

THE ELIMINATION OF FORCED OR COMPULSORY LABOUR IN VIETNAM WITHIN THE CONTEXT OF THE EVFTA AND LESSONS FROM EUROPEAN COUNTRIES

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Abstract

Following centuries of attempts to improve labour standards and fight for the elimination of forced or compulsory labour, the problem remains severe on a worldwide scale. No country or continent in the world can abolish this phenomenon in all of its forms, concomitantly, not only does it affect developed and high-income countries, but it also has an enormous impact on developing ones like Vietnam. In order to preserve a level playing field, protect fair competition, avoid divergence on social and environmental standards, and provide each party with the ability to apply its social norms, this issue must be addressed. Eliminating forced or compulsory labour, therefore, is a remarkable goal that the European Union (EU) aims to achieve in its free trade agreements (FTAs), including the EU-Vietnam free trade agreement (EVFTA). Accordingly, the EU also demanded that Vietnam abide by the prohibition on forced or compulsory labour in EVFTA's labour commitments. In light of the need to uphold obligations as a member and the potential market with the EU in the future, the study of eradicating forced or compulsory labour in Vietnam is crucial to both the EU and Vietnam's pursuit of sustainable development. This study focuses on evaluating legislation for eliminating Vietnam's forced or compulsory labour, indicating the compatibility between the EVFTA's labour commitments and the national legal system, and looking at the other EU countries' experiences with this problem; from that, it provides recommendations on completing Vietnamese legislation.

Keywords: EVFTA, forced labour, EU, Vietnam, free trade agreement.

Forced or compulsory labour (hereinafter referred to as “forced labour”) has been regarded as a crime and a flagrant breach of the most fundamental rights of humanity, an attempt to force individuals into performing labour in undesirable conditions and denying basic human dignity¹. That not only has been carried out

in violation of fundamental rules laid down by the labour law but has also been deemed a severe and inevitable phenomenon globally from the beginning of the International Labour Organisation (ILO) to the XXI century. This issue, however, is enshrined in the “C029-Forced Labour Convention, 1930 (No.29)”², and the “C105-

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¹ Interparlamentarische Union & Internationale Arbeitsorganisation, *Eliminating forced labour*, Interparliamentary Union, Geneva, 2019, 13.

² ILO, C029 – *Forced Labour Convention, 1930 (No.29)*, https://www.ilo.org/dyn/normlex/en/f?p=NO_RMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

Abolition of Forced Labour Convention, 1957 (No.105)³, as a core labour standard in the ILO Declaration of 1998, has remained and negatively impacted the economies of many countries in general, as well as their labour forces, therefore, the restriction of all varieties of forced labour is currently regarded as an international law rule from which no exceptions are authorised⁴.

With its consistent policy in new-generation FTAs, the EU has indicated its commitment to core labour standards, including the elimination of forced labour. However, as one of the most promising partners of the EU among developing countries, Vietnam, with the ratification of the EVFTA and Convention C105, has strict international obligations to internalise the convention rules into domestic legislation and to implement these regulations in reality effectively. Thus, it is time for Vietnam to revisit the eradication of forced labour within their country by examining the labour law and relevant internal regulations in order to accomplish the legal duties under the FTA with the EU and learning experience from some EU countries, which have a number of similarities, diplomatic and economic cooperation with Vietnam, would help Vietnam keep up with globalisation and trade liberalisation.

Based on the analysis of the relevant literature, this is the first study to investigate Vietnam's eradication of forced labour within the context of the EVFTA. Using synthesis research methodologies, detailed

evaluation, and in-depth comparison with ILO and EVFTA papers, this study tries to address three questions: (1) How has Vietnam accomplished the abolition of forced labour in accordance with EVFTA requirements?; (2) How has the situation surrounding the abolition of forced labour been addressed in Vietnam, as well as what are the limitations to this issue?; (3) What are the experiences of EU countries in eliminating forced labour and the lessons for Vietnam?

1. A pocket guide to the determinant of forced labour

1.1. The concept of forced labour

The first international treaty to define what forced labour entails is the Convention (C029) by the International Labour Organisation (ILO) from 1930⁵, accordingly, it means “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”⁶. This concept encompasses three fundamental conditions: “work or service”; “menace of any penalty”; and “voluntary”⁷. To begin, “work or service” includes any kind of work, regardless of the nature or legality of the employment relationship that occurs in any industry, sector, or activity, whether public or private⁸. Secondly, the “menace of any penalty” covers various forms of coercion methods, whether

³ ILO, *C105 – Abolition Forced Labour Convention, 1957 (No. 105)*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO.

⁴ United Nations Office on Drugs and Crime, *UNODC and the sustainable development goals*, https://www.unodc.org/documents/SDGs/UNODC-SDG_brochure_LORES.pdf.

⁵ Natalia Ollus, “Regulating forced labour and combating human trafficking: The relevance of historical definitions in a contemporary perspective”, *Crime, Law and Social Change*, 2015, 63(5), 222.

⁶ Art. 2.1 of C029, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

⁷ Ollus, *op.cit.*, 228.

⁸ Interparlamentarische Union & Internationale Arbeitsorganisation, *op. cit.*, 19.

financial, physical, psychological, or other, used to restrict individuals from undertaking service or work against their voluntariness which should be understood in various forms of external constraint or indirect coercion⁹. Thirdly, “voluntary” should be analysed regarding the format and scope of consent, the significance of external constraints, and the possibility of freely withdrawing a given consensual agreement¹⁰.

Specifically, the ILO also creates an index list of indicators that depict the most typical signals or “clues” that lead to the possibility of a forced labour situation, which is divided into eleven categories: (1) using physical and sexual violence; (2) taking advantage of people's vulnerability; (3) restricting freedom of movement; (4) threats and intimidation; (5) isolation; (6) disinformation or false promises about the nature of work; (7) withholding identity documents; (8) debt servitude; (9) working excessive hours; (10) abusive working and living circumstances; (11) withholding and non-payment of wages¹¹.

However, given the constant effects of globalisation, the traditional kinds of forced labour continue to persist alongside the new forms that are emerging in the global economy¹². The ILO, therefore, has recently defined this phenomenon as: “Traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and

various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking”¹³.

1.2. Forced labour in the modern world

Forced labour is currently recognised to be the most difficult political and social challenge of the twenty-first century¹⁴. According to ILO statistics for 2021, there were 27.6 million people in forced labour globally on any given day, which equates to 3.5 individuals per thousand. This figure has steadily climbed in recent years, with the population increasing by 2.7 million between 2016 and 2021¹⁵. Despite the alarming status of forced labour, the results are only partially reflected in the collected statistical data due to various, including methodologies, to name but one. As a result, the actual scale that the world would face in eradicating forced labour remains unclear and is significantly greater than these estimates¹⁶.

In fact, eliminating forced labour necessitates confronting its root causes. On the one hand, the ILO mentions poverty, informal economic activity, poor governance, a lack of access to social protection, a shortage of understanding of the human as well as labour rights,

⁹ *Ibid.*

¹⁰ Kadriye Bakirci, “Human trafficking and forced labour: A criticism of the International Labour Organisation”, *Journal of Financial Crime*, 2009, 16(2), 162.

¹¹ ILO, *ILO Indicators of Forced Labour*, 2013.

¹² Kanchana N. Ruwanpura & Pallavi Rai, *Forced labour: Definitions, indicators and measurement*, ILO, Geneva, 2004, 4.

¹³ ILO, *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, Report of the Committee of Experts on the Application of Conventions and Recommendations, 2012, ILC.101/III/1B, 272.

