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Article

# The Crisis of a Definition: Human Trafficking in Bulgarian Law

Vladislava Stoyanova \*

## Abstract

This article develops two arguments. First, at a national level in Bulgaria, the human trafficking framework is inoperable for identifying abuses worthy of consideration. By comparing the Bulgarian criminal law definition of human trafficking with the international law definition, I argue that the national criminal law definition is overly inclusive. This state of the Bulgarian criminal law makes it difficult to undertake a realistic assessment of the problem. Second, I submit that because the focus in Bulgaria has been exclusively directed towards the crime of human trafficking, the fact that the abuses of slavery, servitude and forced labour as such have not been criminalised at a domestic level has remained ignored. Thus, abuses that constitute slavery, servitude and forced labour, but do not manifest elements of human trafficking, might be left without proper investigation and prosecution.

## Introduction

The commitment of the international community to address the problem of human trafficking has resulted in the adoption of legal instruments at the international and regional levels. The ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children’ [*hereinafter* the Palermo Protocol]<sup>1</sup> and the ‘Council of Europe Convention on Action against Trafficking in Human Beings [*hereinafter* the Council of Europe Trafficking Convention]<sup>2</sup> establish a definition of human trafficking [*hereinafter* the Palermo definition], oblige states to criminalise human trafficking at a national level, and oblige them to protect and assist victims of human trafficking.<sup>3</sup> Since the adoption of the Palermo Protocol, there has been a growing interest in the phenomenon of human trafficking, which has produced a body of research addressing the achievements and the deficiencies of the abovementioned international legal instruments.<sup>4</sup>

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, entered into force Sept. 9, 2003, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

<sup>2</sup> 2005, Council of Europe Convention on Action against Trafficking in Human Beings, CETS No.:197

<sup>3</sup> See Articles 3, 5-8 of the Palermo Protocol; Articles 4, 10-18 of the Council of Europe Trafficking Convention.

<sup>4</sup> See A. T. Gallagher, *The International Law of Human Trafficking*, Cambridge University Press 2010; J. C. Hathaway, ‘The Human Rights Quagmire of “Human Trafficking”’, *Virginia Journal of International Law* 2008-49, no. 1; A. T. Gallagher, ‘Human Rights and Human Trafficking:

The transposition of the international human trafficking legal framework at a national level, however, has not received adequate attention. The objective of this article is to examine the Bulgarian substantive criminal law on human trafficking. For that purpose, the reader will be guided through three steps reflected in the three sections of the present article. The objective of the first section is to introduce the international law definition of human trafficking and to point out that this definition contains ambiguous elements which are susceptible to varying interpretations. The second section shifts the focus from an international to a national context.<sup>5</sup> It addresses the following questions: how has the Palermo definition been transposed at a national level? What difficulties do national authorities face when interpreting the elements of the crime of human trafficking? And what types of activities ultimately qualify as human trafficking at a national level? The article engages with these issues by comparing the domestic definition of human trafficking with the Palermo definition. The argument developed on the basis of this comparison is that activities criminalised as human trafficking in Bulgaria include simple facilitation of immigration without there being any violence or abuses attached. This is a reason for concern since the overzealous criminalisation under the label of human trafficking and the application of a legal framework built with ambiguous definitions has made a realistic assessment of the scope of the problem of persons subjected to real abuses such as slavery, servitude and forced labour impossible. Finally, it is suggested that the Palermo definition collapses at the national level, mainly due to over-criminalisation. The third section of the article reveals that the abuses of slavery, servitude and forced labour are not criminalised outside the context of human trafficking. Since the focus has been exclusively directed towards the crime of human trafficking, this gap has remained obscured. An argument is advanced that as a result of this omission Bulgaria has failed to fulfil its positive human rights obligations under Article 4 of the European Convention on Human Rights. In relation to this failure, it should be clarified that although Bulgaria is generally perceived as a country of origin of human trafficking, it can be a host country where immigrants reside and labour.

To develop the above arguments, the article uses relevant provisions from the Bulgarian Criminal Code and a judgment by the Bulgarian Supreme Court of Cassation. The article furthermore refers to the *travaux préparatoires* of the Palermo Protocol, the Explanatory Report to the Council of Europe Convention, judgments by the European Court of Human Rights [*hereinafter* the ECtHR] and scholarly publications.

## I. The Palermo Definition

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Quagmire or Firm Ground? A Response to James Hathaway', *Virginia Journal of International Law*, 2009-49, p. 789; V. E. Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia', *Social and Legal Studies* 2005-14, p. 91; J. Doezema, *Sex Slaves and Discourse Masters The Construction of Trafficking*, London Zed Books, 2010; J. A. Chuang, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy', *University of Pennsylvania Law Review* 2010-158, p. 1655.

<sup>5</sup> Translations of most of the legal instruments relevant to the topic of human trafficking in Bulgaria can be found at the official web site of the Bulgarian National Anti-trafficking Commission, available at: <http://www.antitrafficking.government.bg/en/2011-12-15-11-21-11/legislation> (accessed on 26 November 2012).

The Palermo Protocol defines human trafficking in international law. The definition has been reproduced in the Council of Europe Trafficking Convention and at the EU level.

Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>6</sup>

As it is generally explained, the definition consists of three elements. The 'action' element includes "recruitment, transportation, transfer, harbouring or receipt" of persons. The 'means' element includes "by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person". Any of the actions in combination with any of the means can be defined as human trafficking as long as the third constitutive element, namely the 'purpose' can also be established. The 'purpose' element of human trafficking is 'exploitation'. In the following paragraphs, each element will be elaborated upon.

The 'action' element was proposed by the USA in the first draft of the Trafficking Protocol<sup>7</sup> and was not an object of discussion during the negotiations. It is noteworthy that the *actus reus* of the crime does not include the action of exploiting as such or maintaining an individual in a situation of exploitation. Accordingly, states adopt the obligation to criminalise 'recruitment, transportation, transfer, harbouring or receipt of persons' by certain means for the purpose of 'exploitation'; however, there is no obligation to do something against the exploitation of an individual who has *not* been recruited, transported, transferred or received.<sup>8</sup> Thus, the 'action' element reflects the process potentially leading to the abuses.

