Where to look for change? A critique of the use of modern slavery and trafficking frameworks in the fight against migrant domestic workers' vulnerability

Abstract

Once an overlooked theme in legal scholarship, the legal treatment of migrant domestic workers has recently seen a significant growth of scholarly interest. In European legal scholarship, much of the focus has been on severe forms of exploitation such as slavery, forced labour and trafficking. While extreme abuses of migrant domestic workers certainly do take place in Europe, they are only part of the story. This article critiques the turn to modern slavery and trafficking as the dominant frame for analysing migrant domestic workers' vulnerability in Europe and proposes a corrective lens. I argue that it is instead more useful, and potentially more deeply transformative, to comparatively examine the role of national labour and migration law regimes in the regulation of migrant domestic workers, as well as, the role of EU law in constructing and challenging these regimes.

Keywords: domestic workers; migrant workers; labour exploitation; modern slavery; Article 4 ECHR

1. Introduction

Once an overlooked theme in legal scholarship, the legal treatment of domestic workers has recently seen a significant growth of scholarly interest. Given that a large share of domestic workers are international migrants,[1] several studies explore the legal status and special vulnerabilities of migrants in domestic work.[2] The debate at the level of the International Labour Organisation (ILO) and the adoption in 2011 of Convention 189 on decent work for domestic workers has raised global awareness concerning the gaps in the legal protection of domestic workers and influenced reforms at the national level. In different parts of the world, campaigns,

[1] According to ILO statistics, at least 17.2% of domestic workers are migrants; the sector's high informality levels and the irregular residence status of some migrants mean that the share of migrants in domestic work might be significantly higher than what official figures indicate. Tayah M. J. *"Decent Work for Migrant Domestic Workers: Moving the Agenda Forward"* (Geneva: International Labour Office, 2016).

[2] Fredman S. "Home from Home. Migrant Domestic Workers and the International Labour Organization Convention on Domestic Workers", in Costello C. and Freedland M. (eds.), *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford: OUP, 2014); Fudge J. "Global Care Chains, Employment Agencies, and the Conudrum of Jurisdiction: Decent Work for Domestic Workers in Canada", *Can. J. Women & L.* (2011) 23, 235-264; Mullally S. and Murphy C. "Migrant Domestic Workers in the UK: Enacting Exemptions, Exclusions and Rights" *Human Rights Quarterly* (2014) 36, 397-

policy and legislative reform projects seek to improve the working and living conditions of domestic workers and reduce their vulnerability to exploitation and abuse.[3] There is, we can say, an undisputable momentum at the global level to look for solutions to domestic workers' many vulnerabilities that range from notoriously low wages, long and unregulated working hours, to harassment at the workplace and disadvantages related to migration status, to name a few.

In European legal scholarship, it was human rights and gender scholars, especially those focusing on the European Convention of Human Rights (ECHR), who first became interested in the situation of migrant domestic workers. Human rights and gender scholars were driven by case law of the European Court of Human Rights (ECtHR or Strasbourg Court) concerning extreme abuse of migrant women under article 4 ECHR; this led, in turn, to an almost exclusive focus of the European legal scholarship on egregious human rights abuses such as slavery, servitude, forced labour and trafficking in human beings.[4] Similarly, advocates for migrant workers' rights are increasingly invoking the modern slavery and human trafficking discourses to challenge restrictive legal rules and are organising their campaigns for expanded rights and protections around anti-slavery arguments.

Scholars and advocates resorting to the modern slavery and human trafficking frameworks have made important and valuable contributions; their analyses draw attention to the acute vulnerabilities migrant domestic workers are exposed to and show how these can be addressed by European and international human rights law. While extreme exploitation in the forms of forced labour and trafficking is undoubtedly part of migrant domestic workers' lived experience in Europe,[5] it is only a small part of the story. Thus, grounding the legal debate almost exclusively on these themes can be problematic and ineffective for a series of reasons.

First, the focus on the most extreme forms of abuse and exploitation runs the risk of failing to pay sufficient attention to the role of law in creating day-to-day, less flagrant but equally important and much more widespread, instances of vulnerability. As the ECtHR interprets them, extreme forms of abuse – slavery, servitude and forced labour – set a very high threshold of abuse. Slavery

[3] Human Rights Watch, "Claiming Rights. Domestic Workers' Movements and Global Advances for Labor Reform", 27 October 2013, available at https://www.hrw.org/report/2013/10/27/claiming-rights/domestic-workers-movements-and-global-advances-labor-reform (13 May 2017).

[4] Mantouvalou, V. "Am I free now?" Overseas Domestic Workers in Slavery, *JLS* (2015) 42(3), 329-57; Mantouvalou, V. "Servitude and forced labour in the 21st Century: the Human Rights of Domestic Workers", *IndLawJ* (2006) 35(4), 395-414; Demetriou D. "Tied Visas and Inadequate Labour Protections: a formula of abuse and exploitation of migrant domestic workers in the United Kingdom" *Anti-Trafficking Review* (2015) 5, 69-88; Murphy, C. "The enduring vulnerability of migrant domestic workers in Europe" *ICLQ* (2013) 62, 599-627; Mantouvalou, V. "Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor" *CLLPJ* (2012), 133-166; Mullally, S. "Migration, gender and the limits of rights" in Ruth Rubio Marín (ed.), *Human Rights and Immigration*, (Oxford: OUP, 2014), 145-177; Mantouvalou V. "Workers without rights as citizens at the margins" *CRISPP* (2013) 16(3), 366-382.

[5] Fundamental Rights Agency, *Severe labour exploitation: workers moving within or into the European Union* (Luxembourg: Publications Office of the European Union, 2015).

entails a right of legal ownership over a person; a person must be sold, bought and treated as an object.[6] Servitude is similar but broader than slavery and entails the use of coercion; this practice requires "a particularly serious denial of freedom", in addition to the obligations to provide service to another and live on another person's property while having no possibility to alter one's situation.[7] As regards forced labour, the ECtHR has relied on Art. 2(2) ILO Convention 29 to affirm that two criteria must be met: work or service is extracted from a person under the menace of any penalty and the person did not offer herself voluntarily.[8]

Second, the focus on extreme abuse falls short of articulating holistic, preventive and transformative solutions to migrant workers' vulnerability. This is because the approach against extreme abuse normally envisions the expansion of criminal law as a remedy. Yet, criminal law solutions are not only ineffective in addressing labour exploitation, but their expansion is often at the expense of developing alternative legal frameworks and strategies to expand and effectively enforce migrant workers' rights.

Third, the focus on identifying "victims and villains", which goes hand in hand with the modern slavery and trafficking frameworks, tends to put the blame on individual employers. Viewed through a modern slavery lens, the labour exploitation of a migrant domestic worker appears to be an isolated case of mistreatment by an – often non-European "uncivilised" – employer. Such framing invokes stereotypes and, in turn, tends to downplay the role of the European host state which, through its laws and policies, creates the background conditions that contribute to exploitation and abuse.

