

[Supreme Court rules diplomatic immunity cannot be used to protect perpetrators of modern slavery \(kcl.ac.uk\)](#) Kings College News Center 6 July 2022

The UK Supreme Court has ruled that diplomatic immunity cannot be used to protect diplomats from civil claims of modern slavery, in a case built on research by Professor Philippa Webb and Dr Rosana Garciandia from The Dickson Poon School of Law.

The Supreme Court judgment, issued on Wednesday 6 July, is in the case of *Basfar v Wong*. Ms Josephine Wong, a migrant domestic worker, was employed by Mr Khalid Basfar, a Saudi Arabian diplomat resident in the United Kingdom. Ms Wong claims to have been a victim of human trafficking whose working conditions constituted modern slavery. Ms Wong brought a claim against Mr Basfar in an employment tribunal, but the diplomat applied to have her claim struck out, on the basis that he enjoys diplomatic immunity.

Under article 31 of the Vienna Convention on Diplomatic Relations 1961, diplomatic agents enjoy complete immunity from the criminal jurisdiction of the receiving state and are also generally immune from its civil jurisdiction. There is, however, an exception for civil claims relating to “any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.” The case centred on whether Mr Basfar’s employment of Ms Wong could be classified as a “commercial activity”.

The Supreme Court allowed Ms Wong’s appeal by a majority of three to two. The majority found that “The relationship between (Mr Basfar and Ms Wong) was not that of employment freely entered into, so as to be an ordinary part of Mr Basfar’s daily life in the UK as a resident diplomat... His (treatment of Ms Wong) amounted to a commercial activity practised... for personal profit.”

Responding to the judgment, Professor Philippa Webb and Dr Rosana Garciandia, said: “The word ‘ground-breaking’ is overused, but it is appropriate here. This is the first case in the world in which a leading court has concluded that the alleged exploitation of a domestic worker in circumstances of modern slavery falls within the ‘commercial activity’ exception. This means that diplomats who exploit their domestic workers through trafficking, forced labour and/or domestic servitude will not be protected by immunity in the United Kingdom. They can be held accountable for their actions in the English courts.”

Domestic and international legislation establish mechanisms to prevent modern slavery and to protect victims. But diplomatic immunity has been a barrier for that protection to materialise. This judgment closes that accountability gap.– Dr Rosana Garciandia and Professor Philippa Webb

The idea of using the “commercial activity” exception to diplomatic immunity to hold diplomats accountable for exploitation of their domestic workers was explored by Professor Philippa Webb in her co-authored book *The Law of State Immunity* (2012 and 2015, OUP, with Lady Hazel Fox QC) and in her article, *The Immunity of States, Diplomats and International Organizations in Employment Disputes: The New Human Rights Dilemma?* (2016) 27(3) *European Journal of International Law* 745.

In their [British Academy-funded research on State Responsibility for Modern Slavery](#), Dr Garciandia and Professor Webb expressly recommended that States “Develop the idea in the UK Supreme Court *Reyes v. Al-Malki* [2017] UKSC 61 to interpret the commercial exception to diplomatic immunity in Article 31(1)(c) Vienna Convention on Diplomatic Relations to cover exploitation of domestic workers.”

Professor Webb and Dr Garciandia were contacted by Ms. Wong’s solicitor, Nusrat Uddin of Wilson Solicitors LLP, prior to the original hearing in the case at an employment tribunal.

Following the initial hearing and appeal, the case was allowed to “leapfrog” directly to the Supreme Court.

Ms. Uddin described the role of the King's academics as "instrumental in this victory. Without Philippa's advocacy at the Employment Tribunal and both of their phenomenal in-depth research we could not have got here today."

Reflecting on the Supreme Court judgment, she said: "The judgment today is thanks to the strength and bravery shown by Ms. Wong. Not only did she escape, but she took her case to the highest court in the land and stood up for the rights of all domestic workers. We are extremely pleased with the judgement which has far reaching implications for victims of modern slavery and domestic servitude who are ill-treated by diplomats. Diplomats are no longer protected from exploiting their workers in the gruelling conditions under which some expect them to work. We hope that this case acts as a deterrent against such abuse going forward and exposes the hidden realities in some diplomatic households.

"As the world becomes increasingly aware of the sheer scale and horrors of modern slavery this judgement offers some light in what can often feel like dark times. The UK can no longer be seen as a safe haven for diplomats who choose to exploit. We hope other countries will be taking note of the UK's stance and change the course of this thriving global crime, especially where it is carried out by state officials who abuse their privileges".

The judgment is likely to lead to similar claims in other jurisdictions.

The UK is a closely-watched jurisdiction for all aspects of international law given the high regard in which our judiciary is held. It is also one of the leading countries in the international efforts to tackle modern slavery. We anticipate that the arguments that succeeded in *Basfar v Wong* will find traction in other jurisdictions, serving as a gateway to greater accountability for modern slavery.- Dr Rosana Garcandia and Professor Philippa Webb

Dr Garcandia and Professor Webb: "We note two points in particular. First, the Court accepted our argument that 'profit' is not to be measured by money changing hands. Rather, in a forced labour context, 'profit' is generated by comparing what the domestic worker was paid with what her counterpart not in forced labour should earn from working freely. It was striking that the Court concluded that the "The cost of purchasing an equivalent service in the labour market would be prohibitive, if anyone could be found who was willing to provide it at all. In reality, an equivalent service would have required two employees, working in shifts" (para. 55). Second, the Court took a realistic and flexible approach to modern slavery – holding that the "gravamen" is that a person is exploited by being forced to work and is placed in a position of special vulnerability (para. 99). The judgment also clarifies the extent to which the international standards on human trafficking, labour exploitation and domestic servitude are relevant to interpreting the "commercial activity" exception to diplomatic immunity (para. 72)."