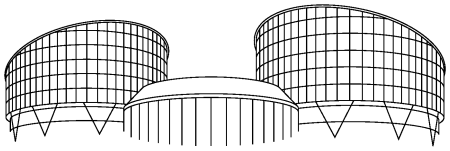

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CHOWDURY AND OTHERS v. GREECE

(Application no. 21884/15)

JUDGMENT

STRASBOURG

30 March 2017

This judgment is final but it may be subject to editorial revision.

In the case of Chowdury and Others v. Greece,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Kristina Pardalos, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Robert Spano,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 7 March 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 21884/15) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by forty-two Bangladeshi nationals ("the applicants"), whose names are listed in an annex hereto, on 27 April 2015.

2. The applicants were represented by Mr V. Kerasiotis, Mr Karavias and Ms Papamina (members of the Greek Council for Refugees), lawyers practising in Athens, and Mr J. Goldston and Mr S. Cox, respectively director and lawyer of the Open Society Justice Initiative. The Greek Government ("the Government") were represented by their Agent's deputies, Mr K. Georghiadis and Ms K. Nasopoulou, Advisers at the State Legal Council. Written comments were received from the Law School of Lund University in Sweden, the International Trade Union Confederation, the organisation Anti-Slavery International, the AIRE Centre (Advice for Individual Rights in Europe) and PICUM (Platform for International Cooperation on Undocumented Migrants), the President having given them leave to intervene in the written proceedings as third parties (Articles 36 § 2 of the Convention and Rule 44 § 3 (a) of the Rules of Court.

3. The applicants alleged that their work in strawberry fields in Manolada, Greece, amounted to forced labour and that their situation constituted human trafficking (Article 4 of the Convention).

4. On 9 September 2015 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Bangladeshi migrants living in Greece without a work permit, were recruited on different dates between October 2012 and February 2013 in Athens and other places, to work on the region's biggest strawberry farm, at Manolada, a village of two thousand inhabitants in the regional district of Elis, in the western part of the Peloponnese peninsula. In that area there are a number of production units, of various sizes, specialising in the intensive cultivation of strawberries. Exports account for 70% of the local production, which covers 90% of the Greek market. Most of the workers are irregular migrants from Pakistan and Bangladesh. Some are employed on the farms permanently and others only on a seasonal basis.

6. The production unit in question was run by T.A. and N.V., the applicants' employers.

The applicants were among a total of 150 workers divided into three teams, each one headed by a Bangladeshi national who reported to T.A.

7. The workers had been promised a wage of 22 euros (EUR) for seven hours' work and three euros for each hour of overtime, with three euros per day deducted for food. They worked in greenhouses every day from 7 a.m. to 7 p.m. picking strawberries under the supervision of armed guards employed by T.A. They lived in makeshift shacks made of cardboard, nylon and bamboo, without toilets or running water. According to them, their employers had warned them that they would only receive their wages if they continued to work for them.

8. On three occasions – in late February 2013, mid-March 2013 and on 15 April 2013 – the workers went on strike demanding payment of their unpaid wages, but without success.

On 17 April 2013 the employers recruited other Bangladeshi migrants to work in the fields. Fearing that they would not be paid, between one hundred and one hundred and fifty workers from the 2012-2013 season who worked in the fields started moving towards the two employers, who were on the spot, in order to demand their wages. One of the armed guards then opened fire against the workers, seriously injuring thirty of them, including twenty-one of the applicants (listed under numbers 4, 6, 7, 8, 9, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 33, 38, 39 and 42). The wounded were taken to hospital and were subsequently questioned by police.

9. On 18 and 19 April 2013 the police arrested N.V. and T.A., together with the guard who had fired the shots and another armed overseer. During the preliminary investigation by the local police, a number of other Bangladeshis, including some who had worked with the suspects, were used as interpreters.

10. On 19 April 2013 the Amaliada public prosecutor charged the four suspects with attempted murder and other offences, and also, in response to a request from the prosecutor at the Court of Cassation, with human trafficking under Article 323A of the Criminal Code. The charge of attempted murder was subsequently reclassified as grievous bodily harm.

11. On 22 April 2013 the Amaliada public prosecutor acknowledged that thirty-five workers – including four team-leaders –, who had all been injured during the incident, were victims of human trafficking, thus making them lawful residents under section 12 of Law no. 3064/2002 (on the repression of human trafficking, crimes against sexual freedom, child pornography, and more generally sexual exploitation).

12. On 8 May 2013 one hundred and twenty other workers, including the twenty-one applicants who had not been injured (listed under numbers 1, 2, 3, 5, 10, 11, 12, 13, 16, 17, 18, 27, 30, 31, 32, 34, 35, 36, 37, 40 and 41), applied to the Amaliada public prosecutor for charges of human trafficking, attempted murder and assault, in respect of them also, to be brought against the four defendants. They stated that they had been employed on the farm run by T.A. and N.V. in conditions of human trafficking and forced labour and that they were part of the group which had come under fire. Relying on the Additional Protocol to the United Nations Convention against Transnational Organised Crime, known as the "Palermo Protocol", of December 2000 ("to Prevent, Suppress and Punish Trafficking in Persons"), they asked the public prosecutor to bring charges under Article 323A of the Criminal Code against their employers, accusing them of exploiting them in a work-related context. They further alleged that, on 17 April 2013, they had also been present at the scene of the incident and that they had gone there to demand their unpaid wages, with the result that they were also victims of the offences committed against the other thirty-five complainants.

13. The police questioned each of the above-mentioned twenty-one applicants, who signed a record containing their statements, which had been given under oath and were accompanied by their photos, and they forwarded the statements to the public prosecutor.

14. In decision 26/2014 of 4 August 2014, the Amaliada public prosecutor rejected the application of the one hundred and twenty workers. He emphasised that those workers had been sought in order to give testimony during the preliminary investigation and that only one hundred and two of them had been traced and interviewed (including the twenty-one applicants mentioned in paragraph 12 above). He noted that it transpired from their statements and other material in the file that their allegations did not correspond to the reality. He explained that if they had really been the victims of the offences complained of, they would have gone to the police immediately on 17 April 2013, like the thirty-five other workers had done, and would not have waited until 8 May 2013. In his view, the claim that the complainants had been afraid and had left their huts was not credible

because they had been close to the scene of the incident and, when the police arrived, they could have returned to make their complaints known. He further noted that only four out of the hundred and two complainants interviewed had stated they had been injured and that, unlike the thirty-five workers mentioned above, none of those four workers had gone to hospital. Lastly, he observed that all the complainants had stated that they had made statements to the police after learning that they would receive residence permits as victims of human trafficking.

15. On 28 January 2015 the public prosecutor at Patras Court of Appeal dismissed the appeals of the one hundred and twenty workers against decision no. 26/2014 on the grounds that the material in the case file did not substantiate their allegations and that they had sought to present themselves as victims of human trafficking in order to obtain residence permits (decision no. 3/2015).

16. The accused were committed to stand trial in Patras Assize Court. Only N.V. was charged with committing the offence of human trafficking. The three other defendants, namely T.A. and the two armed overseers, were charged with aiding and abetting that offence. The hearings began on 6 June 2014 and ended on 30 July 2014. The thirty-five workers mentioned above joined the proceedings as civil parties and were represented by their lawyers V. Kerasiotis and M. Karabeïdis, whose fees were paid by the Greek Council for Refugees and the Hellenic League for Human Rights.

17. In his oral submissions the public prosecutor pointed out that the applicants who had been injured in the incident had been living and working in Greece without any permit, at the mercy of networks which exploited human beings and in conditions which enabled them to be characterised as victims of human trafficking. In his view both the material element and the mental element of this offence were made out in the present case.

18. The public prosecutor further emphasised that exploitation in a labour context was part of the notion of exploitation provided for in European and other international law instruments as a means of committing the offence of human trafficking. He indicated that Article 4 of the Convention and Article 22 of the Greek Constitution prohibited forced or compulsory labour. He explained that the notion of exploitation through work included all acts which constituted a breach of employment law, such as the provisions concerning working hours, working conditions and workers' insurance. In his view, that form of exploitation also obtained through the performance of work for the benefit of the offender himself.

19. Referring to the facts of the case, the public prosecutor explained that the employer, N.V., had not paid the workers for six months, that he had only paid them a very small sum for food, deducted from their wages, and had promised to pay the rest later. He observed as follows: that the defendants were unscrupulous and imposed themselves by making threats and carrying weapons; the workers laboured in extreme physical conditions,

had to work long hours and were constantly humiliated; on 17 April 2013, N.V. had informed the workers that he would not pay them and would kill them, with the help of his co-accused, if they did not carry on working for him; as the workers had not given in to the threats, he had told them to leave and said that he would take on another team in their place and that he would burn down their huts if they refused to leave. He lastly noted that, when he recruited them, N.V. had promised the complainants makeshift shelters and a daily wage of EUR 22 – which in his view was the only solution for the victims to be sure of a means of subsistence – and that N.V. had thus succeeded, at that point, in obtaining their consent in order to be able to exploit them subsequently.

20. The public prosecutor asserted that the incident of 17 April 2013 was illustrative of a situation of over-exploitation and barbaric treatment to which the major landowners in the region had subjected the migrant workers. He took the view that the incident had been a barbaric and armed aggression by Greek employers against the migrants, conjuring up images of a "southern slave-trade" which had no place in Greece.

21. At the hearing, one of the witnesses, an officer from the police station of Amaliada, stated that one or two days before the incident of 17 April 2013 some workers had gone to the police station to complain that their employers had refused to pay them their wages and that one of his colleagues had subsequently had a telephone conversation with N.V. on this subject.

