



Court finds shortcomings in Croatian authorities' investigation into an allegation of forced prostitution

In today's **Grand Chamber** judgment¹ in the case of **S.M. v. Croatia** (application no. 60561/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 4 (prohibition of slavery / prohibition of forced labour) of the European Convention on Human Rights.

The case concerned a Croatian woman's complaint of human trafficking and forced prostitution.

The Court took the opportunity via the applicant's case to clarify its case-law on human trafficking for the purpose of exploitation of prostitution. It pointed out in particular that it relied on the definition under international law to decide whether it could characterise conduct or a situation as human trafficking under Article 4 of the Convention and therefore whether that provision could be applied in the particular circumstances of a case.

It also clarified that the notion of "forced or compulsory labour" under Article 4 of the Convention aimed to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether, in the particular circumstances of a case, they were related to the specific human trafficking context.

It found that Article 4 could be applied in the applicant's case as certain characteristics of trafficking and forced prostitution had arguably been present, such as abuse of power over a vulnerable individual, coercion, deception and harbouring. In particular, the applicant's alleged abuser was a policeman, while she had been in public care from the age of 10, and he had first contacted her by Facebook, leading her to believe that he would help her to find a job. Instead, he had arranged for her to provide sexual services, either in the flat he had rented or by driving her to meet clients.

That situation meant that the prosecuting authorities had been under an obligation to investigate the applicant's allegations. However, they had not followed all obvious lines of enquiry, notably they had not interviewed all possible witnesses, and therefore in the court proceedings it had been a question of the applicant's word against her alleged abuser's. Such shortcomings had fundamentally undermined the domestic authorities' ability to determine the true nature of the relationship between the applicant and her alleged abuser and whether she had indeed been exploited by him.

Principal facts

The applicant, Ms S.M., is a Croatian national who was born in 1990 and lives in Z.

The applicant lodged a criminal complaint in September 2012, alleging that a man, T.M., had forced her into prostitution over several months in mid-2011. She alleged that T.M., a former police officer, had initially contacted her via Facebook as a friend of her parents, promising to help her find a job. However, at a first meeting he had driven her to a man's house to provide sexual services, assuring her that it was only until she found a job. That situation had then led to her having regular clients, either in the flat he had arranged for them to live in or by driving her to meet them. She alleged that she had been under T.M.'s control, that he had made her give him half of the money she had earned from providing sexual services and that he had threatened her and punished her if she did not

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

comply with his demands. She had eventually telephoned a friend whose boyfriend had helped her to escape and then stayed with her friend and friend's mother for the next six months. When T.M. started contacting her again via Facebook with threatening messages, she had decided to turn to the police.

The police carried out a preliminary investigation, and established that T.M. had a previous conviction for procuring prostitution using force and for rape. They searched T.M.'s premises and his car, and found condoms, two automatic rifles, a hand grenade and a number of mobile phones.

At the end of 2012 T.M. was indicted and the applicant was officially given the status of victim of human trafficking.

After an investigation, T.M. was brought to trial in 2013. However, he was acquitted of forcing the applicant into prostitution. The courts found the applicant's testimony incoherent and unreliable, in particular because it contradicted in places the evidence provided by the friend who had helped her to escape. The courts therefore concluded that the prosecution had failed to provide sufficient evidence for a conviction, and that the applicant had given sexual services voluntarily.

An appeal by the State Attorney's Office was dismissed in January 2014, while a constitutional complaint by the applicant was declared inadmissible in June of the same year.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 August 2014.

Relying in particular on Article 4 (prohibition of slavery / prohibition of forced labour) of the European Convention on Human Rights, the applicant complained of an inadequate official procedural response to her allegations.

In its Chamber [judgment](#) of 19 July 2018, the European Court of Human Rights held, by six votes to one, that there had been a violation of Article 4 of the Convention.

On 3 December 2018 the Grand Chamber Panel accepted the Croatian Government's request that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber).

The following organisations were granted leave to intervene in the written proceedings as third parties: the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), *Clinique doctorale de droit international des droits de l'homme (Faculté de droit d'Aix-en-Provence)*, the Research Centre *L'altro diritto onlus* (University of Florence), and the group of researchers Bénédicte Bourgeois (University of Michigan), Marie-Xavière Catto (University Paris I Panthéon-Sorbonne) and Michel Erpelding (Max Planck Institute Luxembourg for Procedural Law).

A Grand Chamber hearing was held in the Human Rights Building, Strasbourg, on 15 May 2019.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Angelika **Nußberger** (Germany),
Ksenija **Turković** (Croatia),
Síofra **O'Leary** (Ireland),
Vincent A. **De Gaetano** (Malta),
Julia **Laffranque** (Estonia),
Valeriu **Griţco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),

Georges Ravarani (Luxembourg),
Pere Pastor Vilanova (Andorra),
Georgios A. Serghides (Cyprus),
María Elósegui (Spain),
Arnfinn Bårdsen (Norway),
Darian Pavli (Albania),

and also Roderick Liddell, *Registrar*.