There is a wide recognition in the literature that the 'means' element and the 'purpose' element are very ambiguous in their meanings.<sup>9</sup> International law furnishes no indication on whether coercion includes psychological coercion as well as physical coercion, or only the latter. Nor does it provide an indication on which circumstances could justify the establishment of psychological coercion. It is also unclear whether

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<sup>6</sup> Article 3 of the Palermo Protocol.

<sup>7</sup> Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the United Nations Convention on Transnational Organized Crime, proposal submitted by USA, A/AC.254/4/Add.3, 25 November 1998, Article 2(2).

<sup>8</sup> J. C. Hathaway, 'The Human Rights Quagmire of "Human Trafficking"', *Virginia Journal of International Law*, 2008-49 no. 1.

<sup>9</sup> See G. Noll, 'The Insecurity of Trafficking in International Law' in: V. Chetail (ed.) *Mondialisation, migration et droits de l'homme : le droit international en question*, Brussels: Bruylant, 2007, pp. 343-361; J. Davidson and B. Anderson, 'The Trouble with "Trafficking"' in: C. van den Anker and J. Doornik, (eds) *Trafficking and Women's Rights*, Palgrave Macmillan, 2006, p.17; V. E. Munro, 'Exploring Exploitation: Trafficking in Sex, Work and Sex Work' in: V. E. Munro, and M. D. Giusta, (eds) *Demanding Sex: Critical Reflections on the Regulation of Prostitution*, Ashgate, 2008 pp. 83-97; S. Marks, 'Exploitation as an international legal concept' in S. Marks, (ed) *International Law on the Left Re-examining Marxist Legacies* Cambridge University Press, 2008, pp. 281-307.

economic coercion is included. In summary, there appears to be no conceptual framework for the standard of coercion in the definition of human trafficking.<sup>10</sup> Thus, the question of how inclusive the concept of coercion should be in order to justify the establishment of criminalised coercion remains unanswered. Similarly, there is no clarity as to the necessary threshold of deception. It is left open to what degree a person should be deceived and what the deception should relate to for a situation to be classified as human trafficking.

The means of ‘abuse of power or of a position of vulnerability’ is just as problematic in terms of its lack of clarity. The Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings has furnished the following interpretation:

By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited.<sup>11</sup>

The reference to emotional, social and economic vulnerability renders the interpretation of ‘abuse of a position of vulnerability’ expansive, which could be inapt for a criminal law context. Comparatively, the 2011 EU Directive on Human Trafficking restricts the clarification on the meaning of ‘abuse of power or of a position of vulnerability’ to ‘[...] a situation in which the person concerned has no real or acceptable alternation but to submit to the abuse involved.’<sup>12</sup>

Finally, neither the Palermo Protocol nor other sources of international law define exploitation. The Palermo Protocol does, however, provide examples of what might be considered ‘exploitation’: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The examples of exploitation given in the Palermo definition can be elucidated by examining the meaning of those concepts which are already defined in international law. The 1930 ILO Convention concerning Forced or Compulsory Labour No.29 defines forced labour as “all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>13</sup> The significance of this definition has been confirmed by the ECtHR, which has taken the ILO definition of forced labour as a starting point for the interpretation of Article 4 of the ECHR, which prohibits slavery, servitude and forced labour.<sup>14</sup> The 1926 Slavery Convention defines slavery as “the status or

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<sup>10</sup> On the lack of clear understanding of what is psychological coercion within the context of human trafficking see K. Kim, ‘Psychological Coercion in the Context of Modern-day Involuntary Labour: Revisiting *United States v. Kozminksi* and Understanding Human Trafficking’, *University of Toledo Law Review* 2007-38 no. 3, p. 941.

<sup>11</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, para.83.

<sup>12</sup> See Article 2(2) of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

<sup>13</sup> 1932, Convention concerning Forced or Compulsory Labour (ILO No. 29), 39 U.N.T.S. 55.

<sup>14</sup> See *Siliadin v. France*, Judgment of 26 July 2005.

condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>15</sup> For the purposes of the present article, it suffices to point to the work of Jean Allain, who has convincingly argued that slavery covers the *de facto* condition when “any or all the powers attaching to the right of ownership” are exercised over a person.<sup>16</sup> Importantly, the concept of slavery cannot be limited only to *de jure* ownership since the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery enumerates and defines the practices similar to slavery. These practices are debt bondage, serfdom, practices affecting women which could generally be considered as forced marriage, and exploitation of children.<sup>17</sup> While international law provides no definition of servitude,<sup>18</sup> the term has been given meaning by the ECtHR in the case of *Siliadin v. France*. In this case, the ECtHR defined servitude as “particularly serious form of denial of freedom” and “an obligation to provide one’s services that is imposed by the use of coercion, and is to be linked with the concept of slavery”.<sup>19</sup> These definitions can be employed in interpreting the ‘purpose’ element of the Palermo definition. Importantly, however, the Palermo definition refers to ‘exploitation’, which appears to be a concept that is more general vis-à-vis the specificities found within the array of the abuses encompassed within the abovementioned various definitions. In addition, ‘exploitation’ appears to be a term connoting less severe abuses in comparison with slavery, servitude, forced labour and practices similar to slavery. On the other hand, it is, as yet, undetermined which abuses should be labelled as exploitation. The claim that trafficking involves exploitation of victims has captured the political and moral imagination without generating much meaningful discussion about what exploitation actually is.<sup>20</sup> Gregor Noll has asked the following questions on how to evaluate exploitation in the context of human trafficking:

Could it be the unequal benefits derived from trafficking? This would be a reasonable thought, leading us to exercises in comparison. What is to be compared? Most likely, the benefits of the trafficker with the benefits of the person to be trafficked. (...) What comparison will be constitutive for the benefit of the trafficked person? Will we compare his or her benefit in the destination country to that derived by staying put in the country of origin? Or we shall compare to a person in a comparable situation in the country of destination? While a salary below the minimum wage of the destination country might make us associate it with exploitation, that salary may very well

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<sup>15</sup> 1927, Slavery Convention of 1926, 60 L.N.T.S. 253.; See J. Allain, ‘The Definition of Slavery in International Law’, *Howard Law Journal* 2009-52, p. 239.