22. In a judgment of 30 July 2014, the Assize Court acquitted the four defendants on the charge of trafficking in human beings, on the ground that the material element of the offence was not made out in the present case. It convicted one of the armed guards and T.A. of grievous bodily harm and unlawful use of firearms, sentencing them to prison for terms of fourteen years and seven months and eight years and seven months, respectively. As regards the overseer who had been responsible for the shots, it took the view that he had not intended to kill those who were attacked in the incident and that he had been trying to make them move away so that the newly recruited workers would not be approached by them. As to N.V., it acquitted him on the ground that it had not been established that he was one of the workers' employers (and therefore that he was obliged to pay them their wages) or that he had been involved as an instigator of the armed attack against them. The Assize Court commuted their prison sentences to a financial penalty of 5 euros per day of detention. It also ordered the two convicted men to pay the sum of EUR 1,500 to the thirty-five workers who were recognised as victims (about EUR 43 per person).

23. The Assize Court noted that the workers' conditions of employment had provided that they would receive: EUR 22 for seven hours of work and EUR 3 for each additional hour; food, of which the cost would be deducted from their wages; and materials for the construction of electrified huts next

to their plantations, at their employers' expense, to satisfy their basic accommodation needs – while allowing them the option of living elsewhere in the region. It noted that these conditions had been brought to the knowledge of the workers by their fellow countrymen who were team-leaders.

24. The Assize Court thus observed that the workers had been informed of their conditions of employment and that they had accepted them after finding them satisfactory. As to the amount of the wages, it found that this was the usual amount paid by the other producers in the region and the workers had not been obliged to accept it. In the court's view, the information provided to the workers by their team-leaders and their compatriots working for other employers about the reliable payment of wages constituted a major factor in the choice of T.A. as employer. The Assize Court further noted that, until the end of February 2013, the workers had not made any complaint about their employer, whether concerning his conduct or the payment of wages, and they had only started to complain at the end of February or the beginning of March 2013 about a delay in payment.

25. Moreover, the Assize Court rejected the workers' allegations that they had not received any wages and had been subjected to a threatening and intimidating attitude, on the part of the defendants, throughout the duration of their work, on the following grounds: those allegations had been expressed for the first time at the hearing, and not at the stage of the preliminary enquiries or investigation; certain intimidating acts had led the complainants to leave their place of work; and the description of these acts was particularly imprecise and vague. The Assize Court also noted that it transpired from the testimony of the workers that, during their free time, they were able to move freely around the region, do their shopping in shops which operated by agreement with the defendants, play cricket and take part in an association set up by their compatriots. It added that it had not been shown that T.A. had, under false pretences and by means of promises, coerced the workers into agreeing to work for him by taking advantage of their situation of vulnerability, especially as it found that they were not in such a situation.

26. The Assize Court took the view that it had also been shown that the relations between the workers and their employers had been governed by a binding employment relationship and its conditions were not intended to trap the workers or to lead to their domination by the employers. On that point, it explained that the conditions had not led the complainants to live in a state of exclusion from the outside world, without any possibility for them to abandon this relationship and look for another job. It further noted that the workers had been in a position to negotiate their conditions of employment at the time of their recruitment and that their unlawful presence

in Greece had not been used by their employers as a means of coercion to force them to continue working.

27. The Assize Court indicated that, for the notion of vulnerability to be constituted, the victim had to be in a state of impoverishment such that his refusal to submit to the offender would appear absurd; in other words the victim had to be in a state of absolute weakness preventing him from protecting himself. It added that the victim would be exploited, as a result of his vulnerability, if he unconditionally submitted himself to the offender and was cut off from the outside world, which in the court's view was not the case here since: (a) the relations between the workers and their employers had been governed by a binding employment relationship, and (b) its conditions were not intended to trap the workers or to lead to their domination by the employers, such that the workers might be cut off from the outside world and find it impossible to withdraw from the employment relationship and find another job. The Assize Court further observed that most of the workers had stated that they would have continued to work for their employers had they been paid their wages.

28. Lastly, as to the workers' allegation that they had received death threats from the defendants – an allegation that it did not accept –, the Assize Court took the view that, if that statement had been true the workers would have left their place of work without hesitation. The fact of fearing for their lives would have prevailed over any other consideration (such as: their unpaid wage demands; their need to earn a living, which allegedly could not have been satisfied in view of the objective inability to find another job; and all the other arguments that the workers had put forward to justify the fact that they had continued to work).

29. On 30 July 2014 the convicted defendants appealed against the judgment of the Assize Court. The appeal, which is still pending before that same court, has suspensive effect.

30. On 21 October 2014 the workers' lawyers lodged an application with the public prosecutor at the Court of Cassation asking him to appeal against the Assize Court judgment. In their application they submitted that the Assize Court had not adequately examined the charge of human trafficking. They took the view that, in order to determine whether that court had properly applied Article 323A of the Criminal Code, it was necessary to examine whether the accused had taken advantage of any vulnerability of the foreign nationals in order to exploit them.

31. On 27 October 2014 the prosecutor refused to lodge an appeal. He gave reasons for his decision, indicating only that the statutory conditions for an appeal on points of law were not met. As a result of this decision, the part of the 30 July 2014 judgment concerning human trafficking became "irrevocable" (*αμετάκλητη*).

II. RELEVANT DOMESTIC LAW

32. Article 22 § 3 of the Constitution provides:

"Any form of compulsory labour shall be prohibited."

33. Article 323 (servitude) of the Criminal Code and Article 323A (human trafficking) of the same Code, as amended by Law no. 3064/2002 (amending the Criminal Code in matters of human trafficking, pornography, incitement of a minor to immorality, assisting or benefiting from prostitution, victim assistance) read as follows:

Article 323

"1. Anyone who practises servitude shall be punished by imprisonment.

2. Servitude includes any act of arrest, appropriation and disposal of an individual which seeks to make him a slave, any act of acquisition of a slave for the purpose of resale or exchange, the act of assignment by sale or exchange of an already acquired slave and, generally speaking, any act of trafficking or transporting of slaves.

..."

Article 323A

"1. Anyone who, through the use of force or the threat thereof, or any other means of coercion or abuse of authority or power or abduction, recruits, transports, brings into the country, detains, protects, delivers – with or without consideration – or obtains from a third party, any person, with the aim of taking cells, tissue or organs from that person, or of exploiting that person's work or begging, whether this is done for personal gain or on behalf of another, shall be punished by imprisonment of up to ten years and a fine of between EUR 10,000 and EUR 50,000.

2. The above-mentioned punishment shall also be imposed on offenders who, pursuing the same purpose, obtain the consent of any person or attract the latter under false pretences, taking advantage of the person's vulnerability, by means of promises, gifts, sums of money or other benefits.

3. Anyone who, with full knowledge of the facts, accepts the work provided by persons who have been subjected to the conditions described in paragraphs 1 and 2 above, shall be punished by imprisonment for a minimum term of six months.

4. Anyone who has committed the offence provided for in the preceding paragraphs shall be punished by imprisonment for at least ten years and a fine of between EUR 50,000 and EUR 100,000 if the offence:

...

(b) is committed repeatedly;

...

(d) has as a consequence particularly serious harm to the health of the victim or has exposed the victim's life to grave danger."

34. In its judgment no. 673/2011 the Court of Cassation pointed out that, as regards trafficking in human beings (Article 323A of the Criminal Code), the element of physical domination of the victim by the perpetrator of the

offence was differentiated both quantitatively and qualitatively, in terms of its substance and duration, from servitude (Article 323 of the Criminal Code), since it did not require either the total subjugation of the victim or the constant and uninterrupted domination of him by the perpetrator. The Court of Cassation held that acts of unlawful violence, threats, blackmail and forcible confinement constituted the means of committing the crime of trafficking in human beings, and that the principle whereby such acts are subsumed under that crime prevailed over the principle of the concurrence of offences. As to the mental element of the offence, the Court of Cassation held that the perpetrator must have acted with malicious intent. It stated that the existence of that intent stemmed from the knowledge and willingness of the perpetrator to recruit, transport, take away, assist or unlawfully confine a person by means of the use of force or threats, and for the purpose of exploiting that person's work. In its view, such exploitation obtained where the victim provided his work either directly for the benefit of the perpetrator of the offence or for the benefit of third parties who would remunerate the latter, and recklessness was not sufficient.

35. The Criminal Code does not contain specific provisions on forced labour. Article 323A was incorporated into this Code by Law no. 3064/2002 (punishing trafficking in human beings, crimes against sexual freedom, child pornography and, more generally, sexual exploitation) which had transposed Framework Decision no. 2002/629/JHA of the Council of the European Union of 19 July 2002 on combating trafficking in human beings. This instrument was replaced by Directive 2011/36 of the European Parliament and of the Council of the European Union of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, which was transposed in Greece by Law no. 4198/2013 of 11 October 2013.

36. Section 4 of Law no. 4198/2013 amended certain articles of the Code of Criminal Procedure and added an Article 226B (witnesses – victims of trafficking in human beings and of the offence of assisting or benefiting from prostitution) of which the relevant part reads as follows:

> "1. When a victim of the acts mentioned in Articles 323A ... of the Criminal Code is interviewed as a witness, a psychologist or a psychiatrist shall be appointed as expert ...
>
> 2. The psychologist or psychiatrist shall prepare the victim for the interview, in collaboration with the investigators and judges. To that end he will use appropriate methods of diagnosis, will give an opinion as to the victim's cognitive capacity and mental state and make written observations in a report which will form an integral part of the file. ...
>
> 3. The victim's statement shall be taken down in writing and recorded electronically where possible. ...
>
> 4. The victim's written statement shall be read out at the public hearing.
>
> ..."

