IN THE SUPREME COURT OF THE UNITED KINGDOM **UKSC/2020/0155**

ON APPEAL FROM THE EMPLOYMENT APPEAL TRIBUNAL (UKEAT/0223/19/BA)

BETWEEN:

MS. JOSEPHINE WONG

Appellant

- and-

MR. KHALID BASFAR

Respondent

-and-

KALAYAAN

First Intervener

-and-

UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN

Second Intervener

WRITTEN SUBMISSIONS ON BEHALF OF THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, SIOBHÁN MULLALLY

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1. The United Nations Special Rapporteur on trafficking in persons, especially women and children, (the Special Rapporteur), established pursuant to Human Rights Council resolution 44/4,[1] is grateful to the Supreme Court for the opportunity to submit this written intervention and for permission to do so "without prejudice" to the central question before the Court.

2. The submission is provided by the Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as, a waiver, express or implied, of any privileges or immunities which the United Nations, its officials or experts on mission, pursuant to 1946 *Convention on the Privileges and Immunities of the United Nations*. Authorisation for the positions and views expressed by the Special Rapporteurs, in full accordance with their independence, was neither sought nor given by the United

[1] The Special Rapporteur on trafficking in persons, especially women and children, reports annually to the United Nations Human Rights Council and to the United Nations General Assembly.

Nations, including the Human Rights Council or the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

3. This case raises important legal questions concerning the scope of diplomatic immunity in international law, the relationship between international law on diplomatic immunity and international human rights law, and the State's international legal obligations concerning human trafficking and the protection of the human rights of victims of trafficking. The appeal before the Supreme Court offers the opportunity to address complex legal questions on the inter-relationship of these distinct bodies of international law, taking into account the significant recent developments in international and national law relating to trafficking in persons, in addition to domestic servitude and other forms of modern slavery, and specifically what are described by Lady Hale in *Reyes v Al-Malki* as "*desirable developments in this area of law*".[2]

4. As Lord Hoffmann said in *R v Lyons* at para. §27:

> *"…Of course there is a strong presumption in favour of interpreting English law (whether common law or statute) in a way which does not place the United Kingdom in breach of an international obligation…"*[3]

5. The Human Rights Act 1998, Section 3(1) provides:

> *"…So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights…"*

It is submitted that the Human Rights Act section 3(1) provides a binding interpretative provision to assist consideration of the relevant law under the Diplomatic Privileges Act 1964, enacting the Vienna Convention on Diplomatic Relations 1961 ("VCDR"), and in particular the question of whether trafficking and subjecting a person to domestic servitude in the UK may constitute a diplomat's "*commercial activity*" under Article 31(1) (c) VCDR.

6. Furthermore, Section 2 of the Human Rights Act, 1998 provides:

> *"…A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—*

[2] UK Supreme Court, *Reyes v. Al-Malki*, [2019] AC 735 para.§69.
[3] UK House of Lords, *Regina v. Lyons*, [2002] UKHL 44, 14 November 2002, para. §27.

(a) *judgment, decision, declaration or advisory opinion of the European Court of Human Rights…*"

7. It is essential, therefore, that any contested interpretations of domestic law are resolved so as to ensure compliance with the United Kingdom's obligations under national and international law and the State's obligations under the European Convention on Human Rights (ECHR). The prohibition of trafficking in human beings is linked to and incorporated within the international law prohibition of slavery, servitude and forced or compulsory labour. It is noteworthy, and of relevance to this case, that the prohibition of slavery is a peremptory norm of international law,[4] meaning that it is a *jus cogens* norm from which no derogation is permitted.[5]

8. The prohibition of forced labour and servitude is included in the Fundamental Conventions of the International Labour Organization (ILO), in particular the *Forced Labour Convention*, 1930 (No. 29),[6] ratified by the United Kingdom on 3 June 1931; the *Protocol of 2014 to the Forced Labour Convention* (P029),[7] ratified by the United Kingdom on 22 January 2016; and the *Abolition of Forced Labour Convention*, 1957 (C105),[8] ratified on 30 December 1957. The prohibition of slavery, servitude and forced labour is also enshrined in international human rights treaties, ratified by the United Kingdom, including: *International Covenant on Civil and Political Rights* (ICCPR) (Article 8),[9] *International Covenant on Economic Social and Cultural Rights* (ICESCR) (Article 7),[10] *Convention against Torture* (CAT) (Article 3),[11] *Convention on the Elimination of Racial Discrimination* (CERD) (Article 5),[12] and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) (Article 6).[13]

9. The Preamble to the *2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against*

[4] Report of the International Law Commission on the work of its fifty-third session (23 April - 1 June and 2 July–10 August 2001) UN Doc. A/56/10, p. 85.
[5] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), 1155 U.N.T.S. 331 (entered into force 27 January 1980), Article 53.
[6] International Labour Organization (ILO), C029 - *Forced Labour Convention* (Geneva, 28 Jun 1930) (entered into force 1 May 1932).
[7] ILO, P029 - *Protocol of 2014 to the Forced Labour Convention*, 1930 (Geneva, 11 June 2014) (entered into force 9 November 2016).
[8] ILO, C105 - *Abolition of Forced Labour Convention* (Geneva, 25 June 1957) (entered into force 17 January 1959).
[9] *International Covenant on Civil and Political Rights* (hereinafter "ICCPR") (New York, 19 December 1966) 999 U.N.T.S. 171 (entered into force 23 March 1976), Article 8.
[10] *International Covenant on Economic Social and Cultural Rights* (hereinafter "ICESCR") (New York, 19 December 1966) 999 U.N.T.S. 3 (entered into force 23 March 1976), Article 7.
[11] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter "CAT") (New York, 10 December 1984) 1465 U.N.T.S. 85 (entered into force 26 June 1987), Article 3.
[12] *Convention on the Elimination of All Forms of Racial Discrimination* (hereinafter "CERD") (New York, 21 December 1965.) 660 U.N.T.S. 195 (entered into force 4 January 1969), Article 5.
[13] *Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW") (New York, 18 December 1979) 1249 U.N.T.S. 13 (entered into force 3 September 1981), Article 6.

