



## Trafficking victim has right to seek compensation from trafficker

In today's **Chamber judgment**<sup>1</sup> in the case of [Krachunova v. Bulgaria](#) (application no. 18269/18) 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 Ms Krachunova's attempts to obtain compensation for the earnings from sex work that X, her trafficker, had taken from her. The Bulgarian courts had refused compensation, stating she had been engaged in prostitution and returning the earnings from that would be contrary to "good morals".

The Court held that States had an obligation to enable victims of trafficking to claim compensation for lost earnings from traffickers, and that the Bulgarian authorities had failed to balance Ms Krachunova's right under Article 4 to make such a claim with the interests of the community, who were unlikely to find the payment of compensation in such a situation immoral.

This was the first time that the European Court had found that a trafficking victim had a right to seek compensation in respect of pecuniary damage from her trafficker under Article 4.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

### Principal facts

The applicant, Daniela Danailova Krachunova, is a Bulgarian national who was born in 1985 and lives in Koshava (Bulgaria).

In April 2012, following a row with her parents, with whom her relationship was difficult, the applicant left home to live with X, his partner, and his four children, in the village of Novachene, about 70 km from Sofia. X's main occupation was driving sex workers to and from work. He was known to the police for, among other things, being an associate of pimps.

The applicant began sex work as she "needed the money" and was curious about whether she "would be able to earn as much as the other girls". By May 2012 she was working every day on the Sofia ring road. By July of that year, she wanted to quit, but alleged that X had beaten and threatened her. In August that year she ran away to her village.

X found her and took her back to his house. He took her identity card. She returned to sex work as she felt she had no choice. From that time on, X took all her earnings, buying her just what she needed and giving her pocket money.

In February 2013, the applicant was arrested. X was summoned to the police station, where he handed over her identity card (which he had on his person), claiming that he had been keeping it for her to avoid its being stolen. The police opened an investigation against X.

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](http://www.coe.int/t/dghl/monitoring/execution).

The applicant was given leave to join the trial before the Sofia District Court as a private prosecutor and to claim damages against X. She claimed 16,000 Bulgarian leva (BGN – 8,181 euros (EUR)) as the earnings he had taken from her, and BGN 8,000 in non-pecuniary damages. However, the court stated at its first hearing that her claim for pecuniary damages could not be examined as it concerned money earned through “lewd and immoral acts”. X was found guilty of trafficking in human beings and of inciting the applicant to engage in prostitution for gain. Apart from a custodial sentence and a fine, he was ordered to pay compensation of BGN 2,000 to the applicant in respect of non-pecuniary damage.

X appealed, and a retrial was ordered. In the retrial, the applicant claimed BGN 22,500 in respect of lost earnings, as the minimum that X had taken from her, and argued that prostitution was not an offence since it was subject to taxation and had not been expressly criminalised.

In January 2017 X was convicted of trafficking in human beings only. He received a suspended prison sentence, probation measures, and a fine. He was also ordered to pay the applicant compensation of BGN 8,000 in respect of non-pecuniary damage, but her claim as regards pecuniary damage was dismissed. The court reasoned that “Each contract for sexual services made between [the applicant] and the respective client was void as infringing good morals ... and there [could] be no question of damages”.

In the final judgment, the Sofia City Court upheld the retrial judgment in December 2017.

## Complaints, procedure and composition of the Court

Relying on Article 4 (prohibition of slavery and forced labour) and 13 (right to an effective remedy), Ms Krachunova complained that there had been no legal avenue for her to obtain compensation in respect of earnings from sex work that had been taken away from her.

The application was lodged with the European Court of Human Rights on 11 April 2018.

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

**Pere Pastor Vilanova** (Andorra), *President*,  
**Jolien Schukking** (the Netherlands),  
**Yonko Grozev** (Bulgaria),  
**Darian Pavli** (Albania),  
**Ioannis Ktistakis** (Greece),  
**Andreas Zünd** (Switzerland),  
**Oddný Mjöll Arnardóttir** (Iceland),

and also **Olga Chernishova**, *Deputy Section Registrar*.

