

THE RESPONSE OF THE SPANISH CRIMINAL LAW TO FORCED LABOUR PRACTICES IN TRANSNATIONAL CORPORATIONS

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Abstract

This paper aims at studying the criminal liability according to the Spanish law of transnational companies for imposing forced labour on citizens in other countries. The objective is to elucidate whether, under the Spanish law, it is possible to penalise Spanish companies that carry out these practices abroad, practices that are clearly harmful to fundamental rights. For criminal prosecution in Spain to be possible, certain requirements must be met. First, it is necessary that the Spanish Criminal Code acknowledges that legal persons can be held liable. This is a reality since year 2010, although there are a number of problems in attributing responsibility to the parent company for the conducts carried out abroad by the subsidiary. Second, it is required that the Spanish Criminal Code expressly provides that legal persons may be responsible for this type of offences (offences against workers' rights). This is not currently foreseen by the Spanish Criminal Code. Third, it is needed that the Spanish courts are able to prosecute extraterritoriality these criminal offences. This is not possible at the moment according to the current Spanish legislation. Given the situation described, this paper proposes the necessary legal reforms to make it possible to penalise Spanish companies that impose forced labour practices abroad since these practices entail violations of fundamental rights.

Keywords: criminal responsibility, forced labour, slavery, Spanish Criminal Code, transnational corporations.

1. Introduction

The aim of this paper is to study the criminal liability of transnational companies under Spanish law for the imposition of forced labour on citizens in other parts of the world¹. It seeks to answer the question of whether, under Spanish law, criminal penalties can be imposed on Spanish companies that engage in these practices outside of the national borders. Three requirements must be met to make this possible. Firstly, the legal system must recognise that legal persons can be criminally liable. Unlike common law systems, the legal systems in continental Europe have not traditionally recognised this. However, several European and Latin American states have recently included this possibility in their legislation. In the case of Spain, the criminal liability of legal persons was incorporated into the Criminal Code through a reform carried out in 2010. Secondly, under Spanish law, the Criminal Code must expressly state which offences can be attributed to a legal person, as it is governed by a closed list (*numerus clausus*) principle. A major problem arises here, as the Spanish Criminal Code does not currently include violations of workers' rights in this list of offences. Thirdly, Spanish law would need to allow the extraterritorial prosecution of violations of workers' rights

committed abroad by Spanish companies. While the current legislation does not allow for this, it makes it possible to prosecute human trafficking for exploitation (including labour exploitation). In other words, Spanish law is not totally foreign to the actual problem that exists at present, but it only provides a criminal law solution to a specific facet of this problem.

In light of the situation described above, this paper aims to offer a proposal *de lege ferenda*, for improving the law in the future, to make it possible to criminally sanction violations of workers' rights by Spanish companies in other countries under Spanish law. This is a response to a practice that is unfortunately common around the world today, as shown by the data that will be provided in the following section. With this proposal *de lege ferenda*, Spain would comply with the supranational mandates that have been developed in this area, such as, for example, the Guiding Principles on Business and Human Rights, adopted by the United Nations in 2011.

It is essential to ensure that national legal systems can address human rights violations such as forced labour and similar practices, as transnational corporations are not subject to international jurisdiction (e.g., the International Criminal Court). Therefore, it is for states to provide an effective response to this problem within their domestic laws². In particular, the focus is on the home states of

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² Ambos, K. "The Foundations of Companies' Criminal Responsibility under International Law". *Criminal Law Forum*, 29 (2018): 564; García Mosquera, M. "La personalidad jurídica de empresas transnacionales como requisito de la responsabilidad penal del art. 31 bis CP. Consideraciones en el contexto de la unión europea". *Estudios penales y criminológicos*, vol. XXXIII, (2013): 325-326; Pérez Cepeda, A.I. Acuerdos de libre comercio y el sistema internacional de Derechos Humanos en el marco del Derecho penal internacional. In *Liber amicorum*.

transnational corporations since, as experts have pointed out, there may be corruption problems in the host state that allow multinationals to circumvent the rules and emerge unscathed from criminal proceedings if there is a prosecution³.