Transnational Organized Crime ("the Palermo Protocol"), ratified by the United Kingdom on 9 February 2006, states that:

> *"… effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their* ***internationally recognized human rights****…"*[14] (emphasis added)

10. Of particular relevance to this case are the positive obligations on the State, arising from Article 4 of the European Convention on Human Rights ("ECHR"), case-law developments under the ECHR, and the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), ratified by the United Kingdom on 1 April 2009. In addressing the scope and status of Article 4 ECHR, the European Court of Human Rights ("the Court") in *Siliadin v. France* emphasised at para.§112:

> *"…The Court reiterates that Article 4 enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 4 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation…"*[15]

In *Siliadin v. France*, the Court again highlighted the "high standard" required to meet States' obligations under the ECHR, noting at para. §121:

> *"…Sight should not be lost of the Convention's special features or of the fact that it is a living instrument which must be interpreted in the light of present-day conditions, and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies…"*[16]

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[14] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (Palermo, 15 November 2000) (entered into force 25 December 2003) (hereinafter "Palermo Protocol"), Preamble.
[15] European Court of Human Rights (hereinafter in footnotes "ECtHR"), *Siliadin v. France* (Application No. 73316/01) judgment of 26 October 2005, para. 112.
[16] *Ibid*, para. 121.

11. In *Rantsev v. Cyprus and Russia*, the Court affirmed the status of the prohibition of trafficking in human beings within the *ordre publique* of the ECHR. In an oft-cited statement, the Court concluded that the prohibition of trafficking falls within the non-derogable norm stated in Article 4 ECHR:

> *"…There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes "slavery", "servitude" or "forced and compulsory labour". Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention…"*[17]

12. The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) expands on the international legal obligations on States Parties to combat trafficking.[18] The ECAT Explanatory Report states:

> *"…Trafficking in human beings, with the entrapment of its victims, is the modern form of the old worldwide slave trade. […] Most identified victims of trafficking are women but men also are sometimes victims of trafficking in human beings. Furthermore, many of the victims are young, sometimes children. All are desperate to make a meagre living, only to have their lives ruined by exploitation and rapacity…"* [19]

13. Of relevance also are developments in international criminal law, where contemporary forms of slavery have been recognised as within the scope of the crime of 'enslavement'. In the case of *Prosecutor v. Kunarac, Vukovic and Kovac*, the International Criminal Tribunal for the Former Yugoslavia ("ICTY") observed at para. §117:

> *"… the traditional concept of slavery, as defined in the 1926 Slavery Convention and often referred to as 'chattel slavery' has evolved to encompass various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership […] there is some destruction of the*

[17] ECtHR, *Rantsev v. Cyprus and Russia* (Application No. 25965/04) judgment of 7 January 2010, para. §282.
[18] *Council of Europe Convention on Action Against Trafficking in Human Beings* (Warsaw, 5 May 2005), C.E.T.S. No. 197 (entered into force 1 February 2008) (hereinafter "ECAT").
[19] *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human* Beings (Warsaw, 16 May 2005) (hereinafter "ECAT Explanatory Report"), para. §3.

juridical personality; the destruction is greater in the case of 'chattel slavery' but the difference is one of degree ..."[20]

Expanding on the scope and character of the crime of enslavement, the Tribunal concluded at para. §119:

"...the question whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement [including] the 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour'. Consequently, it is not possible exhaustively to enumerate all of the contemporary forms of slavery which are comprehended in the expansion of the original idea ..."[21]

14. The Statute of the International Criminal Court ("the Rome Statute"), provides that "enslavement" under Article 7(1)(c):

"...means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children..."[22]

15. The *jus cogens* nature of the prohibition of slavery was emphasised by the Inter-American Court of Human Rights in its judgment *Hacienda Brasil Verde Workers v. Brazil* at paras. §§342-343,[23] concerning trafficking in human beings. This is an important consideration bearing in mind that the Preamble to the VCCR affirms that *"the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention".*

16. In its General Recommendation no.38 on trafficking in women and girls in the context of global migration,[24] the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) states at para. §15:

[20] International Criminal Tribunal for the former Yugoslavia (hereinafter "ICTY"), *Prosecutor v. Kunarac* (Case No. IT-96-23 and IT-96-23/1-A) judgement of 12 June 2002, para. §117.
[21] *Ibid*, para. §119.
[22] *Rome Statute of the International Criminal Court* (Rome, 17 July 1998), 2187 U.N.T.S. 90 (entered into force 1 July 2002), Article 7 (2) (c)
[23] Inter-American Court of Human Rights (hereinafter "IACtHR"), *Hacienda Brasil Verde Workers v. Brazil* (Series C No. 318) judgement of 20 October 2016, paras. 342-343, referred to in detail later.
[24] Committee on the Elimination of Discrimination against Women (hereinafter "CEDAW Committee"), '*General recommendation No. 38 on trafficking in women and girls in the context of global migration'* (20 November 2020), UN Doc. CEDAW/C/GC/38.

