

# 1. INTRODUCTION<sup>1</sup>

Slavery is a global phenomenon that has appeared throughout human history, even if its form, moral status and terminology have changed over time.<sup>2</sup> Essentially, it entails the control of a person for the purpose of some type of exploitation. Although slavery as a legal institution has been abolished worldwide, the concept of exploitation of human beings remains a serious global problem.<sup>3</sup>

In this regard, trafficking in human beings is pervasive, with an International Labour Organization (ILO) report from 2017 estimating that 40 million individuals were victims of human trafficking in 2016, excluding victims of organ trafficking.<sup>4</sup> Due to significantly lower acquisition costs today compared to in the past, exploiting new victims is more lucrative than re-trafficking already-acquired people.<sup>5</sup> Globali-

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1 For this publication, case-law up to July 2023 was taken into account.

2 Kevin Bales, 'Slavery in its Contemporary Manifestations' in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2013), 281; Mary C Burke and Brian Bruijn, 'Introduction to Human Trafficking: Definitions and Prevalence' in Mary C Burke (ed), *Human trafficking: Interdisciplinary perspectives* (2nd edn. Routledge Taylor & Francis Group 2018), 6.

3 Kevin Bales, 'Slavery in its Contemporary Manifestations' in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2013), 281.

4 International Labour Organization, Walk Free, International Organization for Migration, *Global Estimates of Modern Slavery: Forced labour and forced marriage* (2017), 5.

5 Kevin Bales, 'Slavery in its Contemporary Manifestations' in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2013), 287 ff; Mary C Burke and Brian Bruijn, 'Introduction to Human Trafficking: Definitions and Prevalence' in Mary C Burke (ed), *Human*

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sation has also made it easier for traffickers to connect supply and demand around the world.<sup>6</sup> Finally, crisis situations such as the recent global pandemic, natural disasters, and wars serve to facilitate and intensify the problem, with people in vulnerable and precarious situations being more likely to fall victim to trafficking.<sup>7</sup>

The eradication of human trafficking is, accordingly, a global goal set out as target 8.7 of the United Nations' Sustainable Development Goals; trafficking, beyond the human toll, also includes a substantial economic cost. Further, several international and regional treaties have been adopted in the past 30 years to combat human trafficking. The central aspects of combating human trafficking are not just the prevention thereof and the prosecution of the offenders but also the protection of human trafficking victims. Considering that traffickers usually exploit vulnerable groups, such as undocumented migrants, refugees, and children and women in precarious situations, it is necessary to have appropriate protective measures in place that meet their needs. However, the majority of binding obligations of the international human trafficking legal framework primarily concern the criminalisation and prosecution of traffickers. For this reason, the victim protection standard under the human rights framework of article 4<sup>8</sup> of the Euro-

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*trafficking: Interdisciplinary perspectives* (2nd edn. Routledge Taylor & Francis Group 2018), 6.

- 6 Mary C Burke and Brian Bruijn, 'Introduction to Human Trafficking: Definitions and Prevalence' in Mary C Burke (ed), *Human trafficking: Interdisciplinary perspectives* (2nd edn. Routledge Taylor & Francis Group 2018), 10.
- 7 United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2020* (United Nations 2021), 9; International Organization for Migration, 'Why does Vulnerability to Human Trafficking Increase in Disaster Situations?' (2018) <<https://ro.sanjose.iom.int/en/blogs/why-does-vulnerability-human-trafficking-increase-disaster-situations>> accessed 25 June 2023.
- 8 Article 4 of the ECHR reads as follows: "No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this Article the term "forced or compulsory labour" shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention; (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life

pean Convention on Human Rights (ECHR), that has been established by the European Court of Human Rights (ECtHR) in case law of the past two decades, forms a crucial pillar in the fight against human trafficking.

To clarify the victim protection standard under European human rights law, this thesis endeavours to determine the positive state obligations under article 4 of the ECHR regarding human trafficking by analysing emerging case law. Given that the body of case law remains fairly limited, a comprehensive and complete answer to all the relevant questions that come up in connection with the positive state obligations cannot be given. Nevertheless, the objective is to provide an overview of the *status quo* and to highlight relevant questions that have not been addressed by the ECtHR yet. Due to the limited scope of this thesis, it will not focus on any particularities concerning child trafficking. Bearing in mind the significance of the ECHR within the Austrian national legal framework as well as the fact that Austria is not only a transit country but also a popular destination country for trafficking victims, this thesis also scrutinizes Austrian adherence to the positive obligations identified in this thesis.

The first chapter constitutes a descriptive research of primary sources to provide an overview of the relevant international legal framework that offers key definitions and standards that have been consistently applied by the ECtHR in its adjudication on the matter of human trafficking. In the main part of the thesis, a thorough analysis of article 4 as it relates to human trafficking is undertaken by examining ECtHR case law and contrasting it with other relevant primary sources as well as relevant secondary sources. However, first, to give the reader an understanding of the legal context of article 4 of the ECHR, a short introduction to the ECHR and ECtHR is given. Subsequently, the material scope of article 4 of the ECHR is examined in order to clarify the situations covered by it. Further, given the confusion surrounding the concepts of article 4 of the ECHR, an attempt is made to delimit

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*or well-being of the community; (d) any work or service which forms part of normal civic obligations.”*

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it these concepts. Subsequently, the three positive obligations under the article are examined, and unresolved issues are highlighted. The final chapter focuses on the human trafficking situation in Austria and presents an analysis of Austria's implementation of the protection standard established by article 4 of the ECHR. Therefore, primary sources such as relevant Austrian law and Austrian administrative regulations as well as secondary sources such as scientific literature and reports of governmental and non-governmental organisations are reviewed.