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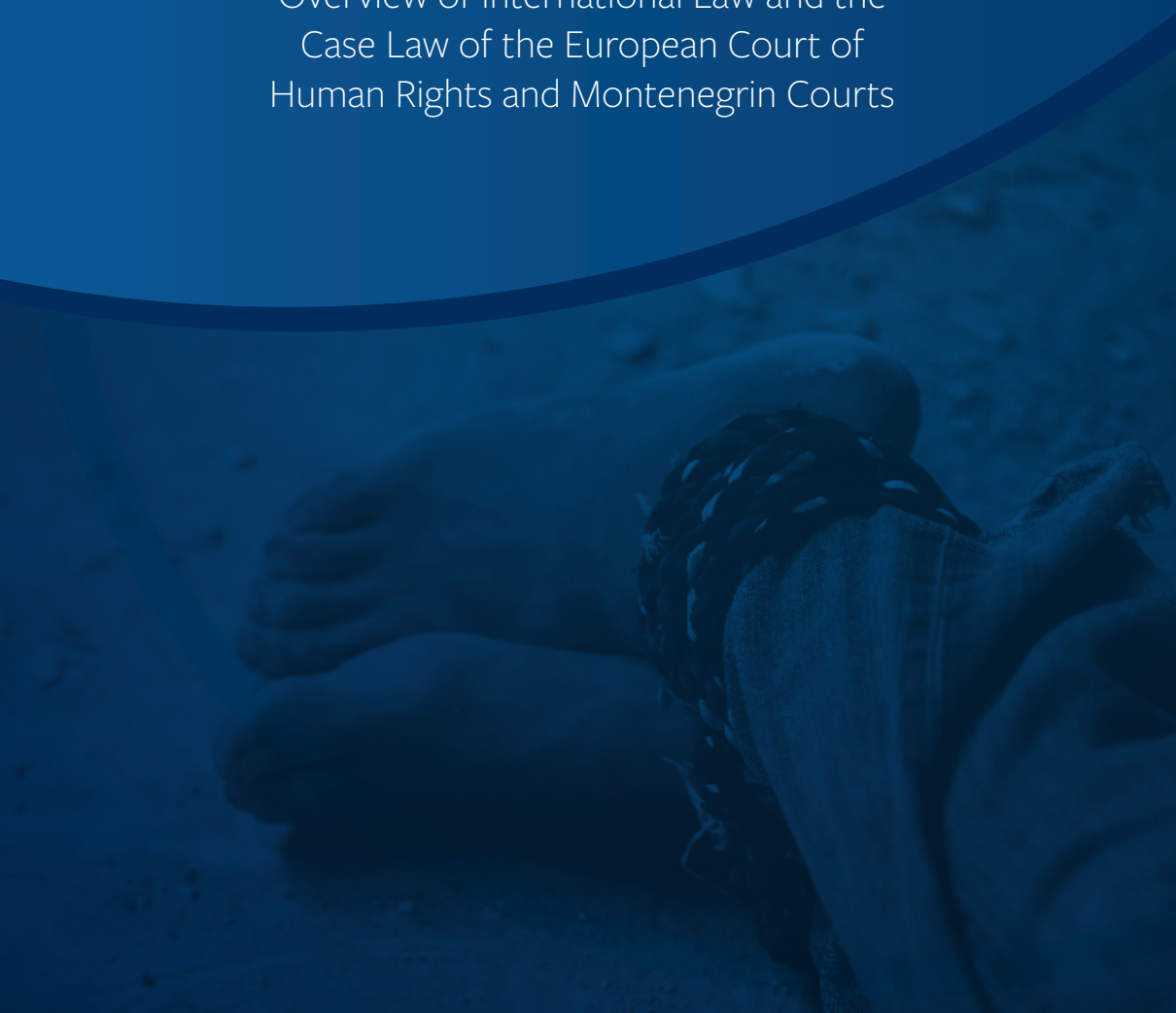
HUMAN TRAFFICKING

Overview of International Law and the Case Law of the European Court of Human Rights and Montenegrin Courts



HUMAN TRAFFICKING
Overview of International Law and the Case Law of the European Court of Human Rights and Montenegrin Courts

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HUMAN TRAFFICKING

Overview of International Law and the Case Law of the European Court of Human Rights and Montenegrin Courts

Introductory Remarks

Dear readers,

I have the great pleasure of welcoming you on behalf of the AIRE Centre, which prepared this Guide in cooperation with the Supreme Court of Montenegro, within a three-year project we have been implementing to improve the application of international standards in proceedings before domestic courts. The implementation of this project has been supported by the UK Government through the British Embassy in Podgorica.

The Guide was developed to empower professionals fighting against human trafficking. Trafficking in humans is a form of modern-day slavery and a problem of global proportions, which affects not only countries in transition but developed countries as well. The Guide is the fruit of cooperation of international and national experts and covers numerous important issues arising both from international legal instruments and obligations Montenegro assumed by ratifying them and from the case law of the European Court of Human Rights and Montenegrin courts.

We hope that you will find this Guide useful and that it will contribute to the efficient prevention and suppression of human trafficking, the criminal prosecution of the traffickers and the protection of their victims.

Biljana Braithwaite
AIRE Centre Western Balkans Programme Manager

HUMAN TRAFFICKING – Overview of International Law and the Case Law of the European Court of Human Rights and Montenegrin Courts

Introduction

Trafficking in humans has existed for a very long time and is now recognised as a global social problem grossly violating human rights and freedoms.

Although trafficking in humans has for the most part found its “market” in countries in transition, there is no doubt that economically developed democracies are not immune to this phenomenon either.

Trafficking in humans in many cases transcends national borders and is international in character. Hence the mention of countries of origin, transit and destination in regard to victims of human trafficking. In the vast majority of cases, the countries of origin of victims of human trafficking are those with low living standards, while the countries of destination are those boasting a high level of economic development. The case law of the European Court of Human Rights (ECtHR or the Court) corroborates this conclusion as well. Therefore, this publication includes a summary of eight recent Court decisions in which it found that the respondent States had not complied with their positive obligations related to human trafficking. Seven cases regarded victims from other countries of origin; as many as five of them came from countries on other continents (Africa or Asia). EU Member States were the destination countries in all these cases, reaffirming the hypothesis that most victims of human trafficking come from countries with low living standards and that developed countries account for a substantial share of the destination countries.

State obligations related to human trafficking apply equally to all States, be they states of origin, transit or destination. All of them have the duty to prevent and combat actions violating the prohibition of trafficking in humans in their jurisdictions, in accordance with their obligations under international law.

The grave consequences of human trafficking – drastic violations of human rights and freedoms, the transnational character of this type of crime and the subtle forms it takes have led to the establishment of mechanisms for combating this destructive phenomenon at the international level.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the Convention against Transnational Organized Crime is an important document adopted under the

auspices of the United Nations in 2000. It is known as the Palermo Protocol. Other major documents include the International Labour Organisation's 1930 Forced Labour Convention and the 1926 *Convention to Suppress* the *Slave* Trade and *Slavery* known as the *Slavery Convention*.

Anti-trafficking mechanisms have also been developed by the Council of Europe, as a regional pan-European organisation: Article 4 of the European Convention of Human Rights prohibits slavery and forced labour and the ECtHR defined the States' positive obligations in its case law. In 2005, the Council of Europe adopted the *Convention* on Action against *Trafficking in Human Beings*.

Montenegro has ratified all of the above international treaties and assumed the obligations therein.

The European Union has also developed a legal framework to combat trafficking in humans. They include, notably, the EU Charter on Fundamental Rights, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Anti-Trafficking Directive), and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (Victims' Rights Directive).These regulations are binding on EU Member States. Candidate countries, including Montenegro, are under the obligation to gradually align their legal systems with the EU *acquis* and fulfil European standards, including on combating human trafficking.

The Palermo Protocol is an important international document for at least four reasons. First, it defines trafficking in persons, imposing on UN Member States the obligation to incriminate this offence (the elements of the crime cannot be lesser than those in the Protocol definition). Therefore, the definition is universal in character and its acceptance in national law is prerequisite for the States' joint action and cooperation in combating human trafficking. This is particularly important where there is a need to assess the existence of dual incrimination in cases of international legal aid in criminal matters. Second, the Protocol highlights the States' positive obligations in regard to human trafficking prevention, victim protection and criminal prosecution. Third, the Protocol emphasises the need for States to cooperate in investigating and prosecuting the perpetrators of the crime. Fourth, the Protocol obligates States to organise training for officials charged with preventing and suppressing trafficking in humans.

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At first glance, the definition of human trafficking in Article 3(a) of the Palermo Protocol appears complex and difficult to incorporate in national criminal law, the predictability of which calls for clear specification of the elements of crime. However, there is no doubt that it contains three elements of trafficking in humans, notably: the act, the means and the purpose. It lists the following acts: recruitment, transportation, transfer, harbouring and receipt of persons. The means specified in the definition include threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The purpose includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Protocol further lays down that the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the specified means have been used.

Article 444 of the Montenegro Criminal Code incriminates human trafficking (one simple and seven aggravated forms of the crime) in line with the Palermo Protocol requirements.

This Article of the Criminal Code evidently expands the definition of the elements of the simple crime of human trafficking in the Palermo Protocol

In addition to the acts listed in the Protocol, Article 444 also mentions the following among the acts: handover, sale, purchase and mediation in the sale of another person. The enumerated means also include abuse of authority, trust and relationship of dependency, as well as withholding another person's identification papers. The purposes also include commission of crimes, begging, pornographic use, participation in armed conflicts, which are not explicitly mentioned in the Protocol but may be subsumed under the generic term"forced labour".

The legislator also fulfilled the State's obligations under the Protocol, by laying down that persons trafficking in minors shall be held liable for human trafficking even if they had not employed force or threat or any other of the listed means against their victims and regardless of their victims' consent.

Slavery and transportation of enslaved persons is a separate criminal offence under the Criminal Code of Montenegro (Article 446) and it includes a number of acts. It follows the prohibition of slavery in the 1926 Slavery Convention supplemented by the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the 1966 International Covenant on Civil and Political Rights. The distinction between this crime and the crime of human trafficking may arise in practice given the similarity of their essential features.

Given that forced labour is mentioned among the purposes of trafficking in humans for exploitation, note also needs to be made of the key international treaty in this field, the ILO 1930 Forced Labour Convention (No. 29), especially since the ILO closely links forced labour and trafficking in humans. Namely, it defines forced labour 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."

Slavery is also defined in the 1926 Slavery Convention, under which it denotes "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."

The Council of Europe *Convention* on Action against *Trafficking in Human Beings applies to all forms of human trafficking, at both the national and international levels. It emphasises the States' obligations regarding prevention, victim protection and prosecution and punishment of the traffickers. It also highlights the States' obligation to identify victims of trafficking in humans and extend them support, assistance and rehabilitation, and to engage in those activities trained officials willing to cooperate with other organisations extending support.*

Article 4 of the European Convention on Human Rights prohibiting slavery and forced labour is of particular importance. This Article includes two prohibitions. First, it prohibits holding anyone in slavery or servitude and, second, it lays down that no one shall be required to perform forced or compulsory labour. Therefore, the prohibition of slavery and forced labour is an absolute right that may not be derogated from under any circumstances.

The European Court of Human Rights reviewed most human trafficking cases under Article 4 provisions and, in some cases, also under Article 2 (right to life) and Article 3(prohibition of torture) of the Convention.

The Court apparently linked the concepts of forced or compulsory labour and slavery and servitude to the definitions of these terms in the above-mentioned international treaties.

It, however, needs to be noted that the Court has considered with regard to forced labour that the "penalty" may go as far as physical violence or restraint, but that it can also take subtler forms, of a psychological nature associated with the state of the victims arguably claiming that they are victims of human trafficking, which affected their will, and drew the conclusion that their work was not voluntary.

Furthermore, the Court clarified that the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lied in the victims' feeling that their condition was permanent and that the situation was unlikely to change.

The States' positive obligations regarding the fight against human trafficking, recognised also in the Court's case law, are particularly important.

The Court in particular emphasised the States' obligation to put in place a safe legal and institutional framework for the prevention and suppression of human trafficking and to extend effective protection to victims of human trafficking, including preventive and protection measures. Preventive measures include coordinated activities by all anti-trafficking bodies to prevent and detect trafficking in humans. On the other hand, protection measures involve facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery.

Victims of human trafficking are entitled access to: accommodation, material assistance, legal advice, medical, interpretation and psychological services, vocational training and employment opportunities, et al. Victims in an interesting ECtHR case were also granted residence and working permits and personal data protection.

States are also under the obligation to extend support to persons at risk of trafficking in humans where they are aware or ought to be of such a risk. States shall be held liable for the failure of their authorities to take appropriate measures where their relevant public officials had been aware of circumstances giving rise to a credible suspicion that a person was a victim of trafficking in humans.

Where there is a credible suspicion of human trafficking, the State is under the obligation to conduct a diligent, independent, effective, prompt and expedient investigation and involve the victim in the procedure to the extent necessary to safeguard their legitimate interests. Such investigations must also be comprehensive and capable of leading to the identification and punishment of responsible individuals. Judicial authorities are expected to approach the presentation and assessment of evidence with caution, whilst bearing in mind the psychological traumas of the victims of human trafficking. When determining the penalties against the traffickers, they must ensure that the punishment reflects the need to discourage potential traffickers.

The States' procedural obligations are not limited only to conducting investigations. They must also cooperate with the authorities of other states in cross-border cases.

As per the EU *acquis* on the fight against human trafficking, note needs to be made of Article 5 of the EU Charter on Fundamental Rights, which prohibits not only slavery and forced labour like Article 4 of the ECHR, but trafficking in humans as well.

The Anti-Trafficking Directive (2011/36/EU) also stresses prevention, victim protection and criminal prosecution of traffickers among the States' obligations. The Directive provides a definition of trafficking in humans that is nearly identical to the one in the Palermo Protocol. It also defines the "position of vulnerability" as "a situation in which the person concerned has no real or acceptable alternative."The Directive also alerts to the negative impact of the non-prosecution and non-application of penalties against traffickers and the States' obligation to provide the victims with support; it also lists the types of support they are entitled to.

The Victim's Rights Directive 2012/29/EU lays down the minimum standards and strengthens the victims' rights to information, support and protection, as well as their procedural rights in criminal proceedings, and encourages States to take particular care when assessing whether the victims are at risk of victimisation, intimidation or retaliation and take adequate protection measures

Compensation of damages suffered by the victims may be qualified as an established standard. However, implementation of this standard in national law may prove challenging.

The publication before you includes detailed guidance on European law on human trafficking and an overview of the relevant ECtHR case law. It was prepared with the support of the British Embassy in Podgorica and in cooperation with the London-based AIRE Centre, which has partnered with the Supreme Court of Montenegro in the implementation of project aimed at improving the application of international standards in proceedings before domestic courts. We hereby wish to extend our gratitude to our project partners and Ms. Biljana Braithwaite, the AIRE Centre Western Balkans Programme Manager, and express our expectation that the publication will facilitate the acceptance of international standards at the national level.

Section IV of the publication provides an overview of Montenegrin case law on human trafficking, part of the comprehensive analysis conducted by the Supreme Court of Montenegro. The summaries include excerpts from national court decisions on acts the judicial authorities treated as human trafficking, providing insight in the complementarity of domestic case law with international standards. The overview was prepared by Ms. Bojana Bandović, an Adviser at the Supreme Court of Montenegro.

I strongly believe that this publication and the guidance it contains will empower the authorities charged with prevention, victim protection, and the criminal prosecution and trials of traffickers and I recommend that it be published and made available to the relevant stakeholders.

Miraš Radović, judge
Supreme Court of Montenegro

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Notes on Citations, Footnotes and Case Summaries

For European Court of Human Rights cases, references will give the name in italics, the date of the decision or the judgment, and the application number.

The cases that are mentioned in the text will also be summarised at the end of this guide for your reference.

List of Acronyms

ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
ECtHR	European Court of Human Rights
GRETA	The Group of Experts on Action against Trafficking in Human Beings
CoE	Council of Europe
ILO	International Labour Organisation
UN	United Nations
3P	Prosecution, Prevention and Protection
ECAT	Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings
NGO	Non-governmental organisation
UNODC	United Nations Office on Drugs and Crime

Introduction

This guide provides an overview of the current international and European laws and standards relating to human trafficking.

Section I concentrates on international legislation on human trafficking, setting out the principles derived from legislation such as the UN Palermo Protocol and the International Labour Organisation Convention. The international legal frameworks analysed in Section I provide widely used definitions of human trafficking and forced labour as well as introduce paradigms for the effective prevention of human trafficking, the protection of victims and prosecution of perpetrators.

Section II and III focus on regional European legal frameworks. Section II gives an overview of the Conventions of the Council of Europe, including the Anti-Trafficking Convention, and draws on the case law of the European Court of Human Rights to set out the principles that have been established in respect of violations of, primarily, Article 4, but also Articles 2 and 3. Violations of Articles 6 and 13 have also been established in a few cases and those are briefly mentioned.

Section III gives a brief overview of European Union legislation on human trafficking, discussing the importance of the European Union Charter of Fundamental Rights, and Directives such as the Anti-Trafficking Directive 2011/36/EU ('the Anti-Trafficking Directive').

Finally, this guide concludes with a selection of summaries of the important human trafficking cases from the European Court of Human Rights which are referred to and analysed throughout the text.

Section I

1. Overview of the International Legal framework on Human Trafficking

a) **The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 ('The Palermo Protocol')**

The international community now recognises that human trafficking is a human rights violation and a crime involving the movement of human beings for purposes of exploitation. The Palermo Protocol provided the first internationally accepted definition of human trafficking and also introduced the concept of **prevention**, victim **protection**, and **prosecution**, that directs efforts to combat aspects of modern slavery. In English, this is referred to as the 3Ps. The 3P paradigm will be looked at in more detailed below.

In Article 3(a), the Palermo Protocol defines trafficking as *'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'*[1]

Apart from introducing the first universal definition of human trafficking, which has since been adopted in a series of international and national legal and policy instruments, including both regional anti-trafficking treaties,[2] the Palermo Protocol was also the first human trafficking protocol supplementing a Convention[3]to introduce the 3P paradigm of **obligations** on its Contracting States:

1 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 ('The Palermo Protocol'), Article 3(a)

2 Both regional anti-trafficking treaties are discussed further in the guide

3 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The CoE signatory states that are parties to this Protocol can be found in Appendix I

- prevention
- protection
- prosecution

Under Articles 2 and 10 of the Palermo Protocol, Contracting States are obliged to co-operate and share information amongst other States' relevant authorities, including law enforcement and immigration, in order to **investigate** and **prosecute** trafficking. Article 6 establishes an obligation on Contracting States to provide assistance to and **protect** victims of trafficking, taking due account of their special needs. Article 10 has very often been cited by the European Court of Human Rights in relation to Article 53 of the ECHR and States' duties not to limit or derogate from their obligations under other international agreements, particularly when looking at positive State obligations to provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.[4]

Article 53 of the ECHR makes explicit that the Convention is not to be construed in a manner which would limit, or derogate from, the protection offered by other international agreements to which the State is a party. Article 53 is intended to maintain the level of protection currently afforded by international law instruments to which the CoEor all of its Member States individually are party, such as the Palermo Protocol and ILO Convention No.29. In interpreting the concepts contained in Article 4, therefore, the Court has relied on international instruments such as the ILO Convention No.29[5], the Anti-Trafficking Convention and the Palermo Protocol to establish violations.[6] This means, furthermore, that in cases where victims of human trafficking find themselves in migration situations, other legislative standards may also be applicable (through Article 53), for instance, legal provisions on international protection and asylum.

To determine whether a particular circumstance constitutes trafficking in persons, the definition of trafficking in the Palermo Protocol, namely the constituent **three elements** of the offence, must be considered:

- There must be an **act** (recruitment, transportation, transfer, harbouring or receipt of persons)

4 Rantsev v. Cyprus and Russia, judgment of 7 January 2010, no. 25965/04, para. 296

5 Van der Mussele v. Belgium, judgment of 23 November 1983, no. 8919/80

6 Rantsev v. Cyprus and Russia (cited above)

- There must be **means** (threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim)
- There must be a **purpose** (for the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.)

Consent is a particularly important element included in the Palermo Protocol definition, as this is what the "means" are deployed to achieve. The baseline established by the Palermo Protocol is that the consent of an adult victim to the intended exploitation is irrelevant if any of the listed 'means' are used.[7] In the context of minor victims of trafficking, consent is irrelevant regardless of whether any means are used or not and thus these same international instruments highlight that a different legal test is required. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is therefore in itself sufficient to qualify a situation as 'human trafficking'.[8] The 'voluntary' element of the definition of trafficking will be further discussed in examining the jurisprudence of the European Court of Human Rights.

The *travaux préparatoires* to the Palermo Protocol suggest that 'abuse of a position of vulnerability' is to be understood as referring to 'any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved'.[9]As no further guidance was provided, it was unclear what 'real and acceptable alternative' actually meant or how it was to be applied in practice. We look at the meaning of 'a position of vulnerability' as defined in the European Court of Human Rights' jurisprudence at a later stage in this guide, when we discuss the regional legal framework.

Despite its prominence, the Palermo Protocol still reflects the predominance of a criminal law approach that principally focuses on prosecution, with the majority of provisions on victim protection not being mandatory. This has changed significantly in Europe since the adoption of the Council of Europe Convention on Action against Trafficking in Human Beings (Anti-Trafficking Convention) which will be discussed further below.

7 Palermo Protocol, Article 3(b)

8 Ibid, Article 3(c)

9 Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Organized Crime and the Protocols thereto, United Nations Office on Drugs and Crime, 2006, p. 345-347

b) **International Labour Organisation ('ILO') Forced Labour Convention, 1930 (No. 29)**

The International Labour Organisation (ILO) is the United Nations' specialised agency responsible for setting international labour standards. It notes an explicit link between human trafficking and forced labour.[10]The ILO recognises that 'forced labour and human trafficking are closely related terms though not identical in a legal sense' while at the same time it perceives that 'most situations of slavery or human trafficking are covered by ILO's definition of forced labour'. The notion of exploitation of labour in the definition of trafficking in persons allows for a link to be established between the Palermo Protocol and the ILO Convention concerning Forced Labour ('Convention No.29').[11] The link between the two elucidates that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour of Convention No.29. Convention No.29 defines 'forced or compulsory labour' as '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.'[12] The ILO Committee of Experts has emphasized that States that have ratified Convention No.29 must develop a comprehensive legal and policy framework to suppress forced labour in all its forms.[13]

Convention No. 105[14] supplements Convention No.29 and calls for the "immediate and complete abolition of forced or compulsory labour" in five specific cases: "(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for the purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination."[15]

In 2009 the ILO published the Global Report on Forced Labour, 'The Cost of Coercion', that set out new emerging issues in contemporary forced labour that

10 Presentation concerning standard setting on forced labour, 103rd Session of the International Labour Conference, Geneva, 2014

11 International Labour Organisation, Convention Concerning Forced or Compulsory Labour, 1930 (No.29)

12 Ibid, Article 2(1)

13 A list of all the CoE States that have ratified the ILO Convention are in Appendix I

14 International Labour Organisation, Abolition of Forced Labour Convention, 1957 (No. 105) ('Convention No. 105')

15 Ibid, Article 1 (a)-(e)

had been in the spotlight of national and international development efforts in the last decade, including the need to have accurate national and global estimates of the scale of the phenomenon of forced labour. The report looks at ways to respond to new, more subtle, forms of coercion, including those of a psychological nature, that are widespread and require a creative response.[16] The report proposes global action under four main themes: data collection and research, raising global awareness, improving law enforcement and labour justice responses, and strengthening a "workers and business alliance against forced labour and trafficking".[17]

The report also provides some clarification to the meaning of forced labour: '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'. In looking at what might constitute a 'voluntary offer' in the context of forced labour, the report mentions that the ILO supervisory bodies have touched on a range of considerations including: 'the form and subject matter of consent; the role of external constraints or indirect coercion; and the possibility of revoking freely-given consent.'[18] The report recognises that there are many subtle forms of coercion and that many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.[19]

The report also makes reference to the notion of a 'penalty', explaining it is used in the broad sense, as confirmed by the use of the term 'any penalty'. The European Court of Human Rights has also considered the meaning of penalty in its jurisprudence.[20]

16 An example given by the report is involves labour market intermediaries, through which workers in both the formal and informal economy can be deprived of either fair wages or full freedom over the employment relationship

17 Report I(B): The cost of coercion - Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 98th Session of the International Labour Conference, Geneva, 2009

18 Ibid, p.6

19 Ibid, p.6

20 Page 21 of this guide analyses the jurisprudence of the ECtHR in this respect

i. State obligations under the International Labour Organisation ('ILO') Forced Labour Convention, 1930 (No. 29)

Convention No. 29 calls for Members to take measures to support due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour.[21] Article 24 of Convention No. 29 states the duties of any existing labour inspectorate should be extended to include inspection of forced labour. Article 12 of the ILO Labour Inspection Convention, 1947 (No. 81) states that labour inspectors shall enter freely without notice at any hour of the day or night in any workplace liable to inspection, interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions.

On 11 June 2014, the Forced Labour (Supplementary Measures) Recommendation (No. 203) was adopted as a recommendation supplementing Convention No.29.[22] Recommendation No. 203 emphasises that in fulfilling obligations Members must take effective measures of prevention, protection and remedy, as well as measures to punish perpetrators.[23] In line with Convention No. 29, Recommendation No. 203 also reaffirms the importance of prosecuting the perpetrators of forced labour and ending their impunity.

In 2014 the ILO Expert Commission[24] highlighted the preventive role of labour inspection, and the need for better coordination with other law enforcement agencies and relevant authorities. Their role in noticing individual cases could be crucial in preventing further deterioration into forced labour circumstances.[25]

What appears to be a common issue in the region is the capacity of labour inspectors to detect cases of trafficking. The Group of Experts on Action against Trafficking in Human Beings (GRETA)[26] has stressed that in order to discourage

21 Convention No. 29, Article 2(e)

22 Protocol of 2014 to the Forced Labour Convention, 1930, entry into force on 9 November 2016

23 ILO Standards on Forced Labour: The New Protocol and Recommendation at a Glance, International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), International Labour Organisation, Geneva, 8 November 2016

24 Report IV(1): Strengthening action to end forced labour, 103rd Session of the International Labour Conference, Geneva, 2014, p. 25

25 Ibid

26 The Group of Experts on Action against Trafficking in Human Beings (GRETA). A more detailed definition is provided under Section II of this guide

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demand for the services of victims, labour inspection ought to be strengthened in industries where there is a particular risk of exploitation, such as agriculture, construction, textile production, as well as hospitality and domestic work.[27]

ii. Corporate accountability

While the 'position of vulnerability' of victims is a very important consideration, recognised in all definitions of human trafficking for the purposes of forced labour, the ILO estimates that 90% of forced labour today occurs in the "private economy". This means that it is vital to understand the concept of forced labour not only through the position of vulnerability of the victims, but also as a deficiency in the regulation of labour markets and the economy.

