property relationship.²² (Modern) slavery vulnerability is related to labour market precariousness and changes in employment (i.e., unemployment and part-time employment, low-skilled jobs, lack of stable income)²³ but specific circumstances can also increase the slavery risk (i.e., being a migrant, a refugee, a displaced person or an asylum seeker).²⁴

18 Bales and Robbins, "No One Shall Be Held in Slavery or Servitude": A Critical Analysis of International Slavery Agreements and Concepts of Slavery": 20.

19 Barbara Herceg Pakšić, "A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus," *Zbornik Radova Pravnog Fakulteta, Novi Sad* 53, no. 4 (2019): 1368, <https://doi.org/10.5937/zrpfns53-24134>.

20 Urmila Bhoola, "Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/36/43 2" (UN, August 2, 2017): 3–4; <http://digitallibrary.un.org/record/1304115> [accessed 21.09.2022]. Forced labour is more difficult to tackle since, for example, there is no consensus regarding its definition and standards in trafficking in human beings. GRETA- Group of Experts on Action against Trafficking in Human Beings, "7th General Report on GRETA'S Activities" (Strasbourg, 2017): 32.

21 Bales and Robbins, "No One Shall Be Held in Slavery or Servitude": A Critical Analysis of International Slavery Agreements and Concepts of Slavery": 20.

22 Ramona Vijayarasa and Jose Miguel Bello Villarino, "Modern Day Slavery? A Judicial Catchall for Trafficking, Slavery and Labour Exploitation: A Critique of Tang and Rantsev," *Journal of International Law and International Relations* 9 (2013): 55–56.

23 Human Rights Council, "Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44," September 2019: 4, <https://digitallibrary.un.org/record/3862519> [accessed 31.10.2022].

24 Migration and refugee conditions go hand in hand with isolation and dependence, language barriers, lack of knowledge about the legal system, etc., which makes their complex situation ever more difficult. These workers have a greater risk of becoming victims of many human rights violations and different forms of abuse and in many ways depend on their employer. There are studies that point out that labour law infringements and exploitations can turn to slavery-like practices: Angelika Kartusch, "Domestic Workers in Diplomats' Households Rights Violations and Access to Justice in the Context of Diplomatic Immunity," Tübingen, June 2011, www.bvdm-online.de [accessed 21.09.2022]. The study focuses on practices in Austria, Belgium, France, Germany, Switzerland, and the United Kingdom in their capacity as host states for foreign diplomatic missions and international organizations.

Although the slavery ban is present in almost all countries of the world,²⁵ in recent years, legislative actions have increased. This is particularly visible in the increase in the national criminalisation regarding holding a person in slavery or servitude,²⁶ which sometimes occurs under the influence of international and European obligations.²⁷ Still, gaps remain,²⁸ particularly in the implementation of international obligations in domestic law. If national incriminations do not govern contemporary slavery forms, international obligations become irrelevant due to judicial interpretations of offence elements.²⁹ Compared with the criminalization of slavery, forced labour or servitude are criminalized to a lesser extent, and in addition, conviction numbers are very low; so the chances for the perpetrators to be condemned are minimal.³⁰ This ‘recurring theme’ of persistent impunity and lack of accountability³¹ suggests that due to practical inefficiency, incriminations are of a symbolic nature.³² The reasons for this lie in obstacles such as complex investigations, low awareness of competent authorities, the nature of the often transnational crimes and demanding interstate cooperation, etc. Nevertheless, these rare convictions therefore serve as a standard for making judgements.

Slavery can entail many other human rights violations such as religious freedoms, the right to family life, freedom of expression, etc. It can also hide specific problems. One of these is the exploitation by diplomatic personnel where employers’ diplomatic immunity often prevents the procedure from being carried out and the host countries

25 David Tolbert and Laura A. Smith, “Complementarity and the Investigation and Prosecution of Slavery Crimes,” *Journal of International Criminal Justice* 14, no. 2 (2016): 430, <https://doi.org/10.1093/jicj/mqw007>.

26 For example, the United Kingdom and Australia, while in Germany, Switzerland, and Canada it is under consideration. Herceg Pakšić, “A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus”: 1368–70. For new French legislation, where the statute for the first time addressed contemporary forms of slavery by establishing a set of four offenses, see Benedicte Bourgeois, “Statutory Progress and Obstacles to Achieving an Effective Criminal Legislation Against the Modern Day Forms of Slavery: The Case of France,” *Michigan Journal of International Law* 38, no. 3 (2017): 456.

27 Vladislava Stoyanova, “Article 4 of the ECHR and the Obligation of Criminalizing Slavery, Servitude, Forced Labour and Human Trafficking,” *Cambridge Journal of International and Comparative Law* 3, no. 2 (2014): 429.

28 Human Rights Council, “Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44,” 8.

29 Bourgeois, “Statutory Progress and Obstacles to Achieving an Effective Criminal Legislation against the Modern Day Forms of Slavery: The Case of France”: 459.

30 Katarina Schwarz and Jean Allan, “Antislavery in Domestic Legislation Database | RESPECT,” <https://respect.international/antislavery-in-domestic-legislation-database/> [accessed 30.03.2021]. Human Rights Council, “Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44,” 8–9.

31 Human Rights Council, “Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44”: 12.

32 Herceg Pakšić, “A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus”: 1368–69.

often remain inactive. If legal proceedings are involved, they are primarily based on labour law and have a form of out-of-court negotiations leading to financial settlements. Despite international proclamations and obligations, there is no comprehensive survey of global anti-slavery efforts, and states are responsible for bringing this human right to life with the realization of freedom from slavery and servitude.³³ Parts of future anti-slavery agenda efforts must combine criminal justice efforts with other interventions that legally empower vulnerable populations.³⁴ This all means “a complex interaction of factors related to the presence or absence of protection; respect for rights; physical safety and security; access to the necessities of life such as food, water, and health care; and patterns of migration, displacement and conflict.”³⁵ Predictions of changes as well as risk factors refer to future work regulation, demographic trends and migration, economic and environmental changes, new technologies, armed conflicts, conflict-induced displacement and persistent gender imbalance.³⁶

2 Reflections on Slavery Definitions

Leading scholars on this issue stipulate that thorough legal analyses of the meaning of ‘slavery’ in international law are yet to be conducted; so we cannot estimate how many people meet the legal definition of slavery.³⁷ Central elements of slavery are control, ownership and often a threat of violence, accompanied with a loss of many other human rights and freedoms.³⁸ Proper understanding of the definition of slavery in international law seems to be a first-class question, especially since the start of the twenty-first century, when certain courts represented contradictory interpretations,³⁹ causing the concept of slavery to become “increasingly confusing.”⁴⁰ Scholars’ interpretations usually go in two directions: *de jure* and *de facto* slavery. *De jure* slavery is a status as a recognition of slavery by law and *de facto* slavery is a condition as an actual slavery situation.⁴¹ Nothing directly limits interpretation to just one viewpoint,

33 Human Rights Council, “Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44”: 8.

34 Human Rights Council, “Current and Emerging Forms of Slavery”: 16.

35 Jacqueline Joudo Larsen and Davina P. Durgana, “Measuring Vulnerability and Estimating Prevalence of Modern Slavery,” *CHANCE* 30, no. 3 (2017): 22, <https://doi.org/10.1080/09332480.2017.1383109>.

36 Human Rights Council, “Current and Emerging Forms of Slavery”: 4–7.

37 Allain, “The Definition of Slavery in International Law”: 239.

38 David Weissbrodt, “Slavery,” in *Max Planck Encyclopedia of Public International Law*, Max Planck Institute for Comparative Public Law and International Law, March 2014, <https://doi.org/10.1093/law:epil/9780199231690/e874>.

