

ECtHR - Chowdury and Others v Greece, Application No. 21884/15, 30 March 2017

Country of Applicant: Bangladesh

Date of Decision: 30-03-2017

Citation: Chowdury and Others v Greece, Application No. 21884/15, 30 March 2017

Court Name: European Court of Human Rights, First Section

Keywords: [Effective access to procedures](#) [Trafficking in human beings](#)

Relevant Legislative Provisions:

European Union Law

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) > [Article 4](#)

Headnote:

The Court finds that forced labour constitutes one form of exploitation subsumed by the definition of trafficking, as is clearly shown in Article 4a) of the Council of Europe Convention on Action against Trafficking in Human Beings.

The positive obligations under Article 4(2) of the ECHR must be interpreted in light of the Council of Europe Convention and the manner in which it has been interpreted by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings. Contracting States have three positive obligations under Article 4(2):

- a) an appropriate legal and regulatory framework for the criminalisation of human trafficking;
 - b) operational measures on the prevention of human trafficking and the protection of victims' rights
 - c) an effective investigation and judicial procedure.
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Facts:

The facts relate to 42 Bangladeshi nationals with undocumented status who worked in a strawberry farm in Manolada in Greece. The employers of the farm promised the workers' wages of 22 euros for seven hours

labour and 3 euros for each overtime hour, less 3 euros for food. They worked in plastic greenhouses picking strawberries every day from 7 a.m. till 7 p.m. under the supervision of armed guards. They lived in makeshift tents of cardboard boxes and nylon without running water and toilets. They were warned by their employers that they would only receive their salaries if they kept on working for them.

After striking several times in order to receive their wages a further group of Bangladeshi nationals were recruited to work in the fields. Fearing that the wages of those recruited for the 2012-2013 season would not be paid 100-150 of the workers demanded their salaries from their employers. They were subsequently shot at by an armed guard, who seriously injured several of the workers.

After the hospitalisation of many of the workers and a subsequent investigation by the Amaliada prosecutor, the Patras Criminal Court acquitted the four defendants of trafficking in human beings (Article 323A Greek Penal Code) on the ground that the objective element of the crime had not been established in the case. They convicted one of the guards and one of the employers for grievous bodily harm and unlawful use of firearms, later commuted to a financial sum. The Court noted that the workers were fully aware of the conditions of living and the amount of salary and had freely accepted them. Moreover, during their free time they could move freely in the region and there had been no proof that the workers free consent had been taken away from them, that they had been trapped and their vulnerability exploited. Indeed, the workers had the possibility to negotiate their salaries and their illegal stay in Greece had not been used as a mechanism by which to force the workers to continue working for their employers. The Court's decision was later appealed by the defendants, which is still pending. The applicants in turn requested the Prosecutor of the Court of Cassation to quash the decision of the Criminal Court since said Court had not adequately examined the allegation of human trafficking and that a correct application of the Greek Penal Code requires examining whether third country nationals' vulnerabilities had been capitalised upon in order to exploit them. The Prosecutor denied such a request, indicating that the conditions to appeal had not been met.

Before the European Court of Human Rights the applicants argued that they were subjected to forced labour and human trafficking and that Greece has failed to fulfil its positive obligation under Article 4 to protect them against these abuses, to conduct an effective investigation, and to prosecute the perpetrators.

Decision & Reasoning:

After assessing the admissibility of the claim, found to be satisfied given that the Greek court had not sufficiently examined the requirements of human trafficking and forced labour, the Court examined whether the migrant workers' circumstances fell within the scope of Article 4(2) of the ECHR.

The Court finds that forced labour constitutes one form of exploitation subsumed by the definition of trafficking, as is clearly shown in Article 4a) of the Council of Europe Convention on Action against Trafficking in Human Beings.

In the present case the Court found that the workers were in a situation of vulnerability given their undocumented status and the risk of being arrested, detained and expelled. Whilst the applicants had initially accepted the work of their own free will, given that they expected to be paid a salary, this situation had later changed due to the behaviour of their employers and the fact that if they stopped working their wages would never have been received. Notwithstanding that the applicants had received death threats from their employers if they stopped working for them, the Court found that their treatment did not fall under the definition of slavery under Article 4 of the Convention since their situation was not stagnant or unchanging, there was an expiry date (they were hired just for the season). However, the Court stated that the Patras Criminal Court had confused the definition of slavery with human trafficking and that the facts clearly demonstrated human trafficking and forced

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labour as defined in Article 3a of the Palermo Protocol and Article 4 of the Convention on Action against Trafficking in Human Beings. Therefore, the workers' circumstances fell within the scope of Article 4(2).