2. Conceptual framework. Some figures on forced labour worldwide

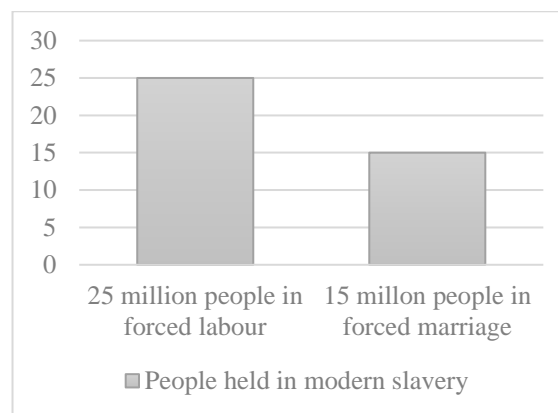
The term “modern slavery” has gained prominence in recent times. It has been used in numerous scientific studies⁴, as well as in some national laws and regulations⁵. The International Labour Organisation (ILO) includes forced labour and forced marriage within this term. The term “forced labour” encompasses acts perpetrated either by the state or by the private sector, as well as the sexual exploitation of adults and children, whether in prostitution or pornography⁶.

Forced labour was defined as early as 1930, in the ILO Forced Labour Convention (Convention No. 29). Article 2 defines this term as “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”. The Convention obliged ratifying States⁷ to abolish all forms of forced labour (Article 1), a mandate that was repeated in the Abolition of Forced Labour Convention, adopted by the same organisation in 1957 (Convention No. 105)⁸ and, more recently, in the Protocol to the Forced Labour Convention, 1930, adopted in 2014⁹. Slavery, however, has further implications. The 1926 Slavery Convention (as amended in 1953) defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (Art. 1) and requires its abolition (Art. 2).

Despite the supranational mandate for the abolition of forced labour practices and slavery, which began almost a century ago, the figures are still devastating today, even though they may not reflect the “unrecorded figures” on this type of crime because many of these practices, by definition, remain hidden from society. At present, the ILO estimates that just over 40 million people in the world (that is, more than twice the population of Romania), are held in conditions of modern slavery (see Graphic 1). This means that 5.4 people in every 1000 are victims of this type of practice. One in four enslaved persons are under the age of 18. Available data also show that slavery has a

significant gender bias (see Graphic 2): 71% of victims are either women or girls. They account for 99% of victims in the sex industry sector, and 58% in all other sectors¹⁰.

Graphic 1. People held in modern slavery around the world



Source: International Labour Office, Walk Free Foundation and International Organization for Migration (2017). *Global Estimates of Modern Slavery*. Ginebra

The phenomenon of modern slavery could be considered to be eradicated in Spain, a country with a well-established democracy and rule of law. In fact, the Spanish Constitution, approved in 1978, did not declare slavery abolished or prohibited, probably because at that time it was believed that slavery no longer existed. However, the Global Slavery Index estimates that 105,000 people in Spain are subjected to modern slavery, which means that just over 2 people out of every 1000 experience slavery conditions in Spain¹¹.

Estudios jurídicos en homenaje al Prof. Dr. Dr. H.c. Juan M^a Terradillos Basoco (617-636). Valencia: Tirant lo Blanch, 2018; Pérez Cepeda, A.I. “Hacia el fin de la impunidad de las empresas transnacionales por violación de los Derechos Humanos”. *Revista Penal*, 44, (2019): 141.

³ Muñoz de Morales Romero, M. “Vías para la responsabilidad de las multinacionales por violaciones graves de Derechos humanos”. *Política Criminal*, vol. 15, n. 30 (2020): 948.

⁴ See, among others, Scarpa, S. *Trafficking in Human Beings. Modern Slavery*. New York: Oxford University Press, 2008.