39 ECtHR and ICTY. Allain, “The Definition of Slavery in International Law”: 242.

40 Bales and Robbins, “‘No One Shall Be Held in Slavery or Servitude’: A Critical Analysis of International Slavery Agreements and Concepts of Slavery”: 18.

41 Allain, “The Definition of Slavery in International Law”: 242.

and both are represented in jurisprudence,⁴² but one should have in mind that favouring the *de jure* slavery interpretation could be the wrong path. Scholars stipulate that slavery has been abolished almost everywhere, leading the Slavery Convention(s) provisions to be largely irrelevant,⁴³ and reducing slavery to legally sanctioned phenomena implies making it a “defunct legal concept”.⁴⁴ *De jure* slavery is more suitable when describing traditional slavery, where slaves were treated as any other property. In contemporary societies, legal systems do not allow one person to treat another person as private property. Owning a person is a legal impossibility.⁴⁵ On the other hand, the *de facto* notion points to the conditions of slavery and is more suitable for coverage of contemporary exploitative practice, with emphasis on the loss of freedom (movement, decision making, etc.) and exploitation often accompanied by violence.⁴⁶ Cullen emphasizes the contemporary context between abolished legal slavery (ownership) and coercion or force as the main mark of forced labour in today’s *de facto* slavery, where powers attached to ownership are exercised without legal ownership right.⁴⁷ This concept is broader than the classic chattel slavery and has two aspects – the perpetrator/ the slave owner aspect (controls the victim, dominating over the freedom of choice) and the victim/slave aspect (how much control over the freedom of choice).⁴⁸ Hickey concludes that “the persistence of *de facto* ownership relations is possible and worth guarding against, even after we have decided not to tolerate *de jure* property rights in respect of persons.”⁴⁹

Almost a decade ago, in the context of legal interpretation, it was proposed that execution of powers attached to the right of ownership should be seen “as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit,

42 Herceg Pakšić, “A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus”: 1373.

43 Ariela J. Gross and Chantal Thomas, “The New Abolitionism, International Law, and the Memory of Slavery,” *Law and History Review* 35, no. 1 (2017): 114, <https://doi.org/10.1017/S0738248016000651>.

44 Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge: Cambridge University Press, 2017): 220.

45 Robin Hickey, “Seeking to Understand the Definition of Slavery,” in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): part C, <https://doi.org/10.1093/acprof:oso/9780199660469.003.0013>.

46 Bales and Robbins, “‘No One Shall Be Held in Slavery or Servitude’: A Critical Analysis of International Slavery Agreements and Concepts of Slavery”: 28–32. Authors proposed a definition of slavery as “a state marked by the loss of free will where a person is forced through violence or the threat of violence to give up the ability to sell freely his or her own labor power.”

47 Holly Cullen, “Contemporary International Legal Norms on Slavery,” in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): 304, <https://doi.org/10.1093/acprof:oso/9780199660469.003.0017>.

48 Irina Kilodizner, “R v Tang: Developing an Australian Anti-Slavery Jurisprudence R v Tang,” *Sydney Law Review* 31, no. 3 (2009): 491–95.

49 Hickey, “Seeking to Understand the Definition of Slavery”: part C.

transfer or disposal of that person”.⁵⁰ This clarification is a result of efforts made in the Bellagio-Harvard Guidelines on the Legal Parameters of Slavery (hereafter referred to as the BH Guidelines). Despite the criticism of its circular nature,⁵¹ we find it useful for the possibility it offers to discuss betterment, regarding the meaning of deprivation of individual liberty. As elaborated,⁵² the syntagm of *significant deprivation of liberty* might lead to excessive, overburdening requirements in judicial reasoning (deprivation is an absolute term). Following the assumption of significant control of personal freedom as sufficient for confirmation of slavery, the term *restriction* instead of deprivation could be considered.⁵³ It could be understood and interpreted as a major (or significant) restriction (or limitation) of personal freedom aimed at creating a significant dependence relationship.

Cullen emphasizes the frequent judicial ignorance regarding which ownership powers are exercised, focusing on the degree of control and coercion that has been exercised over the victim.⁵⁴ The issue of control is stipulated in judicial reasonings⁵⁵ and deeply rooted in exploitation of the victim’s vulnerability. It is underpinned with the sense that the situation will not change, accompanied by “feelings of fear, abandonment, helplessness, inability to change the situation, threats of being sent back to native country.”⁵⁶ Control can also serve as a transitional benchmark when servitude amounts to slavery with the exercise of additional control, which entails placing the victim in legal limbo beyond the protection of law.⁵⁷

Notions included in the syntagm of modern slavery refer to institutions and practices similar to traditional slavery, such as servitude, forced labour, debt-bondage, human trafficking, serfdom, servile marriage, child exploitation, etc. are more or less analysed in law leading to the conclusion of a gradation, where slavery is the most

50 Research Network on the Legal Parameters of Slavery, “The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery,” March 03, 2012, Guideline 2.

51 Gross and Thomas, “The New Abolitionism, International Law, and the Memory of Slavery”: 115.

52 Barbara Herceg Pakšić and Miroslav Jukić, “Primjena Konvencijskog Prava u Području Zabrane Ropstva i Prisilnog Rada: Europski Standardi i Hrvatska Postignuća,” *Hrvatski Ljetopis Za Kaznene Znanosti i Praksu* 23, no. 2 (2016): 290.

53 Herceg Pakšić and Jukić, “Primjena Konvencijskog Prava u Području Zabrane Ropstva i Prisilnog Rada: Europski Standardi i Hrvatska Postignuća”; Herceg Pakšić, “A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus.”

54 Cullen, “Contemporary International Legal Norms on Slavery”: 305.

55 As we will later see, ICTY insisted that chattel slavery is impossible today and placed emphasis on the issue of control. At a minimum, a slavery relationship requires that the slave owner has some degree of control over the object which is possessed, in this case, a slave. Vijayarasa and Bello Villarino, “Modern Day Slavery? A Judicial Catchall for Trafficking, Slavery and Labour Exploitation: A Critique of Tang and Rantsev”: 70.

56 Herceg Pakšić, “A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus”: 1377.

57 Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law*: 286.

severe form of exploitation and the other forms are weaker. Servitude is not defined by an international instrument and can be described as “human exploitation falling short of slavery”⁵⁸ related to a coercively imposed providing of services that does not involve the notion of ownership.⁵⁹ Debt-bondage refers to the position of a debtor whose labour is the collateral property of the lender until the debt is repaid, which often means an indefinite period or a lifetime, sometimes placing a child or other family member in bondage to repay a debt.⁶⁰ According to Article 3 of the Palermo Protocol,⁶¹ human trafficking has many means, forms and purposes, but sex trafficking stays the international and national focus.⁶² Article 2.1 of the ILO Convention No. 29 (1930), providing some exceptions, defines forced 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”.⁶³ It has three broad forms: work or services imposed by the State or by armed forces, forced commercial sexual exploitation and economic exploitation.⁶⁴ Slavery-like practices in marriage include forced, pretended or arranged marriages, mail-order bride systems, and sale of women for marriage⁶⁵ but there are also cases of child marriage where control and ownership are the main characteristics, especially in conflict settings.⁶⁶ In the following, we will therefore deal with the views of slavery through the eyes of the courts in selected cases that have attracted considerable attention within the scientific community. This review of court judgments clearly depicts the criminal justice and human rights contexts. Even though some decisions have muddied the waters with regards to reasoning where

58 Jean Allain, “On the Curious Disappearance of Human Servitude from General International Law,” *Journal of the History of International Law* 11, no. 2 (2009): 304, <https://doi.org/10.1163/138819909X12468857001505>. See also Pitman B. Potter, “The Doctrine of Servitudes in International Law,” *American Journal of International Law* 9, no. 3 (1915): 627–41, <https://doi.org/10.2307/2187098>.