37. Prior to the present case, Greece had already ratified the Geneva Convention to Suppress the Slave Trade and Slavery of 25 September 1926, Convention no. 29 of the International Labour Organisation (ILO) of 28 June 1930 on forced labour ("ILO Convention no. 29"), together with the Supplementary Convention on the Abolition of Slavery of 30 April 1956 and the "Palermo Protocol" of December 2000. As to the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005, Greece signed it on 17 November 2005 and ratified it on 11 April 2014. That Convention entered into force on 1 August 2014

III. RELEVANT INTERNATIONAL LAW

38. The Court would refer to paragraphs 49 to 51 of its judgment in *Siliadin v. France* (no. 73316/01, ECHR 2005-VII) and to paragraphs 137 to 174 of the judgment in *Rantsev v. Cyprus and Russia* (no. 25965/04, ECHR 2010), which set out the relevant provisions of international conventions concerning forced labour, servitude, slavery and human trafficking (Geneva Slavery Convention of 25 September 1926; ILO Convention no. 29; Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949; Supplementary Convention on the Abolition of Slavery, 30 April 1956; ILO Forced Labour Convention (Convention no. 105) of 1957; "Palermo Protocol" of December 2000; Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005, and relevant extracts from the Council of Europe's work in this field (Parliamentary Assembly recommendations no. 1523 of 26 June 2001 and no. 1623 of 22 June 2004; Explanatory Report on Anti-Trafficking Convention).

A. International Labour Organisation

39. Article 2 § 1 of ILO Convention no. 29 reads as follows:

> " ... the term ***forced or compulsory labour*** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

40. Also noteworthy are the following extracts from the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, entitled "The Cost of Coercion", adopted by the International Labour Conference in 2009:

> "24. The ILO's definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily. The work of the ILO supervisory bodies has served to clarify both of these elements. The penalty does not need to be in the form of penal sanctions, but may also take the form of a loss of rights and privileges. Moreover, the menace of a penalty can take many different forms. Arguably, its most extreme form involves physical violence or

restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when their employment status is illegal, or denunciation to village elders in the case of girls forced to prostitute themselves in distant cities. Other penalties can be of a financial nature, including economic penalties linked to debts. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.

25. As regards 'voluntary offer', the ILO supervisory bodies have touched on a range of aspects including: the form and subject matter of consent; the role of external constraints or indirect coercion; and the possibility of revoking freely-given consent. Here too, there can be many subtle forms of coercion. Many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it."

B. United Nations

41. Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ("the Palermo Protocol"), supplementing the United Nations Convention against Transnational Organised Crime, provides as follows:

"For the purposes of this Protocol:

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

C. Council of Europe

42. The relevant provisions of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Council of Europe Anti-Trafficking Convention") read as follows:

Article 4 – Definitions

"For the purposes of this Convention:

a 'Trafficking in human beings' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the

prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

b The consent of a victim of 'trafficking in human beings' to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;

d 'Child' shall mean any person under eighteen years of age;

e 'Victim' shall mean any natural person who is subject to trafficking in human beings as defined in this article.

Article 5 – Prevention of trafficking in human beings

"1. Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.

2. Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.

..."

Article 10 – Identification of victims

"2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2."

Article 13 – Recovery and reflection period

"1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly."

Article 15 – Compensation and legal redress

"Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.

2 Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23."

43. The relevant passages from the above-mentioned Explanatory Report accompanying the Convention read as follows:

"74. In the definition, trafficking in human beings consists in a combination of three basic components, each to be found in a list given in the definition:

– the action of: 'recruitment, transportation, transfer, harbouring or receipt of persons';

– by means of: 'the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person';

– for the purpose of exploitation, which includes 'at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.

75. Trafficking in human beings is a combination of these constituents and not the constituents taken in isolation. ...

76. For there to be trafficking in human beings ingredients from each of the three categories (action, means, purpose) must be present together. ...

77. Thus trafficking means much more than mere organised movement of persons for profit. The critical additional factors that distinguish trafficking from migrant smuggling are use of one of the means listed (force, deception, abuse of a situation of vulnerability and so on) throughout or at some stage in the process, and use of that means for the purpose of exploitation.

...

81. The means are the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, and giving or receiving payments or benefits to achieve the consent of a person having control over another person.

82. Fraud and deception are frequently used by traffickers, as when victims are led to believe that an attractive job awaits them rather than the intended exploitation.

83. By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.

...

85. The purpose must be exploitation of the individual. The Convention provides: 'Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'. National legislation may therefore target other forms of exploitation but must at least cover the types of exploitation mentioned as constituents of trafficking in human beings.

86. The forms of exploitation specified in the definition cover sexual exploitation, labour exploitation and removal of organs, for criminal activity is increasingly diversifying in order to supply people for exploitation in any sector where demand emerges.

...

89. Nor does the Convention define "forced labour". Nonetheless, there are several relevant international instruments, such as the Universal Declaration of Human Rights (Article 4), the International Covenant on Civil and Political Rights (Article 8), the 1930 ILO Convention concerning Forced or Compulsory Labour (Convention No. 29), and the 1957 ILO Convention concerning the Abolition of Forced Labour (Convention No. 105).

90. Article 4 of the ECHR prohibits forced labour without defining it. The authors of the ECHR took as their model the ILO Convention concerning Forced or Compulsory Labour (No.29) of 29 June 1930, which describes as forced or compulsory 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. In the case *Van der Müssele v. Belgium* (judgment of 23 November 1983, Series A, No.70, paragraph 37) the Court held that 'relative weight' was to be attached to the prior-consent criterion and it opted for an approach which took into account all the circumstances of the case. In particular it observed that, in certain circumstances, a service 'could not be treated as having been voluntarily accepted beforehand'. It therefore held that consent of the person concerned was not sufficient to rule out forced labour. Thus, the validity of consent has to be evaluated in the light of all the circumstances of the case.

...

97. Article 4(b) states: 'The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in sub-paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used'. The question of consent is not simple and it is not easy to determine where free will ends and constraint begins. In trafficking, some people do not know what is in store for them while others are perfectly aware that, for example, they will be engaging in

prostitution. However, while someone may wish employment, and possibly be willing to engage in prostitution, that does not mean that they consent to be subjected to abuse of all kinds. For that reason Article 4(b) provides that there is trafficking in human beings whether or not the victim consents to be exploited."

44. Further, it its Fourth General Report on its activities (for the period 1 August 2013 to 30 September 2014), the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) reported as follows:

"GRETA has noted that some countries focus almost exclusively on THB [trafficking in human beings] for sexual exploitation and not enough is done to conceive prevention measures addressing trafficking for other purposes. For example, GRETA has urged the Spanish authorities to develop measures to raise awareness of THB for the purpose of labour exploitation and to organise information and education activities about THB, including for children."

Then in its Fifth General Report (for the period from 1 October 2014 to 31 December 2015), GRETA added as follows:

"94. Article 10 of the Convention places a positive obligation on States Parties to identify victims of trafficking. The Convention requires that the competent authorities have staff who are trained and qualified in identifying and helping victims, including children, and that the authorities collaborate with one another and with relevant support organisations, such as NGOs. Victim identification is a process that takes time. Even when the identification process in not completed, as soon as the competent authorities consider that there are reasonable grounds to believe that a person is a victim, he/she must not be removed from the territory of the state concerned, be it to the country of origin or a third country.

...

97. GRETA also observed in Italy that the detection of victims of human trafficking for the purpose of labour exploitation was particularly complicated due to the significant size of the 'informal economy' in certain sectors. As the Italian immigration laws do not offer a possibility for legal employment for workers who already are irregularly in Italy, their only possibility of being employed is in the informal economy, very often under exploitative conditions. Economic sectors where the exploitation of high numbers of irregular migrants is common include agriculture, the construction sector and the textile industry. GRETA urged the Italian authorities to take steps to reduce the particular vulnerability of irregular migrants to trafficking in human beings and invited them to study the implications of the immigration legislation, in particular the offence of illegal entry and stay, for the identification and protection of victims of trafficking, and the prosecution of offenders.

98. In the report concerning Spain, GRETA was concerned by the lack of training and awareness of the rights of victims of trafficking among border police officers, asylum officials, staff at temporary reception centres for aliens (particularly in the Autonomous Cities of Ceuta and Melilla), staff in reception centres for asylum seekers, reception centres for irregular migrants where third-country nationals await expulsion, and judicial bodies responsible for issuing expulsion orders."

D. European Union

45. Article 5 of the European Union's Charter of Fundamental Rights reads as follows:

Prohibition of slavery and forced labour

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited"

46. Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings provides in particular as follows:

Article 1
Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

"1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

(a) use is made of coercion, force or threat, including abduction, or

(b) use is made of deceit or fraud, or

(c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

(d) payments or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age."

Article 2
Instigation, aiding, abetting and attempt

"Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable."

Article 7
Protection of and assistance to victims

"1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.

..."

47. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, provides in particular as follows:

Article 1
Subject matter

"This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof."

Article 2
Offences concerning trafficking in human beings

"1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age."

Article 3
Incitement, aiding and abetting, and attempt

"Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable."

Article 4
Penalties

"1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.

2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;

(b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ...;

(c) deliberately or by gross negligence endangered the life of the victim; or

(d) was committed by use of serious violence or has caused particularly serious harm to the victim.

3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender."