"…Obligations flowing to non-State actors to respect the prohibition of trafficking also arise from the peremptory norm (jus cogens) prohibiting slavery, the slave trade and torture, noting that in certain cases trafficking in women and girls may amount to such rights violations…"

Trafficking in Persons as a commercial activity and the scope of Diplomatic Immunity

17. A specific legal issue before the Court in this case is whether the employment and trafficking of a domestic servant is a commercial activity under Article 31(1)(c) of the Vienna Convention on Diplomatic Relations 1961[25] as enacted into domestic law by section 2(1) of the Diplomatic Privileges Act 1964. It is submitted that trafficking in persons for the purpose of labour exploitation, including domestic servitude, is a commercial activity coming within the scope of the exception provided to diplomatic immunity by Article 31(1) (c) of the Vienna Convention on Diplomatic Relations 1961, in accordance with the binding interpretative obligations under the Human Rights Act 1998.

18. The ECAT Explanatory Report sets out the nature of the commercial activity of trafficking in human beings at para. §5:

"…A worldwide phenomenon, trafficking in human beings can be national or transnational. Often linked to organised crime, for which it now represents one of the most lucrative activities, trafficking has to be fought in Europe just as vigorously as drug and money laundering. Indeed, according to certain estimations, trafficking in human beings is the third largest illicit money-making venture in the world after trafficking of weapons and drugs..."[26]

19. The commodification of human beings and the commercial activities underpinning trafficking in persons are described by the European Court of Human Rights in the case of *Rantsev v. Cyprus and Russia* at para. §281*:*

"…The Court considers that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere ..."[27]

[25] Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961), 500 U.N.T.S. 95 (entered into force 24 April 1964), Article 31 (1)(c).
[26] ECAT Explanatory Report, para §5.
[27] *Rantsev v. Cyprus and Russia* , para. §281.

20. The Report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, specifically addresses the impact of slavery and servitude on marginalized migrant women workers in the global domestic economy:

> *"…Despite its prohibition as a universally applicable international customary law norm enforceable by States against one another and from which no derogation is permissible even in situations of emergency, slavery continues to exist as one of the most egregious human rights violations in the global economy. The definition of slavery elaborated in the Slavery Convention of 1926, as supplemented by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised", remains applicable today. However, the legal right to ownership has been replaced by many different forms of coercion and control…"* [28]

21. A joint Communication to the United Kingdom on May 27 2021, from the Special Rapporteur on Trafficking in Persons, especially women and children, the Special Rapporteur on contemporary forms of slavery, including its causes and Consequences and the Special Rapporteur on the human rights of migrants, specifically highlights the risks of exploitation including human trafficking faced by migrant ('overseas') domestic workers.[29] As the Communication notes, concerns and calls for legal reform have been raised repeatedly by the UN Committee against Torture,[30] the UN Committee on Economic, Social and Cultural Rights,[31] the Council of Europe Group of Experts on Action against Trafficking in Human Beings,[32] and numerous civil society organizations and trade unions. These concerns highlight the increased risks of exploitation faced by migrant ('overseas') domestic workers following the changes made to the Overseas Domestic Workers visa in 2012 for both visa categories, that is, migrant domestic workers in private households and in diplomatic households.

22. Globally, the International Labour Organisation (ILO) estimates that there are 11.5 million migrant domestic workers around the world, approximately 8.5 millions of whom are female (73.4%).[33] The

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[28] UN General Assembly, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences* (27 July 2018), UN Doc. A/HRC/39/52, para. §12.
[29] Joint Communication of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children, (27 May 2021), AL GBR 6/2021, available at:
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26423.
[30] CAT/C/GBR/CO/6, para. §60.
[31] E/C.12/GBR/CO/6, para. §35.
[32] Group of Experts on Action Against Trafficking in Human Beings (hereinafter "GRETA"), "*Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: Second Evaluation Round*" (Strasbourg, GRETA, 2016), para. 106.
[33] ILO, "*Global estimates on Migrant Workers: results and methodology*" (2015), pp.6-7.

ILO has repeatedly stated that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and has highlighted the significant contribution of domestic workers to the global economy.[34]

23. Trafficking for the purpose of labour exploitation, including in the context of domestic work, is recognised as generating significant profits to employers. The ILO, in its comprehensive study, *Profits and Poverty: The Economics of Forced Labour* (2014) states:

> *"…It is estimated that nearly US$8 billion are literally stolen annually from the 3.4 million domestic workers in forced labour worldwide […] domestic services create an economic value added, and therefore the savings made by the employer on expenditures count as profits…"*[35]

24. The ILO estimates, published in its 2014 Report, indicate that illicit proceeds obtained from the use of forced labour amount to USD 51.2 billion per year, of which USD 7.9 billion is from domestic work.[36] The 2018 Financial Action Task Force Report states:

> "…*In addition to its enormous human cost, human trafficking is estimated to be one of the most profitable proceeds generating crime in the world, with the International Labour Organisation estimating that forced labour generates USD 150.2 billion per year. While in the past, many aspects of the crime went 'unseen', there is now an increased understanding of the breadth and gravity of human trafficking, particularly with respect to domestic human trafficking and human trafficking for labour exploitation. Human trafficking is also one of the fastest growing forms of international crime…*"[37]

As the Report also notes:

> "…*trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers*…"[38]

[34] ILO, C189 – *Domestic Workers Convention*, 2011 (Geneva, 16 June 2011) (entered into force 5 September 2013), Preamble.
[35] ILO, "*Profits and Poverty: The Economics of Forced Labour*" (2014), p. 25.
[36] Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), "*Financial Flows from Human Trafficking*" (2018), p. 14.
[37] *Ibid*, p.3
[38] *Ibid*, p.6

As such, trafficking for the purpose of domestic servitude is a significant commercial activity, generating considerable personal profit. It is also a serious violation of international human rights law and a serious criminal offence.

