

## Lack of specific legislation criminalising domestic servitude made investigation into victim's allegations ineffective

In today's Chamber judgment in the case of [C.N. v. the United Kingdom](#) (application no. 4239/08), which is not final<sup>1</sup>, 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.

The case concerned allegations of domestic servitude by a Ugandan woman who complained that she had been forced into working as a live-in carer.

The Court found that the legislative provisions in force in the United Kingdom at the relevant time had been inadequate to afford practical and effective protection against treatment contrary to Article 4. Due to this absence of specific legislation criminalising domestic servitude, the investigation into the applicant's allegations of domestic servitude had been ineffective.

### Principal facts

The applicant, Ms C.N., is a Ugandan national who was born in 1979. She left Uganda for the United Kingdom in September 2002 with the help of her cousin, S., who enabled her to enter the country with a false passport and visa. According to the applicant, her purpose was to escape from the sexual and physical violence which she had experienced in Uganda.

In early 2003 Ms C.N. began to work as a live-in carer for an elderly Iraqi couple ("Mr and Mrs K"). She alleged that she was permanently on-call day and night as Mr K. suffered from Parkinson's disease. According to Ms C.N., her salary was sent to the agent who had arranged her work with the K family; he then passed a percentage of that money to S. on the apparent understanding that it would be paid to her. However, she denied having received significant payment for her labour. During that time, her passport was also retained.

In August 2006, she collapsed in a bank and spent a month in hospital, where she was diagnosed as HIV positive and suffering from psychosis. Following her discharge from hospital, Ms C.N. was housed by the local authority and made an application for asylum, which was refused.

After the applicant's solicitor had written to the police in April 2007, the Metropolitan Police Human Trafficking Team commenced an investigation and interviewed Ms C.N. They concluded that there was no substantial evidence of trafficking in her case. The

<sup>1</sup> 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)

Head of Legal Services at the United Kingdom Human Trafficking Centre<sup>2</sup> further advised that while the applicant worked with the K family she was well looked after and given some money. There was, however, a dispute over money and it might have been that "her cousin kept more than he should have done".

After Ms C.N.'s solicitor had asked the police to consider prosecutions for other offences, including slavery or forced labour, the police began to conduct further investigations in January 2009. In their letter to Ms C.N.'s solicitor in August 2009, the police wrote that it had been decided to conclude the investigation, based in particular on the conclusions of the Human Trafficking Centre that "the circumstances of Ms N.'s case did not appear to constitute an offence of trafficking people for the purposes of exploitation contrary to the Asylum and Immigration Act 2004".

On 6 April 2010 Section 71 of the Coroners and Justice Act 2009 came into force and made slavery, servitude and forced or compulsory labour criminal offences punishable by a fine and/or up to fourteen years' imprisonment. This provision did not have retrospective effect.

## Complaints, procedure and composition of the Court

Relying on Article 4 (prohibition of slavery and forced labour), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy), the applicant alleged that the treatment to which she had been subjected had amounted to domestic servitude and that the authorities had been unable to investigate her case owing to the absence of legislation in the United Kingdom at the time specifically criminalising domestic servitude and forced or compulsory labour.

The application was lodged with the European Court of Human Rights on 24 January 2008.

The Aire Centre and the Equality and Human Rights Commission were granted leave to make written submissions as third parties.

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

Lech **Garlicki** (Poland), *President*,  
Nicolas **Bratza** (the United Kingdom),  
Päivi **Hirvelä** (Finland),  
George **Nicolaou** (Cyprus),  
Ledi **Bianku** (Albania),  
Zdravka **Kalaydjieva** (Bulgaria),  
Nebojša **Vučinić** (Montenegro),

and also Lawrence **Early**, *Section Registrar*.

## Decision of the Court

### Article 4

The Court noted that the authorities had first been made aware of the applicant's allegations of domestic servitude after she had collapsed in a bank in August 2006. In her subsequent application for asylum, she had complained in particular that she had been forced to work for the K family without remuneration. Furthermore, in April 2007

<sup>2</sup> A multi-agency organisation based in Sheffield, providing a central point of expertise in the field of human trafficking.

her solicitor had asked the police to investigate her case and during the interview by the Human Trafficking Team, Ms C.N. had set out her domestic servitude complaints. The Court observed that the circumstances of her case had been remarkably similar to the facts of the *Siliadin v. France*<sup>3</sup> case, in which the Court confirmed that Article 4 entailed a specific positive obligation on member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour.

The Court therefore considered that the applicant's complaints had given rise to a credible suspicion of domestic servitude, which in turn had placed the British authorities under an obligation to investigate those complaints. The Court noted in that connection that the authorities' investigation into the applicant's complaints had strongly indicated that her allegations had not been inherently implausible.

In view of its findings in the *Siliadin* judgment - that the provisions of the French Criminal Code were too restrictive to protect the applicant's rights under Article 4 - the Court could only conclude that the legislative provisions in force in the United Kingdom at the time had been inadequate to afford practical and effective protection against treatment contrary to Article 4. Indeed, the authorities had been limited to investigating and penalising criminal offences which often - but not necessarily - accompanied the offences of slavery, servitude and forced or compulsory labour. Victims of domestic servitude who had not also been victims of one of these related offences had been left without any remedy.

The Court then examined whether this lack of specific legislation criminalising domestic servitude had prevented the domestic authorities from properly investigating the applicant's complaints. It was concerned by the fact that the investigation had been carried out by a specialist trafficking unit who nearly exclusively focused on the offence of trafficking for exploitation as set out in the Asylum and Immigration Act 2004, when domestic servitude was, as indicated in the third party interventions<sup>4</sup>, a specific offence, distinct from trafficking and exploitation.

Consequently, as domestic servitude involved a complex set of dynamics, due weight had to be given to subtle ways an individual could fall under the control of another, which the domestic authorities had been unable to do in Ms C.N.'s case, in the absence of a specific offence of domestic servitude. In particular, no attempt had been made to interview S. and no apparent weight had been attributed to the applicant's allegations that her passport had been taken from her, that S. had not kept her wages for her as agreed and that she had been threatened with denunciation to the immigration authorities, even though these factors had been identified by the International Labour Organization as indicators of forced labour.

The Court concluded that the investigation into Ms C.N.'s allegations of domestic servitude had been ineffective due to the absence of specific legislation criminalising such treatment in the United Kingdom at the relevant time, in breach of Article 4 of the Convention.

### Other articles

Having regard to its findings under Article 4, the Court considered that it was not necessary to examine the applicant's complaints under Articles 8 and 13.

<sup>3</sup> [Siliadin v. France](#), no. 73316/01, 26.07.2005.

<sup>4</sup> By the Aire Centre and the Equality and Human Rights Commission (§§ 61-64 of the judgment)

### Just satisfaction (Article 41)

The court held that the United Kingdom was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 20,000 in respect of costs and expenses.

*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.