Forced labour imposed by State authorities remains a concern in some countries, but its scale nowadays is overshadowed by the use of forced labour at the hands of private individuals and enterprises operating outside the rule of law.[28] Three-quarters of this is in productive activities such as agriculture, domestic work, construction, fisheries and manufacturing, and the remainder involves commercial sexual exploitation.[29]Thus corporate accountability and comprehensive regulation of the private sector should be included in anti-trafficking action and policy. States should encourage the role that the private sector and trade unions have in preventing trafficking and forced labour and addressing situations that may contribute to it.

In relation to States' failure to prevent violations of human rights by corporations, the ECtHR has already identified *mutatis mutandis* a positive duty 'to regulate private industry' in the case of *Fadeyeva v. Russia*.[30] The state obligations identified through ECtHR jurisprudence will be discussed at a later stage in this guide.

27 4th General Report on GRETA's activities,covering the period from 1 August 2013 to 30 September 2014, GRETA(2015)1, Council of Europe, 2015, p. 40

28 Report IV(1): Strengthening action to end forced labour, 103rd Session of the International Labour Conference, Geneva, 2014, p. 1

29 Global estimates of modern slavery, forced labour and forced marriage, International Labour Office, Geneva, 2017, p. 23

30 Fadyeva v. Russia, judgment of 30 November 2005, no.55723/00. This was a case brought by a Russian national against Russia claiming a violation of Article 8. As she lived in a major steel-producing centre she claimed the State had failed to take adequate measures to protect her private life and home from severe environmental nuisance arising from the industrial activities and endangered her heath and well being and that of her family. The Court found the State to be in breach of Article 8

c) **The Convention to Suppress the Slave Trade and Slavery ('the 1926 Slavery Convention')**

The 1926 Slavery Convention is an earlier international legislative framework which provides a definition of slavery, with its important Supplementary Convention[31] describing 'practices similar to slavery' including debt bondage, and institutions and practices that discriminate against women in the context of marriage. Slavery is defined in the 1926 Convention as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.[32]Although the 1926 Slavery Convention is almost 100 years old, it is very much relevant today, and at regional level, the ECtHR, through its caselaw, has endorsed this definition for the purpose of interpreting slavery.[33]For example, in the case of *Siliadin v. France*[34]the ECtHR referred to the definition of the 1926 Slavery Convention. It interpreted it as requiring exercise of a 'genuine right of legal ownership' and reduction of the relevant person to the status of an 'object'. In *M and Others v. Italy and Bulgaria*, the ECtHR changed its language by discarding the requirement for 'legal ownership', simply referring to slavery as an 'exercise of a genuine right of ownership and reduction of the status of the individual concerned to an 'object''.[35]In conjunction with a basic definition of contemporary slavery, the main concern of the 1926 Convention was to monitor efforts towards its prohibition.

A governing body responsible for the evaluation and monitoring of human rights violations in the form of contemporary slavery does not exist. Additionally, there is an absence of a universal set of laws and protocols that would abolish contemporary forms of slavery on an international level. In 1930, an Advisory Commission was created to address some of these failings but was limited in its effect due to the existence of confidentiality agreements with States that dictated what could and could not be publicly revealed. [36]Despite the lack of a responsible governing body, the relevance of the definition of slavery in the 1926 Convention and the possibility of referring to it before the ECtHR, makes the Convention still very much relevant.

31 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on 7 September 1956, entry into force on 30 April 1957 ("The 1956 Supplementary Convention")

32 Slavery Convention, signed on 25 September 1926, entry into force on 9 March 1927, Article 1

33 Siliadin v. France, judgment of 26 July 2005, no. 73316/01; M. and Others v. Italy and Bulgaria, judgment of 31 July 2012, no. 40020/03

34 Siliadin v. France, judgment of 26 July 2005, no. 73316/01

35 M. and Others v. Italy and Bulgaria, judgment of 31 July 2012, no. 40020/03, para. 149

36 Contemporary Slavery and International Law, Jessica Bell, Human Rights & Human Welfare, pg 36

Section II

Overview of the Regional Legal Frameworks on Human Trafficking

This section deals with legislation regarding human trafficking at the European regional level, particularly Conventions and Directives of the Council of Europe and European Union.

1. **Council of Europe (CoE)**

a) **Council of Europe Convention on Action against Trafficking in Human Beings (Anti-Trafficking Convention) 2005**

On 3 May 2005, the CoE adopted the Anti-Trafficking Convention. The intention of the Anti-Trafficking Convention was to further develop the definition of and approach to trafficking, by way of strengthening and building on the protective provisions of existing international instruments, such as the Palermo Protocol. The Anti-Trafficking Convention strengthens the protection afforded to victims, with a comprehensive scope of application encompassing all forms of trafficking (whether national or transnational, or linked or not linked to organised crime), distancing itself from the crime-centric approach adopted by the Palermo Protocol and taking into account all persons who are victims of trafficking (women, men, and children). The forms of exploitation covered by the Anti-Trafficking Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.[37]

Under Article 36 of the Anti-Trafficking Convention, the Group of Experts on Action against Trafficking in Human Beings (GRETA) was set up. GRETA is the body responsible for monitoring the implementation of the Anti-Trafficking Convention by the contracting parties and drawing up reports evaluating the measures taken by each party. GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, selected on the basis of their professional experience in the areas covered by the Anti-Trafficking Convention.[38]Importantly, the ECtHR in delivering its judgments is

37 Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, available at: https://www.refworld.org/docid/43fded544.html [accessed 12 April 2019]

38 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA(2016)21, Council of Europe, 7 October 2016

often guided by the Anti-Trafficking Convention and the manner in which it is interpreted by GRETA.[39]

The intention of the CoE to provide a wider scope of protection against trafficking in human beings is enshrined in The Anti-Trafficking Convention's Article 2, which reads: 'This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime'.

The Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings(ECAT)[40]analyses the meaning of 'position of vulnerability' as seen in the definition of trafficking in human being under Article 4 of the Anti-Trafficking Convention. It defines it as 'any situation in which the person involved has no real and acceptable alternative to submitting to the abuse'.[41]It goes on to suggest that the vulnerability may be of 'any kind, whether physical, psychological, emotional, family related, social or economic.'[42]Helpfully, the Explanatory Report ECAT recognises that such situations can, for example, involve 'insecurity or illegality of the victim's administrative status, economic dependence or fragile health'. In short, the situation can be 'any state of hardship in which a human being is impelled to accept being exploited.' The European Court of Human Rights has further expanded this definition in its case law.[43]

I. Obligations on Contracting States to the Anti-Trafficking Convention

A general approach to State obligations to counteract human trafficking is the internationally recognised 3P approach: prosecution, prevention and protection, as first introduced by the Palermo Protocol.[44] Article 1 of the Anti-Trafficking Convention mirrors this approach by setting out its purpose to **prevent** and combat trafficking in human beings, to **protect** the human rights of the victims of trafficking, design a comprehensive framework for

39 Chowdury and Others v. Greece, judgment of 30 March 2017, no. 21884/15, para. 104

40 Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Treaty Series - No. 197, Council of Europe, Warsaw, 2005

41 Ibid, para 83

42 Ibid, para 83

43 See section below on ECtHR section

44 Study on prevention initiatives on trafficking in human beings, European Commission, pg 88, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_prevention_initiatives_on_trafficking_in_human_beings_0.pdf

the protection and assistance of victims and witnesses, as well as to ensure effective investigation and **prosecution**. Article 1 also mentions the promotion of international cooperation on action against trafficking in human beings.

Some of the core provisions enshrined in the Anti-Trafficking Convention include, the obligation **to identify** victims of trafficking (Article 10), the obligation **to prevent** trafficking in human beings (Article 5), intended at both adopting relevant legislative measures as well as ensuring the necessary training and qualifications to authorities; the right to assistance 'in their physical, psychological and social recovery' (Article 12); the right to a recovery and reflection period of at least 30 days (Article 13); as well as the right to compensation (Article15).

Article 10 of the Anti- Trafficking Convention places a positive obligation on State Parties to identify victims of trafficking. While identifying existing and potential victims of trafficking is a positive State obligation in itself, the identification also triggers States' obligations to provide them with support, assistance and rehabilitation services.[45] The Anti-Trafficking Convention requires that the competent authorities have staff who are trained and qualified in identifying and helping victims, including children, and that the authorities collaborate with one another and with relevant support organisations, such as NGOs.

b) European Convention on Human Rights ('ECHR') and European Court of Human Rights ('ECtHR')

The obligations established under the Anti-Trafficking Convention must also be interpreted and applied consistently with the obligations stemming from the ECHR, under Article 53, with particular reference to Article 4, and with the relevant ECtHR case law.

Article 4 reads:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour
3. For the purpose of this article the term "forced or compulsory labour" shall not include:

45 Council of Europe Convention on Action against Trafficking in Human Beings, Article 10

a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
d. any work or service which forms part of normal civic obligations.

In the case of *Siliadin v. France* the Court emphasised that Member States' positive obligations under Article 4 of the Convention must be construed in the light of the Council of Europe's Anti-Trafficking Convention and be seen as requiring, in addition to prevention, victim protection and investigation. They also require any act aimed at maintaining a person in such a situation to be characterised as a criminal offence and effectively prosecuted.[46]

Article 4 of the ECHR, together with Articles 2 and 3, enshrines one of the basic values of the democratic societies making up the Council of Europe. Specifically, Article 4(1) of the ECHR requires that 'no one shall be held in slavery or servitude'. Article 4(1) makes no provision for exceptions and no derogation from it is permissible under Article 15(2) even in the event of a public emergency threatening the life of the nation – it is an absolute right.

While Article 4 of the ECHR deals with slavery, servitude, and forced labour, it makes no explicit mention of trafficking in human beings. The ECtHR has never considered the provisions of the ECHR as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. Before the judgment in *Rantsev v. Cyprus and Russia*, there was a significant lack of case-law on the interpretation and application of Article 4 of the Convention in the context of trafficking cases. The judgment in *Rantsev* is of fundamental importance because the ECtHR held for the first time that trafficking, even though not expressly included under Article 4, falls under the umbrella of violations which are prohibited under the provision. The Court has frequently recognised that the object and purpose of the ECHR requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.

46 Siliadin v. France (cited above)

While cases concerning human trafficking before the ECtHR mainly rely on Article 4, the Court has also found violations in cases that fall under the umbrella of human trafficking under Article 3, prohibition of inhuman and degrading treatment (*M and others v. Italy and Bulgaria*), Article 2 right to life (*Rantsev*), Article 6 right to a fair trial and Article 13 right to an effective remedy (*L.E. v. Greece*). Those will be briefly discussed below.

I. Forced labour

Article 4(2) of the Convention prohibits forced or compulsory labour.[47] However, Article 4 does not define what is meant by 'forced or compulsory labour' and no guidance on this point is to be found in the various Council of Europe documents relating to the preparatory work of the European Convention.[48] The ECtHR has provided some guidance on the meaning of forced or compulsory labour. The Court has extended the definitional scope of Article 4, by establishing that a trafficking situation could exist in spite of the victim's freedom of movement and thus that restriction on freedom of movement was not a condition *sine qua non* for establishing a case as forced labour or human trafficking.[49]

In *Van der Mussele v. Belgium*, the Court looked at whether the requirement for a pupil lawyer to perform occasional pro bono work in order to access the profession, had breached Article 4. The ECtHR held that work carried out in pursuance of a freely negotiated contract cannot be regarded as falling within the scope of Article 4 on the sole ground that one of the parties has undertaken with the other to do that work and will be subject to sanctions if they do not honour their promise.[50] Using the definition of forced labour as set out by the ILO Convention No.29, the Court explained that for labour to be considered forced there has to be work 'exacted from any person under the menace of any penalty' and also performed against the will of the person concerned, that is, work for which he 'has not offered himself voluntarily'.

The meaning of the word 'penalty' was looked at beyond the ILO global report 'The cost of coercion' in the case of *C.N. and V. v. France*.[51]This case

47 Stummer v. Austria, judgment of 7 July 2011, no. 37452/02

48 The Travaux Préparatoires to the Convention can be accessed here https://www.echr.coe.int/Documents/Library_TravPrep_Table_ENG.pdf

49 Chowdury and Others v. Greece (cited above)

50 Van der Mussele v. Belgium (cited above)

51 C.N. and V. v. France, judgment of 11 October 2012, no. 67724/09

concerned allegations made by two orphaned, underage, Burundian sisters that they had been subject to servitude or forced or compulsory labour under threat of being returned to Burundi. The ECtHR considered that while the 'penalty' may go as far as physical violence or restraint it can also take subtler forms, including of a psychological nature, or as threats to denounce victims to the police or immigration authorities when their immigration status is precarious Similarly, in *Siliadin v. France* the Court considered that, although the applicant, a minor, was not threatened by a 'penalty', the fact remained that she was in an equivalent situation in terms of the perceived seriousness of the threat against her as she was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police..[52]

The definition of forced labour as set out by the ILO Convention has been developed by the ECtHR.[53]According to the Court, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victim's feeling that his or her condition is permanent and that the situation is unlikely to change.[54]

ii. **Positive obligations of States**

While the content of State obligations has been developed by ECtHR jurisprudence, the fundamental obligation on States is derived from Article 1 of the ECHR. Read in conjunction with other ECHR articles, Article 1 obliges contracting States to secure the rights and freedoms under Section I of the Convention that are relevant to the situation of the individual.

This can entail, for example, an obligation on the State to take all reasonable steps to prevent harm of which they knew or ought to have known, under Articles 2 and 3, as set out by the case of *Osman v United Kingdom*[55] (referred to as the Osman test).While the Osman test was initially formulated by the ECtHR to determine when States have a positive obligation to intervene to protect individuals from the acts of other private parties under Article 2 of the ECHR, it has been applied subsequently in cases claiming violations of Articles 3[56]

52 Siliadin v. France (cited above)

53 Chowdury v. Greece (cited above), C.N. and V. v France (cited above)

54 C.N. and V. v France (cited above)

55 Osman v. United Kingdom, judgment of 28 October 1998, no. 23452/94

56 M. and others v. Italy and Bulgaria (cited above)

and 4[57]. While the majority of human trafficking cases before the ECtHR rely on Article 4 when claiming a State obligation, Article 3 has also been relied on before the Court.[58]

The positive obligations a State must comply with are not limited to adopting criminal-law provisions which penalise the practices referred to in Article 4. The duty to penalise and prosecute human trafficking is only one aspect of Member States' general undertaking to combat trafficking. Helpfully, the case law of the ECtHR provides useful guidance to such obligations, largely drawing upon the principles etched out in landmark judgments.

It is important to note that the ECtHR has, on many occasions, made clear that the Convention must guarantee rights which are not theoretical or illusory, but practical and effective.[59] Under this principle the ECtHR ensures that a State's obligation to protect the rights of those within its jurisdiction is effectively discharged.

A. The substantive obligations

Article 4 creates positive obligations for States, in particular, the overarching obligation to take steps to effectively prevent human trafficking and protect its victims.[60]The ECtHR has recognised the following forms of positive obligations that bind States:

i. **The positive obligation to put in place an appropriate legislative and administrative framework**

Member States have a positive obligation to adopt an appropriate and comprehensive legislative and administrative framework that prohibits and punishes forced or compulsory labour, servitude and slavery.[61]It transpires from this case-law that States must, firstly, assume responsibility for putting in place a legislative and administrative framework providing real and effective protection of the rights of victims of human trafficking.[62]

57 Chowdury v. Greece (cited above)

58 See discussion on M. and others v. Italy and Bulgaria below

59 Airey v. Ireland, judgment of 9 October 1979, no. 6289/73

60 Chowdury v. Greece (cited above)

61 Rantsev v. Cyprus and Russia (cited above)

62 Chowdury v. Greece (cited above)

In *Rantsev*, the applicant's daughter Ms Rantseva, a Russian national, had arrived in Cyprus on a 'cabaret-artiste' visa, meaning that the Cabaret managers had to make an application for an entry permit on her behalf. The Court observed that Cyprus had adopted legislation prohibiting trafficking and sexual exploitation in 2000 which reflected the provisions of the Palermo Protocol and that there was therefore no concern regarding the obligation to put in place an appropriate legislative framework. However, the Court identified a number of weaknesses in the general legal and administrative framework, such as the fact that Cabaret managers were required to make the application for an entry permit for the artiste, rendering the artiste thus dependent on her employer and increasing the chance of the artiste falling into the hands of traffickers. The Court further held that measures which encouraged the cabaret owners and managers to track down missing artistes or in some other way to assume personal responsibility for the conduct of artistes were unacceptable in the broader context of trafficking concerns. As a result, despite the fact that the Court had recognised that Cyprus had in place appropriate legislative framework in terms of trafficking, it concluded that the regime of artiste visas in Cyprus did not afford to Ms Rantseva practical and effective protection against trafficking and exploitation and that there had been a violation of Article 4 in this regard.[63]

States are not merely obliged to put in place a legislative framework but also apply it appropriately. In *S.M. v Croatia*, while the Court looked at the existence of domestic legal framework against the trafficking and exploitation of women for the purposes of prostitution in Croatia, it also considered its practical application.[64] While the Court was satisfied that there was an adequate legal framework for dealing with the offence of forced prostitution in that case, it found that the State authorities had failed to take the necessary steps to implement the deterrent effect of the criminal-law system in place and had consequently failed in their procedural obligations. This will be discussed in detail under the relevant heading below. *S.M. v Croatia* has now been referred to the Grand Chamber and a judgment is awaited.

In *Chowdury*,the direct mention of domestic immigration law suggests that Member States may have a positive obligation not only to ensure that they

63 Rantsev v. Cyprus and Russia (cited above)

64 S.M. v. Croatia, judgment of 19 July 2018, no. 60561/14. The Court has addressed the issue of human trafficking in several judgments, but in S.M. v. Croatia it was the first occasion on which it had to consider whether Article 4 was applicable to the trafficking and exploitation of women for the purposes of prostitution

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criminalise trafficking offenses, but also that they ensure their immigration law does not contribute to making human trafficking easier. The Court seems to direct Member States to adopt immigration law that does not provide State actors with incentives to engage in human trafficking or exploitative labour practices.[65]

ii. **The positive obligation to take operational measures**

As noted earlier, the Anti-Trafficking Convention calls on Member States to adopt a range of measures to prevent trafficking and to protect the rights of victims.

The preventive measures include taking steps to:

- strengthen coordination at national level between various anti-trafficking bodies
- discourage the demand to supply people for exploitation, for human trafficking purposes
- include border controls to detect trafficking
- The protection measures include:
- facilitating the identification of victims by qualified persons; and
- assisting victims in their physical, psychological and social recovery.

The ECtHR has held that in certain circumstances the State will be under an obligation to take operational measures to protect actual or potential victims and prevent treatment contrary to Article 4. [66]

Any positive obligation placed on States must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities, 'bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising.'[67]

65 Chowdury v. Greece (cited above), para 87

66 L.E. v. Greece, judgment of 21 January 2016, no. 71545/12

67 Osman v. the United Kingdom, judgment of 28 October 1998, no. 87/1997/871/1083

Under the Osman test, in order for a positive obligation to arise in terms of operational measures, it must be established that the authorities **knew or ought to have known** at the time of circumstances giving rise to a credible suspicion that an identified individual had been, or was, at real and immediate risk of being trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, and that the authorities failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

In the case of *Rantsev*, in looking at the positive obligation of Cyprus to take protective measures, the Court first established that the Cypriot authorities knew that a substantial number of foreign women were being trafficked to Cyprus on artistes' visas. The Court then proceeded to recall the obligations undertaken by State authorities' as parties to the Palermo Protocol and the Anti-Trafficking Convention to ensure adequate training for those working in relevant fields to enable them to identify potential trafficking victims. The night that Ms Rantseva was taken to the police station the cabaret manager where she worked asked the police officers to declare her illegally present in the country and to detain her. After the police refused they asked the cabaret manager to collect her from the police station. Given those circumstances, the Court believed that there were sufficient indicators available to the police authorities, against the general backdrop of trafficking issues in Cyprus, for them to have been aware of circumstances giving rise to a credible suspicion that Ms Rantseva was, or was at real and immediate risk of being, a victim of trafficking or exploitation, thus giving rise to an immediate positive obligation to investigate without delay and to take any necessary operational measures to protect Ms Rantseva. As a result, *Rantsev* established that failing to make immediate further inquiries into whether an individual has been trafficked when there is credible suspicion to think so and not complying with the relevant provisions to protect them, amounts to a breach of Article 4.[68]

In *Chowdury*, the Court found a violation of Article 4(2) of the ECHR in relation to 42 undocumented migrant workers from Bangladesh who worked on a strawberry farm in Manolada, Greece, and who were subjected to severe forms of labour exploitation. One of the incidents put before the Court took place on 17 April 2013, when 100 to 150 workers started moving towards the two employers in order to demand their wages. One of the employers' armed guards then opened fire, seriously injuring 30 workers. The ECtHR found that

68 Rantsev v. Cyprus and Russia (cited above), para 298

the migrants' circumstances amounted to forced labour *and* human trafficking and that Greece was in violation of its positive obligations under Article 4 to take protective operational measures and to conduct an effective investigation. This judgment is an important contribution to European human rights law in recognising the complex and subtle forms of coercion that underpin trafficking for the purpose of forced labour. The Court noted that, well before the incident of 17 April 2013, the situation in the strawberry fields of Manolada had been known to the authorities, whose attention had been drawn to it by reports and press articles.[69]

The issue of identification was also raised in the admissibility decision of *G.J. v. Spain*, specifically to determine whether the procedures for the identification of victims of trafficking that subordinate their protection to cooperation in criminal procedures against traffickers are compatible with the positive obligations arising from Article 4 ECHR. The applicant, a Nigerian woman, complained under Articles 3, 4 and 8 of the Convention. She specifically complained that the domestic authorities had failed to carry out an appropriate identification procedure and consequently had not assessed the risk that the applicant might have been a victim of trafficking and that her expulsion to Nigeria, where trafficking was a widespread phenomenon, would amount to a violation of her right to a private and family life.[70] The Court did not consider the case on its merits and held it inadmissible due to the failure to comply with the "written authority" requirement of submission (Rule 36.1 and 47(5)(1)(c) of the Rules of Court).

iii. **Procedural obligations to investigate**

Like Articles 2 and 3, Article 4 also creates a procedural obligation to investigate situations of potential trafficking. The requirement to investigate does not depend on a complaint from the victim or next-of-kin; once the matter has come to the attention of the authorities they must act of their own motion.

The Court has held that an effective investigation should:

- be independent from those implicated in the events;
- be capable of leading to the identification and punishment of responsible individuals;

69 Chowdury v. Greece (cited above)

70 G.J. v. Spain, decision of 21 June 2016, no. 59172/12

- be prompt and reasonably expedient; and
- involve the victim or the next-of-kin in the procedure to the extent necessary to safeguard their legitimate interests.

In *J. and Others v. Austria*, a case concerning an allegation by two Filipino nationals, who had gone to work as au pairs in the United Arab Emirates, that their employers had taken their passports away from them and exploited them the Court, found that the Austrian authorities had complied with their duty to protect the applicants as potential victims of human trafficking and therefore held that there had been no violation of Article 4 or Article 3.In the Court's view the Austrian authorities had taken all steps which could have reasonably been expected in the situation; the applicants had been interviewed by specially trained police officers, had been granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban had been imposed for their protection. The investigation into the applicants' allegations about their stay in Vienna had been sufficient and the authorities' resulting assessment, given the facts of the case and the evidence available, had been reasonable. Notably, the Court in *J. and Others v. Austria* said that the 'police should be afforded a broad margin of appreciation in the choice of the means of investigation' and the investigative obligations must be interpreted in a way which 'does not impose an impossible or disproportionate burden on the state authorities'.[71] The meaning of 'broad margin of investigation' was not clarified by the *J. and Others v. Austria* judgment but the Court in its previous consistent caselaw did not intend to permit the police to avoid its obligation to take the basic and objectively necessary and proportionate steps or create uncertainty or give the States unfettered discretion.[72]

Judge Pinto de Albuquerque and Judge Tsotsoria, in their concurring opinion in *J. and Others v. Austria*, were not satisfied that the substantive or procedural reasons for the discontinuance of the investigation by the domestic authorities were in line with international law. The concurring opinion recalled that, under the ILO Convention, there is no requirement regarding the legality, duration or severity of the exacted labour. Hence forced labour includes 'permanent, contingent, temporary, occasional, incidental, intermittent, irregular or part-time forced factory work'[73]The fact that the incidents of exploitation in *J. and Others v. Austria* had occurred over the course of three days was not,

71 J. and Others v. Austria, judgment of 17 January 2017, no. 58216/12

72 S.M. v. Croatia (cited above)

73 J. and Others v. Austria, concurring opinion of Judge Pinto de Albuquerque, joined by Judge Tsotsoria, para 40

according to the concurring opinion, a reason to discontinue the investigation on the basis that 'the relevant acts relating to the exploitation of labour must be committed over a longer period of time'[74]

In looking at the procedural reasons for discontinuance, the concurring opinion noted that the lack of jurisdiction over the facts which occurred outside Austria was not in itself a reason for discontinuance. It noted that where the authorities of the country of origin of the trafficking victims or the perpetrators do not wish or are unable to cooperate with the authorities of the country of destination or transit, there are still legal avenues open for the latter authorities to promote the investigation, prosecution, possible detention and conviction of the alleged traffickers, such as the EUROPOL, FRONTEX and INTERPOL tools, none of which were used by the domestic authorities.[75]

This opinion was reinforced in the case of *Rantsev*, which established that in addition to the obligation to conduct a domestic investigation into events occurring on their own territories, Member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories.[76] Such a duty is in keeping with the objectives of the Member States, as expressed in the preamble to the Palermo Protocol, to adopt a comprehensive international approach to trafficking in the countries of origin, transit and destination.