⁵ United Kingdom, *Modern Slavery Act*, 2015. Australia, *Modern Slavery Act*, 2018.

⁶ International Labour Office, Walk Free Foundation & International Organization for Migration. *Global Estimates of Modern Slavery*. Geneva (2017), 17.

⁷ Spain ratified the Convention on the 29th August 1932. Romania ratified it on the 28th May 1957.

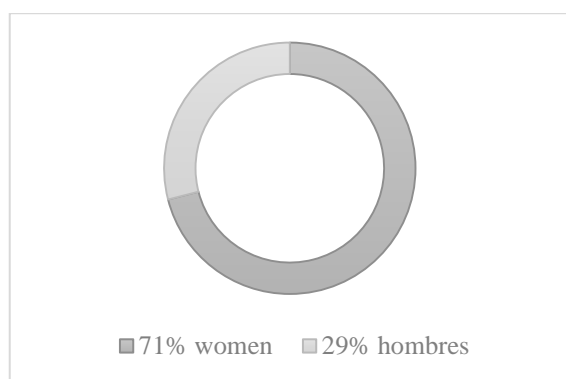
⁸ Spain ratified the Convention on the 6th November 1967. Romania ratified it on the 3rd August 1998.

⁹ Spain ratified the Convention on the 20th September 2017. Romania has not ratified it yet (last check 21.3.2021).

¹⁰ International Labour Office, Walk Free Foundation & International Organization for Migration, *op. cit.*, 9-10.

¹¹ Walk Free Foundation. *Global Slavery Index*. 2018.

Graphic 2. Distribution of forced labour between men and women



Source: International Labour Office, Walk Free Foundation and International Organization for Migration (2017). *Global Estimates of Modern Slavery*. Ginebra

The above data show that slavery practices exist all over the world and that policies are needed to eliminate them. These policies include those that can be adopted in criminal law, although criminal law is certainly not the only way to combat these practices, and sometimes it is not even the most effective way. In fact, as early as 1930, the Forced Labour Convention set out that “the illegal exaction of forced or compulsory labour should be punishable as a penal offence” and penalties should be imposed by states accordingly (Article 25). The treatment of forced labour in Spanish criminal law is explained below.

3. Forced labour as a criminal offence in the Spanish Criminal Code

Title XV (Articles 311-318) of the Spanish Criminal Code regulates violations of workers’ rights. It criminalises a wide range of behaviours such as imposing illegal conditions on a worker, simultaneously employing people without a work permit or without registering them with the Social Security authorities, certain behaviours related to labour discrimination, the infringement of health and safety rules that poses serious risk to workers’ life or health, etc. (see Table 1). When these behaviours are less serious, they are sanctioned by administrative law¹², a less harming and stigmatising branch of law. Specifically, these sanctions are provided for in the *Law on Labour Offences and Sanctions*¹³ outside of criminal law in Spain. However, recent decades have seen an expansion of punitive measures in various

forms, both in Spain and elsewhere¹⁴. In particular, in the area of so-called criminal labour law, this expansion has been characterised by including in the punitive provisions some behaviours that are already sanctioned in non-criminal regulations. This poses a serious problem, because they have largely been incorporated without providing for any additional levels of harm, which would make it possible to distinguish an administrative infringement from a criminal offence.

Despite the fact that criminal labour law has undergone a notable expansion, there are certain truly serious conducts that are not expressly criminalised in the Spanish Criminal Code. These are slavery and forced labour practices. Admittedly, these practices would fall under Art. 311.1° of the Criminal Code, which reads as follows:

“Prison sentences of between 6 months and 6 years and a fine of between 6 and 12 months will be imposed on:

1. Those who, by means of deceit or abuse of a situation of need, impose working or Social Security conditions on the workers in their service that are detrimental to suppress or restrict the rights that are granted to them by law, collective bargaining agreements or individual contracts”.

