**Rantsev v. Cyprus and Russia**

7 January 2010

***(Application no.*** [***25965/04***](https://hudoc.echr.coe.int/eng#{"appno":["25965/04"]})***)***

In the present case, the applicant was the father of a young woman called Oxana Rantseva, who died in Cyprus where she had gone to work in a cabaret in March 2001. Everything began on 13 February 2001, when X.A.; the owner of a cabaret in Limassol, applied for an “artiste” visa and work permit for Ms Rantseva to allow her to work as an artiste in his cabaret. The application was accompanied by a copy of Ms Rantseva’s passport, a medical certificate, a copy of an employment contract (apparently not yet signed by Ms Rantseva) and a bond, signed by [X.A.] Agencies. After that, Ms Rantseva was granted a temporary residence permit as a visitor which was extended with a permit to work until 8 June 2001 as an artiste in the cabaret owned by X.A. and managed by his brother, M.A.

At first, she stayed in an apartment with other young women working in X.A.’s cabaret. However, after 3 days, M.A. was informed by the other women living with Ms Rantseva that she had left the apartment and taken all her belongings with her. The women told him that she had left a note in Russian saying that ***she was tired and wanted to return to Russia***. On the same date M.A. informed the Immigration Office in Limassol that Ms Rantseva had abandoned her place of work and residence. According to M.A.’s subsequent witness statement, he wanted Ms Rantseva to be arrested and expelled from Cyprus ***so that he could bring another girl to work in the cabaret.*** However, Ms Rantseva’s name was not entered on the list of people wanted by the police.

On 28 March 2001, at around 4 a.m., Ms Rantseva was seen in a discotheque in Limassol by another cabaret artiste. Upon being advised by the cabaret artiste that Ms Rantseva was in the discotheque, M.A. called the police and asked them to arrest her. After the police officers did their research, they determined she was not to be detained so M.A. collected her and took her to the apartment of M.P., a male employee at his cabaret who lived with his wife, D.P. Around 6.30 am, Ms Rantseva was found dead on the street below the apartment.

The applicant complained that the Cypriot police had not done everything possible to protect his daughter from trafficking while she had been alive and to punish those responsible for her death. He also complained about the failure of the Russian authorities to investigate his daughter’s trafficking and subsequent death and to take steps to protect her from the risk of trafficking.

**The European Court of Human Rights** 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.

(Paragraph 199.) Regarding to this case, the Court emphasises the serious nature of the allegations of trafficking in human beings made, which raise issues under Articles 2, 3, 4 and 5 of the Convention. In this regard, it is noted that awareness of the problem of trafficking of human beings and the need to take action to combat it has grown in recent years, as demonstrated by the adoption of measures at international level as well as the introduction of relevant domestic legislation in a number of States. National policies and measures in the field turn out to be at times inadequate and ineffective. The paramount requirement for any legal system effectively to address human trafficking is recognition of the need for a multidisciplinary approach; cooperation among States; and a legal framework with an integrated human rights approach.

***(Paragraph 213.) The applicant contended that there was a violation of Article 2 of the Convention (“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law...”) by both the Russian and Cypriot authorities on account of the failure of the Cypriot authorities to take steps to protect the life of his daughter and the failure of the authorities of both States to conduct an effective investigation into her death.***

It is clear that Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction. In the first place, this obligation requires the State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. However, it also implies, in appropriate circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

However, in the present case The Court considered that particular chain of events leading to Ms Rantseva’s death could not have been foreseeable to the police officers when they released her into M.A.’s custody. Accordingly, the Court concluded that no obligation to take operational measures to prevent a risk to life arose in the present case.

However, The Court finds the Cypriot authorities’ refusal to make a legal assistance request to obtain the testimony of the two Russian women who worked with Ms Rantseva at the cabaret particularly unfortunate, given the value of such testimony in helping to clarify matters which were central to the investigation. Although Ms Rantseva died in 2001, the applicant is still waiting for a satisfactory explanation of the circumstances leading to her death. In that sense, The Court accordingly found that there was a **procedural violation of Article 2 of the Convention** as regards the failure of the Cypriot authorities to conduct an effective investigation into Ms Rantseva’s death.

Regarding to the Russian authorities, the Court observed that they made extensive use of the opportunities presented by mutual legal assistance agreements to press for action by the Cypriot authorities. In particular, they requested that further investigation be conducted into Ms Rantseva’s death, that relevant witnesses be interviewed and that the Cypriot authorities bring charges of murder, kidnapping or unlawful deprivation of freedom in respect of Ms Rantseva’s death. Furthermore, a specific request was made to institute criminal proceedings, being this request reiterated on several occasions. In conclusion, **the Court found that there was no procedural violation of Article 2 by the Russian Federation.**

***(Paragraph 248.) The applicant alleged a violation of Article 3 of the Convention (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”) by the Cypriot authorities in respect of their failure to take steps to protect Ms Rantseva from ill-treatment and to investigate whether Ms Rantseva was subject to inhuman or degrading treatment in the period leading up to her death.***

The Court noted that there was no evidence that Ms Rantseva was subjected to ill-treatment prior to her death. However, it is clear that the use of violence and the ill-treatment of victims are common features of trafficking. The Court therefore considered that, in the absence of any specific allegations of ill-treatment, any inhuman or degrading treatment suffered by Ms Rantseva prior to her death was inherently linked to the alleged trafficking and exploitation. Accordingly, **the Court concluded that it was not necessary to consider separately the applicant’s Article 3 complaint and dealt with the general issues raised in the context of its examination of the applicant’s complaint under Article 4 of the Convention.**

***(Paragraph 253.) The applicant alleged a violation of Article 4 of the Convention (“1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour.”) by both the Russian and Cypriot authorities in light of their failure to protect his daughter from being trafficked and their failure to conduct an effective investigation into the circumstances of her arrival in Cyprus and the nature of her employment there.***

Under Article 4, the Court referred to the classic definition of slavery contained in the 1926 Slavery Convention, which required the exercise of a genuine right of ownership and reduction of the status of the individual concerned to an “object”. With regard to the concept of “servitude”, the Court has held that what is prohibited is a “particularly serious form of denial of freedom”. The concept of “servitude” entails an obligation, under coercion, to provide one’s services, and is linked with the concept of “slavery”. For “forced or compulsory labour” to arise, the Court has held that there must be some physical or mental constraint, as well as some overriding of the person’s will.

