EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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# Recruiting and coercing women to work as "web models" correctly qualified as trafficking in human beings

In today's **Chamber** judgment[1] in the case of Jasuitis and Šimaitis v. Lithuania (application nos. 28186/19 and 29092/19) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 7 (no punishment without law)** of the European Convention on Human Rights.

The case concerned the applicants' conviction for trafficking in human beings. They had hired a number of women to work as "web models", but complaints were made by one woman that they had used threats and psychological violence to force her to carry out that work.

The Court found in particular that the relevant law in this case and its interpretation by the national courts had been clear. The applicants should have been able to see that their actions would have come under the definition of trafficking in human beings as set out in the Lithuanian Criminal Code.

## Principal facts

The applicants, Vilandas Jasuitis and Darius Šimaitis, are Lithuanian nationals who were born in 1988 and live in Šiauliai (Lithuania).

On an unspecified date the applicants placed a job advertisement online, seeking "attractive girls" for "online communication with people from different countries of the world in English". In 2012-13 they hired a number of women to work as "web models".

In April 2012, one of the women, P.Ch. – who at the time was still an 18-year-old secondary-school student – made a complaint to the police, stating that she had been subjected to threats and psychological violence by the applicants. She had initially agreed to communicate with clients online, but later had been told to show her clients her naked body, to dance striptease, to use sex toys and to do everything the clients requested, which she had refused to do.

An investigation was opened and the applicants were indicted following the identification of several women – often in vulnerable situations – in their employ, some of whom also made accusations against the applicants, including having been threatened, screamed at, and humiliated in front of a child, among other things. One witness, V.R., was both threatened and offered money to change her statements to the police.

In January 2017 the Šiauliai Regional Court found the applicants guilty of trafficking in human beings, along with several other crimes. It held that they had recruited (*verbuoti*) and forced (*vertė*) women to provide pornographic services which the applicants had profited from. That court confirmed that psychological violence and threats, along with making the victims dependent on them and recruiting them under false premises, had been part of the operating method of the applicants. The applicants appealed.

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.

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The Court of Appeal overturned the first-instance court and acquitted the applicants in February 2018, considering that the latter court had erred in its assessment of the facts.

The prosecution and one of the victims appealed against that verdict to the Supreme Court, arguing that the appellate court had wrongly assessed the issue of the victims' alleged vulnerability and dependency, and the applicants' deceit. The Supreme Court found for them, and found the applicants guilty of trafficking in human beings. They received a five-year prison sentence. The Supreme Court held that the Court of Appeal had not fully examined all the relevant evidence, departing from the standards of criminal procedure.

Regarding the specific charge of trafficking in human beings (Article 147 of the Criminal Code) committed in aggravated circumstances (as a group), the Supreme Court stated that that could involve any of the following: prostitution, pornography, or other forms of sexual abuse, forced labour or criminal activity, in which there was a transaction that benefited the trafficker. That could involve elements such as restriction of liberty, recruitment, using a victim's vulnerability, and deception. The court found that the applicants' actions had fallen within the criteria to be classed as trafficking in human beings.

## Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law) of the European Convention the applicants alleged that the national courts had interpreted the relevant law too widely.

The applications were lodged with the European Court of Human Rights on 22 and 27 May 2019.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

## Decision of the Court

The parties did not dispute that the relevant provision (Article 147 § 2 of the Criminal Code) as in force at the time was accessible to the applicants. The question remained whether the applicants could reasonably have foreseen that their actions would have been consistent with the essence of that offence.

The applicants relied heavily on the use of "slavery" or "slavery-like conditions" in Article 147 § 1, but the Court noted that slavery or slavery-like conditions were not an indispensable element for this crime. The wording overall was foreseeable and consistent with the essence of the offence. It found no blatant arbitrariness in its application.

"Actions" that were indicative of trafficking included sale, transfer, acquisition, recruitment and transportation of a person or holding that person captive under Article 147 § 1. The Court held that the action of advertising on the Internet, when coupled with their subsequent actions, did constitute "recruitment" within the meaning of the Criminal Code.

The relevant "means" included physical violence or threats, or otherwise depriving the victim of the possibility to resist, or taking advantage of the victim's dependency or vulnerability, or resorting to

deception. The Court, noting the facts established in the national courts, was satisfied that the applicants had been capable of assuming a dominant position over the women they had recruited and abusing their vulnerability in order to exploit them for the purpose of providing pornographic services, including by deceiving them. Furthermore, they had used "debt bondage" and coercion in various forms, among other tactics, as means to control their victims.

As regards the "purpose" of the exploitation, in the applicants' case they had made money from the services that the trafficking victims had been providing.

The Court concluded that the relevant provision (Article 147 § 1) was not ambiguous and the Lithuanian Supreme Court's interpretation had been precise and consistent, and had not been so expansive so as to be arbitrary. As a result, there had been no violation of Article 7 of the Convention.

*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.