



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

Guide on Article 4 of the European Convention on Human Rights

Prohibition of slavery and
forced labour

Updated on 31 August 2018

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Note to readers

This guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular guide analyses and sums up the case-law on Article 4 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”) until 31 August 2018. Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court’s judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a *List of keywords*, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The *HUDOC database* of the Court’s case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court’s reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the *HUDOC user manual*.

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

I. General principles

Article 4 of the Convention – 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. For the purpose of this article the term ‘forced or compulsory labour’ shall not include:
- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.”

HUDOC keywords

Slavery (4-1) – Servitude (4-1) – Trafficking in human beings (4-1) – Forced labour (4-2) – Compulsory labour (4-2) – Work required of detainees (4-3-a) – Work required to be done during conditional release (4-3-a) – Service of military character (4-3-b) – Alternative civil service (4-3-b) – Service exacted in case of emergency (4-3-c) – Service exacted in case of calamity (4-3-c) – Normal civic obligations (4-3-d)

A. Structure of Article 4

1. Article 4 of the Convention, together with Articles 2 and 3 of the Convention, enshrines one of the fundamental values of democratic societies (*Siliadin v. France*, § 112; *Stummer v. Austria* [GC], § 116).
2. Article 4 § 1 of the Convention requires that “no one shall be held in slavery or servitude”. Unlike most of the substantive clauses of the Convention, Article 4 § 1 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (*C.N. v. the United Kingdom*, § 65; *Stummer v. Austria* [GC], § 116).
3. Article 4 § 2 of the Convention prohibits forced or compulsory labour (*ibid.*).
4. Article 4 § 3 of the Convention is not intended to “limit” the exercise of the right guaranteed by paragraph 2, but to “delimit” the very content of that right, for it forms a whole with paragraph 2 and indicates what the term “forced or compulsory labour” is not to include (*ibid.*, § 120).

B. Principles of interpretation

5. The Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. It has long stated that one of the main principles of the application of the Convention provisions is that it does not apply them in a vacuum. As an international treaty, the Convention must be interpreted in the light of the rules of interpretation set out in the Vienna Convention of 23 May 1969 on the Law of Treaties. Under that Convention, the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn. The Court must have regard to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole,

and interpreted in such a way as to promote internal consistency and harmony between its various provisions. Account must also be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part. The object and purpose of the Convention, as an instrument for the protection of individual human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (*Rantsev v. Cyprus and Russia*, §§ 273-275).

6. In interpreting the concepts under Article 4 of the Convention, the Court relies on international instruments such as the 1926 Slavery Convention (*Siliadin v. France*, § 122), Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (*C.N. and V. v. France*, § 90), ILO Convention No. 29 (Forced Labour Convention) (*Van der Musselle v. Belgium*, § 32) and Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime, 2000 (*Rantsev v. Cyprus and Russia*, § 282).

7. Sight should not be lost of the Convention's special features or of the fact that it is a living instrument which must be interpreted in the light of present-day conditions, and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies (*Siliadin v. France*, § 121; *Stummer v. Austria* [GC], § 118).

C. Specific context of human trafficking

8. Article 4 makes no mention of trafficking, proscribing “slavery”, “servitude” and “forced and compulsory labour” (*Rantsev v. Cyprus and Russia*, § 272).

9. Trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions. It is described in the explanatory report accompanying the Anti-Trafficking Convention as the modern form of the old worldwide slave trade (*ibid.*, § 281; *M. and Others v. Italy and Bulgaria*, § 151).

10. 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 (*Rantsev v. Cyprus and Russia*, § 282).

11. Thus, the Court, having regard to its obligation to interpret the Convention in the light of present-day conditions, considers it unnecessary to identify, in the specific context of human trafficking, whether the treatment about which an applicant complains constitutes “slavery”, “servitude” or “forced and compulsory labour” (*Rantsev v. Cyprus and Russia*, § 282). It considers that trafficking itself, within the meaning of Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime, Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings, fall within the scope of Article 4 of the Convention (*S.M. v. Croatia**, § 54; *Rantsev v. Cyprus and Russia*, § 282; *M. and Others v. Italy and Bulgaria*, § 151).

12. In a recent case, the Court has underlined that the same conclusion applies in respect of trafficking and exploitation of prostitution even if the applicant is a national of the respondent State

and in the absence of an international element. In this respect, it noted that Article 2 of the Anti-Trafficking Convention encompasses all forms of trafficking in human beings, whether national or transnational and the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others refers to exploitation in prostitution in general (*S.M. v. Croatia**, § 54).