The absence of an express reference to trafficking in the Convention is unsurprising. The Convention was inspired by the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations in 1948, which itself made no express mention of trafficking. In its Article 4, the Declaration prohibited “slavery and the slave trade in all their forms”. However, in assessing the scope of Article 4 of the Convention, sight should not be lost of the Convention’s special features or of the fact that it is a living instrument which must be interpreted in the light of present-day conditions. The increasingly high standards required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably require greater firmness in assessing breaches of the fundamental values of democratic societies.

There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considered it unnecessary to identify whether the treatment about which the applicant complains constitutes “slavery”, “servitude” or “forced and compulsory labour”. Instead, **the Court concluded that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention. The Russian Government’s objection of incompatibility *ratione materiae* is accordingly dismissed.**

***(Paragraph 310.) The applicant complained that there was a violation of Article 5 § 1 of the Convention (“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:***

***(a) the lawful detention of a person after conviction by a competent court;***

***(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;***

***(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;***

***(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;***

***(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;***

***(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”) by the Cypriot authorities in so far as his daughter was detained at the police station, released into the custody of M.A. and subsequently detained in the apartment of M.A.’s employee.***

The alleged detention lasted about two hours. Although of short duration, the Court emphasised the serious nature and consequences of the detention and recalled that where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the detention didn’t affect this conclusion. Accordingly, the Court found that the detention of Ms Rantseva at the police station and her subsequent transfer and confinement to the apartment amounted to a deprivation of liberty within the meaning of Article 5 of the Convention.

Taken in the context of the general living and working conditions of cabaret artistes in Cyprus, as well as in light of the particular circumstances of Ms Rantseva’s case, the Court considered that it is not open to the police to claim that they were acting in good faith and that they had no responsibility for Ms Rantseva’s subsequent deprivation of liberty in M.P.’s apartment. It was clear that without the active cooperation of the Cypriot police in the present case, the deprivation of liberty could not have occurred. **The Court therefore considered that the national authorities acquiesced in Ms Rantseva’s loss of liberty, being this deprivation of liberty both arbitrary and unlawful.**

**Therefore, the Court concluded that there was a violation of Article 5 § 1 on account of Ms Rantseva’s unlawful and arbitrary detention.**

The Court declared the applicant’s complaints under Article 3 (prohibition of inhuman or degrading treatment) and 4 (prohibition of slavery and forced labour**) inadmissible**. It noted in particular that the applicant could have raised all of her Convention complaints in an appeal to the Upper Tribunal. By not applying for permission to appeal to the Upper Tribunal, he had failed to meet the requirements of Article 35 *§* 1 (admissibility criteria) of the Convention.

**L.E. v. Greece (no. 71545/12)**

21 January 2016

***Note:*** *The Judgment is only available in French, Arabic*, Croatian, German, Greek, Polish and Russian. *However, I found the Legal Summary in English, which I’ve used to summarise this case.*

This case concerned a complaint by a Nigerian national who was forced into prostitution in Greece. She arrived in Greece in 2004 with the help of K.A., in return for a debt pledge of EUR 40,000. Once on Greek territory, K.A. allegedly confiscated her passport and forced her to work as a prostitute. She was arrested on several occasions for prostitution and breach of the legislation on the entry and residence of aliens. In November 2006, while being held in detention pending expulsion, the applicant filed a complaint against K.A. and his spouse 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. She joined 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.

She was assisted in that step by the non-governmental organisation Nea Zoi, which provides practical and psychological support to women who have been forced into prostitution, with which she had been in contact for about two years. The director of Nea Zoi was questioned and corroborated the applicant’s claims.

Officially recognised as a victim of human trafficking for the purpose of sexual exploitation, the applicant had nonetheless been required to wait more than nine months after informing the authorities of her situation before the justice system granted her that status. She submitted in particular that the Greek State’s failings to comply with its positive obligations under Article 4 (prohibition of slavery and forced labour) of the Convention had entailed a violation of this provision.

The key date was that on which the applicant indicated to the police officers that she was a victim of human-trafficking. From that date, the police services took immediate action, entrusting the applicant to the specialised anti-trafficking department. In addition, the expulsion proceedings that were pending against her were discontinued and she was issued with a residence permit allowing her to remain on Greek territory. Lastly, the applicant was formally classified as a victim of human-trafficking**. However, that status was only granted about nine months after the applicant’s complaint, in part because the statement given by the director of Nea Zoi was not included in the case file in good time, as a result of inadvertence on the part of the police authorities.** That period could not be described as reasonable, especially as the authorities’ omission could have had adverse consequences on the applicant’s personal situation, since her release could have been delayed as a result. It followed that this delay in recognising the applicant as a victim of trafficking amounted to a substantial failing in terms of the operational measures that they could have taken to protect her.

