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Forced Labour and *Chowdury and Others v Greece*

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Abstract: *Chowdury and Others v Greece* reveals the exploitation that migrant workers suffer at agricultural farms for production of strawberries whose sweet taste many of us enjoy. Greece was found in violation of Article 4 of the ECHR (the right not to be subjected to forced labour and human trafficking) for its failure to protect the migrants from the exploitation and to conduct effective investigation. The judgment will be laurelled as an important achievement in favour of the rights of undocumented migrant workers to fair working conditions. It sheds light on the application of the definition of forced labour to labour performed by undocumented migrants. It also contributes to the enhancement of states' positive obligations under Article 4 ECHR. It suggests that the obligations imposed by the Council of Europe Convention on Action against Trafficking in Human Beings are of relevance not only to factual circumstances qualified as human trafficking, but to the whole gamut of abuses intended to be captured by Article 4 ECHR.

Keywords: migrant workers, forced labour, human trafficking, servitude, exploitation, positive obligations, Article 4 of the ECHR, Council of Europe Convention on Action against Trafficking in Human Beings

1. Introduction

Chowdury and Others v Greece revealed the human cost that migrants pay so that many of us enjoy the sweet taste of strawberries grown at farms.[1] The judgment will be laurelled as an important achievement in favour of the rights of undocumented migrant workers to fair working conditions. The applicants were 42 Bangladeshi nationals in Greece with undocumented status. They were recruited to work on a strawberry farm in Manolada, Greece, and were promised wages of 22 Euro for seven hours labour and 3 Euro for each overtime hour. They worked in plastic greenhouses picking strawberries every day from 7 a.m. till 7 p.m. in scorching heat under the supervision of armed guards. They lived in makeshifts tents of

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[1] *Chowdury and Others v Greece* (App. No.21884/15), judgment of 30 March 2017 (currently available only in French).

cardboard boxes and nylon without running water and toilets. The workers were never paid their wages for which they went couple of times on strike. Despite not being paid, they continued to work since they were afraid that if they were to leave, they would be never paid. After the recruitment of other migrants by the same employer, the Bangladeshi nationals went again on strike to demand their wages. At this point, one of the armed guards opened fire and seriously injured many of them. After this incident, the employer and the guards were convicted for grievous bodily harm and unlawful use of firearms (sentences that were subsequently commuted to a minimum financial penalty), but acquitted of the charge of trafficking in human beings. The 42 Bangladeshi migrants argued before the European Court of Human Rights (the Court) that they were subjected to forced labour and human trafficking and that Greece failed to fulfill its positive obligation under Article 4 to protect them against these abuses, to conduct effective investigation and to punish the perpetrators. The Court agreed with these claims and ordered Greece to pay each applicant between 12 000 and 16 000 euro. This order that can be regarded as an achievement given the stark reality that exploited migrants rarely, if ever, receive any compensation.[2]

This article assesses the contribution of *Chowdury* in two respects. First, the judgment contributes to the resolution of some of the definitional challenges raised by Article 4 of the ECHR, a provision that has produced relatively limited judicial output.[3] The definitional clarifications offered in the judgment are of importance not only for the future case law in this area, but also for the national legislation of the Council of Europe (CoE) states. For example, the United Kingdom Modern Slavery Act does not define the elements of slavery, servitude and

[2] *Severe Labour Exploitation: Workers Moving within or into the European Union* (EU Agency of Fundamental Rights, 2015) 21.

[3] V. Stoyanova, "L.E. v Greece: Human Trafficking and the Scope of States' Positive Obligations under the ECHR" (2016) 3 *European Human Rights Law Review* 290.

forced labour; instead, it refers to Article 4 of the ECHR. Despite this positive contribution of the judgment, some definitional complications under Article 4 ~~have still~~have remained unresolved. Second, the significance of *Chowdury* also lies in the further integration of the Council of Europe Convention on Action against Human Trafficking CETS No. 197 (the CoE Anti-Trafficking Convention) within the positive obligations generated by Article 4 of the ECHR.