The Court then went on to examine Greece's positive obligations under Article 4. The Court noted that these positive obligations must be interpreted in light of the Council of Europe Convention and the manner in which it has been interpreted by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings. The Court examined three types of positive obligations.

The obligation to put in place an appropriate legal and regulatory framework

Since Greece had criminalised human trafficking at national level and had incorporated the relevant EU law in this area, EU Directive 2011/36, the Court found that Greece had conformed to this requirement.

Operational measures

The Court stated that the Council of Europe Convention has specified a series of measures on the prevention of human trafficking and the protection of victims' rights. Amongst these measures are the identification of victims of human trafficking by qualified staff and their physical psychological and social recovery. Noting that the authorities were aware of the situation of the migrant workers in the Manolada region and the abuses to which they were exposed, the Court highlighted that little was done to remedy their situation. Thus, the operational measures were not sufficient to prevent human trafficking and protect the applicants from the treatment they endured.

Effectiveness of the investigation and judicial procedure

The Court noted that for an investigation of exploitation to be effective, it must be pursued with reasonable diligence, acting urgently where it is possible to remove the individual from a deleterious situation and acting immediately where a situation is brought to their attention. In regard to one group of applicants, the Court found a procedural violation of Article 4(2) since the national authorities, by omitting to verify testimonies of the applicants, had failed to abide by their investigative obligations under the Article. Moreover, the prosecutor had failed to abide by the regulatory framework, namely Article 13 of the Council of Europe Convention, allowing for a delay between escaping his/ her trafficker and deciding on future cooperation with the authorities. This respite allows the victims to recover and recuperate from the treatment inflicted.

With regard to a second group of applicants, the Court, contrary to the finding of the Greek Court, found that restrictions upon freedom of movement cannot be a necessary element for qualifying a situation as forced labour and as human trafficking. A situation of trafficking can exist notwithstanding freedom of movement. Moreover, the punishment meted out by the Greek court reflected the narrow interpretation of the crime of human trafficking which was confused with the definition of slavery. Indeed, the applicants received 43 euros each as damages for grievous bodily harm despite the fact that Article 15 of the Council of Europe Convention requires states to indemnify victims and to establish a compensation fund for them. A procedural violation of Article 4(2) was therefore found with regards to this group.

Outcome:

The Court found:

A violation of Article 4(2)

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The Court provided a sum of 16 000 euros each to those who were applicants before the Patras Criminal Court and 12 000 euros each to the remaining applicants.

The Court provided a further sum of 4 363,64 between the applicants for court expenses.

Observations/Comments:

There were several third party interventions in this case, one of which was brought forward by the AIRE Centre. The AIRE Centre considered the necessary working conditions for Article 4(2) to be triggered, the degree of a restriction of liberty as well as a person's human dignity, the provisions of the European Social Charter and EU law concerning conditions of work.

Case Law Cited:

ECtHR- Paul and Audrey Edwards v. the United Kingdom, Application No. 46477/99

[ECtHR - Rantsev v. Cyprus and Russia, Application no. 25965/04, 10 October 2010](#)

ECtHR - Beyeler v. Italy [GC], Application No. 33202/96

ECtHR - Fressoz Roire v. France [GC], Application No. 29183/95

ECtHR - Azinas v Cyprus, Application No. 56679/00

ECtHR - Siliadin v. France (no. 73316/01)

ECtHR - Van der Musselse V. Belgium (No. 8919/80)

ECtHR - Nejdet Şahin and Perihan Şahin v Turkey [GC], no 13279/05

ECtHR - C.N. v. United Kingdom, no 4239/08

ECtHR - C.N. and V. v France, no 67724/09

ECtHR - Dink v Turkey, nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09

ECtHR - L.E v Greece, no 71545/12

ECtHR - A, B and C v. Ireland [GC], no 25579/05



Attachment(s): [AFFAIRE CHOWDURY ET AUTRES c. GR-CE.pdf](#)

Other sources cited:

Council Framework Decision of 19 July 2002 on combating trafficking in human beings

Convention against Transnational Organized Crime and the Protocols Thereto (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime).

The Council of Europe Convention on Action against Trafficking in Human Beings.

Authentic Language: French

State Party: Greece

National / Other Legislative Provisions:

Greece - Penal Code Article 323A

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