With regard to D.J.’s acquittal, in a 42-page judgment and after taking into consideration several witness statements from persons involved in the case, the assize court concluded that it was not established that the defendant had forced the applicant into prostitution. The assize court could not be accused of issuing an arbitrary or insufficiently reasoned judgment entailing a breach of the procedural obligation under Article 4.

As to the adequacy of the police investigation, the police authorities had reacted promptly to the applicant’s complaint and the initial investigation had been completed in due time. However, a number of aspects of the proceedings had been unsatisfactory.

Firstly, the applicant’s complaint had initially been rejected by the prosecutor, who did not have available the witness statement by the director of the NGO Nea Zoi. In addition, the relevant judicial authorities had not resumed examination of the applicant’s complaint of their own motion following the addition of that statement. It was the applicant who revived the proceedings. Lastly, it was not until June 2007 that the prosecutor had ordered that criminal proceedings to be brought. No explanation had been provided as to this period of inactivity, which had lasted for more than five months. Those acts or omissions had had the effect of prolonging the period between the disclosure of the disputed situation and criminal proceedings being brought against K.A. and D.J. Yet this period had been crucial for ensuring prompt progress in the proceedings. Secondly, a number of shortcomings in the preliminary inquiry and the investigation of the case had compromised their effectiveness. Thus, no measure had been ordered once it was realised that K.A. was not resident at the address under surveillance. Yet stepping up the search for K.A. would appear to have been crucial at that point, given that D.J., his presumed accomplice, had already been summoned for police questioning as part of the preliminary investigation. Thirdly, there had been considerable delays in both the preliminary inquiry and investigation of the case, for which no explanation had been provided.

Lastly, with particular reference to K.A., the main presumed perpetrator of the acts of trafficking against the applicant, 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 database. Thus, for example, there was nothing in the case file to suggest that the Greek authorities had established contact or instigated cooperation with the Nigerian authorities for the purpose of arresting K.A.

In the light of the foregoing, there was a lack of promptness in taking operational measures in the applicant’s favour and shortcomings with regard to the Greek State’s procedural obligations under Article 4 of the Convention.

To conclude, **The Court held that there was a violation of Article 4 (prohibition of slavery and forced labour) of the Convention.**

**J.V.L. and Others v. Austria (no. 58216/12)**

Communicated to the Austrian Government on 10 June 2014

The applicants in this case, three Filipino nationals, complain that the Austrian authorities failed to comply with their positive obligations to undertake effective and exhaustive investigations into their allegations that they were held against their will and forced to work in Vienna by their employer form the United Arab Emirates.

The first and third applicants were recruited in 2006 and 2009 respectively by an employment agency in Manila to work as maids or au pairs in Dubai (United Arab Emirates). The second applicant travelled to Dubai in December 2008 for the same purpose, as she was suggested to come by the first applicant, not via an agency. All of the applicants had their passports taken away by their employers. During the course of their work in Dubai, they allege that they were subjected to ill-treatment and exploitation by their employers, who also failed to pay them their agreed wages and forced them to work extremely long hours, under the threat of further ill-treatment.

For most of the initial two-year contract ***the first applicant*** was not subjected to physical abuse or direct threats of harm by her employers, and she was paid regularly. However, she had to work extremely long hours without a single day off. She needed to live under different strict rules, like being not allowed to have her own telephone, given her the opportunity to call her family in the Philippines once a month, being the costs of these calls deducted from her wages. Further, she was generally only given the family’s leftover food. After approximately nine months, the first applicant faced the first punishments by her employers. However, towards the end of her two year-contract she finally agreed to extend her contract as she was promised to have so much better conditions at work, so she returned to the Philippines for three months. Owing to the incentives and the prospect of improved working conditions, she asked the second applicant to take over her role in Dubai during the time she was away.

***The second applicant*** agreed to work for the same employers as the first applicant as she was expecting a better pay in Dubai since she needed the money. The employers in Dubai arranged a visiting visa for her, under false pretences. As a result of this arrangement, the second applicant did not approach the employment agency in the Philippines and did not have a written contract with her employers. After the first applicant returned to the Philippines for three months in January 2009, the employers significantly changed their conduct towards the second applicant. They threatened not to pay her family if she made any mistakes. They refused to let her leave Dubai, including by refusing to return her passport and ordering her to repay them her travel costs and related expenses. They also told her that she would be put in prison if she ran away or went to the authorities in Dubai for help. They physically and emotionally abused her, and there was one incident when one of her employers struck her across the shoulder using significant force. She was also forced to work extremely long hours.

***The third applicant***’s family were desperate for money to pay for crucial medical treatment for her brother. Therefore, in 2009 she contacted an employment agency in the Philippines and was offered work as a maid in Dubai. She was informed that she would be earning twice her salary in the Philippines. Upon her arrival in Dubai in 2009 she had to hand over her passport and mobile phone to someone supposedly working for the employment agency. She was told that these items would be returned to her when she finished her work in Dubai. This third applicant was working for a family member of the first and second applicants’ employers. The applicants got to know each other, as the two families met every Friday, when they secretly shared their experiences. This third applicant was also bound by working extremely long hours, being also forced by her employer to unbearable conditions. She did not receive any remuneration at all for the first three months of her employment. Afterwards, she received less than what had been agreed. She also was subjected to ill-treatment and different threats, being too afraid to leave Dubai in order to return to her country.

On 2 July 2010 the applicants’ employers took them along on a short holiday trip to Austria. After an incident in which one of the children went missing for some time and the extreme verbal abuse the applicants were subjected to, they asked for help to N., the Tagalog-speaking employee at the hotel. The night following the incident, the applicants left the hotel with the help of N., who had organised a car to pick them up in a side street near the hotel and take them to a “safe place”. The applicants subsequently found support within the local Filipino community in Vienna.