2. The definitional challenges raised by Article 4 of the ECHR

In terms of definitional challenges, *Chowdury* has three distinctive features that need to be highlighted from the outset. It is the first case in which the European Court determined that the conditions under which undocumented migrant workers had to labor amounted to foced labour. The previous two cases, i.e. *Siliadin v France*[4] and *C.N. and V. v France*,[5] involved migrant children who had to provide domestic services in the home of their abusers, which signified specificities potentially preventing the extrapolation of the reasoning to wider circumstances. A second feature that denotes distinctiveness to the *Chowdury* case is that, in contrast to *Siliadin* and *C.N. and V.* where the applicants were determined to be *both* victims of forced labour and servitude,[6] in *Chowdury* the level of severity of the abuses was found not to have reached the threshold of servitude. This gave the Court the possibility to introduce further clarity as to the distinction between forced labour and servitude under Article 4 of the ECHR. Against the background of the existing case law under Article 4, a third distinctive feature of *Chowdury*, is that the Court applied both concepts, i.e. human trafficking and forced labour, to the factual circumstances. In its previous judgments, the Court used either human trafficking (see *Rantsev*

[4] *Siliadin v France* (2006) 43 E.H.R.R. 16.

[5] *C.N. and V. v France* (App. No.67724/09), judgement of 11 October 2012.

[6] In *C.N. and V.* only the bigger sister was determined to be such a victim.

v Cyprus and Russia[7]*, L.E. v Greece*[8] and *J. and Others v Austria*[9]) or the concepts explicitly enshrined in the text of Article 4 (see *Siliadin, C.N. and V.* and *C.N. v The United Kingdom.*)[10] In fact, in *C.N. and V. v France* the Court explicitly noted its preference to the legal concepts specifically provided for in the Convention. More specifically, it held

> It is true that in the case of *Rantsev v. Cyprus and Russia* the Court affirmed that human trafficking itself falls within the scope of Article 4 of the Convention in so far as it is without doubt a phenomenon that runs counter to the spirit and purpose of that provision. However, it considers that, above all, the facts of the present case concern activities related to "forced labour" and "servitude", legal concepts specifically provided for in the Convention.[11]

No elucidation was offered as to why a preference was given to the 'legal concepts specifically provided for in the Convention.' As I will show below, *Chowdury* has not resolved the obscurity surrounding the case law as to when and why the Court will prefer to take 'human trafficking' on board and as to how this concept actually relates to those explicit in the text of Article 4 of the ECHR.

Before assessing the significance of these innovations and persisting ambiguities, it is worthwhile to remind ourselves that Article 4 contains three concepts, i.e. slavery, servitude

[7] *Rantsev v Cyprus and Russia* (2010) 43 E.H.R.R. 16.

[8] *L.E. v Greece* (App. No.71545/12), judgment of 21 January 2016.

[9] *J. and Others v Austria* (App. No.58216/12), judgment of 17 January 2017.

[10] *C.N. v The United Kingdom* (App. No.4239/08), judgement of 13 November 2012. In *M. and Others v Italy* (App. No.40020/03), judgment of 31 July 2012 at [146-170], the Court did refer to all four concepts; however, neither of them was found applicable and the complaint under Article 4 was found inadmissible.

[11] *C.N. and V.* at [88].

and forced labour. With *Rantsev* (para 286) the Court has added 'human trafficking', as defined in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons[12] and the CoE Trafficking Convention, to the conceptual apparatus of Article 4.[13] In sum, Article 4 captures four concepts for qualifying abuses and the Court needs to find some sensible way of distinguishing them and of denoting some distinctiveness to each one of them.

2.1. Undocumented migrants and the definition of forced labour

The Court has addressed the distinctive definitional contours of forced labuor in its previous judgments. In *Van der Mussele v Belgium* and in *Siliadin*, the Court took into account the definition of forced labour in the ILO Forced Labour Convention No.29, where the term is defined 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 voluntary.'[14] Pursuant to this definition, involuntariness is one of the necessary definitional elements together with menace of penalty. In this sense, it can be argued that 'forced labour' is not intended to capture exploitative and abusive working conditions *per se*; one can labour in acceptable working conditions, but still involuntary and thus be subjected to forced labour.[15] This creates two problems in two different kinds of situations. First, a person might work in severely exploitative

[12] 2237 UNTS 319, *entered into forced* 25 December 2003.