IV. REPORTS CONCERNING THE SITUATION IN MANOLADA

A. The Ombudsman

48. The Ombudsman of Greece drew up a report dated 22 April 2008 following the publication of several articles in the print and electronic media reporting on numerous cases of large-scale exploitation of foreigners in the district of Ilia.

In his report, addressed to several government departments and agencies, and to the public prosecutor's office, he commented on the situation in Manolada and made recommendations for improvement.

49. The Ombudsman reported that hundreds of economic migrants lived in impoverished conditions in improvised camps in the region. He said that, in addition to being subjected to poor working conditions, the migrants appeared to be deprived of their liberty because, according to press reports, their employers – owners of strawberry greenhouses referred to as the

"greenhouses of shame" – had imposed supervision of their activities, even during their free time.

50. Referring to the same press reports, the Ombudsman also stated that: the migrants were poorly paid, were working in unacceptable conditions and were obliged to pay their wages – which were said to be very low – to their employers to be able to purchase commodities and services from them (rent for a 'hovel', rudimentary provision of water and sometimes electricity, purchase of staple foods); the dirty waters from the camps were polluting the Katochi lagoon, a protected natural area in the European Natura 2000 network; poor hygiene was a concern not only for the health of migrants but also for that of the local population; in the camps, employers illegally set up shops in which migrants were obliged to buy basic goods to cater for their immediate needs; at the end of the work period, some employers denounced irregular migrants to the police in order to avoid paying them their wages.

51. The Ombudsman stated that the labour relations were characterised by an uncontrolled exploitation of migrants, which was reminiscent of the early years of the Industrial Revolution, and that they were governed by the physical and economic domination of the employers. He noted that groups of vulnerable people were affected and noted that the State was completely inactive.

52. The Ombudsman called upon the various national authorities to carry out inspections and he advocated the adoption by them of a whole series of measures which he considered appropriate.

53. In a letter of 26 May 2008, the Minister for Employment informed the Ombudsman that eleven inspections had been carried out. They had revealed eight cases where the wages paid did not correspond to those provided for in collective agreements, and two cases of child labour. He added that one company had had its licence temporarily suspended for having committed several offences and for ignoring the instructions of the labour inspectors.

B. Facts reported by the Re-integration Centre for Migrant Workers with the support of the European Commission

54. A report on Greece, prepared as part of a project entitled "Combating trafficking in human beings – going beyond" (2011) by the Re-integration Centre for Migrant Workers with the support of the European Commission, reported the reaction of the authorities following the revelation of the situation experienced by migrants working in the strawberry fields of Manolada. The report refers to a large number of press articles published in 2008. It contains the following information.

55. The situation of migrant workers in Manolada was brought to the attention of the public in the spring of 2008 in a long article entitled "Red gold: a sweet taste with bitter roots", published in the Epsilon supplement of

the Sunday edition of the newspaper *Elefterotypia*. The article, describing in detail the working conditions of the migrant workers in Manolada and denouncing the practice of human trafficking, provoked a debate in the Greek Parliament. As a result of this publication, the Minister for Employment asked the Labour Inspectorate to carry out inspections. In addition, the Health Minister ordered health checks and the Minister of the Interior stated that he was preparing a decision that would oblige employers to provide decent accommodation for seasonal workers.

56. The Minister for Employment also found that inspections had taken place in 2006 and 2007 and had led to unsuccessful prosecutions. As regards the fresh inspections ordered by this Minister, they had not had any consequences: most of the strawberry producers had managed to hide the migrant workers, and only a few of them had been prosecuted for employing irregular migrants (one or two producers) or minors (two producers).

57. According to the press reports on which the report was based, in April 2008 1,500 workers refused to work and gathered in the village square to demand payment of their wages and a pay rise to EUR 30 per day. On the second day of the "strike" action, trade unionists from the Communist Party supported the migrants, and the producers' armed overseers attacked and struck the trade unionists, who they considered responsible for the attitude of the migrants, and also journalists. The latter, discouraged from continuing to write articles on the subject, even allegedly received death threats. That evening, the armed guards destroyed the migrants' huts and fired shots into the air to intimidate them. The police did not make any arrests. The migrants took refuge on the coast and spent the night there.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 § 2 OF THE CONVENTION

58. The applicants complained that their work in the strawberry fields of Manolada had constituted forced or compulsory labour. They claimed that the State had a positive obligation to prevent their subjection to human trafficking, to adopt preventive measures to that effect and to impose sanctions on their employers who, in their view, were guilty of that offence. They accused the State of failing to fulfil that obligation. They complained that there had been a violation of Article 4 § 2 of the Convention, which reads as follows:

> "2. No one shall be required to perform forced or compulsory labour."

A. Admissibility

1. Victim status

59. The Government requested the Court to dismiss the application in respect of the applicants listed under numbers 4, 6, 7, 8, 9, 14, 15, 19, 20, 22, 23, 24, 25, 26, 28 , 29, 33, 38, 39 and 42 on the grounds that they had not participated as civil parties in the proceedings before the Assize Court. They stated that the complaints by these applicants had been rejected by both the prosecutor at Amaliada Criminal Court and the prosecutor at Patras Court of Appeal. They took the view that the applicants' allegations that they had worked in N.V.'s strawberry fields and had not received their wages for this work did not call into question the findings of the two prosecutors. They added in that connection that it was not for the Court to substitute its own assessment for that of the prosecutors who, at first instance and on appeal, had found that those applicants did not have the status of victims of human trafficking.

60. The applicants alleged that the twenty-one of them who had not been injured in the incident of 17 April 2013 were members of the group of workers who were working and were present that day, and that they therefore had victim status. They criticised the Amaliada public prosecutor for failing to examine individually the cases of each of the one hundred and two workers interviewed by the investigating authorities. They maintained that the prosecutor had made a global assessment of their statements and rejected them on the basis of doubts he seemed to have had with regard to only some of them. The applicants alleged that the Amaliada public prosecutor's submissions were irrelevant in the case of the twenty-one of them who had not been injured and did not contain any evidence contradicting the statements in question. They added that, on the date that the Amaliada public prosecutor took his decision, the case concerned charges of assault and the prosecutor had therefore only examined whether the claimants were victims of that offence and not of human trafficking.

61. The Court takes the view that in the particular circumstances of the present case, the Government's objection is so closely connected to the substance of the complaint of that group of applicants that it should be joined to the merits, being relevant in particular to the examination of the effectiveness of the investigation (see paragraphs 117-22 below).

2. Non-exhaustion of domestic remedies

62. The Government maintained that the applicants had not exhausted domestic remedies on the ground that at no stage of the domestic proceedings had they clearly referred to one of the rights guaranteed by the Convention and in particular the right – invoked by the applicants in their application to the Court – not to be subjected to forced labour and human

trafficking. They stated that the applicants' allegations before the domestic courts had been based essentially on domestic law. They took the view that mere reliance on Article 323A of the Criminal Code without explicit reference to Article 4 of the Convention could not be regarded as sufficient to enable the Assize Court and the prosecutor at the Court of Cassation to examine the case under the Convention.

63. The applicants submitted that the right not to be subjected to forced labour was paramount in criminal proceedings relating to the charge of human trafficking for the purpose of exploitation in a work-related context. They contended that their subjection to forced labour had been clear in the view of the prosecutors and the courts which had dealt with the case. They stated that, in their observations on the merits, the Government had asserted that the various State authorities had been aware of their allegations that they were subjected to forced labour and sought protection by the State. In the applicants' submission, the Government had expressly acknowledged that the proceedings under Article 323A of the Criminal Code had been initiated for the purposes of ensuring compliance by the State with its obligations under Article 4 of the Convention and that the complaints about a violation of the prohibition on forced labour had been examined by the police and judicial authorities.

64. The Court reiterates that, while in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I, and *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

65. In the present case, the Court notes that in the proceedings before Patras Assize Court the public prosecutor argued that Article 323A of the Criminal Code, penalising human trafficking, had to be interpreted in the light of Article 22 of the Constitution, which prohibited all forms of compulsory labour, and Article 4 of the Convention (see paragraph 18 above). It also observes that the twenty-one injured applicants asked the public prosecutor at the Court of Cassation to appeal on points of law against the judgment of the Assize Court. They argued in support of that application that in order to determine whether the Assize Court had correctly applied Article 323A of the Criminal Code, it was necessary to examine whether there had been any exploitation of foreign nationals by

taking advantage of their vulnerability (see paragraph 30 above). It further finds that, when appealing to the Amaliada public prosecutor on 8 May 2013, the twenty-one applicants who were not injured had invoked the "Palermo Protocol" and had asked the public prosecutor to bring proceedings under Article 323A of the Criminal Code against their employers, who they accused of exploiting them in a work-related context (see paragraph 12 above).

66. For its part, in its judgment of 30 July 2014, the Assize Court acquitted the four defendants on the charge of human trafficking. The workers' lawyers then applied to the public prosecutor at the Court of Cassation requesting that he appeal on points of law against the judgment of the Assize Court. In their application they contended that the Assize Court had not adequately examined the charge of trafficking in human beings. They considered that, in order to determine whether that court had correctly applied Article 323A of the Criminal Code, it was necessary to examine whether advantage had been taken of any vulnerability of the foreign nationals in order to exploit them.

67. The Court notes that the Criminal Code contains only two provisions relating to situations such as those in the present case: Article 323, which penalises slavery, and Article 323A, which penalises human trafficking. It is clear from the latter that, in order for a person to be found guilty of that offence, he or she must have performed one of the acts enumerated therein with the aim of exploiting the victim. Human trafficking is not limited to sexual exploitation, but extends to exploitation through work, an aspect to which Article 323A § 3 of the Criminal Code specifically refers. In addition, the Court has already held that human trafficking within the meaning of Article 3 (a) of the Palermo Protocol, an instrument expressly invoked, and Article 4 (a) of the Council of Europe's Anti-Trafficking Convention – both already ratified by Greece (see paragraph 37 above) – falls within the scope of Article 4 of the Convention (see *Rantsev*, cited above, § 282).