As discussed above, in *S.M. v. Croatia*, the Chamber judgment considered that in the particular circumstances of the case, the State authorities did not fulfil their procedural obligations under Article 4 of the Convention. The important point for review before the Court was whether and to what extent the prosecuting authorities and the courts could be considered to have submitted the case to the careful scrutiny required by Article 4 of the Convention, the deterrent effect of the criminal-law system in place and the significance of the role it is required to play in preventing violations of the rights protected under Article 4 of the Convention.[77] According to the Court, while the Croatian police had acted promptly they had failed to identify the appropriate witnesses to interview, although they had at their disposal a

74 Ibid, para 53

75 Ibid, para 57

76 Rantsev v. Cyprus and Russia (cited above)

77 Ibid

wider group of witnesses who might have been more useful. Furthermore, the applicant had alleged that she had been coerced as her assailant had used an 'arsenal of weapons' and had threatened to hurt her family. Despite that, there had been no indication that the national authorities had made a serious attempt to investigate in depth these circumstances, despite having found several pieces of automatic rifles in the assailant's flat. Finally, the Court noted that the national courts had dismissed the applicant's testimony as unreliable as they deemed it to be incoherent, as she had been unsure and hesitated when speaking. The national authorities had not made any assessment of the possible impact of psychological trauma on the applicant's ability to recount the events and circumstances of her exploitation. These elements showed that the national authorities did not made a serious attempt to investigate in depth all relevant circumstances and to gather all available evidence. As a result, the Court considered that the State authorities had not fulfilled their procedural obligations and were therefore in breach of Article 4. The case is now pending before the Grand Chamber.

Furthermore, in *C.N. v. the United Kingdom*, where a violation of Article 4 was found,the ECtHR reiterated the low "credible suspicion" threshold.[78] The Court considered C.N.'s account of trafficking (which was not marked as credible after investigation by the UK authorities) and noted that it was not inherently implausible when considered against other claims of trafficking for domestic servitude, thus that the credible suspicion test was satisfied. The ECtHR clarified that the fact that the person may not later be recognised as a victim of human trafficking was not relevant to the duty to investigate which arises when there is a credible suspicion.

In the forced labour case of *Chowdury v. Greece*, the Court considered that in failing to ascertain whether the allegations of the group of applicants who did not participate in the Assize Court proceedings were well founded, the public prosecutor failed in his duty to investigate, even though he had factual evidence to suggest that these applicants had been working for the same employers as the applicants who were parties to the proceedings in the Assize Court, and that in all likelihood their working conditions must have been the same.[79] This meant that there had been a violation of Article 4(2) on the basis that the procedural obligation to conduct an effective investigation into the situation of human trafficking and forced labour had not been met.

78 C.N. v. the United Kingdom, judgment of 13 February 2013, no. 4238/08

79 Chowdury v. Greece (cited above)

The reliance on Article 4 to bring human trafficking cases before the Court is fairly recent, In cases of human trafficking, the ECtHR has also found, in addition to Article 4, violations of Article 3, which prohibits torture, and inhuman or degrading treatment or punishment, Article 6, the right to a fair trial, and Article 13, the right to an effective remedy.

Article 3, imposes positive obligations on States to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under the Article, including when such treatment occurs at the hands of private individuals. Article 3 also imposes a procedural positive obligation on States to effectively investigate alleged violations of this provision, including reported crimes perpetrated by private individuals. In the case of *M. and others v. Italy and Bulgaria*[80], the Court instead found a violation of Article 3. In that case, the applicants, of Roma origin and Bulgarian nationality, complained before the Court that following their arrival in Italy to find work, their daughter was detained by private individuals at gunpoint, was forced to work and steal, and sexually abused at the hands of a Roma family in a village. They claimed that the Italian authorities had failed to investigate the events adequately. The Court declared the applicants' complaints under Article 4 as being manifestly ill-founded as it found that there had been no evidence supporting the complaint of human trafficking. However, it still found that the Italian authorities had not effectively investigated the applicants' complaints that their daughter, a minor at the time, had been repeatedly beaten and raped in the villa where she was kept.

Similarly, in *SZ v. Bulgaria*, the Court considered whether the authorities had failed to make the necessary efforts to investigate under Article 3, in a case where the applicant was taken to a flat where she was held against her will and repeatedly beaten and raped by several men for about 48 hours. The applicant had identified her assailants and two police officers which her assailants had met before they locked her in the flat, claiming that they were all part of a criminal gang involved in human trafficking. The Court held that it was a cause for concern that given the nature of the offences in the present case, and despite the applicant's allegations that her assailants were members of a network trafficking in women with a view to their prostitution abroad, the authorities did not consider it necessary to examine the possible involvement of two police officers and an organised criminal network and confined themselves to prosecuting the individuals directly responsible for

80 M. and Others v. Italy and Bulgaria (cited above)

the abduction and assault of the applicant. In light of that, the Court held that the proceedings could not be deemed to have satisfied the requirements under Article 3.

Article 6 has been breached when the Court found that the applicant had been deprived of the right to a fair trial within a reasonable time. Under Article 6, the Court's task is to ascertain whether the proceedings as a whole are fair, including the way in which evidence was taken. This includes witness and expert opinion evidence. Article 6 has both a civil and a criminal limb. Under the civil limb of Article 6, a civil partyhas the right to participate effectively in any criminal proceedings in order to protect a civil right. Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure'[81]In the case of *L.E v. Greece*, the applicant, a Nigerian national who was forced into prostitution in Greece, complained under Articles 4, 6 and 13. She specifically complained that the Greek authorities had failed to comply with their positive obligations under Article 4, about the length of the criminal proceedings in which she was claiming civil damages, and the fact that at the relevant time there was no effective remedy in respect of her complaints, under Articles 6 and 13. With regard to Article 6, the Court looked at both the length of the proceedings and the investigation. In looking at the length of the proceedings, the Court noted 5 years had passed from the moment the applicant had announced her intention to join the proceedings as a civil party and the moment the national court delivered its judgment. At the investigation level, the Court noted that approximately two and a half years had passed between the applicant's civil-party application and the date on which the hearing in the case had been suspended until the subjects could be located and arrested. The Court found that the length of the proceedings in question had been excessive and had failed to meet the 'reasonable time' requirement and therefore found a violation of Article 6 § 1. As to whether an effective remedy to complain about the length of the proceedings existed at the relevant time, the Court found that there had been an absence in domestic law of a remedy by which the applicant could have enforced her right to a hearing within a 'reasonable time' and there had therefore been a violation of Article 13.

81 See, for example, ECtHR 21 June 2011, Isayev v. Russia, judgment of 21 June 2011, no. 43368/04, paras 186-187;, Anguelova v. Bulgaria, judgment of 13 June 2002, no. 38361/97, para 161; Mahmut Kaya v. Turkey, judgement of 28 March 2000, no. 22535/93, para 107; El-Masri v. "the former Yugoslav Republic of Macedonia", judgment of 13 December 2012, no. 39630/09, para 255; Labita v. Italy, judgment of 6 April 2000, no. 26772/95, para 131.

iv. **Vulnerability of the victim as considered in ECtHR case law**

This guide has already looked at the meaning of the 'position of vulnerability' under Article 3(a) of the Palermo Protocol, its *travaux préparatoires*,and the Anti-Trafficking Convention and its explanatory report.[82] As already mentioned, the meaning of 'a position of vulnerability' has been further developed by the Court's jurisprudence.

In the case of *Chowdury*, the ECtHR looked at the meaning of the 'position of vulnerability' of trafficked victims who were kept in a climate of fear, forced to work overtime and were in state of vulnerability because of their status as irregular migrants. The Court considered that when an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, the workers do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour. The question whether an individual offers himself/herself for work voluntarily is a factual question which must be examined in the light of all the relevant circumstances of a case. In the specific situation the Court recognised the victims' fear as to their immigration status was linked to their position of vulnerability.

The pending cases[83] of *V.C.L. v. The United Kingdom* and *A.N. v. The United Kingdom*[84] also look at the issue vulnerability, but from the perspective of child victims of trafficking. The issue of child victims or children at risk of being victims of human trafficking and the importance of age assessment and appointment of a guardian in this respect has recently been highlighted in the pending case of *Darboe and Camara v. Italy*[85], which looks at the increased vulnerability of children in migration situations. The meaning of 'position of vulnerability' has also been defined by the Anti-Trafficking Directive, discussed below under EU law.

82 See page 8 above

83 These are pending cases where there has not yet been a judgment. The ECtHR communicates cases to the State against which the case is lodged so as to give the state in question an opportunity to react

84 A.N. v. the United Kingdom, lodged on 21 November 2012, no. 74603/12

85 Darboe andCamara v. Italy, communicated on 14 February 2017, no. 5797/17. See AIRE Centre intervention at https://www.asylumlawdatabase.eu/en/content/darboe-and-camara-v-italy-applno579717-third-party-intervention-aire-centre-dutch-council

2. **European Union**

This section briefly looks at the existing provisions of EU law designed to prevent human trafficking and protect and support victims. European Union legislation only applies in situations and jurisdictions regulated by EU law.

a) **The European Union Charter of Fundamental Rights ('EU Charter')**

EU Member States must respect the provisions of the Charter of Fundamental Rights of the EU, which explicitly prohibits trafficking in human beings.

Article 5 of the EU Charter reads as follows:

Prohibition of slavery and forced labour
"1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited"

The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.

b) **Anti-Trafficking Directive 2011/36/EU ('the Anti-Trafficking Directive')**

The Anti-Trafficking Directive is the fundamental EU legislative act addressing trafficking in human beings. The Anti-Trafficking Directive was formally adopted on 5 April 2011 and replaced Council Framework Decision 2002/629/JHA. Reflecting the three Ps, the Anti-Trafficking Directive establishes robust provisions on victims' **protection**, assistance and support, but also on **prevention** and **prosecution** of the crime of trafficking.

Article 2(1) states that trafficking is: '*[t]he recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*'

Similar to the Palermo Protocol, the Anti-Trafficking Directive states that in cases involving a child victim of trafficking the definition is adapted to the particular safeguards applicable to children. The EU Anti-trafficking Directive provides that: '*When the conduct referred to in [Article 2(1)] involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used*' (Art. 2(5)), hence removing the issue of consent as part of the elements of the crime.

The Anti-Trafficking Directive introduced new provisions, which were not taken from the Anti-Trafficking Convention or the Palermo Protocol, defining the 'position of vulnerability' as 'a situation in which the person concerned has no real or acceptable alternative.' The principles of non-punishment and non-prosecution are also innovative aspects of the Anti-Trafficking Directive, as is the obligation of early identification as opposed to an obligation of only identification in other provisions. EU States' competent national authorities may decide not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities, which they were compelled to commit as a direct consequence of being a victim of trafficking.[86] This is however optional, there is no prohibition on prosecution.

The gathering and reporting of statistics on trafficking in human beings is required by Articles 19 and 20 of the Anti-Trafficking Directive.[87] Article 19 of the Directive requires that 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.' [88]

This Directive recognises two victims' categories: presumed and identified. Victims are 'presumed' when they have met the criteria of Directive 2011/36/EU but have not been formally identified by the relevant formal authority as victims of trafficking in human beings or who have declined to be formally or legally identified as trafficked. Victims are considered "identified" when they have been formally identified as victims of trafficking in human beings by the relevant formal authority in Member States'.

86 Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA (the "Anti-Trafficking Directive")

87 Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

88 Ibid. Article 19

The Anti-Trafficking Directive also recognises that in order to evaluate the results of anti-trafficking action, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.[89] Numerous other stakeholders are emphasising the importance of obtaining accurate data and creating common statistical indicators that would allow data comparison across countries.[90] Reliable and comparable data on the results of anti-trafficking action is crucial, although there are no standardised universal guidelines for data collection on trafficking in human beings.

Different indicators, including for example indicators for measuring Sustainable Development implementation, are trying to address this issue.[91] They are emphasising that the "numerator of this indicator is composed of two parts: detected and undetected victims of trafficking in persons."[92] Substantial problems exist in measuring both detected and undetected victims. For instance, for the purposes of reporting to the UNODC, the data coming from many countries is incomplete. Some countries do not report victims of all the types of trafficking that the Protocol defines, or they do not submit completely disaggregated data, often not including any other information besides age and sex.[93]

Another problem in data collection could be the difference in the number of trafficking cases officially recorded by government agencies and by civil society organisations. Civil societies tend to count the number of cases they have positively identified as involving human trafficking while criminal justice actors tend to record the number of criminal proceedings linked to the crime of trafficking, thus creating a discrepancy in the national trafficking numbers.

Last but not least, it should be highlighted that the Trafficking Directive created a legal obligation for EU Member States to provide victim centred

89 Anti Trafficking Directive, preamble para 28

90 Data collection on trafficking in human beings in the EU, Final report 2018 - Lancaster University, European Union, 2018

91 A global indicator framework was developed by the Inter-Agency and Expert Group on SDG Indicators (IAEG-SDGs)

92 Raymond Saner, LichiaYiu, Laurel Rush, 'The measuring and monitoring of human trafficking' in Public Administration and Policy, Vol. 21 Issue: 2, p. 94-106, 2018, p. 97

93 World Drug Report, United Nations Office on Drugs and Crime, 2017, Annex I

support that is tailored to the survivors' needs and delivered for an adequate length of time (para 18 arts. 11-12). The care to which trafficking survivors are entitled to includes: access to a recovery and reflection period of at least 30 days to recover, access to safe accommodation, access to translation and interpretation services, access to legal advice, access to medical services, psychological services and material assistance, access to compensation, access to vocational training and employment opportunities (when a resident permit is granted) and assistance for safe repatriation and return.

c) Victim's Rights Directive 2012/29/EU

The Victim's Rights Directive 2012/29/EU is an EU legislative instrument that establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim to crime are recognised and treated with respect. They must also receive proper protection, support and access to justice.

The Directive considerably strengthens the rights of victims and their family members to information, support and protection. It further strengthens victims' procedural rights in criminal proceedings. The Directive also requires that EU countries ensure appropriate training on victims' needs for those officials who are likely to come into contact with victims.

The Victim's Rights Directive is particularly important to human trafficking victims as it encourages Member States to take particular care when assessing whether victims of trafficking are at risk of victimisation, intimidation and retaliation and state that there should be a strong presumption that those victims will benefit from special protection measures.

i. Compensation

Similarly to the CoE, and Article 15 of its Anti-Trafficking Convention, the EU has put in place legislation that facilitates access to compensation in situations where the crime was committed in an EU country other than the victim's country of residence. Directive 2012/29/EU establishes minimum standards for the rights, support and protection of victims of crime, providing the right to obtain a decision on compensation from the offender. It also encourages EU countries to set up mechanisms for recovering compensation payments from offenders.

Similarly, Directive 2004/80/EC on compensation to crime victims allows people who have fallen victim to crime abroad to apply for State compensation. The Directive requires that all EU countries have a State compensation scheme that provides fair and appropriate compensation to victims of intentional violent crime.

Comparative examples show a difference in compensation systems for victims of trafficking and victims of forced labour, with compensation for victims trafficked for the purpose of forced labour being rarer and usually subject to additional qualifications (e.g. an emphasis on the element of trafficking excludes forced labour subjects who cannot fulfil the national criteria for having been trafficked for labour exploitation). Thanks to the help of ASTRA[94], after 7 years of criminal and civil proceedings, a judgment was delivered in Serbia by which the convicted perpetrators were obliged to pay €18,500 in compensation for non-pecuniary damage to the victim of trafficking. This is the second verdict in Serbia that awarded non-pecuniary damage to the victim of this crime.[95]

94 ASTRA is an organization dedicated to eradicate all forms of exploitation and trafficking in human beings, especially women and children, as well as to provide support in missing children cases. Read more here https://www.astra.rs/en/about-astra/

95 A Court of Appeal case in Serbia, (Apelacioni Sud U NovomSadu), judgment of 28 Novembr 2013, no Gž.3536/13

Section III

1. Conclusion

It is hoped that this guide has provided a useful overview of the international and regional frameworks relating to the crimes that fall under the umbrella of human trafficking. It has looked at the jurisprudence of the ECtHR and key State obligations and instruments for the protection of the rights of victims. The guide has also outlined examples of how State obligations are applied in practice with reference to the relevant instruments. States' obligations to protect victims have been explained.

This guide has unpacked the 'procedural' and 'substantive' obligations under both Articles 3 and 4. Substantive obligations require States to take measures designed to safeguard individuals within their jurisdiction from violations, such as breaches of Articles 3 or 4, - or from being put at risk of such violations - including when such ill treatment is perpetrated by private individuals. A State also has a procedural obligation to conduct an effective official investigation into allegations of violations that is capable of leading,if appropriate, to prosecution and conviction. These procedural obligations are considered essential to the practical and effective enjoyment of the rights guaranteed by the ECHR.

The main principles flowing from the case law of the ECtHR, as seen above, reflect the concept of the '3P' paradigm initially introduced by the Palermo Protocol, that of the prevention of human trafficking, victim protection, and prosecution of perpetrators. It becomes evident from the emerging case law, mostly under Article 4 but also under Articles 2 and 3, that Member States have positive obligations in relation to the 3Ps. As established in this guide, States have a positive obligation to: put in place appropriate legislative and administrative frameworks, and then apply them effectively; take operational measures; and, in a procedural obligation, conduct an effective investigation. An effective investigation entails an investigation which is independent from those implicated in the events, capable of leading to the identification and punishment of responsible individuals, prompt and reasonably expedient, and involves the victim or the next-of-kin in the procedure to the extent necessary to safeguard their legitimate interests.

This guide does not by any means cover all aspects of human trafficking. It simply aims to provide an overview of the international and European standards and how they are interpreted and applied in practice.

The authorities' failure to comply with their positive obligation to set in place a legislative and administrative framework to effectively combat servitude and forced labourconstituted a violation of Article 4

JUDGMENT IN THE CASE OF
C.N. AND V. v. FRANCE
(Application no. 67724/09)
11 October 2012

1. Principal Facts

The applicants were C.N. ("first applicant") and V. ("second applicant"), two sisters with French nationality who were born in 1978 and 1984 respectively in Burundi. The first applicant arrived in France in 1994, at the age of sixteen, while the second applicant arrived in 1995, at the age of ten, with their three younger sisters. Their arrival was arranged by their aunt, Mrs M., wife of Mr M., a national of Burundi.

The applicants left their country of origin following the civil war in 1993, in which their parents were killed. In a family council meeting dated 25 February 1995, organised by Mrs M., it was decided that the applicants and their younger sisters would be placed in the guardianship of Mr and Mrs M., who were living in France. Mr M. was a former government minister of Burundi and a UNESCO staff member, therefore the couple enjoyed diplomatic immunity. The applicants' three younger sisters were placed with foster families in France.

According to the applicants, they were housed in conditions contrary to human dignity, living in an insalubrious, unheated basement of Mr and Mrs M. family's house, and they were used as "housemaids" with the first applicant having to look after the family's disabled eldest son. They were not given any remuneration for their work nor any days off. The applicants also complained of ill-treatment and physical aggression by their aunt, having no access to a bathroom and only an unhygienic makeshift toilet and that they were only given pasta, rice and potatoes to eat, and occasionally leftovers from the family's meat dishes. The second applicant attended school but their aunt refused to buy her travel card or pay for her to have school meals, and upon her arrival at home from school she would have to do her homework then help her sister with the domestic chores. The first applicant was never sent to school or given any vocational training.

A local association drew the attention of the Nanterre public prosecutor's office to the applicants' situation and the applicants were taken into the association's care. The Director General of UNESCO granted a request to lift Mr and Mrs M.'s diplomatic immunity, as submitted by the public prosecutor's office and a preliminary investigation was opened.

In February 1999 a judicial investigation was opened against Mr and Mrs M. Mr M. was placed under judicial supervision and an arrest warrant was issued against Mrs M. who was in Burundi at the time. The applicants joined the proceedings as civil parties.

In June 1999 the results of a medico-psychological examination concluded that the applicants suffered a psychological impactcharacterised by mental suffering and combined, in the case of the first applicant, with feelings of fear and a sense of abandonment, as the threat of being sent back to Burundi was in her mind synonymous with a threat of death and the abandonment of her younger sisters.

On 17 September 2007 the Nanterre Criminal Court found Mr and Mrs M. guilty as charged, both for subjecting several vulnerable people, including at least one minor, to indecent living and working conditions, and Mrs M. for wilful violence with aggravating circumstances against a child under 15 years of age, by a person in a position of authority. They were sentenced to imprisonment, to the payment of a fine of €10,000 each and the payment of €24,000 in damages to the first applicant and a one symbolic euro to the second applicant.

Following Mr and Mrs M.'s appeal, on 29 June 2009 the Versailles Court of Appeal set aside the judgment on the charge of subjecting several vulnerable people, including at least one minor, to indecent living and working conditions, acquitted the defendants of that charge and dismissed the applicants' claims for compensation for damage suffered in respect of that charge. The Court of Appeal upheld the judgment in relation to the charge against Mrs M. of aggravated wilful violence against the second applicant. Mrs M. was fined €1,500 and ordered to pay one euro in respect of non-pecuniary damage. On 23 June 2010 the Criminal Division of the Court of Cassation rejected the appeals lodged by the applicants and by Mrs M.

2. Decision of the Court

Relying on Article 3, the second applicant alleged that she suffered inhuman and degrading treatment and that the State had failed its obligation to protect her. Both applicants relied on Article 4 to complain that they were held in servitude and subjected to forced or compulsory labour by Mr and Mrs M. and that the French State had failed its positive obligations under this provision. Finally, the applicants complained under Article 13 that they had not had an effective remedy.

Article 3

The Court found the second applicant's complaint to be manifestly ill-founded as she could no longer claim to be a victim of a violation of the Convention within the meaning of Article 34, as the domestic courts found Mrs M. guilty of aggravated violence and awarded the second applicant with the claimed compensation.

Article 4

The existence of "forced or compulsory labour" under Article 4 § 2

The Court referred to previous case-law establishing the meaning of forced or compulsory labour for the purposes of Article 4 and observed that the applicants alleged that they worked at the house of Mr and Mrs M. against their will. The Court distinguished however the situations of the two applicants, as the first applicant did not attend school and was responsible for all the household work and care for the couple's disabled son, seven days a week, without remuneration or time for leisure activities, while the second applicant attended school and had time to do her homework when returning from school. The Court also noted that different factors must be taken into account in order to distinguish between forced or compulsory labour and a "helping hand which can reasonably be expected of other family members or people sharing accommodation", referring to the notion of disproportionate burden already addressed in the Court's previous caselaw.[96]

In the present case the Court noted that without the first applicant's work Mr and Mrs M. would have had to employ and pay a professional housemaid,

96 Van der Mussele v. Belgium, judgment of 23 November 1983, no. 8919/80.

while it was not sufficiently evidenced that the second applicant contributed in an excessive measure to the household. Although it was clear that the second applicant was a victim of ill-treatment by Mrs M., the Court could not establish that the said violence was directly linked to the alleged exploitation. The Court therefore found that the ill-treatment inflicted on the second applicant by Mrs M. did not fall within the scope of Article 4.

In relation to the first applicant, the Court found that the first condition of "forced or compulsory labour" was met, namely that the applicant did the work without offering herself for it voluntarily. As to whether the work was conducted under the menace of any penalty, the Court stressed that "penalty" is used in a broad sense and can mean physical violence or restraint as well as subtler forms of a psychological nature, such as threats to denounce victims to the police or immigration authorities. In the present case the Court confirmed that Mrs M. regularly threatened to send the applicants back to Burundi, which for the first applicant represented a fear of death and abandonment. The first applicant therefore perceived being sent back to Burundi as a penalty and the threat of being sent back as a menace of that penalty being executed. The Court thus concluded that the first applicant was subjected to forced or compulsory labour by Mr and Mrs M. within the meaning of Article 4 § 2.

The existence of "servitude" under Article 4 § 1

Repeating the allegations already made for the purposes of determining forced or compulsory labour, the applicants further alleged that they had been kept in a state of complete administrative and financial dependence on Mr and Mrs M. and had not had any choice other than stay in their house and continue to work for them.

The Court reiterated that servitude is a particularly serious form of denial of liberty that involves an obligation to provide one's services imposed by the use of coercion. The Court further noted that the distinction between servitude and forced or compulsory labour within the meaning of Article 4 lies in the victim's feeling that their condition is permanent and that the situation is unlikely to change. This was the case for the first applicant, who believed that her situation in France depended on living with Mr and Mrs M. and that she would place herself in an illegal situation would she to free herself from their hold. The Court concluded that the first applicant was effectively kept in a state of servitude by Mr and Mrs M. within the scope of Article 4 § 1.

The Court did not reach a similar conclusion in relation to the second applicant, who was less isolated than her sister for the reasons already highlighted in the previous section. The Court found that her situation did not fall within the scope of Article 4 §§ 1 and 2 and therefore the State could not be held responsible for any violation of those provisions.

The Respondent State's positive obligations

The Court reiterated that States have positive obligations under Article 4, distinguishing between (i) the positive obligation to penalise and effectively prosecute actions in breach of that provision and (ii) the procedural obligation to investigate when the authorities become aware of situations of potential exploitation.

In relation to the first positive obligation mentioned above, the Court notes that domestic legislation in France was in this case similar to the legislative framework in the case of *Siliadin v. France*,[97] in which the Court had found a violation of the French State's positive obligations under Article 4. The Court therefore concluded that in the present case there had been a violation of Article 4 in respect of the first applicant for the State's failure to comply with its positive obligations to set in place a legislative and administrative framework to effectively combat servitude and forced labour.

Regarding the procedural obligation to investigate situations of potential exploitation, the Court stressed that an effective investigation must be independent from those implicated in the events and capable of leading to the identification and punishment of the individuals responsible. Although in the present case an investigation was carried out by the police child protection services in 1995, at the time there was insufficient evidence to demonstrate that an offence had been committed the applicants have admitted that the situation had not yet deteriorated to an unbearable point. For this reason, the Court did not find a violation of Article 4 in respect of the procedural obligation of the State to conduct an effective investigation as there was no evidence of unwillingness from the authorities to identify and prosecute the offenders.

97 Siliadin v. France, judgment of 26 July 2005, no. 73316/01.

Article 13

The Court referred to its reasoning regarding the State's positive obligation to investigate and therefore considered it unnecessary to examine the alleged violation of Article 13 separately.

Article 41

The Court awarded the first applicant a compensation of €30,000 in respect of all damage sustained.

