



Austrian authorities complied with their duty under the European Convention to protect two alleged victims of human trafficking

In today's **Chamber** judgment¹ in the case of **J. and others v. Austria** (application no. 58216/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 4 (prohibition of forced labour) of the European Convention on Human Rights, and

no violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention.

The case concerned the Austrian authorities' investigation into an allegation of human trafficking. In particular, two Filipino nationals, who had gone to work as maids or au pairs in the United Arab Emirates, alleged that their employers had taken their passports away from them and exploited them. They claimed that this treatment had continued during a short stay in Vienna where their employers had taken them and where they had eventually managed to escape. Following a criminal complaint filed by the applicants against their employers in Austria, the authorities found that they did not have jurisdiction over the alleged offences committed abroad and decided to discontinue the investigation into the applicants' case concerning the events in Austria. In their complaint before the European Court, they argued in particular that what had happened to them in Austria could not be viewed in isolation, and that the Austrian authorities had a duty under international law to investigate also those events which had occurred abroad.

The Court notably found that there had been no obligation under the European Convention to investigate the applicants' recruitment in the Philippines or their alleged exploitation in the United Arab Emirates, as States are not required under Article 4 of the Convention to provide for universal jurisdiction over trafficking offences committed abroad.

Turning to the events in Austria, the Court concluded that the authorities had taken all steps which could have reasonably been expected in the situation. The applicants, supported by a government-funded NGO, had been interviewed by specially trained police officers, had been granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban had been imposed for their protection. Moreover, the investigation into the applicants' allegations about their stay in Vienna had been sufficient and the authorities' resulting assessment, given the facts of the case and the evidence available, had been reasonable. Any further steps in the case – such as confronting the applicants' employers – would not have had any reasonable prospect of success, as no mutual legal assistance agreement existed between Austria and the United Arab Emirates, and as the applicants had only turned to the police approximately one year after the events in question, when their employers had long left the country.

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.

Principal facts

The applicants, Ms J., Ms G., and Ms C., are three Filipino nationals who were born in 1984, 1982, and 1972 respectively and live in Vienna (Mrs J. and Mrs G.) and Switzerland (Mrs C.). Between 2006 and 2009 all three applicants went to work as maids or au pairs in Dubai (the United Arab Emirates) for the same family or relatives of the same family. They allege that their employers took away their passports, ill-treated and exploited them. Notably, they were forced to work extremely long hours without being paid their agreed wages, were physically and emotionally abused and threatened.

In July 2010 the applicants' employers took them on a short trip to Vienna. Like in Dubai, their passports remained with their employers and they had to work from the early hours of the morning to midnight or even later, taking care of all the employers' children and carrying out numerous domestic duties. A few days after their arrival, two of applicants were subjected to extreme verbal abuse when one of their employers' children went missing at the zoo. Deciding that the violence towards them was likely to escalate at any time and that they could not continue working in such conditions any longer, they escaped with the help of an employee at the hotel where they were staying who spoke Tagalog, the first applicant's mother tongue. The applicants subsequently found support within the local Filipino community in Vienna.

About nine months later, the applicants contacted LEFÖ, a local, government-financed NGO actively involved in supporting the victims of trafficking in human beings in Austria. Assisted by the NGO, in July 2011 they filed a criminal complaint against their employers. Accompanied by the NGO, they were interviewed by police officers specially trained in dealing with victims of human trafficking, and described in detail what had happened to them and how they had been treated by their employers. On the basis of the police report, the public prosecutor's office initiated an investigation under Article 104a of the Criminal Code which related to human trafficking. However, the investigation was discontinued in November 2011 as the prosecutor's office found that the Austrian authorities did not have jurisdiction over the alleged offences, which had been committed abroad by non-nationals. The prosecuting authorities later also specified that the applicants' complaints about their stay in Vienna – including having to look after children, wash laundry and cook food for no more than three days – did not in themselves amount to exploitation under Article 104a of the Criminal Code.

In March 2012 the decision to discontinue the investigation was confirmed by the Vienna Regional Criminal Court, which added that there was no reason to prosecute if a conviction was no more likely than an acquittal. In its view, there was also no obligation under international law to pursue an investigation concerning events allegedly committed abroad.