68. In those circumstances it cannot be claimed that the Greek judicial authorities were not made aware of the requirements connected with the prohibition of human trafficking and forced or compulsory labour. Without expressly relying on Article 4 of the Convention, the applicants found arguments in domestic law and international law by which they clearly complained of an infringement of the rights guaranteed by that provision of the Convention. They therefore provided the judicial authorities with an opportunity to avoid, or provide redress for, the alleged violations, in accordance with the purpose of Article 35 of the Convention. Accordingly, the Government's objection must be rejected.

3. Conclusion

69. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

70. The applicants submitted that the facts of the case clearly demonstrated the existence of a situation of forced labour and that the Assize Court had based its decision on a very narrow interpretation of the concept of "human trafficking" which was incompatible with that of "forced labour" as referred to in Article 4 of the Convention and in other international instruments. They stated that the prohibition in Article 4 of the Convention did not apply only to cases of absolute weakness of the victims, total abandonment of their freedom or "exclusion from the outside world" (paragraphs 26-27 above). They added that the concepts of "threat of punishment" and "involuntary work" included subtle forms of psychological threat, such as the threat of denunciation to the police or immigration authorities and refusal to pay wages. The applicants considered that there were similarities between their case and that of the applicant in *Siliadin* (cited above, § 130) and pointed out that in that case the Court had examined whether the legislation in question and its application had been so flawed as to entail a violation of Article 4 of the Convention on the part of the respondent State.

71. The applicants submitted that, in the present case, the respondent State had failed to comply with its positive obligation to prevent the situation of forced labour as a form of exploitation within the meaning of Article 323A of the Criminal Code and the definitions contained in Articles 3 (a) of the Palermo Protocol and 4 (a) of the Anti-Trafficking Convention, to protect them and to punish the perpetrators of the acts in question. In their view, it was clear from the file that the Greek authorities knowingly tolerated a situation which suggested that migrant workers would be subjected to forced labour. The applicants stated that the Ombudsman had informed the authorities of the continuous employment of irregular migrants in Manolada under conditions of exploitation (see paragraphs 48-53 above). They added that the Patras Assize Court had found that, in spite of this warning, the police had not inspected their employers' production unit. They took the view that their allegations had not been properly investigated. Furthermore, they alleged that those who had been injured had not been interviewed in their mother tongue but in a language that they

hardly spoke, and that the Assize Court had rejected their request to benefit, as victims of human trafficking, from psychological support. As regards those of them who had not been injured, they indicated that it had taken the prosecutor fifteen months to reject, allegedly in a summary manner and without reasoning, their request for him to bring charges.

72. Lastly, the applicants submitted that the Government did not dispute the fact that the relevant domestic law failed to penalise forced labour *per se* or that the provisions on human trafficking were applied in such a way as to cover cases of forced labour also.

(b) The Government

73. Referring to long extracts from the judgment of the Assize Court, the Government argued that it had given sufficient reasons for its decision, that it had taken all the evidence into account and that it had not given a particularly narrow interpretation of Article 323A of the Criminal Code. According to the Government, it was clear from the facts of the case that the applicants' work had not been demanded under the threat of punishment and that "no claim of ownership had been exercised against them, which would have reduced their legal existence to that of objects". The Government indicated that, in the present case, the elements of physical or mental coercion were lacking. They added that there had been no impossibility for the applicants to alter the situation complained of. In that connection they stated that they had not been obliged to work, that they had had the opportunity to negotiate their working conditions and that they had been free to leave their jobs when they so wished, to look for another.

74. The Government argued that the authorities had fully complied with their positive and procedural obligations under Article 4 of the Convention with regard to the question of human trafficking. They submitted that there had been no evidence that the authorities knew or should have been aware of facts which could give rise to well-founded suspicions that the applicants were in actual danger of being subjected to treatment contrary to that provision. They indicated that the applicants had not filed any complaint with the police, even in the form of a grievance, which would have enabled the police to investigate the situation of which they claimed to be victims.

75. The Government further considered that the applicants' complaints relating to servitude and compulsory labour had been thoroughly examined by the police and judicial authorities, which had responded promptly by arresting the perpetrators of the acts in question and by bringing them to trial. They also stated that national legislation contained criminal and civil provisions for the purpose of combating human trafficking and protecting the rights of victims. On this point they observed that Article 323A of the Criminal Code penalised forced labour as prohibited by Article 4 of the Convention and explained that this domestic provision was aimed at those who, through the use of force or the threat of such force or other means of

coercion, recruited a person for the purpose of exploiting his work for the benefit of the perpetrator himself or on behalf of a third party.

76. The Government alleged that the applicants who had participated in the proceedings as civil parties were in reality requesting the Court to reconsider and amend the findings of the Assize Court which had led to the rejection of their arguments. In that regard they argued that the interpretation and application of national law fell within the jurisdiction of the domestic courts, as the Court had asserted on numerous occasions. In the present case, they stated that the Assize Court had examined the allegations of the parties and that the decision taken by it at the end of several days of hearings contained comprehensive reasoning.

77. Lastly, the Government submitted that the relevant domestic law, in particular Article 22 § 4 of the Constitution and Article 323A of the Criminal Code, and the various international instruments ratified by Greece, gave the applicants real and effective protection against human trafficking and forced or compulsory labour.

2. Third-party interveners

(a) The Faculty of Law of the University of Lund, Sweden

78. The third-party intervener analysed the concept of forced labour in the context of Article 4 of the Convention and how it could be distinguished from that of servitude in the light of the Court's case-law. In this regard, it proposed clarification regarding the application of the "impossible or disproportionate burden" test to determine the factual circumstances that might constitute forced labour. In its view, the Court in the present case should consider whether there was a threat of punishment and look at the difference between the actual working conditions of the applicants and those of the relevant employment legislation. In its view, the restriction on freedom of movement was a criterion which characterised servitude but not forced labour. The third-party intervener submitted that in order to determine whether the situation in question had reached a certain threshold in order to qualify as servitude, it would be necessary to consider whether the applicants were in total isolation, whether they were deprived of autonomy and whether they were subjected to subtle forms of control over different aspects of their lives.

79. The third-party intervener then turned to the interaction between the positive obligations of States under Article 4 of the Convention and those imposed by the Council of Europe's Anti-Trafficking Convention. In its view, those obligations had an impact not only on cases of human trafficking but also on all the situations covered by Article 4 of the Convention. It further argued that, as regards the positive obligations arising from that Article, as interpreted in the light of the aforementioned Council

of Europe Convention, they should not depend on the requirements of domestic criminal law.

(b) The International Trade Union Confederation

80. The third-party intervener submitted that a worker was the victim of a violation of Article 4 of the Convention where he was unable to resign from his post because of retention of his wages by his employer, where he was kept in a climate of fear and forced to work overtime (often beyond his limits) and where he was in a state of vulnerability because of his status as an irregular migrant. In its view, the fact that a migrant worker was in an irregular situation at the time of his subjection to forced labour should not have any bearing on the question whether there had been a violation of that provision or whether a remedy was available to the person concerned under domestic law.

81. The intervener stated that there were no provisions in Greek criminal law relating to forced labour. It took the view that the provisions concerning human trafficking were not sufficient on the grounds that they did not have adequate wording with regard to the victim's consent. It added that ILO Convention no. 29 provided that the concept of forced labour was broader than that of human trafficking and that it was important for national legal systems to contain specific provisions which took account of the principle of the strict interpretation of criminal law. It also stated that Greek law did not require employers to pay unpaid wages to irregular migrants.

(c) Anti-Slavery International

82. The main argument of this intervener was as follows: while the recognition and classification of the concepts contained in Article 4 of the Convention had evolved over time, the common feature of all forms of exploitation described was the abuse of vulnerability. In its view, that concept had to be the starting point for the Court's consideration of the form of exploitation in question under Article 4 of the Convention.

83. The intervener focussed on four points: (a) the known features of agricultural labour performed by migrants in Europe and the elements of this work associated with forced labour or human trafficking; (b) abuse of vulnerability, which it considered to be one of the means of exploitation of victims of human trafficking; (c) the scope of Article 4 of the Convention, which would involve an examination of the definitions of the conduct prohibited by that provision and the correlation between the forms of conduct; and (d) the substantive and procedural obligations under Article 4 of the Convention in relation to forced labour and human trafficking.

84. More specifically, the intervener submitted that, in certain circumstances – where the employer exploited and controlled workers by taking advantage of their status as irregular migrants and thus of their vulnerability, surveillance became oppressive, accommodation was on site,

working hours were long, wages were low or unpaid and there were threats of violence in the event of refusal to cooperate – work is obtained under threat of punishment and without the consent of the person concerned and constitutes forced labour. According to the intervener, these elements can also be included in the definition of human trafficking, which in its view was a means of imposing slavery or forced labour. It considered that human trafficking was defined by slavery and forced labour, and not the other way round.