[13] For a critique of this addition see V. Stoyanova, "Dancing on the Borders of Article 4. Human Trafficking and the European Court of Human Rights in the Rantsev case" (2012) 30(2) *Netherlands Quarterly of Human Rights* 163.

[14] *Van der Mussele v Belgium* (1984) 6 E.H.R.R. 163 at [32]; *Siliadin* at [116].

[15] For an analysis how the two elements of the definition, i.e. involuntariness and menace of penalty, collapse into each other see V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017), p.267.

working conditions to which she/he consents, which might potentially render the concept of forced labour inoperative. The situation of the 42 Bangladeshi migrant workers in the *Chowdury* could potentially fall into this category. However, this pitfall was avoided; below, I will show how. Second, a person might be required to do some labour under acceptable conditions, to which he objects and is threatened with a penalty,[16] which arguably renders the circumstances forced labour.

As early as 1983 when *Van der Mussele* was delivered, a case about a lawyer required to provide *pro bono* legal service to indigent clients, the Court realized the problem with the simplistic and unhelpful dichotomy between voluntary versus involuntary labour. One of the implications from this problem would be rendering the concept of forced labour impotent to capture exploitative working conditions. Another adverse implication would be preventing states from requiring certain services from individuals since the imposition of this requirement might potentially amount to forced labour. In *Van der Mussele* the Court thus held that

> […] relative weight is to be attached to the argument regarding the applicant's "prior consent", *the Court will have regard to all the circumstances of the case in the light of the underlying objectives of Article 4 of the European Convention* in order to determine whether the service required of Mr. Van der Mussele falls within the prohibition of compulsory labour. This could be so in the case of a service required in order to gain

[16] The 'menace of penalty' has been interpreted widely and it does not pose a serious definitional challenge. 'Menace of any penalty should be understood in a very broad sense. […] The penalty here in question might also take the form of a loss of rights or privileges.' International Labour Conference, *General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for Fair Globalization*, Report III (Part 1B) (ILO, 2013) p.111. The European Court has also followed this wide approach to the definition of 'menace of penalty'. For example, in *Van der Mussele* the threat of being deregistered from the list of lawyers was found to suffice.

> access to a given profession, if the service imposed a burden which was *so excessive or disproportionate to the advantages attached* to the future exercise of that profession, that the service could not be treated as having been voluntarily accepted beforehand [emphasis added].[17]

Crucially, the Court invoked the disproportionate burden test. After assessing the situation of the applicant, the Court concluded that he did not have to bear such a burden and, therefore, he was not subjected to forced or compulsory labour.

The circumstances in *Van der Mussele* involved labour demanded by the state. *Siliadin* was the first judgment involving interpersonal harm (a child migrant required to labour in deplorable conditions in private households). *Siliadin* does not contain very sophisticated analysis as to whether the girl was subjected to foced labour. The Court simply determined that she was 'an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police' and that 'it is clear from the facts of the case that it cannot seriously be maintained' that she performed the work of her own free will' (para 118 -9). In contrast, *C.N. and V.* did offer a more elaborate analysis. The applicants were two girls required to provide domestic services at home. They were arguably treated as family members from whom it was expected to help with the household. Here the Court invoked the disproportionate burden test for the first time in the circumstances of interpersonal harm and observed that:

> […] the first applicant was forced to work so hard that without her aid Mr and Mrs M. would have had to employ and pay a professional housemaid. The second applicant, one

[17] *Van der Mussele* at [37].