<sup>16</sup> J. Allain, *The Slavery Conventions The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention*, Martinus Mijhoff Publishers, 2008; Allain 2009, supra note 15.

<sup>17</sup> 1957, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3; See Article 1 of the Supplementary Convention for the definitions of debt bondage, serfdom, practices affecting women, and exploitation of children.

<sup>18</sup> J. Allain, ‘On the Curious Disappearance of Human Servitude from General International Law’, *Journal of the History of International Law*, 2009-11, p. 303.

<sup>19</sup> *Siliadin v France*, Judgment 26 July 2005, ECHR, at para. 124.

<sup>20</sup> V. E. Munro, ‘Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking’, *Journal of Law and Society* 2008-35, no. 2, p. 263; S. Marks, ‘Exploitation as an international legal concept’ in S. Marks (ed) *International Law on the Left Re-examining Marxist Legacies*, Cambridge University Press, 2008, p. 281; J. O’Connell Davidson and B. Anderson, ‘The Trouble with “Trafficking”’ in C. van den Anker and J. Doomernik (eds), *Trafficking and Women’s Rights*, Palgrave Macmillan, 2006, p. 17.

exceed the one realistically available to the trafficked person in the country of origin.<sup>21</sup>

These questions reveal that exploitation has an as-yet insecure meaning, one which will remain so as long as there are material income and developmental differences across countries and as long as there are no standardised labour laws extant therein.

In addition, exploitation is a morally loaded term.<sup>22</sup> The moral grounding of 'exploitation' was an issue very strongly present when the problem of prostitution was discussed during the negotiations of the Palermo Protocol. The discussions centred on whether prostitution was inherently exploitative, which implied that all prostitution was exploitation irrespective of the will of the prostitute. The alternative approach required that the prostitution had to be forced in order to constitute a purpose of human trafficking, which implied that the agency of the person to engage in prostitution was recognised and only forced prostitution had to be addressed. As this dilemma could not be resolved, the expressions 'exploitation of the prostitution of others' and 'sexual exploitation' were endorsed. The Parties also agreed that the following interpretative note be included in the Palermo Protocol's *travaux préparatoires*:

The protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms "exploitation of the prostitution of others" or "other forms of sexual exploitation" are not defined in the protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws.<sup>23</sup>

Ultimately, the phrase 'sexual exploitation' may be interpreted for the convenience of either party to the dispute on prostitution. It could mean that any prostitution *per se* is exploitation and it could also mean that there should be force and coercion in the prostitution in order to be classified as 'sexual exploitation.' Thus, 'sexual exploitation' is sufficiently elastic to cover different approaches to prostitution. However, this only enables further ambiguity in this field of law and flies in the face of the principle of legal certainty and specificity.

## II. The Collapse of the Palermo Definition at the National Level

In 2002 the Bulgarian Criminal Code was furnished with Section IX 'Human Trafficking', in fulfilment of Bulgarian obligations concerning the criminalisation of human trafficking.<sup>24</sup> The national definition as stipulated in Article 159a (1) of Section

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<sup>21</sup> G. Noll, 'The Insecurity of Trafficking in International Law' in V. Chetail (ed) *Mondialisation, migration et droits de l'homme: le droit international en question*, Brussels: Bruylant 2007, at p. 348.

<sup>22</sup> A. Wertheimer, 'Remarks on Coercion and Exploitation' *Denver University Law Review*, 1997-74, p. 890; J. Feinberg, *The Moral Limits of the Criminal Law Volume 4: Harmless Wronging*, Oxford University Press, 2003, p. 219.

<sup>23</sup> The Travaux Préparatoires of the Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols thereto, UN Office on Drugs and Crime, New York (2006), p. 347.

<sup>24</sup> Official translation of the Bulgarian Criminal Code in English is available at: [http://www.antitrafficking.government.bg/images/documents/Polezna\\_informacia/EN/1251896607.pdf](http://www.antitrafficking.government.bg/images/documents/Polezna_informacia/EN/1251896607.pdf) (accessed on 26 November 2012). For a discussion on the problem of human trafficking in Bulgaria in the academic literature see Александър Стойнов, Наказателно Право. Особена Част Престъпления против Правата на Човека, Циела (2006), pp.228-138 [Aleksandar Stojnov,



IX of the Criminal Code can be broken into the following separate elements. The ‘action’ element consists of recruitment, transportation, harbouring or receipt of individuals. The ‘purpose’ element consists of debauchery, forced labour, removal of organs, keeping somebody in forceful subjection or selling the child of a pregnant woman. It is explicitly stated that the consent of the trafficked person is irrelevant. There is no ‘means’ element incorporated in the domestic law definition. In its entirety, the national definition is formulated in the following way:

*Section IX Trafficking of People  
(New, State Gazette No. 92/2002)*

*Article 159a*

*(1) (Amended, State Gazette, No. 27/2009) An individual who recruits, transports, harbours or receives individuals or groups of people for the purpose of using them for debauchery, forced labour, removal of organs or of keeping them in forceful subjection, regardless of their consent, shall be punished by deprivation of liberty of two to eight years and a fine from 3 000 to 12 000 leva.*

*(2) Where the act under paragraph (1) has been committed:*

- 1. with regard to an individual who has not turned eighteen years of age;*
- 2. through the use of coercion or by deceiving the individual;*
- 3. through kidnapping or illegal deprivation of liberty;*
- 4. through abuse of a position of dependency;*
- 5. through the abuse of power;*
- 6. through promising, giving or receiving benefits,*