An investigation into a complaint of domestic servitude was ineffective due to absence of specific legislation criminalising such treatment and thus amounted to a violation of Article 4

JUDGMENT IN THE CASE OF
C.N. v. THE UNITED KINGDOM
(Application no. 4239/08)
13 November 2012

1. Principal Facts

The applicant was Ms C.N., a Ugandan national born in 1979. She had travelled to the United Kingdom from Uganda on 2 September 2002, claiming that she had been raped several times in Uganda and that her purpose in travelling was to escape from the sexual and physical violence which she had experienced.

The applicant claimed that a relative named S. and a Mr A. helped her obtain a false passport and a visa, but upon arrival in the United Kingdom S. took that passport and travel documents and did not return them to her.

During the several months that the applicant lived at various houses belonging to S. in London, she was constantly warned that she should not talk to people and that she could easily be arrested or otherwise harmed in London, having specifically been shown violence on television and told that the same could happen to her if she was not careful. From January 2003, the applicant started working as a carer for M., who ran a business providing carers and security personnel. Clients would pay M., who would transfer a percentage to S.'s bank account in the apparent belief that she would transfer it to the applicant. However, the applicant claims she never received payment for the services.

Under this scheme, the applicant started working for Mr and Mrs K. as a live-in carer in early 2003. In August 2006, Mr and Mrs K. went on a family trip to Egypt but the applicant was unable to accompany them as she didnot have a passport. The applicant was kept in a house belonging to S. with his partner, H., who effectively prevented her from leaving the house and warned her not to speak with anyone.

On 18 August 2006 the applicant left the house and asked a local bank to call the police. She collapsed and was taken to hospital, where she was diagnosed

as HIV positive and suffering from psychosis. During the month the applicant spent in hospital, H. visited the applicant and tried to persuade her to return to S.'s house. After being discharged from hospital, the applicant was housed by the local authority and on 21 September 2006 she made an application for asylum.

The applicant's asylum application was refused on the basis that the applicant could access protection in Uganda to prevent further sexually motivated attacks, and that the applicant was not genuinely afraid of S., otherwise she would have tried to escape earlier. The applicant's appeal was dismissed with the Immigration Judge noting serious concerns about the applicant's credibility.

Between 2006 and 2009, and following a request from the applicant's solicitor, the Metropolitan Police Human Trafficking Team conducted an investigation to ascertain whether the applicant had been the victim of a criminal offence, concluding that there was no evidence of trafficking.

The applicant was assessed by a clinical psychologist specialising in violence against women, who reported that the applicant was suffering from PTSD in conjunction with a Major Depressive Disorder, presented a moderate risk of suicide and presented herself "in ways consistent with a victim of trafficking and forced labour, in the context of a history of sexual assaults".

On 12 August 2009 the police informed the applicant's solicitor that a decision had been made to conclude the investigation and that the case did not appear to constitute an offence of trafficking people for the purposes of exploitation contrary to the Asylum and Immigration Act 2004. The police further informed that it was "not aware of any specific offence of forced labour or servitude beyond that covered by section 4 of the Asylum and Immigration Act 2004 though regulation of working conditions are controlled by such areas as health and safety legislation". On 6 April 2010, Section 71 of the Coroners and Justice Act 2009 came into force which made punishable slavery, servitude and forced or compulsory labour criminal offences, however it did not have retrospective effect.

2. Decision of the Court

The applicant relied on Article 4 to allege that there had ben a failure to properly investigate her complaints and that this failure was at least in part

based on defective legislation which did not penalise treatment falling within the scope of Article 4.The applicant further complained that the treatment she was subjected to amounted to a violation of Article 8 and that the absence of any specific criminal offence of domestic servitude or forced labour denied her an effective remedy under Article 13.

Article 4

The Court referred to its previous case-law to reiterate the absolute nature of Article 4 and that States have specific positive obligations to penalise and effectively prosecute any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour. The Court further noted that when State authorities become aware, or ought to have been aware, that an identified individual had been or was at a real and immediate risk of being subjected to treatment contrary to Article 4, the State will also have a positive obligation to take operational measures to protect the victim or potential victim. The obligation must however be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.

The Court stressed that Article 4 entails a further procedural obligation to investigate a credible suspicion that an individual's rights have been violated under Article 4 as soon as it comes to the attention of the authorities. The investigation must be effective, independent, capable of leading to the identification and punishment of those responsible and must be conducted as a matter of urgency if there is a possibility of removing an individual from a harmful situation.

The obligation to investigate arises if there is a credible suspicion that an individual has been held in servitude. The Court did not consider that the applicant's complaints concerning her treatment by S. and M. were inherently implausible, which was also indicated by the fact that the police opened an investigation into the applicant's complaints. The Court therefore considered that the complaints did give rise to a credible suspicion that she had been held in domestic servitude.

The Court found that, even though the United Kingdom penalised a number of criminal offences related to specific aspects of slavery, servitude and forced or compulsory labour (such as trafficking, false imprisonment, kidnapping, etc.), the legislative provisions in force at the relevant time were inadequate to afford practical and effective protection against treatment falling within the

scope of Article 4. Victims of such treatment that were not also victims of one of the related offences were left without any remedy.

As the Government submitted that the reason no action was taken following investigation was rather the absence of evidence than the absence of appropriate legislation, the Court reiterated that it cannot replace domestic authorities in the assessment of the facts but it would need to consider whether the lack of specific legislation prevented domestic authorities from properly investigating.

At different stages during the investigation it became evident that the police was at all times focusing on the offence of trafficking for exploitation. The Court stressed that domestic servitude is a specific offence, distinct from trafficking and exploitation, which involves a complex set of dynamics, involving both overt and more subtle forms of coercion. An appropriate investigation therefore requires an understanding of the subtle ways in which an individual may fall under the control of another. The Court's position was that the authorities were unable to give due weight to these factors, finding that the investigation into the applicant's complaints of domestic servitude was ineffective due to absence of specific legislation criminalising such treatment. The Court thus found a violation of Article 4.

Articles 8 and 13

The Court considered that no separate issues arouse under Articles 8 and 13 that hadnot been addressed in its findings in relation to Article 4.

Article 41

The Court held that the United Kingdom was to pay the applicant €8,000 in respect of non-pecuniary damage and €20,000 in respect of costs and expenses.

Violation of a State's obligation to prevent, investigate and punish those responsible for human trafficking

JUDGMENT IN THE CASE OF
CHOWDURY AND OTHERS v. GREECE[98]
(Application No. 21884/15)
30 March 2017

1. Principal Facts

The applicants are 42 Bangladeshi nationals who live in Greece. They did not have work permits when they were recruited between October 2012 and February 2013 to pick strawberries on a farm in Manolada. They had been promised a wage of €22 for seven hours' work and €3 for each hour of overtime. They worked every day from 7 a.m. to 7 p.m. under the supervision of armed guards. Their employers had warned them that they would only receive their wages if they continued to work. The applicants lived in makeshift shacks without toilets or running water.

In February, March and April 2013 the workers went on strike demanding payment of their unpaid wages, but without success. On 17 April 2013 the employers recruited more Bangladeshi migrants. Fearing that they would not be paid, 100 to 150 workers from the 2012-2013 season started moving towards the two employers in order to demand their wages. One of the armed guards then opened fire, seriously injuring 30 workers, including 21 of the applicants. The wounded were taken to hospital and were subsequently questioned by police.

The two employers, together with the guard who had opened fire and an armed overseer, were arrested and tried for attempted murder – subsequently reclassified as grievous bodily harm – and also for trafficking in human beings. By a judgment of 30 July 2014, the assize court acquitted them of the charge of trafficking in human beings. It convicted the armed guard and one of the employers of grievous bodily harm and unlawful use of firearms; their prison sentences were commuted to a financial penalty. They were also ordered to pay €1,500 to the 35 workers who had been recognised as victims – that is, €43 to each of them. The two convicted men lodged an appeal against that decision. At the time of the Court's judgment, the appeal was pending and had suspensive effect.

98 This decision will become final in the circumstances set out in Article 44(2) of the Convention.

On 21 October 2014 the workers asked the public prosecutor at the Court of Cassation to appeal against the assize court judgment, arguing that the charge of human trafficking had not been examined properly. That request was dismissed and the part of the assize court judgment dealing with human trafficking became final.

2. Decision of the Court

The applicants argued, relying on Article 4(2) of the Convention, that they had been subjected to forced or compulsory labour. They also argued that the State was under an obligation to prevent them being trafficked and to adopt preventative measures to do so, and to punish the employers.

Article 4

The Court distinguished between servitude and forced labour. It observed that national courts had effectively equated the concept of trafficking with servitude; a concept that requires the victim to feel that their condition was permanent. This could not be held to be the case with the applicants as they were seasonal workers. However, the facts at issue, and in particular the applicants' working conditions, would lean towards a finding of human trafficking and forced labour set out in Article 3a of the "Palermo Protocol" and Article 4 of the Council of Europe's Convention on Action against Trafficking in Human Beings that says that exploitation through labour is one aspect of human trafficking. Forced labour, the Could reaffirmed, implied restriction, whether physical, or moral. Also important for the Court's finding that the facts amounted to human trafficking and forced labour was the nature of the work, and its intensity.

The Court then examined a State's obligations under Article 4(2) and noted that they must put in place a legislative and administrative framework that prohibits and punishes forced or compulsory labour, servitude and slavery. The Court observed in connection with this that Greece had ratified the Council of Europe Convention on Action against Trafficking in Human Beings in 2014. The Court then also concluded that in order for a positive obligation to be applicable, such as the obligation to investigate, the State must have been made aware of circumstances that could reasonably lead to the conclusion that there were people being submitted to the prohibited treatment. Here, the Court observed that the State had been notified, well before the events of 17 April 2013, of the situation in the Manolada Strawberry plantations by reports

and press articles. Debates had also been held in Parliament, with three ministers ordering inspections and the drafting of legislative texts aimed at improving the migrants' situation and the Ombudsman's Office had alerted several ministers and State bodies, but no tangible results were seen until 2013. Furthermore, the Amaliada police station seemed to have been aware of the employers' refusal to pay the applicants' wages, as one of its police officers had given evidence to the assize court that workers from the farm had come to the police station to complain about this refusal. The Court, therefore, considered that the operational measures taken by the authorities had not been sufficient to prevent human trafficking and to protect the applicants from the treatment to which they were being subjected.

In order to examine the effectiveness of the investigation and the judicial procedures undertaken and thus to see whether the State had complied with its obligation under Article 4, the Court divided the applicants into those who had taken part in the procedure before the assize court and those who had not. With regard to the latter, the Court noted that they had filed a complaint on 8 May 2013 claiming that they had been employed on the farm belonging to T.A. and N.V. in conditions of human trafficking and forced labour. Their complaint was dismissed as the prosecutor considered that had they really been victims, they would have reported the event on the 17th April 2013, rather than waiting until 8 May 2013. The Court held that by not verifying the veracity of the allegations, the prosecutor had not complied with his obligation to carry out an investigation. Indeed, Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings provided for a "recovery and reflection period" of at least 30 days, so that the person concerned could recover and escape the influence of traffickers and take an informed decision on cooperating with the competent authorities. The Court therefore concluded that there had been a violation of Article 4(2) of the Convention with regard to the procedural obligation to conduct an effective investigation.

With regard to the applicants who had taken part in the proceedings before the assize court, the Court noted that the national court had acquitted the defendants of the charge of trafficking because the workers' freedom of movement had not been restricted. However, restriction of movement is not a condition *sine qua non* for forced labour or human trafficking. In any case, the Court observed that the applicants did not have work permits or a permit to be in Greece and thus any attempt to quit their job would subject them to risk of deportation. Moreover, the fact that they had not been paid, meant that they did not have the money to leave the job.

Furthermore, the prison sentence of the defendants for serious bodily harm had been converted to a financial penalty of €5 per day of imprisonment. The assize court had ordered T.A. and one of the armed guards to pay a total amount of €1,500, or €43 per injured worker, for the prejudice sustained. Yet Article 15 of the Council of Europe Convention on Action against Trafficking in Human Beings required the Contracting States, including Greece, to provide for the right of victims to obtain compensation from the persons who committed the offence, and, among other measures, to create a compensation fund for victims.

The Court accordingly held that there had been a violation of Article 4(2) of the Convention as regards the State's procedural obligation to carry out an effective investigation into the situation of human trafficking and forced labour complained of by the applicants and to provide effective judicial proceedings.

Article 41

The Court held that Greece was to pay each of the applicants who had participated in the proceedings before the assize court €16,000, and each of the other applicants €12,000 in respect of all the damage sustained, plus €4,363.64 to the applicants jointly in respect of costs and expenses.

A limited authority to act in domestic courts was not sufficient for an NGO to represent the applicant, who had been expelled to Nigeria and according to the NGO was back at the hands of her traffickers, before the European Court of Human

DECISION IN THE CASE OF
G.J. v SPAIN
(Application no. 59172/12)
21 June 2016

1. Principal Facts

The case originated in an application by Women's Links Worldwide (WLW) acting on behalf of the applicant. The applicant herself, Ms G.J, a Nigerian national, arrived in Spain in 2006 and submitted an asylum request. She claimed to be Catholic and had fled Sudan after her father was assassinated by a radical Muslim group. Her asylum claim was dismissed, and her appeal was rejected. The applicant then filed a new asylum request stating that she had been forced into prostitution by the person who helped her come into Spain. This asylum request was also declared inadmissible.

While in detention,the applicant signed a written authority for WLW to act for a limited purpose, to ask for a "recovery and reflection period". WLW made such an application, and also asked for a stay of the applicant's expulsion. In the meantime, the applicant was expelled to Nigeria. WLW was served with a decision rejecting the request for a recovery and reflection period and they enacted administrative judicial proceedings stating that the applicant had been expelled before the authorities had examined the content of her request for a recovery and reflection period.The Audiencia Nacional declared the appeal inadmissible as WLW had no locus standi to represent the applicant. According to WLW they only managed to have one telephone conversation with the applicant after her expulsion as they claimed she had been recaptured by her traffickers in Nigeria, which had rendered her unable to sign any authority after her expulsion. The Madrid High Court of Justice upheld this decision.

2. Decision of the Court

Relying on a number of Articles of the Convention, WLWcomplained that the domestic authorities had failed to carry out an appropriate identification procedure and consequently had not assessed the risk that the applicant

would face upon her return to Nigeria,and the expulsion amounted to a violation of her rights to respect for family and private life. Furthermore, WLW complained that the actions taken by the domestic authorities had not considered the particular vulnerability of the applicant given her position as a victim of trafficking.

Admissibility

Where applicants choose to be represented under Rule 36 § 1 of the Rules of Court rather than lodging the application themselves, Rule 45 § 3 requires them to produce a written authority to act, duly signed. The Court emphasised that the applicant's representative must also stay in contact with the applicant throughout the proceedings.

WLW claimed that special consideration may be appropriate in the cases of victims of alleged breaches of Articles 2, 3 and 8. On this ground, the WLW argued, applications lodged on behalf of such victim(s), had been declared admissible even if no valid written authority to act was given.

In the case in question, the Court had to ascertain whether the applicant wished to exercise her right of individual application and, if so, whether she wished WLW to act as her legal representative. It noted that, at the time of the applicant's expulsion, she had initiated two parallel sets of asylum proceedings. In each set of proceedings, the two lawyers duly authorised to act on her behalf at domestic levelhad given different and detailed submissions as to the applicant's situation and had challenged the enforcement of the expulsion order issued in 2007. It must thus be seen that the applicant was in contact with her lawyers during the proceedings. According to the case file, however, she never advised her lawyers to lodge an application on her behalf before the Court.

The applicant signed the written authority dated 11 March 2010, which solely conferred authority to represent her in the administrative proceedings seeking a recovery and reflection period. However, the organisation did not represent the applicant at any stage of the asylum proceedings, nor did the applicant provide WLW with any written authority to act before the Court or produce any explicit instruction to do so.

Moreover, the organisation had no direct contact with the applicant since her expulsion. WLW's statement that the applicant had confirmed to them by

phone in 2011 that she wanted them to bring her case before the international courts did not constitute an adequate basis for the Court to demonstrate that the applicant was aware of and in agreement with the WLW's intention to lodge an application before the Court on her behalf.

In the view of the aforementioned, the Court concluded that WLW had no standing to lodge the application. Consequently, the application was rejected for being incompatible *ratione personae*, pursuant to Article 35 § 3 and 4.

Decision not to pursue an investigation into alleged human trafficking offences committed abroad by non-nationals did not amount to a violation of Articles3 or 4

JUDGMENT IN THE CASE OF
J. AND OTHERS v. AUSTRIA
(Application no. 58216/12)
17 January 2017

1. Principal Facts

The applicants were three Filipino nationals, Mrs J.("the first applicant"), Mrs G. ("the second applicant")and Mrs C.("thethird applicant"). Respectively in 2006 and 2009, the first and third applicants were recruited by an employment agency in the Philippines to work as maids or au pairsin Dubai, United Arab Emirates. In 2008, at the suggestion of the first applicant and not via an agency, the second applicant travelled to Dubai also to work as a maid.

The first and second applicant worked for the same family, while the third applicant worked for a family member of their employers. The applicants alleged that their passports were taken away by their employers, that they were subjected to ill-treatment and exploitation, forced to work extremely long hours and were either not paid or didnot receive the agreed wages. They complained of emotional and physical ill-treatment, threats, scarcity of food and lack of access to medical treatment.

In July 2010 the applicants travelled with their employers on a short holiday trip to Austria and stayed together in a hotel in Vienna. Their working conditions and ill-treatment continued in Vienna and their passports were withheld by their employers.

The applicants were regularly shouted at by their employers, for example for having failed to get all the children ready early every morning. In addition, their employers woke the first applicant up at around 2 a.m. and forced her to cook food for them and she was forced to carry the employers' twenty suitcases into the hotel by herself. They applicant believed that they could not live with their conditions of work any longer.With the help of a hotel employee, the applicants were brought to a safe place and found support with the Filipino community in Vienna.

Approximately nine months after they left their employers, the applicants contacted a local NGO for assistance in reporting their ill-treatment, abuse and exploitation to thepolice. In July 2011 theapplicants filed a criminalcomplaint against their employers claiming that theyhad been the victims of human trafficking. After conducting interviews, the Office to Combat HumanTraffickingconcluded that the offences had been committed abroad. On 4 November 2011 the Vienna public prosecutor's officediscontinued the proceedings on the grounds that the offence had beencommitted abroad by non-nationals and did not engage Austrian interests as required by the Criminal Code. From the applicants' accounts, it did not appear that they had been exploited in Austria, especially considering they had managed to leave their employers only 2 to 3 days after arrival. The applicants challenged this conclusion and applied to the Vienna RegionalCriminal Court to continue the investigation,however their application was dismissed on 16 March 2012. The applicants were granted resident permits and registered in the Central Register with a personal data disclosure ban, so that they could not be traced by the generalpublic.

2. Decision of the Court

The applicants complained under Article 4that the Austrian authorities had failed to comply with their positive obligations to effectively investigate their allegations of forced labour and human trafficking.The applicants further submitted that they were subject to inhuman or degrading treatment orpunishment under Article 3.

The Court struck out of its list the third applicant's complaint, as her representative was no longer in contact with the third applicant.

Article 4

The Court first affirmed that trafficking of human beings is often not confined to domestic settings and trafficking offences may occur in the State of origin, any State oftransit and the State of destination. The Council of Europe'sConvention on Action Against Trafficking in Human Beings requires each member State to establish jurisdiction over any trafficking offense committed on its territory, which is also in line with the positive obligation to investigate under Article 4. This obligation is triggered as soon as the authorities become aware of a possible trafficking offence, when they must act with promptness and reasonable expedition, or with urgency where there is apossibility of removing the victim from a harmful situation.

The Court confirmed that the applications' allegations fell within the scope of Article 4 and examined whether the Austrian authorities had complied with their positive obligations to (i) identify and support the applicants as potential victims of trafficking and (ii) investigate the alleged crimes.

Regarding the first issue, the Court noted that the police considered the applicants' claims credible and treated them as potential victims of human trafficking from the moment they were contacted by the applicants. The applicants were adequately interviewed, granted residence and work permits and afforded protection with a personal data disclosure ban. They were supported by an NGO funded by the Government, provided legal representationand assistance in their integration. The Court also confirmed that the legal and administrative framework in place appeared to have been adequate and the authorities had taken all reasonable steps to protect the applicants, therefore complying with their duty to identify, protect and support them as potential victims of trafficking.

In relation to the positive obligation to investigate the allegations of humantrafficking, the Court noted that the applicants were given an opportunity to present their claims and that the public prosecutor's office initiated an investigation.The investigation was conducted with a detailed account and registration of the events.

The Court noted that the procedural limb of Article 4 does not require States to provide for universal jurisdiction over trafficking offences committed abroad. The Anti-Trafficking Convention only requires State to provide for jurisdiction over offences committed within their territory, or by or against one of their nationals. There was therefore no obligation on the domestic authorities to investigate the applicants' complaints in relation to their recruitment in the Philippines or the forced labour and exploitation in Dubai.

Even though the domestic authorities treated the applicants as potentialvictims of human trafficking, such treatment does not presuppose official confirmation that the elements of the offence of human trafficking had been fulfilled. Potential victims need support even before the offence of human trafficking is formally established. In light of the evidence that the authorities had at their disposal, the events that the applicants reported to have happened in Austria did not include ill-treatment and did not amount to human trafficking under domestic law, thusthe Court found that the conclusion that the elements of the relevant offence had not been fulfilled was not unreasonable.

As the domestic authorities were only informed of the alleged offences a year after the events, the applicants' employers had presumably long since left Austria and returned to Dubai. The only further steps that could have been taken were requesting legal assistance from the United Arab Emirates, attempting to question the applicants' employers by means of letters of request and issuing an order to determine their whereabouts. However, although theoretically possible, the absence of mutual legal assistance agreements between Austria and the United Arab Emirates means that there were no reasonable prospects of success. The Court thus concluded that the investigation conducted by the domestic authorities was sufficient and the decision to discontinue the investigation concerning the events in Austria did not breach the positive obligation under the procedural limb of Article 4. The Court found no violation of Article 4.

Article 3

The Court considered that the State's positive obligations arising under the procedural limb of Article 3 were very similar to those under Article 4. For essentially the same reasons described above, the Court therefore concluded that there had been no violation of Article 3.

Criminal complaint by victim of human trafficking not dealt with in a manner compatible with the Convention

JUDGMENT IN THE CASE OF
L.E. v. GREECE
(Application no. 71545/12)
21 January 2016

1. Principal facts

The applicant is a Nigerian national who was born in 1982 and lives in Athens.

On 9 June 2004 she was brought from Nigeria to Greece by K.A. who promised to find her work in bars and nightclubs, in exchange for a promise by her to pay him €40,000 and not to tell the police. Upon arrival, she initially worked as a waitress in a bar in Crete before K.A. and his wife D.J. confiscated her passport and forced her into prostitution. After some time she was brought to Athens.

On 12 July 2004 she applied for asylum but did not go to the reception centre allocated to her. On 8 June 2005 she asked for asylum again but according to the records she did not present herself. On 9 June 2005 a third party submitted an asylum application to the relevant authorities on her behalf. This was rejected on the grounds that it was not made by the person requesting asylum.

The applicant was arrested a number of times for prostitution, being acquitted each time. In April 2006, she was detained pending expulsion as her status in Greece was irregular. In November 2006, she lodged a criminal complaint against K.A. and his wife D.J. alleging that she, along with two other Nigerian women, were victims of human trafficking forced into prostitution. This was dismissed by the Athens Criminal Court on the basis that her report did not show that she was a recognised victim of trafficking. This was based on the fact that she had travelled alone to Crete, that she was unaccompanied when she was prostituting herself in Athens and that she had contacted and meet with K.A. at her initiative. At this point the testimony of E.S., the Director of "NeaZoi", the NGO that was assisting the applicant with her case, had not been included in the report.

The applicant joined the proceedings as a civil party in January 2007 and later applied for re-examination of the criminal complaint. In August 2007

she was officially recognised as a victim of human trafficking and the public prosecutor instituted criminal proceedings. Only D.J. could be found by the authorities, and a court ruled that she was a victim of K.A. rather than an accomplice.

On 16 January 2014, the competent administrative authorities renewed the applicants residence permit until the 2 November 2014.

2. Decision of the Court

Relying on Article 4 of the ECHR the applicant complained of having been a victim of trafficking, as she had been subjected to prostitution by K.A. and D.J, and she alleged that the Greek State had failed in its positive obligations emerging from Article 4 in this respect. She further complained about the unreasonable length of the proceedings under Article 6, and that she had not had an effective remedy under Article 13.

Article 4

The Court considered that there was an appropriate legal and regulatory framework in domestic law for preventing and combating trafficking in human beings capable of providing the applicant with practical and effective protection. The Court noted that the applicant had informed the authorities that she was a victim of trafficking on 29 November 2006, but she was not formally recognised as having this status until around 9 months later. The Court considered this an unreasonable lapse of time.

The Court found that the operational measures taken to protect the applicant were insufficient. The competent authorities could reasonably have known or suspected that the applicant was a victim of human trafficking. Moreover, the Court found a number of shortcomings in the adequacy and diligence of the authorities in investigating the applicant's allegations. For example, a statement by the director of the NGO assisting her was not included in the case file for her initial complaint, which was dismissed. In addition, once the witness statement had been added to the case file, the judicial authorities had not resumed examination of her complaint of their own motion. The applicant herself had had to revive the proceedings by applying to the prosecutor's office on 26 January 2007 and it was not until 1 June 2007 that the prosecutor ordered that criminal proceedings be brought. The Government did not provide any explanation as to this period of inactivity, which lasted for more than five months.

With regard to the preliminary inquiry and the subsequent investigation, the Court noted that a number of shortcomings had compromised their effectiveness. A house had been placed under police surveillance immediately after L.E.'s accusation, with a view to locating K.A., the presumed perpetrator. However, after having noted that he was no longer at the address in question, the police had not widened their search to the two other addresses specifically mentioned by L.E. in her statement. Nor did it appear that the police had attempted to gather other information, in particular through further inquiries. There had been considerable delays in the preliminary inquiry and investigation of the case. Once criminal proceedings had been brought against K.A. and D.J. on 21 August 2007, more than four years and approximately eight months had passed before a hearing took place before the Athens Assize Court. Lastly, with regard to K.A., the presumed principal offender in the acts of trafficking, the evidence did not indicate that the police had taken further tangible steps to find him and bring him before the courts, other than entering his name in the police criminal research file. Nor had the authorities established contact or instigated cooperation with the Nigerian authorities in order to arrest the suspect.