The applicants were subsequently granted a special residence and work permit for victims of human trafficking in Austria, and a personal data disclosure ban was imposed on the Central Register so that their whereabouts would not be traceable by the general public.

Complaints, procedure and composition of the Court

Relying on Article 4 (prohibition of forced labour) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicants alleged that they had been subjected to forced labour and human trafficking, and that the Austrian authorities had failed to carry out an effective and exhaustive investigation into their allegations. They argued in particular that what had happened to them in Austria could not be viewed in isolation, but had to be seen in the context of ongoing ill-treatment; therefore the Austrian authorities had had a duty under international law to investigate also those events which had occurred abroad.

The application was lodged with the European Court of Human Rights on 4 September 2012.

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

András Sajó (Hungary), *President*,
 Vincent A. De Gaetano (Malta),
 Nona Tsotsoria (Georgia),
 Paulo Pinto de Albuquerque (Portugal),
 Krzysztof Wojtyczek (Poland),
 Gabriele Kucsko-Stadlmayer (Austria),
 Marko Bošnjak (Slovenia),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

The Court decided to strike Ms C.'s application out of its list of cases because it considered that she had to have lost interest in pursuing her application as she had failed to inform her representative of her current whereabouts. Nor did it find any reason relating to respect for human rights, as defined in the Convention and its Protocols, which would require it to continue the examination of her application, the other two applicants having raised the same complaints which the Court has examined as below.

Article 4 (prohibition of forced labour)

First, the Court was satisfied that the Austrian authorities had complied with their duty to identify, protect and support the applicants as (potential) victims of human trafficking. The legal and administrative framework in place concerning the protection of (potential) victims of human trafficking in Austria had been sufficient, and the Austrian authorities had taken all steps which could have reasonably been expected in the situation. In particular, from the point when Ms J. and Ms G had contacted the police, they had been interviewed by specially trained police officers, were granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban had been imposed for their protection. Furthermore, during the domestic proceedings, the applicants had been supported by the NGO LEFÖ, which is funded by the Government. Furthermore, the applicants had been given legal representation, procedural guidance and assistance to facilitate their integration in Austria.

Secondly, as concerned the events abroad, the Court found that Austria had had no obligation under the European Convention to investigate the applicants' recruitment in the Philippines or their alleged exploitation in the United Arab Emirates. Under Article 4 of the Convention, States are not required to provide for universal jurisdiction over trafficking offences committed abroad.

Lastly, as concerned the events in Austria, the Court considered that the Austrian authorities' investigation in the applicants' case had been sufficient. The authorities' assessment of the case, namely that the applicants' complaints about their stay in Vienna did not in themselves amount to exploitation under Article 104a of the Criminal Code, was not unreasonable, given the facts of the case and the evidence available.

In relation to the applicants' argument that the events in the Philippines, the United Arab Emirates and Austria could not be viewed in isolation, the Court found that, even if they had been taken together, there was no indication that the Austrian authorities had failed to comply with their duty of investigation. The applicants had only turned to the police approximately one year after the events in question, when their employers had long left the country. Any further steps in the case – such as confronting the applicants' employers with the allegations made against them – would not have had any reasonable prospect of success, as no mutual legal assistance agreement existed between Austria and the United Arab Emirates. Indeed, the Government referred to past

experiences when even simple requests for legal assistance had been refused without discernible reason. The Court further emphasised that, under Austrian law, it was not possible to conduct criminal proceedings in the absence of the accused and, besides, the public prosecutor's office had room for manoeuvre when deciding which cases to pursue and which to discontinue.

In conclusion, the Austrian authorities had complied with their duty to protect the applicants as (potential) victims of human trafficking. There had therefore been no violation of Article 4 of the Convention.

Article 3 (prohibition of inhuman or degrading treatment)

For essentially the same reasons, the Court concluded that there had been no violation of Article 3 either.

Separate opinion

Judge Pinto de Albuquerque, joined by Judge Tsotsoria, expressed a concurring opinion. This opinion 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.