## Decision of the Court

The Court was satisfied that the applicant had been a victim of human trafficking, noting, among other points, the control X had had over her access to money, that he had allegedly hit her, and that he had had intimate relations with her (traffickers often use emotional involvement as a means to control their victims). The question was whether there was a positive obligation on the State to provide an avenue for trafficked individuals to claim compensation for lost earnings from their traffickers.

The Court reiterated that Article 4 conferred positive obligations on the States, including putting in place a legislative and administrative framework that prohibited and punished trafficking, taking operational measures to protect victims in some cases, and investigating situations of potential trafficking.

Those positive obligations could extend to the way in which the law regulated certain matters, including the seeking and awarding of damages. It was not decisive that the text of Article 4 was silent on whether it laid down an obligation to enable victims to sue their traffickers in respect of lost earnings; specific obligations of that kind had been read into other Convention provisions whose text was equally silent on such points. There were strong arguments in favour of reading such an obligation into Article 4. Together with Articles 2 (right to life) and Article 3 (prohibition of torture), it enshrined one of the basic values of the democratic societies making up the Council of Europe, and trafficking was incompatible with those values. It had long been accepted that the combat against it had to be guided by a comprehensive approach. After-the-fact responses, such as investigation and punishment, were essential for deterrence, but could not wipe away the material harm suffered by its victims. The possibility for them to seek compensation in respect of, in particular, withheld earnings could redress the full extent of the harm suffered by them. It would also give them the financial means to rebuild their lives. Such a mechanism would, moreover, go some way towards ensuring that traffickers could not enjoy the fruits of their offences, thus reducing the incentives to engage in trafficking.

It could hence be concluded that Article 4, interpreted in a way rendering its safeguards practical and effective, laid down a positive obligation to enable the victims of trafficking to claim compensation from their traffickers in respect of lost earnings.

In support of this conclusion, the Court referred to relevant international treaties, which set out a duty to allow trafficking victims to seek compensation, including the [Palermo Protocol](#) (Article 6 § 6) and the [Anti-Trafficking Convention](#) (Article 15 § 3), both of which were in force in all Contracting States.

There was, moreover, a trend – most prominently in the United States of America and Canada, but also in some European States – Austria, Belgium, Denmark, France, Germany, the Netherlands, Norway and the United Kingdom – towards enabling trafficking victims to recover from their traffickers the gains that the latter have realised by exploiting them, while arguably only one Contracting State apart from Bulgaria specifically barred such claims.

The Bulgarian courts had referred to the criminalisation of income derived from prostitution in Bulgarian law and to “good morals” in dismissing the applicant’s claim for compensation from X. In this regard, the Court noted that the offence, set out in Article 329 § 1 of the Bulgarian Criminal Code, of earning income in a prohibited or immoral way, reflected outdated social attitudes left over from the totalitarian communist regime. Indeed, the Article had been declared unconstitutional by the Bulgarian Constitutional Court in September 2022. The alleged illegality of the applicant’s earnings had therefore not been an adequate ground to dismiss her claim.

Concerning the question of “good morals”, the Court stated that human rights should be the main criterion in designing and implementing policies on prostitution and trafficking. It was hard to imagine in this case that ordering X to return the money taken from the applicant to her would have offended public morals. Even if there existed sound public-policy reasons to dismiss a claim relating to earnings obtained through prostitution (for instance, it could be argued that upholding such a claim might be seen as condoning prostitution or encourage some people to engage in it), in this case such reasons came up against the countervailing and undoubtedly compelling public policy against trafficking and in favour of protecting its victims, to which not only the Court but also the Bulgarian authorities themselves attached considerable significance.

The Court therefore concluded that the Bulgarian courts had failed to adequately balance the applicant’s rights under Article 4 against the interests of the community. There had thus been a violation of that Article.

### Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicant 6,000 euros (EUR) in respect of non-pecuniary damage, and EUR 3,100 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.