25. It is important to recognise that the nature of commercial activity evolves, as was highlighted by the International Court of Justice (ICJ) in the case *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)*.[39] There, the ICJ held that the word "commerce", is "*a generic term, referring to a class of activity*" and that:

> *"…the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning…"*

The ICJ concluded, at para. §70, that the term "*con objetos de comercio*" ("for the purposes of commerce"):

> *"…must be understood to have the meaning they bear on each occasion on which the Treaty is to be applied, and not necessarily their original meaning…"*[40]

26. It is important that the ordinary meaning of Article 31(3) (c) is interpreted in the light of the development of international law, including as Lord Wilson noted in *Reyes v. Al-Malki,* the emergence of an international prohibition against trafficking.[41] As Lord Wilson also highlighted at para. §59:

> *"…Perceived immunity makes trafficking with a view to domestic servitude a low risk, high reward activity for diplomats…"*[42]

27. Lord Wilson, citing the ECAT Explanatory Report, and drawing on the international legal definition of trafficking in the Palermo Protocol, emphasises that the definition of trafficking:

> "*…endeavours to encompass the whole sequence of actions that leads to the exploitation of the victim…*"[43]

28. Dismissing the analogy provided by Lord Sumption with a receiver of stolen goods, he concludes:

[39] International Court of Justice (hereinafter "ICJ"), *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)* judgement of 13th July 2009, para. §66.
[40] *Ibid*, para 70.
[41] *Reyes v Al-Malki*, para. §67.
[42] *Ibid*, para. §59.
[43] *Ibid*, para. §61

> *"…But another rational view is that the relevant "activity" is not just the so-called employment but the trafficking; that the employer of the migrant is an integral part of the chain, who knowingly effects the "receipt" of the migrant and supplies the specified purpose, namely that of exploiting her, which drives the entire exercise from her recruitment onwards; that the employer's exploitation of the migrant has no parallel in the purchaser's treatment of the stolen goods; and that, in addition to the physical and emotional cruelty inherent in it, the employer's conduct contains a substantial commercial element of obtaining domestic assistance without paying for it properly or at all…"* [44]

29. In agreeing with Lord Wilson's statements in the case, Lady Hale and Lord Clarke, specifically questioned:

> "…*whether the construction adopted by Lord Sumption in this particular context is correct especially in the light of what we would regard as* ***desirable developments in this area of the law****…*"[45] (emphasis added).

30. The desirable developments referenced by Lady Hale include, it is submitted, direct developments in the legislative landscape of the United Kingdom, reinforcing its commitment to extensively combat forms of modern slavery through the introduction of domestic law to criminalise not only human trafficking, but as stand-alone offences slavery, servitude and forced labour as well. This occurred under criminal legislation introduced between 2003 and 2012, which was later consolidated and enacted under the Modern Slavery Act 2015 ("MSA 2015"), the key offences being s.1 (holding a person in slavery or servitude or requiring a person to perform forced labour) and s.2 (trafficking a person into, within or out of the UK).

31. The 'desirable developments' also include case-law and international human rights law on trafficking in persons.

32. In the case of *Hounga v. Allen*, in commenting on the case-law arising under Article 4 ECHR and the obligations imposed by ECAT, Lord Wilson noted at para. §52:

> *"…No doubt mindful of their obligations under article 4, the UK authorities are striving in various ways to combat trafficking and to protect its victims..."* [46]

[44] *Ibid*, para. §62.
[45] *Ibid*, para. §69
[46] UK Supreme Court, *Hounga v. Allen*, case No. UKSC 47, 30 July 2014, para. §52.

Commenting on the defence of illegality raised by the Respondent in this case, he continued:

> *"…the prominent strain of current public policy against trafficking and in favour of the protection of its victims should take priority over the doctrine of illegality, which under which illegality may bar a civil claim. The public policy in support of the application of that defence, to the extent that it exists at all, should give way to the public policy to which its application is an affront…"* [47]

33. The scope of diplomatic immunity must be defined with reference to States' positive obligations arising under international human rights law, including Article 4 ECHR, which prohibits slavery, servitude, and forced or compulsory labour. These positive obligations include the prevention, investigation, and prosecution of trafficking for the purpose of labour exploitation, and are linked to duties to ensure access to the courts (Article 6 ECHR) and to effective remedies for human rights violations (Article 13 ECHR, Article 15 ECAT, Article 2 ICCPR, and Articles 2 (e) and (f) CEDAW).

34. In *Chowdury and Others v. Greece,*[48] the Strasbourg Court stated at para. §104:

> "*…the member States' positive obligations under Article 4 of the Convention must be construed in the light of the Council of Europe's Anti-Trafficking Convention and be seen as requiring, in addition to prevention, victim protection and investigation, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in such a situation […]. The Court is guided by that Convention and the manner in which it has been interpreted by GRETA*…"

35. In the case of *V.C.L and A.N. v the United Kingdom,*[49] the Strasbourg Court, drawing on its previous case-law, reiterated that the general framework of positive obligations under Article 4 ECHR includes:

> "*…(1) the duty to put in place a legislative and administrative framework to prohibit and punish trafficking; (2) the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking; and (3) a procedural obligation to investigate situations of potential trafficking. In general, the first two*

[47] *Ibid.*
[48] ECtHR, *Chowdury and Others v. Greece* (Application No. 21884/15) judgment of 30 March 2017.
[49] ECtHR, *V.C.L. and A.N. v. The United Kingdom* (Applications Nos. 77587/12 and 74603/12) judgment of 16 February 2021.

aspects of the positive obligations can be denoted as substantive, whereas the third aspect designates the States' (positive) procedural obligation…"[50]

36. Of relevance to this case, is the State's positive obligation to ensure that the relevant legal or regulatory framework is in place to comply with Article 4 ECHR, as recognised in *Siliadin v. France*[51] and *Rantsev v. Cyprus and Russia*[52]. Thus, "*in assessing whether there has been a violation of Article 4 of the Convention, the relevant legal or regulatory framework in place must be taken into account*".[53]