¹⁴ Zbigniew Lasocik, “Is research on forced labour at an ‘early stage’? Introduction to the special issue”, *Archiwum Kryminologii*, 2021, 43(1), 8.

¹⁵ ILO & Walk Free & International Organization for Migration, *Global Estimates of Modern Slavery Forced Labour and Forced Marriage*, ILO, Geneva, 2022, 2.

¹⁶ ILO, *Ending forced labour by 2030: A review of policies and programmes*, Geneva, 2018, 31.

humanitarian crises, and discrimination as the primary drivers of this phenomenon¹⁷. Whilst the high proportion of forced labour happens in the unregulated grey economy¹⁸, the majority of those who are victims of this issue in developing nations are poor¹⁹, as those in poverty or lacking livelihood options are more likely to be at higher risk of being employed in jobs that use forced labour²⁰. Similarly, discrimination also contributes to the likelihood of being exploited and allows for continued forced labour today²¹. On the other hand, many facets of state governance can be discussed. First of all, unclear legislation as reflected in forced labour is not defined in any detail, making it hard to identify whether actions come within the prohibition against forced labour and must therefore be punished by the law. Secondly, many countries have failed to prove a specific offence of forced labour in criminal law, even though it is provided in labour law. Thirdly, there is a lack of enforcement measures regulating the abolition of forced labour²².

All this means that, since its inception under the Paris Peace Treaty in 1919, the ILO has regarded the fight against forced labour as one of its top priorities and, simultaneously, a constant mission from its early days right up to the present²³.

2. Broad context of the EVFTA and the eliminating forced labour in the EVFTA

2.1. Broad context of the EVFTA

Bilateral cooperation between the EU and Vietnam has been fruitful since the signing of the initial Cooperation Agreement²⁴ in 1995, and the Comprehensive Partnership and Cooperation Agreement²⁵ in 2012²⁶. Nevertheless, it was only in the successful signing of the EVFTA in 2019 that it highlighted a new milestone on the path of almost 30 years of development and cooperation between the EU and Vietnam²⁷. Consequently, the European Commission dubbed EVFTA “the most ambitious and

¹⁷ ILO Global Business Network on Forced Labour, *Viet Nam Policy Brief 1: Addressing forced labour at its root in Viet Nam*, ILO, Geneva, 2020, 3.

¹⁸ *Ibid.*

¹⁹ ILO, *A global alliance against forced labour: Global report under the follow-up to the ILO Declaration on Fundamental Principles and rights at work*, Report of the International Labour Conference 93rd Session 2005, International Labour Office, Geneva, 2005, 18.

²⁰ ILO Global Business Network on Forced Labour, *op.cit.*, 3.

²¹ GTZ, *Forced Labour and Trafficking in Persons*, Programme Promoting Gender Equality and Women's Rights, Germany, 2008, p.1, <https://www.oecd.org/dac/gender-development/44896368.pdf>.

²² ILO, *op.cit.*, 2.

²³ Daniel Roger Maul, “The International Labour Organization and the Struggle against Forced Labour from 1919 to the present”, *Labour History*, 2007, 48(4), 477.

²⁴ Cooperation Agreement between the European Community and the Socialist Republic of Vietnam signed 17 July 1995, <https://wtocenter.vn/upload/files/hiep-dinh-khac/323-europe/362-vietnam--eu/2.Cooperation%20Agreement%20between%20the%20European%20Community%20and%20Vietnam.pdf>.

²⁵ Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part signed 27 June 2012, https://www.fdfa.eu/sites/default/files/2022-01/1003_Ondertekende%20akte%20in%20het%20Engels.pdf.

²⁶ Delegation of the European Union to Vietnam, *The European Union and Vietnam*, https://www.eeas.europa.eu/vietnam/european-union-and-vietnam_en?s=184.

²⁷ Areg Navasartian, “EU-Vietnam Free Trade Agreement: Insights on the Substantial and Procedural Guarantees for Labour Protection in Vietnam”, *European Papers-A Journal on Law and Integration*, 2020, 2020(1), 562.

comprehensive agreement ever concluded with a developing country”²⁸, and a preliminary step towards the EU’s ultimate ambition of negotiating bilateral trade agreements with the individual ASEAN member states²⁹. On the other side, the EVFTA, for Vietnam, is the largest new-generation FTA in history in terms of direct benefits³⁰ and considers Vietnam’s development needs³¹ entirely. Through the EVFTA’s broad range and high level of commitment³², including trade and even non-commercial commitment, trade activities are boosted, over 99% of customs duties on goods are eliminated, Vietnam’s service markets become more open to EU enterprises, and EU investments in the nation are strengthened through more transparent procedures³³. Furthermore, throughout this agreement, economic benefits are always accompanied by guarantees with regard to the implementation of basic labour standards³⁴, including eliminating forced labour, through legally binding and enforceable provisions regarding sustainable development. These

rules align with what most of the new generation of FTAs, like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, of which Vietnam is now a part, are doing³⁵. Therefore, the role of the EVFTA in reforming the global trade systems should not be underestimated, as it also represents a growing momentum in harmonising trade and sustainable development³⁶.

2.2. The eliminating forced labour commitment in the EVFTA

In recent years, “social concerns” in international trade agreements have become increasingly important, particularly the consequences of economic integration on labour markets³⁷. Besides the positive aspects, globalisation also reveals the negative aspects and international labour standards play a more crucial role than ever in tackling these issues³⁸. The question is: what is the best solution to effectively enforce these standards?³⁹ In response to the above question, Fair trade theory suggests

²⁸ European Commission, *Guide to the EU-Vietnam Trade and Investment Agreements*, 2016, www.trade.ec.europa.eu, 6.

²⁹ Delegation of the European Union to Vietnam, *Guide to the EU- Vietnam Trade and Investment agreements*, 2019, https://www.eeas.europa.eu/sites/default/files/eu_fta_guide_final.pdf.

³⁰ World Bank, *Vietnam: Deepening International Integration and Implementing the EVFTA*, The World Bank, Washington, D.C, 2020, 10.

³¹ European Commission, *EU-Vietnam trade agreement enters into force*, 2020, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1412.

³² Nguyen et al., “Labour commitments in the EVFTA: Amendments and supplements to Vietnamese Law and Recommendations”, *JL Pol’y & Globalization*, 2022, 125, 76.

³³ European Commission, *op.cit.*, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1412.

³⁴ *Ibid.*

³⁵ Munim Kumar Barai et al. , “Vietnam achievements and challenges for emerging as a FTA hub”, *Transnational Corporations Review*, 2017, 9(2), 54.

³⁶ Tran Thi Thuy Duong, “WTO+ and WTO-X provisions in the European Union-Vietnam Free Trade Agreement: A ‘fruit salad tree’ is yet to grow”, *Asia Europe Journal*, 2021, 20(2), 75.

³⁷ Inmaculada Martinez-Zarzoso & Hendril W. Kruse, “Are labour provisions in free trade agreements improving labour conditions?”, *Open Economies Review*, 2019, 30(5), 976.

³⁸ Jan Martin Witte & Deutsche Gesellschaft für Technische Zusammenarbeit, *Realizing Core Labor Standards—The potential and limits of voluntary codes and social clauses—A review of the literature*, GTZ, Eschborn, 2008, 16.

