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

Press Release
issued by the Registrar of the Court

ECHR 374 (2012)
11.10.2012

Underage girl kept in servitude by her aunt and uncle: the authorities failed to combat forced labour

In today's Chamber judgment in the case of **C.N. and V. v. France** (application no. 67724/09), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 4 (prohibition of slavery and forced labour) of the European Convention on Human Rights in respect of the first applicant (C.N.), as the State had not put in place a legislative and administrative framework making it possible to fight effectively against servitude and forced labour;

no violation of Article 4 in respect of the first applicant (C.N.) with regard to the State's obligation to conduct an effective investigation into instances of servitude and forced labour; and,

no violation of Article 4 in respect of the second applicant (V.).

The case concerned allegations of servitude or forced or compulsory labour (unremunerated domestic chores in their aunt and uncle's home) by two orphaned Burundi sisters aged 16 and ten years.

The Court concluded, in particular, that C.N. had been subjected to forced or compulsory labour, as she had had to perform, under threat of being returned to Burundi, activities that would have been described as work if performed by a remunerated professional – "forced labour" was to be distinguished from activities related to mutual family assistance or cohabitation, particular regard being had to the nature and volume of the activity in question. The Court also considered that C.N. had been held in servitude, since she had felt that her situation was unchanging and unlikely to alter. Finally, the Court found that France had failed to meet its obligations under Article 4 of the Convention to combat forced labour.

Principal facts

The applicants, two sisters (C.N. and V.), are French nationals, who were born in 1978 and 1984 respectively in Burundi. They left that country following the 1993 civil war, during which their parents were killed. They arrived in France in 1994 and 1995 respectively, through the intermediary of their aunt and uncle (Mr and Mrs M.), Burundi nationals living in France. The latter had been entrusted with guardianship and custody of the applicants and their younger sisters at a family meeting in Burundi. Mr and Mrs M. lived in a detached house in Ville d'Avray with their seven children, one of whom was disabled.

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

The applicants were accommodated in the basement of the house and alleged that they were obliged to carry out all household and domestic chores, without remuneration or any days off. C.N. claimed that she had also been required to take care of Mr and Mrs M.'s disabled son, including occasionally at night. The applicants allege that they lived in unhygienic conditions (no bathroom, makeshift toilets), were not allowed to share family meals and were subjected to daily physical and verbal harassment.

On 19 December 1995 the social action department for the Hauts de Seine *département* submitted a report on children in danger to the Nantes public prosecutor but, following an investigation by the police child protection team, it was decided not to take any further action.

V. was a pupil in the Ville d'Avray primary school from 1995, then in the general and vocational adapted learning department (Segpa) of a Versailles secondary school from 1997. In spite of difficulties in integrating and learning French, she obtained good school results. When she returned from school she did her homework, then helped her sister with the domestic chores. The applicants claimed that they were physically and verbally harassed on a daily basis by their aunt, who regularly threatened to send them back to Burundi.

On 4 January 1999 the association "Enfance et Partage" drew the attention of the Nanterre public prosecutor's office to the applicants' situation; on the following day the applicants ran away from Mr and Mrs M.'s home and were taken into the association's care.

The diplomatic immunity enjoyed by Mr M., a former Burundi government minister and a UNESCO employee, was lifted, as was that of his wife. During the preliminary investigation V. said that she had not dared to confide in the police in 1995 for fear of reprisals. In the context of the judicial investigation that was subsequently opened, C.N. and V. confirmed that their situation had gradually deteriorated since 1995, a point when "things were not (yet) going too badly" with their aunt. A medico-psychological report on the applicants found, among other things, that the psychological impact of the acts to which they had been subjected was characterised by mental suffering and, in the case of C.N., by an experience of fear and sense of abandonment, as the threat of being sent back to Burundi was synonymous in her opinion with a threat of death and abandonment of her younger sisters.

By a judgment of 17 September 2007 the Nanterre Criminal Court found Mr and Mrs M. guilty of all of the charges brought against them (for both spouses, having subjected individuals to working and living conditions that were incompatible with human dignity by taking advantage of their vulnerability or state of dependence; and for Mrs M., aggravated assault[2]). However, following the judgment of the Versailles Court of Appeal on 29 June 2009, only the finding that Mrs M. was guilty of aggravated intentional assault against V. was upheld. Mrs M. was ordered to pay a criminal fine of 1,500 euros (EUR) and to pay V. the sum of one euro as compensation for non-pecuniary damage, in line with her claim. The public prosecutor did not appeal on points of law against that judgment. The appeals on points of law lodged by the applicants and by Mrs M. were dismissed on 23 June 2010 by the Criminal Division of the Court of Cassation.