II. The prohibition of slavery and forced labour

A. Freedom from slavery or servitude

Article 4 § 1 of the Convention

“1. No one shall be held in slavery or servitude.”

HUDOC keywords

Slavery (4-1) – Servitude (4-1) – Trafficking in human beings (4-1)

1. Slavery

13. In considering the scope of “slavery” under Article 4, the Court refers to the classic definition of slavery contained in the 1926 Slavery Convention, which defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (*Siliadin v. France*, § 122).

14. In *Siliadin v. France*, where the applicant, an eighteen years old Togolese national, was made to work as a domestic servant fifteen hours a day without a day off or pay for several years, the Court found that the treatment suffered by her amounted to servitude and forced and compulsory labour, although it fell short of slavery. It held that, although the applicant was, clearly deprived of her personal autonomy, she was not held in slavery as there was no genuine right of legal ownership over her, thus reducing her to the status of an “object” (§ 122).

15. In a case concerning alleged trafficking of a minor girl, the Court also considered that there was not sufficient evidence indicating that she was held in slavery. It held that, even assuming that the applicant’s father received a sum of money in respect of the alleged marriage, in the circumstances of that case, such a monetary contribution could not be considered to amount to a price attached to the transfer of ownership, which would bring into play the concept of slavery. In this connection, the Court reiterated that marriage has deep-rooted social and cultural connotations which may differ largely from one society to another and that therefore this payment can reasonably be accepted as representing a gift from one family to another, a tradition common to many different cultures in today’s society (*M. and Others v. Italy and Bulgaria*, § 161).

2. Servitude

16. For Convention purposes “servitude” means an obligation to provide one’s services that is imposed by the use of coercion, and is to be linked with the concept of slavery (*Seguin v. France* (dec.); *Siliadin v. France*, § 124).

17. With regard to the concept of “servitude”, what is prohibited is “particularly serious form of denial of freedom”. It includes “in addition to the obligation to perform certain services for others ... the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition” (*ibid.*, § 123).

18. The Court noted that servitude was a specific form of forced or compulsory labour, or, in other words, “aggravated” forced or compulsory labour. In fact, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victims’ feeling that their condition is permanent and that the situation is unlikely to change. The Court finds it sufficient that this feeling be based on the above-mentioned objective criteria or be brought about or kept alive by those responsible for the situation (*C.N. and V. v. France*, § 91).

19. In this connection, the Court underlined that domestic servitude is a specific offence, distinct from trafficking and exploitation and which involves a complex set of dynamics, involving both overt and more subtle forms of coercion, to force compliance (*C.N. v. the United Kingdom*, § 80).

20. In *Siliadin v. France* the Court considered that the applicant was held in servitude because, in addition to the fact that the applicant was required to perform forced labour, she was a minor with no resources, vulnerable and isolated with no means of living elsewhere than the home where she worked at their mercy and completely depended on them with no freedom of movement and no free time (§§ 126-127). See also *C.N. and V. v. France*, where the Court found the first applicant to be held in servitude but not the second applicant (§§ 92-93).

B. Freedom from forced or compulsory labour

Article 4 § 2 of the Convention

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

HUDOC keywords

Forced labour (4-2) – Compulsory labour (4-2)

21. Article 4 § 2 of the Convention prohibits forced or compulsory labour (*Stummer v. Austria* [GC], § 117). However, Article 4 does not define what is meant by “forced or compulsory labour” and no guidance on this point is to be found in the various Council of Europe documents relating to the preparatory work of the European Convention (*Van der Mussele v. Belgium*, § 32).

22. In the case of *Van der Mussele v. Belgium* the Court had recourse to ILO Convention No. 29 concerning forced or compulsory labour. For the purposes of that Convention the term “forced or compulsory labour” means “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”. The Court has taken that definition as a starting point for its interpretation of Article 4 § 2 of the Convention (*ibid.*; *Graziani-Weiss v. Austria*; *Stummer v. Austria* [GC], § 118 and *Adigüzel v. Turkey* (dec.), §§ 26-27 with the case-law references cited therein).