³⁹ Thomas Payne, “Retooling the ILO: How a new enforcement wing can help the ILO reach its goal through regional free trade agreements”, *Indiana Journal of Global Legal Studies*, 2017, 24(2), 598.

that regional and bilateral trade agreements should be responsible for enhancing labour conditions or, if possible, avoiding a “race to the bottom”⁴⁰ by including international labour standards in FTAs and upholding trade sanctions against nations that fail to adhere to the minimum standards⁴¹. Thus, over the last two decades, the fundamental labour standards of the ILO have been the most prevalent type of labour provisions in FTAs, serving as the legal framework for FTAs to address the issue of global working conditions⁴². Moreover, those clauses are now deemed substantive under the chapter on sustainable development in EU FTAs⁴³.

According to the labour commitments in the “Trade and Sustainable Development Chapter”, Chapter 13 in the EVFTA commits the parties:

“To respect, promote, and effectively implement the fundamental principles and rights at work, in accordance with the duties of ILO member countries and line with the 1998 ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up, namely: (i) the freedom of association and the effective recognition of the right to collective bargaining; (ii) the elimination of all forms of forced or compulsory labour; (iii) the effective abolition of child labour; and (iv) the elimination of discrimination in respect of employment and occupation”⁴⁴.

Regarding the commitment to eliminate all forms of forced labour, each treaty party is bound by two aforementioned ILO fundamental conventions⁴⁵, as followings:

Convention C029 requires each ratifying country to commit to ending as soon as possible forced labour in any kind (Article 1). Given the definition of forced labour, the Convention allowed exceptions to the notion of “forced labour”, which include: prison labour; work exacted under purely military character; work imposed in emergencies; normal civic duties of citizens; and minor communal services⁴⁶. The obligation on ratifying members to guarantee that the unlawful forced labour exactions must be penalised under a criminal offence and the punishment imposed is also truly sufficient and effective as well as expressly forbids using forced labour by private actors without any exception, is also included in this Convention (Article 25).

Convention C105 complements, rather than revises, the earlier Convention⁴⁷. This highlights a variety of targets for which forced labour could never be exacted, particularly at the state level, such as the purpose of economic growth or political education or as a means of retribution for

⁴⁰ Zarzoso & Kruse, *op.cit.*, 976.

⁴¹ Gijbert Van Liemt, “Minimum labour standards and international trade: Would a social clause work?”, *Int'l Lab. Rev.*, 1989, 128, 434.

⁴² Payne, *op.cit.*, 602.

⁴³ Hanania Lilian Richieri, “The Social Dimension of Sustainable Development in EU Trade Agreements: Strengthening International Labour Standards”, *German YB Int'l L.*, 2016, 59, 439.

⁴⁴ Art. 13.4, paragraph 2 of EVFTA signed 30 June 2019, <https://wtocenter.vn/file/17684/full-text-evfta.pdf>.

⁴⁵ European Commission & Ergon Associates, *Targeted surveys on application of core labour standards: Vietnam*, Publications Office of the European Union, Luxembourg, 2020, 8-9, <https://op.europa.eu/en/publication-detail/-/publication/de2b410e-9407-11ea-aac4-01aa75ed71a1/language-en>.

⁴⁶ Art. 2.2 of C029, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

⁴⁷ International Labour Office & Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), *ILO standards on forced labour–The new protocol and recommendation at a glance*, ILO, Geneva, 2016, 4.

participating in strikes, discrimination, or labour discipline⁴⁸.

Under the EVFTA, the requirement to abolish forced labour also includes reaffirming fundamental rights by respecting, promoting, and implementing them in law and practice. This implies that these rights must be promulgated in Vietnam's legislation through the Labour Code and effectively enforced in practice⁴⁹.

3. The elimination of forced labour in Vietnam under the context of the EVFTA

3.1. Vietnam has promulgated a legal normative document system to eliminate forced labour

The 2013 Constitution, for the first time, stipulates the right to work and to choose a career path, employment, and workplace; the right to be given fair and safe working conditions, the right to be paid a salary; the right to enjoy conditions of rest; and the prohibition of forced labour (Article 35)⁵⁰. This also means that Vietnam, as an EVFTA party as well as a ratifying member of the ILO Conventions, has undertaken

efforts to ensure the constant strengthening of the legal instruments for the abolition of every type of forced labour. However, the Vietnamese legislation, still contains explicit limitations despite covering the key features of the ILO Conventions as detailed below.

The concept of forced labour

The Vietnam Labour Code defines forced labour as “coercive labour means the use of force or threat to use force or other tricks to force an employee to work against his/her will”⁵¹. Accordingly, Vietnamese law recognises the term forced labour in the way employers force workers to perform certain work contrary to their will, resulting in a “forced labour” situation⁵². This also details a part of the typical groups of forced labour behaviours in eleven indicators of behaviours⁵³, which are “use of force”, “threat to use of force”, and open regulation through the term “other tricks”⁵⁴. By contrast, the lack of detail explained in “other tricks” makes this crime difficult to deter in practice⁵⁵.

In sum, compared to the criteria in Article 2 of C029, the scope of the Vietnamese definition of forced labour appears to be narrower and more

⁴⁸ Art. 1 of C105, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO.

⁴⁹ European Commission and Government of Vietnam, *EVFTA Report 2018: The EU-Vietnam Free Trade Agreement: Perspectives from Vietnam*, presented to the European Parliament, October 2018, 66.

⁵⁰ Nguyen Thi My Linh & Vu Cong Giao, “Thi hành quyết định của Hiến pháp 2013 về xóa bỏ lao động cưỡng bức” [Implementing the 2013 Constitutional Decision on the Abolition of Forced Labour], *Hội thảo Khoa học Đánh giá 5 năm thi hành Hiến pháp nước Cộng hòa Xã hội Chủ nghĩa Việt Nam năm 2013 [The Scientific Workshop to evaluate 5 years of implementation of the Constitution of the Socialist Republic of Vietnam in 2013]*, Hanoi, 2018, 332.

⁵¹ Art. 3.7 of Labour Code 2019 dated 20 November 2019 issued by the National Assembly, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/110469/137416/F-1864718830/VNM110469%20Eng.pdf>.

⁵² Trinh Thi Thu Hien, “Hoàn thiện quy định về ‘cưỡng bức lao động’ [Completing ‘forced labour’ regulations]”, *Vietnam Lawyer Journal*, 2020, <https://lsvn.vn/hoan-thien-quy-dinh-ve-cuong-buc-lao-dong.html>.

⁵³ (1) Abuse of vulnerability; (2) Deception; (3) Restriction of movement; (4) Isolation; (5) Physical and sexual violence; (6) Intimidation and threats; (7) Retention of identity documents; (8) Withholding of wages; (9) Debt bondage; (10) Abusive working and living conditions; (11) Excessive overtime.

⁵⁴ Ngo Ngoc Diem & Le Van Nam, “Discussing on forced labour in Viet Nam’s criminal law”, *Legal Professions Review*, 2016, 6(2016), 16.

⁵⁵ *Ibid.*

ambiguous⁵⁶. In light of the absence of a thorough definition, it is still a profound challenge for Vietnam to implement its commitment within the context of the EVFTA.

Identify the indicators of forced labour

There are only four provisions in the domestic labour law that directly regulate forced labour in the form of acts that are prohibited or entitled behaviours to protest in the case of being forced⁵⁷. In addition, this law also strictly bans a number of behaviours, which include deception in recruitment methods, retention of identity documents, deposit requirements prior to employment, infringement of workers' rights to overtime pay, excessive wage deductions, a specific requirement to meet regional minimum wage requirements, and situations that delay in wage payment⁵⁸. The regulatory framework, however, is still fragmented, with indicators for forced labour separated into several provisions without being gathered into one article. Also, other indicators of the eleven signs indicated by the ILO have yet to be officially recognised, potentially leaving them outside the ambit of forced labour in Vietnam⁵⁹.