Even though these behaviours are covered by Article 311.1° above, the fact is that this provision includes wide-ranging practices in terms of their degree of harm to workers’ rights. This is why the penalties are so broad (the prison sentence ranges from 6 months to 6 years). The inclusion of disparate violations in the same article means that the full extent of slavery and forced labour is little recognised, and legal provisions are not consistent with the situation of our time, as shown by the data in section 2 above. There is such lack of knowledge of the actual situation by the Spanish legislator that the concepts of slavery and forced labour are not even mentioned in these articles of the Criminal Code. Professor Terradillos has noted that there is an important paradox here, as the Criminal Code requires slavery and forced labour practices to be encompassed within more “minor” criminal offences such as the imposition of unlawful working conditions in Article 311.1°, and charged cumulatively with other offences such as offences against moral integrity, illegal detentions, and human trafficking for exploitation, among others. This allows for relatively long prison sentences being given, “but causes the boundaries of very serious crimes, namely, imposing slavery and forced labour, to be blurred”¹⁵.

¹² Fuentes Osorio, J. L. “¿El legislador penal conoce la normativa sancionadora laboral? Superposición del ilícito penal y el administrativo-laboral. El ejemplo del tráfico ilegal de mano de obra”. *Estudios Penales y Criminológicos*, vol. XXVI (2016): 553-603, passim.

¹³ Passed on the 4th August 2000.

¹⁴ Silva Sánchez, J.M. *La expansión del Derecho penal. Aspectos de Política criminal en las sociedades postindustriales*. Montevideo – Buenos Aires: BdeF, 2006, passim.

¹⁵ Terradillos Basoco, J.M. *Aporofobia y plutofilia. La deriva jánica de la política criminal contemporánea*. Barcelona: J.M. Bosch Editor, 2020, 140.

Table 1. Violations of workers' rights in the Spanish Criminal Code

Art. 311.1°	Imposing unlawful conditions
Art. 311.2°	Simultaneously employing a number of workers without registering them with the social security system or without a work permit
Art. 311.1°	Maintaining unlawful conditions
Art. 311.4°	Engaging in the above behaviours resorting to violence or intimidation
Art. 311bis	Repeated hiring of foreign nationals without work permits/Hiring of minors without work permits
Art. 312.1	Workers' trafficking (transfer, placement)
Art. 312.2 (I)	Recruiting or luring people out of employment by offering misleading or false employment or working conditions
Art. 312.2. (II)	Employing foreign nationals without a work permit under conditions that impair, suppress, or restrict rights
Art. 313	Promoting migration by simulating a contract or placement or similar deception
Art. 314	Engaging in serious discrimination and failing to restore equality under the law following a formal notice or administrative sanction
Art. 315	Preventing or limiting the rights to organise a union and take industrial action/Coercing to go on strike
Art. 316 - 318	(Intentional and reckless) violations of health and safety regulations

Source: Spanish Criminal Code

In addition to this situation, which makes it impossible to have an adequate appreciation of slavery or forced labour practices, there is another inconsistency in the Spanish Criminal Code. In 2010, human trafficking was incorporated into Spanish legislation as a separate criminal offence, pursuant to the applicable supranational regulations³⁹. The new offence was inserted into Art. 177bis of the Criminal Code. It defines the human trafficking in the same way as supranational regulations do, including the well-known three elements:

- the conducts (inducing, transporting, etc.),
- the means (violence, intimidation, deception, etc.)
- and the purposes (exploitation of various kinds).

These purposes literally include "imposing forced labour or services, slavery or practices similar to slavery, servitude or begging" (Art. 177bis.1.a). This reference is incongruous insofar as these practices do

not appear as such in any other provision of the Criminal Code. They could be included in the scope of Art. 311.1, but as mentioned above, it also includes other types of less severe conduct.