(d) The AIRE Centre (Advice for Individual Rights in Europe) and the PICUM (Platform for International Cooperation on Undocumented Migrants)

85. The interveners addressed the following issues: (a) determination of the elements necessary to consider that working conditions fell within the scope of Article 4 § 2 of the Convention and violated that provision; (b) the degree of restriction on freedom, or freedom of movement, and the level of interference with personal autonomy and dignity which was required to bring treatment under Article 4 of the Convention; (c) the interpretation of these provisions so as to avoid violations of Articles 17 and 18 of the Convention; (d) the possibility of invoking the provisions of the European Social Charter under Article 53 of the Convention in cases raising questions relating to Article 4 of the Convention; and (e) the relevance of Community law, in particular the health and safety at work *acquis*, in relation to the definition of appropriate and fair working conditions.

3. The Court's assessment

(a) Whether Article 4 § 2 of the Convention is applicable

(i) General principles

86. The Court refers to its relevant case-law on the general principles governing the application of Article 4 in the specific context of human trafficking (see, in particular, *Rantsev,* cited above, §§ 283-89). Having regard to the importance of Article 4 within the Convention, its scope cannot be confined merely to the direct actions of the State authorities. It follows from this provision that States have positive obligations, in particular, to prevent human trafficking and protect the victims thereof and to adopt criminal-law provisions which penalise such practices (see *Siliadin*, cited above, § 89).

87. Firstly, in order to combat this phenomenon, member States are required to adopt a comprehensive approach and to put in place, in addition to the measures aimed at punishing the traffickers, measures to prevent trafficking and to protect the victims (see *Rantsev,* cited above, § 285). It transpires from this case-law that States must, firstly, assume responsibility for putting in place a legislative and administrative framework providing

real and effective protection of the rights of victims of human trafficking. In addition, the States' domestic immigration law must respond to concerns regarding the incitement or aiding and abetting of human trafficking or tolerance towards it (see *Rantsev*, cited above, § 287).

88. Secondly, in certain circumstances, the State will be under an obligation to take operational measures to protect actual or potential victims of treatment contrary to Article 4. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take such measures (see *L.E. v. Greece*, no. 71545/12, § 66, 21 January 2016). In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3 (a) of the Palermo Protocol and Article 4 (a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (ibid.).

89. Thirdly, Article 4 imposes a procedural obligation to investigate potential trafficking situations. The authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or close relative (see, *Rantsev*, cited above, § 232; *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 76, 14 September 2010; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II). To be effective, the investigation must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The requirement of promptness and reasonable expedition is implicit in all cases, but where it is possible to remove the individual concerned from a harmful situation, the investigation must be carried out as a matter of urgency. The victim or close relative must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see, *mutatis mutandis*, *Paul and Audrey Edwards*, cited above, §§ 70-73).

90. The Court further reiterates that the term "forced labour" brings to mind the idea of physical or mental coercion. As to the term "compulsory labour", it cannot refer just to any form of legal compulsion or obligation. For example, work to be carried out in pursuance of a freely negotiated contract cannot be regarded as falling within the scope of Article 4 of the Convention on the sole ground that one of the parties has undertaken with the other to do that work and will be subject to sanctions if he does not honour his promise. What there has to be is work "exacted ... under the

menace of any penalty" and also performed against the will of the person concerned, that is, work for which he "has not offered himself voluntarily" (see *Van der Mussele v. Belgium*, 23 November 1983, § 37, Series A no. 70, and *Siliadin*, cited above, § 117). In the *Van der Mussele* judgment (cited above, § 37) the Court found that "relative weight" was to be attached to the argument regarding the applicant's "prior consent" and thus opted for an approach which took account of all the circumstances of the case. In particular, it observed that, in certain cases or circumstances, a given "service could not be treated as having been voluntarily accepted beforehand" by an individual. Accordingly, the validity of the consent had to be assessed in the light of all the circumstances of the case.

91. In order to clarify the concept of "labour" within the meaning of Article 4 § 2 of the Convention, the Court would point out that any work demanded from an individual under the threat of a "punishment" does not necessarily constitute "forced or compulsory labour" prohibited by that provision. It is necessary to take into account, in particular, the nature and volume of the activity in question. These circumstances make it possible to distinguish "forced labour" from work which can reasonably be required on the basis of family assistance or cohabitation. In this regard, the Court in *Van der Mussele* (cited above, § 39) relied in particular on the concept of "disproportionate burden" in determining whether a trainee lawyer had been subject to compulsory labour when he was required to act, free of charge, to defend clients as assigned counsel (see *C.N. and V. v. France*, no. 67724/09, §74, 11 October 2012).

(ii) Application of those principles to the present case

92. The Court notes at the outset that the parties do not dispute the applicability of Article 4 in the present case.

93. The Court reiterates that there can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention (see *Rantsev*, cited above, § 282). It refers to its relevant case-law in which it has already accepted that human trafficking falls within the scope of Article 4 of the Convention (see, in particular, *Rantsev*, cited above, §§ 272-82). Admittedly, the present case does not concern sexual exploitation as in the *Rantsev* case. However, exploitation through work also constitutes an aspect of human trafficking and the Greek courts examined the case from this perspective. This aspect can be clearly seen from Article 4 (a) of the Council of Europe's Anti-Trafficking Convention, which provides in particular that "[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (see paragraph 42 above). In other words, exploitation through work is one of the forms of exploitation

covered by the definition of human trafficking, and this highlights the intrinsic relationship between forced or compulsory labour and human trafficking (see also paragraphs 85-86 and 89-90 of the Explanatory Report accompanying the Anti-Trafficking Convention, paragraph 43 above). The same idea is clearly reflected in Article 323A of the Criminal Code, which was applied in the present case (see paragraph 33 above).

94. In the present case, the Court notes that the applicants were recruited on various dates between October 2012 and February 2013 and that they worked at least until the date of the incident, 17 April 2013, without having received the agreed wage which remained due. While their employers offered board and lodging for a low price (EUR 3 per day), their living and working conditions were particularly harsh: they worked in greenhouses from 7 am to 7 pm every day, picking strawberries under the supervision of armed overseers employed by T.A.; they lived in makeshift shacks made of cardboard, nylon and bamboo and without toilets or running water; their employers did not pay them and warned them that they would only receive their wages if they continued to work.

95. The Court also observes that the applicants did not have a residence permit or a work permit. The applicants were aware that their irregular situation put them at risk of being arrested and detained with a view to their removal from Greece. An attempt to leave their work would no doubt have made this more likely and would have meant the loss of any hope of receiving the wages due to them, even in part. Furthermore, the applicants, who had not received any salary, could neither live elsewhere in Greece nor leave the country.

96. The Court further considers that where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour. The question whether an individual offers himself for work voluntarily is a factual question which must be examined in the light of all the relevant circumstances of a case.

97. In the present case the Court notes that the applicants began working at a time when they were in a situation of vulnerability as irregular migrants without resources and at risk of being arrested, detained and deported. The applicants probably realised that if they stopped working they would never receive their overdue wages, the amount of which was constantly accruing as the days passed. Even assuming that, at the time of their recruitment, the applicants had offered themselves for work voluntarily and believed in good faith that they would receive their wages, the situation subsequently changed as a result of their employers' conduct.

98. The Court further observes that in his submissions before Patras Assize Court, the public prosecutor set out certain facts which were not called into question by that court in its judgment. In particular, the workers

had not been paid for six months, they had only received a very small sum for their food, deducted from their wages, and their employer had promised them that he would pay them later. The accused unscrupulously imposed themselves by their threats and the weapons they carried. The workers laboured under extreme physical conditions and for exhaustingly long working hours and were subjected to constant humiliation. On 17 April 2013 the employer informed the workers that he would not pay them and that he would kill them if they did not continue to work for him. As the workers did not succumb to the threat, he told them to leave and warned them that he would employ another team in their place and would burn their huts if they refused to leave. By promising them rudimentary shelter and a daily wage of EUR 22, which was the only solution for the victims to have any means of subsistence, the employer had been able to obtain their consent at the time of recruitment in order to exploit them later.

99. The Court takes the view that, admittedly, the applicants' situation cannot be characterised as servitude. In that connection, it reiterates that the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victim's feeling that his or her condition is permanent and that the situation is unlikely to change (see *C.N. and V. v. France*, cited above, § 91). Whilst that was the case for the first applicant in *C.N. and V. v. France* (ibid., § 92), in the present case the applicants could not have had such a feeling since they were all seasonal workers recruited to pick strawberries. However, by stating that the applicants' working and living conditions did not result in their living in a state of exclusion from the outside world, without any possibility of abandoning that employment relationship and seeking other employment (see paragraph 26 above), Patras Assize Court appears to have confused servitude with human trafficking or forced labour as a form of exploitation for the purpose of trafficking.

100. The facts of the case, and in particular the applicants' working conditions, most of which were highlighted by the judgment of the Assize Court and which were not, moreover, disputed by the Government, clearly demonstrate the existence of human trafficking and forced labour. The facts in question are consistent with the definition of human trafficking in Article 3 (a) of the Palermo Protocol and Article 4 of the Council of Europe's Anti-Trafficking Convention, this offence being provided for in Article 323A of the Criminal Code, which reproduces in substance the definitions contained in the above-mentioned international instruments. In this regard, the Court reiterates that that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is to verify whether the effects of such interpretation are compatible with the Convention (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011).

The Court notes, moreover, that under Article 28 of the Greek Constitution, international treaties, after their ratification by the legislature and their entry into force, form an integral part of domestic law and prevail over any provision of the law to the contrary. From this arises the obligation for the courts to interpret domestic law by taking into account the international instruments to which Greece is a party. In the present case, national courts have interpreted and applied very narrowly the concept of human trafficking by virtually equating it to that of servitude.

101. The Court therefore concludes that the applicants' situation fell within the scope of Article 4 § 2 of the Convention as human trafficking and forced labour.

102. It is now necessary to consider whether the respondent State has fulfilled its positive obligations under that Article.