Given the preceding conclusions, the Court found a lack of urgency regarding the operational measures and deficiencies with regard to procedural obligations of the Greek State pursuant to Article 4 of the Convention. The Court therefore found a violation of this provision.

Article 6 and 13

The Court also found that delays in the length of proceedings since the applicant joined proceedings as a civil party were unreasonable, in violation of Article 6(1); and that the Greek legal system did not provide an effective remedy to complain about the length of proceedings to enforce her right to a hearing within a reasonable time, in violation of Article 13.

Article 41

The Court awarded the applicant €12,000 for non-pecuniary damage, and €3,000 for costs and expenses.

The authorities' failure to conduct an effective investigation into the alleged trafficking claims and ill-treatment of a teenager amounted to a violation of Article 3

JUDGMENT IN THE CASE OF
M. AND OTHERS v. ITALY AND BULGARIA
(Application no. 40020/03)
31 July 2012

1. Principal Facts

The applicants in this case, L.M.and her parents, were Bulgarian nationals of Roma ethnic origin. L.M. was born in 1985, and hence at the time of the events, still a minor.

The facts according to the applicants

According to the applicants, on 12 May 2003, the applicants arrived in Milan following a promise of work by X., a Roma man of Serbian nationality who resided in Italy. The applicants were accommodated by X. in a villa in Ghislarengo. According to L.M., she and her mother had met X. in "Yugoslavia", and from there X. had driven them to Italy after proposing a job. Her mother however claimed that they had moved to Italy in search of work and after their arrival to Milan, they approached X., who suggested they would work for him as domestic employees.

After a while in the villa, X. announced that Y., his nephew, wanted to marry the first applicant. When they declined, X. threatened them with a gun and then proceeded to beat, threaten them with death and pressured the parents to leave Italy on 18 May 2003. While the applicants denied this allegation, it appears from their initial submissions that the parents had been offered money to leave their daughter behind.

The applicants stated that L.M. was kept under constant surveillance and was beaten, forced to steal against her will, threatened with death and repeatedly raped by Y.

On 24 May 2004, L.M.'s mother returned to Italy and lodged a complaint to the police, stating that she and her husband had been beaten and threatened and that L.M. had been kidnapped.

On 11 June 2003, 18 days after the lodging of the complaint by the mother, the police raided the house, found L.M. there and made several arrests. L.M. was taken to a police station where the applicants claimed that L.M. was treated roughly and threatened that she would be accused of perjury and libel if she did not tell the truth. Allegedly she was then obligated to declare that she did not wish her supposed kidnappers to be prosecuted and to sign documents in Italian, which she did not understand. The applicants also claimed that the interpreter did not do her job properly and that Y. was present during various parts of the questioning.

L.M.'s mother was also questioned by the police later that day. She claimed that she was also threatened, and that the interpreter did not do her job properly. L.M. was questioned again on the same day and then taken to a cell and left there for up to five hours. She was transferred to a shelter for homeless persons at 4 a.m., and she remained there until 12:30 p.m.

On the same day, the applicants were taken to the railway station upon their request and travelled back to Bulgaria. Following their return, the applicants wrote to the Italian authorities asking them to start criminal proceedings. The applicants did not provide the Court with any documents apart from two medical reports, one dated 22 June 2003 establishing that the first applicant was suffering from post-traumatic stress disorder and one dated 24 June 2003 establishing that the first applicant had a bruise on the head, a small wound on the right elbow and a broken rib. It further stated that she had lost her virginity and was suffering from a vaginal infection. The medical report concluded that these injuries could have been inflicted in the way the first applicant had reported.

The facts according to the Italian Government

The Italian Government claimed that L.M., when questioned, made allegations that showed a variety of discrepancies with the complaint previously submitted by her mother. This led the authorities to conclude that the situation concerned an agreement about marriage, rather than kidnapping. This conclusion was confirmed by photographs given by X., showing a wedding party where the second applicant had received a sum of money from X. As a result, the Public Prosecutor of Vercelli decided to turn the proceedings into criminal proceedings against L.M. and her mother for perjury and libel. The charges against L.M. were later dropped as the offences were one-off and not serious. The mother was acquitted on the ground that the facts of which she was accused did not subsist.

2. Decision of the Court

Relying on Articles 3, 4, 13 and 14, the applicants complained that L.M. suffered ill-treatment, forced labour and sexual abuse. They also complained that the parents had also suffered this to a lesser extent from X, and that the Italian authorities failed to investigate the incidents adequately. Furthermore, they complained that Italian police officers subjected L.M. and her mother to ill-treatment during their questioning, and that L.M. and her mother were not provided with lawyers and interpreters, were not informed of the capacity they were questioned, and were forced to sign documents the content which they were not aware of. The applicants also complained that the Bulgarian authorities did not provide them with required assistance in their dealings with the Italian authorities.

Article 3

With regards to the steps taken by the Italian authorities, the Court observed that the police released the first applicant from her alleged captivity within two and a half weeks. Keeping in mind that the applicants had stated that the alleged captors were armed, the Court was able to accept that prior surveillance was necessary. Thus, the Court found that the intervention complied with the requirement of diligence and promptness with which the authorities should act in such circumstances and there was no violation of Article 3 under this head.

However, the Court found a violation of Article 3 regarding the investigation following L.M.'s release.The Court observed that the Italian authorities questioned X., Y., Z (a third-party present at the wedding), L.M. and her mother but no efforts were made to question any other third parties who could have witnessed the events. The Court was struck by the fact that following L.M.'s release and her complaints were heard, the criminal proceedings against the assailants had been converted into criminal proceedings against her and her mother. Given that it had taken the domestic authorities less than a day to reach their conclusions on L.M.'s complaints, it would have been impossible for them to clearly establish the facts. Even if the Court could not determine whether the applicants came to work in Italy or were transported to Italy by X, itcould not exclude that the circumstances of the present case could have amounted to human trafficking as defined in international conventions. Therefore, the Italian authorities had an obligation to investigate the matter and to establish all the relevant facts by means of an appropriate investigation.

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Furthermore, when released, L.M. was not subject to a medical examination, even though she had allegedly been repeatedly beaten and raped. The Court observed that even if the events at issue amounted to a marriage, it was still alleged that the first applicant had been beaten and forced to have sexual intercourse with Y. The Court reiterated that authorities must take protective measures in the form of effective deterrence against serious breaches of an individual's personal integrity also by a husband. Thus, any such allegation should have required an investigation, especially when the first applicant was a minor at the time of the incident, but no questioning or testing took place in this respect.

The applicants also complained that L.M.'s parents had suffered ill-treatment and threats from X. Allegations of ill-treatment must be supported by appropriate evidence, and even if the parents had been previously kept under constraint, this was no longer so after 18 May 2003. Hence they could have sought medical assistance and acquired medical evidence. Due to lack of necessary proof, the authorities were not give reasonable cause for suspecting the parents were subjected to ill-treatment and the complaint was declared inadmissible.

Neither L.M. nor her mother had lodged a complaint in respect of the alleged mistreatment by the police during their questioning. As a result, they had failed to exhaust domestic remedies in respect of this complaint. In addition, a lawyer or an interpreter, had accompanied them during the interrogation. The fact that the police officers had warned them of the possibility of being prosecuted and imprisoned if they did not tell the truth had been a normal part of the police duties when questioning people, and not an unlawful threat. As a conclusion, the Court considered that this complaint was inadmissible.

As regards the applicants' complaints against the Bulgarian authorities, the Court rejected them as inadmissible on the basis that Bulgarian authorities were not obliged under the Convention to carry out an investigation into the applicants' complaints, and that they had actually repeatedly pressed the Italian authorities for action, evidenced by documents submitted to the Court.

Article 4

Examining both versions of the events, as submitted by the applicants and the Italian Government, the Court concluded that even if it could establish which one was true, the evidence had not shown the circumstances fell under Article 4.

The Court had held under Article 3 that the circumstances as alleged by the applicants could have amounted to human trafficking. Nevertheless, it considers that there was not sufficient evidence to establish it with certainty.

As to the Article 4 obligation on the authorities to take appropriate measures within the scope of their powers to remove an individual from a situation of human trafficking or risk of human trafficking, the Court already found that there had been no violation of Article 3. Hence, the Court considered that the overall complaint under Article 4 against Italy was inadmissible as manifestly ill-founded.

The Court observed that the authorities concluded that the facts of the case amounted to a typical marriage in accordance with the Roma tradition. L.M., who was aged seventeen years and nine months at the time, never denied that she willingly married Y. She, however, denied that any payment had been made to her father for the marriage. Nevertheless, the photos appear to suggest that an exchange of money in fact took place. Again, there had been insufficient evidence that L.M. had been held in slavery or forced labour. Even assuming that L.M.'s father had received some money in the context of the alleged marriage, that was not enough to conclude that it had been a price in exchange of acquiring ownership over L.M. Furthermore, the applicants had themselves stated that they had been employed at the villa to do housework. Finally, there had been no evidence suggesting that the union had been undertaken for any purposes other than those generally associated with a traditional marriage. The Court therefore, rejected the applicants'complaints as inadmissible.

As regards Bulgaria, the Court already established that the circumstances of the case did not give rise to human trafficking, a situation which would have engaged the responsibility of the Bulgarian State. Moreover, the applicants only complained that the Bulgarian authorities did not provide them with the required assistance in their dealings with the Italian authorities. It follows that the complaint under Article 4 against Bulgaria was manifestly ill-founded and must be rejected.

Articles 6 and 14

The Court's case-law on Article 14 established that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. When investigating violent incidents, State authorities have the additional duty to take all reasonable steps to expose any

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racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.

The Court observed that even assuming the applicants' version of events was truthful, the treatment they claim to have suffered at the hands of third parties cannot be said in any way to have racist overtones. The applicants did not make this allegation to the police when they complained about the events related to the Serbian family. Thus, there was no positive obligation on the State to investigate such motives. Accordingly, the Court held that the complaint was manifestly ill-founded, and must be rejected.

Further complaints under Articles 6 and 13 were rejected.

Article 41

As the applicants had not submitted a claim for just satisfaction when requested by the Court, no award was made in this regard.

Positive obligations of States to protect victims of human trafficking

JUDGMENT IN THE CASE OF
RANTSEV v. CYPRUS AND RUSSIA
(application no. 25965/04)
7 January 2010

1. Principal facts

The applicant was a Russian national and the father of Ms Oxana Rantseva, who died in Cyprus in March 2001. She had arrived in Cyprus in early March that year on an "artiste" visa, and started work in a cabaret only to abandon her place of work and lodging three days later leaving a note saying that she was going back to Russia. After finding her in a night club in Limassol some ten days later, at around 4 a.m. on 28 March, the manager of the cabaret where she had worked took her to the police asking them to declare her illegal in the country and to detain her, apparently with a view to expelling her so that he could have her replaced in his cabaret. The police, after checking their database, concluded that Ms Rantseva did not appear to be illegal and refused to detain her. They asked the cabaret manager to collect her from the police station and to return with her later that morning to make further inquires into her immigration status. The manager collected the applicant's daughter at around 5.20 a.m.

Ms Rantseva was brought by the cabaret manager to the house of another employee, where she was taken to a room on the sixth floor of the apartment block, whilst the manager remained in the flat. At about 6.30 a.m. that morning, Ms Rantseva was found dead in the street below the flat. A bedspread was found looped through the railing of the balcony.

Following the death, those present in the flat were interviewed. A neighbour who had seen Ms Rantseva's body fall to the ground was also interviewed, as were the police officers on duty when the applicant's daughter had been brought in earlier that morning. An autopsy was carried out which concluded that Ms Rantseva's injuries were the result of her fall and that the fall was the cause of her death. At an inquest hearing some time later it was decided that Ms Rantseva died in strange circumstances resembling an accident in an attempt to escape from the flat in which she was a guest, but there was no evidence to suggest criminal liability for her death.

Another autopsy was carried out in Russia at the applicant's request, which concluded that additional investigation into the death was necessary, and these findings were forwarded to the Cypriot authorities in the form of a request for mutual legal assistance under treaties to which Cyprus and Russia were parties. A report by the Cypriot Ombudsman noted in connection with Ms Rantseva's case that the word "artiste" had in Cyprus become synonymous with "prostitute".

2. Decision of the Court

Relying on inter alia Articles 2, 3, 4, and 5, Mr Rantsev complained about the investigation into the death, and the failure of the Cypriot and Russian authorities to protect his daughter from trafficking.

Article 2

As regards Cyprus, the Court considered that the chain of events leading to Ms Rantseva's death could not have been foreseen by the Cypriot authorities and, in the circumstances, they therefore had no obligation to take practical measures to prevent a risk to her life.

However, a number of flaws had occurred in the investigation carried out by the Cypriot authorities: there had been conflicting testimonies which had not been resolved; no steps to clarify the strange circumstances of Ms Rantseva's death had been made after the verdict of the court in the inquest proceedings; the applicant had not been advised of the date of the inquest and as a result had been absent from the hearing when the verdict had been handed down; and although the facts had occurred in 2001 there had not yet been a clear explanation as to what had occurred. There had therefore been a violation of Article 2 as a result of the failure of the Cypriot authorities to effectively investigate Ms Rantseva's death.

As regards Russia, the Court concluded that there had been no violation of Article 2 as the Russian authorities were not obliged themselves to investigate Ms Rantseva's death, which had occurred outside their jurisdiction.

Article 3

The Court held that any ill-treatment which Ms Rantseva might have suffered before her death had been inherently linked to her alleged trafficking and exploitation and that it would consider this complaint under Article 4.

Article 4

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4. It concluded that there had been a violation by Cyprus of its positive obligations arising under that Article on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect Ms Rantseva from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking.

There had also been a violation of this Article by Russia on account of its failure to investigate how and where Ms Rantseva had been recruited and, in particular, to take steps to identify those involved in Ms Rantseva's recruitment or the methods of recruitment used.

Article 5 § 1

The Court found that the detention of Ms Rantseva for about an hour at the police station and her subsequent confinement to the private apartment, also for about an hour, did engage the responsibility of Cyprus, and that both were contrary to Article 5 § 1 by Cyprus.

Article 41

The Court held that Cyprus had to pay the applicant €40,000 in respect of non-pecuniary damage and €3,150 for costs and expenses, and that Russia had to pay him €2,000 in respect of non-pecuniary damages.

Failure of the authorities to comply with positive obligations to provide effective protection against servitude and forced labour constituted aviolation of Article 4

JUDGMENT IN THE CASE OF
SILIADIN v. FRANCE
(Application no. 73316/01)
26 July 2005

1. Principal Facts

The applicant was Ms Siwa-AkofaSiliadin, a Togolese national who arrived in France with a passport and a tourist visa on 26 January 1994, aged 15 years and 7 months, accompanied by Mrs D., a French national of Togolese origin. Mrs D. had agreed with the applicant's father that the applicant would work at her home until the cost of the applicant's ticket had been reimbursed, that her immigration status would be regularised and that she would attend school. In reality, the applicant worked at Mrs D.'s house for a few months without any remuneration and her passport was taken away.

Later in 1994 Mrs D. "lent" the applicant to Mr and Mrs B. so that she could assist Mrs B. with household work during her pregnancy. Mrs B. then decided to keep the applicant and she became a general housemaid working seven days a week, without a day off, except for an occasional authorisation to attend mass on Sundays. The applicant would work from 7.30am to 10.30pm and her tasks included looking after four children, including a baby, and performing housework. The applicant slept on a mattress on the floor in the baby's room and had to look after the baby if he woke up. The applicant was never paid except for one or two 500 FRF notes given by Mrs B.'s mother, she did not attend school and her immigration status was never regularised.

In December 1995 the applicant escaped with the assistance of a Haitian national who she worked for during five or six months and gave her adequate food, accommodation and a salary of 2,500 FRF per month. In obedience to her paternal uncle who had been in contact with Mr and Mrs B., the applicant eventually returned to their home but the situation remained unchanged – the applicant conducted the same tasks, her immigration status had not been regularised, she was not paid and did not attend school.

The applicant eventually managed to recover her passport and a neighbour alerted the Committee against Modern Slavery, which filed a complaint with the prosecutor's office. The police raided Mr and Mrs B.'s home on 28 July 1998 and the couple was prosecuted.

On 10 June 1999 the Paris tribunal de grande instance convicted Mr and Mrs. B for obtaining the performance of services without payment or in exchange for payment that is manifestly disproportionate to the amount of work carried out, by taking advantage of that person's vulnerability or state of dependence (under Article 225-13 of the Criminal Code), and for employing an alien who was not in possession of a work permit. The applicant was proved vulnerable and dependent by the fact that she was aware that she was unlawfully residing in France and feared arrest, a fear that Mr and Mrs B. nurtured while promising to secure her leave to remain, and by the fact that the applicant had no resources, no friends and almost no family to help her.

Although Mr and Mrs B. were also charged with subjecting an individual in a state of vulnerability or dependence to working and living conditions incompatible with human dignity (Article 225-14 of the Criminal Code), the court concluded that while employment regulations had not been observed in respect of working hours and rest time, this was not sufficient to establish that the working conditions were incompatible with human dignity. The Paris court also found that the applicant's living conditions did not infringe human dignity, given that it was not uncommon for people in the Paris region to share a room with others and that accommodation infringing human dignity implied unhygienic, unheated rooms, with no possibility of looking after one's basic hygiene or premises which would be dangerous if occupied.

Mr and Mrs B. appealed against this decision and the Court of Appeal ruled on 19 October 2000 that, while it appeared that the applicant had not been paid or that payment was disproportionate to the amount of work performed, the existence of working or living conditions incompatible with human dignity had not been established. The court also found that it had not been established that the applicant was in a state of vulnerability or dependence as, in spite of her youth, she had shown an "undeniable" form of independence by being able to find her way around Paris; being proficient in French; having a degree of independence to take the children to school and to their activities, attend mass, shop for the household; being able to contact her family and after leaving Mr and Mrs B.'s home for a considerable period the applicant returned without coercion. The Court of Appeal therefore acquitted the defendants on all charges against them.

The applicant submitted an appeal on points of law.As the public prosecutor decided not to appeal on points of law, the Court of Cassation could only address the civil aspects of the case and Mr and Mrs B.'s acquittal became final. On 11 December 2001, the Court of Cassation overturned the Court of Appeal's judgment in respect of the dismissal of the requests for compensation, considering that the Court of Appeal had failed to provide adequate and effective reasons with regard to the victim's vulnerability and dependence and to specify which facts established that her working conditions were compatible with human dignity.

On 15 May 2003, the Versailles Court of Appeal upheld the findings of the court of first instance and awarded the applicant damages, however reaffirming that her working and living conditions were not incompatible with human dignity.

The Versailles Court of Appeal awarded the applicant €15,245 in compensation and on 3 October 2003 the Paris industrial tribunal awarded the applicant €31,238 in respect of arrears of salary, €1,647 in respect of the notice period and €164 in respect of holiday leave.

2. Decision of the Court

The applicant complained that by failing to protect her against the servitude in which she had been held, or at the very least against the forced or compulsory labour she had been required to perform, France had failed to comply with its positive obligation under Article 4 of the Convention, to put in place adequate criminal-law provisions to prevent and effectively punish the perpetrators of those acts.

Article 4

The Court noted that it was already established case-law that, in order for a State to comply with its obligations under Article 1, it is not sufficient for it to abstain from interfering with the rights guaranteed by the Convention as there may be positive obligations inherent to the effective protection of such rights. The Court highlighted the importance of international instruments such as the Forced Labour Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the International Convention on the Rights of the Child to consider that limiting compliance with Article 4 only to direct action by the State authorities

would be inconsistent with these instruments and would amount to rendering Article 4 ineffective. Article 4 therefore imposes positive obligations on States to adopt criminal-law provisions which penalise and prosecute the practices referred to in Article 4 and apply such laws effectively in practice.

The Court pointed out that the protection from slavery, servitude and forced or compulsory labour is enshrined in several international instruments in addition to the Convention and that, although slavery was officially abolished over 150 years ago, "domestic slavery" persisted in Europe and concerned thousands of people, the majority of who were women. The Court reiterated that Article 4 of the Convention enshrines one of the fundamental values of democratic societies and that Article 4 makes no provision for exceptions and does not admit derogation from it.

The Court reiterated the importance of considering the ILO conventions and that to constitute "forced or compulsory labour" work must be exacted under the menace of any penalty and performed against the will of the person concerned.

The Court noted that although the applicant was not threatened by a "penalty" she was in an equivalent situation in terms of the perceived seriousness of the threat, as she was aware of her irregular immigration status and feared arrest by the police, a fear that was nurtured by Mr and Mrs B, and especially considering that the applicant was a minor at the time. It was also evident to the Court that the applicant was not given any choice as to the performance of the work and therefore did not conduct the work of her own free will. The Court therefore considered that the applicant was, at least, subjected to forced labour within the meaning of Article 4 at a time when she was a minor.

Determining whether the applicant was also held in servitude or slavery, the Court noted that the applicant was not held in slavery in the proper sense – that is, although she was clearly deprived of her personal autonomy, Mr and Mrs B. did not exercise a genuine right of legal ownership over the applicant thus reducing her to the status of an object. The Court reiterated that the concept of "servitude" means an obligation to provide one's services that is imposed by the use of coercion. For these purposes, the Convention prohibits a "particularly serious form of denial of freedom" which includes "in addition to the obligation to perform certain services for others ... the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition".

The Court concluded that applicant was held in servitude within the meaning of Article 4, particularly considering the applicant's age, the intensity of the work carried out, her isolation and vulnerability, her inability to live elsewhere other than the shared accommodation provided by Mr and Mrs B., the fact that her papers were confiscated and her immigration status never regularised, the fact that the applicant was not permitted to leave the house except as part of her duties, was afraid of being arrested and that she never attended school.

Having established the above, the Court then assessed whether the impugned legislation had such significant flaws as to amount to a breach of Article 4 by France. The Court noted that Articles 225-13 and 225-14 of the French Criminal Code did not deal specifically with the rights enshrined in Article 4 of the Convention and that slavery and servitude were not as such classified as offences under French criminal law.

The applicant was subjected to treatment contrary to Article 4 and held in servitude, but those responsible were not convicted under criminal law. As the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment of 19 October 2000, the appeal to the Court of Cassation concerned only civil aspects and Mr and Mrs B.'s acquittal thus became final.

In such circumstances, the Court considered that the criminal legislation in force at the relevant time did not afford practical and effective protection against the actions of which the applicant was a victim as a minor. The Court thus found that there had been a violation of the respondent State's positive obligations under Article 4.

Article 41

The applicant did not claim damages. The Court awarded the applicant €26,209.69 for the costs of legal representation.

The Croatian authorities' investigation into the applicant's complaint that she had been forced into prostitution was not adequate and hence violated the procedural obligation under Article 4

JUDGMENT IN THE CASE OF
S.M. v. CROATIA[99]
(Application no. 60561/14)
19 July 2018

1. Principal Facts

The applicant, Ms. S.M., was born in 1990, and from 2000 to 2004 she lived with a foster family. She then moved to a public home for children and young persons where she stayed until she completed professional training as a waiter.

On 27 September 2012 the applicant lodged a complaint with the police against a T.M., a former policeman, alleging that between the summer of 2011 and September of the same year he had forced her into prostitution using physical and psychological pressure. The applicant related that she had met T.M. in 2011 through a social networking site and that he had offered to find her a job as a waitress. Instead he had begun demanding that she perform sexual services for other men and would beat her if she did not comply. He gave her a mobile phone so that clients could contact her. The applicant said that she had been too scared of T.M. to resist. T.M. then rented a flat where the applicant and him lived together and she provided sexual services to other men. When she refused he would beat her, which he did every couple of days. Since T.M. lived in the same flat he controlled everything she did.

The applicant went on to say that once when she was left at home with a key she called a friend, M.I., and asked her to help her escape. M.I.'s boyfriend, T.R. then arrived and took her to M.I.'s home, where she stayed for about ten days.

M.I. related to the police that at the end of summer 2011 the applicant suddenly returned to M.I.'s home having agreed with M.I.'s mother to come and stay with them. Only after the applicant came to live with M.I. and her mother did M.I. learn where or for whom the applicant was involved in prostitution. The applicant told M.I. that she had used an opportunity to run away from T.M.

99 This case has been referred to the Grand Chamber and a judgment is awaited.

when he had been out of the flat where they had lived.M.I.'s boyfriend, T.R., had told her that he had spoken with the applicant about the situation but did not give any details.

On 6 November 2012 the County State Attorney's Office indicted T.M. on the charges of forcing another to prostitution, as an aggravated offence of organising prostitution. On 21 December 2012 the applicant was officially given the status of human trafficking victim by the Office for Human and Minority Rights of the Government of Croatia. The Croatian police contacted the Croatian Red Cross, who in turn organised individual counselling for the applicant. The applicant was also provided with legal aid by a non-governmental organisation within the legal-aid scheme supported by the state.

During the applicant's testimony in court she elaborated on her first statement to the police. T.M. however denied the applicant's version of events and instead claimed that she had entered into prostitution in order to pay her debts and to gain money. T.M. had lived with her in the flat where the applicant sometimes met clients, but never compelled her to do anything. On 15 February 2013 the domestic court acquitted T.M. on the grounds that although it had been established that he had organised a prostitution ring, it had not been established that the applicant had been forced into prostitution. As he had been indicted on the aggravated charge, he could not be convicted on the basic charge of organising prostitution. The applicant's testimony was given less weight in the court's deliberations because the domestic court had found her statement to be incoherent, unsure, and that she had paused and hesitated when speaking.

The State Attorney's Office appealed against the decision, arguing that the first instance court had erred when it did not accept the applicant's testimony. The County Court dismissed this appeal, upholding the original judgment and its findings. On 31 March 2014 the applicant lodged a complaint with the Constitutional Court. On 10 June 2014 the Constitutional Court declared the complaint inadmissible, asserting that the applicant had no right to bring a constitutional complaint regarding criminal charges.

2. Decision of the Court

Relying on Articles 3, 4, and 8 the applicant complained that the inadequacy of the domestic legal framework and the procedural response of the domestic authorities to her allegations against T.M. violated her rights. In particular

she alleged that the domestic authorities had failed to elucidate all the circumstances of the case, had not secured her adequate participation in the proceedings and had not properly qualified the offence.

Article 4

The Court considered that the complaint should be analysed from the standpoint of Article 4 (prohibition of slavery and forced labour). It stated that trafficking itself as well as the exploitation of prostitution fell within the scope of that provision.

The Court stated that it was irrelevant that there was no international element to the case since Article 2 of the Council of Europe Anti-Trafficking Convention encompasses "all forms of trafficking in human beings, whether national or transnational"and the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others refers to exploitation of prostitution in general.