> the other hand, has not adduced sufficient proof that she contributed *in any excessive measure* to the upkeep of Mr and Mrs M.'s household [emphasis added].[18]

Chowdury is the second judgment involving interpersonal harm where the disproportionate burden test was invoked.[19] It was acknowledged that the migrants did initially consent to work; however, the Court also observed that '[t]he validity of the consent must be assesses in the light of all the circumstances of the case.' This implied taking into consideration 'the nature and volume of the activity in question.' The nature and the volume of the work performed, including the nature of the working conditions that might manifest excessiveness, are ultimately determinative. In this respect the Court observed: 'The workers labored in extreme physical conditions, had an exhausting schedule and were subjected to constant humiliation.'[20] As a consequence, severely exploitative working conditions can be captured by the definitional scope of forced labour even if the person has consented:

> By promising them rudimentary shelter and a daily wage of EUR 22, which was the only solution for the victims to ensure a means of subsistence, the employer had been able to obtain their consent at the time of hiring in order to exploit them later.[21]

What is particularly important in the assessment of these conditions is the strong emphasis on the applicants' vulnerability that originated from their irregular migration status. This is one of the most important contributions of *Chowdury:*

[18] *C.N. and V*. at [75].

[19] *Chowdury* at [90-91]; see also [96].

[20] *Chowdury* at [98].

[21] *Chowdury* at [98].

> […] the applicants did not have a residence permit or a work permit. The applicants were aware that their irregular situation put them at risk of being arrested and detained with a view of deportation from Greek territory. An attempt to leave their work would no doubt have increased this prospect and would have meant loss of any hope of receiving their salaries or at least part of them. Given that they had not received any salary, they could not leave Greece.[22]

The Court also added that

> […] the applicants began working in a situation of vulnerability as irregular migrants without resources and at risk of being arrested, detained and deported. They probably realized that if they stopped working, they would never collect the arears of their wages, the amount of which was constantly increasing as the days passed. Even assuming that, at the time of hiring, the applicant volunteered their work and believed in good faith that they would receive their wages, the situation subsequently changed as a result of their employers.[23]

In sum, 'forced labour' captures severely exploitative working conditions and the element of consent has been reduced to an assessment of the excessiveness of these conditions.

2.2. The distinction between forced labour and servitude

[22] *Chowdury* at [95].

[23] *Chowdury* at [97].

One of the challenging definitional issues in *Chowdury* was caused by the fact that the migrant workers could freely leave the strawberry farm and go to the nearby city, including to do their shopping. In fact, at certain point their employer told them to leave the farm. They refused, since they believed that the continuation of the employment relationship was essential for them to recover their salaries. Given the freedom that the migrants had, the Court was confronted for the first time with the question whether deprivation of liberty or some form of restriction on freedom of movement are necessary or relevant elements for the qualification of the situation as forced labour.[24] This question prompted the Court to further clarify the distinction between forced labour and servitude. Importantly, it excluded restrictions on freedom of movement as a necessary element for defining forced labour; however, it preserved the relevance of this element for the purpose of qualifying situations as servitude:

> The Court observes that the Patras Assize Court acquitted the defendants of the count of trafficking in human beings, in particular by noting that the workers were not absolutely unable to protect themselves and that their freedom movement was not compromised, on the grounds that they were free to leave their work (see paragraphs 26-27 above). However, the Court considers that the restriction on freedom of movement is not a *sine qua non* condition for qualifying a situation as forced labor or even as trafficking in human beings. This form of restriction does not refer to the provision of the work itself,

[24] The ECHR draws the distinction between deprivation of liberty (Article 5) and restriction on freedom of movement (Article 2(3), Protocol 4). The European Court has clarified that the difference between the two is 'one of degree or intensity, and not of nature or substance'. *August and Others v the United Kingdom* [GC] (App. No.39692/09, 40713/09 and 41008/09), judgment of 15 March 2012 at [57]. A context specific assessment needs to be applied for determining whether restrictions on freedom of movement amount to deprivation of liberty (i.e. detention).