It so happens that the Labour Code, although it entitles workers to work and

freely select a job, a workplace, or an occupation, also gives them the freedom to unilaterally terminate labour contracts without notice⁶⁰. However, for some groups of workers, such as civil servants working in the state sector, domestic law lays down that civil servants are entitled to terminate their labour contracts at their own will, subject to the consent of the competent agencies, organisations, or units⁶¹. Suppose the competent agencies do not accept the resignation; in that case, they shall state the grounds for refusal, which may include, inter alia, the workers' non-fulfilment of "an obligation to pay money or assets under their personal liability towards their agencies, organisations, or units⁶². By doing so, this provision not only limits the capacity of civil servants to unilaterally terminate their labour contract but is also a sign of debt bondage behaviour that the Labour Code and C029⁶³ strictly prohibited.

Specification of exceptional cases of forced labour

Regarding cases of emergency, the national labour code provides that the employer has the authority to require employees to work overtime at any time. Employees are not entitled to refuse such work if the work is to implement a

⁵⁶ Dao Mong Diep & Mai Dang Luu, "Nội luật hóa quy định của Công ước 29 về lao động cưỡng bức và bắt buộc năm 1930 [Formalization provisions of Forced labour Convention, 1930 (No. 29)]", *Legal Professions Review*, 2015, 2(2015), 31.

⁵⁷ *Ibid.*

⁵⁸ International Labour Organization & Viet Nam Chamber of Commerce and Industry, *Preventing forced labour in the textile and garment supply chains in Viet Nam: guide for trainers*, ILO, Hanoi, 2016, 25.

⁵⁹ Nguyen Khanh Phuong, "Kiến nghị hoàn thiện pháp luật về chống lao động cưỡng bức, thực hiện cam kết của Việt Nam trong Hiệp định Đối tác xuyên Thái Bình Dương [Recommendations to improve legislation on anti-forced labour, to implement Vietnam's commitments in the Trans-Pacific Partnership Agreement]", *Legislative Studies*, 2016, 18(322), 54.

⁶⁰ Nguyen et al., *op. cit.*, 79.

⁶¹ Art. 3.1 of Decree No. 46/2010/ND-CP providing for job discontinuation and retirement procedures applicable to civil servants dated 27 April 2010 issued by the Government, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84250/93524/F1855104368/VNM84250.pdf>.

⁶² Art. 4.1 of Decree No. 46/2010/ND-CP, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84250/93524/F1855104368/VNM84250.pdf>.

⁶³ CEACR, "Forced Labour Convention (C029)", *Observation - adopted 2020, published 109th ILC session (2021) - Vietnam*, Comments (ilo.org).

conscription request for the reason of: (i) national security or national defence in emergency situations; (ii) preventing and recovering from natural calamities, fires, epidemics, and disasters; (iii) executing duties to protect human life or assets owned by organisations, agencies, or individuals⁶⁴. As reflected in the Observation Report adopted in 2020, the Committee of Experts on the Application of ILO Conventions and Recommendations (CEACR)⁶⁵ indicated the scope of labour, in this case, is beyond the one of Article 2.2.d in emergency cases, which only allows forced labour in cases of these situations, especially during special times like wars or natural disasters or the danger of natural disasters, and in situations where the safety of part or all of humanity would be in danger.

Regarding prison labour, those sentenced to detention must be forced to serve their sentences in prison camps that contain structured labour for inmates tailored to their age and health so as to help them become valuable members of society. Following the Execution of Criminal Judgements Law, using prison labour outside the detention camp through collaboration with organisations and individuals is not deemed to violate C029 because of three elements. The first reason is that the prisoner voluntarily participates in labour and study outside the prison camp (by a voluntary application for participation in labour and study). Another reason is that these inmates are compensated for their labour. Finally, the government claims that inmates' labour is placed under the close

supervision of prison officers and not the supervision of private enterprises⁶⁶.

Regarding the work exacted in drug rehabilitation centres, this means that an administrative treatment mandate is imposed by a decision of the Presidents of the State's administrative agencies, which requires that individuals undergoing drug rehabilitation centres actively engage in labour and manufacturing for treatment, work, education, vocational training, and reintegration into the community. This work, on the one hand, does not constitute forced labour, and it enables drug addicts to recognise the value of their labour and to regain their work capabilities, while no punishment would be imposed on those who are unwilling to work as well. Meanwhile, Article 2.2.c additionally states that labour can only be compelled from a person as a result of a court judgement. With this regard, it emphasises that forced labour imposed by administrative or other authorities or nonjudicial organisations is contrary to the convention. Therefore, the CEACR urged the Vietnam authorities to initiate the necessary actions, both legally and practically, to stop those confined in drug rehabilitation centres without being convicted by a court of law from being required to perform work⁶⁷. A lot of attention is also paid to the fact that persons may be obliged to work in organisations and enterprises that are illegal, as required by Convention C029. That means that the regulation of the obligation to work in drug

⁶⁴ Art. 108 of Labour Code 2019, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/110469/137416/F-1864718830/VNM110469%20Eng.pdf>.

⁶⁵ CEACR, *op. cit.*, Comments (ilo.org).

⁶⁶ The Nation Assembly Office of Vietnam, *Tổ chức lao động, hướng nghiệp, dạy nghề cho phạm nhân ngoài trại giam phù hợp với các điều ước quốc tế Việt Nam là thành viên [Organization of labour, vocational guidance and vocational training for inmates outside prison in accordance with international treaties that Vietnam is a member of]*, 2022, <https://quochoi.vn/pages/tim-kiem.aspx?ItemID=65689>.

⁶⁷ CEACR, Comments (ilo.org).

rehabilitation centres in Vietnam does not align with this convention⁶⁸.

Human trafficking regulation

Trafficking in human beings is mentioned in the Law on Prevention and Combat of Human Trafficking 2011, including stipulating the responsibilities of ministries and sectors in preventing and combating human trafficking, the rights and obligations of victims, and principles for handling human trafficking cases⁶⁹. However, criminal sanctions for behaviours related to human trafficking are regulated in the Criminal Code in two articles: the crimes of human trafficking and the trafficking of a person under the age of 16 (Articles 150 and 151, respectively). These provisions make significant changes to human trafficking legislation, such as ensuring a broader definition of human trafficking that includes forced labour as well as sexual exploitation, eliminating forms of coercion or forced labour in cases of child trafficking, and admitting that both men and women can be trafficked⁷⁰. Domestic law, in conjunction with the trafficking of children, is non-compliant with international requirements due to the age of the crime's victims. More explicitly, the Protocol requires state members to criminalise child trafficking under 18 years of age as a mandatory demand⁷¹, whereas national legislation

clarifies that children are under the age of 16 and victims of trafficking children crimes are the same age too, which is incompatible with international standards.

Punishment for the criminal offence of forced labour

For the first time, forced labour is criminalised with the highest penalty, up to 12 years in prison⁷², in the Crime of Forced Labour (Article 297) of the Criminal Code, signifying a new and targeted approach to regulating forced labour. Notwithstanding, critical obstacles to the application of this provision are: Firstly, the lack of detailed guidance on the behaviour of “using violence” or “threatening violence” in order to force others to work in forced labour helps distinguish it from some acts of other crimes, such as coercive behaviours to force others to perform prostitution activities, illegal arrest, detention, or imprisonment of people, or behaviours of human/child trafficking for sexual abuse or forced labour⁷³. Second, the penalty rate for this kind of crime is much lower than for other crimes with the same consequences⁷⁴. For example, when evaluating the consequences of the use of violence that leads to “injury or harm to the health of one person with a rate of bodily injury between 31% and 60%”, forced labour crimes are punished with a maximum of three years imprisonment, while

⁶⁸ Linh & Giao, *op. cit.*, 338.