The aim of this article is twofold. First, I wish to critique the frequent turn to modern slavery and trafficking as the dominant frame for analysing migrant domestic workers' vulnerability in Europe. I argue that the focus on extreme abuse may obscure and make less likely other, potentially more deeply transformative framings. Second, I wish to point to what such an alternative framing should entail; instead of focusing on extreme forms of abuse, I argue that it is more promising to comparatively examine national immigration and labour law regimes on migrant domestic workers, as well as the contribution of EU law in constructing or alternatively challenging those regimes. A caveat is necessary here: it is beyond the scope of this article to examine the different national European and EU legal regimes on migrant domestic workers. The intention of my critique is rather to invite those interested in the situation of migrant domestic workers in Europe – scholars and activists alike – to rethink the way we approach, analyse and

[6] Art. 1 of the 1926 Slavery Convention.
[7] Siliadin v France, European Court of Human Rights, App No 73316/01 Judgement of 26 July 2005, para 123 and cited case law.
[8] Siliadin v France, para 118.

challenge labour exploitation and broaden our perspective away from an exclusive focus on severe exploitation.

The structure of the discussion is as follows. Section 2 asks why the modern slavery and trafficking discourses have become dominant in the European legal scholarship on migrant domestic workers. I argue that, apart from the ECtHR case law on Art. 4 which has been an important driver of this focus, two important misconceptions have also contributed to this focus. The first concerns the profile of migrant domestic workers in Europe today and the second, their exclusion from the personal scope of protective EU labour law sources. These two misconceptions are related and stem, I believe, from the focus of the legal debate on the UK as the paradigm case of the status of migrant domestic workers in Europe. Section 3 examines the limits of the modern slavery and trafficking frameworks in articulating transformative solutions and identifies certain risks this approach entails. Section 4 concludes.

2. The turn to human rights for migrant domestic workers in Europe: invoking modern slavery, servitude, forced labour and trafficking discourses to remedy vulnerability

In 2005 the European Court of Human Rights handed down a judgement which has come to be considered a landmark for the protection of migrant domestic workers in Europe. In *Siliadin v France*[9] the ECtHR relied, for the first time, on the underutilised art. 4 of the European Convention on Human Rights (ECHR) to rule that states have positive obligations to protect individuals from slavery, servitude and forced labour.[10] This was also the first time that a regional European Court addressed domestic workers' exploitation and offered redress to a severely abused migrant domestic worker who was found to be a victim of servitude. It is from this moment on that Europe-based legal scholars became increasingly interested in the situation of migrant domestic workers and started drawing on human rights law sources to challenge exploitation.[11] Subsequently, in the 2010 *Rantsev v Cyprus and Russia* judgement, the Strasbourg Court construed art. 4 to include a prohibition of trafficking in human beings.[12] Even though *Rantsev* did not concern domestic workers, it was seen as relevant for its "recognition of the links between

[9] *Siliadin v France*, European Court of Human Rights, App No 73316/01 Judgement of 26 July 2005.
[10] The Strasbourg Court already had established case law on positive obligations deriving from Article 2 on the right to life and Article 3 on the prohibition of torture.
[11] Having said that, I do not mean that no one researched the exploitation of migrant domestic workers in Europe before *Siliadin*. Sociologists like Bridget Anderson documented abuse long before; see her widely cited book '*Doing the dirty work?' The Global Politics of Domestic Labour* (London/New York: Zed, 2000). But, to the best of my knowledge, legal scholars who studied domestic work in Europe before *Siliadin* did so from the perspective of national labour and social security law in the context of mono-state studies without paying any specific attention to international human rights law sources. See for instance, Quesada Segura R. *El contrato de servicio doméstico* (Madrid: La Ley, 1991); Cueva Puente M. La relación laboral de los empleados de hogar (Valladolid: Lex Nova, 2005).
[12] *Rantsev v Cyprus and Russia*, European Court of Human Rights, App. No 25965/04, Judgement of 7 January 2010.

immigration status and vulnerability to exploitation".[13] In 2012, the ECtHR confirmed states' positive obligation deriving from art.4 ECHR in two cases litigated by migrant domestic workers without a legal migration status – the *C.N. and V. v France* and the *C.N. v UK* judgements.[14]

The ECtHR's case law on slavery, servitude, forced labour and trafficking set the scene for the European legal debate on migrant domestic workers. Since the ECHR binds all Council of Europe states, human rights advocates saw a promising avenue for redress against exploitation in the ECtHR's positive obligations doctrine on the basis of art.4 ECHR. As universal norms, human rights are applicable to all within a state's jurisdiction; the prohibitions of slavery, servitude, forced labour and trafficking – as enshrined in international and regional human rights law instruments – hold a strong promise of delivering protection to exploited non-nationals, including those lacking legal residence under migration law.[15] Understandably, scholars and activists alike, saw a transformative potential in the ECtHR's case law and turned to the anti-slavery/anti-trafficking discourses in attempts to "engage a powerful legal obligation"[16] that could be invoked not only against the state, but against private individuals as well.

In what follows, I first present examine the ECtHR's case law on art.4 and migrant workers' exploitation. Even though this case law has been extensively analysed, a brief discussion here serves to highlight certain aspects that will then allow me to assess the judgements' effectiveness in challenging vulnerability. I then turn to the two flawed assumptions and examine how these might be related to the fact that the holder of the UK's overseas domestic worker visa scheme has come to be seen as the paradigmatic type of migrant domestic worker in Europe.

2.1. The case law on Art.4 ECHR and the – unfulfilled –promise of states' positive obligations

Siliadin v France concerns the case of a 15-year old girl from Togo who was recruited in her country of origin to work as a live-in domestic worker in Paris for a French family of Togolese origin. The employers had promised to cover her schooling expenses and to regularise her migration status once in France. It was agreed that at the beginning Siliadin would receive no

[13] Murphy C. "The enduring vulnerability of migrant domestic workers in Europe" *ICLQ* (2013) 62, 599-627, at 619.
[14] *C.N. v UK*, European Court of Human Rights, App. No 4239/08, Judgement of 13 November 2012; *C.N. and V. v France*, European Court of Human Rights, App. No 67724/09, Judgement of 11 October 2012.
[15] A quote from Siobhán Mullally illustrates well this point: "The inclusion of those who are strangers to the state in the panoply of human rights obligations disrupts the settled boundaries and imaginaries of state sovereignty, bringing to the fore the promised universalism of human rights norms and their transformative potential". Mullally S., "Migration, Gender and the Limits of Rights" in Rubio-Marín R. (ed) *Human Rights and Immigation* (Oxford: OUP, 2014) 145-176. For a similar assessment, see Mantouvalou V. "Workers without rights as citizens at the margins" (2013) 16(3) *Critical Review of International Social and Political Philosophy*, 366-382.
[16] Fudge J. and Strauss K., "Migrants, unfree labour and the legal construction of domestic servitude. Migrant domestic workers in the UK" in Costello C. and Freedland M. (eds.), *Migrants at Work. Immigration and Vulnerability in Labour Law* (Oxford: OUP, 2014).