23. It is true that the English word “labour” is often used in the narrow sense of manual work, but it also bears the broad meaning of the French word “travail” and it is the latter that should be adopted in the present context. The Court finds corroboration of this in the definition included in Article 2 § 1 of ILO Convention No. 29 (“all work or service”, “*tout travail ou service*” in French), in Article 4 § 3(d) of the European Convention (“any work or service”, “*tout travail ou service*” in French) and in the very name of the International Labour Organization (ILO), whose activities are in no way limited to the sphere of manual labour (*Van der Mussele v. Belgium*, § 33).

24. In order to clarify the notion of “labour” within the meaning of Article 4 § 2 of the Convention, the Court has underlined that not all work exacted from an individual under threat of a “penalty” is necessarily “forced or compulsory labour” prohibited by this provision. Factors that must be taken into account include the type and amount of work involved. These factors help distinguish between

“forced labour” and a helping hand which can reasonably be expected of other family members or people sharing accommodation. Along these lines, in the case of *Van der Musselle v. Belgium* the Court made use of the notion of a “disproportionate burden” to determine whether a lawyer had been subjected to compulsory labour when required to defend clients free of charge as a court-appointed lawyer (§ 39; see also *C.N. and V. v. France*, § 74).

25. The first adjective “forced” brings to mind the idea of physical or mental constraint. As regards the second adjective “compulsory”, 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 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 (*Van der Musselle v. Belgium*, § 34). 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” (*ibid.*).

26. The Court noted that in the global report “The cost of coercion” adopted by the International Labour Conference in 1999, the notion of “penalty” is used in the broad sense, as confirmed by the use of the term “any penalty”. It therefore considered that the “penalty” may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal (*C.N. and V. v. France*, § 77).

27. The Court found the first criterion, namely “the menace of any penalty”, fulfilled in *Van der Musselle v. Belgium* where the applicant, a pupil advocate, ran the risk of having the Council of the *Ordre des avocats* strike his name off the roll of pupils or reject his application for entry on the register of advocates (§ 35); in *Graziani-Weiss v. Austria* where the refusal of the applicant, a lawyer, to act as a guardian gave rise to disciplinary sanctions (§ 39); in *C.N. and V. v. France* where the applicant was threatened to be sent back to her country of origin (§ 78).

28. In *Siliadin v. France* the Court considered that, although the applicant, a minor, was not threatened by a “penalty”, the fact remained that she was in an equivalent situation in terms of the perceived seriousness of the threat as she was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police. Her fear was nurtured and she was led to believe that her status would be regularised (§ 118).

29. By contrast, in the case of *Tibet Menteş and Others v. Turkey* (§ 68), the Court noted that the applicants, workers in airport shops complaining about unpaid overtime, had voluntarily agreed to their conditions of work involving continuous twenty-four-hour shifts. In addition, there was no indication of any sort of physical or mental coercion to force the applicants to work overtime. The mere possibility that they could be dismissed in the event of refusal did not, in the Court’s view, correspond to “the menace of any penalty” for the purposes of Article 4. It thus took the view that the first criterion was not satisfied and dismissed the complaint as incompatible *ratione materiae* with Article 4 of the Convention.

30. In *Adigüzel v. Turkey* (dec.), where the applicant, a forensic doctor, complained that he was required to work outside the prescribed working hours without pecuniary compensation, the Court held that by choosing to work as a civil servant for the municipality, the applicant must have known from the beginning that he could be subject to work outside the standard hours without pay. Moreover, even if pecuniary compensation was not available, the applicant could have taken compensatory days off, which he never requested. He could thus not claim to be subject to a disproportionate burden. The risk of having his salary deducted or even being dismissed for refusing to work outside working hours was not sufficient to conclude that the work had been required under the threat of a “penalty”. In light of the foregoing, the Court took the view that the additional services the applicant was required to provide did not constitute “forced or compulsory labour”. The

Court dismissed the complaint as incompatible *ratione materiae* with Article 4 of the Convention (§§ 30-35).

31. As to the second criterion, namely whether the applicant offered himself voluntarily for the work in question (*Van der Musselle v. Belgium*, § 36), the Court took into account but did not give decisive weight to the element of the applicant’s prior consent to the tasks required to be performed (*ibid.*; *Graziani-Weiss v. Austria*, § 40; *Adigüzel v. Turkey* (dec.), § 30).