⁶⁹ International Labour Organization & Viet Nam Chamber of Commerce and Industry, *op. cit.*, 31.

⁷⁰ Le Luong & Wyndham Caitlin, “What we know about human traffickers in Vietnam”, *Anti-Trafficking Review*, 2022, 18, 34.

⁷¹ Le Thi Van Anh, “Đánh giá tính tương thích của Bộ luật Hình sự năm 2015 về tội mua bán người, tội mua bán người dưới 16 tuổi với quy định của Nghị định thư về phòng ngừa, trấn áp và trừng trị việc buôn bán người, đặc biệt là phụ nữ và trẻ em [Examine the compatibility of the 2015 Penal Code's provisions on the crime of trafficking in persons, including the crime of trafficking in persons under the age of 16, with the Protocol on the prevention, suppression, and punishment of trafficking in persons, particularly women and children]”, *Legal Professions Review*, 2021, 3(2021), 56.

⁷² Phuong, *op. cit.*, 55.

⁷³ Diem & Nam, *op. cit.*, 17.

⁷⁴ Van Linh, “Hoàn thiện quy định về tội ‘Cưỡng bức lao động’ theo Điều 297 BLHS 2015 [Completing regulations on the crime of ‘forced labour under Article 297 of the Penal Code 2015’]”, *Vietnam Lawyer journal*, 2022, <https://svn.vn/hoan-thien-quy-dinh-ve-toi-cuong-buc-lao-dong-theo-dieu-297-bo-luat-hinh-su-20151650036106.html>.

intentional injuring provides for a maximum sentence of six years⁷⁵.

3.2. Vietnam has taken step-by-step synchronised measures of law implementation to eliminate forced labour

Intending to counter the practice of this phenomenon, Vietnam has ratified ILO C029 and C105 together with reaffirming EVFTA's commitment to putting an end to forced labour through the launch of the National Alliance 8.7 or the Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour⁷⁶. Moreover, in 2021, the Prime Minister issued Decision No. 2234/QĐ-TTg approving the Strategy on Execution of the ILO C105, encompassing nine working groups and assigning responsibility for organising the implementation to ministries, sectors, and localities⁷⁷. A vast range of various activities, including as (i) propagating and disseminating contents of C105 and related provisions of Vietnam's regulations; (ii) training and enhancing capacity for employees and employers; (iii) reviewing, amending, supplementing documents or promulgating new ones so as to improve the legal system; (iv) developing a database; (v) formulating documents to guide particular provisions of C105 that

must be performed in conformity with Vietnam's conditions; (vi) developing and putting in place a system for inspection, supervision, and managing infractions; (vii) reporting regularly or upon request to the ILO on implementation; (viii) strengthening cooperation with other countries; (ix) comprehensively assessing the implementation, drawing experience and supplement solutions⁷⁸. For new regulatory instruments that could be crafted to maximise their effectiveness, the National Assembly, the Ethnic Council, the National Assembly Committee, deputies' delegations and deputies from the whole country shall, within the scope of their responsibilities and authority, supervise this execution⁷⁹.

As of now, neither extensive scrutiny into forced labour practices in Vietnam nor the mechanisms for gathering information on the forms of compulsory labour has been established. This database also contains information still collected through the mass media and a number of documents from non-governmental organisations⁸⁰. Consequently, it is currently impossible to assess the effectiveness of legal instruments comprehensively and accurately, as well as to determine what actions should be taken in the future. Regarding the mechanism for

⁷⁵ Hien, *op. cit.*, <https://lsvn.vn/hoan-thien-quy-dinh-ve-cuong-buc-lao-dong.html>.

⁷⁶ European Commission and Government of Vietnam, *op. cit.*, 71.

⁷⁷ Ministry of Labour - Invalids and Social Affairs, *Báo cáo quốc gia lần thứ nhất về tình hình thực hiện công ước số 105 của ILO về Xóa bỏ lao động cưỡng bức [First Country Report on the Implementation of ILO Convention 105 on the Elimination of Forced Labour]*.

⁷⁸ Quyết định số 2234/QĐ-TTg ngày 30/12/2021 của Thủ tướng Chính phủ về việc phê duyệt Kế hoạch thực hiện Công ước số 105 của Tổ chức Lao động quốc tế (ILO) về Xóa bỏ lao động cưỡng bức [Decision No. 2234/QĐ-TTg approving the Strategy on Execution of the ILO Convention No. 105 concerning the Abolition of Forced Labor dated 30 December 2021 issued by the Prime Minister], <https://datafiles.chinhphu.vn/cpp/files/vbpq/2022/01/2234.signed.pdf>.

⁷⁹ Art. 4 of Resolution No. 104/2020/QH14 on accession to the International Labor Organization's Convention No. 105 concerning the Abolition of Forced Labor dated 8 June 2020 issued by the National Assembly of Viet Nam, <https://english.luatvietnam.vn/resolution-no-104-2020-qh14-dated-june-08-2020-of-the-national-assembly-on-accession-to-the-international-labor-organizations-convention-no-105-co-185795-doc1.html>.

⁸⁰ Linh & Giao, 339.

inspection, there has yet to be a full-fledged subject-matter inspection of forced labour⁸¹.

In terms of the plan to eradicate human trafficking, the recently adopted National Plan of Action to Combat and Prevent Trafficking in Persons for the period 2021–2025, with a vision to 2030 (NPA), emphasises the fight against all forms of human trafficking, including human trafficking with the intention of exploitation, with the aim of mobilising the participation of all relevant ministries and agencies to prevent and deal with the dangers of human trafficking and tackle the root causes of the latter⁸². However, it appears that Vietnam has not yet addressed all forms of human trafficking⁸³, and the application of the legislation lags behind since the authors were only able to find very few cases⁸⁴. For example, statistics for 2020 indicate that only 136 individuals were involved in 71 instances of individuals being trafficked for sexual exploitation and ten instances of forced labour⁸⁵, of which it is estimated that about 90% of the human-trafficking cases are cross-border and that human trafficking for prostitution or domestic forced labour accounts for 10% of the total cases detected⁸⁶. Furthermore, according to the U.S. Embassy's report on human trafficking in 2022, the Government of Vietnam failed

to ultimately achieve the minimum requirements for eradicating trafficking, and its lack of meaningful efforts to do so resulted in Vietnam being degraded to Tier 3⁸⁷.

In general, in spite of the fact that the General Labour Federation of Vietnam and the Inspectorate of the Ministry of Labour - Invalids and Social Affairs reported that in Vietnam, no cases of forced labour have been recorded so far⁸⁸, that does not mean that Vietnam has fulfilled its obligations under its commitments. It seems necessary for Vietnam to have a lot of time to implement its commitments to the abolishment of forced labour within the EVFTA because this agreement just came into force in 2020. Nevertheless, it is still clear how the highest efforts and goodwill of Vietnam contributed to the common goal of respecting, promoting, and implementing the abolition of forced labour, namely by completely ratifying C029 and C105 and abolishing and amending incompatible legal instruments with a view to improving the domestic legal framework compatible with these Conventions⁸⁹, in parallel with the Strategy for Execution of ILO C105 on the

⁸¹ *Ibid.*

⁸² Luong & Caitlin, *op. cit.*, 34.