In April or May 2011, approximately nine months after they had left their employers, the applicants contacted a local NGO called “LEFÖ” for assistance in reporting their ill-treatment, abuse and exploitation to the police. In July 2011 the applicants decided to turn to the Austrian police and filed a criminal complaint against their employers. On 11 and 21 July and 17 August 2011, accompanied by representatives of LEFÖ, they were interviewed at length by officers from the Office to Combat Human Trafficking at the Federal Office of Criminal Investigations. In their report, the officers concluded that the offences had been committed abroad.

The applicants all expressed their willingness to actively cooperate with the authorities and to engage in criminal proceedings against their employers.

On 4 November 2011 the Vienna public prosecutor’s office discontinued the proceedings under Article 104a of the Criminal Code relating to human trafficking, pursuant to Article 190 § 1 of the Code of Criminal Procedure. In the public prosecutor’s view, the offence had been committed abroad by non-nationals, and did not engage Austrian interests within the meaning of Article 64 § 1 (4) of the CC.

On 30 November 2011 the applicants lodged an application to continue the investigation with the Vienna Regional Criminal Court. They submitted that Austrian interests had indeed been engaged, and that their employers had continued to exploit and abuse them in Austria. In their view, the elements of the crime punishable under Article 104a § 1 (2) of the CC had been present.

The Vienna public prosecutor’s office then submitted a statement to the Vienna Regional Criminal Court, specifying its reasons for discontinuing the investigation. There had been no indication in the case file that any of the criminal actions exhaustively listed in Article 104a of the CC had occurred in Austria, particularly since the offence had already been completed in Dubai, and the accused were not Austrian citizens. On 16 March 2012 the Vienna Regional Criminal Court dismissed the applicants’ application.

The applicants complained that they had been subjected to forced labour and human trafficking, and that the Austrian authorities had failed to comply with their positive obligations under the procedural limb of Article 4 of the Convention (“1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour...”).

First of all, and regarding the Government’s contention that the application was submitted outside the time-limit provided for by Article 35 § 1 of the Convention (see paragraph 77 above), the Court notes that the applicants’ first letter of intent – which at the time of its submission was satisfactory to stop the six-month time-limit from running – reached the Court on 4 September 2012. The last domestic decision in the matter was served on the applicants’ counsel on 23 March 2012 (see paragraph 30 *in fine* above), hence less than six months before that date. **The Court was therefore satisfied that the admissibility criterion of Article 35 § 1 *in fine* wascomplied with.**

The Court noted that this complaint was not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further noted that it was not inadmissible on any other grounds**. It was therefore declared admissible.**

(Paragraph 108, 109) Secondly, **in regards to Article 4 of the Convention** in the specific context of trafficking in human beings and forced labour, the Court considered that the applicants’ allegations fell within the ambit of the mentioned article. The alleged treatment prohibited by Article 4 was not imputed to organs of the Austrian State, but to private individuals, namely the applicants’ employers, over a period of several years in Dubai and two to three days in Austria. Therefore, the present case concerned the positive obligations arising under this provision, rather than the negative obligations. The Court considered that the instant case essentially raised two questions: whether the Austrian authorities complied with their positive obligation to identify and support the applicants as (potential) victims of human trafficking, and whether they fulfilled their positive obligation to investigate the alleged crimes.

Concerning the first question, the Court considered that the legal and administrative framework in place concerning the protection of (potential) victims of human trafficking in Austria appears to have been sufficient, and that the Austrian authorities took all steps which could reasonably have been expected in the given situation (applicants were granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban was imposed on the Central Register so their whereabouts were untraceable by the general public. During the domestic proceedings, the applicants were supported by the NGO LEFÖ, which is funded by the Government specially to provide assistance to victims of human trafficking). The Court was therefore satisfied that the duty to identify, protect and support the applicants as (potential) victims of human trafficking was complied with by the authorities.

Concerning the second question, namely the procedural obligation incumbent on the Austrian authorities to investigate the applicants’ allegations and to prosecute cases of human trafficking The Court distinguish between the alleged events in the United Arab Emirates and the events in Austria.

(Paragraph 114) Concerning the alleged events in the United Arab Emirates, the Court considered that Article 4 of the Convention, under its procedural limb, does not require States to provide for universal jurisdiction over trafficking offences committed abroad. The Palermo Protocol is silent on the matter of jurisdiction, and the Anti-Trafficking Convention only requires States Parties to provide for jurisdiction over any trafficking offence committed on their own territory, or by or against one of their nationals. **The Court therefore could not but conclude that, in the present case, under the Convention, there was no obligation incumbent on Austria to investigate the applicants’ recruitment in the Philippines or their alleged exploitation in the United Arab Emirates.**

(Paragraph 116) Based on the descriptions given by the applicants, the authorities concluded that the events which had taken place over a maximum of three days in Vienna did not in themselves amount to any of the criminal actions exhaustively listed in Article 104a of the CC. No ill-treatment in Austria was reported by the applicants. **The Court considered that, in the light of the facts of the case and the evidence the authorities had at their disposal, the assessment that the elements of Article 104a of the CC had not been fulfilled in relation to the events in Austria does not appear to be unreasonable.** SinceThe Austrian authorities were only alerted approximately one year after the events in Vienna, when the applicants’ employers had long left Austria and had presumably returned to Dubai, the only further steps the authorities could possibly have taken were: requesting legal assistance from the United Arab Emirates; attempting to question the applicants’ employers by means of letters of request, hence giving them the opportunity to make a statement in their defence; and issuing an order to determine their whereabouts.