32. Rather, the Court will have regard to all the circumstances of the case in the light of the underlying objectives of Article 4 when deciding whether a service required to be performed falls within the prohibition of “forced or compulsory labour” (*ibid.*, § 37; *Bucha v. Slovakia* (dec.)). The standards developed by the Court for evaluating what could be considered normal in respect of duties incumbent on members of a particular profession take into account whether the services rendered fall outside the ambit of the normal professional activities of the person concerned; whether the services are remunerated or not or whether the service includes another compensatory factor; whether the obligation is founded on a conception of social solidarity; and whether the burden imposed is disproportionate (*Graziani-Weiss v. Austria*, § 38; *Mihal v. Slovakia* (dec.), § 64).

33. No issue was found to arise under Article 4 in cases where an employee was not paid for work done but the work was performed voluntarily and entitlement to payment was not in dispute (*Sokur v. Ukraine* (dec.)), where the applicant was transferred to a less lucrative employment (*Antonov v. Russia* (dec.)), where the social assistance act required the applicant to obtain and accept any kind of labour, irrespective of the question whether it would be suitable or not, by reducing her benefits if she refused to do so (*Schuitemaker v. the Netherlands* (dec.)), where the applicant, a notary, was required to receive reduced fees when acting for non-profit making organisations (*X. v. Germany*, Commission decision) or where the applicant complained about the unfairness of the work and pay conditions imposed by the State on relatives of persons with disabilities acting as personal assistants (*Radi and Gherghina v. Romania* (dec.)). By contrast, the Court found, in the case of *Chowdury and Others v. Greece*, that the applicants’ situation – irregular migrants working in difficult physical conditions and without wages, under the supervision of armed guards, in the strawberry-picking industry in a particular region of Greece – constituted human trafficking and forced labour.

C. Delimitations

Article 4 § 3 of the Convention

“3. For the purpose of this article the term ‘forced or compulsory labour’ shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.”

HUDOC keywords

Work required of detainees (4-3-a) – Work required to be done during conditional release (4-3-a) – Service of military character (4-3-b) – Alternative civil service (4-3-b) – Service exacted in case of emergency (4-3-c) – Service exacted in case of calamity (4-3-c) – Normal civic obligations (4-3-d)

34. Paragraph 3 of Article 4 serves as an aid to the interpretation of paragraph 2. The four subparagraphs of paragraph 3, notwithstanding their diversity, are grounded on the governing ideas of general interest, social solidarity and what is normal in the ordinary course of affairs (*Van der Musselle v. Belgium*, § 38; *Karlheinz Schmidt v. Germany*, § 22; *Zarb Adami v. Malta*, § 44).

1. Work during detention or conditional release

35. Article 4 § 3 (a) indicates that the term “forced or compulsory” labour does not include “any work to be done in the ordinary course of detention” (*Stummer v. Austria* [GC], § 119) or during conditional release from such detention.

36. In establishing what is to be considered “work required to be done in the ordinary course of detention”, the Court will have regard to the standards prevailing in member States (*ibid.*, § 128).

37. For example, when the Court had to consider work a recidivist prisoner was required to perform, his release being conditional on accumulating a certain amount of savings, while accepting that the work at issue was obligatory, the Court found no violation of Article 4 of the Convention on the ground that the requirements of Article 4 § 3 (a) were met (*Van Droogenbroeck v. Belgium*, § 59). In the Court’s view the work required did not go beyond what is “ordinary” in this context since it was calculated to assist him in reintegrating himself into society and had as its legal basis provisions which find an equivalent in certain other member States of the Council of Europe (*ibid.*; *Stummer v. Austria* [GC], § 121; *De Wilde, Ooms and Versyp v. Belgium*, § 90).

38. Regarding prisoners’ remuneration, the Commission has held that Article 4 does not contain any provision concerning the remuneration of prisoners for their work (*Twenty-one detained persons v. Germany*, Commission decision; *Stummer v. Austria* [GC], § 122). The Court has noted that there have been subsequent developments in attitudes to this issue, reflected in particular in the 1987 and 2006 European Prison Rules, which call for the equitable remuneration of the work of prisoners (*Zhelyazkov v. Bulgaria*, § 36; *Floroiu v. Romania* (dec.), § 34). However, it has considered that the mere fact that a prisoner was not paid for the work he did, did not in itself prevent work of this kind from being regarded as “work required to be done in the ordinary course of detention” (*ibid.*, § 33).