⁸³ Office to Monitor and Combat Trafficking in Persons, "2022 Trafficking in Persons Report: Vietnam", *U.S. Department of State*, 2022, <https://www.state.gov/reports/2022-trafficking-in-persons-report/vietnam/>.

⁸⁴ Marx Axel & Jan Wouters, "Combating Slavery, Forced Labour and Human Trafficking. Are Current International, European and National Instruments Working?", *Global Policy*, 2017, 8(4), 496.

⁸⁵ Office to Monitor and Combat Trafficking in Persons, *op. cit.*, <https://www.state.gov/reports/2022-trafficking-in-persons-report/vietnam/>.

⁸⁶ Department of Criminal Investigation, *Training Handbook: Capacity building to prevent and combat human trafficking for criminal police forces and grassroots police*, Ministry of Public Security, 2018, 44.

⁸⁷ Office to Monitor and Combat Trafficking in Persons, <https://www.state.gov/reports/2022-trafficking-in-persons-report/vietnam/>.

⁸⁸ Ministry of Labour - Invalids and Social Affairs, *op. cit.*

⁸⁹ Kiên Giang Provincial Department of Labour, Invalids and Social Affairs, *Gia nhập Công ước 105 của ILO: Rất cần thiết và đã đủ 'chín muồi'* [Accession to ILO Convention 105: Necessary and "ripe" enough], 2020, <https://sldtbxh.kien Giang.gov.vn/trang/TinTuc/120/1125/Gia-nhap-Cong-uoc-105-cua-ILO--Rat-can-thiet-va-da-du--chin-muoi-.html>.

Abolition of Forced Labour in the period 2021–2025⁹⁰.

4. Lessons from European countries in the elimination of forced labour

4.1. European

As one of the most significant economies globally, the EU still has a detrimental impact upon the ability to conceal the threats posed by forced labour in the global supply chain. An estimated 1.3 million persons in EU countries were coerced into modern slavery in 2018⁹¹, as per the Global Slavery Index, and the estimated prevalence of the phenomenon ranged from 02 (in places like Denmark, Austria, Finland, Sweden and Ireland) to nearly 08 victims per 1,000 persons (in Greece)⁹². The EU, thus, formulated a number of legal instruments as some current approaches taken to address forced labour, including the European Convention on Human Rights 1950, which first recognised in Article 4 that slavery/forced labour is prohibited (except for some cases such as prisoners, military duty, and national emergencies), and then the EU Charter of Fundamental Rights 2000 reaffirmed this in Article 5⁹³. In addition, a number of EU directives on work and employment, like the ILO Conventions, could protect workers

from forced labour, more specifically, the Directives 2003/88/EC and 89/391/EEC, for instance, on the working time, safety and health of workers at work⁹⁴. In regard to human trafficking for the forced labour purpose, the 2005 Council of Europe Convention and Directive 2011/36/EU all include provisions for prosecuting traffickers and protecting their victims⁹⁵. In particular, based on a Delphi expert investigation, the European Commission, in collaboration with the ILO, collectively issued a collection of signs of labour/sexual abuse trafficking in 2009, which published four groups of 67 indicators for victims who are adults and kids trafficked for work and sexual exploitation⁹⁶. Although this collection of metrics is not a rule in and of itself, it has become widely regarded as a standard for national enforcement practice⁹⁷.

In a further effort to tackle abuses in supply chains, the EU thus targets companies more directly as key actors in the co-enforcement of enhanced working conditions and combating forced or compulsory labour. The European Commission enacts a specific Directive on Corporate Sustainability Due Diligence, which stipulates that businesses need to prove they have taken all the required steps to prevent, recognise, and address forced labour in every aspect of their business operations and supply chain⁹⁸. These steps

⁹⁰ TG, “Thực Hiện công ước của ILO Về Xóa Bỏ Lao động Cường Bức [Implementation of the ILO convention on the Abolition of Forced Labour]”, *Communist Party of Vietnam online newspaper*, 2022, <https://dangcongsan.vn/xa-hoi/thuc-hien-cong-uoc-cua-ilo-ve-xoa-bo-lao-dong-cuong-buc-601374.html>.

⁹¹ Valli Corbanese & Gianni Rosas, *Policies to prevent and tackle labour exploitation and forced labour in Europe*, ILO, Rome, 2021, 1.

⁹² *Ibid.*, 2.

⁹³ Nick Clark, *Detecting and tackling forced labour in Europe*, Joseph Rowntree Foundation, York, 2013, p.20.

⁹⁴ Corbanese & Rosas, 12.

⁹⁵ *Ibid.*, 17.

⁹⁶ SAP-FL, “Operational Indicators of Trafficking in Human Beings”, results from a Delphi Survey Implemented by the ILO and the European Commission, ILO, 2009, https://www.ilo.org/wcmsp5/groups/public/--ed_norm/---declaration/documents/publication/wcms_105023.pdf.

⁹⁷ Clark, *op. cit.*, 21.

⁹⁸ Corbanese & Rosas, *op. cit.*, 21-23.

should be integrated into the organisation's ultimate strategies, organisational forms, financial and capital management⁹⁹. In addition, the EU has been working on a bill for a European Parliament and Council Regulation barring the sale of goods created with forced labour in the European trade, strictly prohibiting both imported products and those manufactured in the Union territory to be destined for internal consumption or export, and not focusing on specific types of enterprises¹⁰⁰. If a corporation performs adequate due diligence on the distribution networks in order to limit, prevent, and eliminate the dangers of forced labour, this will thereby mitigate the risks of placing on the market products obtained by resorting to forced labour¹⁰¹. As a result, the two new EU policies together support tackling dangers associated with forced labour throughout the supply chain¹⁰², which is a precious resource for Vietnam seeking to eliminate forced labour.

4.2. Hungary

As a rather modest nation located in the heart of Europe, with a population of

approximately 10 million people¹⁰³, Hungary is at the intersection of the East-West and South-East Continents. This has made it a source and transit country of legal and illegal migration in which trafficked women and girls are victims of sexual abuse, as well as a country of origin for men and women exploited at work¹⁰⁴ (approximately 63,000 people live in conditions of slavery¹⁰⁵). Vietnam, with a good and long-standing traditional cooperative relationship with Hungary, and with 1,042 workers working in Hungary in the fields of agriculture, food processing, construction, industrial production, welders, and chefs (in the period 2019-2022), is therefore always concerned with social issues, especially forced labour in Hungary¹⁰⁶. Forced labour is a hidden situation in Hungary, and because of that, there are only calculated numbers of victims. As we know-according to official crime statistics-a total of 36 registered forced labour crimes were committed in Hungary between 2013 and

⁹⁹ Accountancy Europe, *Joint statement on the Corporate Sustainability Due Diligence Directive*, 2022, <https://www.accountancyeurope.eu/reporting-transparency/joint-statement-on-the-corporate-sustainability-due-diligence-directive-csddd/>.

¹⁰⁰ Anne Altmayer, "Proposal for a ban on goods made using forced labour", *European Parliament Research Service (EPRS)*, 2023, 3, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739356/EPRS_BRI\(2023\)739356_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739356/EPRS_BRI(2023)739356_EN.pdf).

¹⁰¹ Council of the European Union, *Proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market*, Brussels, 2022, <https://op.europa.eu/en/publication-detail/-/publication/724c8b9a-3a5a-11ed-9c68-01aa75ed71a1/language-en/format-PDF>.

¹⁰² European Commission, *Commission moves to ban products made with forced labour on the EU market*, 2022, https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5415.