*(amended, State Gazette, No. 27/2009) the punishment shall be deprivation of liberty from three to ten years and a fine from 10 000 to 20 000 leva.*

*(3) (New, State Gazette No. 75/2006, amended, No. 27/2009) Where the act under paragraph 1 has been committed in respect to a pregnant woman for the purpose of selling her child, the punishment shall be deprivation of liberty from three to fifteen years and a fine from 20 000 to 50 000 leva.*

### *II.1. The ‘Means’ Element*

As noted above, the precise meaning of the ‘means’ element in the Palermo definition is uncertain. Uncertainty is not conducive to successful criminal prosecution on the national level. Moreover, proving actual coercion or deception might be difficult. With that in mind, a close reading of the Bulgarian definition reveals that the means (coercion, deception, etc.) are excluded as an element of the crime of human trafficking; they can only be aggravating circumstances. Thus, the strength that could be otherwise derived from the ‘means’ element as indicated in the Palermo definition (notwithstanding their uncertainties) in establishing a basis for the

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Criminal Law Special Section Crimes against the Person, (Ciela, 2006), *hereinafter* Aleksandar Stojnov]; Справедлив Процес за Жертвите на Трафик на Хора, Съюз на Съдиите в България (2010) [Due Process for Victims of Human Trafficking, (Bulgarian Judges Association Publication, 2010)].

crime is absent from the Bulgarian definition. This absence lowers the legal threshold for criminal convictions, as the prosecution does not have to prove beyond a reasonable doubt that the alleged victim was transported or recruited by means of coercion or deception.

If one of the elements of the Palermo definition is excluded from the domestic definition, can the *actus reus* in question still constitute human trafficking?<sup>25</sup> In the Bulgarian context, the legislature has decided that linking the ‘actions’ with the ‘means’ is unnecessary. The question left open is whether the exclusion of the ‘means’ element challenges the Palermo definition to the point that the national definition and the international definition cannot be extant simultaneously with any degree of legal coherence. The linkage of the three elements, as found in the Palermo definition, disintegrates in the Bulgarian situation.

In 2009 the Bulgarian Supreme Court of Cassation<sup>25</sup> issued an interpretative decision on Section IX of the Criminal Code.<sup>26</sup> It observed that by removing the ‘means’ as an element of the crime of human trafficking, the Bulgarian legislature has allowed the possibility for holding *more* individuals criminally responsible for human trafficking since no coercion or deception has to be proven. This suggests a general recognition that the ‘means’ element is sufficiently difficult to prove to justify it being removed altogether from the legal definition. The Supreme Court of Cassation explained the discrepancy between the Bulgarian legislation and the international law by referring to the principle of state sovereignty, and in particular the sovereignty of the state to define the elements of the crimes in view of the national need for effective legal regulation and the specificities of the state.<sup>27</sup> The national court seems to be referring to the designation of the country as a country of origin of human trafficking and the need for responding to external pressure for demonstrating that effective measures are undertaken for coping with the problem.<sup>28</sup>

## *II.2. The ‘Purpose’ Element*

As opposed to the international legal framework, the concept of exploitation does not appear in the Bulgarian definition. According to the Bulgarian Criminal Code, the purpose of human trafficking is debauchery, forced labour, removal of organs,

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<sup>25</sup> According to Article 124 of the Bulgarian Constitution, the Supreme Court of Cassation exercises supreme judicial oversight as to the precise and equal application of the law by all courts. According to Article 124 of the Judiciary System Act in Bulgaria, in case of contradictory or erroneous jurisprudence on the interpretation or application of the criminal law, an interpretative judgment is adopted by the general assembly of the criminal college of the Supreme Court of Cassation.

<sup>26</sup> Bulgarian Supreme Court of Cassation, Interpretative decision No.2 of 16 July 2009. A summary of the interpretative decision in English is available at:

[http://www.antitraffic.government.bg/images/documents/Polezna\\_informacia/EN/1263815111.doc](http://www.antitraffic.government.bg/images/documents/Polezna_informacia/EN/1263815111.doc) (accessed on 26 November 2012). The full version of the interpretative decision in Bulgarian is available at: [http://www.vks.bg/vks\\_p10\\_36.htm](http://www.vks.bg/vks_p10_36.htm) (accessed on 26 November 2012).

<sup>27</sup> Bulgarian Supreme Court of Cassation, Interpretative decision No.2 of 16 July 2009.

<sup>28</sup> Bulgaria faces considerable external pressure to cope successfully with human trafficking. As a new EU Member State, Bulgaria sees its role for protecting the EU external borders as very important one. Furthermore, it intends to become part of the Schengen area that sets out high standards in law enforcement and effectiveness of the judicial system. See Bulgarian National Strategy on Migration, Asylum and Integration (2011-2020), p. 3, at: <http://www.mvr.bg/NR/rdonlyres/EBCD864F-8E57-4ED9-9DE6-B31A0F0CE692/0/NationalStrategyinthefieldofMigrationAsylumandIntgrationENG.pdf> (accessed on 26 November 2012).

keeping somebody in forceful subjection, or selling the child of a pregnant woman.<sup>29</sup> These purposes are exhaustively enumerated. In the separate subsections that follow, each one of these purposes is to be explained.<sup>30</sup> Finally, it is suggested that the 'purpose' element as constructed at a national level is compatible with the concept of 'exploitation' as used in the Palermo definition.