The crime against humanity was incorporated into the Spanish Criminal Code in 2003, as required by the Rome Statute of the International Criminal Court. It also punishes subjecting a person to slavery or keeping them in slavery, provided that the acts are perpetrated "as part of a widespread or systematic attack against the civilian population or a part thereof" (Art. 607bis of the Criminal Code). The same provision also sets out a definition of slavery as "the situation of a person over whom another person exercises, albeit de facto, all or some of the attributes of the right of ownership, such as buying, selling, lending, or exchanging such person". The same inconsistency is found here, since slavery as such is not criminalised elsewhere in the Spanish Criminal Code.

In view of the above, there is a certain lack of coherence on these matters in the provisions of the

³⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (15 November 2000); Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005); Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Official Journal L 101, 15 March 2011). See Pérez Cepeda, A. I. & Benito Sánchez, D. *Trafficking in Human Beings. A Comparative Study of the International Legal Documents*. Groningen/Amsterdam: Europa Law Publishing, 2014.

Spanish Criminal Code. It is therefore necessary to incorporate the offences of subjection to slavery and forced labour separately into the Criminal Code. This would be the starting point for holding Spanish companies accountable for such practices.

4. Corporate criminal liability for forced labour practices under Spanish law: unfinished business

Organic Law 5/2010 of 22 June 2010 introduced the criminal liability of legal persons into Spanish criminal law, in line with other legal systems and supranational requirements, especially those of the Organisation for Economic Co-operation and Development. Since the entry into force of the Organic Law, companies can be held liable for certain criminal offences if the requirements in Art. 31bis of the Criminal Code are met. Specifically, Art. 31bis encompasses two events:

1. A legal person can be criminally liable when the offence is committed by its legal representative or a person who individually or collectively has decision-making, organisational or controlling authority.

2. A legal person can be liable when the offence is committed by a person under the authority of the aforementioned.

In both cases, the offence must be committed in the name or on behalf of the entity, in other words, within the scope of duties of the subject in question, and it must be carried out for the direct or indirect benefit of the company. In the second case, a further requirement is that the offence must be enabled by a serious breach of the duties of supervision, monitoring and control by the persons referred to in point (1), considering the circumstances of the case. If the legal person is found guilty of a criminal offence, the applicable penalties are those mentioned in Table 2.

Table 2. Penalties applicable to legal persons under Spanish law

Art. 33.7 Spanish Criminal Code	a) Fine by quotas or proportional
	b) Dissolution of the legal person. The dissolution shall cause definitive loss of its legal personality, as well as of its capacity or act in any way in legal transactions, or to carry out any kind of activity, even if lawful.
	c) Suspension of its activities for a term that may not exceed five years.
	d) Closure of its premises and establishments for a term that may not exceed for five years.
	e) Prohibition to carry out the activities through which it has committed, favoured or concealed the felony in the future. Such prohibition may be temporary or definitive. If temporary, the term may not exceed fifteen years.
	f) Barring from obtaining public subsidies and aid, to enter into contracts with the public sector and to enjoy tax or Social Security benefits and incentives, for a term that may not exceed fifteen years
	g) Judicial intervention to safeguard the rights of workers or creditors for the time deemed necessary, which may not exceed five years.

Source: Spanish Criminal Code

Having explained the cases of attribution of liability to legal persons, it should also be borne in mind that legal persons cannot be liable for *any* of the offences provided for in the Spanish Criminal Code, but only for a closed list of offences (*numerus clausus*), which is shown in Table 3. It is therefore necessary to ensure that the Criminal Code expressly states that the legal person can be liable for the offence in question. This list of offences is essentially composed of so-called white-collar crimes, with one remarkable exception: violations of workers' rights, which do not appear in this list. This has been criticised by the doctrine⁴⁰ because the context in which workers' rights can be violated is typically within a corporation. Moreover, violating these rights undoubtedly benefits