37. Specifically on the right of victims to compensation, the Strasbourg Court held in *Rantsev v. Cyprus and Russia* that Article 15 of ECAT (on 'compensation and legal redress') obliges Contracting States:

> "*… to provide in their domestic law for the right of victims to receive compensation from the perpetrators of the offence, and to take steps to, inter alia, establish a victim compensation fund…*"[54]

38. The Strasbourg Court found a violation of Article 4 (2) of the ECHR, specifically because of the State's failure to fulfil its:

> "*…procedural obligation to guarantee an effective investigation and judicial procedure in respect of the situations of human trafficking and forced labour…*"[55]

39. As was also noted by Lord Wilson in *Reyes*,[56] Article 6(6) of the *Palermo Protocol* requires State Parties to:

> "*…ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered….*"

In addressing the issue of compensation for victims of trafficking, Lord Wilson emphasised:

[50] *Ibid*, para. §156 (citing ECtHR, *S.M. v. Croatia* (Application No. 60561/14) judgement of 25 June 2020, para. §306).
[51] *Siliadin v. France*, paras. §§89 and 112.
[52] *Rantsev v. Cyprus and Russia*, para. §285.
[53] *Rantsev v. Cyprus and Russia*, para. §284.
[54] *Ibid*, para. §126 (citing ECAT, Article 15(3)).
[55] *Ibid*, para. §127.
[56] *Reyes v Al-Malki*, para. §60.

"*…the universality of the international community's determination to combat human trafficking", and, "the equal level of determination of the UK, of Saudi Arabia and in effect of every state in the world to stamp out trafficking...*"[57]

40. It is important to note that P029 - *Protocol of 2014 to the Forced Labour Convention* , 1930, provides in Article 1 that:

"*…each Member shall take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour…"*

Article 1(3) states that the Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour. Further, Article 4 of the Protocol requires that:

"…Each Member shall ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation…"

41. The corresponding right under the ECHR is Article 13 which provides for the right to effective remedies.

42. In its Decision on Admissibility in the case of *Siti Aisah and others v. United States of America*, August 27, 2020,[58] the Inter-American Commission on Human Rights (IACHR) raises questions relating to alleged violations of rights guaranteed under the American Declaration of the Rights and Duties of Man concerning six migrant domestic workers. The issues raised address the obligations of the United States to exercise due diligence to effectively prevent, punish and provide remedies for the harms caused by the unlawful acts of foreign diplomat employers, and the United States' discriminatory treatment and failure to afford the alleged victims special measures of protection and redress.[59] In its decision on admissibility, the Commission, addressing the question of diplomatic immunity, stated:

"…the claims of the petitioner are not manifestly unfounded and require a substantive study since the alleged facts, if corroborated as true, could characterize violations of articles I (life, liberty and personal security), VII (protection for mothers and children), IX (inviolability of the home), X (inviolability and

[57] *Ibid.*
[58] Inter-American Commission on Human Rights (hereinafter "IACHR*"), Siti Aisah and others v. United States of America* (Report No. 224/20) judgement of 27 August 2020.
[59] *Ibid*, para. 1.

transmission of correspondence), XI (preservation of health and well-being), XII (education), XIV (work and fair remuneration), XV (leisure time and the use thereof) and XVIII (fair trial) of the American Declaration. Additionally, at the merits stage, the IACHR will analyze whether the discriminatory effect of the exclusion of certain domestic workers from the scope of application of regulations relating to labor and employment standards, if proven, could constitute a violation of articles II (equality before law) of the Declaration…"[60]

On the question of effective remedies and the more limited residual immunity of diplomats, the Commission stated at para §15:

"…the Commission considers that the filing of civil actions once the immunity cease to apply does not constitute an adequate remedy, since not being available at the moment of the alleged violations…"

43. In the case now before the Supreme Court, to ensure compliance with the United Kingdom's positive obligations under Article 4 ECHR, it is imperative that diplomatic immunity is recognised as limited in scope, and as necessarily excluding trafficking in persons from its scope, both as a commercial activity and a serious human rights violation. The obligations of the State, and the rights of victims of trafficking, require effective action to ensure access to the courts as protected by Article 6 ECHR, and the right to an effective remedy, as protected by Article 13 ECHR, and in numerous international human rights treaties.

In this vein, it is important to mention that the IACtHR condemned Brazil for establishing a statute of limitation to slavery, emphasizing its nature as a *jus cogens* norm and stressing that:

"… it is not admissible to cite procedural mechanisms such as prescription or the statute of limitations to avoid the obligation to investigation and punish such crimes. For the State to satisfy the obligation to adequately ensure different rights protected by the Convention, including the right of access to justice, it must comply with its duty to investigate, prosecute, punish, as appropriate, and make reparation for the facts…"[61]

44. Given developments in international law, including in case-law arising under the ECHR, the decision of the US Fourth Circuit Court of Appeals in *Tabion v Mufti*, that the impugned activity did not come

[60] *Ibid*, para. §19.
[61] *Hacienda Brasil Verde Workers v. Brazil*, para. §412.

within the 'commercial activity' exception,[62] is not authoritative and should not be followed by the Supreme Court. As was stated by Lord Wilson in *Reyes* at para. §68:

> *"… it is difficult for this court to forsake what it perceives to be a legally respectable solution and instead to favour a conclusion that its system cannot provide redress for an apparently serious case of domestic servitude here in our capital city…"*[63]

Positive obligations and the obligation of Due Diligence to prevent and combat trafficking in persons

45. In *Rantsev v Cyprus and Russia*, the Strasbourg Court emphasised the State's obligation under Article 4 ECHR to ensure the practice and effective protection of the rights of victims. It stated at para. §284:

> *"…The Court considers that the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking…"*