39. For example, in *Floroiu v. Romania*, the Court observed that prisoners were able to carry out either paid work or, in the case of tasks assisting the day-to-day running of the prison, work that does not give rise to remuneration but entitles them to a reduction in their sentence. Under domestic law prisoners were able to choose between the two types of work after being informed of the conditions applicable in each case. The Court, having regard to the fact that the applicant had been granted a significant reduction in the time remaining to be served found that the work carried out by the applicant was not entirely unpaid and that therefore the work performed by the applicant can be regarded as “work required to be done in the ordinary course of detention” within the meaning of Article 4 § 3 (a) of the Convention (§§ 35-37).

40. Recently, the Grand Chamber was called upon to examine the question whether Article 4 requires the State to include working prisoners in the social security system, notably, as regards the old-age pension system. It noted that while an absolute majority of Contracting States affiliate prisoners in some way to the national social security system or provides them with some specific insurance scheme, only a small majority affiliate working prisoners to the old-age pension system. Thus Austrian law reflects the development of European law in that all prisoners are provided with health and accident care and working prisoners are affiliated to the unemployment insurance scheme but not to the old-age pension system (*Stummer v. Austria* [GC], § 131). It therefore considered that there was no sufficient consensus on the issue of the affiliation of working prisoners to the old-age pension system. It held that while Rule 26.17 of the European Prison Rules, which provides that as far as possible, prisoners who work shall be included in national social security systems, reflects an evolving trend, it cannot be translated into an obligation under Article 4 of the Convention. Consequently, the obligatory work performed by the applicant as a prisoner without

being affiliated to the old-age pension system had to be regarded as “work required to be done in the ordinary course of detention” within the meaning of Article 4 § 3 (a) (*ibid.*, § 132; *Floroiu v. Romania* (dec.), § 32).

41. In a case where the applicant complained about the obligation on prisoners to perform work in prison after they had reached retirement age, the Court, having regard to the aim of the work imposed, its nature, its extent and the manner in which it was to be performed as well as noting the absence of consensus among the Council of Europe member States on the issue, held that no absolute prohibition can be found to exist under Article 4 of the Convention and that the compulsory work performed by the applicant while in detention, including the work carried out after he had reached retirement age, could therefore be regarded as “work required to be done in the ordinary course of detention” within the meaning of Article 4 § 3 (a) of the Convention (*Meier v. Switzerland*, §§ 72-79).

2. Military service or substitute civilian service

42. Article 4 § 3 (b) excludes from the scope of “forced or compulsory labour” prohibited by Article 4 § 2 “any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service” (*Bayatyan v. Armenia* [GC], § 100; *Johansen v. Norway*, Commission decision).

43. In the Commission decision of *W., X., Y. and Z. v. the United Kingdom*, where the applicants were minors when they entered into the armed forces of the United Kingdom, the Commission held that the service entered into by the applicants was subject to the limiting provision under Article 4 § 3, and therefore any complaint that such service constituted “forced or compulsory labour” had to be rejected as being manifestly ill-founded in view of the express provision of Article 4 § 2 (b) of the Convention.

44. The Commission has held, however, that “servitude” and “forced or compulsory labour” are distinguished in Article 4 and, although they must in fact often overlap, they cannot be treated as equivalent, and that the clause excluding military service expressly from the scope of the term “forced or compulsory labour” does not forcibly exclude such service in all circumstances from an examination in the light of the prohibition directed against “slavery or servitude” (*W., X., Y. and Z. v. the United Kingdom*, Commission decision). The Commission held that generally the duty of a soldier who enlists after having attained the age of majority, to observe the terms of his engagement and the ensuing restriction of his freedom and personal rights does not amount to an impairment of rights which could come under the terms of “slavery or servitude” (*ibid.*). It found that the young age of the applicants who had entered into the services with their parents’ consent cannot attribute the character “servitude” to the normal condition of a soldier (*ibid.*).

45. Recently, however, in the case of *Chitos v. Greece*, which concerned the obligation imposed on an army officer to pay the State a substantial sum of money to allow him to leave the military before the end of the contracted service period, the Court departed from the above interpretation of the Commission and considered that the limitation under Article 4 § 3 was aimed at military service by conscription only and did not apply to career servicemen. It held that sub-paragraph 3 (b) of Article 4 must be viewed as a whole. A reading of the entire sub-paragraph in its context suggested, for two reasons, that it applied to compulsory military service in States where such a system was in place: firstly, through the reference to conscientious objectors, who will obviously be conscripts and not professional military personnel, and secondly, through the explicit reference to compulsory military service at the end of the sub-paragraph. It further found support for this interpretation in ILO Convention no. 29 as well as in the view taken both by the European Committee of Social Rights and by the Committee of Ministers (§§ 83-89).