[2] Acts that were set out in and punishable under the Criminal Code

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman and degrading treatment), V. alleged that she had been subjected to ill-treatment. Under Article 4 (prohibition of slavery and forced labour), the applicants submitted that they had been held in servitude and required to perform forced or compulsory labour. Lastly, relying on Article 13 (right to an effective remedy), they also claimed that no effective investigation had been carried out in response to their allegations.

The application was lodged with the European Court of Human Rights on 23 December 2009.

The non-governmental organisation "Aire Center" was given leave to submit written observations as a third party in the proceedings (in accordance with Article 36 of the Convention).

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

Dean **Spielmann** (Luxembourg), *President*,
Mark **Villiger** (Liechtenstein),
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
Angelika **Nußberger** (Germany),
André **Potocki** (France),

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Article 3

As Mrs M. had been convicted with final effect by the domestic courts on charges of aggravated assault and V. had obtained compensation corresponding to the amount claimed by her, V. could no longer claim to be a "victim" within the meaning of Article 34 (individual applications) of the Convention. In consequence, the Court dismissed this complaint as manifestly ill-founded.

Article 4

The Court reiterated that Article 4 enshrined one of the basic values of democratic societies. The first paragraph of this Article made no provision for exceptions and no derogation from it was permissible, even in the event of war of other public emergency threatening the life of the nation within the meaning of Article 15 § 2 of the Convention.

The Court further reiterated[3] that "forced or compulsory labour" within the meaning of Article 4 § 2 meant work required "under the menace of any penalty" and performed against the will of the person concerned. It was necessary to distinguish "forced work" from work which could reasonably be required in respect of mutual family assistance or cohabitation, taking into account, among other things, the nature and amount of work in issue. In this case, C.N. had indeed been forced to work without having offered herself for it voluntarily. In addition, she had been obliged to perform so much work that, without her help, Mr and Mrs M. would have been required to have recourse to a professional – and thus paid – employee. The Court did not reach such a conclusion with regard to V., who did not provide evidence that she had contributed in a disproportionate manner to the upkeep and cleaning of Mr and Mrs M.'s house. As to the "menace of any

[3] Cases of Van der Mussele v. Belgium (23 November 1983) and Siliadin v. France (26 July 2005).

penalty", the Court noted that Mrs M. regularly threatened to send the applicants back to Burundi, a country that was synonymous for C.N. with death and abandonment of her young sisters. The Court therefore concluded that she had been subjected to "forced or compulsory work" within the meaning of Article 4 § 2, unlike V., in respect of whom the Court considered that the work performed did not fall within the scope of Article 4 § 2. Moreover, it was not established that the ill-treatment experienced by V. was directly related to the alleged exploitation; nor did they come within the scope of Article 4.

The Court then considered the existence of "servitude" within the meaning of Article 4 § 1. Servitude was "aggravated" forced or compulsory labour, based on the fact that it was impossible for the individual concerned to change his or her situation[4]. In the present case, the essential feature distinguishing servitude from forced or compulsory labour was the victims' feeling that their condition could not be altered and that there was no potential for change, in particular C.N.'s belief that she could not escape from Mr and Mrs M.'s guardianship without finding herself in an illegal situation, and her understanding that, without vocational training, she would be unable to find external employment. Since this situation had moreover lasted for four years, the Court considered that C.N. had been kept in a state of servitude by Mr and Mrs M. This was not the case for V., who, given that she was attending school, developed in another atmosphere and was less isolated. She had also had time to do her homework after school.

Finally, the Court examined the issue of France's obligations under Article 4. It noted, firstly, as in the *Siliadin* case, that, on the one hand, the relevant criminal-law provisions and their interpretation had not provided the victim with practical and effective protection and, on the other, the appeal to the Court of Cassation had concerned only the civil aspect of the case, since the public prosecutor had not appealed on points of law against the Court of Appeal's judgment of 29 June 2009. There had therefore been a violation of Article 4 in respect of C.N. with regard to the State's positive obligation to put in place an adequate legislative and administrative framework to combat servitude and forced labour effectively. As to the State's obligation to investigate situations of potential exploitation, the Court found that there were no grounds for calling into question the conclusions of the investigation conducted by the child protection team in 1995. It also emphasised that the applicants had admitted that the situation had not yet deteriorated at that time. In consequence, the Court concluded that there had been no violation of Article 4 with regard to the State's obligation to conduct an effective investigation into instances of servitude and forced labour. Having regard to this conclusion, it did not consider it necessary to examine separately the applicants' complaint under Article 13.

Just satisfaction (Article 41)

The Court held that France was to pay C.N. 30 000 euros (EUR) to cover all heads of damage.

The judgment is available only in French.

Press contacts

[4] Commission Report in the case of Van Droogenbroeck v. Belgium of 9 July 1980 (available only in French).

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)

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.