> but rather to certain aspects of the life of the victim of a situation contrary to Article 4 of the Convention, and in particular to a situation of servitude. On this point the Court reiterates its finding that Patras Assize Court had a narrow interpretation of the concept of trafficking, which relied on elements specific to servitude in order not to qualify the applicants' situation as trafficking (see paragraph 100 above). However, a situation of trafficking can exist despite the freedom of movement of the victim.[25]

It follows that restrictions upon freedom of movement might be a relevant element for defining abuses as servitude. A question that still needs to be unequivocally resolved is whether such restrictions are a *necessary* element for qualifying circumstances as servitude. There are persuasive arguments to the contrary. The starting point for advancing these arguments is the following pronouncement from *C.N. and V.* and *Chowdury:*

> […] servitude corresponds to a special type of forced or compulsory labour or, in other words, "aggravated" forced or compulsory labour. As a matter of fact, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies *in the victim's feeling that their condition is permanent and that the situation is unlikely to change*. It is sufficient that this feeling be based on the above-mentioned objective criteria or brought about or kept alive by those responsible for the situation [emphasis added]. [26]

[25] *Chowdury* at [123]. See section 2.3 below I explain the conflation of forced labour and human trafficking in the judgment.

[26] *C.N. and V.* at [91]; *Chowdury* at [99]. For a critique of the addition of the element related to permanence and immutability of the situation see V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017) p.255.

Deprivation of liberty and restrictions upon freedom of movement might indeed be one of these objective criteria that the Court has invoked for demonstrating the victims' feeling that their condition is permanent and not likely to change. However, other objective circumstances might also provoke such feelings. An example to this effect could be exercising subtle forms of control over various aspects of victims' lives. The required level of control and the aspects of life upon which control is exerted (the place where the victim lives, the persons that he/she is allowed to meet and talk to etc.), remain to be tested in future cases. Here it is pertinent to note that in *C.N. v the United Kingdom,* the Court observed that

> '[…] domestic servitude is a specific offence, distinct from trafficking and exploitation, which involves *a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance*. A thorough investigation into complaints of such conduct therefore requires *an understanding of the many subtle ways an individual can fall under the control of another*.'[27]

This is a strong indication that it is not necessary to prove restrictions upon freedom of movement. It will suffice to demonstrate that the victim was under control, including by the application of subtle forms of coercion, for reaching the definition threshold of servitude.

2.3. The insertion of human trafficking within the conceptual limits of Article 4

In *Chowdury,* the Court concluded that the migrant workers were subjected to both human trafficking and forced labour, in this way confirming that in some respects these forms of abuses

[27] *C.N. v The United Kingdom* (App. No.4239/08), judgement of 13 November 2012 at [80].

can occur at the same time or one might happen after the other. More specifically, the judgment says that '[…] exploitation of labour is one of the forms of exploitation in the definition of trafficking in human beings, which highlights the intrinsic relationship between forced and compulsory labour and trafficking in human beings.'[28] Yet, this intrinsic relationship is not one of overlap.[29] It is regrettable that the Court did not explain this intrinsic relationship; rather the judgment seems to suggest that these two forms of abuses overlap.

It is also worthwhile to remind the reader that in *Rantsev* the Court conflates human trafficking and slavery by defining the former through the definition of slavery in international law,[30] which has caused further confusion. As much confusingly, in some paragraphs in the reasoning in *Chowdury* the Court talks only about human trafficking (see, for example, para. 86, 87, 89) without mentioning forced labour. Even more puzzlingly, in other paragraphs the Court refers not only to human trafficking, but also to the concept of exploitation (para.88 and 93). 'Exploitation' is not only left undefined, but as the international law definition of human trafficking suggests (a definition that the Court has endorsed) it is much more broad and capacious than forced labour. No explanation has been offered as to the required threshold for defining exploitation and how it might relate to forced labour and servitude in the context of Article 4, which has left the minimum threshold of severity under Article 4 uncertain. Equally confusingly, in para.99, the Court refers not to forced labour *per se*, but only to forced labour as a form of exploitation within the definition of human trafficking. In sum, the European Court

[28] *Chowdury* at [83].

[29] V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017) p.292.

[30] *Rantsev* at [281]; J. Allain, "Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery", (2010) 10(3) *Human Rights Law Review* 546; V. Stoyanova, "Dancing on the Borders of Article 4. Human Trafficking and the European Court of Human Rights in the Rantsev case" (2012) 30(2) *Netherlands Quarterly of Human Rights* 163.

seems to be still struggling with the conceptual apparatus of Article 4. The source of this confusion is ultimately the insertion of human trafficking within the limits of Article 4 and not clarifying how this concept differs and relates to those that are explicit in the text of the provision.