46. In the aforementioned case of *Chitos v. Greece* the Court found that, while it was legitimate for States to provide for obligatory periods of service for army officers after their studies, as well as for

payment of compensation in case of early resignation, in order to recover the costs associated with their education, there had to be a balance between the different interests involved. In the particular circumstances of that case the Court found a violation of Article 4 § 2 on the ground that the authorities had placed a disproportionate burden on the applicant (§ 109; see, by contrast, *Lazaridis v. Greece* (dec.)).

3. Service required during an emergency or calamity

47. Article 4 § 3 (c) excludes any service exacted in case of an emergency or calamity threatening the life or well-being of the community from the scope of forced or compulsory labour. In this connection, the Commission held that the obligation on a holder of shooting rights to actively participate in the gassing of fox-holes as part of a campaign against an epidemic – even if the above obligation fell within the notion of compulsory labour – was justified under Article 4 § 3 (c) which allows the exaction of services in case of an emergency or calamity threatening the life or well-being of the community, or under Article 4 § 3 (d) which allows service which forms part of normal civic obligations (*S. v. Germany*, Commission decision). In a case, which concerned a requirement that the applicant serve a year in the public dental service in northern Norway, two members of the Commission held the view that the service in question was service reasonably required of the applicant in an emergency threatening the well-being of the community and was not forced or compulsory labour (*I. v. Norway*, Commission decision).

4. Normal civic obligations

48. Article 4 § 3 (d) excludes any work or service which forms part of normal civil obligations from the scope of forced or compulsory labour (*Van der Mussele v. Belgium*, § 38).

49. In *Van der Mussele v. Belgium* the Court accepted that the applicant, a pupil-advocate, had suffered some prejudice by reason of the lack of remuneration and of reimbursement of expenses, but that prejudice went hand in hand with the advantages he enjoyed and had not been shown to be excessive. It held that while remunerated work may also qualify as forced or compulsory labour, the lack of remuneration and of reimbursement of expenses constitutes a relevant factor when considering what is proportionate or in the normal course of business. Noting that the applicant had not had a disproportionate burden of work imposed on him and that the amount of expenses directly occasioned by the legal work he performed in question had been relatively small, the Court concluded that he had not been a victim of compulsory labour for the purposes of Article 4 § 2 of the Convention (§§ 34-41).

50. More recently, the Court concluded that a physician's obligation to participate in emergency medical service did not amount to compulsory or forced labour for the purposes of Article 4 § 2 and declared the relevant part of the application inadmissible as being manifestly ill-founded (*Steindl v. Germany* (dec.)). In that case the Court considered relevant, in particular, (i) that the services to be rendered were remunerated and did not fall outside the ambit of a physician's normal professional activities; (ii) the obligation in issue was founded on a concept of professional and civil solidarity and was aimed at averting emergencies; and (iii) the burden imposed on the applicant was not disproportionate.

51. The Commission and the Court have also considered that "any work or service which forms part of normal civic obligations" includes: compulsory jury service (*Zarb Adami v. Malta*); compulsory fire service or financial contribution which is payable in lieu of service (*Karlheinz Schmidt v. Germany*); obligation to conduct free medical examinations (*Reitmayr v. Austria*); the obligation to participate in the medical emergency service (*Steindl v. Germany*); or the legal obligations imposed on companies in their quality of employers to calculate and withhold certain taxes, social security contributions etc. from the salaries and wages of their employees (*Four Companies v. Austria*, Commission decision).

52. The criteria which serve to delimit the concept of compulsory labour include the notion of what is in the normal course of business. Work or labour that is in itself normal may in fact be rendered abnormal if the choice of the groups or individuals bound to perform it is governed by discriminatory factors. Therefore in cases where the Court has found that there was no forced or compulsory labour for the purpose of Article 4, it does not follow that the facts in issue fall completely outside the ambit of Article 4 and, hence, of Article 14 (*Van der Musselle v. Belgium*, § 43; *Zarb Adami v. Malta*, § 45). For example, any unjustified discrimination between men and women in the imposition of a civic obligation is in breach of Article 14 in conjunction with Article 4 of the Convention (*ibid.*, § 83; *Karlheinz Schmidt v. Germany*, § 29).