### II.2.1. Debauchery

The Palermo definition incorporates the expressions 'exploitation of the prostitutions of others' and 'sexual exploitation'. These expressions have not been adopted in the Bulgarian Criminal Code. Instead, the Bulgarian Criminal Code criminalises recruitment, transportation, harbouring or receipt of individuals for the purpose of using them for debauchery. Debauchery as such is not defined as a criminal offence. Section VIII defines and criminalises certain *specific* actions as debauchery. These actions include *inter alia* lewdness (arousing or satisfying sexual desire, without copulation, with a person under 14 years of age);<sup>31</sup> sexual intercourse with a person who has not reached the age of 14 years;<sup>32</sup> rape or sexual intercourse by compulsion through the use of material or official dependency;<sup>33</sup> using the services of a prostitute who is under 18 years of age;<sup>34</sup> persuading somebody to practice prostitution or procuring; systematically placing at the disposal of different persons premises for sexual intercourse or for acts of lewdness;<sup>35</sup> abduction of a person to be made available for the purpose of debauchery;<sup>36</sup> and production and distribution of pornographic materials.<sup>37</sup>

Practicing prostitution as such is not criminalised as debauchery. However, persuading an individual to practice prostitution, acting as a procurer of or procuring for the performance of indecent touching or copulation are criminalised as debauchery.<sup>38</sup>

However, the meaning of debauchery in the national definition of human trafficking is not restricted to the practices of debauchery enumerated in Section VIII of the Criminal Code. The Supreme Court of Cassation interpreted debauchery in the context of the crime of human trafficking broadly. Pursuant to this broad interpretation, practicing prostitution *per se* is viewed as a form of debauchery. In its

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<sup>29</sup> Bulgarian Criminal Code, *supra* note 24, Article 159a.

<sup>30</sup> The problem of 'removal of organs' has been left out from this article's analysis since it raises its own particular issues.

<sup>31</sup> Bulgarian Criminal Code, *supra* note 24, Article 149 and 150.

<sup>32</sup> *Ibid.*, Article 151.

<sup>33</sup> *Ibid.*, Article 152 and 157.

<sup>34</sup> *Ibid.*, Article 154a.

<sup>35</sup> *Ibid.*, Article 155 and 158

<sup>36</sup> Article 156 (1) of the Bulgarian Criminal Code stipulates that 'Who abducts another person to be made available for the purpose of debauchery shall be punished by imprisonment from 3 to 10 years and by a fine of up to 1 000 BGN.' If the abduction has been carried out for the purpose of placing the person at disposal for acts of debauchery beyond the borders of Bulgaria, the punishment is imprisonment from 5 to 12 years (Article 156(2)(3)). The Bulgarian Criminal Code provides for even further aggravation of the punishment (deprivation of liberty from 5 to fifteen 15 and a fine of BGN 5,000 to BGN 20,000) when the act of abduction for making available the abducted person for the purpose of debauchery, was committed by an individual acting on the orders or in execution of a decision of an organized criminal group, the abducted person was handed over for sexual activities outside the borders of the country or the act constitutes dangerous recidivism (Article 156(3)).

<sup>37</sup> Bulgarian Criminal Code, *supra* note 24, Article 159.

<sup>38</sup> *Ibid.*, Article 155(1). The punishment for these crimes is deprivation of liberty for up to 3 years and fine from 1 000 to 3 000 BGN.

2009 interpretative decision, the Supreme Court of Cassation ruled that prostitution is *per se* exploitative and it is *per se* debauchery. Bulgarian academic literature supports this interpretation.<sup>39</sup> Therefore, the concept of debauchery is ultimately as uncertain and elastic in its content as the concepts of exploitation, sexual exploitation and exploitation of the prostitution of others incorporated in the Palermo definition.

### II.2.2. Forced Labour

Forced labour as a purpose of human trafficking can be defined based on the ILO definition and on ECtHR's judgments.<sup>40</sup> However, there are indicators that at a national level, force labour is defined differently. For example, Aleksandar Stojnov, an academic and a leading authority in the field of criminal law in Bulgaria, claims that forced labour as an element of the crime of human trafficking in the Bulgarian Criminal Code does not have the same meaning as the definition of forced labour in the ILO Convention. He defines forced labour in the context of human trafficking as "any work or service demanded from a person which he or she has not accepted voluntarily and has been motivated to do through the means of force, threat or any other illegal means [author's translation]".<sup>41</sup> Stojnov does not provide any specific authority for substantiating his proposal. Comparatively, in the study on human trafficking in Bulgaria published by the Bulgarian Judges Association, Iva Pushkarova claims that forced labour is any denial or delay of remuneration and that forced labour is extant in case of any violation of labour law standards. Pushkarova also submits that there is no consent to do a job when there is no knowledge of the elements of the working conditions (including place, time, duration, regime and remuneration). Pursuant to her submission, when incorrect information as to the working conditions is provided, one cannot infer consent.<sup>42</sup>

Review of decisions issued by low instance national courts leads to the conclusion that the abovementioned authors' expansive approach to the meaning of forced labour as a purpose of human trafficking has been integrated in the Bulgarian courts' reasoning. A reference to a court case in which Bulgarians were recruited to pick blueberries in Sweden, can provide a relevant example.<sup>43</sup> Here, the defendant was found guilty of recruiting a group of people to work in Sweden, having transported them and transferred them over the border for the purpose of using them for forced labour to pick blueberries, and having deceived them and abused their position of dependency by leaving them without subsistence and transportation (Article 159b (2) of the Criminal Code). The accused person contacted two brothers who were unemployed and explained that he could find them work. He claimed he could guarantee them the transportation to Sweden, accommodation and food in Sweden. The brothers contacted a relative who agreed to join them. The three men, the accused, his daughter, and two other relatives travelled to Sweden by minibus. Once in Gävle, Sweden, the three men had to sleep outside without blankets. During the

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<sup>39</sup> Stojnov 2006, *supra* note 24, p. 6; Aleksandar Stojnov refers to 'debauchery' in the context of human trafficking as '*voluntary* or involuntary participation in sexual intercourse [emphasis added].'

<sup>40</sup> See Section 2 of the article for the definition of forced labour and its interpretation by the ECtHR.

<sup>41</sup> Stojnov 2006, *supra* note 24, p. 6.

<sup>42</sup> I. Pushkarova, *The Bulgarian Legislation on the Crime of Human Trafficking in Due Process for Victims of Human Trafficking*, Bulgarian Judges Association Publication, 2010, pp. 99-100 and p. 106.