salary in order to pay off the cost of her plane ticket. She arrived in France in 1994 on a tourist visa but instead of sending her to school, the employers withheld her passport and made no arrangements to change her visa. After working for some months without pay, the employers "lent" her to a well-off couple with four children. Siliadin's working and living conditions were abusive and exploitative; she worked without respite for 15 hours per day, seven days a week taking care of the family's children, cooking and cleaning. She was allowed out of the house only occasionally, received no salary except for some occasional pocket money and instead of a private room, she slept on the floor in the children's room. When at some point she managed to escape the household, the Committee against Modern Slavery – a platform of French civil society organisations – assisted her in bringing claims against her employers in French tribunals. Siliadin's civil action was successful and the Paris employment tribunal awarded her compensation amounting to approximately 33 000 Euro for unpaid wages, holiday leave and notice period.[17]

However, Siliadin brought her case to the Strasbourg Court arguing that France did not fulfil its positive obligations deriving from Art. 4 ECHR. She complained that French criminal law, as it stood at the time, did not afford her effective protection against slavery, servitude and forced labour. As the ECHR does not define the concepts of slavery, servitude and forced labour, the Strasbourg Court drew on international law sources to determine to what extent the applicant could be considered a victim of any of the three practices. Thus, the claim that the applicant was a victim of slavery was rejected because Siliadin's treatment did not fulfil the requirements of Art. 1 of the 1926 Slavery Convention, i.e. to be treated as an object.[18]

Yet the Court held instead that she was a victim of forced labour and of servitude. As regards forced labour, the ECHR applied the two criteria Art. 2(2) of ILO Convention 29 sets: work or service is exacted from a person under the menace of any penalty, while the person does not offer herself voluntarily. To determine whether Siliadin's situation could fall under the definition of forced labour, the Court relied heavily on the fact that she was a minor: "[…] the Court considers that the first criterion was met, especially since the applicant was a minor at the relevant time, a point which the Court emphasises."[19] The Court also said that it could not be considered that Siliadin had offered herself voluntarily as "it is evident that she was not given any choice".[20] Turning to the issue of servitude – i.e. "the obligation to provide one's services imposed by the use of coercion" – [21] and in light of the fact that she was minor, had no resources, lacked a legal migration status, had no documents and no freedom of movement, the Court held that Siliadin

[17] *Siliadin v France*, paras 9-45.
[18] *Siliadin v France*, para 123.
[19] *Siliadin v France*, para 118.
[20] *Siliadin v France*, para 118.
[21] *Siliadin v France*, para 123 and cited case law.

was also a victim of servitude.[22] I will return to the implications of these findings in the next section where I discuss the effectiveness of ECtHR case law.

Siliadin v France was celebrated in human rights scholarship. For Virginia Mantouvalou, the judgement "showed the potential of the ECHR to address violations of labour rights" because the Strasbourg Court established that Article 4 can be applied horizontally in relations between individuals which implies the state's positive duty to intervene in the employment relationship so as to protect the vulnerable party.[23] On an even more optimistic assessment, the judgment was also seen as a step towards bridging the gap between civil and social rights' protection in Europe.[24]

In 2010 the ECtHR handed down the *Rantsev v Cyprus and Russia* judgement. The case concerned trafficking for the purpose of sexual exploitation. The applicant's daughter, Oxana Rantseva a young Russian woman, arrived in Cyprus on the basis of a so-called "artiste" visa to work as a dancer in a cabaret nightclub. It was widely known that the term "artiste" was a euphemism for a visa that was channelling migrant women to prostitution. When Oxana Rantseva sought protection from local authorities, the police handed her back to the cabaret owner. In her second attempt to escape, she tragically died by falling from the building where she was kept. The victim's father brought the case to Strasbourg. The Court, building on its previous case law on Article 4, held that states' positive obligations extend to penalising and prosecuting trafficking as well as to taking effective measures to protect individuals from trafficking and exploitation.[25] Cyprus was *inter alia* condemned for enacting and maintaining a migration scheme that exposed migrant women to great vulnerability; the state was found to be complicit because the authorities were well aware that the artiste visa was a disguised route to forced prostitution but did nothing to stop migrant women's sexual exploitation

In *C.N. and V. v France* the applicants were two sisters from Burundi who arrived in France, with the help of their uncle and aunt already established there, fleeing their home country's civil war. They were both minors at the time and fully dependent on their uncle and aunt for subsistence. The applicants were ill-treated in their relatives' household; they were physically abused by their aunt, made to live in unhygienic conditions, were refused medical treatment and were verbally harassed on various occasions. In addition to the abuse, the older of the two sisters had to take care of the family's seven children, to do all household chores, was permanently on-call and

[22] *Siliadin v France*, paras 126-129.
[23] Mantouvalou V., "Servitude and forced labour in the 21st century: the human rights of domestic workers" (2006) 35 *Industrial Law Journal*, page 395.
[24] Mantouvalou V., "Labour Rights in the European Convention of Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation", (2013) 13(3) *Human Rights Law Review*, 529-555.
[25] *Rantsev v Cyprus and Russia*, paras 283-286.

received no pay or days off. After the applicants' aunt and uncle were partially acquitted by the French criminal courts, the Committee Against Slavery brought their case to the ECtHR arguing *inter alia* that France failed to protect the applicants from forced labour under Art. 4 ECHR. The Court found that only the older sister was a victim of forced labour. Then, following its *Siliadin* case law and noting that there was still no criminal law provision against forced labour or servitude in domestic law, held that France breached its positive obligation "to set in place a legislative and administrative framework to effectively combat servitude and forced labour".[26]

The facts in *C.N. v UK* are very similar to those in *Siliadin.* The applicant, a young woman from Uganda and allegedly a victim of sexual violence in her home country, entered the UK on a false passport and visa she obtained with the help of a so-called S., a wealthy and apparently powerful relative of hers. When the applicant arrived in the UK, S. confiscated her travel documents and through an agent, arranged for her to work as a live-in carer for an elderly couple. C.N. worked long hours seven days a week, was permanently on-call and was given only a few hours per month time-off. Her freedom of movement was effectively restricted not by her employers but by S. who controlled and constantly threatened the applicant that she would be abused and expelled from the UK. C.N. received no wages for her work as S. withheld all payments the elderly couple made to the agent. When she finally escaped, C.N. was in very bad conditions with frail physical and mental health. She unsuccessfully applied for asylum and then filed a complaint to the police stating that she was a victim of domestic servitude.[27]

UK legislation as it stood at the time contained no free-standing criminal offence of domestic servitude if there was no trafficking element. Since C.N.'s status as a victim of trafficking could not be established, the police could not investigate her allegations. C.N. brought her case to the ECtHR and complained that the UK had failed to protect her from servitude and was thus in breach of Article 4 ECHR. The Strasbourg Court found a lacuna in UK law as it contemplated no specific offence of domestic servitude; because of this lacuna, the Court asserted, UK authorities were not able to take into account all the factors that made C.N. fall under the control of S.[28] Building on its case law in *Siliadin* – the only factual differences between the two cases were that C.N. was not a minor and that the abuse was perpetrated not by the employers but by her relative – the ECtHR found that the UK had breached its positive obligations under Art.4 by not enacting adequate legislation to afford practical and effective protection against servitude. While the case was pending in Strasbourg, the UK enacted legislation that explicitly made slavery, servitude and forced labour a criminal offence.