III. Positive obligations

53. In *Siliadin v. France* the Court noted that, with regard to certain Convention provisions, such as Articles 2, 3 and 8, the fact that a State refrains from infringing the guaranteed rights does not suffice to conclude that it has complied with its obligations under Article 1 of the Convention (§ 77). In this connection, it held that limiting compliance with Article 4 of the Convention only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective (§ 89). It has therefore held that States have positive obligations under Article 4 of the Convention.

A. The positive obligation to put in place an appropriate legislative and administrative framework

54. Article 4 requires that member States penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour (*C.N. v. the United Kingdom*, § 66; *Siliadin v. France*, § 112; *C.N. and V. v. France*, § 105). In order to comply with this obligation, member States are required to put in place a legislative and administrative framework to prohibit and punish such acts (*S.M. v. Croatia**, § 58; *Rantsev v. Cyprus and Russia*, § 285).

55. In the particular context of trafficking, the Court underlined that the Palermo Protocol and the Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking which includes measures to prevent trafficking and to protect victims, in addition to measures to punish traffickers. In its opinion, it was clear from the provisions of these two instruments that the Contracting States, including almost all of the member States of the Council of Europe, have formed the view that only a combination of measures addressing all three aspects can be effective in the fight against trafficking. Therefore, the Court emphasised that the duty to penalise and prosecute trafficking is only one aspect of member States' general undertaking to combat trafficking and that the extent of the positive obligations arising under Article 4 must be considered within this broader context (*ibid.*).

56. In this connection, the Court has held that the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. It, accordingly, considered that, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking (*ibid.*, § 284). Moreover, States are required to provide relevant training for law enforcement and immigration officials (*ibid.*, § 287).

57. The Court has emphasised that the aforementioned principles are equally relevant when it came to human trafficking and the exploitation of individuals through work. The Court thus accepted that

trafficking in human beings covers the recruitment of persons for the purposes of exploitation and that exploitation includes forced labour. It underlined, in this respect, that Article 4 § 2 of the Convention implied a positive obligation for States to address this category of trafficking in the form of a legal and regulatory framework enabling the prevention of trafficking in human beings and their exploitation through work, the protection of victims and the investigation of arguable instances of trafficking of this nature, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in such a situation (*Chowdury and Others v. Greece*, §§ 86-89 and 103-104).

58. The Court has further held that in international law, prostitution, sexual exploitation, and trafficking in human beings are closely related. It therefore found that member States should also be required to ensure that efficient criminal-law provisions are in place for cases concerning forced prostitution (*S.M. v. Croatia**, § 62).

59. The Court found that the legislation in force at the material time did not afford the applicants practical and effective protection against treatment failing within the scope of Article 4 of the Convention in *Siliadin v. France* (§ 148), in *C.N. and V. v. France* (§ 108), and in *C.N. v. the United Kingdom* (§ 76). Whereas in *Rantsev v. Cyprus and Russia*, on the basis of the evidence before it and bearing in mind the limits of Russia's jurisdiction in the particular facts of the case, the Court found no such failure in the legislative and administrative framework in Russia with respect to trafficking (*ibid.*, §§ 301-303; *V.F. v. France* (dec.); *J.A. v. France* (dec.)). In that case, Cyprus was found to be in violation of this obligation because, despite evidence of trafficking in Cyprus and the concerns expressed in various reports that Cypriot immigration policy and legislative shortcomings were encouraging the trafficking of women to Cyprus, its regime of artiste visas did not afford to the applicant's daughter Ms Rantseva, practical and effective protection against trafficking and exploitation (§§ 290-293). Likewise, the Court considered that the legislation in force at the material time had provided the applicant with practical and effective protection against human trafficking in *L.E. v. Greece*.

60. In *S.M. v. Croatia**, the Court found that Croatia had not breached its positive obligations. It was satisfied that at the relevant time there was an adequate legal framework in Croatia for addressing the offence alleged by the applicant, having regard to national legislation criminalising matters such as trafficking in human beings, forced prostitution and exploitation of prostitution (§§ 65-68). Secondly, it noted that the applicant was recognised as a victim of human trafficking by the Croatian authorities and provided with various forms of support and aid, including the right to counselling and that, upon the applicant's request the accused was removed from the courtroom and the applicant had given evidence in his absence (§ 72).