46. The serious problem of trafficking for the purpose of domestic servitude by diplomats in the United Kingdom, and elsewhere, is well known. The failure to limit the scope of diplomatic immunity is directly relevant to this problem and to the failure to prevent and combat trafficking in persons, as required by the Palermo Protocol and other international treaties. As was stated by Lord Wilson in *Reyes:*

> "*…The explanation for the high ratio of trafficked workers in diplomatic households is largely because perceived immunity from claims for compensation leads diplomats to consider that they can exploit them with impunity…*"[64]

These concerns were also highlighted by Mr Ewins QC, in his Independent Review of the Overseas Domestic Workers Visa**,** dated 16 December 2015.[65]

Similarly, on access to justice, the UN Special Rapporteur on slavery also observed that:

[62] US Court of Appeals, *Tabion v. Mufti*, case No. 95-1732, 17 January 1996.
[63] *Reyes v Al-Malki*, para. §68.
[64] *Reyes v Al-Malki*, para. §59 (citing evidence submitted by Kalayaan).
[65] James Ewins, *Independent Review of the Overseas Domestic Workers Visa* (2015).

"*…[a]ccessing justice is very difficult for domestic workers in diplomatic households owing to the immunity of the employer…*"[66]

47. In the case of *Hacienda Brasil Verde Workers v Brazil*, the Inter-American Court of Human Rights, specifically addressed the State's positive obligations of due diligence in the context of contemporary forms of slavery and trafficking in persons, finding at para §320:

> *"…In particular, States should have an appropriate legal framework and enforce it effectively, as well as prevention policies and practices that allow them to take effective measures when complaints are received. The prevention strategy should be comprehensive; in other words, it should prevent the risk factors and, at the same time, reinforce its institutions so that they can respond effectively to situations of contemporary slavery. In addition, States should take preventive measures in specific cases in which it is evident that certain groups of people may be victims of trafficking or slavery. This obligation is increased owing to the nature of the prohibition of slavery as a peremptory norm of international law (supra para. 249) and to the seriousness and intensity of the rights violations due to this practice…"*

48. The Court concluded at paras. §§342-343:

> *"…Everything shows that the State failed to act with the required due diligence to prevent adequately the contemporary form of slavery verified in this case and did not act as could reasonably be expected, based on the circumstances of the case, to terminate that type of violation. This failure to comply with the obligation to ensure rights is particularly egregious owing to the context that the State was aware of and the obligations imposed by Article 6(1) of the American Convention and specifically derived from the jus cogens nature of the prohibition…On this basis, the Court considers that the State violated the right not to be subjected to slavery and trafficking in violation of … of the American Convention on Human Rights…"*[67]

49. The CEDAW Committee has particularly recognised that "*women migrant workers may become victims of trafficking due to various degrees of vulnerability they face*"[68] and that women are also "*forced into gender-specific exploitative labour (for example, forced prostitution, domestic work)*".[69]

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[66] UN Doc. A/HRC/39/52, para. §37.
[67] *Hacienda Brasil Verde Workers v. Brazil* paras. §§342-343.
[68] CEDAW Committee, General recommendation No. 26 on women migrant workers (5 December 2008) UN Doc. CEDAW/C/2009/WP.1/R, footnote 4.
[69] Janie Chuang, "Article 6" in Christine Chinkin et. al. (eds) *The UN Convention on the Elimination of all Forms of Discrimination Against Women: A Commentary* (OUP, 2012), p. 172.

This implies that States should take their vulnerability into consideration, and should improve their efforts in ensuring that these victims are protected and have access to their human rights.

50. Given the State's awareness of the problem of trafficking for the purpose of domestic servitude in diplomatic households in the United Kingdom and the gender-specific nature and impact of detrimental treatment suffered by the victims the continued acceptance of diplomatic immunity in these cases would violate, at the very least, the State's positive obligations to prevent and combat trafficking in persons, as required by the Palermo Protocol, the ECHR and ECAT and international human rights treaties.

Developments in the law of State Immunity

51. The right of access to the courts, as protected by Article 6 ECHR, has been critical to the recognition that State Immunity is limited in the context of employment disputes, and that such limitation is a proportionate restriction on immunity, to ensure effective protection of the right of access to the courts, and the right to an effective remedy for victims of violations of human rights.

52. Maintaining different interpretations of the exceptions to state immunity and diplomatic immunity leads to an anomaly whereby if a domestic worker's employment is with the Embassy mission, the State will not be able to claim immunity in respect of the serious human rights violation of trafficking in persons, whereas if the employer is the individual diplomat, the victim is denied access to the courts and to an effective remedy.[70] As is noted by Murphy and Mullally in the *American Journal of Comparative Law* (2016) at p. 719*:*

> "…*The fragmentation of international law rules on state and diplomatic immunity and the divergences in how immunity claims function in civil and criminal proceedings create dissonance and confusion*…"[71]

53. Such an anomaly is not only illogical, but also fails to comply with the United Kingdom's obligations under Articles 4, 6 and 13 of the ECHR, as well as the State's obligations under Article 15 of ECAT, and the right to an effective remedy as protected under international human rights treaties, including the ICCPR,[72] CEDAW,[73] CERD[74] and CAT.[75] Moreover, as was stated by Laws J (as he then was),

[70] See further: Clíodhna Murphy and Siobhán Mullally, "Double Jeopardy: Domestic Workers in Diplomatic Households and Jurisdictional Immunities", Vol. 64(3) (2016) *American Journal of Comparative Law*, pp. 677–720.
[71] *Ibid*, p. 719.
[72] ICCPR, Article 2.3(a).
[73] CEDAW, Articles 2, 3 and 5.a.
[74] CERD, Article 6.
[75] CAT, Article 14.