[26] C.N and V v France, para 108.
[27] *C.N. v UK*, paras 4-31.
[28] *C.N. v UK*, paras 76-77.

The cases that reached Strasbourg provide powerful narratives of extreme abuse and appalling exploitation. All applicants were either minor or very young women, coming from poor non-EU countries, who fell prey to powerful individuals, were deceived, taken advantage of and either died while trying to escape their abusers or found themselves in a dire situation. The need to eradicate such practices and remedy such injustice is self-evident. Characterising migrant domestic workers' exploitation as "modern slavery" or "trafficking" can be a tempting strategy because these discourses have strong symbolic connotations and provide for compelling arguments. Yet, to what extent can this framing and the intervention the ECtHR envisions be truly transformative for migrant domestic workers? I return to this question in section 3.

2.2. Misconceptions: who are migrant domestic workers and which supranational norms apply to them?

European human rights scholarship seems to assume that domestic workers are typically non-EU nationals who in addition lack legal residence. Mantouvalou, for instance, writes: "Domestic workers are also very often migrant, and immigration legislation in many national legal orders also disadvantages them. The lack of citizenship status (as legal status) leads to their exclusion from additional labour rights."[29] This view, however, conflates the notions of migrant worker with that of third-country national, overlooks the diverse migration statuses domestic workers hold and the sharply different legal treatment EU law – and consequently national law – affords to different types of migrants moving and working within the EU. Clearly, the author's aim is to emphasise the decisive role of migration law in creating disadvantage. Yet this role is more complex; if we treat migrant workers as a "unified category of precarious residents"[30] we miss the opportunity of giving a nuanced account of how migration law creates disadvantage and which migration rules make the difference.

Migrants work and move within the EU on a broad range of migration statuses: EU migrant, transitional EU migrant, family member of an EU migrant, third-country national, family member of a third-country national, asylum seeker, refugee and so on.[31] The legal treatment of these categories can be sharply different under EU law. For instance, an EU migrant domestic worker moves and takes up work under a legal framework that reduces the vulnerabilities typically associated with the migration experience. She does not need to be sponsored by an employer, may enter a Member State as a jobseeker to explore different employment opportunities, can freely change employers, and may move into a sector with better conditions, while being entitled to the

[29] Mantouvalou V., "Workers without rights as citizens at the margins, (2013) 16(3) *Critical Review of International Social and Political Philosophy*, 366-382.
[30] Fudge J. "Making Claims for Migrant Workers: Human Rights and Citizenship" (2014) 18(1) Citizenship Studies, 29-45, 16.
[31] Anderson B, "Migrant Domestic Workers: Good Workers, Poor Slaves, New Connections" (2015) 22(4) *Social Politics*, 636-652.

same rights and protections as national workers. Migrants who are EU nationals enjoy enhanced protection against expulsion even after employment has ended, they can be accompanied by family members – who also gain rights to residence and labour market access – have certain voting rights and more straightforward paths to citizenship. In addition, EU migrant workers enjoy intra-EU mobility rights which means that they can move freely between Member States for the purpose of employment or become circular migrants and move back and forth between their country of origin and place of work.[32] This robust set of rights and protections means that an EU domestic worker is not equally legally vulnerable as some types of non-EU migrants.

Despite what has been normally assumed in the scholarship centred on severe forms of labour exploitation, not all domestic workers in Europe are third-country nationals. In some Member States, for instance Italy, Sweden and Spain, EU nationals outnumber third-country nationals in domestic work; to ensure their rights, one does not need to go as far as the prohibitions of slavery in international human rights law but could more usefully invoke EU free movement law.

But not even third-country nationals are a homogenous category. EU law treats them differently depending on whether the EU has signed an Association and Cooperation Agreement with their country of origin; crucially, the type of Agreement shapes very distinct legal statuses.[33] For instance, a Swiss or a Norwegian domestic worker – think of a young person on an au pair placement – has a legal status that is akin to that of an EU citizen and cannot be considered equally legally vulnerable as an au pair from the Philippines. Similarly, Turkish and Maghreb workers have a different set of rights under EU law – albeit not as robust as EU nationals – that place them in a different position. Because of all these complexities, an analysis of the role of migration law in creating migrant workers' disadvantage must be more nuanced and attentive to the impact of EU migration law.

The turn to international and European human rights law is also related to the misplaced debate concerning the coverage of domestic workers by protective EU labour legislation. In their search for transformative sources, European legal scholars focusing on severe exploitation have overlooked the potential of EU labour law in challenging some of domestic workers' vulnerabilities on the assumption that EU labour law does not apply to domestic workers. Similarly, those campaigning for migrant domestic workers' rights at the national level have not

[32] Marchetti's study on care workers in Italy shows that circularity is a very much preferred migration and employment pattern for eastern European women in the sector. Marchetti S., "Dreaming circularity?: Eastern European women and job-sharing in paid home care" (2013) 11 (4) *Journal of Immigrant and Refugee Studies*,347-363.

[33] For a comprehensive account see, Eisele K., "The external dimension of the EU's migration policy. Different legal positions of third-country nationals in the EU: A comparative perspective (Leiden: Brill Nijhoff, 2014).

invoked compliance with EU law rights as a strategy to boost rights and protections at work. The view that EU labour law does not apply to domestic workers has relied on the textual exclusion of domestic workers from the personal scope of the EU Directive on health and safety.[34] While few scholars have explicitly analysed the role of EU labour law as regards domestic workers, those who have analysed the issue tend to assume that the exclusion in the Health and Safety Directive automatically implies the further exclusion of domestic workers from various other pieces of EU labour law.[35] This assumption has been dominant and unchallenged until recently.

