



## Migrants who were subjected to forced labour and human trafficking did not receive effective protection from the Greek State

In today's **Chamber** judgment<sup>1</sup> in the case of [Chowdury and Others v. Greece](#) (application no. 21884/15) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 4 § 2 (prohibition of forced labour) of the European Convention on Human Rights.**

The case concerned 42 Bangladeshi nationals who did not have work permits and were subjected to forced labour. Their employers had recruited them to pick strawberries on a farm in Manolada (Greece) but failed to pay the applicants' wages and obliged them to work in difficult physical conditions under the supervision of armed guards.

The Court found, firstly, that the applicants' situation was one of human trafficking and forced labour, and specified that exploitation through labour was one aspect of trafficking in human beings<sup>2</sup>.

The Court then held that the State had failed in its obligations to prevent the situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences committed and to punish those responsible for the trafficking.

### 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 euros for seven hours' work and three euros 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 2013, March 2013 and April 2013 the workers went on strike demanding payment of their unpaid wages, but without success. On 17 April 2013 the employers recruited other 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 euros to the 35 workers who had been

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](http://www.coe.int/t/dghl/monitoring/execution).

2 Article 4 (a) of the Council of Europe Convention on Action against Trafficking in Human Beings.

recognised as victims – that is, 43 euros to each of them. The two convicted men lodged an appeal against that decision. The appeal is currently pending and has a suspensive effect.

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 “irrevocable”.

## Complaints, procedure and composition of the Court

Relying on Article 4 § 2 (prohibition of forced labour), the applicants alleged that they had been subjected to forced or compulsory labour; they further submitted that the State was under an obligation to prevent their being subjected to human trafficking, to adopt preventive measures for that purpose and to punish the employers.

The application was lodged with the European Court of Human Rights on 27 April 2015.

The Law Faculty of Lund University (Sweden), the International Trade-Union Confederation, the organisation Anti-Slavery International, the AIRE Centre (Advice for Individual Rights in Europe) and the PICUM (Platform for International Cooperation on Undocumented Migrants) were given leave by the President to intervene as third parties in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 (a) of the Rules of Court).

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

Kristina **Pardalos** (San Marino), *President*,  
Linos-Alexandre **Sicilianos** (Greece),  
Aleš **Pejchal** (the Czech Republic),  
Robert **Spano** (Iceland),  
Armen **Harutyunyan** (Armenia),  
Tim **Eicke** (the United Kingdom),  
Jovan **Ilievski** (the former Yugoslav Republic of Macedonia),

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

## Decision of the Court

### [Article 4 § 2 \(prohibition of forced labour\)](#)

#### **1. Human trafficking and forced labour**

The Court reiterated that human trafficking fell within the scope of Article 4 of the Convention<sup>3</sup> and that, according to Article 4 (a) of the Council of Europe Convention on Action against Trafficking in Human Beings, exploitation through labour was one aspect of human trafficking.

The Court noted that the domestic courts had interpreted and applied the concept of trafficking in human beings in a very restrictive manner, by more or less identifying it with servitude. However, the applicants’ situation did not amount to servitude. The fundamental distinguishing feature between servitude and forced or compulsory labour lay in the victims’ feeling that their condition was permanent and that the situation was unlikely to change. In the present case, the applicants could not have experienced this feeling, in that they were all seasonal workers. The facts at issue, and particularly the applicants’ working conditions, showed clearly that they amounted to human trafficking and forced labour, and corresponded to the definition of trafficking in human beings set

<sup>3</sup> See *Rantsev v. Cyprus and Russia*, no. 25965/04, § 282, ECHR 2010 (extracts).

out in Article 3a of the “Palermo Protocol”<sup>4</sup> and Article 4 of the Council of Europe’s Anti-Trafficking Convention. That being so, the Court concluded that the applicants’ situation fell within the scope of Article 4 § 2 of the Convention in so far as it concerned human trafficking and forced labour.

## **2. The State’s obligations under Article 4 § 2**

The States must put in place a legislative and administrative framework that prohibits and punishes forced or compulsory labour, servitude and slavery. Greece had largely complied with that obligation, in particular by ratifying the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings (see §§ 105 to 109 of the judgment for details).

The States were required to adopt a series of measures<sup>5</sup> to prevent trafficking and protect the rights of victims. In the present case, the Court noted that well before the events of 17 April 2013, the authorities had been aware of the situation in the Manolada strawberry plantations, their attention having been drawn to it by reports and press articles. Debates had been held in Parliament and three ministers had ordered inspections and the drafting of legislative texts aimed at improving the migrants’ situation. However, this mobilisation had not yielded any tangible results. In April 2008 the Ombudsman’s Office had alerted several ministers and State bodies, as well as the public prosecutor’s office, recommending that a series of measures be adopted. However, the authorities’ reaction had been on an *ad hoc* basis, and they had not, at least until 2013, provided a general solution to the problems faced by the Manolada migrant workers. 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. In consequence, the Court 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.

The States had to ensure that the investigation and judicial proceedings were effective. In cases involving exploitation, the authorities had to carry out an investigation capable of leading to the identification and punishment of those responsible. They had to act of their own motion once the matter had come to their attention.

**With regard to the applicants who did not take part in the procedure before the assize court:** 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, and alleging that they had been present at the scene of the incident on 17 April 2013 in order to demand their unpaid wages. Their complaint was dismissed, as the Amaliada prosecutor considered, among other points, that had they really been victims, they would have reported the matter to the police authorities on 17 April 2013 rather than waiting until 8 May 2013. The Court considered that by omitting to verify whether the allegations by this group of applicants were well-founded, the prosecutor had not complied with his obligation to carry out an investigation, and that in dismissing their request on the grounds that they had delayed in complaining to the police, the prosecutor had breached the regulatory framework governing trafficking in human beings. 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.

<sup>4</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).

<sup>5</sup> The Council of Europe Convention on Action against Trafficking in Human Beings recommends that a series of measures be adopted to prevent trafficking and protect the rights of victims.

**With regard to the applicants who took part in the proceedings before the assize court:** the Patras Assize Court acquitted the defendants of the charge of trafficking in human beings, finding, in particular, that it had not been absolutely impossible for the workers to protect themselves and that their freedom of movement had not been compromised in that they had been free to leave their jobs. The Court considered that a restriction on freedom of movement was not a condition *sine qua non* for classifying a situation as forced labour or even human trafficking. A trafficking situation could exist in spite of the victim's freedom of movement. Moreover, the Patras Assize Court had acquitted the defendants of the charge of human trafficking and had converted the prison sentence imposed on the two convicted individuals for serious bodily harm into a financial penalty of EUR 5 per day of imprisonment. The public prosecutor at the Court of Cassation had refused to appeal on points of law against the acquittal judgment. The assize court had ordered T.A. and one of the armed guards to pay a total amount of EUR 1,500, or EUR 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.

**In conclusion**, the Court held that there had been a violation of Article 4 § 2 of the Convention on account of the State's failure to fulfil its positive obligations under that provision, namely to prevent the human trafficking situation complained of, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking.

#### Article 41 (just satisfaction)

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

*The judgment is available only in French.*

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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.