

Clarifying the scope of labour exploitation in human trafficking law: towards a legal conceptualisation of exploitation

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The agreement of the international definition of human trafficking in the 2000 Palermo Protocol is a noteworthy achievement, welcomed for providing the first internationally agreed definition of the offence. However, this international definition fails to provide clarity as to the exact scope and meaning of exploitation. Instead, it consists of an open-ended list of forms of exploitation that “at a minimum” amount to exploitation. Labour exploitation is enumerated as forced or compulsory labour, slavery or practices similar to slavery and servitude. This adds confusion since these forms of exploitation are also separately legally defined and criminally prohibited. Despite the international recognition of these severe forms of labour exploitation, the current legal framework thus engenders a lack of clarity as to the threshold between decent working conditions and labour exploitation. This thesis will address this legal gap by seeking to legally conceptualise labour exploitation.

The state-of-the-art legal understanding of labour exploitation reveals that the international definition of human trafficking has, in the most part, been replicated in both regional and domestic settings (Part I). However, the contemporary understanding of labour exploitation remains thwarted by confusion and conflation of legal terms, as we exemplify in this thesis by reference to the jurisprudence of the European Court of Human Rights. Legal ambiguity hinders the full understanding and implementation of existing legal frameworks that seek to combat labour exploitation and fails to protect those who are subject to exploitative working practices, regardless of whether they are considered to be trafficked persons or not.

The research adopts a cross-disciplinary exploration of the topic using a legal analysis (Part I) and a political theory analysis (Part II). Building on these findings, we comparatively analyse the judicial interpretation of labour exploitation in 72 criminal cases of two European national legal orders: Belgium and England & Wales (Part III). This allows us to develop a roadmap of its judicial understanding from which we conceptualise labour exploitation as: *A knowingly taking unfair advantage of B’s position of vulnerability by means of the exercise of control showing a lack of respect for B’s human dignity, in order to gain a benefit.*

The proposed conceptualisation and its accompanying key constituent elements provide for consistency and legal certainty (Part IV). They are envisaged as a springboard for future efforts seeking to tackle labour exploitation. Whilst the thesis’ emphasis is premised upon the analysis of criminalised forms of relational exploitation (exploitation by individuals on other individuals), we acknowledge the need to ensure that not only criminal law is galvanised to tackle this issue. Other law and policy areas are needed to address not only relational but also the structural features of our global, neo-liberal labour market and societies that exacerbate and fuel the instrumentalization of millions of workers in a precarious situation. As such, this conceptualisation must be complementary to additional measures that secure the respect for the human and labour rights of all whose labour is exploited, whether trafficked or not.