<sup>43</sup> Decision No.30186/ 16 June 2010 by the Regional Court of Montana, available at: <http://legalacts.justice.bg/ShowAct.aspx?actId=168535> (accessed on 26 November 2012).

day, they picked blueberries. The accused person collected the blueberries, brought the fruits to the collection points and kept the profits for himself. He brought the men food three times per day, but did not pay them. After twenty days, the men left their place of employment and were captured by the police. After receiving assistance from the Swedish social services, their transportation back to Bulgaria was organised by the Bulgarian embassy.

In its analysis, the regional court observed that the accused motivated the victims to go to Sweden by promising them financial benefits. The consent of the victims was irrelevant since they were put in circumstances which excluded their ability to make an informed assessment of the situation. The victims were deceived by being led to believe they would be provided with normal working conditions, food and accommodation. Once in Sweden, the accused left them without food and accommodation, thus rendering the victims dependent. The above-described factual circumstances were qualified as human trafficking for the purposes of forced labour.

There are at least two concerns ensuing from the interpretation of forced labour at a national level. Firstly, there is no certainty as to the nature and the gravity of abuses that could qualify as forced labour at a national level. It seems that forced labour can be equated with low wages, poor working conditions and deception about working conditions. Secondly, forced labour has been subjected to conceptual disintegration and there is no hint of interaction and congruity between the international and the national levels. References to the International Labour Organisation's understanding of the meaning of forced labour and to the ECtHR's judgments related to Article 4 of the ECHR can illuminate the last point. The International Labour Organisation has submitted that

Forced labour cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives. Forced labour represents a severe violation of human rights and restriction of human freedom, [...]”<sup>44</sup>

In *C.N. and V. v. France*, the ECtHR clarified the conceptual limits of forced labour. It took the International Labour Organisation's definition of forced labour as a starting point: “forced or compulsory labour within the meaning of Article 4(2) of the European Convention referred to work exacted under the menace of any penalty and also contrary to the will of the interested person who had not offered voluntarily to do the work.” It further pointed out that “any work exacted from a person under the menace of a “penalty” does not necessary constitute “forced or compulsory labour” prohibited by this provision. More particularly, the nature and volume of the activity in question should be taken into consideration.”<sup>45</sup> Once the ECtHR took into consideration the nature and the volume of the activity, it could distinguish the situation of the first applicant from the situation of the second applicant in the case of *C.N. and V. v. France*. The ECtHR concluded that only the first applicant's condition amounts to forced labour.<sup>46</sup>

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<sup>44</sup> A Global Alliance against Forced Labour, Report of the Director-General, International Labour Conference, 93<sup>rd</sup> session 2005, Report I(B), ILO Geneva (2005), p. 5.

<sup>45</sup> *C.N. and V. v. France*, Judgment of 11 October 2012, ECHR, paras. 71 & 74.

<sup>46</sup> *Ibid.*, paras. 75-76.

### II.2.3. Forceful Subjection

The concept ‘forceful subjection’ is non-existent in international law and thus it is idiosyncratic for the Bulgarian criminal legislation. The Bulgarian Criminal Code does not offer clarification as to the meaning of forceful subjection. Nor is there any indication as to how forceful subjection differs from slavery, practices similar to slavery and servitude as defined by the international legal instruments. One could assume that slavery, practices similar to slavery and servitude are subsumed by the concept of forceful subjection. The possibility that ‘forceful subjection’ is more inclusive should not be precluded. Aleksandar Stojnov has defined forceful subjection as actions motivating victims to adopt a conduct contrary to their will and in accordance with the will of somebody else, including by residing in an unwanted location.<sup>47</sup> It has also been suggested that forceful subjection is more expansive than sexual and labour exploitation since it includes actions committed by the victims, which can neither be described as labour nor as debauchery.<sup>48</sup> It ultimately rests with the discretion of the domestic courts to delineate the contours of the concept of forceful subjection and to assess which circumstances amount to forceful subjection.

### II.2.4. Selling the Child of a Pregnant Woman

Neither the Palermo Protocol, nor the Council of Europe Trafficking Convention or the 2011 EU Trafficking Directive refers to ‘selling the child of a pregnant woman’ as a purpose of human trafficking. This element, too, is specific for the Bulgarian legal context. The inclusion of the ‘selling the child of a pregnant woman’ as a purpose of human trafficking at national level is not inconsistent with the international legal framework on human trafficking. As was already elaborated upon in the beginning of this article, pursuant to the international definition of human trafficking, the meaning of ‘exploitation’ is left open-ended. This implies that different practices, including ‘selling the child of a pregnant woman’ can be defined as exploitative and included as examples of exploitation.<sup>49</sup> However, the way in which human trafficking for the purpose of ‘selling the child of a pregnant woman’ is formulated in the Bulgarian context, raises particular problems. The pregnant woman, who is to be trafficked and whose child is about to be sold, is viewed as a victim of the crime of human trafficking. At this junction the reader should be reminded that coercion or deception or any other means of vitiating the woman’s will are not elements of the crime. Therefore, she is viewed as a victim whether she acts voluntarily or not. This means that she simply has to be recruited, transported, or harboured for the purpose of selling her child. She might agree to the arrangement of selling her child and even benefit from it. She might even be an active party participating in the organisation of the selling and the purchase of her child. However, these considerations are irrelevant for the purpose of defining the whole scheme as human trafficking. According to the Bulgarian Criminal Code, she is still a victim. One might argue that it appears more appropriate to sanction the woman for her participation in a scheme of illegal adoption or transfer of a baby. However, the cogency of this argument could depend on how one construes the notion of ‘exploitation’ and what forms of coercion (possible candidates for different forms of coercion are economic, physical,

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<sup>47</sup> A. Stojnov 2006, *supra* note 24, p. 6.

<sup>48</sup> I. Pushkarova, *The Bulgarian Legislation on the Crime of Human Trafficking in Due Process for Victims of Human Trafficking*, Bulgarian Judges Association Publication, 2010, p. 101.