¹⁰³ Windt Szandra, "The unspoken phenomenon: Forced labour in Hungary", *Archiwum Kryminologii*, 2021, I(XLIII), 124.

¹⁰⁴ European Commission, *Migration and Home Affairs - Hungary*, https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/hungary_en.

¹⁰⁵ Walk Free, *Regional analysis: Europe and Central Asia*, Global Slavery Index, 2018, Europe and Central Asia | Walk Free.

¹⁰⁶ Ministry of Labour - Invalids and Social Affairs, *Promoting the cooperation on labour export between Vietnam - Hungary*, 2022, <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=231273>.

2019¹⁰⁷. The victims typically tend to have alcohol problems, be homeless, unemployed, elderly, in extremely poor health, and be of below-average intelligence, and they usually have problems with money; they are in a debt spiral, which causes their contemporary slavery or forced labour situation. These are the new variations of slavery in Europe and in Hungary too.

Therefore, the legal framework for the abolition of forced labour and human trafficking for exploitation is a set of rights recognised by the Constitution as requiring a high level of protection, the Fundamental Law of Hungary¹⁰⁸, and the Labour Code 2012 (as amended in 2020)¹⁰⁹. In another attempt, the Hungary government amended and supplemented the Criminal Code at the beginning of 2020 with three major amendments¹¹⁰: Firstly, Sections 192 of the definition of human trafficking and 193 of the definition of forced labour were amended in the direction of merging the two concepts into “human trafficking and forced labour”. This was an appropriate streamlining of their legislation, while also clearly reflecting the nature of human trafficking and demonstrating the most comprehensive, inclusive, and without exception for victims of trafficking; Secondly, the maximum penalties for the offence described in the standard case are increased from 3 years to 5 years, which reflects how serious the crime is; Thirdly, intentionally making use of services or tasks by victims of human trafficking or forced

labour would result in legal repercussions as punishment. At the same time, on February 18, 2020, the Hungarian government approved a plan to combat human trafficking from 2020 to 2023. The strategy is built on the following core elements: prevention, protection, prosecution, and partnership, with measures targeted at the main target groups of children, adolescents, and women (especially those living in extreme poverty)¹¹¹. A comparison with Vietnamese law shows that, via a change in behavioural identification, Hungarian law offers a more comprehensive framework for human trafficking, and regulations that penalise the indirect use of forced labour, in particular, could possibly contribute to strengthening Vietnam's law on this matter.

4.3. Italy

Among the four EU founding member nations, Italy is notable for being a state-centered one in the EU¹¹². In Italy, by contrast, forced labour is a severe issue in agriculture, textile production, construction, and domestic work (the second highest in EU countries¹¹³), which has been known for years to rely on cheap and exploited migrant labour¹¹⁴. Due to bilateral cooperation in various fields such as high-tech agriculture, construction and textiles, the experience of Italy on sustainable employment, the management of forced labour, and migration (especially from 2020 to 2022, when the Three-Year Plan was implemented to

¹⁰⁷ Szandra, *op. cit.*, 119.

¹⁰⁸ Art. XII of the Hungary's Constitution of 2011 dated 25 April 2011 by the President, https://www.constituteproject.org/constitution/Hungary_2011.pdf.

¹⁰⁹ 2012 évi I törvény a munka törvénykönyvéről [Act I of 2012 on the Labour Code] dated 1 July 2012 amended in 2023 issued by National Assembly, https://net.jogtar.hu/jogszabaly?docid=a1200001.tv_.

¹¹⁰ Szandra, 126.

¹¹¹ European Commission, *op. cit.*, https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/hungary_en.

¹¹² Clark, 7.

¹¹³ Corbanese & Rosas, 2.

¹¹⁴ Walk Free, “Country studies: Italy”, *Global slavery index*, 2018, Italy | Walk Free.

combat labour exploitation and illegal recruiting in agriculture), these are the problems that Vietnam is interested in¹¹⁵.

It can be seen that there are a variety of different national approaches to protection for employment, human rights, and equality, especially in the Italian Constitution (Articles 36, 41). Forced labour, on the other hand, is criminalised under Article 603; trafficking in persons and slavery are prohibited in Articles 601, 600, and 602 of the Criminal Code¹¹⁶. According to Law No. 1999 on measures to combat undeclared employment, exploitative labour, and wage realignment in agriculture, “caporalato” (exploitation) is defined as if any of the following circumstances are met in a given situation: the pattern of wage payments that are either inconsistent with national collective agreements or grossly out of proportion to the amount and quality of work done; the persistent breaking of safety, sanitation, and working-time regulations; and putting the worker in poor working circumstances or a worsening housing situation. Coupled with a number of aggravating factors of the crime, including: when there are more than three illegally hired employees; when children are illegitimately recruited; and when illegally recruited employees are subjected to any form of hazard¹¹⁷. There is no doubt that Italy has broadened the definition's reach while strengthening the protection of forced labourers in identified situations of forced

labour. And through the aggravating conditions for illegally recruiting labour, this would convincingly demonstrate comprehensive provisions related to forced labour in this nation.

Additionally, through the Social Labelling Programmes, a label called “Network of High-Quality Agricultural Labour”¹¹⁸ is used to describe action taken by enterprises to improve working conditions of a product or service¹¹⁹. Only companies that comply with core labour standards and have not received convictions for breaches of labour laws in the past three years can use the label as a certificate of business respecting labour laws and social legislation¹²⁰. In a similar vein, Law No. 50 mandates the removal of economic organisations from participating in government procurement practices if the controller has already been found guilty of child labour or human trafficking by a final verdict¹²¹. Thus, through self-governance and community-based monitoring, businesses will serve as the initial line of defence in recognising and dealing with forced or compulsory labour in their distribution networks¹²².

5. Recommendation

Despite deliberate attempts to amend and supplement national legislation on the abolition of forced labour, however, there are still significant limitations that need to be

¹¹⁵ Ministry of Labour, War Invalids and Social Affairs, *Promoting cooperation between Vietnam and Italy in the field of labour*, 2014, <http://english.molisa.gov.vn/Pages/News/Detail.aspx?tintucID=217169>.

¹¹⁶ Walk Free, *op. cit.*, Italy | Walk Free.

¹¹⁷ Ruggero Scaturro, “Modern slavery made in Italy—Causes and Consequences of Labour Exploitation in the Italian Agricultural Sector”, *Journal of Illicit Economies and Development*, 2021, 3(2), 186.

¹¹⁸ Walk Free, Italy | Walk Free.

¹¹⁹ Janelle DILLER, “A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives”, *International Labour Review*, 1999, 138(2), 104.

¹²⁰ Walk Free, Italy | Walk Free .

¹²¹ *Ibid.*

¹²² Schwarz Katarina, et al, *External policy tools to address modern slavery and forced labour*, European Parliament, Brussels, 2022, 109.

taken into account in a further effort to achieve more effective implementation of the EVFTA labour commitments:

Firstly, the Vietnamese legislation should shed light on both the concept and identification of forced labour in line with C029.

In the first place, the Labour Code 2019 continues to define forced labour primarily through the use/threat of force, which is akin to workplace violence, and as a result, the level of danger as well as the variety of forced labour behaviours have not been transmitted. Besides, the “other tricks”, which are an open regulation, could be construed in a number of complex ways¹²³. Because the definition of forced labour stipulated by C029 might not have been properly incorporated into domestic Vietnamese legislation, it would be necessary for that complete definition of forced labour by defining it as “the situation in which a person is forced by another to impose work under the threat of possible adverse consequences for himself/herself or his/her relatives”¹²⁴. Moreover, to close the gap, a range of indicators should be classified into typical identification signals/cases based on the eleven ILO’s indicators for forced labour, including: (i) employers take advantage of their employees’ vulnerability; (ii) employers deceive their employees into joining and/or performing contractual relationships with them; (iii) employees are isolated and in a restricted movement; (iv) employees are threatened by their employers; (v) employers put their employees in a position of subordination and make them do required

tasks by withholding their ID or wages or using indirect methods; (vi) employees are regularly and constantly forced to work excessive overtime; (vi) employees suffer physical and sexual violence by their employers¹²⁵.