59 Schabas, *The European Convention on Human Rights: A Commentary*: 207.

60 Bales and Robbins, “No One Shall Be Held in Slavery or Servitude”: A Critical Analysis of International Slavery Agreements and Concepts of Slavery”: 34–36.

61 “Protocol to Prevent, Suppress and Punish Trafficking in Persons,” 2000, <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [accessed 21.09.2022].

62 Ella Cockbain and Kate Bowers, “Human Trafficking for Sex, Labour and Domestic Servitude: How Do Key Trafficking Types Compare and What Are Their Predictors?” *Crime, Law and Social Change* 72, no. 1 (2019): 10, <https://doi.org/10.1007/s10611-019-09836-7>.

63 “Convention C029 – Forced Labour Convention, 1930 (No. 29),” https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 [accessed 15.04.2021].

64 Patrick Belser, “Forced Labour and Human Trafficking: Estimating the Profits,” *International Labour Organization, Working Paper* 42, 03.01.2005, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_081971/lang-en/index.htm [accessed 15.04.2021].

65 Marjan Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labour and Slavery-like Practices* (Utrecht: Foundation Against Trafficking in Women, 1999): 75–83.

66 Catherine Turner, *Out of the Shadows: Child Marriage and Slavery* (London: Anti-Slavery International, 2013): 16.

slavery is concerned, the jurisprudence of regional human rights courts still is “providing insights”.⁶⁷ International criminal law cases are oriented in individual liability for engaging in slavery/enslavement, and human rights courts are oriented to human rights violations that go beyond individual liability, to determine and evaluate state actions. National courts are bound by national arrangement of criminal law and general elements of criminal acts.

3 On the Case-Law and Judicial Reasoning on Slavery

Undoubtedly, international, European and national provisions on the prohibition of slavery are important because they reflect the consciousness and evolution of society in terms of its fundamental structures and values, but a test of their strength and weight is made in judicial reasoning and epilogues of real cases. There is a test of true social values in every court decision. It should be borne in mind that case law usually goes the established way without challenging ingrained social understanding. Still, in some situations, circumstances are stacked so that judges accept the opportunity to step forward and make a small step for a judiciary system, but a big one for case law. Select decisions related to slavery cases have attracted considerable attention from scientific authors. They are also interesting for another reason – their background is different: some are related to the context of human rights and others to criminal justice on two levels, the international and the national one. The difference in these approaches is reflected in the much stronger shackles of criminal justice versus the human rights perspective. This distinction is precisely emphasized by Bassiouni’s statement that human rights advocates strive to achieve *lex desiderata* with moral and ethical arguments, considering them sufficient to surpass the legal ones, but jurists rely on appropriate legal techniques to advocate human rights in a legal context.⁶⁸ Although this section analyses relatively recent case law insights into slavery, it is worth mentioning that more than half a century ago, the International Military Tribunal (IMT) put forth interesting and valuable views in the Pohl case.⁶⁹ Counts two

⁶⁷ Human Rights Council, “Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44”: 10.

⁶⁸ M. Cherif Bassiouni, “Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions,” *Duke Journal of Comparative & International Law* 3, no. 2 (1993): 242.

⁶⁹ US Military Tribunal Nuremberg, *United States v. Pohl, et al.* (November 3, 1947). IMT was founded in 1945 and has held trials for crimes committed in World War II. The Pohl case belonged to the subsequent Nuremberg proceedings (Military Tribunal II). It had eighteen defendants that were members of the Wirtschaft- und Verwaltungshauptamt (WVHA, Economic and Administrative Main Office). As head of WVHA, Oswald Pohl was chief defendant.

and three of the indictment alleged that the defendants committed or took part in different criminal acts, among them enslavement and deportation for the purpose of slave labour: about 5,000,000 men, women, and children were violently seized and forcibly deported as slaves. With regard to the characteristics of enslavement, the court emphasized deprivation of liberty and forced uncompensated labour. According to this decision, freedom from enslavement is “one of the fundamental concepts of civilization” and “slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery – compulsory uncompensated labour – would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery.”⁷⁰

3.1 The European Court of Human Rights (ECtHR)

Article 4 of the European Convention for Human Rights and Fundamental Freedoms (ECHR) guarantees freedom from slavery, servitude and forced labour, which, along with articles 2 and 3 “enshrines fundamental values of democratic society”.⁷¹ Its prohibition of slavery is absolute⁷² and refers to positive rather than negative state obligations where the perpetrators are usually individuals.⁷³ There are no permissible exceptions and no possible derogation of the slavery ban. The concepts are interpreted in accordance with relevant international documents mentioned earlier, but also bearing in mind that the ECHR is a living instrument that should be interpreted in the light of present-day conditions.⁷⁴ In comparison with other Convention rights and freedoms, there are significantly

⁷⁰ US Military Tribunal Nuremberg: 969–70.

⁷¹ European Court of Human Rights, “Guide on Article 4 of the European Convention on Human Rights Prohibition of Slavery and Forced Labour,” April 2021, 5, Schabas, *The European Convention on Human Rights: A Commentary*: 201. European Court of Human Rights, *Siliadin v. France*, Application no. 73316/01 (July 26, 2005).

⁷² Art. 4., Prohibition of slavery and forced labour. 1. No one should be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this Article, the term ‘forced or compulsory labour’ shall not include any work required to be done in the ordinary course of detention imposed according to provisions of Art. 5 of this Convention or during conditional release from such detention; any service of a military character, or in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service; any service exacted in case of emergency or calamity threatening the life or well-being of the community; any work or service which forms part of normal civic obligations.

⁷³ Schabas, *The European Convention on Human Rights: A Commentary*: 206.

⁷⁴ European Court of Human Rights, “Guide on Article 4 of the European Convention on Human Rights Prohibition of Slavery and Forced Labour”: 6.

fewer ECtHR judgments bringing the slavery prohibition to life, and this state of affairs can have many reasons: victims' rights awareness, (national) competent authorities' understanding of slavery, unsuccessful case handling and overall comprehension of the notion of slavery.⁷⁵

The Court uses the 'classical' slavery definition from the 1926 Convention⁷⁶ ("the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"). Due to differences in judicial stances made in other cases, Allain expressed the acute need to establish a proper understanding of the definition of slavery in international law.⁷⁷ In terms of the severity scale, slavery requires ownership, servitude requires forced labour coupled with the compulsion to live on another's property, and forced labour means involuntary work extracted under menace with no proprietary element.⁷⁸

Following this *de jure* understanding, the ECtHR delivered a decision declining slavery confirmation in the first (and most well-known) case regarding Article 4,⁷⁹ *Siliadin v. France*.⁸⁰ The applicant was a Togolese national, who had been brought to France when she was 15 by a relative of her father. As an illegal immigrant, dependent and vulnerable, she was forced to work for Mr and Mrs B., doing housework and looking after their three, later four, children. Her passport had been taken, and she worked from 7 a.m. until 10 p.m. every day as an unpaid domestic servant, without a day off and entirely without pay for several years. Finally, neighbours intervened and the Committee Against Modern Slavery made a report to the prosecuting authorities. The couple was acquitted of the criminal charges, but proceedings continued with respect to the civil aspect and upon completion, they were ordered to pay compensation (non-pecuniary damage). Even though the ECtHR accepted that she was deprived of her personal autonomy, it found that the overall treatment amounted to servitude and forced and compulsory labour, but not slavery "as there was no genuine right of legal ownership over her, thus reducing her to the status of an object."⁸¹

75 Herceg Pakšić and Jukić, "Primjena Konvencijskog Prava u Području Zabrane Ropstva i Prisilnog Rada: Europski Standardi i Hrvatska Postignuća"; Herceg Pakšić, "A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus": 1371.