I have argued elsewhere that the analysis of domestic workers' position within the personal scope of EU labour law has been misplaced; a closer and more nuanced scrutiny reveals that most EU individual labour law sources – with the exception of the Health and Safety Directive – apply or should be interpreted as applying to domestic workers as well.[36] Crucially, these sources are applicable to all migrant domestic workers regardless of immigration law status;[37] thus, even an illegally resident domestic worker can still derive rights from EU labour law. Those working to improve the rights and entitlements of domestic workers in EU Member States should start paying more attention to the potential of EU labour law sources and the case law they generate as tools against some of the vulnerabilities national regimes create. Because EU law prevails over national law, it is important to raise awareness, both in academic debates and amongst migrant domestic workers' advocates, of the applicability of most sources of EU labour law so that they can use these sources to scrutinise national law. For instance, the Working Time Directive[38] can be used to challenge domestic workers' exemption from maximum weekly time or the non-calculation of their on-call hours,[39] the Pregnant Workers Directive to fight against dismissal in the event of pregnancy, the lack of maternity leave or the obligation to perform night work,[40] the Recast

[34] See Art. 3(a) Directive 89/391/EEC and the discussion in Mc Cann D. "New Frontiers of Regulation: Domestic Work, Working Conditions and the Holistic Assessment of Non-Standard Work Norms" 34 *Comparative Labor Law and Policy Journal*, 167-184.

[35] For analyses explicitly assuming this view see, Mc Cann D. "New Frontiers of Regulation: Domestic Work, Working Conditions and the Holistic Assessment of Non-Standard Work Norms" *34 Comparative Labor Law and Policy Journal*, 167-184; Mantouvalou V. "What is to be done for migrant domestic workers" in Ryan B. (ed.) *Labour Migration in Hard Times* (Institute of Employment Rights, 2013); Rodgers L. "*Labour Law, Vulnerability and the Regulation of Precarious Work*" (Edward Elgar, 2016). Catharina Calleman, on the other hand, has criticised this assumption which has nonetheless prevailed in Swedish debates concerning labour standards in domestic work. Calleman C. "Domestic Services in a Land of Equality: The case of Sweden" 23 *C.J.W.L*, 121-139.

[36] Pavlou V., "Domestic work in EU law: the relevance of EU employment law in challenging domestic workers' vulnerability"(2016) 41(3) *European Law Review*, 379-398.

[37] See case *Tümer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen* (C-311/13) EU:C:2014:2337.

[38] Directive 2003/88/EC.

[39] For an analysis of how EU law challenges Spanish regulation on domestic workers' on-call hours see, Pavlou V. "El potencial del derecho laboral de la UE para luchar contra la vulnerabilidad de los trabajadores domésticos. Implicaciones para el ordenamiento jurídico español" (2016) 76 *Revista de Derecho Social* 83-106.

[40] Directive 92/85/EC.

Directive may be used to address harassment at work, including complainants' victimisation[41] and the Written Statement Directive can tackle domestic workers' lack of information concerning their employment relationship.[42] Receiving information might seem trivial in challenging abuse at the workplace, yet the Written Statement Directive is an important resource for domestic workers. In a sector where informal norms and practices prevail, written information on hours of work, pay, holidays and specification of tasks is a way to introduce the language of rights in a relationship often perceived as casual. This directive is also an important tool in promoting labour standards' enforcement in a sector where labour inspection is notoriously problematic and collective organisation particularly limited.

EU law is of course not a panacea. My argument is not that there is a body of substantive EU labour law which addresses the full range of migrant domestic workers' vulnerabilities. There are issues of crucial importance that EU law does not regulate. Migrant domestic workers cannot rely on EU law to get, for instance, higher pay or to challenge a dismissal falling outside the material scope of anti-discrimination directives. Nor do I claim that domestic workers effectively enjoy all the rights and protections EU law grants them on paper. My claim is rather that EU labour law sources contain a range of important rights and protections which are applicable to migrant domestic workers as well. From this follows that, whenever there is a mismatch with the rights and protections national law offers, EU law sources can be used to challenge national law. Advocates for domestic workers' rights could usefully put more emphasis on compliance with EU labour law as a strategy to pressure for legislative and policy changes at the national level. EU labour law sources can in this way become useful tools not only for individual litigants but for all domestic workers – both migrant and national – as a group.

2.3. The UK's visa scheme on overseas domestic workers as the paradigm

European legal scholarship focusing on extreme abuse of migrant domestic workers draws significantly on the UK case;[43] this line of scholarship tends to treat the holder of the UK visa as the paradigmatic type of the vulnerable migrant domestic worker in Europe. This approach has influenced the assumptions mentioned above concerning the profile of domestic workers and the supranational legal norms applicable to them. To be sure, the UK's immigration regime on domestic workers has certain characteristics and peculiarities that make it stand out as particularly problematic; thus, the scholarly attention and critique it attracts is very much justified. However,

[41] Directive 2006/54/EC.
[42] Directive 91/533/EEC.
[43] Mantouvalou, V. "Am I free now?" Overseas Domestic Workers in Slavery, *JLS* (2015) 42(3), 329-57; Mantouvalou, V. "Servitude and forced labour in the 21st Century: the Human Rights of Domestic Workers", *IndLawJ* (2006) 35(4), 395-414; Demetriou D. "Tied Visas and Inadequate Labour Protections: a formula of abuse and exploitation of migrant domestic workers in the United Kingdom" *Anti-Trafficking Review* (2015) 5, 69-88; Mantouvalou V. What is to be done for migrant domestic workers?, in Ryan B. (ed) Labour Migration in Hard Times (Institute of Employment Rights, 2013).

the UK's scheme is not necessarily representative of how migrant domestic labour is regulated in European states, and thus, it may not be suitable in giving an accurate and full account of the role of law in creating vulnerability. Besides, the discourses on migrant domestic labour as a form of modern slavery have special resonance in the UK because of the visa's trajectory.

From the mid-1970s migrants were allowed to enter the UK as domestic staff accompanying wealthy foreign employers, normally investors, businessmen and diplomats. Formally, they had no residence permit and no right to work in the country; their entry was allowed as a concession so as to facilitate foreign investors and other wealthy expats who wished to bring their domestic staff to the UK. In absence of an independent legal status, migrant domestic workers were fully dependent on their employers for both work and residence and they were considered illegally resident in case they escaped an abusive employer.[44]

Abuse was indeed widespread at the time and thousands of migrant domestic workers were trapped in a situation of illegality. This situation prompted domestic workers to form an advocacy group, Kalayaan, and start a long process of mobilisation which lasted for about two decades.[45] Their main claim was the introduction of a special visa for domestic workers that would allow them to change employers. As Bridget Anderson explains, such visa diverged from general labour immigration rules which normally do not permit change of employers; thus, migrant domestic workers' claimed to be treated as British workers.[46] To achieve this, Kalayaan argued that domestic work's specificities, i.e. isolation in the household and intimate relationship with the employer, justified a special treatment under immigration law.[47]

That campaigning was successful and the overseas domestic workers visa was finally introduced in the late 1990s. While far from perfect – there was no independent entry right because domestic workers still had to accompany a foreign employer – the visa guaranteed important rights: it was renewable, it granted an independent residence permit, the crucial right to change employers, labour rights, family reunification rights and a path to permanent settlement.