in *Propend Finance Pty Ltd v. Sing,*[76] "*the law relating to diplomatic immunity is not free-standing from the law of sovereign or state immunity, but is an aspect of it*".[77]

54. The anomaly arising, and its consequences for the protection of the rights of victims of trafficking, are highlighted in *Reyes* by Lord Wilson at para. §65:

> "…*I cannot readily explain why proceedings relating to a contract of employment entered into by a foreign state, for performance in the UK, will not in principle attract immunity in circumstances in which, if the contract is entered into by a diplomat, it will in principle attract immunity...*"[78]

55. There is an established line of case-law in which the European Court of Human Rights has held that restrictions on the access to court of embassy staff engage Article 6, but may be justified with reference to "*the legitimate aim of complying with international law to promote comity and good relations between States*".[79] In both the cases of *Cudak v. Lithuania* [80] and *Sabeh El Leil v. France,*[81] the Court found that the application of state immunity in employment disputes involving embassy employees, was disproportionate, and constituted a violation of Article 6(1) ECHR, which provides inter alia for a right of access to a hearing by a tribunal in the determination of civil rights and obligations.

56. The Grand Chamber in *Sabeh El Leil* emphasised that the ECHR is intended to guarantee rights that are not merely "*theoretical or illusory, but practical and effective*." Highlighting the importance of the right of access to the courts, the Court held:

> "…*This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial […] It would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on categories of persons...*"[82]

[76] England & Wales Court of Appeal, *Propend Finance Pty Ltd and Others v. Sing*, case No. EWCA Civ. J0417-14, 17 April 1997.
[77] *Ibid*. at paras. §633-634
[78] *Reyes v Al-Malki*, para. §65.
[79] ECtHR, *Sabeh El Leil v. France* (Application No. 34869/05) judgement of 29 June 2011, para. §52.
[80] ECtHR, *Cudak v. Lithuania* (Application No. 15869/02) judgement of 23 March 2010.
[81] *Sabeh El Leil v. France*.
[82] *Ibid*, para. §50.

57. The Court accepted that the grant of immunity to a State in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States, but noted that the "*impugned restriction must also be proportionate to the aim pursued*."[83] The Court concluded that in upholding the state immunity claim and dismissing the applicant's claim without providing relevant and sufficient reasons:

> "*…the French courts [had] failed to preserve a reasonable relationship of proportionality*"[84], which had "*impaired the very essence of the applicant's right of access to a court...*"[85]

58. Importantly in *Secretary of State for Foreign and Commonwealth Affairs v. Benkharbouche, Libya v. Janah*,[86] the Supreme Court set out its responsibility to resolve the disputed issue concerning international law on state immunity and its limits. Specifically, Lord Sumption held:

> "*…If it is necessary to decide a point of international law in order to resolve a justiciable issue and there is an ascertainable answer, then the court is bound to supply that answer….*"[87]

59. The Supreme Court concluded that as the employment of Ms Janah and Ms Benkharbouche were clearly not exercises of sovereign authority, and nothing about their alleged treatment engaged the sovereign interests of their employers:

> "*…As a matter of customary international law, therefore, their employers are not entitled to immunity as regards these claims. It follows that so far as sections 4(2)(b) or 16(1)(a) of the State Immunity Act confer immunity, they are incompatible with article 6 of the Human Rights Convention…*"[88]

60. The Supreme Court now has the opportunity to ascertain and clarify the international law question arising concerning the scope of diplomatic immunity, in light of developments in international law, and the State's obligations to ensure access to the courts arising under Article 4, 6 and 13 ECHR. As was held by the Supreme Court in *Benkharbouche* in the context of state immunity claims, the imposition of a restriction on access to the courts, would be disproportionate to the aim of promoting comity between nations and friendly relations between states.

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[83] *Ibid*, paras. §§52-53.
[84] *Ibid*, para. §67.
[85] *Ibid*.
[86] UK Supreme Court, *Secretary of State for Foreign and Commonwealth Affairs v Benkharbouche, Libya v Janah*, case No. UKSC 62, 18 October 2017.
[87] *Ibid*, para. §35.
[88] *Ibid*, para. §76.

Functional rationale for Diplomatic Immunity

61. Recognising that commercial activity, specifically trafficking for the purpose of domestic servitude, is not within the scope of diplomatic immunity, is not incompatible with the object and purpose of the *Vienna Convention on Diplomatic Relations, 1961*. The long-established principles of diplomatic immunity seek to ensure friendly relations between states, irrespective of their differing constitutional and social systems. (Preamble, Recital 2). The Vienna Convention on Diplomatic Relations was adopted, 'bearing in mind', the purposes and principles of the Charter of the United Nations, which include, *"promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."*[89] As is noted in Recital 4 of the Preamble to the Vienna Convention on Diplomatic Relations:

> *"…the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States…"*[90]

62. As such, the rationale for diplomatic immunity is primarily a functional one. It is noteworthy that in *Abusabib v. Taddese* ,[91] in which the focus was on the functional test for the recognition of immunity, the Employment Appeal Tribunal stated at para. §28:

> *"…[i]t cannot be said that an act of racial or sexual discrimination . . . could be regarded as any part of, or ancillary to any part of, the functions of a diplomat as a member of a mission*…"

Neither can it be argued that an act of trafficking in human beings for the purpose of domestic servitude and related acts of sexual discrimination and gender-based violence form any part of the functions of a diplomat.