<sup>49</sup> Jean Allain has submitted that as the definition of human trafficking is framed, various new types and categories of exploitative practices can be added. In this sense, he argues that, the exploitation is not definitional, but categorical. J. Allain, *Slavery in International Law: Of Human Exploitation and Trafficking*, Martinus Nijhoff Publishers 2012, p. 350.

emotional, psychological, cultural), the legal system is willing to recognise as legitimate for the purpose of criminalisation.<sup>50</sup>

### *II.3. The 'Action' Element*

The Bulgarian Supreme Court of Cassation has provided guidelines as to how the 'action' element of human trafficking should be interpreted. This was done as a response to an enquiry by the Bulgarian Prosecutor General. Since the Prosecutor General had no clear understanding of the meaning of 'recruitment', he asked the Court of Cassation what actions constitute recruitment and whether recruitment for the purpose of the definition of human trafficking can be established when the active party in the process is the victim.

The Supreme Court of Cassation noted that even if the active party in the process were the victim, the crime of human trafficking can still be constituted.<sup>51</sup> This finding was justified with the clarification that the consent of the victim was irrelevant for the purposes of the application of the criminal law. And, indeed, according to the Palermo definition, 'consent' can be irrelevant. However, the irrelevance is only valid if some of the 'means' elements have been applied. The Bulgarian Court of Cassation did not take note of any correlation between the consent by the alleged victim and the 'means' element in the Palermo definition. In particular, it did not take account of the absence of the 'means' as an element of the crime of human trafficking at a national level.

The Court further explained that the purpose of the actions of 'harbouring' and 'receipt' was to prepare the exploitation of the victim. It provided examples to clarify this. 'Harbouring' means keeping the victim hidden and unknown to the persons who are entitled to know the victim's whereabouts. Pursuant to the Court of Cassation's decision 'harbouring' also means simply giving shelter to the victim. This is a very bold interpretation of 'harbouring' in light of the fact that deception and coercion are not elements of the crime. This line of interpretation could lead to an absurd situation, where, for example, providing shelter to a person whilst knowing that that person works as a prostitute could constitute a case of human trafficking.

### *III.4. Conclusion*

Using the foregoing analysis of the elements of the Bulgarian definition of human trafficking, including the interpretation provided by the Bulgarian Supreme Court of Cassation, as a backdrop, juxtaposing the Bulgarian definition with the Palermo definition provides a sharp relief. The national definition excludes the 'means' element and this is viewed as beneficial by the Court of Cassation because the number of prosecutions and convictions can be easily increased.

An enquiry into the consistency between the 'purpose' element at the national level and at the international level could be as fruitless as the whole concept of

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<sup>50</sup> *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria* (First evaluation round), GRETA(2011)19, Strasbourg, 14 December 2011, p.31. The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) reports that ' [...] nearly all pregnant women trafficking for the purpose of having their babies sold abroad have reportedly been Roma.'

<sup>51</sup> Bulgarian Supreme Court of Cassation, Interpretative decision No.2 of 16 July 2009, para.1.2.

‘exploitation’ is uncertain. The meaning of ‘debauchery’ is as indeterminate and elastic as the concepts of ‘exploitation’, ‘sexual exploitation’ and ‘exploitation of the prostitution of others’. ‘Forced labour’ tends to be expansively defined in the Bulgarian legal context without regard to the international law definition as applied by the ECtHR. This raises concerns because it results in the conceptual disintegration of forced labour and in indeterminacy as to the standard of gravity for classifying abuses as forced labour. However, the expansive interpretation of forced labour at a national level could arguably be in harmony with the indeterminate meaning of exploitation. Similarly, the lack of specificity as to which factual circumstances amount to ‘forceful subjection’ is in accord with the indeterminate meaning of exploitation at the international level. Finally, ‘selling the child of a pregnant woman’ is presented as a form of exploitation when, in fact, the same woman could agree to, actively participate in and benefit from the whole transaction. However, due to its insecurity the concept of exploitation does not preclude this contradictory result; it is actually facilitative to it.

In light of these insights, the conclusion that there is no incompatibility between the Palermo definition and the national definition in terms of the ‘purpose’ element appears inevitable. Another conclusion which could be drawn from the above investigation is that there is a trend favouring an expansive interpretation of the crime of human trafficking. This allows for a more liberal understanding of what ‘human trafficking’ is and ensures that more activities can be criminalised and prosecuted under the label of human trafficking.

Should this over-criminalisation be viewed as problematic? When the international community focused on the phenomena collectively named human trafficking in the second half of the 1990s, there was an understanding that the problem of abuses was linked with the movement of victims to an unfamiliar milieu which made it difficult for them to access assistance, and had to be faced with the adoption of an international instrument.<sup>52</sup> The output of this engagement, embodied in the Palermo definition, was nevertheless not satisfactory due to the ambiguities inherent in the definition of human trafficking. At a national level, in the case of Bulgaria, these ambiguities have become exaggerated to the point that human trafficking has become unrecognisable. Arguably, this approach does not mean that Bulgaria violates its international obligations. The Bulgarian Criminal Code defines human trafficking more broadly than the Palermo definition. The Bulgarian legislature has demonstrated a degree of zealotry in terms of the scope of criminalisation. This could be construed as a collapse of the Palermo definition, since at a national level the label of human trafficking has become so wide-ranging that the boundaries between migrations involving criminal abuses and non-abusive migrations are indiscernible in the eyes of the criminal law.

### **III. Lack of Criminalisation of Slavery, Servitude and Forced Labour outside the Context of Human Trafficking**

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<sup>52</sup> A. Miller and A. N. Stewart, ‘Report from the Roundtable of the Meaning of “Trafficking in Persons:” A Human Rights Perspective’, 1998-20, *Women’s Rights Law Reporter* 1998-22, p. 11; Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, submitted in accordance with Commission on Human Trafficking Resolution 1997/44, E/CN.4/2000/68, 29 February 2000, paras. 13-16.