⁴⁰ See, among others, Agustina Sanllehí, J.R. Delitos contra los derechos de los trabajadores. In *Lecciones de Derecho penal económico y de la empresa. Parte general y especial*, directed by J.M. Silva Sánchez. Barcelona: Atelier, 2020, 415; Gil Nobajas, S. Protección penal del trabajador y responsabilidad penal de personas jurídicas. In *Direitos Humanos e Mediação*. Carviçais. Lema d'Origem, 2019, 83; Hortal Ibarra, J.C. Delitos contra los derechos de los trabajadores. In *Manual de Derecho penal económico y de la empresa. Parte general y especial*, directed by M. Corcoy Bidasolo y V. Gómez Martín (511-553). Valencia: Tirant lo Blanch, 2016.

the company, which is a requirement for the attribution of criminal liability to a legal person under the Spanish system, as mentioned above.

In summary, under Spanish law, companies cannot be held liable for criminal violations of workers' rights. There is an urgent need to reform the Criminal Code to ensure that criminal liability can be attributed to legal persons for this type of offences. It would be sufficient to insert a final paragraph to Art. 318 specifying this.

In addition to the above, further reform of the Criminal Code would be needed whereby it would expressly recognise that the parent company is responsible for what the subsidiary company does in terms of violations of workers' rights in the territory where it operates⁴¹. Under the current regulations, Spanish criminal law could not be applied to a subsidiary company whose registered office is in a

different state and which has a different legal personality, as none of the principles for the application of Spanish criminal law on a territorial basis would be met, as will be discussed in the following section. To solve this, some authors⁴² have proposed considering both parent and subsidiary as a single economic unit, as is already the case for the purposes of competition law penalties in the European Union. Ever since the Judgment of the Court of Justice of the European Union of 10 September 2009 was rendered (case C-97/08 for, Akzo Nobel and another v. Commission), where the subsidiary was wholly owned by its parent company, it has been possible to attribute liability to parent companies for infringements of antitrust rules committed by their subsidiaries. In other words, priority has been given to the financial situation rather than to the legal avenue to solve the problem.

Table 3. Offences attributable to a legal person under the Spanish Criminal Code

<p>Art. 156 bis (trafficking in human organs), Art. 177.7 bis (trafficking in human beings), Art. 189 bis (child pornography), Art. 197 quinquies (discovery and revelation of secrets), Art. 251 bis (swindling), Art. 258 ter (foiled executive proceeding), Art. 261 bis (punishable insolvency), Art. 264 quater (damages on informatics data and programs), Art. 288 (offences against intellectual and industrial property, the market and consumers), Art. 302.2 (money laundering), Art. 304 bis (illegal funding of political parties), Art. 310 bis (fraud), Art. 318 bis.5 (offences against the rights of foreign citizens), Art. 319.4 (offences against the organisation of the territory), Art. 328 (environmental crime), Art. 343.3 (offences related to nuclear energy and ionising radiations), Art. 348.3 (offences of risk caused by explosives), Art. 366 (offences against public health), Art. 369 bis (drug trafficking), Art. 386.5 (forgery of currency), Art. 399 bis.1 (forgery of credit cards, debit cards and travellers' cheques), Art. 427 bis (bribery), Art. 430 (trafficking in influence), Art. 435.5 (embezzlement), Art. 510 bis (hate incitement), Art. 580 bis (terrorisim)</p>
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Source: Spanish Criminal Code

⁴¹ Pérez Cepeda, A.I. "Hacia el fin de la impunidad...", *op. cit.*, 142. The criminal liability of parent companies for failure to prevent crimes committed by their subsidiaries is a topic gaining attention at the international level with respect to other areas such as anti-bribery policies. See Dell, G. *Exporting Corruption 2020: Assessing Enforcement of the OECD Anti-Bribery Convention*. Transparency International, 2020, 25-26.

⁴² Nieto Martín, A. Derecho penal de la empresa y económico europeo e internacional. In *Derecho penal económico y de la empresa*, coauthors De la Mata Barranco, Dopico Gómez-Aller, Lascuraín Sánchez, Nieto Martín. Madrid: Dykinson, 2018, 82-83; Pérez Cepeda, A.I. "Hacia el fin de la impunidad...", *op. cit.*, 142, footnote 81.