Secondly, the Vietnamese law should be amended to narrow down the exceptional cases of forced labour.

As explained above, the scope of emergency in the Vietnamese Labour Code does not meet the characteristic of Article 2.2.d under C029; thus, national legislation should make a more appropriate adjustment to the Convention that permits forced labour to be exacted only in cases of emergency, according to the literal meaning of the phrase, particularly occurrences of war or (threatened) calamity, and also generally, any situations that might jeopardise the survival or the general or specific well-being of the population.

An aspect of addicts work exacted in drug rehabilitation centres, those imposed by an administrative decision, should be subject to the obligation under a court ruling in order to guarantee conformity with the international convention ratified by Vietnam¹²⁶. At the same time, as the use of this workforce by individuals, corporations, or organisations is illegal, it would be necessary to formulate guidelines providing for the cooperation between drug rehabilitation centres and private or individual enterprises, with a particular emphasis on avoiding the transfer of labour or placing it under the right of private property, to comply with the conditions of Article 2 under C029.

¹²³ Diem & Nam, 16-17.

¹²⁴ Nguyen Tien Dung, “Khái niệm về lao động cưỡng bức [Concept of forced labour]”, *Hanoi Law Review*, 2016, 12(2016), 6.

¹²⁵ Nguyen Tien Dung & Nguyen Thi Thanh Huyen, “Elimination of forced labour or compulsory worker under Vietnam’s law viewpoint from the European Union and some member countries”, *Legal professions Review*, 2023, 4(2023), 80.

¹²⁶ CEACR, Comments (ilo.org).

Thirdly, Vietnam should keep adapting to international norms and the experiences of other nations in human trafficking legislation.

As mentioned previously, the lower-level minimum age for trafficking in children is one of the primary obstacles to Vietnam's application of international law. It is, therefore, believed that Vietnam should raise the age for victims of child trafficking to 18 years of age. This amendment would both synchronise with the requirements of international norms as well as the legislation of many countries in the world and be better for decreasing social vulnerability while also protecting those who have not yet acquired physical and mental maturity¹²⁷.

Fourth, criminal penalties for forced labour should be revised to improve legal regulation and the penalty level.

Regarding the provision on the crime of forced labour in the Criminal Code, specific guidelines and rules on the use/threat of force to compel others to work alongside distinctive actions of forced labour in other offences should be supplemented¹²⁸. Furthermore, we highly suggest greater penalties for the offence of forced labour, similar to intentional injury or harm to the health of others, and this may refer to aggravating cases involving illegal employment under Italian law to establish the level of danger of the conduct.

Fifth, it is important to promote the execution and allocation of resources for the plan on C105 implementation and the plan for the prevention of human trafficking on a nationwide scale (NPA)¹²⁹.

Admittedly, the most urgent issue with Vietnam is the requirement to develop official statistics systems for collecting databases, in addition to carrying out a thorough investigation into forced labour as well as human trafficking in an attempt to closely monitor the situation in the coming years¹³⁰. It is also necessary to establish and carry out an inspection process, monitoring full-fledged subject-matter inspection of forced labour and human trafficking throughout a whole nation. Accordingly, the conduct of inspection and the handling of violations require coordination, a collaboration of several public agencies such as the inspection agency, the organisation of representatives of workers, the judiciary, and the executive agency. Since then, the government has the basis to carry out the prevention, combat, and elimination of forced labour from 2021–2025, as proposed.

Sixthly, it is necessary to enact regulatory measures that not only oblige but also encourage enterprises in Vietnam to take social responsibility, along with the co-enforcement of the elimination of forced labour commitments.

Due to the domestic framework's lack of provisions relating to the responsibility of enterprises or employers to prevent forced labour as mandatory obligations, it is suggested that providing the obligation to “build and take measures in preventing and resolving workplace forced labour” as an enterprise’s binding obligation¹³¹. This regulatory measure also obliges enterprises to disclose the extent to which they take steps to address forced labour in internal labour regulations, as proposed in the

¹²⁷ Anh, *op. cit.*, 59.

¹²⁸ Diem & Nam, 17.

¹²⁹ Office to Monitor and Combat Trafficking in Persons, <https://www.state.gov/reports/2022-trafficking-in-persons-report/vietnam/>.

¹³⁰ Linh & Giao, 341.

¹³¹ Tran Thi Huyen Trang, “The responsibility of businesses for preventing forced labour”, *Industry and trade magazine*, 2021, 3(2021).

directive proposal on corporate sustainability due diligence that has been developed by the EU. Enterprises, besides adhering to obligations under national and international law, also should comply with the Code of Conduct for the strict prevention of forced labour in corporate social responsibility criteria¹³². On the other hand, the government should first actively promote a “Responsible Supply Chain Policy” intended to prevent and mitigate the use of forced labour throughout the global supply chain, in relation to the “social labelling programmes” in Italy, or a legal proposal that empowers the states to exclude from the Vietnamese trade products created with forced labour.

6. Conclusion

This research focuses on the development and implementation of Vietnamese policy on the end of forced labour under the EU's next-generation free trade agreement. The Vietnamese government here has made considerable efforts to both establish appropriate legislative regimes and enforce important tools aimed at eliminating all forms of forced labour together with fighting human trafficking. Despite considering this a high-level priority in the country, in the course of satisfying international obligations, Vietnam still faces a wide range of enforcement challenges.

In fact, active learning from the concrete experience of the EU and EU

countries like Hungary and Italy, as well as adapting internal legislation along with exemplary implementation of C105 and C029, would ensure that Vietnam significantly benefits from participating in trade agreements. On the contrary, if Vietnam fails to meet its labour commitments related to the abolition of forced labour, bilateral trade relations between Vietnam and the EU will suffer severely. Therefore, the ongoing review, modification, and supplementation of the internal legal system to ensure compatibility with international legal norms as well as the synchronous implementation of ILO recommendations will additionally prevent and eliminate the practice of using forced labour in Vietnam while still ensuring Vietnam's sustainable development in the world trade market.

Overall, the EVFTA serves as an important declaration of principles, including the eradication of forced labour, which both the EU and Vietnam are willing to uphold on a global scale. Yet it is also a comprehensive trade agreement, with a strategic role for the EU on both sides of the Asian region and in developing countries. So the study on the commitment to eliminate forced labour within the EVFTA would, on the one hand, benefit the EU in reevaluating this commitment as well as commitments in line with the social dimension in EU policy and, on the other, enable other developing nations to reevaluate their own national labour commitments in new-generation FTAs with the EU and other country partners./.

¹³² Such as, the UN Global Compact, the International Finance Corporation's (IFC) Performance Standards on Labour and Working Conditions, the Global Reporting Initiative (GRI) Sustainability Reporting Framework, ISO 26000: 2010 - Guidance on social responsibility, the Ethical Trading Initiative (ETI) Base Code, the Fair Labour Association's Workplace Code of Conduct; Social Accountability International - SA8000 Standard, and the Nordic Initiative Clean & Ethical Fashion (NICE).

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