In 2012, in line with the UK's broader policy of restricting entry to all but the most highly-skilled third-country nationals, the visa came under attack and its terms were substantially amended. Under the new rules, migrant domestic workers are granted a six-month non-renewable visa, have no right to change employers, no path to permanent residence and no family reunification rights.

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[44]Lalani M, "Ending the abuse: Policies that work to protect migrant domestic workers" (London: Kalayaan, 2011).
[45] Anderson B, "Mobilising Migrants, Making Citizens: Migrant Domestic Workers as Political Agents" (2010) 33(1) *Journal of Ethnic and Racial Studies*, 60-74.
[46] Anderson B, "Migrant Domestic Workers: Good Workers, Poor Slaves, New Connections" (2015) 22(4) *Social Politics*, 636-652.
[47]Anderson B, "Migrant Domestic Workers: Good Workers, Poor Slaves, New Connections" (2015) 22(4) *Social Politics*, 636-652.

This time, however, due to the prevailing anti-immigration climate, it was much more difficult to claim that migrant domestic workers should be treated as British workers. Thus advocates, in search of an effective vocabulary to fight against the immigration changes, turned to anti-slavery arguments hoping that these would have more public resonance.

The current UK regime on migrant domestic labour is an excellent example of a problematic temporary migration arrangement that sets the background conditions for abuse and exploitation to take place. For those European scholars analysing the exploitation of migrant domestic workers with the UK model in mind, it made sense to make the link with modern slavery. However, because it only regulates the entry of third-country nationals accompanying wealthy foreign employers and because of its very restrictive conditions, the UK visa depicts the migrant domestic worker in a very specific way. Thus analyses focusing exclusively on the UK tend to imagine migrant domestic workers mainly as a unified category of third-country nationals, often without a legal right to stay, brought to Europe by non-European employers. This framing has contributed in directing scholars to international and European human rights law sources as being, presumably, the only available and applicable resource to challenge migrant domestic workers' vulnerability to exploitation and abuse.

3. The limits of the modern slavery and trafficking frameworks

After having examined the reasons that the European legal debate on migrant domestic workers has been almost exclusively centred on extreme abuse, I turn to examine what could be the limits and risks of this approach.

3.1. Focuses on the extreme, trivialises the daily

Siobhán Mullally rightly observes that "as in other areas of international law, it is primarily the moments of crisis – incidents of human trafficking, slavery, or forced labour – that have captured the attention of human rights law".[48] Yet, by focusing on the most extreme forms of abuse, we run the risk of failing to pay sufficient attention to, equally important and much more widespread, daily instances of vulnerability. With daily instances of vulnerability I refer to practices that may not amount to forced labour but still constitute important dimensions of domestic workers' labour exploitation. These are, for instance, low wages, unlawful wage deductions, unfair dismissals, lack of protection against pregnancy-related discrimination, long and unregulated working hours, lack of information as regards working conditions, as well as vulnerabilities related to migration status.

[48] Mullally, "Migration, gender and the limits of rights" in *Human Rights and Immigration,* 2014, above, page 169.

The cases that reached ECtHR illustrate the high threshold of abuse that must be met for Art.4 to be triggered. Clearly, not just any denial of freedom will fall under the definition of servitude; rather, denial of freedom must be of a "particularly serious form" coupled with coercion. In *Siliadin* the Court looked into a series of factors to determine whether the applicant was a victim of servitude: the fact that she was minor, that she was illegally resident in France, that she had no freedom of movement, no passport and practically no one to turn to for support. Siliadin's age was a decisive factor in the Court's assessment.[49] Similarly, to determine whether her treatment amounted to forced labour, the Court examined whether work was exacted from her under threat of a penalty and whether she did not offer herself voluntarily. In Siliadin's case both criteria were met precisely because she was a minor and as the Court notes, she was given "no other choice". Yet, her lack of choice was due to her very specific circumstances of age, residence illegality and isolation. These criteria will not be met by the vast majority of migrant domestic workers in Europe who are adult women, often with previous studies and work experience, migrating out of the need to work and sustain themselves and their families back home and normally hold a legal migration status. Arguably, they too have no other choice; yet, this is not the lack of choice Art.4 ECHR is concerned with.

By setting a high threshold of abuse, servitude and forced labour encompass a narrow understanding of vulnerability as treatment that is egregious and exceptionally bad. Such conceptualisation of vulnerability risks normalising and trivialising day-to-day forms of abuse and exploitation that do not reach this high threshold but are part of migrant domestic workers' lived experience. When juxtaposed to the plight of migrant workers – such as C.N. or Siliadin – who were minors, deceived, were not allowed to leave the household, had their passports confiscated, slept on floors and received no payment in exchange for their arduous work, abuse that is not as extreme looks less like abuse. In a context where migrants' labour exploitation is equated to slavery-like conditions, expanding rights at work becomes less urgent. Claiming, for instance, that there should be limits and adequate compensation for domestic workers' on-call hours, seems less important than saving them from "modern slavery". But what does saving migrants from modern slavery entail?

3.2. Favouring criminal law and restrictive migration policies on the expense of other strategies

When labour exploitation is characterised as servitude or trafficking, this framing inevitably calls for a criminal law approach to address the problem.[50] According to the ECHR's jurisprudence on Article 4, states' positive obligations entail enacting and effectively enforcing criminal laws

[49] *Siliadin*, para 129.
[50] Fudge J. *"Modern Slavery and Migrant Domestic Workers: The Politics of Legal Characterisation"* (The Foundation for Law, Justice and Society, 2016).

against slavery, servitude, forced labour and trafficking; states were condemned precisely because their criminal law frameworks were deemed inadequate. Thus, the Strasburg Court, prescribes a criminal law approach to migrant workers' exploitation but without going beyond that. Arguably, an effective criminal law machinery may deter employers from engaging in highly abusive practices. Yet, a criminal law approach to labour exploitation has significant limitations. First, only the egregiously bad treatment falling within the legal definitions of slavery, servitude, forced labour and trafficking will be addressed. Second, criminal laws have strict rules regarding proof and liability which restrict even further the opportunities to engage them. Third, even if the employer's liability is established, a criminal law approach will only be concerned with punishing the perpetrator, while the only remedy available to the migrant worker would be compensation for the harm suffered; thus, the expansion of criminal law provisions does little in terms of ensuring migrants' rights at work.[51]

