



ECHR finds rights violation in case of Croatian woman who alleged she was forced into prostitution

In today's **Chamber** judgment¹ in the case of [S.M. v. Croatia](#) (application no. 60561/14) the European Court of Human Rights held, by six votes to one, that there had been:

a violation of Article 4 (prohibition of slavery and of forced labour) of the European Convention on Human Rights.

The case concerned a Croatian woman's complaint that she had been forced into prostitution. She alleged in particular that the authorities had failed to respond adequately to her complaint and that Croatia lacked a proper legal framework to deal with such issues.

First, the Court ruled that Article 4 could be applied in cases such as the applicant's involving human trafficking and exploitation of women for the purposes of prostitution, even if there had been no international element to her case.

The Court then went on to find that, although there was an adequate legal framework in Croatia for criminalising trafficking in human beings, forced prostitution and exploitation of prostitution, there had been shortcomings in the authorities' investigation into her case. In particular, they had not interviewed all the possible witnesses and, in finding that she had voluntarily given sexual services to acquit the accused, had taken no account of international laws on human trafficking according to which the consent of the victim was irrelevant.

Principal facts

The applicant, Ms S.M., is a Croatian national who was born in 1990 and lives in Z.

The applicant lodged a criminal complaint in September 2012, alleging that a man had forced her into prostitution over several months in mid-2011. She alleged that the man, a former police officer, had driven her to meet clients, had made her give him half of the money she had earned from providing sexual services and had threatened her and punished her if she did not comply with his demands.

At the end of 2012 the man was indicted and the applicant was officially given the status of victim of human trafficking.

After an investigation, the man was brought to trial in 2013. However, he was acquitted of forcing the applicant into prostitution. The courts found the applicant's testimony incoherent and unreliable. They therefore concluded that the prosecution had failed to provide sufficient evidence for a conviction, and that the applicant had given sexual services voluntarily.

An appeal by the State Attorney's Office was dismissed in January 2014, while a constitutional complaint by the applicant was declared inadmissible in June of the same year.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying in particular on Article 4 (prohibition of slavery / prohibition of forced labour), the applicant complained of the lack of a legal framework to deal with the issues raised by her case and about the official response to her allegations.

The application was lodged with the European Court of Human Rights on 27 August 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Krzysztof **Wojtyczek** (Poland),
Ksenija **Turković** (Croatia),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court has already had to address the issue of human trafficking in several judgments, but the applicant’s case is the first occasion on which it has had to consider whether Article 4 was applicable to the trafficking and exploitation of women for the purposes of prostitution.

It ruled that not only trafficking itself but also exploitation of prostitution fell within the scope of Article 4 of the European Convention. Referring to international law in the area of human trafficking, the Court found that it was irrelevant that there had been no international element and that the applicant was actually a national of the respondent State. It cited in particular the Council of Europe’s Anti-Trafficking Convention, which had been ratified by Croatia, and which encompassed “all forms of trafficking in human beings, whether national or transnational”.

The Court went on to examine the circumstances of the applicant’s case and whether they showed if Croatia had met its obligations under the Convention, firstly, to have a legislative and administrative framework to prohibit and punish trafficking and to protect victims, and, secondly, to investigate allegations of trafficking.

As to the first set of obligations, the Court was satisfied that at the time there had been an adequate legal framework in Croatia for dealing with the offence alleged by the applicant, having regard to national legislation criminalising matters such as trafficking in human beings, forced prostitution and exploitation of prostitution. Furthermore, the applicant had been recognised as a victim of human trafficking by the Croatian authorities and provided with various forms of support and help, including the right to counselling and free legal aid. Moreover, during the hearing on her case, the accused had been removed from the courtroom immediately upon her request and she had given evidence in his absence.

However, as concerned the investigation into the applicant’s complaint, the Court found several shortcomings.

Among other things, it observed that the authorities had not interviewed key witnesses, including the applicant’s clients and other individuals who might have been able to testify as to the true nature of her relationship with the accused. Nor had they made any serious attempt to investigate her allegation of threats and of being financially dependent on him. Lastly, they had not assessed the possible impact of psychological trauma on her ability to clearly and consistently relate the circumstances of her exploitation, simply dismissing her testimony as unreliable.

In any case, by finding that the applicant had provided sexual services voluntarily and had not been coerced, the domestic courts had not taken into account international law in the area of human trafficking, including the Council of Europe Anti-trafficking Convention, according to which the consent of the victim was irrelevant.

Therefore the Court was not satisfied that the prosecuting authorities and the courts had submitted the applicant's case to the careful scrutiny required by Article 4 of the Convention to avoid undermining the deterrent effect of the criminal-law system in place. There had therefore been a procedural breach of Article 4.

[Just satisfaction \(Article 41\)](#)

The Court held that Croatia was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Koskelo expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.