Article 4 contains a positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a position of slavery, servitude, or forced or compulsory labour. Therefore States are under a positive obligation to put in place a legislative and administrative framework to prohibit and punish trafficking and also to protect victims. The Court was satisfied that at the time of the alleged offence there was an adequate framework in Croatia for its examination within the context of the trafficking in human beings, forced prostitution and exploitation of prostitution. The Court also accepted that the applicant was provided with support and assistance by the Government. This included recognition of her status as a victim of human trafficking and the free legal assistance she was provided through state-funded and state-supported programmes carried out by NGOs. There had hence been an adequate legal framework in place to support the applicant.

However, while the initial investigation was prompt, the Court stated that more individuals should have been interviewed by the police, especially M.I.'s mother and M.I.'s boyfriend. This suggested to the Court that the Croatian authorities did not investigate the case in depth and did not attempt to gather all available evidence.

Further, the authorities had never made a serious attempt to investigate the psychological pressure inflicted on the applicant by T.M. as a relevant factor

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in assessing whether T.M. forced the applicant into prostitution. Nor did they investigate the presence of rifle parts in T.M.'s flat and the applicant's economic dependence on T.M.

The Court went on to point out that according to Croatian law, the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, and the Anti-trafficking Convention, the consent of the victim is irrelevant.

The national authorities did not consider the possible impact of psychological trauma on the applicant's ability to coherently relate the circumstances of her exploitation. The Court also ruled that the presence of T.M. in the courtroom could have had an adverse effect on the applicant even if he was subsequently removed.

The Court considered that in this case the Croatian authorities did not fulfil their procedural obligations under Article 4, and that therefore there was a violation of Article 4.

Article 41

The Court held that the applicant should be awarded €5,000 in respect of non-pecuniary damages, and nothing in respect of costs and expenses as the applicant was represented by a lawyer provided by a non-governmental organisation funded by the state.

The authorities failed, in violation of Article 3, to conduct an effective investigation into a case concerning rape and abduction, where the applicant alleged her attackers formed part of a human trafficking network

JUDGMENT IN THE CASE OF
S.Z. v. BULGARIA
(Application no. 29263/12)
3 June 2015

1. Principal Facts

The applicant, Ms. S.Z, was a Bulgarian national. On 19 September 1999, then a 22-year-old student, left Sofia for Blagoevgrad in a vehicle with two young men, B.Z. and S.P., and another young woman whose acquaintance she had made through a close friend, H.I. During the journey the two men told her that they intended to "sell" her as a prostitute, and then to "take her back" after receiving the money. The applicant refused, but was threatened by B.Z. On their arrival at Blagoevgrad the group met several people who were apparently involved in prostitution rings abroad and discussed with B.Z. and S.P. sending the applicant to Greece, Italy or Macedonia to work as a prostitute. The applicant was told that three of the men were police officers. The applicant was then taken to a flat where she was held against her will and repeatedly beaten and raped by a group of men for about 48 hours. Finally, she managed to escape and found refuge in a neighbouring apartment block where occupants called the police.

During her first police interview the applicant tried to throw herself out of the window and was then admitted to a psychiatric hospital. She subsequently received psychological counselling.

A criminal investigation was initiated by the Blagoevgrad District Public Prosecutor's Office. The applicant identified some of her attackers and the two police officers and stated they were part of a criminal gang involved in human trafficking.

On 10 October 1999, the prosecutor discontinued the proceedings against the two police officers, Z.B. and Y.G., on the basis that there was no sufficient evidence.During 1999 and 2000 various people were questioned and the investigation was closed and sent to the prosecutor. However, the prosecutor sent the case back four times for further investigation. In three different orders

from November 2001, October 2002 and March 2004, the prosecutor stated that the investigator had failed to carry out any investigative measures and that there were several irregularities in the charges.

In December 2005, the prosecutor decided to discontinue the proceedings against H.I. and G.M. This decision was set aside on appeal by the applicant.

In May 2007, the investigation was closed and the applicant was served with the investigation file. The applicant requested that Y.Y.G. was to also be charged with rape, but this request was rejected. On 26 June 2007, part of the investigation was separated from the main proceedings and fresh proceedings were brought against persons unknown, but the prosecutor's office later stayed these proceedings.

In a judgment of 27 March 2012, the Blagoevgrad District Court convicted L.D. and M.K. of aggravated gang rape and aggravated false imprisonment, and they were sentenced to six years' imprisonment. B.Z. and S.P. were convicted of abducting the applicant for the purposes of coercing her into prostitution and sentenced to six- and four-years' imprisonment. S.D. was convicted of false imprisonment and sentenced to a fine of BGN 3,000.[100] The proceedings against G.M. were discontinued and H.I. was found not guilty.

The five convicted defendants appealed. The applicant appealed only against the part of the judgment concerning S.D.

In a final judgment of 11 February 2014, the Blagoevgrad Regional Court set aside S.D.'s conviction and terminated the proceedings against him as they had become time-barred, and it reduced some of the other defendants' sentences and the amount of non-pecuniary damages.

2. Decision of the Court

Relying inter alia on Article 3, the applicant complained to the Court that the criminal proceedings brought against her attackers lacked effectiveness, in particular the excessive delays in the investigation and trial, the lack of investigation into the involvement of the two police officers and the failure to charge two of her assailants.

100 Approximate value 1 BGN=€0.511292

Article 3

The Court noted that although criminal proceedings were instituted following a complaint filed by the applicant and some of the perpetrators were committed for trial, they lasted fourteen years in total, which at first sight appeared excessive having regard to the authorities' obligation to proceed promptly in such cases.

The preliminary investigation, which lasted over eight years, appeared to have been substantially delayed. The Court observed that the investigation was closed four times but the prosecutor decided to send the case back for further investigation on the grounds that the necessary investigative measures had not been carried out or that procedural irregularities had been committed. This revealed a lack of diligence by the authorities and certainly had the effect of delaying the investigation phase of the proceedings. It also incurred the risk of causing the criminal proceedings to become time-barred, which occurred in the prosecution of the less serious offences.

The lack of diligence of the authorities carrying out the investigation was also demonstrated in the failure to investigate some aspects of the case, such as the involvement of the two police officers Z.B. and Y.G., and of two other individuals, K.M. and Y.Y.G. Although the applicant did not challenge the order of 10 October 1999 discontinuing the proceedings, given the nature of the offences and the applicant's allegations that her attackers were members of a network trafficking in women the authorities did not consider it necessary to examine the possible involvement of an organised criminal. Further, there was no evidence that following the prosecutor's decision to separate the investigation in regards of the two other individuals the authorities displayed diligence and carried out concrete measures with a view to finding the individuals or gathering additional evidence.

The Court held, further, that the judicial stage of the proceedings lasted a notable time which was not entirely justified by its complexity. Several hearings were adjourned without an examination of the merits of the case, on the grounds that some of the accused failed to appear or had not been properly summoned.

The disproportionate length of the proceedings undoubtedly had negative effects on the applicant, who was left in a state of uncertainty with regards to the possibility of securing the trial and punishment of her attackers and

had to return to court frequently and relive the events during the several examinations by the court.

In the light of the preceding, the proceedings did not satisfy the requirements and therefore violated Article 3.

Article 46

The Court noted that it had already found, on many occasions, violations of the obligation to perform an effective investigation in applications regarding Bulgaria.

The list of various flaws found in a wide number of cases revealed the existence of a systematic problem regarding the ineffectiveness of investigations in Bulgaria. However, the Court took into account the complexity of the structural problem found to exist and the difficulty in identifying the exact causes of the shortcomings found. Therefore, it did not consider itself to be in a position to indicate which individual and general measures were to be implemented for the purposes of executing the current judgment, but found that the Bulgarian authorities, in cooperation with the Committee of Ministers, were best placed to decide which general measures were required – in practical terms – to prevent other similar violations in the future.

Article 41

The Court awarded the applicants €15,000 in respect of non-pecuniary damage and €2,500 for costs and expenses.

Violation of Article 4 due to insufficient action taken by State authorities in the case of trafficking in human beings

JUDGMENT IN
T.I. AND OTHERS v. GREECE
(Application no. 40311/10)
18 July 2019

1. Principal Facts

The applicants were three Russian nationals, Mrs T.I ("the first applicant"), T.A ("the second applicant") and V.K ("the third applicant"). They were born in 1979, 1981 and 1978 respectively.

On different dates, between June and October 2003 the applicants arrived in Greece, after Russian travel agencies lodged visa applications with the Consulate General of Greece in Moscow, on their behalf. The applicants alleged that the Consulate had been bribed by Russian traffickers to ensure they could be issued visas to be brought to Greece for the purposes of sexual exploitation.

On 14 November and 21 December 2003, the applicants were recognised as "victims of trafficking", according to provisions of the relevant domestic legislation. The authorities initiated two criminal proceedings, one against the suspected traffickers and one relating to the issuing of the visas.

Prior to this, on 18 September 2003, the third applicant was arrested for violation of laws on prostitution. The third applicant alleged that she was detained in bad conditions and was not informed by the authorities about the legislation protecting victims of human trafficking before the start of the trial against her. She added that, during her apprehension, she called her pimp from the patrol car, but no effort was made by the police officers to locate him.

On 19 September 2003, the Thessaloniki Criminal Court sentenced the third applicant to imprisonment for a period of 40 days and imposed a financial penalty of €200. According to the third applicant, during the police interview, she had revealed information about the prostitution ring to the police, alleged she had been forced into prostitution by N.S, F.P and E.M and indicated where these people were located.

The suspects named were arrested on 23 September 2003. On 14 November 2003, the expulsion order against the third applicant was suspended until final judgment against N.S, F.P and E.M, and she was granted a residence permit.

On 6 June 2011, the Thessaloniki Court of Appeal sentenced F.P and N.S to five years and ten months of imprisonment for criminal conspiracy, living on the earnings of prostitution and human trafficking. F.P and N.S were ordered to pay €30 to the third applicant. E.M was acquitted.

On 12 December 2003, the first two applicants reported to the Ermoupolis Police, complaining that they were trafficked by N.M. and his associates, Mr P. and A.A. On 16 December 2003 an investigation was opened against the individuals identified as the perpetrators and criminal proceedings were brought against them.

On 19 March 2010, the Athens Criminal Court sentenced N.M to an unsuspended term of two years and seven months' imprisonment for forgery, and falsification of certificates. It sentenced the second suspect to three years' imprisonment and seven months for forgery, falsification of certificates, extortion, attempted violence and carrying weapons. However, the prosecutor decided to suspend the trial against N.M., as the accused had not been located. The sentences were commuted to pecuniary penalties of €10 for each day of detention. Two other suspects were acquitted on the same charges and two other suspects were acquitted on charges of criminal organisation and human trafficking.

On 26 May 2005, the applicants applied to the public prosecutor, alleging that the visa applications made on their behalf to the Consulate contained false information of which they were not aware. The applicants also accused the employees of the Consulate and the companies involved of facilitating their transfer to Greece. Following multiple refusals by the public prosecutor to initiate an investigation into the allegations in question, an investigation was finally opened on 11 April 2006. In particular, criminal proceedings were brought against several individuals, including three consular employees, for human trafficking. However, on 23 February 2016, the Athens Criminal Court terminated the proceedings, holding that prosecution of the offences of human trafficking allegedly committed by two individuals was time-barred and that there was no substantial evidence that the offences of which another individual was accused had been committed.

2. Decision of the Court

Relying, in particular, on Article 4 all three applicants complained that the Greek authorities had failed to fulfil their obligations to criminalise and prosecute acts relating to human trafficking. They further complained of inadequacies and shortcomings in the investigations carried out and in the judicial proceedings.

Article 4

In terms of the existence of an appropriate legal and regulatory framework the Court noted that in the proceedings concerning the offence of exploitation against the applicants, the domestic courts had been obliged to apply Article 351 of the Criminal Code, as at the time Law No. 3064/2002, which strengthened the fight against human trafficking, had not yet come into force. Article 351 prohibited forced prostitution and classified it as a misdemeanour, punishable by a prison term of between one and three years. Human trafficking for the purposes of sexual exploitation did not constitute a separate criminal offence. Therefore, the fact that the alleged acts of human trafficking constituted minor crimes at the material time had led the Athens Criminal Court to dismiss the proceedings against two of the accused as the crimes being time-barred. Accordingly, the Court was unable to conclude that the legal framework governing those proceedings had been effective and sufficient either to punish the traffickers or to ensure effective prevention of human trafficking. There had, therefore, been a violation of Article 4 on that account. The Court noted that the legislation had changed post-Law No. 3064/2002.

In terms of the operational measures taken to protect the applicants**,** the Court held that the authorities had recognised the applicants as victims of human trafficking shortly after they had complained to the police and the authorities had been alerted to their situation. The Court also noted, in particular in relation to the third applicant, that less than two months after being made aware of her situation, the authorities suspended the decision to deport her and issued a residence permit to her. Therefore, the Court concluded that the measures taken by the competent authorities were sufficient and that there had been no violation of Article 4 on that account.

The Court also looked at the effectiveness of the police investigations and the judicial proceedings in terms of the proceedings relating to the applicants, the criminal proceedings against the suspects, and the issuing

of visas. As to the criminal proceedings against N.S, F.P and E.M, the Court noted that the competent authorities had not handled the case with the level of diligence required by Article 4 of the Convention, as the proceedings against the traffickers had lasted for seven years and nine months. In terms of the proceedings involving the first and the second applicants, the Court observed that the proceedings against the traffickers lasted for nine years and three months, with 12 December 2003 being the date on which the first two applicants were recognised as victims of human trafficking and 27 March 2013 being the date on which the Athens Criminal Court of Appeal delivered their judgment. The Court also took into account the fact that the proceedings against N.M., one of the accused traffickers, were still suspended, fifteen years after the complaint had been made. The applicants had been deprived of the opportunity of an effective investigation and there had, therefore, been a violation of the procedural aspect of Article 4.

In terms of the effectiveness of the proceedings concerning the issuing of the visas, the Court noted that the applicants had reported the facts to the attention of the prosecutor at the Criminal Court on 26 May 2005, but the opening of an investigation was only ordered on 14 February 2006. The Court also observed that the Athens police referred the case to the competent prosecutor approximately two years and seven months after receiving it, and that the preliminary inquiry lasted more than three years, which the Court deemed being an excessive period, notwithstanding the complexity of the case. Furthermore, on 4 December 2009, when the preliminary inquiry was closed, the part of the offences relating to the falsification of certificates had already become time-barred.

While the Court acknowledged that its role was not to decide whether the competent authorities should have refrained from issuing the visas, it considered that an effective investigation should have been conducted to ascertain whether the competent authorities had subjected the applicants' visa applications to close scrutiny before issuing the visas. Given the seriousness of the applicants' allegations and the fact that they had accused public officials of involvement in human-trafficking networks, the authorities were under a duty to act with special diligence in order to verify that the acts in question were subjected to detailed scrutiny and, thus, to dismiss the doubts concerning the integrity of the public officials.

The Court concluded that the competent authorities had not dealt with the case with the level of diligence required by Article 4 of the Convention and

that the applicants had not been involved in the investigation to the extent required under the procedural limb of that provision.

Article 41

The Court held that Greece was to pay the applicants €15,000 each in respect of non-pecuniary damage and €3,000 jointly in respect of costs and expenses.

A requirement for a pupil lawyer to perform occasional pro bono work in order to access the profession did not amount to a breach of Article 4 § 2 - theECtHR setting out guidelines for its interpretation.

JUDGMENT IN THE CASE OF
VAN DER MUSSELE v. BELGIUM
(Application no. 8919/80)
23 November 1983

1. Principal Facts

The applicant was Mr. Van der Mussele, a Belgian national who exercised the profession of avocat (lawyer). The applicant enrolled as a pupil avocat on 27 September 1976 and terminated his pupillage on 1 October 1979, having since then been entered on the register of the Ordre des Avocats (Bar Association). During his pupillage, the applicant would take cases entrusted to him by his pupil-master and receive some payment for the work conducted under those cases.

On 31 July 1979, the applicant was appointed by the Legal Advice and Defence Office of the Antwerp Bar to defend Mr.NjieEbrima, a Gambian national who had been arrested on suspicion of theft and of dealing in and possessing narcotics, under Article 184 bis of the Code of Criminal Procedure for the assistance of an officially appointed avocat.

Mr.Ebrima appeared before the Antwerp Court of First Instance that confirmed the warrant of arrest issued against him and added a further charge of publicly using a false name. Following Mr.Ebrima's appeal of these two orders, the Antwerp Court of Appeal later upheld these.

On 3 October 1979, the Court of First Instance sentenced Mr.Ebrima to six months and eight days imprisonment for theft, public use of a false name and illegal residence and acquitted him on the remaining charges. On 12 November 1979 the Court of Appeal reduced the length of the sentence to equal the period Mr.Ebrima had spent in detention on remand and on 17 December 1979 he was released, following representations made by the applicant.

The applicant acted for Mr.Ebrima throughout the proceedings, estimating that he devoted between 17and 18 hours on the matter and that his fees and

disbursements amounted to 3,400 BF[101].

On 18 December 1979, the Legal Advice and Defence Office notified the applicant that he was released from the case and that no assessment of his fees and disbursements could be made against Mr.Ebrima due to his lack of resources.

2. Decision of the Court

The applicant complained that he would have been liable to sanctions had he refused to represent Mr.Ebrima upon his appointment and that he had not been entitled to any remuneration or reimbursement of his expenses. The applicant therefore alleged that such circumstances resulted in forced or compulsory labour contrary to Article 4 and to treatment incompatible with Article 1 of Protocol no. 1. The applicant further relied on Article 14 in conjunction with Article 4 to allege that there had been discrimination between avocats and certain other professions.

Article 4

The applicant alleged that he had had to perform forced or compulsory labour incompatible with Article 4.

The Court noted that Article 4 does not define the meaning of "forced or compulsory labour" but that it would take into account the treaties of the International Labour Organisation, and especially Convention no. 29 concerning Forced or Compulsory Labour, as it was evident that the authors of the Convention based themselves in these texts.

Article 2 § 2 of Convention no. 29 (ILO) provides that for the purposes of the Convention the term "forced or compulsory labour" shall mean "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". Interpretation of Article 4 should start from this definition with due consideration to the special features of the Convention and the fact that it is a living instrument.

The Court reiterated that "labour" should not be interpreted in the narrow English meaning of manual work but rather encompass all forms of work or service as per the meaning of the French work "travail".

101 4,200 BF was equivalent to £42.28 at the time.

The Court proceeded to ascertain whether there was "forced" labour, in the sense of physical or mental constraint, or "compulsory" labour which refers to work exacted under the menace of any penalty and performed against the will of the person concerned, that is work for which the person did not voluntarily offer to perform.

The Court considered that the risk of having the Council of the Ordre des Avocats strike the applicant's name off the roll of pupils or reject his application for entry on the register was capable of constituting "the menace of any penalty".

As to whether the applicant offered himself voluntarily for the work, the Court attached relative weight to the fact that the applicant consented in advance to the situation he complained of, having previously balanced (i) the drawbacks of entering the profession (namely the need to defend clients free of charge for a limited period and in a limited quantity) with (ii) the advantages of the pupillage, including the freedom he would enjoy in carrying out his duties and the opportunity of familiarising himself with the courts and establish a paying clientele. The applicant therefore undoubtedly chose to enter the profession of avocat, accepting that under the rules of the profession he would on occasions be bound to render services free of charge and without reimbursement of his expenses.

The Court nevertheless attached a limited weight to the fact that the applicant had given his prior consent to his situation. The service required to enter a given profession could not be treated as having been voluntarily accepted beforehand if such service imposed an excessive or disproportionate burden compared to the advantages attached to the future exercise of that profession (such as a service unconnected with the profession to be accessed).

To assist with the interpretation of Article 4 § 2 the Court resorted to § 3, which delimits the very content of prohibition of forced or compulsory labour. All sub-paragraphs of § 3 are grounded on the governing ideas of the general interest, social solidarity and what is in the normal course of affairs. The Court therefore reiterates that the services to be rendered in the case did not fall outside the ambit of the normal activities of an avocat, that the applicant found a compensatory factor in the advantages attaching to the profession and that the services in question actually contributed to the applicant's professional training. Moreover, the services provided were also founded on a conception of social solidarity and could not be regarded as unreasonable as they secured

the enjoyment by Mr.Ebrima of his rights under Article 6 § 3 of the Convention. Finally, the Court considered that the burden imposed on the applicant was not disproportionate, as even considering all the cases in which the applicant was appointed to act, the applicant would still benefit from sufficient remaining time to perform his paid work.

The Court further stated that while remunerated work could also qualify as forced or compulsory labour, the lack of remuneration or reimbursement of expenses was relevant in the assessment of proportionality. In the present case, the Court considered that the amount of expenses imposed on the applicant was relatively small and had not shown to be excessive.

In conclusion, the Court did not find, between the aim of the services (qualification as an avocat) and the obligations undertaken in order to achieve that aim, an imbalance capable of warranting the conclusion that the applicant's services were compulsory despite his consent. The Court hence did not find a violation of Article 4 § 2 of the Convention.

Article 14 in conjunction with Article 4

The applicant submitted that Belgian avocatswere subject to less favourable treatment than that of members of other professions, such as medical practitioners for example, because of having to work pro-bono. In this regard, the Court held that there had been no breach of Articles 14 and 4 taken in conjunction, as there was a difference between the profession of an avocat and the other professions cited and there was no evidence disclosing any similarity between the disparate situations in question

Article 1 of Protocol no. 1

The Court found that there was no violation of Article 1 of Protocol no. 1, whether taken alone or in conjunction with Article 14 of the Convention, as Article 1 of Protocol 1 only protects the right to the peaceful enjoyment of one's possessions. As no debt ever arose in favour of the applicant, there was no scope for the application of Article 1 of Protocol no. 1.

Section IV

Overview of Montenegrin case law on human trafficking

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This overview aims to provide experts and the public at large with insight in the relevant Montenegrin case law on human trafficking and includes a selection of the most relevant excerpts of court decisions.

Montenegro has ratified the main international legal documents on human trafficking, including, notably, the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), the first document to provide an internationally recognised and binding definition of human trafficking, as well as the Council of Europe Convention on Action against Trafficking in Human Beings.

By ratifying these documents, Montenegro undertook to comply with the legal and other obligations therein, take effective measures to prosecute the offenders, protect the victims and to take preventive measures. Montenegro incriminated trafficking in humans in 2003 and adopted its first national Anti-Trafficking Strategy the following year, thus establishing a legislative-strategic approach to addressing this phenomenon.

This part of the Guide covers all 17 final human trafficking judgments delivered by Montenegrin courts since 2004. Sixteen cases regarded the crime of trafficking in humans under Article 444 of the Criminal Code of Montenegro and one case the crime of trafficking in children for adoption under Article 445 of the Criminal Code.

The section begins with an overview of the criminal law aspect of trafficking in humans and the relevant national legal provisions and explains the complex definition and elements of the crime of trafficking in humans. It then gives practical examples of Montenegrin case-law illustrating the acts and means of human trafficking and the most common types of exploitation of victims in Montenegro.

The most recent final judgment on trafficking in humans was delivered in 2014. The courts did not rule on any human trafficking cases in the 2014-

2017 periods. One first-instance conviction was handed down in 2019 in a case opened in 2017, but it is not analysed in this section since it has not become final by the time this Guide was completed.

Like other countries in the region, Montenegro is qualified as a country of origin, transit and destination of men, women and children subject to sexual exploitation and forced labour. The victims of sex trafficking identified in Montenegro were primarily women and girls from Montenegro, neighbouring Balkan countries, and, to a lesser extent, other countries in Eastern Europe. "Traffickers exploit victims in hospitality facilities, bars, restaurants, nightclubs, and cafes. Children, particularly Romani, Ashkali, and Balkan Egyptian children, are subjected to forced begging. Romani girls from Montenegro reportedly have been sold into marriages in Romani communities in Montenegro and, to a lesser extent, in Albania, Germany, and Kosovo, and forced into domestic servitude." The Report goes on to say that "International organized criminal groups subject some Montenegrin women and girls to sex trafficking in other Balkan countries."[102]

Most of the final judgments delivered by Montenegrin courts were condemnatory. From 2004 to the time this Guide was prepared, the relevant courts convicted a total of 38 people for human trafficking. Specifically, they found 38 of the 46 defendants guilty and sentenced them to prison; seven defendants were acquitted and one did not stand trial because the prosecutor abandoned criminal prosecution and the court dismissed the case.

Case law statistics show that the prison sentences for human trafficking handed down by all the courts ranged from six months to six years. The perpetrators were on average sentenced to two years and three months imprisonment. The courts' sentencing practice needs to be reviewed to ensure that the State adequately responds to human trafficking crimes.

Most of the defendants were Montenegrin nationals, for the most part middle-aged males, with primary or secondary education.

Twenty-five of the 38 victims identified in the court judgments were female and 13 were male, which corroborates that human trafficking in Montenegro clearly has a gender dimension. Statistics also show that most of the victims were nationals of Montenegro (13 of them or 37%) and Ukraine (9 of them or 24%). The other victims were nationals of Serbia (5 of them or 14%), North Macedonia

102 European Commission's Report on Montenegro for 2019

(2 of them or 5%) and the Republic of Kosovo (2 of them or 5%), while only one victim of human trafficking was an Albanian national.[103] Although Montenegrin nationals accounted for most (37%) of the victims, these data indicate that the majority of cases (63%) concernedcross-border human trafficking.

Sexual exploitation dominated among the types of exploitation of human trafficking victims in Montenegro. Exploitation of victims for forced labour and servitude was also identified, as was one case of trafficking in children for adoption. Exploitation for other purposes - removal of organs, begging and forced marriage - was not identified in the analysed court decisions.

1. National Criminal Law Framework for Combatting Trafficking in Humans

Definitions of the crime of trafficking in humans in most European countries, including Montenegro, are based on the definitions of trafficking in humans in international documents.

Trafficking in humans was introduced as a separate criminal offence in Montenegro's Criminal Code in 2003[104]and it is incriminated in the section on crimes against humanity and rights guaranteed under international law. In terms of substance, its construction is quite complex and involves a variety of acts, but all of them essentially amount to different forms of inhuman treatment of people.[105]

The Criminal Code has been amended several times since the incrimination of human trafficking. These amendments improved the domestic legal framework and aligned it with international standards and requirements of the international community. Such amendments were made in 2003[106], 2004[107], 2006[108], 2008[109], 2010[110], 2013[111], 2015[112]and 2017[113].