The preoccupation with human trafficking has left a serious deficiency within the national criminal law ignored. The abuses of slavery, servitude and forced labour *as such and on their own* are not criminalised in the Bulgarian Criminal Code. Before 2002, when the crime of human trafficking was incorporated at a national level, the concepts of forced labour and forceful subjection were alien to the Criminal Code. Bulgaria ratified the Slavery Convention in 1927, the ILO Forced Labour Convention in 1932, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1958. However, slavery and forced labour were never defined as criminal offences.<sup>53</sup> As a consequence, one could argue that the later incorporation of the crime of human trafficking at a national level had the favourable side effect of criminalising in some form forced labour and forceful subjection. However, the form of criminalisation is deficient. In its current version, the Bulgarian Criminal Code criminalises forced labour and forceful subjection *only* in the context of human trafficking. This means that in order for forced labour and forceful subjection to constitute crimes, these abuses have to be combined with the actions of recruitment, transportation, transfer, harbouring or receipt.

At this juncture, one cannot but wonder why forced labour and forceful subjection should be spin-off products given that the abuses of slavery, servitude and forced labour as defined in international law and prohibited under human rights law are worthy of criminalisation on their own. Importantly, when abuses against individuals reach certain levels of severity that meet the definitional thresholds of slavery and forced labour, these abuses should be legally characterised as what they are *per se*, not as part of the separate crime of human trafficking.

In its current form Bulgarian legislation does not meet the standards established by the ECtHR in relation to Article 4 of the ECHR. In *Siliadin v. France*, the ECtHR ruled that Article 4 of the ECHR imposes positive obligations on States to adopt criminal law provisions to act as an effective deterrent against abuses falling within the material scope of the article.<sup>54</sup> *Siliadin v. France* exposed that the French criminal code incorporated various definitions which could be used for addressing abusive practices. However, the ECtHR emphasised that subjecting somebody to forced labour, to servitude, and slavery *as such* were not defined as crimes at a national level. It noted that the other criminal offences which existed in French legislation were more restrictive regarding the scope of the abuses covered, and that they contained ambiguous formulations which allowed differing interpretations from one court to the next.<sup>55</sup> It appears that Bulgarian legislation currently faces the same problem as French legislation did at the time of *Siliadin v. France*.

The more recent ECtHR judgment of *C.N. v. The United Kingdom*<sup>56</sup> exposed the problems ensuing from the lack of criminalisation at the domestic level of the abuses

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<sup>53</sup> Article 418, which was added in 1975 to the Bulgarian Criminal Code, defines as a crime 'unlawful deprivation of liberty and subjection to forced labour of members of a group *defined by its racial characteristics* [emphasis added].' Article 48(4) of the Bulgarian Constitution stipulates that 'No one shall be compelled to do forced labour.' However, the abuse of forced labour on its own is not defined as a separate crime.

<sup>54</sup> H. Cullen, 'Siliadin v France: Positive Obligations under Article 4 of the European Convention on Human Rights', *Human Rights Law Review* 2006-6, no. 3, p. 585; A. Nicholson, 'Reflection on Siliadin v. France: Slavery and Legal Definition' *International Journal of Human Rights* 2010-14, no. 5, p. 705.

<sup>55</sup> *Siliadin v France*, Judgment 26 July 2005, ECHR para. 147.

<sup>56</sup> *C.N. v. The United Kingdom*, Judgment 13 November 2012, ECHR

of slavery, servitude and forced labour outside the context of human trafficking. In *C.N. v. The United Kingdom*, the applicant complained that there was a failure by the national authorities to properly investigate her complaints of abuses of domestic servitude. The applicant claimed that this failure was at least in part rooted in defective national legislation which did not specifically criminalise treatment falling within the scope of Article 4 of the ECHR.

The ECtHR agreed with the applicant. More specifically, it found it disturbing that the national investigating authorities at all times placed their focus on the offence of trafficking for exploitation.<sup>57</sup> However, the abuses suffered by *C.N.* did not manifest the elements of human trafficking. The ECtHR noted that “[...] the authorities were limited to investigating the penalising criminal offences [human trafficking] which often – but do not necessary – accompany the offences of slavery, servitude and forced or compulsory labour.”<sup>58</sup> The Strasbourg Court concluded that “[...] the investigation into the applicant’s complaints of domestic servitude was ineffective due to the absence of specific legislation criminalising such treatment [the ill-treatment of slavery, servitude and forced labour].”<sup>59</sup>

Bulgarian criminal legislation has the same problem as UK legislation at the material time of *C.N. v. The United Kingdom*. Its focus has been exclusively directed at the crime of human trafficking, which requires an element of movement/migration of the victim. In case the abuses experienced by victims do not manifest such an element, these abuses might remain ignored. Abuses might not be investigated and/or prosecuted. These failures could result in violation of state’s obligations under Article 4 of the ECHR.

#### IV. Conclusion

As the legal discourse at the international and national level is currently framed, the emphasis has been predominantly placed at raising the number of convictions and prosecutions for the crime of human trafficking. In the Bulgarian context, this has resulted in formulating and interpreting human trafficking in an overly inclusive manner. Giving human trafficking such a broad meaning has made the label of human trafficking ineffective for the purpose of identifying abuses worthy of consideration.

At the same time, the fact that the abuses of slavery, servitude and forced labour as such have not been criminalised at a domestic level has remained ignored. The positive human rights obligation of criminalising the abuses prohibited under Article 4 of the ECHR has been neglected. Thus, abuses which reach the severity thresholds of slavery, servitude and forced labour, but do not manifest elements of human trafficking, might be left without proper investigation and prosecution.

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<sup>57</sup> *C.N. v. The United Kingdom*, Judgment 13 November 2012, ECHR, para. 80.

<sup>58</sup> *C.N. v. The United Kingdom*, Judgment 13 November 2012, ECHR, para. 76.

<sup>59</sup> *Ibid.*, para. 81.