**The Court considered that the Austrian authorities complied with their duty to protect the applicants as (potential) victims of human trafficking. In finding that they did not have jurisdiction over the alleged offences committed abroad, and in deciding to discontinue the investigation into the applicants’ case concerning the events in Austria, they did not breach their positive obligation under the procedural limb of Article 4 of the Convention. Therefore, there was no violation of that provision.**

(Paragraph 113) Thirdly and regarding to the **Article 3 of the Convention** (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”), The Court considered that in line with the applicants’ submissions, the test of the State’s positive obligations under the procedural limb of Article 3 of the Convention is very similar to that under Article 4, which was examined above. For essentially the same reasons, **the Court concluded that there was no violation of the State’s positive obligations under Article 3 of the Convention.**

(Paragraph 124) Fourthly, and last regarding to the **Article 8 of the Convention** (right to respect for private life), the applicants submitted that, even though in their specific case Austria had identified them as victims of human trafficking, the lack of a formal recognition system was in itself capable of giving rise to a breach of the mentioned article. However, The Court said that the applicants have been treated as (potential) victims of trafficking in human beings, in line with Austria’s domestic and international legal obligations, finding no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from this complaint.

**Chowdury and Others v. Greece (no. 21884/15)**

Application communicated to the Greek Government on 9 September 2015

In this case, the applicants are 42 Bangladeshi nationals. They were recruited in Athens and other parts of Greece between October 2012 and February 2013, without a Greek work permit, to work at the main strawberry fields amounted to forced or compulsory labour. They argued that Greece failed to comply with its positive obligation to prevent them from being subjected to human trafficking, to adopt preventive measures to that end and to penalise their employers.

The workers were promised a wage of 22 euros (EUR) for seven hours’ work and three euros for each hour of overtime, with three euros per day deducted for food. They worked in greenhouses every day from **7 a.m. to 7 p.m**. picking strawberries under the supervision of armed guards employed by T.A. They lived in makeshift shacks made of cardboard, nylon and bamboo, **without toilets or running wate**r. According to them, their employers warned them that they would only receive their wages if they continued to work for them.

On three occasions **the workers went on strike demanding payment** of their unpaid wages, but without success. On 17 April 2013 the employers recruited other Bangladeshi migrants to work in the fields. Fearing that they would not be paid, between one hundred and one hundred and fifty workers from the 2012-2013 season who worked in the fields started moving towards the two employers, who were on the spot, in order to demand their wages. One of the armed guards then opened fire against the workers, seriously injuring thirty of them, including twenty-one of the applicants. The wounded were taken to hospital and were subsequently questioned by police. On 18 and 19 April 2013 the police arrested N.V. and T.A., together with the guard who had fired the shots and another armed overseer. During the preliminary investigation by the local police, a number of other Bangladeshis, including some who had worked with the suspects, were used as interpreters.

On 19 April 2013 the Amaliada public prosecutor charged the four suspects with attempted murder and other offences, and also, in response to a request from the prosecutor at the Court of Cassation, with human trafficking under Article 323A of the Criminal Code. The charge of attempted murder was subsequently reclassified as grievous bodily harm.

On 22 April 2013 the Amaliada public prosecutor acknowledged that thirty-five workers – including four team-leaders –, who had all been injured during the incident, were victims of human trafficking, thus making them lawful residents under section 12 of Law no. 3064/2002 (on the repression of human trafficking, crimes against sexual freedom, child pornography, and more generally sexual exploitation).

On 8 May 2013 one hundred and twenty other workers, including the twenty-one applicants who had not been injured, applied to the Amaliada public prosecutor for charges of human trafficking, attempted murder and assault, in respect of them also, to be brought against the four defendants. They stated that they had been employed on the farm run by T.A. and N.V. in conditions of human trafficking and forced labour and that they were part of the group which had come under fire. Relying on the Additional Protocol to the United Nations Convention against Transnational Organised Crime, known as the “Palermo Protocol”, of December 2000 (“to Prevent, Suppress and Punish Trafficking in Persons”), they asked the public prosecutor to bring charges under Article 323A of the Criminal Code against their employers, accusing them of exploiting them in a work-related context. They further alleged that, on 17 April 2013, they had also been present at the scene of the incident and that they had gone there to demand their unpaid wages, with the result that they were also victims of the offences committed against the other thirty-five complainants.

The police questioned each of the above-mentioned twenty-one applicants, who signed a record containing their statements, which had been given under oath and were accompanied by their photos, and they forwarded the statements to the public prosecutor.

The accused were committed to stand trial in Patras Assize Court. **Only N.V. was charged with committing the offence of human trafficking**. **The three other defendants, namely T.A. and the two armed overseers, were charged with aiding and abetting that offence.**

The public prosecutor asserted that the incident of 17 April 2013 was illustrative of a situation of over-exploitation and barbaric treatment to which the major landowners in the region had subjected the migrant workers.

In a judgment of 30 July 2014, the Assize Court acquitted the four defendants on the charge of trafficking in human beings, on the ground that the material element of the offence was not made out in the present case. It convicted one of the armed guards and T.A. of grievous bodily harm and unlawful use of firearms, sentencing them to prison for terms of fourteen years and seven months and eight years and seven months, respectively. As regards the overseer who had been responsible for the shots, it took the view that he had not intended to kill those who were attacked in the incident and that he had been trying to make them move away so that the newly recruited workers would not be approached by them. As to N.V., it acquitted him on the ground that it had not been established that he was one of the workers’ employers (and therefore that he was obliged to pay them their wages) or that he had been involved as an instigator of the armed attack against them. The Assize Court commuted their prison sentences to a financial penalty of 5 euros per day of detention. It also ordered the two convicted men to pay the sum of EUR 1,500 to the thirty-five workers who were recognised as victims (about EUR 43 per person).