5. The application of Spanish criminal law to offences committed by Spanish legal persons operating in other countries

The classic principle of application of a state's criminal law is the principle of territoriality, which means that the courts of that state have jurisdiction to prosecute offences committed within its territory. Even when this principle was originally applied in modern liberal states it had some exceptions, such as, for example, crimes committed by a state's national in another state (active personality principle). Additional principles were developed over time to address new situations such as transnational crimes (e.g., piracy) and crimes against the international community (e.g., genocide), in particular, the principle of universal jurisdiction.

In Spanish law, these matters are governed by Article 23 of the *Organic Law of the Judiciary* (hereinafter LOPJ)⁴³. Under current regulations, even if violations of workers' rights were included in the list of offences for which a legal person can be held liable, it would not be possible to prosecute that legal person if the offence had been perpetrated in a different state, as is the case discussed in this paper regarding the imposition of forced labour on workers in a state other than Spain by Spanish companies. This is so because the principle of universal jurisdiction contained in Article 23.4 of the LOPJ is only applicable to a closed list of offences, which does not include violations of workers' rights.

In view of the above, in order for Spanish courts to be able to prosecute and eventually convict a Spanish company for violations of workers' rights perpetrated in a foreign territory, it would be necessary to extend the jurisdiction of Spanish courts⁴⁴. Specifically, the legislature should amend Article 23.4 of the LOPJ that would incorporate the violations of workers' rights into this list of offences. Similarly to the provisions in paragraph m) of Article 23.4 of the LOPJ with respect to human trafficking, it should be noted that Spanish courts have jurisdiction to hear criminal cases related to offences committed by both Spaniards and non-Spaniards outside the national territory that could be classified as violations of workers' rights provided that

“the proceedings are directed against a legal person, company, organisation, group or any other type of entity or group of persons whose headquarters or registered office are in Spain”.

6. Conclusions

It can be concluded from the above that current Spanish legislation does not allow for criminal sanctions to be imposed on Spanish companies that engage in violations of workers' rights in other states. This means that these corporations go unscathed after committing serious human rights violations, such as the imposition of forced labour. This situation contradicts the supranational mandates that have been developed in recent years.

The lack of a supranational jurisdiction that could be responsible for addressing these serious human rights violations perpetrated by transnational corporations makes it necessary for states to take action in their domestic law. In the case of Spain, a number of legislative reforms would be necessary.

- Firstly, slavery and forced labour practices should be given an independent treatment in the Criminal Code, so as to enable the imposition of penalties that are proportional to the gravity of the offenders' crimes.

- Secondly, this type of offence should be expressly included in the list of offences that can be attributed to a legal person, since under Spanish criminal law, legal persons cannot be held liable for all the offences contained in the Criminal Code, but only for those expressly indicated.

- Thirdly, it would be necessary to consider that the Spanish parent company and its subsidiary form a single economic unit and therefore, the acts committed by the subsidiary abroad are attributable to the parent company, having fulfilled the rest of the requirements of Article 31bis of the Criminal Code.

- Finally, it would be necessary to extend the jurisdiction of the Spanish courts, regulated in the *Organic Law of the Judiciary*, to allow for violations of workers' rights committed by Spanish legal persons abroad to be prosecuted and criminal penalties imposed, as is the case for human trafficking crimes.

References

- Agustina Sanllehí, J.R. Delitos contra los derechos de los trabajadores. In *Lecciones de Derecho penal económico y de la empresa. Parte general y especial*, directed by J.M. Silva Sánchez (389-417). Barcelona: Atelier, 2020;
- Ambos, K. “The Foundations of Companies' Criminal Responsibility Under International Law”. *Criminal Law Forum*, 29 (2018): 499-566.
- Dell, G. *Exporting Corruption 2020: Assessing Enforcement of the OECD Anti-Bribery Convention*. Transparency International, 2020. Available at <https://www.transparency.org/en/publications/exporting-corruption-2020> (last access 21.3.2021);

⁴³ Passed on the 1st July 1985.