(b) The respondent State's positive obligations under Article 4 of the Convention

103. The Court reiterates that Article 4 of the Convention may, in certain circumstances, oblige the State to take operational measures to protect actual or potential victims of human trafficking (see paragraphs 87-89 above).

104. More specifically, the member States' positive obligations under Article 4 of the Convention must be construed in the light of the Council of Europe's Anti-Trafficking Convention and be seen as requiring, in addition to prevention, victim protection and investigation, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in such a situation (see *Siliadin*, cited above, § 112). The Court is guided by that Convention and the manner in which it has been interpreted by GRETA.

(i) The obligation to put in place an appropriate legal and regulatory framework

105. In order to comply with their positive obligation to penalise and effectively prosecute the practices referred to in Article 4 of the Convention, member States are required to put in place a legislative and administrative framework to prohibit and punish forced or compulsory labour, servitude and slavery (see *Siliadin*, cited above, §§ 89 and 112; also, *mutatis mutandis*, *Rantsev*, cited above, § 285, and *L.E. v. Greece*, cited above, §§ 70-72). Thus, in assessing whether there has been a violation of Article 4 of the Convention, the relevant legal or regulatory framework in place must be taken into account (see *Rantsev*, cited above, § 284).

106. The Court notes, firstly, that Greece had ratified or signed, a long time before the relevant period in the present case, the major international instruments adopted in the combat against slavery and forced labour (see paragraph 37 above). In addition Greece had ratified both the Palermo

Protocol of December 2000 and the Council of Europe's Anti-Trafficking Convention of 16 May 2005. Greece also transposed Framework Decision no. 2002/629/JHA of the Council of the European Union and the instrument which replaced it, Directive 2011/36 of the European Parliament and the Council of the European Union (see paragraphs 46-47 above).

107. The Court notes, moreover, that the Criminal Code does not contain any specific provisions relating to forced labour, whereas Article 22 § 4 of the Constitution prohibits all forms of compulsory labour. By contrast, Law no 3064/2002 transposing into the Greek legal order Framework Decision 2002/629/JHA of the Council of the European Union on combating trafficking in human beings, while directed at subject-matter other than forced labour or servitude, introduced, as its title indicates, regulations to combat human trafficking. Article 323A was thus incorporated into the Criminal Code as part of that transposition. In its first paragraph, this Article punishes anyone who, through the use of force or the threat thereof or other coercive means or abuse of power, recruits, transports, brings into the country, detains, protects, delivers – with or without consideration –, or obtains from a third party, any individual, with the aim of taking cells, tissue or organs therefrom or of exploiting that individual, for work or through begging, whether for personal gain or on behalf of another. Its third paragraph is directed against anyone who accepts work provided by a person who is subjected to the conditions described in the first paragraph (see paragraph 33 above).

108. Lastly, Law no. 4198/2013 on combating trafficking in human beings, which incorporated into the Greek legal order Directive 2011/36 of the European Parliament and of the Council of the European Union, amended the Code of Criminal Procedure to ensure better protection for victims of trafficking in court proceedings (see paragraph 36 above).

109. The Court therefore finds that Greece has essentially complied with the positive obligation to put in place a legislative framework to combat human trafficking. It remains to be examined whether the other positive obligations have been fulfilled in the present case.

(ii) Operational measures

110. The Court observes that the Council of Europe's Anti-Trafficking Convention calls on the member States to adopt a range of measures to prevent trafficking and to protect the rights of victims. The preventive measures include measures to strengthen coordination at national level between the various anti-trafficking bodies and to discourage the demand, which promotes all forms of exploitation of persons, including border controls to detect trafficking. Protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery.

111. In the present case, the Court notes at the outset that, well before the incident of 17 April 2013, the situation in the strawberry fields of Manolada was known to the authorities, whose attention had been drawn to it by reports and press articles (see paragraphs 54-55 above). Thus, not only were debates held in Parliament on this subject, but three ministers – namely, the Employment, Health and Interior Ministers – had ordered inspections and the preparation of texts aimed at improving the situation of the migrants. However, it must be noted that this mobilisation did not lead to any concrete results.

112. The Court further observes that in a report of April 2008 the Ombudsman alerted a number of State ministries and agencies and the public prosecutor's office to this situation (see paragraphs 48-52 above). The Ombudsman pointed out that the employment relationships between the migrants and their employers were characterised by uncontrolled exploitation of the former by the latter, and that this was reminiscent of the industrial revolution. He noted that these relations were marked by the physical and economic domination of the employers and that the State was totally inactive. He recommended the adoption of a series of measures by the authorities.

113. The Court notes, however, that there had only been a sporadic reaction on the part of the authorities, which had failed, at least until 2013, to provide a general solution to the problems encountered by migrant workers in Manolada.

114. The Court also notes that the Amaliada police station appeared to be aware of the refusal of the applicants' employers to pay their wages. The Court refers in this connection to the testimony of one of the police officers at the hearing before the Assize Court, who stated that certain workers had gone to the police station to complain about the refusal (see paragraph 21 above).

115. In the light of the foregoing, the Court finds that the operational measures taken by the authorities were not sufficient to prevent human trafficking or to protect the applicants from the treatment to which they were subjected.

(iii) Effectiveness of the investigation and judicial proceedings

116. For an investigation into exploitation to be effective, it must be capable of leading to the identification and punishment of the individuals responsible, this being an obligation not of result but of means (see *Rantsev*, cited above, § 288). A requirement of promptness and reasonable expedition is implicit in all cases, but where the possibility of removing the individual from a harmful situation is available, the investigation must be undertaken as a matter of urgency (ibid.). As to what form the investigation should take in order to achieve the aforementioned aims, it may vary according to the circumstances. However, once the matter has come to the attention of the

authorities they must act of their own motion (see *C.N. v. the United Kingdom*, no. 4239/08, § 69, 13 November 2012). Moreover, and in general terms, the Court considers that the obligation to investigate effectively is binding, in such matters, on the law-enforcement and judicial authorities. Where those authorities establish that an employer has had recourse to human trafficking and forced labour, they should act accordingly, within their respective spheres of competence, pursuant to the relevant criminal-law provisions.

(α) As to the applicants who did not participate in the Assize Court proceedings

117. The Court notes that in their complaint of 8 May 2013, this group of applicants set out two sets of complaints which were different in nature. On the one hand they claimed that they had been employed on the farm of T.A. and N.V. in conditions of human trafficking and forced labour, relying on Article 323A of the Criminal Code and the "Palermo Protocol" which sought to prevent and penalise such trafficking. On the other hand, they alleged that at the time of the incident they were also present at the scene and that they had gone there to demand their unpaid wages and that, accordingly, they were also victims of the offences committed against the other thirty-five complainants.

118. In dismissing the applicants' request, the Amaliada public prosecutor explained that if they had actually been the victims of the offences of which they complained, they would have referred the matter to the police immediately, as early as 17 April 2013, as the other thirty-five workers had done, and would not have waited until 8 May 2013. In his view, the assertion that the complainants had been afraid and had left their huts was not credible, as they were in the immediate vicinity of the scene of the incident and that, as soon as the police arrived, they could have returned to the scene to make the relevant complaints known. He further noted that only four of the one hundred and two complainants had declared that they had been injured and that, unlike the above-mentioned thirty-five workers, none of those four workers had gone to hospital. Lastly, he noted that all the complainants had indicated that they had given statements to the police after learning that they would receive residence permits as victims of human trafficking.

119. It is clear from the above-mentioned reasons in the public prosecutor's decision of 4 August 2014 that the rejection of the applicants' complaint was based on considerations related to the alleged assault, and in particular to the applicants' presence on 17 April 2013 at the scene of the incident and to the question whether they had been shot at and injured. There is nothing in the decision to show that the prosecutor really examined the limb of the applicants' complaint relating to human trafficking and forced labour. The Court notes that the police questioned each of the

twenty-one applicants, who signed interview records containing their statements, given under oath and accompanied by their photographs, and those statements were transmitted to the public prosecutor (see paragraph 13 above).

120. The Court is of the view that, in failing to ascertain whether the allegations of that group of applicants were well founded, the public prosecutor failed in his duty to investigate, even though he had factual evidence to suggest that these applicants had been working for the same employers as the applicants who were parties to the proceedings in the Assize Court, and that their working conditions must have been the same.

121. The Court further finds that, in rejecting the request of this group of applicants on the grounds, *inter alia*, that their complaint to the police was belated, the public prosecutor disregarded the regulatory framework governing human trafficking. Article 13 of the Council of Europe's Anti-Trafficking Convention provides for a "recovery and reflection period" of at least thirty days for the person concerned to be able to recover and escape from the influence of the traffickers and knowingly take a decision about cooperating with the authorities (see paragraph 42 above).

122. In the light of the foregoing, the Court dismisses the Government's objection as to the victim status of those applicants who did not participate in the Assize Court proceedings and finds that there has been a violation of Article 4 § 2 of the Convention on the basis of the procedural obligation to conduct an effective investigation into the situation of human trafficking and forced labour complained of by those applicants.

(β) As to the applicants who were parties to the Assize Court proceedings

123. The Court observes that Patras Assize Court acquitted the defendants on the charge of human trafficking, finding in particular that the workers were not absolutely unable to protect themselves and that their freedom of movement was not compromised, on the grounds that they were free to leave their work (see paragraphs 26-27 above). However, the Court takes the view that restriction of freedom of movement is not a prerequisite for a situation to be characterised as forced labour or even human trafficking. The relevant form of restriction relates not to the provision of the work itself but rather to certain aspects of the life of the victim of a situation in breach of Article 4 of the Convention, and in particular to a situation of servitude. On this point the Court reiterates its finding that Patras Assize Court adopted a narrow interpretation of the concept of trafficking, relying on elements specific to servitude in order to avoid characterising the applicants' situation as trafficking (see paragraph 100 above). However, a situation of trafficking may exist in spite of the victim's freedom of movement.