The Assize Court thus observed that the workers had been informed of their conditions of employment and that they had accepted them after finding them satisfactory, not having been obliged to accept it.

Moreover, the Assize Court rejected the workers’ allegations that they had not received any wages and had been subjected to a threatening and intimidating attitude, on the part of the defendants, throughout the duration of their work, on the following grounds: those allegations had been expressed for the first time at the hearing, and not at the stage of the preliminary enquiries or investigation.

The Assize Court took the view that it had also been shown that the relations between the workers and their employers had been governed by a binding employment relationship and its conditions were not intended to trap the workers or to lead to their domination by the employers.

Lastly, as to the workers’ allegation that they had received death threats from the defendants – an allegation that it did not accept –, the Assize Court took the view that, if that statement had been true the workers would have left their place of work without hesitation.

On 21 October 2014 the workers’ lawyers lodged an application with the public prosecutor at the Court of Cassation asking him to appeal against the Assize Court judgment. In their application they submitted that the Assize Court had not adequately examined the charge of human trafficking. They took the view that, in order to determine whether that court had properly applied Article 323A of the Criminal Code, it was necessary to examine whether the accused had taken advantage of any vulnerability of the foreign nationals in order to exploit them. However, on 27 October 2014 the prosecutor refused to lodge an appeal. He gave reasons for his decision, indicating only that the statutory conditions for an appeal on points of law were not met. As a result of this decision, the part of the 30 July 2014 judgment concerning human trafficking became “irrevocable”

The applicants complained that their work in the strawberry fields of Manolada had constituted forced or compulsory labour. They claimed that the State had a positive obligation to prevent their subjection to human trafficking, to adopt preventive measures to that effect and to impose sanctions on their employers who, in their view, were guilty of that offence. They accused the State of failing to fulfil that obligation. They complained that there was a violation of Article 4 § 2 of the Convention (“2. No one shall be required to perform forced or compulsory labour”). In regard to this, The Court referred that States have positive obligations, in particular, to prevent human trafficking and protect the victims, adopting criminal-law provisions which penalise such practices.

In the present case, it must be noted that, as the Council of Europe’s Anti-Trafficking Convention says, exploitation through work is one of the forms of exploitation covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking. The same idea is clearly reflected in Article 323A of the Criminal Code, which was applied in the present case.

(Paragraph 101) The Court concluded that the applicants’ situation fell within the scope of Article 4 § 2 of the Convention as human trafficking and forced labour. Regarding to whether the respondent has fulfilled its positive obligations under that Article, The Court noted, firstly, that Greece had ratified or signed, a long time before the relevant period in the present case, the major international instruments adopted in the combat against slavery and forced labour. In addition, Greece had ratified both the Palermo Protocol of December 2000 and the Council of Europe’s Anti-Trafficking Convention of 16 May 2005. Greece also transposed Framework Decision no. 2002/629/JHA of the Council of the European Union and the instrument which replaced it, Directive [2011/36](https://hudoc.echr.coe.int/eng#{"appno":["2011/36"]}) of the European Parliament and the Council of the European Union. Lastly, Law no. 4198/2013 on combating trafficking in human beings, which incorporated into the Greek legal order Directive [2011/36](https://hudoc.echr.coe.int/eng#{"appno":["2011/36"]}) of the European Parliament and of the Council of the European Union, amended the Code of Criminal Procedure to ensure better protection for victims of trafficking in court proceedings. **The Court therefore found that Greece had essentially complied with the positive obligation to put in place a legislative framework to combat human trafficking.**

(Paragraph 11) Regarding to the operational measures taken by the authorities, The Court found that **were not sufficient to prevent human trafficking or to protect the applicants from the treatment to which they were subjected** and so because before the incident of 17 April 2013, the situation in the strawberry fields of Manolada was known to the authorities, whose attention had been drawn to it by reports and press articles. Thus, not only were debates held in Parliament on this subject, but three ministers – namely, the Employment, Health and Interior Ministers – had ordered inspections and the preparation of texts aimed at improving the situation of the migrants. However, this mobilisation did not lead to any concrete results.

(Paragraph 122) In the light of the foregoing, the Court dismissed the Government’s objection as to the victim status of those applicants who did not participate in the Assize Court proceedings and finds that there was a **violation of Article 4 § 2 of the Convention on the basis of the procedural obligation to conduct an effective investigation into the situation of human trafficking and forced labour complained of by those applicants.**

As The Court revealed, the relevant form of restriction relates not to the provision of the work itself but rather to certain aspects of the life of the victim of a situation in breach of Article 4 of the Convention, and in particular to a situation of servitude. On this point, the Court reiterated its finding that Patras Assize Court adopted a narrow interpretation of the concept of trafficking, relying on elements specific to servitude in order to avoid characterising the applicants’ situation as trafficking. However, a situation of trafficking may exist in spite of the victim’s freedom of movement**.** Furthermore, the Court noted that the public prosecutor at the Court of Cassation refused to appeal on points of law against the acquittal. To the allegation of the workers’ lawyers that the Assize Court had not properly examined the charge of human trafficking, the public prosecutor replied without any further reasoning that “the statutory conditions for an appeal on points of law [were] not met”. **Concerning to the above, The Court found that there was a violation of Article 4 § 2 of the Convention as a result of the State’s procedural obligation to guarantee an effective investigation and judicial procedure in respect of the situations of human trafficking and forced labour complained of by these applicants.**

As a conclusion, it must be noted that there was a violation of Article 4 § 2 on account of the failure of the respondent State to fulfil its positive obligations under that provision, namely the obligations to prevent the impugned situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking.