76 European Court of Human Rights, "Guide on Article 4 of the European Convention on Human Rights Prohibition of Slavery and Forced Labour": 8.

77 Allain, "The Definition of Slavery in International Law": 242.

78 David Keane, "Abolitionist in Heart But Not in Action: Slavery, Servitude and the Status of Article 4 ECHR in Irish Law," *Irish Jurist, New Series* 50 (2013): 171.

79 Helen Duffy, "Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution," *Journal of International Criminal Justice* 14, no. 2 (2016): 378, <https://doi.org/10.1093/jicj/mqv079>. Vladislava Stoyanova, "Article 4 of the ECHR and the Obligation of Criminalising Slavery, Servitude, Forced Labour and Human Trafficking," *Cambridge International Law Journal* 3, no. 2 (2014): 413, <https://doi.org/10.7574/cjicl.03.02.191>.

80 European Court of Human Rights, *Siliadin v. France*, Application no. 73316/01.

81 European Court of Human Rights, at § 122.

In the case of a Roma girl claiming to have been sold to Italian criminals, the question of slavery in the marriage context was discussed.⁸² The application was declared inadmissible; however, there were allegations of slavery due to money paid to the applicant's father related to the alleged marriage. The Court reasoned "marriage has deep-rooted social and cultural connotations which may differ largely from one society to another [. . .] payment can reasonably be accepted as representing a gift from one family to another, a tradition common to many different cultures in today's society [. . .] such a monetary contribution cannot be considered to amount to a price attached to the transfer of ownership."⁸³ The case *C. N. and V. v. France*⁸⁴ was brought by two sisters sent from Burundi to Paris to live with their relatives for whom they were obliged to carry out household and domestic chores under threat of being sent back to Burundi. The sisters were used as house cleaners who were obliged to carry out all household work. They had no access to a bathroom, were not allowed to eat with the family (were given leftovers instead) and were not paid or given days off. In this case slavery was not even examined, but a violation of art. 4 was found with confirmation of servitude and forced labour only for the older sister because she did most of the work and was under threat of returning to her country of origin. The presented ECtHR positions regarding interpretations of slavery provoked the authors to label the shown restrictive approach as incorrect and out of date⁸⁵ because it "does not seem to offer hints about interpreting slavery from a contemporary perspective"⁸⁶ and is reluctant to use the term slavery for anything that is not chattel slavery based on ownership.⁸⁷ This narrow approach is criticized for "denuding the prohibition on slavery of any utility."⁸⁸

Thus, it is worth questioning or re-examining the presented ECtHR stances to explore other lines of reasoning. To facilitate legal reflections, in 2012 the BH Guidelines⁸⁹ were adopted. Despite the criticism about their circular nature⁹⁰ they can be a useful tool proposing the interpretation of "powers attaching to the right of ownership". According to

⁸² *M. and others v. Italy and Bulgaria*, Application no. 40020/03 (July 31, 2012).

⁸³ *M. and others v. Italy and Bulgaria*, Application no. 40020/03 at § 161. For research on whether forced marriage can be considered as a form of enslavement, see Iris Haenen, "The Parameters of Enslavement and the Act of Forced Marriage," *International Criminal Law Review* 13, no. 4 (2013): 895–916.

⁸⁴ *C. N. and V. v. France*, Application no. 67724/09 (October 11, 2012).

⁸⁵ Duffy, "Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution": 379.

⁸⁶ Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law*: 246.

⁸⁷ Keane, "Abolitionist in Heart But Not in Action: Slavery, Servitude and the Status of Article 4 ECHR in Irish Law": 167.

⁸⁸ Cullen, "Contemporary International Legal Norms on Slavery": 309.

⁸⁹ Research Network on and the Legal Parameters of Slavery, "The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery." This document contains altogether 10 guidelines providing clarification of the slavery definition from the 1926 Slavery Convention (Art. 1) and the 1956 Supplementary Convention (Art. 7).

⁹⁰ Gross and Thomas, "The New Abolitionism, International Law, and the Memory of Slavery": 115.

the BH Guidelines, it “should be understood as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer or disposal of that person. Usually, this exercise is supported by and obtained through means such as violent force, deception and/or coercion.”⁹¹ The specific notion of control over a person is one tantamount to possession.⁹² Some analyses have shown that in the *Siliadin* and *C. N. and V.* cases, in accordance with the BH Guidelines’ indicators of slavery, all or almost all indicators were fulfilled, which ultimately would allow us to form a conclusion on the existence of slavery.⁹³

A few years later, the ECtHR reassessed and modified its views in the *Rantsev* case.⁹⁴ The applicant’s daughter was a Russian national who died in unexplained circumstances, falling from a window of a private property in Cyprus in March 2001. Her body was found in the street. She arrived in Cyprus with a ‘cabaret-artiste’ visa and when she wanted to return to Russia, a cabaret manager asked the police to detain her as an illegal immigrant. After contacting the immigration authorities and receiving instructions, the police did not detain her, and the manager picked her up. Afterwards she was found dead, and the conclusion based on the investigation was that her death was an accident that happened while she attempted to escape. Despite the complex circumstances and an autopsy conducted in Russia, neither the Russian nor the Cypriot authorities proceeded with the investigation. Given that trafficking of human beings is not explicitly mentioned within the text of Art. 4, the Court had to first discuss its applicability. The Court did not focus on the vicissitudes related to interpretations of the legal concept of ownership-related slavery but interpreted the Convention in light of present-day conditions. It concluded that trafficking of human beings is an internationally recognized and globally increasing negative phenomenon based on the exercise of power attached to the right of ownership and treating human beings as commodities; so it falls within the scope of Art. 4.⁹⁵ After confirming its applicability, the ECtHR found that both states had violated it: Cyprus by not establishing a suitable framework to combat human trafficking or to take operational measures to protect victims and Russia by failing to conduct an effective investigation regarding recruitment within its territory by traffickers. With an obvious difference in relation to the reasoning in the *Siliadin* case, the court did not determine under which definition from Art. 4 (‘slavery’, ‘servitude’ or

91 Research Network on the Legal Parameters of Slavery, “Bellagio-Harvard Guidelines on the Legal Parameters of Slavery,” March 3, 2012, Guideline 2.

92 Research Network on the Legal Parameters of Slavery, Guideline 3. “To determine, in law, a case of slavery, one must look for possession.”

93 Herceg Pakšić, “A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus”: 1377–79.

94 European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application no. 25965/04 (January 7, 2010).

95 European Court of Human Rights: § 281.

‘forced and compulsory labour’) the violation occurred, considering it to be unnecessary.⁹⁶ This omission, in the light of subsequent decisions in other cases,⁹⁷ has contributed to the impression that the overall understanding of the concept of slavery is still not sufficiently defined and specified, a situation which we hope will soon be rectified.

3.2 The International Criminal Tribunal for the Former Yugoslavia (ICTY)

The ICTY, the United Nations court for war crimes that happened during the 1990s in the Balkan area, ceased to exist in 2017. It had the power to prosecute individuals for grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide and crimes against humanity.⁹⁸ Enslavement, as a form of crime against humanity, is directed against the civilian population and committed during armed conflict of international or internal character.⁹⁹ In the well-known case *Kunarac et al.*,¹⁰⁰ which entailed the first ICTY convictions for enslavement (as well as rape), as a crime against humanity, the court assumed the stance of adaptability to the contemporary interpretation of slavery. The case was, *inter alia*, regarding enslavement as a crime against humanity, perpetrated by three members of the Serb forces against Muslim women who were held in early 1992 and mid-1993 in detention centres in Foča and other locations in Bosnia and Herzegovina. The accused faced charges of violating the laws or customs of war and committing crimes against humanity – rape, torture, enslavement and outrages upon personal dignity. Muslim civilians were rounded up in the villages surrounding Foča and men were separated from women and children. The men suffered periods of detention, mistreatment and some were killed. The women and children were detained at collection points from which women and young girls were taken to private houses and other places where they were raped.¹⁰¹ In this case, the Trial Chamber considered and accepted the specific elements of relevance for the crime of enslavement such as:

⁹⁶ European Court of Human Rights: § 282.