⁴⁴ Pérez Cepeda, A.I. “Hacia el fin de la impunidad...”, *op. cit.*, 142.

- Fuentes Osorio, J. L. “¿El legislador penal conoce la normativa sancionadora laboral? Superposición del ilícito penal y el administrativo-laboral. El ejemplo del tráfico ilegal de mano de obra”. *Estudios Penales y Criminológicos*, vol. XXVI (2016): 553-603. Available at <https://revistas.usc.es/index.php/epc/article/view/3149> (last access 21.3.2021);
- García Mosquera, M. “La personalidad jurídica de empresas transnacionales como requisito de la responsabilidad penal del art. 31 bis CP. Consideraciones en el contexto de la unión europea”. *Estudios penales y criminológicos*, vol. XXXIII, (2013): 321-368. Available at <https://revistas.usc.gal/index.php/epc/article/view/1362> (last access 21.3.2021);
- Gil Nobajas, S. Protección penal del trabajador y responsabilidad penal de personas jurídicas. In *Direitos Humanos e Mediação*. Carviçais (75-85). Lema d’Origem, 2019;
- Hortal Ibarra, J.C. Delitos contra los derechos de los trabajadores. In *Manual de Derecho penal económico y de la empresa. Parte general y especial*, directed by M. Corcoy Bidasolo y V. Gómez Martín (511-553). Valencia: Tirant lo Blanch, 2016;
- International Labour Office, Walk Free Foundation and International Organization for Migration. *Global Estimates of Modern Slavery*. Geneva (cited as ILO et al). 2017. Available at https://www.ilo.org/global/publications/books/WCMS_575479/lang--es/index.htm (last access 21.3.2021);
- Muñoz de Morales Romero, M. “Vías para la responsabilidad de las multinacionales por violaciones graves de Derechos humanos”. *Política Criminal*, vol. 15, n. 30 (2020): 948-992. Available at <http://politcrim.com/wp-content/uploads/2020/12/Vol15N30A14.pdf> (last access 21.3.2021);
- Nieto Martín, A. *Derecho penal de la empresa y económico europeo e internacional*. In *Derecho penal económico y de la empresa*, coauthors De la Mata Barranco, Dopico Gómez-Aller, Lascraín Sánchez, Nieto Martín (61-85). Madrid: Dykinson, 2018;
- Pérez Cepeda, A.I. Acuerdos de libre comercio y el sistema internacional de Derechos Humanos en el marco del Derecho penal internacional. In *Liber amicorum. Estudios jurídicos en homenaje al Prof. Dr. Dr. H.c. Juan M^a Terradillos Basoco* (617-636). Valencia: Tirant lo Blanch, 2018;
- Pérez Cepeda, A.I. “Hacia el fin de la impunidad de las empresas transnacionales por violación de los Derechos Humanos”. *Revista Penal*, 44, (2019):126-146;
- Pérez Cepeda, A. I. & Benito Sánchez, D. *Trafficking in Human Beings. A Comparative Study of the International Legal Documents*. Groningen/Amsterdam: Europa Law Publishing, 2014;
- Scarpa, S. *Trafficking in Human Beings. Modern Slavery*. New York: Oxford University Press, 2008;
- Silva Sánchez, J.M. La expansión del Derecho penal. Aspectos de Política criminal en las sociedades postindustriales. Montevideo – Buenos Aires: BdeF, 2006;
- Terradillos Basoco, J.M. Aporofobia y plutofilia. La deriva jánica de la política criminal contemporánea. Barcelona: J.M. Bosch Editor, 2020;
- Walk Free Foundation. Global Slavery Index. 2018. Available at <https://www.globalslaveryindex.org/2018/findings/navigating-the-index/> (last access 21.3.2021).