Regarding to Article 41 of the Convention (“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”) The Court awarded to each of the applicants who participated in the Assize Court proceedings, the sum of EUR 16,000, and to each of the other applicants EUR 12,000, plus any tax that may be chargeable.

Concerning to the Cost and Expenses, The Court awarded the full sum claimed by the applicants in respect of the domestic court proceedings.

**KAYA v. GERMANY** *(Application no.* [*31753/02*](https://hudoc.echr.coe.int/eng#{"appno":["31753/02"]})*)*

28 June 2007

In this case, the applicant is a Turkish national who was born in 1978 in Mannheim (Germany). His parents had been lawfully resident in Germany for more than thirty years and he used to visit Turkey only two or three times during his holidays, according to his submissions.

On 1994, the competent authorities granted the applicant a permanent residence permit.

On 1996, the Mannheim public prosecutor discontinued juvenile delinquency proceedings brought against the applicant for grievous bodily harm.

Regarding to the proceedings for criminal offences, on 27 January 1999 the applicant was arrested and subsequently detained on remand, being convicted of two counts of attempted aggravated trafficking in human beings, several counts of battery and aggravated battery, procurement, purchasing illegal drugs, two counts of drunken driving and two counts of insulting behaviour by the Mannheim District Court on 8 September 1999, which sentenced him to three years and four months’ imprisonment.

The District Court found the applicant had forced his former partner to surrender the main part of her earnings acquired through prostitution. To that end, he used physical violence. Regarding this issue, in January 1999, the applicant – together with two accomplices, including his former partner- had attempted on two occasions to force another woman into prostitution using violence.

It must be noted that the applicant was also found guilty of having purchased five grams of cocaine on one occasion, together with one accomplice, and of having insulted several police officers.

In view of that all, only the applicant’s confession prevented the District Court from imposing a prison sentence of more than four years, which would have meant relinquishing the examination of the case in favour of the regional Court.

On 23 November 1999, the Karlsruhe Regional Government ordered the applicant’s expulsion to Turkey, considering that his conviction for several serious offences made it necessary to expel him under section 47(1) and (3) and section 48(1) of the Aliens Act for serious reasons relating to public safety and the high risk that he would continue to pose a serious threat to it. **It was obvious that the interference with the applicant’s right to respect for his private and family life, as guaranteed by Article 8 of the Convention, was justified under paragraph 2 of that Article, regard being had in particular to the serious danger of recidivism.**

On 3 January 2000, the applicant applied to the Karlsruhe Administrative Court for judicial review of the expulsion order, stating, inter alia, that his parents were suffering from serious depression caused by the earlier loss of their son, obliging them to seek medical treatment. However, the Administrative Court rejected the applicant’s motion. The applicant subsequently applied for leave to appeal, being this refused by the Administrative Court of Appeal.

On 5 April 2001, the applicant was deported from prison to Turkey and 2 days after, he lodged a constitutional complaint for adjudication which was refused by the Federal Constitutional Court.

On 20 May 2002, the applicant married a German national of Turkish origin, who lived in Germany. On 28 December 2003, the couple had a child.

On 16 September 2002, the applicant requested to have a time-limit placed on his exclusion order. In this regard, the Karlsruhe Regional Government limited the period of validity of the applicant’s exclusion order until 5 October 2006, being this subjected to the condition that the applicant was to submit evidence that he had not committed any further criminal offences and that he was still married to his German wife, that he was to submit a hair analysis proving that the did not consume drugs and that he was to reimburse the expenses incurred in connection with his deportation.

On 11 April 2006, the Karlsruhe Administrative Court rejected the applicant’s application for judicial review aimed at further shortening the time-limit set to his exclusion order. By the end of February 2007, the applicant was still residing in Turkey.

The applicant complained that his expulsion had violated his right to respect for his private and family life under Article 8 of the Convention (“1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”)

(Paragraph 51) In this regard, The Court reiterated at the outset that the Convention does not guarantee the right of an alien to enter or to reside in a particular country and that a State is entitled, subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. In pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions must be in accordance with the law and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued.

(Paragraph 54) The general criteria to be used in order to assess whether an expulsion is necessary in a democratic society and proportionate to the legitimate aim pursued are the following:

- the nature and seriousness of the offence committed by the applicant;

- the length of the applicant's stay in the country from which he or she is to be expelled;

- the time elapsed since the offence was committed and the applicant's conduct during that period;

- the nationalities of the various persons concerned;

- the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

- whether the spouse knew about the offence at the time when he or she entered into a family relationship;

- whether there are children of the marriage, and if so, their age; and

- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

The Court noted, firstly, that the applicant was born in Germany, where he had legally resided, attended school and completed vocational training, following that the applicant's expulsion had to be considered as an interference with his right to respect for his private life guaranteed in paragraph 1 of Article 8. The question whether the applicant also enjoyed family life within the meaning of Article 8 had to be determined with regard to the position at the time the exclusion order became final and that time, the applicant had not yet founded a family of his own, as he married in May 2002 and his child was born subsequently.

He further asserted that he played a special role in the family following the tragic death of his brother. Under these circumstances, the Court finds that the applicant's expulsion interfered to a certain degree also with his right to respect for his family life and such interference constitutes a violation of Article 8 unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as “necessary in a democratic society”.