⁹⁷ European Court of Human Rights, *S.M. v. Croatia*, Application no. 60561/14 (July 19, 2018).

⁹⁸ “Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed on the Territory of the Former Yugoslavia” (1991), Article 1–5, [https://www.icty.org/x/file/Legal Library/Statute/statute_sept09_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf) [accessed 21.09.2022].

⁹⁹ Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed on the Territory of the Former Yugoslavia, Article 5 (c).

¹⁰⁰ ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (IT-96-23-T& IT-96-23/1-T) (February 22, 2001).

¹⁰¹ The trial against the three accused is called the “rape camp case”, an example of the systematic rape of women of another ethnicity being used as a ‘weapon of war’. Members of the Bosnian Serb armed forces used rape as an instrument of terror. Judgement of Trial Chamber II in the *Kunarac, Kovač and Vuković* case (February 22, 2001).

detention; ordered work (cooking and household chores); reservation of some women for a specific person (exclusivity); constant disposal of victims; degrading treatment (offering permission to rape a victim in the presence of a witness); denial of control over victims' lives; sale and transfer of victims; mistreatment (beatings and slapping) and poor living conditions (lack of food). The ICTY Statute did not define enslavement; so, in order to evaluate the elements, it was necessary to research sources of international humanitarian and human rights law. Many of them, as mentioned earlier, did not include definitions of slavery and at the time,¹⁰² case law was not yet developed, so the ICTY had no precedents. It was concluded that enslavement “consisted of the exercise of any or all of the powers attaching to the right of ownership over a person” where *actus reus* was the exercise of any or all of the powers attaching to the right of ownership over a person and the *mens rea* was the intentional exercise of such powers.¹⁰³ As described by the Chamber, this definition is wider than the traditional one and indications include “elements of control and ownership; the restriction or control of an individual’s autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator.”¹⁰⁴ The absence of victim consent or free will is marked as irrelevant due to specific and frequent circumstances such as fear, coercion, threats, deception, vulnerability, captivity, etc. The factors for consideration of slavery were determined as “the control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.”¹⁰⁵ By extending the international concept of enslavement and providing factors for assessment that would qualify as indicative of slavery,¹⁰⁶ the Trial Chamber found the first two accused (Kunarac and Kovač) guilty of enslavement and sentenced them to imprisonment. They appealed during March 2001 on several grounds. About a year and a half after the Trial Chamber judgement, the Appeals Chamber Judgement rejected all grounds of appeal confirming the sentences imposed by the Trial Chamber.¹⁰⁷ There was a common ground of appeal, relating to the definition of the crime of enslavement, contending the broadness of the Trial Chamber’s understanding of enslavement and the lack of clear crime elements. The appellants offered the following three

102 ICTY, Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (IT-96-23-T& IT-96-23/1-T): 177–92, §§ 518–38.

103 ICTY, 192: § 539–40.

104 ICTY, 193: § 541–42. The Trial Chamber also identified some additional enslavement indicators such as exploitation, exaction of labour, physical hardship, sex, prostitution, and human trafficking.

105 ICTY, 194: § 543. The mere ability to buy, sell, trade or inherit a person or his or her labours or services could be a relevant factor.

106 Harmen van der Wilt, “Slavery Prosecutions in International Criminal Jurisdiction,” *Journal of International Criminal Justice* 14 (2016): 275, 282.

107 ICTY, Appeals Chamber Judgement: Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (IT-96-23 & IT-96-23/1-A) (June 12, 2002). ICTY, Appeals Chamber Judgement in the Kunarac, Kovač and Vuković (Foča) case-summary (CVO/ P.I.S./ 679-E) (June 12, 2002).

alternative criteria: establishing that the accused treated the victims “as their own ownership”, lack of victim consent throughout detention and transfer (claiming they had freedom of movement and could escape) and duration of enslavement as “indefinite or at least for a prolonged period of time” additionally claiming there was no *mens rea*.¹⁰⁸ The Appeals Chamber accepted the almost universal nature of the traditional concept of slavery from the Slavery Convention of 1926 but acknowledged that it evolved to comprise different contemporary forms based on power attached to ownership right. These forms were not as extreme as chattel slavery, but regardless were a part of enslavement, whose confirmation in this specific case will depend on “operation of the factors or indicia of enslavement identified by the Trial Chamber.”¹⁰⁹ Further, the Appeals Chamber rejected the idea that the victim’s lack of consent was an element of the crime; the crime setting disabling the expression of consent is sufficient to presume the absence of consent. Equally, it upheld the conclusion of duration not belonging to crime elements but rather highlighted the content of the perpetrator-victim relationship. Because of the notable step forward, this ICTY judgement is described as the reference point for other courts in defining slavery and the first contemporary international judicial decision on slavery.¹¹⁰

3.3 Australian Jurisprudence on Slavery

The landmark case *R. v. Tang*¹¹¹ is a first jury conviction for slavery under anti-slavery provisions introduced in 1999 and, alongside *Kunarac* and *Siliadin*, one that brought “much depth of understanding to the parameters of what constitutes ‘slavery’ both in the Australian context, but also in international law.”¹¹² Australian jurisprudence significantly contributed to the interpretation of slavery.¹¹³ In 2006, the County Court of Victoria convicted brothel owner Ms Wei Tang for possession of a slave and intentional exercise of ownership power over a slave, and sentenced her to 10 years of imprisonment. The accusation was regarding five women, all Thai nationals, previously providing sexual

108 ICTY, Appeals Chamber Judgement: *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (IT-96-23 & IT-96-23/1-A) at 33–34, §§ 107–11.

109 ICTY, 36, § 119.

110 Cullen, “Contemporary International Legal Norms on Slavery”: 305–6.

111 High Court of Australia, *The Queen v Tang*, HCA 39 (August 28, 2008).

112 Jean Allain, “*R v Tang*: Clarifying the Definition of ‘Slavery’ in International Law,” *Melbourne Journal of International Law* 10, no. 1 (2009): 246.

113 Commonwealth Criminal Code was amended in 1999 to contain slavery-related offences and an updated slavery definition without the word ‘status’ to reflect the legal impossibility of ownership over a person. Cullen, “Contemporary International Legal Norms on Slavery”: 315. Prior to this, slavery was a criminal offence in Australia in accordance with the Slave Trade Act of 1824. Andreas Schloenhardt and Laura-Rose Lynch, “*McIvor and Tanuchit*: A Truly ‘Heinous’ Case of Sexual Slavery,” *University of New South Wales Law Journal* 35, no. 1 (2012): 175.