103 The nationality of six victims could not be ascertained from the text of the judgments.

104 Criminal Code of Montenegro, Official Journal of the Republic of Montenegro, 070/03 of 25 December 2003

105 Comment of the Criminal Code of Montenegro, Dr LjubišaLazarević, Dr BrankoVučković, Dr VesnaVučković

106 Official Journal of the Republic of Montenegro, 070/03 of 25 December 2003

107 Official Journal of the Republic of Montenegro, 013/04 of 26 February 2004

108 Official Journal of the Republic of Montenegro, 047/06 of 25 July 2006

109 Official Journal of Montenegro, 040/08 of 27 June 2008

110 Official Journal of Montenegro, 025/10 of 5 May 2010 and 073/10 of 10 December 2010

111 Official Journal of Montenegro, 040/13 of 13 August 2013 and 056/13 of 6 December 2013

112 Official Journal of Montenegro, 014/15 of 26 March 2015, 042/15 of 29 July2015 and 058/15 of 9 October.2015

113 Official Journal of Montenegro, 044/17 of 6 July 2017

The amendments added the following purposes of exploitation to the initial ones: "slavery and practices similar to slavery", "other forms of sexual exploitation" and "unlawful marriage".

The amendments also expanded the list of perpetrators of the aggravated form of the crime, which now includes also public officials who committed it whilst exercising their duties and perpetrators who jeopardised the lives of one or more people. Moreover, Article 444 of the Criminal Code now also includes an explicit provision on the irrelevance of the victim's consent to the intended exploitation.

The scope of Article 445 of the Criminal Code (Trafficking in Children for Adoption) has also been extended to cover children under 18.

Pursuant to Article 444 of the Criminal Code of Montenegro, the crime of human trafficking is committed by "anyone who by force or threat, deception, abuse of power, trust, relationship of dependency orposition of vulnerability, withholding, seizure, destruction or forgery of identification papers, or by giving or receiving money or other benefits to achieve the consent of a person having control over another person for the purpose of exploitation: recruits, transports, transfers, hands over, sells, buys, mediates in the sale of, hides or harbours another person for the purpose of exploiting their work, for forced labour, servitude, slavery or practices similar to slavery, crime, prostitution or other forms of sexual exploitation, begging, pornographic use, unlawful marriage, removal of organs for transplantation or participation in armed conflicts". The simple form of the crime carries a sentence of imprisonment ranging from one to ten years.

Perpetrators who did not apply force, threat or another of the above-mentioned means shall be held liable for the simple form of the crime if they committed it against minors. The aggravated form of the crime is committed against minors or by public officials exercising their duties or the life of one or more people was intentionally jeopardised. Three years' imprisonment is the minimal penalty in such cases.

The Criminal Code also prescribes stricter penalties for human trafficking with graver consequences. If the offence resulted in grave bodily injuries, the perpetrator shall be sentenced to between one and 12 years of imprisonment. If it resulted in the death of one or more persons, the perpetrator shall be punished by minimum ten years' imprisonment.

Whoever habitually commits the offences referred to in paragraphs (1) to (3) of this Article or participates in their organised commission together with other persons shall be punished by minimum ten years' imprisonment.

Paragraph 7 of Article 444 of the Criminal Code provides for imprisonment ranging between six months and five years for anyone who knowingly availed themselves of the services of human trafficking victims. The aggravated form of this crime is committed against minors and warrants imprisonment ranging between three and 15 years.

The last paragraph of Article 444 is also important, since it lays down that the victims' consent to the exploitation shall be irrelevant.

Elements of the Criminal Offence of Trafficking in Humans

The simple form of the criminal offence of human trafficking is characterised by three elements: the act, the means and the purpose.

Act	Means	Purpose
• Recruitment; • Transport; • Transfer; • Handover; • Sale; • Purchase; • Mediation in the sale • Hiding • Harbouring	force or threat, deception, abuse of power, trust, relationship of dependency or position of vulnerability, withholding, seizure, destruction or forgery of identification papers; or by giving or receiving money or other benefits to achieve the consent of a person having control over another person	Labour exploitation, forced labour, servitude, slavery and practices similar to slavery, crime, prostitution or other forms of sexual exploitation, begging, pornographic use, unlawful marriage, removal of organs for transplantation or participation in armed conflicts

→ **Acts and Means**

The simple form of the crime of human trafficking entails the following acts: recruitment, transport, transfer, handover, sale, purchase, mediation in the sale, hiding or harbouring of another. It is committed by the following means: force or threat, deception, abuse of power, trust, relationship of dependency or position of vulnerability, withholding, seizure, destruction or forgery of identification papers, or by giving or receiving money or other benefits to achieve the consent of a person having control over another person.

The above-mentioned acts are clear and do not require an explanation. The term "recruitment" might cause some dilemmas but it should be construed in the context of the purpose(s) it aims to achieve. It entails persuading other persons, seeking their consent to undertake an activity or place themselves in a specific position; this act usually refers to the commission of criminal activities, prostitution, begging, et al.[114]

For a criminal offence to exist, the perpetrator must have undertaken one of the acts by one of the means. Essentially, the act and the means should be viewed as a whole. For instance, the act of transporting a person does not in itself constitute the crime of human trafficking. But it does amount to human trafficking if it is effected by force or threat, deception or by other means laid down in the law.[115]

→ **Purpose**

For the crime of human trafficking to exist, it must have a purpose. The acts are directed at achieving a specific purpose in relation to thepersons subjected to trafficking, who are passive subjects. These acts have to be performed for the purpose of labour exploitation, forced labour, servitude, slavery or practices similar to slavery, crime, prostitution or other forms of sexual exploitation, begging, pornographic use, unlawful marriage, theremoval of organs for transplantation or participation in armed conflicts. The terms used to describe the acts and purposes should be construed in accordance with their use in the relevant articles of the Criminal Code, while understanding some of them requires reference to their definitions in the Palermo Protocol and other relevant international conventions.[116]

114 Comment of the Criminal Code of Montenegro, Dr LjubišaLazarević, Dr BrankoVučković, Dr VesnaVučković, 2004

115 Comment of the Criminal Code of Montenegro, Prof Dr Zoran Stojanović, 2010

116 Ibid.

Some of the purposes appear also as features (usually consequences) of other criminal offences but they are clear and do not need to be elaborated. The definitions of "forced labour" and "servitude" in Montenegrin law are imprecise. Forced labour should be construed as coercing others to engage in activities against their will. This is usually achieved by use of force or threat. The nature of forced labour is irrelevant. Such labour may be lawful and even useful, but the crime is essentially committed because the passive subject is not performing the workunder coercion from the perpetrator rather than voluntarily. Servitude should be construed as total submission to another, the passive subjects' obligation to "serve" the perpetrators, to obey their orders without question. Servitude should not be equated with dependency or subordination; it is worse and entails total submission[117].

A crime will have been committed even if the purpose for which an act has been committed by any of the listed means has not been achieved. However, the intention to achieve the purpose has to be determined.[118]

Trafficking in children for adoption is incriminated in Article 445 of the Montenegrin Criminal Code. This offence is incriminated as a separate criminal offence because Article 444 does not cover trafficking in children for adoption.[119]

The simple form of this criminal offence is committed by anyone who abducts children for adoption in contravention of the law in force, adopts the childrenor mediates in their adoption, and anyone who, for that purpose, buys, sells, hands over or transports children under 14 years of age, or providesaccommodation for or hides such children. The simple form of the crime warrants between one and five years' imprisonment.

Whoever habitually commits these crimes orengages or participates in their organised commission together with others shall be punished by minimum three years' imprisonment.

Slavery and transportation of enslaved persons is incriminated in Article 446 of the Montenegrin Criminal Code. It is committed by anyone who enslaves other persons or places them in a similar position or maintains them in such

117 Comment of the Criminal Code of Montenegro, Dr LjubišaLazarević, Dr BrankoVučković, Dr VesnaVučković, 2004

118 Comment of the Criminal Code of Montenegro, Prof Dr Zoran Stojanović, 2010

119 Ibid.

a position, or buys, sells or hands them over to other persons or mediates in their purchase, sale or handover, or induces other persons to sell their own freedom or that of their dependants and persons in their care. The offence warrants between one and ten years' imprisonment. Whoever transports enslaved persons or persons in a position similar to slavery from one country to another shall be punished by imprisonment ranging from six months to five years. Perpetrators of this crime against minors shall be punished by a sentence of imprisonment ranging from five to 15 years.

2. **Summary of Judgments**

Tabular Overview of Judgments

Case No:	Court:	Delivered on:
K.No. 35/09	Podgorica Higher Court	6 May 2011
K. No. 261/09	Podgorica Higher Court	1 March 2010
K.No. 197/08	Podgorica Higher Court	16 February 2011
Kž.No. 470/08120	Podgorica Higher Court	13 February 2009
K.No.267/07	Podgorica Higher Court	3 June 2008
K.No. 6/13	Podgorica Higher Court	18 November 2013
K.No. 271/08	Podgorica Higher Court	2 July 2009
Ks. No. 2/10	Podgorica Higher Court	28 April 2010
K.No.201/07	Podgorica Higher Court	9 March 2013
K.No.28/08	Podgorica Higher Court	24 July 2009
K.No. 19/12	Podgorica Higher Court	10 June 2013
Ks.No. 3/09	BijeloPolje Higher Court	29 September 2009
Ks.No. 12/12121	BijeloPolje Higher Court	3 December 2012
K.No. 55/08	BijeloPolje Higher Court	19 May 2009
K.No. 9/1332	Podgorica Basic Court	15 December 2010
K.No. 05/1087	Podgorica Basic Court	28 September 2006
K.No. 05/789	Podgorica Basic Court	23 December 2005
K.No. 54/11	Ulcinj Basic Court	23 September 2014
K.No. 78/09	Rožaje Basic Court	15 May 2009

120 Kž.No. 470/08. The Montenegrin Appeals Court partly upheld the appeal by S.S. and modified the Podgorica Higher Court judgment in case K No. 2567/07 of 3 June 2008.

HUMAN TRAFFICKING — Overview of International Law and the Case Law of the European Court of Human Rights and Montenegrin Courts

Podgorica Higher Court Judgments

1. In its judgment in case K 6/13, the Podgorica Higher Court found the defendant J.B. guilty of: "**human trafficking, by abuse and exploitation of the position of vulnerability of a number of women, including two underage girls, and their handover to others for the purpose of prostitution**, although he was aware of his crime and intended to commit it." Specifically, the Court found that J.V. had abused the position of vulnerability of victims S.A. and A.M. from R.M. caused by their unemployment and the illness of their family members requiring medical treatment. He promised to help them, specifically to lend victim A.M. money for the treatment of her father and procurement of the shots he needed and to lend victim S.S. money to pay for her mother's medical examination; he told them that they would repay him from the wages they would earn by working on ships, jobs he promised he would find them. Although he knew that they had no money, he started insisting that they repay the money and told them that they could repay it by providing sexual services. With regard to victim V.D. and her underage daughter S. M., who he knew was a minor because he requested of her not to disclose her age in her encounters with men, J.V. abused their position of vulnerability that he was aware of, because they told him that they could not afford to buy even bread or pay their

121 In its judgment in case Ks 12/12, the BijeloPolje Higher Court voided the part of the judgment of this court in case Ks. No. 3/09 of 29 September 2009, specifically the decision on the criminal penalty imposed against one of the defendants.

rent and electricity bills and that their living conditions were insufferable. As per victim R.A., he promised that he would help her overcome her financial difficulties and lent her money to pay her rent and then insisted she repay the loan by providing sexual services. The defendant also exploited the position of vulnerability of victim A.D., who was forced to come to H.N. in Montenegro, where she did not know anyone but him, and induced her to provide sexual services and thus improve her family's financial situation. Motivated by profit, the defendant also exploited victim P.D., who he knew was a minor because he met her while she was still in school. The defendant exploited the above-mentioned victims for prostitution by taking them in the said period to his apartments in Herceg Novi near the "Plaža" Hotel and building no. 601 in Baošići, where he placed them at the disposal of a large number of men, whom he had previously contacted to agree the place, time, rate and features of the victims they wanted to satisfy their sexual needs; he would then, in person or by phone, instruct victims V. D., R.A., A. M., S. S., A. D.and underage S. M.and P. D. onhow much time they were to spend with the men, the rates and how they should satisfy their sexual needs. The victims complied with the defendant's instructions, while hekept watch from cafés across the apartments he used and checked whether the victims followed his instructions and how much time they spent with the men, in order to have full control of the victims' conduct and their provision of sexual services. He would beforehand agree with the men on the rates of the sexual services, usually between €50 and €100, and would keep part of the money himself and give the victims a specific sum. When the men gave the agreed amounts to the victims, they would hand him over part of the money, since they were aware that he had agreed on the rates with the men.

The Court further explained that "the defendant had knowingly abused the victims' position of vulnerability, because he was aware that they had financial problems and were going through difficult times in their lives because their close family members were ill, and that he evidently wanted to use the circumstances to make profit, since he handed them over to other men for prostitution over a longer period of time. Hence, all the elements of the crime of human trafficking under Article 444(6) in conjunction with paragraphs (3) and (1) of the Criminal Code of Montenegro were present in his conduct."

The Court found that the defendant had committed human trafficking by abusing the position of vulnerability of the adult and underage victims and exploiting them for prostitution or other forms of sexual exploitation.

Since two of the victims were minors, the Court found the defendant guilty of the aggravated form of human trafficking because he abused their position of vulnerability and exploited themfor prostitution or other forms of sexual exploitation under Article 444(6) in conjunction with paragraphs (3) and (1) of the Criminal Code because the victims were between 14 and 18 years of age (Article 142(9)) of the Criminal Code).

The Court referred to the provisions of the relevant international treaties, as corroborated by the following excerpt of the judgment: "When underage persons are victims of the criminal offence at issue, they are considered vulnerable because of their age also under the Council of Europe Convention onAction against Trafficking in Human Beingseven in the absence of force, threat or other means of commission laid down in Article 444(1) of the Criminal Code. Pursuant to paragraph (2), the culpability of the perpetrator is equated with culpability under paragraph (1) and warrants imprisonment ranging from one to ten years. Furthermore, as set out in the Convention, the minor victims' consent to exploitation is irrelevant and cannot justify the perpetrator's actions, precisely because of their age and the fact that their development has not been completed yet."

2. In its judgment in case K No. 19/12, the Podgorica Higher Court found that the "The crime of human trafficking was committed by defendants Z.Lj. and Đ. I. in Podgorica from end May 2010 to an unspecified date in August 2010, and by defendants N. B., N. A. and B. I. in Nikšić in the period from an unspecified date in August 2010 to 13 September 2010. Defendant V. J. knowingly aided and abetted defendants N. B., N. A. and B. I.. Namely, defendants Z.Lj., Đ. I, N. B. and N.A. and B. I. **abused the relationship of dependency and position of vulnerability** of victim Lj. S., whom defendant Đ. I. also **deceived**. The victim had come to Podgorica from Kotor, alone and without any money. The defendants were aware of her circumstances and **exploited her for prostitution**. First, the main defendant Đ.I. deceived the victim into believing that she could easily earn large sums of money by providing sexual services. The victim initially agreed, but when she decided not to engage in such activities anymore, Đ. I. told her that she had to work and earn her keep, and then, together with Z.Lj. proceeded to bring over several men every day, to which the victim provided sexual services at venues designated by the defendants and under their supervision. The men paid between €20 and €30 to the defendants for her services. The defendants kept the money and only provided the victim with accommodation and meagre meals until an unspecified date in August, when, on the order of defendant Z.Lj., the victim provided sexual services to defendants N. B., N. A.

and B. I. Abusing her financial difficulties, they persuaded her that she would be better off with them and drove her, without her belongings, at night by car to Nikšić, where they further exploited her for prostitution. The defendants brought several men to her every day, to whom she provided sexual services at the places designated by the defendants and under their supervision. The men paid between €20 and €30 to the defendants for her services. The defendants kept the money and only provided the victim with accommodation and meagre meals until 13 September 2010, when the victim was transferred to hospital. During this period, defendant V. J. knowingly aided and abetted defendants N. B., N. A. and B. I. in human trafficking, facilitating the conditions for the commission of this crime – in September 2010, V.J. on several occasions drove the victim to the male clients, as pre-arranged with defendants N. B., N.A. i B. I., waited for her and then drove her back."

This judgment is an example of a decision in which the Court found that the defendants used the following means: **abuse of a relationship of dependency and the victim's position of vulnerability**. As the Court noted, she had nowhere to go, no place to sleep, no money to buy even basic food, no hygiene products, no wardrobe except a skirt and a tank top, and no personal documents. The defendants were aware of her plight and abused her **relationship of dependency and position of vulnerability**, and Đ. I. deceived her, to exploit her for prostitution, wherefore the Court concluded that the defendants were guilty of human trafficking. 44 188

3.In its judgment in case K No. 35/09, the Podgorica Higher Court **acquitted the defendants** charged with "exploiting Albanian national N.M. **for crime and prostitution in an organised fashion, by means of threat, deception and abuse of her position of vulnerability** in the 20-24 October 2004 period. Defendant A.M. had promised an Albanian national, L., that he would help the victim illegally cross the border between Albania and the State Union of Serbia and Montenegro and take her to her aunt; he and the other defendants waited for her at the agreed location near the border and took her to an empty house in Donji Štoj, the owner of which, M.S., was abroad, where they harboured her for four days to coerce her into engaging in prostitution and selling drugs for them, threatening to destroy her family and kill her if she refused."

The Court acquitted the defendants because the prosecutor did not prove that they had committed the crime of human trafficking. An excerpt of the reasoning of the judgment is provided in the text below.

The acquittal was based on the non-admission of the victim's statement. The Court said that "it did not believe the accuracy of victim N.M.'s statement, the only evidence the indictment is based on, primarily because she gave five different accounts of the same event."

The Court went on to say that exploitation of the victim was the key stage of the entire human trafficking process, that it was the main means to make illicit profit. Victims can be exploited in various ways. In the Court's view, the victim in this case was not exploited for crime or prostitution. As it explained, "the fact is that defendant A.M. helped the victim cross the borderillegally, but that act cannot be assessed and recognised as an act of human trafficking under Article 444(6) in conjunction with paragraph (1) of the Criminal Code, because the commission of this crime requires the implementation of the act by one of the above means, i.e. the act and the means should be viewed as a whole. These acts are related to the achievement of a specific purpose vis-à-vis the person subjected to trafficking, i.e. the passive subject. The acts have to be committed for the purpose of exploiting the victim for work, forced labour, servitude, prostitution or other forms of sexual exploitation, begging, pornographic use, etc. Therefore, the prosecutor **did not prove the requisite element of the crime at hand – that the defendants harboured victim N.M. in the 20-24 October 2004 period to exploit her for prostitution and crime**. On the contrary, the evidence and facts lead to only one conclusion, that defendant A.M. helped N.M. enter Montenegro from Albania by crossing the border illegally. However, the evidence and facts do not lead to the conclusion that the defendants harboured the victim for four days to exploit her for prostitution and crime by threat, deception and abuse of her position of vulnerability, threatening to destroy her family and kill her if she refused, and that they brought girls from Albania to engage in prostitution and sell drugs."

4.In its judgment in case K No. 197/08,122the Podgorica Higher Court found the three defendants guilty of human trafficking. It established that they "transported and harboured the underage victim, G.A., for servitude in an organised fashion, by employing force and deception from an unspecified date in September 2007 to November 2007. On an unspecified date in September 2007, the defendants came to Prizren from Ulcinj and tricked victim G.A. to take her to Ulcinj for forced labour. Defendant K. deceived G.A. into leaving her village Pećani and coming to Prizren, to the apartment of defendants A.Dž. and A., where K. told her that they would go to Ulcinj for a day. When the victim

122 One defendant was also charged with rape under Article 204(3) in conjunction with Article 49 of the Criminal Code.

refused, K. beat her up and would not let her leave the apartment. The next day, after obtaining an I.D. in the name of an adult, K.L., the defendants took the victim, in a vehicle driven by A.Dž., and crossed into Montenegro at the Kula border crossing. At the border, defendant A.Dž. ordered her to pretend that she was sleeping and showed K.L.'s ID to the border officials, claiming it was the victim's ID. When they arrived in Ulcinj, the defendants put the victim up in the apartment they were living in, without reporting her stay to the relevant authorities. A.Dž. found the victim a waitressing job at "K.", where she earned €10 a day; the defendants took the money from her and only provided her with accommodation and meagre meals."

The act of this criminal offence involved use of force, deception, transportation and harbouring of the victim for the purpose of placing her in servitude.

The Court said that human trafficking was committed by undertaking any of the **acts** specified in Article 444(1) of the Criminal Code. In this specific case, the act involved **use of force, deception, transportation and harbouring of the victim for the purpose placing her in servitude**. Paragraph (3) of Article 444 applied in this case because the victim was a minor. Paragraph (6) of Article 444 also applied because the crime was committed in an organised fashion by more than one person, which means that two or more people planned its commission, i.e. it was not the result of a spontaneous and sudden action; rather its commission was preceded by a specific degree of organisation and planning. Furthermore, **servitude should be construed as full submission to another person, the obligation of the passive subject, the victim, to serve the perpetrators and obey their orders without question**.

5. In its judgment in case KS No. 2/2010, the Podgorica Higher Court found the four defendants guilty. It said that"defendant A. I. organised a human trafficking group in the Republic of Serbia in mid-April 2008, and in Montenegro as of early June 2008 to illegally profit from **organised smuggling of young women from Ukraine to Kosovo via Serbia and Montenegro for their sexual exploitation-prostitution**. Defendants S.M. and L.T. and a number of unidentified individuals were part of that group, the international activities of which had been planned in the longer term and involved predefined roles and tasks. Defendant AI., the **organiser of the group**, secured the money to cover the travel and other costs of transport of a number of women, using the documents of his company "Lj. NN" registered in Kosovo; he presented their trip to Kosovo as part of their

business and working arrangements. In agreement with defendant A. I., defendant S. M., also a member of the group, used his personal connections and frequent visits to Pridnestrovie, where his wife was living, to **recruit**, personally or via his acquaintances, **young women**, Ukrainian nationals, to come to Kosovo and Serbia. S.M. promised the women good salaries and that he would cover their travel costs. In agreement with defendant S.M., defendant L.T., also a member of the group, secured an apartment in Sutomore for the reception and temporary accommodation of the Ukrainian nationals on their arrival in Montenegro.

In early June 2008, defendants A. I., S. M., L. T.and D. E.began the **transfer of Ukrainian nationals** M.O. and S.J. from Ukraine to Montenegro **in an organised fashion**. They booked them on Ukrainian agency holiday summer tours and charter flights from Kiev to Tivat, with the ultimate goal of transferring them to the territory of Kosovo **for the purpose of sexual exploitation** in night clubs in Kosovska Mitrovica. A.I., the organiser of the group, gave S.M. an unspecified amount of money to cover the costs of M.O.'s and S.J.'s passports, air tickets and agency tours. During his prior visit to Pridnestrovie, defendant S.M. directly and through his acquaintances **abused the trust and position of vulnerability of victims M.O. and S.J. and recruited them to come to Montenegro, deceiving them by promises of jobs and good salaries and paying the costs of their trips and ten-day holiday packages** with the money A.I. had given him and arranged their reception in Montenegro. In agreement with defendant A.I., S.M. left Serbia on 14 June 2008 and came to Sutomore in Montenegro, where he was taken in by a member of the organised group L.T., who was living in a rented apartment in Cara Lazara Str. 103/3 in Sutomore. Knowing that the victims would arrive on 23 June 2008, S.M. went to Tivat and met them at the airport when they arrived from Kiev at around 7 am. He drove them to Sutomore and put them up in the rented apartment in a BMW licence plate no BR ...owned by defendant L. T., who let him use both the vehicle and the rented apartment for this purpose, That same day, at around midnight, defendant A.I. took the victims over and they were driven by defendant D.E. in a Mercedes, licence plate no. 494 KS 200 from Sutomore to the Kula border crossing at Rožaje, where they tried to cross the border and enter Kosovo at around 4 am with the goal of transferring the victims to Kosovska Mitrovica for the purpose of their sexual exploitation – prostitution. The Montenegrin police caught them, deprived them of their liberty and placed the victims in the shelter for victims of human trafficking."

The Court found the four defendants guilty of the aggravated form of the crime of human trafficking under Article 444(6) in conjunction with paragraph

(1) because their actions were the result of an extremely well organised and thoroughly planned joint criminal endeavour.

6. In its judgmentin case K No. 201/2007, the **Podgorica Higher Court** found the four defendants guilty of human trafficking. "Defendants V.T. and I.V. and defendants J.N. and V.M. in the April 2003-14 August 2004 and April-August 2003 periods respectively, engaged in **human trafficking in an organised fashion for the purpose of exploitation - forced labour and servitude of Ukrainian construction workers** in the following manner:

Defendant V.T. founded the company "P.B." headquartered in the house of defendant I.V. in "R.D." Street 37 on the proposal of J.N., the executive director of the company "G" and with his guarantees and those of V.M., the owner of company "L.M", that they would hire Ukrainian workers on their construction sites; together with defendant I.V., defendant V.T. also founded the company "M.C." registered at the same address. Through these companies, she concluded contracts on the engagement of Ukrainian workers on the construction sites of companies "G." and "L.M.", including a commission fee for herself of €0.5-1 per worker a day. Via tourist officers of companies "T.V.K. grup" and "J.", H. M. I. and H. I. B., against whom the relevant Ukrainian authorities initiated human trafficking proceedings, V.T. advertised job vacancies in Montenegro, offering a good salary of between €500 and €1000 a month for work in companies "P. B" and "M. C.", thus deceiving and recruiting tens of Ukrainian construction workers, including the identified V. V. F., B. V. A., D. V. I., K. M. A.,D. V. I., K. M. A., K. V. V. and K. S. O., who applied for the jobs. Before they left Ukraine, each of the applicants gave H. M. I. and H.I. B. up to €700 to cover their travel costs, visas and legal residence and work permits in Montenegro.H. M. I. and H. I. B. put them on buses heading for Montenegro and gave them the phone numbers and names of defendants V. T. and I. V. The latter met them on arrival in Podgorica, seized their travel documents under the pretext that they needed them to register their residence with the relevant state authorities. Defendants V.T. and I.V. accommodated the workers in "G" company's barracks and other substandard facilities and provided them with meagre meals, and then sent them on to the construction sites of companies "G." and "L.M." in agreement with defendants J.N. and V.M. and for the purpose of exploitation: forced labour and servitude. The workers worked on the construction sites 10-12 hours every day without any remuneration for two or three months; when they demanded their salaries from V. T., I. V. and V. M., these defendants threatened that they would deprive them of food and accommodation and that they would torture the workers who refused to work, thus placing them in

servitude. Defendant J.N. drove three workers over a period of five days to his apartment to perform construction work there without remunerating them. On 19 June 2004, V.T. and I.V. took over Ukrainian workers - S. V., B. M., I. S. and I. S. - in the same fashion and for the same purpose and with the same consequences, and exploited them, by forcing them to work on a number of construction sites in Podgorica until 17 August 2004, without remunerating them, thus placing them in servitude."