63. It is no part of the functions of a diplomat to engage in trafficking for the purpose of domestic servitude. It is a stated purpose of the Palermo Protocol to promote co-operation among States Parties (including both the United Kingdom and Saudi Arabia) in order to meet its objectives, specifically to prevent and combat trafficking in persons and to protect and assist victims of trafficking.[92]

[89] Charter of the United Nations (San Francisco, 26 June 1945) (entered into force 24 October 1945), Article 1(3).
[90] Vienna Convention on Diplomatic Relations.
[91] UK Employment Appeal Tribunal, *Abusabib and Anor v. Taddese*, case No. UKEAT/0424/11/ZT, 20 December 2012.
[92] Palermo Protocol Article 2 (a) - (c).

Relationship between Article 42 of the Vienna Convention on Diplomatic Relations and Article 31(c)

64. Of relevance to this case is Article 42 of the Vienna Convention on Diplomatic Relations, which specifically provides:

> *"...A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity..."*

This explicit prohibition does not permit of any exceptions or limitations, and is clearly intended to indicate the functions of the diplomatic agent as excluding commercial activity that generates personal profit. Trafficking for the purpose of domestic servitude is such a commercial activity, generating personal profit to the diplomat. This personal profit contributes to the demand that leads to exploitation and to trafficking in persons. The holding of a person in domestic servitude[93], which is also a criminal offence under s.1 of the MSA 2015, similarly gives rise to profits which arise from the use of a human being kept for unpaid services.

Obligation to discourage demand

65. Article 9(5) of the Palermo Protocol, obliges States to adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. As is noted by the CEDAW Committee, in its General Recommendation no.38 at para §31:

> *"...In the context of labour as a form of trafficking in women and girls, demand for trafficking persists due to insufficient regulatory environment..."*[94]

66. Article 6 of ECAT imposes a strict obligation on State Parties to adopt measures to discourage demand:

> *"...To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures..."*

[93] In terms of the definition of domestic servitude in *Chowdury and Others v Greece*, the Strasbourg Court held at para. §99 that the fundamental distinguishing feature between servitude and forced labour lay in the victims' feeling that their condition was permanent and unlikely to change. In this way domestic servitude is to be considered an aggravated form of forced labour.
[94] CEDAW Committee para. §31.

Public Policy priority to combat trafficking in persons

67. It is important also to highlight the stated public policy priority and commitment of the United Kingdom to combat trafficking in persons and to combating domestic servitude, slavery and forced labour. The Government has acted on this commitment by bringing in legislation to criminalise human trafficking in line with its obligations under the Palermo Protocol, and by enacting separate legislation to criminalise as stand-alone offences the holding of a person in slavery or servitude or requiring a person to perform forced labour, recognising its obligations under international law to provide practical protection to victims of such offences in its jurisdiction. These criminal offences, enacted between 2003-2012, were consolidated into English law under sections 1 and 2 of the Modern Slavery Act 2015.

68. In the foreword to the UK Government 2020 Modern Slavery Statement, Rt Hon Prime Minister Boris Johnson MP stated at p.1:

> *"...Around the world, something in the region of 40 million innocent men, women and even children have been forced into various forms of modern slavery. Many are here in the UK. Still more are abroad. All are victims of a vile business that has no place in the last century, let alone this one..."*[95]

The prohibition of discrimination

69. The UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in its General Recommendation no.38 (2020), states at para. §1:

> *"...Despite the plethora of existing legal and policy frameworks to combat trafficking at the national, regional and international levels, women and girls continue to comprise the majority of detected victims of trafficking across the world, and perpetrators enjoy widespread impunity..."*

And at para. §2:

> *"...A gender analysis of the crime reveals that its root causes lie in sex-based discrimination, including the failure to address the prevailing economic and patriarchal structures and the adverse and gender-differentiated impact of the*

[95] Home Office, *UK Government Modern Slavery Statement* (2020), p. 1.

labour, migration and asylum regimes of States parties that create the situations of vulnerability leading to women and girls being trafficked…"

70. The joint Communication to the United Kingdom on 27 May 2021 from the UN Special Rapporteur on Trafficking in Persons and others (above), highlights the State's obligations to protect gender equality and to ensure non-discrimination in all measures to protect the human rights of migrant workers and to effectively prevent trafficking in persons, advising that:

"…*The majority of migrant domestic workers are women, and are at heightened risk of trafficking and slavery where the State fails to effectively protect their human rights as migrant workers…*" [96]

71. In *Opuz v. Turkey*,[97] for the first time in Strasbourg case law, the Court linked States' obligations to combat domestic violence to the obligation of non-discrimination in Article 14 ECHR. In *Opuz,* the Court accepted the existence of a prima facie indication that domestic violence affected mainly women and concluded at para. §198 that:

"…*the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence...*"

The Court further considered that the violence suffered by the applicant and her mother constituted gender-based violence, which it said was a form of discrimination against women. Noting the failure to take effective action to protect the applicant and her mother, the Court stated at para. §200:

"…*Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, […], indicated that there was insufficient commitment to take appropriate action to address domestic violence…*"

The Court found that there had been a violation of Article 14 of the Convention, read in conjunction with Articles 2 and 3, ECHR. [98]

72. Given that the majority of domestic workers in diplomatic households globally, and in the United Kingdom, are women, failing to ensure effective protection for them against trafficking for the purpose of domestic servitude engages grave human rights abuses.

[96] Joint Communication, p. 2.
[97] ECtHR, *Opuz v. Turkey* (Application No. 33401/02) judgement of 9 June 2009.
[98] *Ibid*, para. 202. For further commentary see: Siobhán Mullally, "*Migration, Gender, and the Limits of Rights*", in Ruth Rubio-Marín (ed.) *Human Rights and Immigration* (OUP, 2014), p. 145.

73. Failing to ensure access to the courts and compensation for domestic workers in diplomatic households who have been trafficked and held in domestic servitude violates a multitude of the State's obligations as described herein, including a victim's right to protection against discrimination under Article 14 ECHR, read in conjunction with violations of Articles 4, 6 and 13 ECHR.

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