

Monday 22nd May

**The compatibility of the Illegal Migration Bill's modern slavery clauses with the ECHR and the ECAT**

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SUMMARY: Clauses 21-28 of the Illegal Migration Bill (IMB) are incompatible with both Article 4 of the 1950 European Convention on Human Rights (ECHR) (prohibition of slavery, servitude, forced labour and human trafficking) and the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT). They *automatically* exclude from protection any potential or confirmed victim of modern slavery who has arrived in the UK irregularly. This would violate an express obligation to identify *every* victim of modern slavery, without discrimination and without exception before their return to the country of origin could be considered. Automatic and immediate removal of potential victims would also result in the breach of an obligation to investigate and prosecute the perpetrators of modern slavery because without the victim's cooperation it would be difficult to gather relevant evidence to prove the offence of modern slavery (as established in the ruling of the UK Supreme Court in [MS \(Pakistan\) v Secretary of State for the Home Department \[2020\] UKSC 9](#))

**I. Preliminary points about the application of international instruments in the UK**

- ECHR is embedded in domestic British law through the Human Rights Act 1998.
- ECAT is incorporated through various legal and policy measures AND ECAT obligations have been read into ECHR by the European Court of Human Rights.
- 1969 Vienna Convention on the Law of Treaties contains in Article 31 a general rule of interpretation of the treaties: '*[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*'
- ECHR/ECAT's object & purpose:
  - To protect the human rights of people (ECHR)
  - 'Respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives' (ECAT Preamble & Art 1).

**II. Key obligations under the ECHR (Article 4) and the ECAT:**

- An obligation to put in place 'a legislative and administrative framework providing real and effective protection of the rights of victims.' This expressly includes adequate immigration policy (*Rantsev v Cyprus and Russia*).
- A duty to take operational measures to protect victims, or potential victims.
- A procedural obligation to investigate potential situations of modern slavery and punish the perpetrators.
- Duties to protect and prosecute arise as soon as there are 'reasonable grounds to believe' that a person is a victim and they do not depend on a victim's report – the authorities must act of their own motion once the matter has come to their attention. Importantly, even when an individual is not a victim of exploitation in a specific ECHR Member State, all State Parties are under a positive obligation to identify and support any potential victim – not just those exploited in the country in which they are discovered (*J and Others v Austria*, paras 110 – 111).
- These obligations apply without exception and without discrimination on any ground including national origin.
- Article 4 ECHR obligations are unqualified; Article 4 ECHR is 'absolute' right – which does not allow for any limitations or balancing against the broader public interest and cannot be derogated from 'even in the event of a public emergency threatening the life of the nation' (*Rantsev v Cyprus and Russia*, para. 283).

### III. Victims or potential victims of modern slavery with irregular immigration status

- The *removal* of victims of modern slavery without lawful residence to the country of their nationality or permanent residence is *not prohibited*, but before doing so states must observe their obligations to identify and protect every victim of modern slavery regardless of their immigration status (Articles 14 and 4 ECHR, Articles 3, 10, and 12 ECAT) and to investigate and prosecute the perpetrators of this crime (Article 4 ECHR and Article 27 ECAT).
- States must make an *individualised assessment* of the impact of such return on ‘the rights, safety and dignity of that person’ (Article 16 ECAT).
- **Article 13 ECAT specifically protects victims with irregular immigration status** (ECAT Explanatory Report paras 172-3) – they are entitled to a reflection and recovery period (R&R period) of minimum 30 days to recover and consider whether to cooperate with law enforcement authorities – during this period, they must not be removed from the state’s territory and are entitled to protection.
- **Article 13 (3) contains an exception from the R&R period on public order grounds or if a victim status was claimed in bad faith. BUT any exception to the provision with the sole purpose of protecting victims with irregular immigration status must be narrowly construed**, (1969 Vienna Convention) **AND this must be done on case-by-case basis** (not *en masse* for everyone with irregular status and solely on that basis). The body in charge of monitoring compliance with ECAT (GRETA) expressly confirmed this in its [written submission to the JCHR Enquiry](#) in para 16:

*‘The grounds of public order should always be interpreted on a case-by-case basis, and it is not possible to automatically disqualify a victim from access to the recovery and reflection period on the basis that the person has violated migration laws. The grounds of public order are intended to apply in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period.’*

### IV. The implications of the modern slavery provisions in the IMB on the UK’s compliance with the ECHR and the ECAT

- **The IMB Rule:** Anyone with irregular immigration status is automatically excluded from protection on ‘public order’ grounds. Even if there are reasonable grounds to believe that they are victims of modern slavery, they will not be referred to the National Referral Mechanism (NRM) and can be removed immediately without benefiting from the R&R period or any protection guaranteed in domestic and international law.
- **Exception No 1 to the Rule:** willingness to cooperate with law enforcement authorities (without benefiting from the R&R period) and even then, the presumption is against the need to stay in order to support investigation. This directly contradicts the ruling of the UK Supreme Court in [MS \(Pakistan\) v Secretary of State for the Home Department \[2020\] UKSC 9](#) para 35.
- **Exception No 2 to the Rule:** ‘serious and irreversible harm’ as a basis for challenging automatic removal from the UK. This option is largely theoretical given that victims will not be identified and offered support and assistance to allow them to make such a representation.
- **The regime created by the IMB makes the exclusion from protection a rule and the protection of victims an exception – it turns the human rights system on its head. Not only does it fail to protect victims of modern slavery, but it also fundamentally undermines a duty to prosecute traffickers and likely encourages more human trafficking.**

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