European legal scholars had high hopes that the ECtHR's jurisprudence on migrants' labour would be transformative, "raise awareness, inspire action and lead to systemic reform".[52] While this is of course a desirable outcome, the way governments have made use of these judgements has been proved unsatisfactory and at times, highly problematic. The case of the UK tells a cautionary story. The UK government coupled the enactment of criminal laws against slavery with the removal of migrant domestic workers' essential rights and protections through the visa reform. Tellingly, the government justified the restrictive turn partly on the need to "protect" domestic workers from abuse. In the words of Theresa May who was the Home Secretary in 2012 when the visa regime was overhauled:

> "We recognise that the overseas domestic worker visa can at times result in the import of abusive employer/employee relationships to the UK. It is important that those who use these routes to bring their staff here understand what is and what is not acceptable. […] *But the biggest protection for these workers will be delivered by limiting access to the UK through these routes*. We are restoring them to their original purpose to allow visitors and diplomats to be accompanied by their domestic staff – not to provide permanent access to the UK for unskilled workers."[53] (emphasis added)

Through this paternalistic response to vulnerability, the state manipulated legitimate claims by migrant women to be free from abuse so as to restrict their access to a legal migration status.[54]

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[51] Fudge J. and Strauss K., Migrants, Unfree Labour and the Legal Construction of Domestic Servitude: Migrant Domestic Workers in the UK in Costello C. and Freedland M. (eds.) Migrants at Work: Immigration and Vulnerability in Labour Law (Oxford: OUP, 2014).

[52] Mantouvalou, V. "Workers without rights as citizens at the margins" 2013, above; Mantouvalou, V. "Modern Slavery: the UK response" 2010, above.

[53] Theresa May, Written Statement to the Parliament: Immigration (employment-related settlement, overseas domestic workers, tier 5 of the points-based system and visitors), 29 February 2012, at https://www.gov.uk/government/speeches/immigration-employment-related-settlement-overseas-domestic-workers-tier-5-of-the-points-based-system-and-visitors-wms (1 March 2017).

[54] See also, Mullally, "Migration, gender and the limits of rights" in *Human Rights and Immigration* (2014), 145-177, above.

Restricting migration policies with the pretext of protecting migrant domestic workers from abuse was coupled with the UK's refusal in 2011 to vote in favour of the ILO Convention 189 on decent work for domestic workers; the UK was one of the very few states to abstain in the vote. On another development, in 2012 the UK the Employment Appeal Tribunal and the Court of Appeal developed a very problematic line of jurisprudence that effectively restricts domestic workers' entitlement to the minimum wage when they live in the employer's household and are treated "as a member of the family".[55] These rulings – based on an ambiguously wide exemption in Regulation 2(2) of the UK's National Minimum Wage Act – are deemed to impact third-country national domestic workers because they are the ones most likely to live-in.[56] States can be very conveniently at the forefront of the fight against slavery and trafficking while at the same time make policy and legal regime choices that create the backdrop for migrant workers' abuse and exploitation to take place.

What broader lessons can we draw from the way migrant domestic workers' exploitation has been framed and addressed in the UK? Inevitably, framing migrant workers' exploitation exclusively as a problem of modern slavery and trafficking leads to criminal law responses which may have undesirable outcomes. Labour law, instead of criminal law, ought to be the main legal tool when looking for solutions against labour exploitation. Defending the applicability of the full range of labour law rights and protections to all domestic workers is a crucial – even though certainly not sufficient – condition in migrant making domestic workers less vulnerable to exploitation at work. In this context, it is important for European legal scholarship concerned with this issue to reveal and challenge the premises for domestic workers' historical exclusion from pieces of national labour law legislation, as well as to examine strategies that make labour rights meaningful and enforceable for domestic workers regardless of their status under migration law.

3.3. Stereotypes and ineffectiveness in challenging the role of the state

The modern slavery discourse tends to depict migrant domestic workers as poor slaves in the hands of abusive, foreign employers. Migrants' labour exploitation is framed not as a structural problem of how immigration and labour law regimes work in synergy to produce vulnerability, but as an imported problem of foreign, uncivilised villains abusing their domestic staff. The facts of the cases that reached Strasbourg are illustrative of this framing; with the exception of Rantsev, all other applicants were brought to Europe by powerful, well-off individuals coming from African countries. It is difficult to avoid such stereotypical depictions when applying a modern slavery frame to migrant domestic workers. For instance when arguing that the UK's domestic

[55] Jose v Julio [2012] ICR 487 UKEAT; Nambalat v Taher and Tayeb [2012] EWCA Civ 1249.
[56] Anderson B, "Who needs them? Care Work, Migration and Public Policy" (2012) *Cuadernos de Relaciones Laborales*, 45-61.

worker visa should be classified as a "visa of enslavement", Virginia Mantouvalou inevitably underlines that the majority of holders of that visa come from Arab countries in the Middle East, especially Qatar, where, as she argues, the abuse of domestic workers is institutionalised due to the *kafala* system applied in those countries.[57] These narratives, while certainly well-intended, are not helpful as they tend to activate a double stereotype as regards migrants' labour exploitation: that abuse happens in the hands of 'uncivilised' others and that exploitative labour relationships are just imported in the European host state. In turn, such stereotype is easily manipulated to neutralise the role of the state – i.e. of the European host state – in contributing to the creation of those background conditions that make migrants' labour exploitation possible.

The roots of migrant domestic workers' labour exploitation are various, complex and often attributed to intersections of race, gender and class disadvantage.[58] Martha Nussbaum writes that there is a certain "social stigma" associated with paid domestic work as an occupation predominantly carried out by poor and racialized women.[59] This social stigma is also linked to domestic work's legacy of slavery and colonialism.[60] In addition, the location of the work – the private household – is a crucially important factor contributing to domestic workers' vulnerability. This is because of the ideologically constructed binary between the public sphere of work and the private sphere of the home; historically, this binary has been the premise of conceptualising work within the household as unproductive as opposed to productive, market work. Work within the household, considered as part of women's innate duties, has been carried out by women on an unpaid basis throughout the centuries. This has contributed to domestic work's social devaluation and those who perform it – women.