services in Thailand. They (voluntarily) came to Australia to continue with this activity, for which each was paid 20,000 USD and was required to return 45,000 USD for transport and living expenses. They were not locked up and were provided with care, but did not speak English, their passports were retained, and they were told to avoid immigration officials. They worked long hours, reducing their debt by 50 USD per client. The Court of Appeal of the Supreme Court of Victoria quashed the conviction and ordered a new trial due to inadequate jury instructions, but prosecution appealed to the High Court, which allowed it and overturned the order of a new trial. In its 52-page decision, it was explained that “there is no status of slavery under Australian law and legal ownership of a person is impossible.”¹¹⁴ The court continued that slavery is to be taken as *de facto*, and powers attaching to the right of ownership are ones attributed to effective but not legal ownership. Slavery is to be understood as a condition where any or all of the powers attached to the right of ownership are exercised over a person and ‘slave’ takes its meaning from the definition of slavery.¹¹⁵ Since Australian law has never recognized the possibility that one person can own or possess another, ownership was explained as “dominion over”¹¹⁶ and consists of the complete subjection of one person to the will of another.¹¹⁷ Before this case, the parameters and the meaning of slavery in Australian law were untested.¹¹⁸ With a six-to-one majority decision, the Court gave judicial guidance regarding the interpretation of slavery and set the grounds for future slavery reasoning by broadening the definition of slavery to encompass and prioritize its *de facto* form. The usefulness of the Tang case’s fundamentals and reflections on slavery was visible in the subsequent period when the need for judicial reasoning in the field of sexual slavery continued. Two years after Tang, there was the occurrence of the *R. v McIvor and Tanuchit* case with significant similarities, which was the first conviction for slavery offences in New South Wales.¹¹⁹ Unlike Tang, this case received much less attention in the scientific community, despite the “exceptionally heinous nature of the crime and the intricate questions of law involved”.¹²⁰ The accused were a married couple convicted of possessing and using slaves. Five Thai women were exploited in a brothel owned and managed by the couple. The women were purchased in Thailand, entered Australia with fraudulent visas and were deceived about the nature of the work and its conditions. The offenders informed them that they were in debt, which was to be repaid by working in the brothel as prostitutes. They locked the women up, controlled them and prevented them from leaving. The women were subjected to

114 High Court of Australia, *The Queen v Tang*, HCA 39 13, § 33.

115 High Court of Australia, 37, § 135.

116 High Court of Australia, 37–38, §139.

117 High Court of Australia, 38, § 142.

118 Schloenhardt and Lynch, “McIvor and Tanuchit: A Truly ‘Heinous’ Case of Sexual Slavery”: 176.

119 Schloenhardt and Lynch, “McIvor and Tanuchit: A Truly ‘Heinous’ Case of Sexual Slavery”: 175.

120 Schloenhardt and Lynch, “McIvor and Tanuchit: A Truly ‘Heinous’ Case of Sexual Slavery”: 176.

degrading treatment. The New South Wales District Court convicted the couple with imprisonment sentences, however on the second instance the Court of Criminal Appeal ordered a retrial.¹²¹ In the twelve-week retrial, the New South Wales District Court declared both accused guilty of possessing a slave and exercising the power of ownership over a slave (power of use). The Court stressed that the possession offence is of “lesser seriousness than the use offence [. . .] the use in the brothel was the exercise of a power which most harshly exemplified the enslavement”¹²² and sentenced each to 12 years of imprisonment.

It is interesting that the Australian criminal law provision also contains the offence of sexual servitude, but the reason for omitting its application is not known. Some authors offer the explanation that slavery was seen as a more severe form that more adequately reflects the criminal conduct and enables a higher penalty.¹²³ The area of sexual services proved to be a continuing challenge in the discussion of slavery, as other cases with factually and thematically similar circumstances obtained court epilogues. In *Ho and Leech*,¹²⁴ three offenders were convicted for slavery offences, where Thai women were purchased and placed on debt contracts to work in a Melbourne brothel. In *Sieders & Yotchomchin*,¹²⁵ both accused were found guilty of exploiting Thai women for sexual servitude. In the *Nethip* case,¹²⁶ the offender was found guilty of conducting a business involving sexual servitude. In *Nantakhum*,¹²⁷ the first case of slavery offences in the Australian Capital Territory, the accused (in addition to other criminal acts) was found guilty of intentional possession of two Thai women as slaves. Despite the relatively small number of convictions for slavery in Australia, the authors nevertheless researched common case law characteristics, such as the subtle recruitment methods that offenders use on victims, the offenders’ formation of complex and controlling relationships through debt-bondage, the offenders’ profit motivation and the similarities between the offenders and victims in terms of gender, background and experience.¹²⁸ Australian case law,

121 Court of Criminal Appeal of New South Wales, *McIvor and Another v The Queen*, [2009] NSWCCA 264 (October 28, 2009).

122 District Court of New South Wales, *R v McIvor & Tanuchit* (December 17, 2010), § 62. The issue of double punishment emerged: related criminal law provision pairs together possession and exercising powers attaching to the right of ownership but were in this case charged separately. The court judge accepted the possibility of separate existence (even though this was hard to imagine) and held that possession is less serious than use, which solidified the victim’s status as a slave.

123 Schloenhardt and Lynch, “*McIvor and Tanuchit: A Truly ‘Heinous’ Case of Sexual Slavery*”: 191.

124 Supreme Court of Victoria, *Ho v The Queen*; *Leech v The Queen* [2011] VSCA 344 as related to DPP (Cth) v *Ho & Ho* [2009] VSC 437 (2009).

125 District Court of New South Wales, *R v Sieders R v Yotchomchin* [2007] NSWDC 101 (2007).

126 District Court of New South Wales, *R v NETHIP* [2010] NSWDC 159 (2010).

127 Supreme Court of the Australian Capital Territory, *R v Watcharaporn Nantakhum* (SCC149 of 2010) (2012).

128 Frances Simmons et al., “Human Trafficking and Slavery Offenders in Australia,” *Trends & Issues in Crime and Criminal Justice, Australian Institute of Criminology* 464 (2013): 10–11, <https://www.aic.gov.au/publications/tandi/tandi464> [accessed 21.09.2022].

starting with Tang, has readily taken over the present-day stance on the manner how slavery should be treated in court proceedings.

4 Acquired Cognitions in the Form of Concluding Thoughts

Proclamations on the absolute prohibition of slavery and similar practices have long since become a normative standard, as well as declarations that slavery undermines fundamental social structures. In today's social conditions, it is clear that approaches to understanding the concept of slavery require breadth and adaptability to constant social change. Prohibition is the prerogative of human rights but the enforceability of that standard in practice is a different matter altogether. Despite its long history, not all features of slavery are always easy to grasp, and even the very beginning and ending of the practice of slavery is challenged.¹²⁹ Regarding new interpretation opportunities, it would be advisable to step back from the attempt to define it with the legally impossible or unviable ownership concept. Turning towards its main characteristics, one description can be a significant restriction of personal freedom creating dependence to a considerable extent, with the goal of exploitation.¹³⁰

This paper thematically deals with judicial approaches to slavery. The selected judgments well reflect the contemporary struggles from the criminal law and human rights perspective and showed a difference in approach and adaptability to slavery interpretations. The criminal justice approach turned out to be much more receptive to accepting the *de facto* notion of slavery as well as willing to step forward in interpretations (i.e. developing its own indicators of slavery), as opposed to the perspective offered by the human rights approach.

The latter was reflected in the ECtHR decisions and an approach that can be described as restrictive and cautious, (already) criticized as non-functional. Despite cases found to violate article 4, slavery *per se* was not yet confirmed due to acceptance of the traditional *de jure* concept of slavery. The general lack of precision in notions belonging to article 4 contributes to and conditions this situation. Continuing this approach also means continuing to miss the opportunity to take a step forward in more advanced consideration of slavery from a human rights perspective. As often stated, the ECtHR is a living instrument that is to be interpreted in the light of contemporary conditions. The beginning of a possible change can be sensed in recent considerations in

¹²⁹ Knott, "Unocal Revisited: On the Difference between Slavery and Forced Labor in International Law": 209.