Decision of the Court

First, the Court took the opportunity via the applicant's case to clarify its case-law on human trafficking for the purpose of exploitation of prostitution.

It reiterated that human trafficking came within the scope of Article 4 of the Convention. It noted, however, that that provision referred to three concepts, slavery, servitude and forced or compulsory labour, without defining them or the notion of trafficking.

The Court had thus previously sought guidance in international law when dealing with those concepts. In particular, international law defined the crime of trafficking as a combination of three elements: an action (such as recruitment, transportation, transfer, harbouring or receipt of persons); means (involving the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to gain control over another person); and, purpose (such as the exploitation of the prostitution of others or other forms of sexual exploitation).

Unless those three elements of the international definition were present, the Court therefore concluded that it was not possible to characterise conduct or a situation as human trafficking under Article 4 of the Convention.

The Court further clarified that the concept of human trafficking covered both national and transnational trafficking in human beings, irrespective of whether or not it was connected with organised crime. Moreover, the notion of "forced or compulsory labour" under Article 4 of the Convention aimed to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether, in the particular circumstances of a case, they were related to the specific human trafficking context.

Whether a particular situation involved all the elements of "human trafficking" and/or gave rise to a separate issue of forced prostitution was a factual question which had to be examined in the light of all the relevant circumstances of a case.

The Government argued that there was no human trafficking in the applicant's case as she had not been threatened, subjected to the use of force or other forms of coercion, which would come under the element of "means" in the international definition. It added that other elements had also been missing: namely, T.M. had not confiscated the applicant's papers, he had not deprived her of her liberty, she had had her mobile phone and the possibility to contact others and she had not been without any income as she had shared her earnings with T.M. For those reasons, the Government contended that Article 4 was thus not applicable in the applicant's case.

The Court, on the other hand, noted that T.M. had allegedly first contacted the applicant via Facebook, which was one of the recognised "means" used by traffickers to recruit their victims. That was also true of the alleged promise of employment, accompanied by the applicant's belief that she had no reason for concern. Furthermore, the applicant's allegations that T.M. had arranged accommodation so that she could provide sexual services suggested the element of harbouring as one of the constituent "actions" of trafficking. Moreover, the applicant's personal situation

undoubtedly suggested that she had belonged to a vulnerable group, while T.M.'s position and background meant that he had been capable of assuming a dominant position over her and abusing her vulnerability.

In sum, the applicant had made an arguable claim and there had been *prima facie* evidence that she had been the victim of treatment contrary to Article 4 of the Convention, namely human trafficking and/or forced prostitution. The Court therefore rejected the Government's argument concerning the applicability of Article 4 of the Convention.

The Court considered that that situation had in turn triggered the domestic authorities' duty under the Convention to investigate the applicant's allegations. As explained in the Court's case-law, that meant instituting and conducting an investigation capable of leading to the establishment of the facts and of identifying and – if appropriate – punishing those responsible. In order to do that, the authorities had to take whatever reasonable steps they could to collect evidence.

Although the prosecuting authorities – namely, the police and the relevant State Attorney's Office – had reacted promptly to the applicant's allegations against T.M., in their investigation they had failed to follow some obvious lines of enquiry.

They had not made any effort to enquire into the applicant's and T.M.'s Facebook exchanges, even though such contacts represented one of the recognised ways used by traffickers to recruit their victims. They had not obtained evidence from the applicant's parents, in particular her mother who had apparently previously had contact and difficulties with T.M. They had not attempted to identify or question the owner of the flat or the neighbours where the applicant and T.M. had lived. Nor had they interviewed the mother or the boyfriend of the friend she had telephoned for help in order to clarify the inconsistencies between the applicant and her friend's statements.

Thus, instead of following such obvious lines of enquiry, the prosecuting authorities had relied heavily on the applicant's statement and had, in essence, created a situation in the subsequent court proceedings where her allegations simply had to be pitted against the denial of T.M., without much further evidence being presented.

Indeed, GRETA and other international bodies had stressed that one of the requirements of effective investigation and prosecution of human trafficking offences was to avoid overreliance on the victim's testimony alone, by clarifying and supporting it with other evidence. Moreover, a victim's psychological trauma had to be taken into account and any other number of reasons for reluctance to cooperate with the authorities.

The Court concluded that those shortcomings in the conduct of the case by the prosecuting authorities had fundamentally undermined the domestic authorities' – including the relevant courts' – ability to determine the true nature of the applicant's and T.M.'s relationship and whether the applicant had been exploited by him as she alleged.

Accordingly, the manner in which the criminal-law mechanisms had been implemented in the case had been flawed, in violation of the respondent State's procedural obligation under Article 4 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Croatia was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Turković, Pastor Vilanova and Serghides each expressed a concurring opinion, while judges O'Leary and Ravarani expressed a joint concurring opinion. These opinions are annexed to the judgment.

Press Release

The judgment is available in English and 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.