Yet law – in particular immigration and labour law – not only reflects ideological biases around paid domestic work, but has an important role in constructing and sustaining different aspects of migrant domestic workers' vulnerability. Immigration law may impose restrictions to migrant workers' freedom – for instance to change employers or sector – while labour law may exclude or partially include domestic workers in the personal scope or rights and protections at work. Immigration and labour law regimes thus work in synergy to produce vulnerability. To say that law has a constitutive role is not to deny the social and economic drivers of labour exploitation;

[57] Mantouvalou V. "Am I free now? Overseas Domestic Workers in Slavery", (2015) *JLS* 42(3), 329-57.
[58] Browne I. and Misra J. "The intersection of Gender and Race in the Labor Market" (2003) *Annual Review of Sociology* 29, 4817-513; Anderson B., *Doing the dirty work? The Global Politics of Domestic Labour* (London: Zed, 2000).
[59] Nussbaum M., *Sex and Social Justice* (New York/Oxford: OUP, 1999); Nussbaum M., "Whether from reason or prejudice: taking money for bodily services" Vol 27 (52) *The Journal of Legal Studies* 1998, 693-724.
[60] ILO Decent Work for Domestic Workers Report no IV(1) at the International Labour Conference 99th session (Geneva: ILO, 2009).

it is rather a call for nuanced accounts of how law combines with those drivers to create conditions conducive to exploitation.[61]

The role of the state lies in the enactment, interpretation and enforcement of laws that both reflect and produce disadvantage. Yet the discourses on slavery, forced labour and trafficking are not effective in challenging the state's role in this respect. The Strasbourg jurisprudence on Article 4, while acknowledging that there is a link between migration regimes and vulnerability, falls short of envisaging the kind of positive obligations that could address the vulnerability of domestic workers holistically; it fails to articulate positive obligations with the potential to be truly transformative.

The case of Cyprus illustrates my claim. When the *Rantsev* case was brought to Strasbourg, the complicity of the Cypriot state in the sexual exploitation of migrant women became widely known. The facts of the case made clear that the visa conditions, set by the state itself, facilitated trafficking and exploitation. The features of the artiste regime the European Human Rights Court found most problematic were that the visa tied the migrant to the cabaret owner/employer who had to lodge a bank guarantee to cover any potential costs related to the migrant's stay and to inform the authorities in case the migrant left the place of work; the bank guarantee was often used as a tool of coercion and control.[62] The ECtHR's adverse finding against the Cypriot authorities created an international pressure that could not be easily ignored. It was partly due to this pressure that Cyprus was obliged to gradually abolish the artiste visa regime.[63] In this case, litigation at the ECtHR had a positive impact that went beyond providing relief to an individual victim,[64] to create overarching results for vulnerable female migrants as a group.

But while this problematic immigration path was closed down, the Strasbourg Court does not establish a state obligation to guarantee any safe alternatives and there is no comprehensive scrutiny of the state's immigration regime. Importantly, the visa regime on migrant domestic workers, which shares striking similarities to the abolished artiste visa, remains firmly in place

[61] Providing detailed accounts of the role of law in producing labour exploitation is beyond the scope of this paper. For illuminating analyses of this theme, see, Anderson B., Migration, immigration controls and the fashioning of precarious workers (2010) 24(2) *Work, Employment and Society*, 300-317; Fudge J. Precarious migrant status and precarious employment: the paradox of international rights for migrant workers, (2012) 34(1) *Comparative Labour Law and Policy Journal*, 95-131.

[62] *Rantsev v Cyprus and Russia*, para 292.

[63] I would suggest that there were also various internal factors that contributed to the abolition of the visa. For instance, the work of the Cypriot Ombudsman gave visibility to the problem, campaigning by local NGOs and the change to a somewhat more gender equality-committed government in 2008. The accession of Cyprus to the EU in 2004 was also a contributing factor. On the one hand, the process of accession gave the impetus for legal and policy changes in various fields. On the other hand, the simultaneous accession of eight Central and Eastern European states as well as of Bulgaria and Romania in 2007 and the liberalisation of migration rules meant that demands for migrant women in the sex industry could be partly covered by intra-EU migration.

[64] Of course, in the *Rantsev* case, the relief was not granted to the actual victim of the violations but to her father.

and unchallenged. The three elements the Court found problematic as regards artiste visas – tied status, bank guarantee and employer's obligation to inform the authorities – form also part of the Cypriot visa regime on TCN domestic workers.[65] For the ECtHR to intervene there is a need for an identified, individual victim to first exhaust all domestic remedies before filing a claim to Strasbourg. In other words, it seems that we would need another victim like Oxana Rantseva but this time on a domestic worker visa for the ECtHR to pressure the Cypriot state to abolish or reform its visa regime.

Thus, even if the Strasbourg Court has made some steps towards acknowledging the nexus between immigration and vulnerability, the approach it contemplates is not effective in remedying migrant domestic workers' vulnerability in a holistic and most importantly, preventive way. A truly transformative positive obligation would be, for instance, requiring states to establish independent migration routes that allow migrant domestic workers to enter the national labour market under conditions of freedom and equality to national workers, while having paths of acquiring permanent residence and eventually, full citizenship.

That is why it crucial to bring the state back to the centre of our analysis. The role of national immigration and labour law regimes – and crucially, their intersection – in creating and sustaining migrant domestic workers' vulnerability to exploitation deserves deeper analysis. This analysis is best done through a comparative approach, i.e. examining how national legal regimes regulate migrant domestic labour in different European states. A comparative lens, instead of single-state studies, can shed new light on the role of law. Because domestic work is a less protected type of work, single-state analyses will normally conclude that national law disadvantages domestic workers *vis à vis other* workers. While this finding is of course important, it is not attentive to the fact that law may create different degrees of vulnerability. Thus, a comparative analysis offers a more nuanced picture. Comparing and contrasting the regulation of domestic labour in various countries sheds light to the very different ways in which law structures and, in certain instances, may contribute in reducing vulnerability. A comparative lens makes evident that, while there are problematic aspects in all regimes, some regimes are less problematic than others. This kind of analysis opens up possibilities to challenge restrictiveness; as the different degrees of vulnerability are revealed, the more progressive aspects of one national regime can become a tool in pursuing legal and policy change in another national context.

[65] Pavlou V., Migrant domestic workers, vulnerability and the law: immigration and employment laws in Cyprus and Spain, (2016) 7(1) *Investigaciones Feministas*, 149-168.

4. Conclusions

In this article I set out to examine the limitations and risks of framing migrant domestic workers' vulnerability to exploitation in Europe as mainly a problem of modern slavery, forced labour and trafficking. Such framings tend to obscure and make less likely other, potentially more deeply transformative, approaches to migrants' labour exploitation. While slavery-like conditions at work, as well as trafficking, are certainly part of migrant domestic workers' lived experience in Europe, they are only a small part of the story. That is why we need alternative framings to analyse vulnerability to exploitation and claim legal change that goes beyond remedying egregious human rights abuses. Starting from the premise that the state, through its laws and policies, has an important role in shaping migrant domestic workers' vulnerability to exploitation, I have argued that the state must be in the centre of our analyses. I have thus advocated that future analysis of migrant domestic workers' vulnerability in Europe should focus more on how national labour and migration law regimes regulate migrant domestic workers, as well as, on the role of EU law in both constructing and, alternatively, challenging aspects of these regimes. There is no contradiction in saying that the law creates vulnerability and then turning to the law as a tool to remedy vulnerability; the key is in identifying, or designing, those legal tools with the potential to challenge vulnerability and conduce to transformative change. We are, I believe, likely to find such transformative legal tools if we look in EU law and in national legal regimes in a comparative perspective.