¹³⁰ Herceg Pakšić and Jukić, "Primjena Konvencijskog Prava u Području Zabrane Ropstva i Prisilnog Rada: Europski Standardi i Hrvatska Postignuća": 289–90.

which the terminology used is slowly beginning to move away from the standard *de jure* vocabulary. Thus, the term ‘legal’ in consideration of ownership begins to be avoided, as are the terms ‘status’ and ‘object’ (M. and others v. Italy and Bulgaria).¹³¹ Case law of art. 4 is generally marked by a lack of clarity of encompassed notions as well as their blurred boundaries, which is certainly one of the future challenges for easier decision making. The protective scope of art. 4 continues to expand, extending to contemporary exploitation forms not directly mentioned in the provision’s wording. In 2010, trafficking in human beings was included due to its connection to slavery, and in 2018, exploitation of prostitution was added.¹³² This significant positive development was however unspecified regarding the question under which of the existing notions from art. 4 the violations were committed: the court found it unnecessary to identify whether it constituted slavery, servitude or forced and compulsory labour. The criminal justice perspective has set the legal standards by preferring the notion of *de facto* slavery and reflections on the indicative criteria that confirm that slavery has been committed. The existing legal provisions on slavery that can be characterized as incomplete or imprecise undoubtedly create challenges in judicial reasoning. As Bourgeois stipulates, defining exploitation-related concepts is a dynamic process, and the identification of the constitutive behaviours under the concept of slavery depends on the level of exigency of the assessment.¹³³ Faced with a lack of clear constituent slavery elements, the ICTY and the HCA, in their landmark decisions, have parted from the outdated 1926 definition and made new standards for repression through the legal system. Case law accompanied with legal controversy shows the need to transcend the definition as the (illegal) ownership of a person but simultaneously to interpret the definition of slavery as the exercise of the powers attaching to the right of ownership over a person. This legal fiction continues to create practical efforts in resolving the puzzle and calls for a more scientific approach in future anti-slavery reflection.¹³⁴ Some sociological reflections abandon the ownership and property concepts, replacing them with ideas of slavery as human parasitism, which emphasizes the asymmetry of unequal relations and complexities of dependence.¹³⁵ There is, however, something peculiar about slavery: its ability to stand the test of time while persistently changing faces.

131 M. and others v. Italy and Bulgaria, Application no. 40020/03, § 149. See Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States’ Positive Obligations in European Law*: 247.

132 European Court of Human Rights, S.M. v. Croatia, Application no. 60561/14.

133 Bourgeois, “Statutory Progress and Obstacles to Achieving an Effective Criminal Legislation against the Modern-Day Forms of Slavery: The Case of France”: 463.

134 Human Rights Council, “Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44”: 16.

135 Patterson, *Slavery and Social Death: A Comparative Study*: 334–36.

Bibliography

- Allain, Jean. "R v Tang: Clarifying the Definition of 'Slavery' in International Law," *Melbourne Journal of International Law* 10, no. 1 (2009): 246–55.
- Allain, Jean. "On the Curious Disappearance of Human Servitude from General International Law," *Journal of the History of International Law* 11, no. 2 (2009): 303–32, <https://doi.org/10.1163/138819909X12468857001505>.
- Allain, Jean. "The Definition of Slavery in International Law," *Howard Law Journal* 52 (2009): 239–75.
- Bales, Kevin, and Peter T. Robbins. "No One Shall Be Held in Slavery or Servitude": A Critical Analysis of International Slavery Agreements and Concepts of Slavery," *Human Rights Review* 2, no. 2 (2001): 18–45, <https://doi.org/10.1007/s12142-001-1022-6>.
- Bassiouni, M. Cherif. "Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions," *Duke Journal of Comparative & International Law* 3, no. 2 (1993): 235–98.
- Bassiouni, M. Cherif. "International Crimes: Jus Cogens and Obligatio Erga Omnes," *Law and Contemporary Problems* 59, no. 4 (1996): 63–74.
- Belser, Patrick. "Forced Labour and Human Trafficking: Estimating the Profits," *International Labour Organization, Working Paper* 42, 03.01.2005, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_081971/lang-en/index.htm [accessed 15.04.2021].
- Bhoola, Urmila. "Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/36/43 2," UN, August 2, 2017, <http://digitallibrary.un.org/record/1304115> [accessed 21.09.2022].
- Bhoola, Urmila, and Kari Panaccione. "Slavery Crimes and the Mandate of the United Nations Special Rapporteur on Contemporary Forms of Slavery," *Journal of International Criminal Justice* 14, no. 2 (2016): 363–73, <https://doi.org/10.1093/jicj/mqw019>.
- Bourgeois, Benedicte. "Statutory Progress and Obstacles to Achieving an Effective Criminal Legislation against the Modern-Day Forms of Slavery: The Case of France," *Michigan Journal of International Law* 38, no. 3 (2017): 455–96.
- C. N. and V. v. France, Application no. 67724/09 (October 11, 2012).
- Cockbain, Ella, and Kate Bowers. "Human Trafficking for Sex, Labour and Domestic Servitude: How Do Key Trafficking Types Compare and What Are Their Predictors?" *Crime, Law and Social Change* 72, no. 1 (2019): 9–34, <https://doi.org/10.1007/s10611-019-09836-7>.
- "Convention C029 – Forced Labour Convention, 1930 (No. 29)," https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 [accessed 15.04.2021].
- Court of Criminal Appeal of New South Wales. *McIvor and Another v The Queen*, [2009] NSWCCA 264 (October 28, 2009).
- Cullen, Holly. "Contemporary International Legal Norms on Slavery," in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): 304–21, <https://doi.org/10.1093/acprof:oso/9780199660469.003.0017>.
- District Court of New South Wales. *R v NETTHIP* [2010] NSWDC 159 (2010).
- District Court of New South Wales. *R v Sieders R v Yotchomchin* [2007] NSWDC 101 (2007).
- District Court of New South Wales. *R v McIvor & Tanuchit* (December 17, 2010).
- Drescher, Seymour. "From Consensus to Consensus: Slavery in International Law," in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): 85–104, <https://doi.org/10.1093/acprof:oso/9780199660469.003.0006>.
- Duffy, Helen. "Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution," *Journal of International Criminal Justice* 14, no. 2 (2016): 375–403, <https://doi.org/10.1093/jicj/mqw079>.