With regard to the applicant’s ties with Turkey, The Court noted that he used to write letters to his mother using the Turkish language during his detention, so it is clear that the use of the Turkish was not uncommon in the applicant’s family of origin. (Paragraph 65)

(Paragraph 67) As the Court had to determine the proportionality of the domestic decisions in the light of the position when the expulsion order became final in March 2001, the applicant could not plead his relationship with his German wife, whom he married only after deportation to Turkey, and to their subsequently born child.

(Paragraph 70) Having regard to all circumstances of the case, and in particular to the seriousness of the applicant's offences, which could not be trivialised as mere examples of juvenile delinquency, the Court did not consider that the respondent State assigned too much weight to its own interest when it decided to impose the expulsion.

And in the light of the above, the Court found that a fair balance was struck in this case in that the applicant’s expulsion was proportionate to the aims pursued and therefore necessary in a democratic society, not finding a violation of Article 8 of the Convention.

**Tas v. Belgium (**[**44614/06**](https://hudoc.echr.coe.int/eng#{"appno":["44614/06"]})**)**

12 May 2009

***Note:*** *The Court Decision is only available in French and Arabic. However, I found the Legal Summary in English, which I’ve used to summarise this case.*

The case concerned the confiscation of premises used in connection with offence linked to human-trafficking and exploiting vulnerable aliens. The applicant relied in particular on Article 1 (protection of property) of Protocol No. 1 to the Convention.

In this case, criminal proceedings were brought against the applicant before the Criminal Court for having “taken advantage, either directly or through an intermediary, of the particularly vulnerable situation of numerous foreign nationals as a result of their administrative, illegal or precarious situation, by renting immovable property, rooms or other premises with the intention of making an abnormal profit”. He was sentenced to one year’s imprisonment and fined, and the confiscation of the property concerned, which belonged to the applicant and his wife, was ordered. The Court of Appeal raised his sentence to three years’ imprisonment and a fine and ordered “the confiscation of the rooms and other premises that were rented out by the defendant to the foreign nationals listed in the case file”. In so concluding, the Court of Appeal noted that the special confiscation provided for in Article 42 1° of the Criminal Code, while previously optional, had been rendered mandatory by Article 433 *terdecies* of the same Code. In order to determine the nature and rate of the penalty to be applied, the Court of Appeal took into consideration the seriousness and particularly heinous nature of the offence which reflected, on the part of the defendant, an inadmissible disregard for human values and dignity, the purely mercenary nature of his conduct, the length of time over which the offences had been committed, and the defendant’s substantial criminal record. An appeal by the applicant to the Court of Cassation was dismissed.

The Court declared the application inadmissible as being manifestly ill-founded. Taking into account the margin of appreciation afforded to States in controlling ‘’the use of property in accordance with the general interest’’, in particular in the context of a policy aimed at combating criminal activities, in found that the interference with the applicant’s right to the peaceful enjoyment of his possessions had not been disproportionate to the legitimate aim pursued, i.e., in accordance with the general interest, to combat human trafficking and the exploitation of foreigners in a precarious situation.

It could be observed from the outset that Article 433 *terdecies*, paragraph 2, of the Criminal Code, rendered mandatory the confiscation of property used in the commission of an offence in cases referred to in certain other articles of the same Code, which covered offences such as those that had led to the applicant’s conviction in the present case. In addition, the impugned confiscation had not been decided by virtue of the discretionary power of a customs authority, but was a penalty under the criminal law.

*Even though,* the impugned confiscation had without doubt constituted an interference with the applicant’s peaceful enjoyment of his possessions, this confiscation concerned property that the courts found to have been used illegally and had been ordered with the aim of preventing its use for the commission of other offences and the resulting prejudice for the community. Therefore, even though the measure had entailed deprivation of property, it fell within the definition of “control of the use of property” under the second paragraph of Article 1 of Protocol No. 1. Being provided for by law, that interference pursued the legitimate aim, in accordance with the general interest, of **combating human trafficking** and the exploitation of foreigners in a precarious situation. Where property that had been used illegally was confiscated, the balance between that aim and the applicant’s fundamental rights depended on numerous factors and in particular the attitude of the property owner. It was therefore appropriate to ascertain whether the Belgian authorities had given due consideration to the extent of the applicant’s negligence or prudence, or at least to the relationship between his conduct and the offence in question.

In cases where confiscation was ordered as a penalty, the owner of the property in question had to be given the opportunity to claim his innocence, without which the fair balance between the protection of the right to the peaceful enjoyment of possessions and the requirements of the general interest would not be maintained. In the present case, proceedings had been brought against the applicant before the Liège Criminal Court for having “taken advantage, either directly or through an intermediary, of the particularly vulnerable situation of numerous foreign nationals as a result of their administrative, illegal or precarious situation, by renting immovable property, rooms or other premises with the intention of making an abnormal profit”.

In order to determine the nature and severity of the penalty to be applied, the Court of Appeal took into consideration the seriousness and particularly heinous nature of the offence which reflected, on the part of the defendant, an inadmissible disregard for human values and dignity, the purely mercenary nature of his conduct, the length of time over which the offences had been committed, and the defendant’s substantial criminal record. The Court of Appeal then ordered the confiscation of the property which was used for the commission of the offence, whilst limiting the measure, however, to the rooms and other premises that had been rented to the foreigners identified in the case file. Lastly, it ordered the return of other property which had only been seized as real evidence for the purposes of the investigation.

**In those circumstances, taking into account the margin of appreciation afforded to States in controlling “the use of property in accordance with the general interest”, in particular in the context of a policy aimed at combating criminal activities, the interference with the applicant’s right to the peaceful enjoyment of his possessions was not disproportionate to the legitimate aim pursued: *manifestly ill-founded*.**