3. The positive obligations triggered by Article 4

In addition to these three distinctive features concerning the definitional scope of Article 4 of the ECHR that I elaborated above, *Chowdury* is also important from the perspective of the positive obligations that this provision generates. Three types of positive obligations were under review. The obligation to adopt effective regulatory framework, to take protective operational measures and to conduct effective investigation. In what follows, the first two will be examined. Although important in the context of the specific case, the third one is excluded from the ambit of this note because this part of the judgment does not contain innovative aspects or contentious issues.

3.1. The obligation to criminalize

Greece was found *not* to be in violation of its obligation under Article 4 to put in place an appropriate legal and regulatory framework. As the Court emphasized, Greece had criminalized human trafficking at national level and had incorporated the relevant EU law in this area.[31] This finding is puzzling given the fact that, while Greece has indeed criminalized human trafficking, the Greek legislation does not contain a specific criminalization of forced labour and servitude. In *Siliadin* and *C.N. and V.*, the Court is quite adamant to the effect that states need to

[31] *Chowdury* at [107-8].

incorporate specific criminalization of forced labour and servitude at domestic level.[32] *C.N.* is also supportive in this respect since the Court stated that domestic servitude was a specific offence distinct from human trafficking.[33] If the same logic is followed, forced labour is also a specific offence distinct from human trafficking, which necessitates its specific criminalization at national level.

The omission by the Court to challenge this gap in the national criminal legislation further exacerbates the definitional confusion that reins at the level of Article 4 and that, as mentioned in section 2.3, has its origins in the insertion of the concept of human trafficking. Another implication from this omission is that states are not encouraged to specifically criminalize forced labour; instead, they can use the label of human trafficking to investigate and prosecute exploitation of migrant workers. This might lead to failures in the criminal proceedings since, for example, no elements of recruitment or transportation might be present and thus the definition of human trafficking might be inapplicable. This problem became evident in *C.N.*[34]

As much importantly, when human trafficking and forced labour are conflated, it might be impossible to gain a clear understanding of the nature and the forms of abuses to which migrants are subjected. This in turn might hamper the adoption of measures for effective response. More specifically, human trafficking is an abusive and deceptive process that might or might not result in exploitation.[35] As opposed to forced labour, it is not a type of exploitation.

[32] V. Stoyanova, "Article 4 of the ECHR and the Obligation of Criminalizing Slavery, Servitude, Forced Labour and Human Trafficking" (2014) 3(2) *Cambridge Journal of International and Comparative Law* 407.

[33] *C.N.* at [80].

[34] *C.N.* at [80].

[35] J. Allian, *Slavery in International Law* (Brill, 2013) p.355; V. Stoyanova, *Human Trafficking and Slavery Reconsidered* (Cambridge University Press, 2017) p.292.

Different measures might be appropriate for addressing exploitation as opposed to addressing the preceding process.

There is one feature that distinguishes *Chowdury* from *C.N.*, which can explain why the Court took different approaches. In particular, *C.N.* is distinctive in the following way. Due to the gap in the domestic criminal law at the material time (absence of a specific offence of servitude) and the exclusive focus on the crime of human trafficking, the investigating authorities did not give due weight to 'overt and more subtle forms of coercion' to which migrants are vulnerable. Consequently, the national investigating authorities conducted a dismissive investigation. In this sense, there was a causal link between the absence of a specific national offence of servitude and the dismissive investigation into the alleged abuses at national level.[36] In contrast, in *Chowdury* no such link was present and the national investigation was in general deficient even under the count of human trafficking.[37] This led to the Court to find a violation of the procedural limb of Article 4.

3.2. The obligation to take protective operational measures

Another type of positive obligation under review in the judgment was the obligation to adopt protective operational measures. The Court emphasized that the authorities were well aware of the situation of the migrant workers in the Manolada region and of the abuses to which they were exposed, including the refusals by the employers to pay their wages.[38] Despite this

[36] V. Stoyanova, "Causation between State Omission and Harm within the Framework of Positive Obligations under the ECHR" (2018) 18(2) *Human Rights Law Review*.