- European Committee of Social Rights: Secretariat. “European Committee of Social Rights: Conclusions 2020,” March 2021, <https://rm.coe.int/esc-press-briefing-conclusions-2020-final-en/1680a1e05b> [accessed 21.09.2022].
- European Court of Human Rights. “Guide on Article 4 of the European Convention on Human Rights Prohibition of Slavery and Forced Labour,” April 2021.
- European Court of Human Rights. *Rantsev v. Cyprus and Russia*, Application no. 25965/04 (January 7, 2010).
- European Court of Human Rights. *S.M. v. Croatia*, Application no. 60561/14 (July 19, 2018).
- European Court of Human Rights. *Siliadin v. France*, Application no. 73316/01 (July 26, 2005).
- European Court of Human Rights. *M. and others v. Italy and Bulgaria*, Application no. 40020/03 (July 31, 2012).
- GRETA–Group of Experts on Action against Trafficking in Human Being. “7th General Report on GRETA’S Activities,” Strasbourg, 2017.
- Gross, Ariela J., and Chantal Thomas. “The New Abolitionism, International Law, and the Memory of Slavery,” *Law and History Review* 35, no. 1 (2017): 99–118, <https://doi.org/10.1017/S0738248016000651>.
- Haenen, Iris. “The Parameters of Enslavement and the Act of Forced Marriage,” *International Criminal Law Review* 13, no. 4 (2013): 895–916.
- Herceg Pakšić, Barbara. “A Contribution to Slavery Debate: Domestic Labour of Migrant Children in Focus,” *Zbornik Radova Pravnog Fakulteta, Novi Sad* 53, no. 4 (2019): 1365–89, <https://doi.org/10.5937/zrpfns53-24134>.
- Herceg Pakšić, Barbara, and Miroslav Jukić. “Primjena Konvencijskog Prava u Području Zabrane Ropstva i Prisilnog Rada: Europski Standardi i Hrvatska Postignuća,” *Hrvatski Ljetopis Za Kaznene Znanosti i Praksu* 23, no. 2 (2016): 281–310.
- Hickey, Robin. “Seeking to Understand the Definition of Slavery,” in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): 220–41, <https://doi.org/10.1093/acprof:oso/9780199660469.003.0013>.
- High Court of Australia. *The Queen v Tang*, HCA 39 (August 28, 2008).
- Honoré, Antony. “The Nature of Slavery,” in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012): 9–16, <https://doi.org/10.1093/acprof:oso/9780199660469.003.0002>.
- Human Rights Council. “Current and Emerging Forms of Slavery, Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/42/44,” September 2019, <http://iniciativa2025alc.org/child-labour-risk-model/> [accessed 21.09.2022].
- Human Rights Council. “Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences, A/HRC/39/52,” July 28, 2018, www.cfr.org/interactives/modern-slavery/#!/section6/item-38 [accessed 21.09.2022].
- ICTY. Appeals Chamber Judgement : *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (IT-96-23& IT-96-23/1-A) (June 12, 2002).
- ICTY. Appeals Chamber Judgement in the *Kunarac, Kovač and Vuković; (Foča) case-summary* (CVO/ P.I.S./ 679-E) (June 12, 2002).
- ICTY. *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (IT-96-23-T& IT-96-23/1-T) (February 22, 2001).
- International Court of Justice. *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Second phase: 1970) (February 5, 1970).
- Jagland, Thorbjørn. “Ready for Future Challenges-Reinforcing the Council of Europe,” 2019, <https://rm.coe.int/168093af03> [accessed 21.09.2022].
- Judgement of Trial Chamber II in the *Kunarac, Kovač and Vuković case* (February 22, 2001).
- Kartusch, Angelika. “Domestic Workers in Diplomats’ Households Rights Violations and Access to Justice in the Context of Diplomatic Immunity,” Tübingen, June 2011, www.bvdm-online.de [accessed 21.09.2022].

- Keane, David. "Abolitionist in Heart But Not in Action: Slavery, Servitude and the Status of Article 4 ECHR in Irish Law," *Irish Jurist, New Series* 50 (2013): 166–98.
- Kilodizner, Irina. "R v Tang: Developing an Australian Anti-Slavery Jurisprudence R v Tang," *Sydney Law Review* 31, no. 3 (2009): 487–97.
- Knott, Lukas. "Unocal Revisited: On the Difference between Slavery and Forced Labor in International Law," *Wisconsin International Law Journal* 28, no. 2 (2010): 201–33.
- Larsen, Jacqueline Joudo, and Davina P. Durgana. "Measuring Vulnerability and Estimating Prevalence of Modern Slavery," *CHANCE* 30, no. 3 (2017): 21–29, <https://doi.org/10.1080/09332480.2017.1383109>.
- Patterson, Orlando. *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982).
- Potter, Pitman B. "The Doctrine of Servitudes in International Law," *American Journal of International Law* 9, no. 3 (1915): 627–41, <https://doi.org/10.2307/2187098>.
- "Protocol to Prevent, Suppress and Punish Trafficking in Persons," 2000, <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [accessed 21.09.2022].
- Research Network on the Legal Parameters of Slavery. "Bellagio-Harvard Guidelines on the Legal Parameters of Slavery," March 3, 2012.
- Research Network on, and the Legal Parameters of Slavery. "The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery," March 3, 2012.
- Schabas, William A. *The European Convention on Human Rights: A Commentary*, ed. Philip Alston and Vaughan Lowe (New York: Oxford University Press, 2015).
- Schloenhardt, Andreas, and Laura-Rose Lynch. "McIvor and Tanuchit: A Truly 'Heinous' Case of Sexual Slavery," *University of New South Wales Law Journal* 35, no. 1 (2012): 177–202.
- Schwarz, Katarina and Jean Allan. "Antislavery in Domestic Legislation Database | RESPECT," <https://respect.international/antislavery-in-domestic-legislation-database/> [accessed 30.03.2021].
- Shahinian, Gulnara. "Human Rights Council Twenty-Fourth Session, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Report of the Special Rapporteur on Contemporary Forms of Slavery," July 1, 2013.
- Simmons, Frances, Brynn O'Brien, Fiona David, and Laura Beacroft. "Human Trafficking and Slavery Offenders in Australia," *Trends & Issues in Crime and Criminal Justice, Australian Institute of Criminology* 464 (2013), <https://www.aic.gov.au/publications/tandi/tandi464> [accessed 21.09.2022].
- Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (1991), [https://www.icty.org/xi/file/Legal Library/Statute/statute_sept09_en.pdf](https://www.icty.org/xi/file/Legal%20Library/Statute/statute_sept09_en.pdf) [accessed 21.09.2022].
- Stoyanova, Vladislava. "Article 4 of the ECHR and the Obligation of Criminalising Slavery, Servitude, Forced Labour and Human Trafficking," *Cambridge International Law Journal* 3, no. 2 (2014): 407–43, <https://doi.org/10.7574/cjicl.03.02.191>.
- Stoyanova, Vladislava. "Article 4 of the ECHR and the Obligation of Criminalizing Slavery, Servitude, Forced Labour and Human Trafficking," *Cambridge Journal of International and Comparative Law* 3, no. 2 (2014): 407–43.
- Stoyanova, Vladislava. *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge: Cambridge University Press, 2017).
- Supreme Court of the Australian Capital Territory. R v Watcharaporn Nantakhkhum (SCC149 of 2010) (2012).
- Supreme Court of Victoria. Ho v The Queen; Leech v The Queen [2011] VSCA 344 as related to DPP (Cth) v Ho & Ho [2009] VSC 437 (2009).
- Tolbert, David, and Laura A. Smith. "Complementarity and the Investigation and Prosecution of Slavery Crimes," *Journal of International Criminal Justice* 14, no. 2 (2016): 429–51, <https://doi.org/10.1093/jicj/mqw007>.
- Turner, Catherine. *Out of the Shadows: Child Marriage and Slavery* (London: Anti-Slavery International, 2013).

- United Nations. Slavery Convention, 46 Stat. 2183, Treaty Series 778 (1926), <https://www.ohchr.org/en/professionalinterest/pages/slaveryconvention.aspx> [accessed 21.09.2022].
- United Nations. “Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, UNTS 266, I. Nos 3822–3833 (1956),” <https://www.ohchr.org/en/professionalinterest/pages/supplementaryconventionabolitionofslavery.aspx> [accessed 21.09.2022].
- US Military Tribunal Nuremberg. United States v. Pohl, et al. (November 3, 1947).
- Vijayarasa, Ramona, and Jose Miguel Bello Villarino. “Modern Day Slavery? A Judicial Catchall for Trafficking, Slavery and Labour Exploitation: A Critique of Tang and Rantsev,” *Journal of International Law and International Relations* 9 (2013): 38–76.
- Weissbrodt, David, and Anti-Slavery International. “Abolishing Slavery and Its Contemporary Forms, Office of the United Nations High Commissioner for Human Rights, HR/PUB/02/4 2002,” New York/Geneva, 2002.
- Weissbrodt, David. “Slavery,” in *Max Planck Encyclopedia of Public International Law*, Max Planck Institute for Comparative Public Law and International Law, March 2014, <https://doi.org/10.1093/law:epil/9780199231690/e874>.
- Wijers, Marjan, and Lin Lap-Chew. *Trafficking in Women Forced Labour and Slavery-like Practices* (Utrecht: Foundation Against Trafficking in Women, 1999).