124. Patras Assize Court not only acquitted the defendants on the charge of human trafficking, it also commuted the prison sentences imposed on two

of them for grievous bodily harm to the payment of a fine of EUR 5 per day of detention.

125. Furthermore, in the present case, the Court notes that the public prosecutor at the Court of Cassation refused to appeal on points of law against the acquittal. To the allegation of the workers' lawyers that the Assize Court had not properly examined the charge of human trafficking, the public prosecutor replied without any further reasoning that "the statutory conditions for an appeal on points of law [were] not met" (see paragraphs 30-31 above).

126. Lastly, the Court finds that, even though T.A. and one of the armed guards were found guilty of grievous bodily harm, the Assize Court only ordered them to pay compensation of EUR 1,500, i.e. EUR 43 per injured worker (see paragraph 22 above). However, Article 15 of the Council of Europe's Anti-Trafficking Convention obliges Contracting States, including Greece, to provide in their domestic law for the right of victims to receive compensation from the perpetrators of the offence, and to take steps to, *inter alia*, establish a victim compensation fund.

127. Having regard to the foregoing, the Court finds that there has been a violation of Article 4 § 2 of the Convention as a result of the State's procedural obligation to guarantee an effective investigation and judicial procedure in respect of the situations of human trafficking and forced labour complained of by these applicants.

(iv) Conclusion

128. There has accordingly been a violation of Article 4 § 2 on account of the failure of the respondent State to fulfil its positive obligations under that provision, namely the obligations to prevent the impugned situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

130. In respect of pecuniary damage, the applicants claimed their unpaid wages, the amounts of which, between EUR 400 and EUR 2,800, were annexed to their application to the Court. They stated that their employers

did not keep a record of the hours worked by each of them and had delegated this task to the team leaders. They added that, before the Assize Court, the public prosecutor had relied on their testimony and that the authorities had not sought to verify or question its veracity. They considered that the unpaid wages had a causal link with the alleged violation of Article 4 of the Convention: in their view, the human trafficking and forced labour suffered by them were linked to a failure by the State to take preventive measures in this regard and that the lack of compensation was linked to a failure by the State to ensure punishment for forced labour and to protect the victims.

131. In respect of non-pecuniary damage, the applicants who were injured in the incident of 17 April 2013 each claimed EUR 16,000 and those not injured each claimed EUR 12,000. In support of their claim, the applicants stated that they had been in a state of distress on account of being subjected to forced labour, having regard to the conditions thereof, which they described as degrading. They added that they had been targeted by gunfire during the above-mentioned incident and, for some, had been injured on that occasion, as well as being deprived of their wages and any effective protection. They also stated that, after the incident of 17 April 2013, several of them had remained in their huts, hoping that their wages would be paid to them, but that they had not even received any food.

132. With regard to the alleged pecuniary damage, the Government submitted that the applicants' claim bore no causal link to the alleged violation of Article 4 of the Convention and that it was vague. In their view, the applicants had failed to demonstrate that the amounts claimed were well founded and had not explained why they had not applied to the domestic courts to claim the corresponding sums under Article 904 of the Civil Code, concerning unjust enrichment.

133. As to the alleged non-pecuniary damage, the Government argued that those applicants who had been civil parties in the proceedings before the Assize Court were entitled to apply to the domestic courts for compensation for such damage. They took the view that the applicants' claims before the Court were excessive and that a finding of a violation would constitute sufficient just satisfaction. They added that, should the Court find it necessary to award an amount, it should not exceed EUR 5,000 for each of the applicants who had been civil parties in the above-mentioned domestic proceedings.

134. The Court refers to its finding that there has been a violation of Article 4 of the Convention on account of the failure of the respondent State to fulfil its positive obligations under that provision, namely to prevent situations of human trafficking, to protect the victims, to effectively investigate offences and to punish those responsible for trafficking. The Court has no doubt that the applicants sustained pecuniary damage as a result of the non-payment of their wages by their employers and the

decision of Patras Assize Court not to find them guilty of trafficking. The Court therefore considers it appropriate to grant them compensation in this connection. However, as the case stands, the Court is unable to determine a specific sum to be awarded to each of them. Ruling on an equitable basis, the Court awards to each of the applicants who participated in the Assize Court proceedings, in respect of the pecuniary and non-pecuniary sustained by them, the sum of EUR 16,000, and to each of the other applicants EUR 12,000, plus any tax that may be chargeable.

B. Costs and expenses

135. The applicants also claimed EUR 4,363.64 for costs and expenses incurred before the domestic courts, namely in the Assize Court proceedings for the applicants who had been civil parties and before the public prosecutor for the others. They did not claim any sums for the proceedings before the Court.

136. The Government submitted that there was no causal link between the applicants' claims and the alleged violation of Article 4 of the Convention. They further submitted that the supporting documents accompanying those claims did not prove that the sums claimed were used to pay court fees and it was impossible to verify the manner in which the amounts were calculated. They submitted that, should the Court find it necessary to award a sum, it should not exceed EUR 1,000.

137. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002). Lastly, in accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part (*A, B and C v. Ireland* [GC], no. 25579/05, § 281, ECHR 2010).

138. Regard being had to circumstances of the case, the documents in its possession and its case-law, the Court awards the full sum claimed by the applicants in respect of the domestic court proceedings.

C. Default interest

139. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's objection that the applicants who did not participate in the Assize Court proceedings were not victims, and *dismisses* that objection;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 4 § 2 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) to each of the applicants who were parties to the Assize Court proceedings (namely the applicants under numbers 4, 6, 7, 8, 9, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 33, 38, 39 and 42) the sum of EUR 16,000 (sixteen thousand euros) and to each of the other applicants (under numbers 1, 2, 3, 5, 10, 11, 12, 13, 16, 17, 18, 27, 30, 31, 32, 34, 35, 36, 37, 40 and 41) the sum of EUR 12,000 (twelve thousand euros), in respect of all the damage sustained, plus any tax that may be chargeable;
      (ii) jointly to the applicants, EUR 4,363.64 (four thousand three hundred and sixty-three euros and sixty-four centimes), plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 30 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Kristina Pardalos President

ANNEX
List of applicants

No.	Forename SURNAME	Year of birth	Place of abode
1.	Morshed CHOWDURY	1982	Athens
2.	Jalil ABDUL	1981	Athens
3.	Kaer (khayer) ABUL (ABDUL)	1983	Athens
4.	Md (ali) ALI (MD)	1982	Nea Manolada
5.	Murad ALIMIR	1993	Athens
6.	Sidik ASIK	1985	Nea Manolada
7.	Mohamed (bablu) BABLU (MD)	1986	Nea Manolada
8.	Md Mitu (mitu) BIYAM (BIYA)	1988	Nea Manolada
9.	Md Royal CHOWDURY	1986	Nea Manolada
10.	Md FORHAD (FARHAD)	1988	Athens
11.	Shike (sheikh) HAMAUIN (MD HAMAUIN)	1987	Athens
12.	Johir HASAN	1981	Athens
13.	Billal (billal) HUSSEIN (MD HOSSEN)	1984	Athens
14.	Miah KADIR	1988	Nea Manolada
15.	Mahamad (mohamad) MAHBUB	1976	Nea Manolada
16.	Mohamad (md) MAMUN	1988	Athens
17.	Julhas MD	1985	Athens
18.	Monir MD	1988	Athens
19.	Ruyel (md Ryel) MD (AHMAD)	1986	Nea Manolada
20.	Jewel (md) MD (JEWEL)	1982	Nea Manolada
21.	Masud Khan (md Masud) MD (KHAN)	1987	Nea Manolada
22.	Romuzzaman (md Romoz) MD (ZAMAN)	1981	Nea Manolada

No.	Forename SURNAME	Year of birth	Place of abode
23.	Rob (abdul Rab) MD ABUR (MOHAMAD)	1981	Nea Manolada
24.	Miah (amial Miah) MD AWAL (MOHAMED)	1987	Nea Manolada
25.	Miah (md Kamal) MD KAMAL (MIAH)	1988	Nea Manolada
26.	Uddin (md Nijam) MD NIZZAM (UDDIN)	1981	Nea Manolada
27.	Oli MIA	1989	Athens
28.	Afzal MIAH	1987	Nea Manolada
29.	Ripon MIAH	1987	Nea Manolada
30.	Jangir MIHA	1987	Athens
31.	Sofik MIHA	1990	Athens
32.	Kamrul MIHA (MIAH)	1982	Athens
33.	Sumon MOHAMAT	1987	Nea Manolada
34.	Muhammad Rabiul (mohammad Raolbiol) MOJUNDAR	1981	Athens
35.	Imran MULLA (MD MOLLA)	1987	Athens
36.	Gabru (kabru) NURUL	1981	Athens
37.	Howdfar RAZUL	1980	Athens
38.	Ahmed (salim) SALIM (AHMED)	1982	Nea Manolada
39.	Molla (sawon) SAWON (MOLLA)	1988	Nea Manolada
40.	Harun SHEK (SHEKH)	1988	Athens
41.	Md (mohammed) TUFAJJOL (TOHAJUL)	1982	Athens
42.	Miah (md Uzzol) UZZOL (MD UZZOL)	1977	Nea Manolada