This case is an **example of labour exploitation** since the defendants placed Ukrainian workers in servitude in a premeditated fashion, depriving them of all their rights, with the purpose of their exploitation and forced labour. The victims had found themselves in a foreign country without residence or any income, their passports were seized and they were unable to offer any resistance.

The Court gave its definition of forced labour, specifying that it entailed coercing individuals to perform specific work against their will, which is usually achieved by use of force or threat, whereas the nature of the work is irrelevant. Work performed by a passive subject may be even beneficial to the community; the essence of the crime is that it is not performed voluntarily by the passive subject but is exacted by the perpetrator. In this particular case, the Ukrainian workers were forced to perform construction work involuntarily. Although physical force was not applied against them, the extremely serious threats were realistic given their position. By "given their position" the Court bore in mind the fact that they were foreign nationals, who found themselves in the country illegally, without any legal grounds for residence, without money or the prospect of getting it. Hence, the Court assessed that the defendants' threat was extremely realistic.

In this judgment, the Court also provided its explanation of **servitude** as full submission to another person, the passive subject's obligation to obey that person's orders without question. In the Court's view, servitude was proven in this particular case, because the workers, who had been deceived that they would earn a lot of money from their work, ended up working 10-12 hours a day without any remuneration; their travel documents had been seized and they were threatened, wherefore they had no other choice but to obey the defendants' orders without question.

The Court found that this was not a case of organised crime, because the requirements under Article 507(3) of the Criminal Procedure Code were not fulfilled. Namely, the criminal proceedings in this case were conducted

against four defendants, while two of whom performed the impugned acts in the April 2003-August 2004 period. The Court could not qualify these offences as organised crime because a new proceeding was at issue wherefore the CPC could not apply to those two defendants. Therefore, in the Court's view, the primary requirement that needed to be fulfilled to qualify crime as organised crime - "that it was committed by two or more individuals" - has not been fulfilled.

7. In its judgment in case K. No. 261/2009, the Podgorica Higher Court found defendant I.M. guilty of human trafficking. "From April 2008 to February 2009, the defendant engaged in human trafficking. **He recruited victims G.I. and G.M. for prostitution by abusing their position of vulnerability and by deceiving them**. In April 2008, I.M., who was working as a doctor in the Tivat Out-Patient Health Clinic, examined victim G.I., a foreign national, on a number of occasions, without charging her for his services. He abused her position of vulnerability, lack of money and her child's sickness, which the victim told him about, by calling her up soon afterwards and promising to help her and provide her with a health card that would allow her and her family members access to health care in Montenegro, although they were foreign nationals without documents or jobs. He fulfilled his promise and secured a health card for the victim and promised her he would pull "strings" in the police to provide the family with personal documents. He requested of the victim to have sex with him in return for the free medical assistance. Deceived by his promises, she agreed, hoping she would regulate her status. She had sex with the defendant several times in his apartment and then introduced him to her husband, victim G.M., in the hoping that the defendant would help him find a job. The defendant promised them he would lend them €30,000 he would get from selling his house in Bosnia and that they could repay him in instalments and that they could use the money to start a business to feed their family. He also said he knew some people in high places, who would help them and he required of G.M. to have sex with him, which this victim agreed to in the hope that the defendant would keep his promise. He had oral sex with the defendant in the latter's apartment on a number of occasions between June 2008 and February 2009. During this period, the defendant continuously deceived the victims, promising them that he would help them in the described way, that they should continue providing sexual services to him and other individuals. On one occasion, he told victim G.I. that she had to have sex with one of the men, who, he alleged, was the manager of a hotel at which she would be performing striptease at a rate ranging between €500 and €1000 a night. He videotaped G.I.'s sex with the man under the pretext that he had to send the recording to the hotel commission

to assess her abilities. In the same period, he prostituted G.I. to various men: in April 2008, he invited to his apartment Ć. H. who had sex with the victim twice in April and June 2008;in May 2008, he prostituted the victim to N. D. and she and N.D. had sex on a number of occasions in the defendant's apartment; in August 2008, the defendant told her that K.D. was the director of the Out-Patient Health Clinic and would hire her husband, and tried to introduce them so that she could provide him sexual services; he also convinced the victim to have sex with his son I. B., and afterwards she provided sexual services to I.G. free of charge in the defendant's apartment. At the end, he suggested to victim G. M. to earn money by selling his kidney. He said he would arrange its sale to an identified individual in Podgorica waiting for transplantation, promising that this individual would pay G.M. €50,000 for the kidney and tip him. The defendant was to have earned a fee from the transaction. G.M. ultimately agreed to sell his kidney but the transplantation did not take place because the victims reported the defendant to the police."

8. In its judgment in case K No. 267/2007,the Podgorica Higher Court found the defendant S.S. guilty of "**exploiting for prostitution underage M.D, from late September to 17 October 2004 by abusing her position of vulnerability and her trust and by harbouring her in his apartment**. Aware that the victim had come from Niš, that she was unemployed and did not have money to buy food, the defendant suggested that she stay in his apartment in D.O. Street until she found a job. The victim agreed, but, when she moved in, the defendant told her that she owed him rent and money for food. On a number of occasions, hebrought the men first to his apartment and then to the apartment in VI C. Street, and ordered the victim to provide them with sex services. The defendant kept the money the men paid for her services. When she wanted to leave his apartment on 17 October 2007 to start waiting tables in a restaurant owned by G.M., he tried to keep her from moving by not letting her take her wardrobe and cell phone."

The Court explained the act of human trafficking, specifying that the defendant had **harboured** underage victim M.D. by abusing her position of vulnerability and her trust for the purpose of prostitution. The commission of this crime involved the victim's involuntary provision of sex services to other individuals - men. Therefore, the underage victim M.D. was a victim of human trafficking, who did not voluntarily agree to have sex with the men the defendant brought over or took her to; she provided sexual services against her free will, which was broken by abuse of her trust of the defendant and her position of vulnerability. Her free will was destroyed by the state she was in,

the fact that she did not have a place to live, a job or elementary conditions to live a normal life, and this situation can only be qualified as a position of vulnerability. At the same time, the defendant, the only one who provided the victim with any kind of accommodation and promised to find her a job, had won the victim's trust; she had believed that she was safe with him and that he offered her the only way out of the situation she was in.

→ **Montenegrin Appeals Court Decision KžNo. 470/08**

In the appeals proceeding, the Montenegrin Appeals Court adopted Decision Kž.No. 470/08 partly upholding the appeal of the defendant and modified the impugned judgment of the Podgorica Higher Court in case K. No. 267/2007,but only the decision on the sentence.

The Appeals Court agreed with the first-instance court on the means and purpose of the crime, but found that he had committed a different act. Based on the evidence presented during the hearing, the Appeals Court based its judgment on its own findings of fact (on the act), which differed from the findings of fact(also on the act) of the first-instance court.

In the view of the Appeals Court, the first-instance court erred with respect to the decisive fact – that defendant S.S. had harboured the victim in his apartments and that she had to provide sexual services on his orders on a number of occasions. The Appeals Court, however, deduced from the presented evidence that the defendant had abused the position of vulnerability of the underage victim and abused her trust in order to recruit her for prostitution. Therefore, as the Appeals Court stated in its decision, the victim had been in a position of vulnerability, she did not have a job or money to buy food or pay rent and the defendant promised she could live and eat at his place free of charge and then sought her consent, persuading her to provide sexual services to the men he brought, which she agreed to.

9. In its judgment in case K No. 271/08, the Podgorica Higher Count found the three defendants guilty of human trafficking. It stated the following: "From early March 2004 to mid-August 2004, the defendants engaged in human trafficking as they had planned. **They deceived victim M.J. from B. and recruited her to engage in prostitution** and pocketed the earnings. They harboured underage B.S., a ward of Z, for the same purpose on the night of 8/9 October 2004: with the help of V. and G., who transported victim M.J. from Sutomore to Podgorica, they brought M.J. to night club "M." in ... Street, owned by defendant M.M. He

and defendant M.Lj. told her that they would find her a good job and that she would have a place to live and food and entertain the guests by dancing and providing them with sexual services; they promised her they would give her 50% of the money they charged the guests. The deceived victim agreed and defendants M. Lj. and M. M. directly introduced the victim to the men; she provided sexual services to those men several times a day either at M.M.'s club, who instructed her not to reveal to the police that she was rendering sexual services at the club or at other venues designated by M.Lj. and M.M. The victim was not paid anything for the sexual services she provided. Throughout the period she spent at the club, the defendants continued to deceive her that they would pay the money they owed her for the sexual services she had provided and which they had kept for themselves, until the day she told them that she had to see a doctor and managed to leave the club Madona in the company of her parents. During the night of 8/9 October 2004, the defendants let in and harboured underage B.S. in the club for prostitution and received €100 from a guest, to whom the underage B.S. was providing sexual services at the time the police raided the club."

10.In its judgment in case K No.28/08123, the Podgorica Higher Court found the four defendants guilty of "change of family status" under Article 218(1) of the Criminal Code. The Court said that:"In March 2006, the defendants changed the family status of a child born to N.S. on 7 March 2006. Several days after the girl was born, she and her husband N.S. handed the child over to the married couple Ć.A. and (now deceased) Lj.A., who in return gave them a passenger vehicle "Alfa Romeo", licence plate number PG ...; the two couples agreed that the child should be registered as the child of another family; they notified V.A. of that and she agreed to register the child as hers. On 13 March 2006, as agreed with the child's biological parents A.S. and N.S., Ć.A.,Lj.A and V.A.took the new-born to the Podgorica Municipal Civil Registry, where V.A. registered the child as her own and the child's data were entered under the name R.A. (name of mother V.A.) in the register of births under Reg. No..... V.A. was issued R.A.'s birth and citizenship certificates the same day."

The Court concluded that the defendants committed the criminal offence of change of family status under Article 218(1) of the Criminal Code."

123 The defendants had been charged with trafficking in children for adoption under Article 445(3) in conjunction with paragraph 1 of the Criminal Code, by the Podgorica Higher State Prosecution Service, Indictment Kt No.61/06 of 19 May 2016. The indictment was modified at one of the main hearings and the defendants were charged with change of family status under Article 218(1) of the Criminal Code.

Bijelo Polje Higher Court Judgments

In its judgment in case K No. 55/08, the Bijelo Polje Higher Court acquitted the three defendants of human trafficking charges. The indictment read: "In the evening of 16 November 2004, defendants Z. Č. And Dj. P. from P. had a telephone conversation during which they arranged with defendant L. M. to bring a person engaged in prostitution to his motel ''C. G.'' in R. For that purpose, defendant Z. Č. **recruited** his acquaintance, victim M. N. from P., and persuaded her to go with him and have a drink at Č. He and defendant Dj. P. then transported her in the latter's motor vehicle, Opel, licence plate no: UE ....., and **seized her ID** on the way. On their arrival in R. in the morning hours of 17 November 2004, defendant Z. Č. told her that she would **engage in prostitution** in R. and, for that purposes handed the victim over to defendant M. L. who **kept her ID** to restrict her freedom until he found out that the police had been notified of the case."

The Court acquitted the defendants of human trafficking, having found that it was not established beyond reasonable doubt that they had committed the crime they had been charged with. The Court assessed the facts in a manner more favourable to the defendants and acquitted them under Article 363(1(3)) of the Criminal Procedure Code.

In its judgment in case Ks No. 3/09,124 the Bijelo Polje Higher Court found the three defendants guilty of trafficking in humans under Article 444(6) in conjunction with paragraph 1 of the Criminal Code of Montenegro in conjunction with Article 507(3) and (4) of the Montenegrin Criminal Procedure Code. Notably, it found that: "In the 29 June-5 July 2005 period, they engaged in human trafficking in Montenegro in an **organised fashion** and in accordance with their pre-agreed plan and over a longer period of time and together with individuals in Kosovo - territory under the control of the United Nations Mission in Kosovo (UNMIK), and with individuals in Bosnia and Herzegovina. The individuals in Kosovo deceived and abused the trust of **M. K., Md. M. R., S. and R. M., nationals of B., and recruited them and another 19 foreign nationals to come to Kosovo. They abused their trust and deceived them into believing that they could earn high salaries in trade there and that they did not need either visas or work permits. They also deceived them into believing that they could freely engage in the textile trade in Montenegro**. The defendants convinced the victims that they needed to go to Berane, but instead transferred them to the Kosovo-Montenegro border, withholding the money in the victims' possession (€7,000 and 2,000 USD just from the above-mentioned victims,). The defendants deceived the victims that they were taking them to B. "to research the market" but were actually taking them over, hiding them and **transferring them across Montenegro**, via R. and P., and **handing them over** to unidentified individuals in Bosnia and Herzegovina. Specifically, defendant R. Đ., who was aware of the said activities of the unidentified individuals in Kosovo, arranged with them to organise and ensure the reception, concealment and further transfer and sale of the victims. In order to implement the plan, he engaged defendant E.K. via an unidentified individual in Kosovo and in direct contact with defendant B.B. with whom he carried the plan out; R. Đ. maintained continuous telephone communication from his cell phone no. 067-..... with B.B. cell phone no. 067-.....and defendant E.K, cell phone no. 067-..... In cooperation with an unidentified individual in Kosovo, E.K, transferred the foreign victims illegally, in groups of three or four, from Kosovo to Montenegro for a fee, hid them at the agreed venue in the area of R., where defendant B.B. took them over as instructed by defendant R. Đ., put them in his van ".....", licence plate no. PV ..... and transported them to P., where he handed them over to defendant R. Đ., who paid him. Defendant R. Đ. then transported the victims in groups towards the Serbia and Montenegro border with Bosnia and Herzegovina across the Ljubišnja Mountain and handed them over to unidentified individuals in Bosnia and Herzegovina, in accordance with their joint plan. The defendants and the unidentified individuals earned money from these **acts committed for the purpose of placing the victims in servitude and their exploitation: forced labour, servitude or involuntary performance of activities in the destination country**. The police discovered the crime during the search of defendant B.B.'s vehicle on 5 July 2005, while he was transporting the victims whose identity is mentioned above."

In this case of labour exploitation, the Court also found that the offence fulfilled the procedural requirements under Article 507 (3) and (4) of the Criminal Procedure Code, i.e. that it amounted to organised crime.

As the Court noted in its judgment, this criminal offence is of a complex structure and involves various acts, which may be committed by various means and to achieve a number of the prescribed purposes. In this specific case, the Court found that the defendants had continuously and successfully committed the acts in an organised fashion, **acts amounting to transfer as an**

124 The defendants were simultaneously tried for illegallycrossing the border under Article 405(2) of the Criminal Code.

element of human trafficking under Article 3 of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Pursuant to that international treaty, recruitment, transfer and exploitation are elements of human trafficking.

Under Article 444 of the Criminal Code, the simple form of the crime of human trafficking has three elements: act, means and purpose. The acts include, inter alia, reception, transport, transfer, handover, hiding or harbouring of another. They are committed, inter alia, by the following means: deception, abuse of power, trust, a relationship of dependency or a position of vulnerability. Under Article 444, the existence of the offence requires that the acts and means serve to achieve a purpose, such as forced labour, servitude, crime, prostitution, begging, pornographic use, removal of organs for transplantation and participation in armed conflicts. Furthermore, under this Article, the offence will have been committed in the event one of the acts has been committed by any of the specified means with the intention of achieving any of the purposes, wherefore the actual achievement of the purpose is unnecessary.

The Court bore the latter in mind given that there was no doubt that the defendants' plan comprised not only the acts and the means, but the purpose they wanted to achieve as well: to place the victims in a position of servitude and exploitation in the destination country. Such an interpretation of the legal norm is justified because the victims' interests would have been irreparably damaged by waiting for the achievement of the purpose.

The Court distinguished between the crimes of trafficking in humans and illegal border crossing, specifying that the victims were not the ones who had initiated the crossing from Serbia and Montenegro to another state, which would have been the characteristic of individuals illegally crossing the border with the help of the perpetrators of the crime, and that they were actually transported/transferred unknowingly and unwillingly, wherefore the individuals transporting/transferring them had violated their fundamental human rights.

The Court further found that "**trafficking in humans extends well beyond the organised transportation of people across a border to make profit; the very manner in which the act of transfer was committed, by deception of the victims and for the purpose of exploitation, is another factor distinguishing trafficking in humans from "smuggling migrants" in this case.**"

Podgorica Basic Court Judgments

In its judgment in case K No. 05/789, the Podgorica Basic Court found defendant H.R. guilty of human trafficking under Article 444(1) of the Criminal Code. "From mid-June 2005 to 3 July 2005, H.R. employed the following means against victim A.S.: **deception, abuse of trust and position of vulnerability, withholding personal documents and threats. He had recruited, transported, harboured and sold victim A.S. for the purpose of prostitution** in Zrenjanin, Bar and Podgorica. Whilst in Zrenjanin, the defendant suggested to the victim to accompany him to the Montenegrin coast and impersonate his mother, deceiving her that they would stay on the coast for a few days to have fun. The victim agreed. On 27 June 2005, he and the victim went by train to Bar, where he rented an apartment in which they both stayed. He bought her wardrobe and food and thus gained her trust and then abused her dependency due to lack of money. On 2 July 2005, he and the victim went by train to Podgorica, where an individual named S. met them as previously arranged. S. drove them to a rented apartment where the defendant immediately told the victim that she had to provide sexual services to others for money. The victim refused and packed her belongings with the intention of leaving the apartment. The defendant stopped her by taking away her cell phone card and threatened to kill her, claiming that he had a gun and prohibiting her from leaving the apartment; the defendant did not allow the victim to call her father, which gave rise to her fears. At around 8 pm that day, the defendant took the victim to the restaurant "P. S." in G., seized her cell phone and ID, and offered her sexual services to the guests for €20-30. R.N. agreed and the victim had sex with him in his car, a Mercedes" licence plate no. ...,which was parked in front of the restaurant. R.N. refused to pay the defendant €20 and the two men quarrelled."

In its judgment in case K No.1332/09,[125] the Podgorica Basic Court acquitted the three defendants. They had been indicted for **using force, threats, abusing the relationship of dependence and position of vulnerability and for transporting, handing over, hiding and harbouring victim B.S. for the purpose of prostitution**. Defendant M.M. stopped his vehicle, a red Golf III, near the market "Carskoselo" in the Zelenika suburb and asked the victim to get in the

125 M.M. was acquitted on charges of human trafficking under Art. 444(1) of the Criminal Code and facilitating substance abuse under Art. 301(1) of the Criminal Code, while the other two defendants were acquitted on charges of human trafficking under Art. 444(1) of the Criminal Code.

car. He drove her to his family home and put her in a room on the 1st floor; he restricted her freedom of movement, hit her, threatened to harm her if she did not obey him, aware that she had no money to live on or a place to stay and that she was a drug (heroin) addict. He gave her heroin, which is declared a narcotic under the Controlled Substances Ruling (Official Journal of the FRY Nos 46/96 and 27/2002), which she snorted, and then forced her to provide sexual services to various individuals he found; he drove her to them and then drove her back to his house; she provided sexual services to:S. S.from Podgorica on multiple occasions, in his car "Audi A 8";to M. I.aka "Swallow" from Podgorica on multiple occasions in the room of the Madona night club; to R. Ž.from Podgorica on multiple occasions in his car; to a V. from Podgorica in his car "Golf IV"; to Albanian nationals, owners of the "A" hotel at Shkoder; to A.and Š.in "L." Hotel, roomsxand yin Podgorica. The defendant charged these individuals €100 an hour. Furthermore, M.M. on multiple occasions drove the victim in his car to commercial and residential buildings in Budva, where he hid her when he feared that the police would check the commercial and residential buildings in Podgorica; he kept her locked up the whole day in a room with bars on the window and the door and then drove her back to his family home in Podgorica. S.M. had on a number of occasions driven the victim from M.M.'s family home in his taxi "Mercedes 124" licence plate no. PG ...to her clients, waited for her and returned her to M.M.'s house after she had provided sexual services. On 2 July 2007, he took the victim from M.M's house via the StariAerodrom settlement to the centre of the city; he stopped the car on the side of the road and demanded that the victim have sex with him. He hit her and punched her in the head a number of times when she refused and then went on to drive her to her client. When he stopped in front of the "Kultura" cinema, the victim managed to escape."

The Court acquitted the defendants because the prosecution had failed to prove that they had committed the crimes they were indicted for. As it properly stated in its judgment: "The Court adopted such a decision given that the indictment is exclusively based on the statement of the victim, which she gave to the investigating judge, and her statement is not and cannot be deemed reliable grounds for a conviction."

In its judgment in case K No. 05/1087, the Podgorica Basic Court found defendant Đ.M. guilty of trafficking in humans under Article 444(1) of the Criminal Code. "From early May to 9 August 2005, the defendant **applied force and threats and abused the vulnerability of victim K.V., whom he recruited, harboured and handed over** in his apartment in III SandžačkeStr. No.47 **for the purpose of prostitution and crime**. The defendant started a love affair with victim K.V. and offered to find her a job and asked her to move in with him after she told him that she did not have a place to stay or a job. The victim agreed. Several days after she moved in, the defendant requested of her to have sex with R.H., who had come to the apartment. After she refused, the defendant took her to the bathroom and hit and kicked her in the head and the body a number of times, forcing her to have sex with R.H.; the defendant left the apartment during their intercourse. Thereinafter, the defendant employed the same means - threats and force - to coerce the victim into having sex in his apartment with C.V., B.M., Š.A., K.P., O.DŽ, R.,S,I., I. and with P.P. in his passenger vehicle Zastava. He also forced her to provide sexual services to men in their cars, as pre-arranged. He also handed the victim over to M.A. aka D.in his passenger vehicle Fiat Uno and to J.R. in his passenger vehicle Mercedes 124, from which the victim managed to escape; after she returned to the apartment and told him that she had not had sex with these men, he dealt her a number of blows in the head and body. In early August 2005, the defendant gave the victim a cell phone on a number of occasions and ordered her to call up various people allegedly to hail a taxi and offer her sexual services. On 1 August 2005, victim K.V. called victim D.M. and told him she needed a cab and to pick her up in front of the "T." store. When he arrived, the victim entered his vehicle and asked him to lend her his cell phone to make a call. When D.M. gave her the phone, a "Nokia3220", worth around €120,K.V. exited his vehicle, ran behind the "T." store and handed the telephone to the defendant. On 2 August 2005, when she was in the company of M.M. and M.D., she asked Mirko to lend her his phone, a "Nokia 6610", worth €150, and went away with it and handed it over to the defendant. On 6 August 2005, victim K.V. used the defendant's cell phone to call up R.V. and offer him her sexual services; she asked him if she could borrow his cell phone, a "Nokia 8510", worth €40, and when he gave her the phone, she went into the store "Taps" and exited it through the back door, where the defendant was waiting for her. The defendant took that phone as well. Defendant Đ. sold the stolen cell phones on the Truckers' Market, procuring unlawful material benefit in the amount of €295."

In this case, the Court found that the victim had been subjected to multiple forms of exploitation. It found that the defendant had recruited, harboured and handed the victim over to men in his apartment for the purpose of sexual exploitation, as well as exploited her to commit crimes. In its assessment of the presented evidence, the Court said that "the statements of the victim and other witnesses clearly indicate that the victim had been recruited by the defendant to engage in criminal activities, to call up people, primarily taxi

drivers, and to take their cell phones and hand them over to the defendant, who sold them with a view to procuring unlawful material benefit...”

Ulcinj Basic Court Judgment

In its judgment in case K 54/14, the Ulcinj Basic Court dismissed the indictment against defendant K.A. Under the indictment, “From late October 2011 to mid-March 2014, the defendant knowingly applied **force and threats, abused the trust of victim M.I. and withheld her personal documents for the purpose of her exploitation: forced labour, servitude and sexual exploitation**. After his wife left him in late 2011, the defendant took the victim, M.I., into his family home in the settlement of Kruteat Ulcinje, to help him with the household chores, since he was left alone with four underage children. The victim had earlier helped him by looking after the children. When she moved in, he seized and hid her health card, her only personal document, beat her up on a number of occasions, and threatened her that he would beat her up even more if she tried to report him and leave him and his home. This is why the victim did not dare report the case to anyone she met during the said period, fearing that they, the defendant’s neighbours, friends and relatives, would pass on her allegations to him rather than the police. The defendant exploited the victim’s work because she did all the household chores in his house and he had sexual relations with her; although she was not raped, the victim did not offer resistance, aware that her situation would deteriorate further if she did.”

The prosecutor abandoned the criminal prosecution of the defendant since the indictment was based only on the statement of the victim. Since the defendant and the victim married in the meantime, the victim exercised her legal right not to testify against him. In the absence of any other proof, the Court rendered the decision to dismiss the case.

Rožaje Basic Court Judgment

In its judgment in case K No. 78/09126, Rožaje Basic Court found the three defendants guilty of human trafficking. The Court found that:

“1. From November 2008 to mid-January 2009, K.S. and K.S. **jointly applied force, threats, deception and abused the position of vulnerability of D.M, a national of Serbia, and harboured her in the restaurant** “A.” in “J.K.” Street in Rožaje **for the purpose of forced labour and prostitution**. S., the owner of the restaurant, hired the victim to work as a waitress. He did not pay her for her work, and the defendants later beat her and threatened her, and then **handed her over for prostitution to unidentified individuals**.

2. In the winter months in late 2002 and in early 2003, D.M. aka M. hired the victim to work as a waitress in his restaurant “S.” in “13. jul” Street in Rožaje **for the purpose of exploitation: forced labour and prostitution**. Rather than paying her, he threatened to dismiss her, to throw her out on the street and torture her unless she agreed to prostitute herself. He then **handed her over to unidentified individuals for prostitution**.”

126 One of the defendants in this case was also on trial for continuously violating labour-related rights under Article 224 of the Criminal Code in conjunction with Article 49 of the Criminal Code.