[37] *Chowdury* at [121] and [127].

[38] *Chowdury* at [110-115].

awareness, the authorities' response was limited.[39] Importantly, the assessment of the positive obligation to protect by the Court was done in light of the positive obligations imposed by the CoE Anti-Trafficking Convention.[40] This approach has been applied in previous judgments and the Court has thus drawn from this convention to strengthen states' positive obligations under Article 4.[41] Still, *Chowdury* manifests one innovative feature. More specifically, the Court referred to the work of the CoE Anti-Trafficking Conventions' monitoring body, GRETA (Group of Experts on Actions against Trafficking in Human Beings): 'The Court draws its inspiration from this Convention and from the manner in which it is interpreted by GRETA.'[42] This will increase the importance of the interpretations offered by GRETA in its reports.

The more pioneering aspect of *Chowdury* is the suggestion that regardless of the legal qualification of the circumstances as human trafficking or forced labour, the positive obligations generated by Article 4 of the ECHR must in principle be interpreted in light of the CoE Anti-Trafficking Convention. This is important for two reasons. First, the latter convention imposes a number of positive obligations upon states (identification of victims, suspension of deportation proceedings, social assistance, non-punishment etc.).[43] Their personal scope is limited to victims of human trafficking and, as a consequence, victims of forced labour, servitude and slavery fall in a protection gap. This has been highlighted by the EU Fundamental Rights Agency:

[39] *Chowdury* at [113].

[40] *Chowdury* at [104].

[41] *Rantsev* at [285, 287 and 296]; *L.E. v Greece* at [71].

[42] *Chowdury* at [104].

[43] V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017) p.74-181.

> While trafficking has attracted much attention, the severe exploitation of works in employment relationships – which may or may not occur in a context of trafficking – has not. This difference in the level of attention is reflected by an institutional setting in which specialized actors are available to deal with trafficking cases but not with cases of severe labour exploitation.[44]

It would be illogical for Article 4 of the ECHR to generate more demanding positive obligations when the case is defined as human trafficking as opposed to forced labour, servitude, or slavery.[45] By extending the relevance of the CoE Anti-Trafficking Convention to all cases falling within the definitional contours of Article 4 of the ECHR, the gap can be bridged.

Second and related to the above, once this extension is endorsed, applicants will not be urged to formulate their cases as human trafficking to invoke the positive obligations under the CoE Anti-Trafficking Convention. Limitations upon the usage of the concept of human trafficking can be welcomed given that the elements of this concept are yet to be specifically clarified by the Court and that it has uncertain severity threshold (see section 2.3 above),

4. Conclusion

[44] *Severe Labour Exploitation: Workers Moving within or into the European Union* (EU Agency of Fundamental Rights, 2015) p.40.

[45] This will be contrary to the interpretative principles of effectiveness and internal consistency developed by the Court.

Against the background of the relative scarcity of judicial engagement at international law level with the right not to be subjected to slavery, servitude, forced labour and human trafficking, [46] *Chowdury* is an important addition. It will help Article 4 of the ECHR to gain further traction by instigating more applications. The judgment sheds light on the definition of forced labour. It clarifies that the concept captures severely exploitative working conditions. It also clarifies that consent to perform the labour can be reduced to an assessment of the excessiveness of these conditions. Crucially, any vulnerabilities stemming from irregular migration status are an inherent part of this assessment. As much importantly, a migrant might be held in forced labour even if not subjected to any form deprivation of freedom of movement. *Chowdury* also contributes to the enhancement of states' positive obligations under Article 4. Its reasoning suggests that the positive obligations imposed by the CoE Anti-Trafficking Convention are of relevance not only to factual circumstances qualified as human trafficking, but to the whole gamut of abuses intended to be captured by Article 4. This can trigger a change in these CoE states that have limited their identification and assistance efforts to victims of human trafficking and have ignored victims of severe forms of labour exploitation (i.e. slavery, servitude and forced labour).

[46] V. Stoyanova, "United Nations against Slavery: Unravelling Concepts, Institutions and Obligations" (2017) 38(3) *Michigan Journal of International Law* (forthcoming).