B. The positive obligation to take operational measures

61. Article 4 of the Convention may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of treatment in breach of that Article (*Rantsev v. Cyprus and Russia*, § 286; *C.N. v. the United Kingdom*, § 67). 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 subjected to treatment in breach of Article 4 of the Convention. In the case of an answer in the affirmative, there will be a violation of that Article where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (*ibid.*).

62. However, bearing in mind the difficulties involved in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (*ibid.*, § 68; *Rantsev v. Cyprus and Russia*, § 287).

63. In *Rantsev v. Cyprus and Russia* various failures of the police, notably, to inquire further into whether Ms Rantseva had been trafficked, the decision to confide her to the custody of M.A and their failure to comply with various domestic law provisions led the Court to find that the Cypriot authorities had failed to take measures to protect Ms Rantseva from trafficking (§ 298).

64. In *V.F. v. France* the Court, while conscious of the scale of the phenomenon of trafficking of Nigerian women in France and the difficulties experienced by those persons in identifying themselves to the authorities in order to obtain protection, could only note, in the light of the circumstances of the case, that the applicant had not attempted to contact the authorities about her situation. It was therefore of the opinion that the evidence submitted by the applicant was not sufficient to demonstrate that the police authorities knew or ought to have known that the applicant was the victim of a human trafficking network when they decided to deport her.

65. In *Chowdury and Others v. Greece* the Court found that Greece had failed to comply with its positive obligations because the authorities, who knew through official reports and the media about the situation in which migrant workers found themselves well before the shooting incident involving the applicants, had failed to take adequate measures to prevent trafficking and to protect the applicants (§§ 111-115).

C. The procedural obligation to investigate

66. Article 4 of the Convention entails a procedural obligation to investigate where there is a credible suspicion that an individual's rights under that Article have been violated (*C.N. v. the United Kingdom*, § 69; *Rantsev v. Cyprus and Russia*, § 288).

67. The Court underlined that the requirement to investigate does not depend on a complaint from the victim or next-of-kin but that the authorities must act of their own motion once the matter has come to their attention. It further affirmed that for an investigation to be effective, it must be independent from those implicated in the events and that it must also be capable of leading to the identification and punishment of individuals responsible, an obligation not of result but of means. Moreover, a requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency. Finally, the victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests (*ibid.*; *L.E. v. Greece*, § 68).

68. In particular, the important point for the Court to review is whether and to what extent the prosecuting authorities in taking their actions and the courts in reaching their conclusion may be deemed to have submitted the case to the careful scrutiny required by Article 4, so that the deterrent effect of the criminal law system in place and the significance of the role it is required to play in preventing violations of the rights protected under Article 4 are not undermined (*S.M. v. Croatia**, § 75).

69. In the particular context of human trafficking, in addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories (*Rantsev v. Cyprus and Russia*, § 289).

70. In *Rantsev v. Cyprus and Russia* the Court found that the Russian authorities had failed to investigate the possibility that individual agents or networks operating in Russia were involved in

trafficking Ms Rantseva to Cyprus (§ 308). In *M. and Others v. Italy and Bulgaria*, however, the Court found that the circumstances of the case did not give rise to human trafficking, a situation which would have engaged the responsibility of the Bulgarian State had any trafficking commenced there (§ 169). In that case, it has further held that the Bulgarian authorities assisted the applicants and maintained constant contact and co-operation with the Italian authorities (§ 169).

71. In *J. and Others v. Austria*, where the applicants complained of the prosecutor’s decision not to pursue an investigation into alleged human trafficking offences committed abroad by non-nationals, the Court considered that Article 4 of the Convention, under its procedural limb, does not require States to provide for universal jurisdiction over trafficking offences committed abroad. In this connection, it noted that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime is silent on the matter of jurisdiction, and the Council of Europe Convention on Action against Trafficking in Human Beings only required States parties to provide for jurisdiction over any trafficking offences committed on their own territory, or by or against one of their nationals (§ 114).

72. In *Chowdury and Others v. Greece* the Court considered that Greece had failed to comply with its procedural obligations, in particular because the prosecutor had refused to bring proceedings in respect of twenty-one applicants on the grounds that they had lodged their complaints belatedly, without having regard to the wider issues of trafficking and forced labour of which they complained (§§ 117-121). The Court further found that the domestic courts had taken a very narrow view of the applicants’ situation, analysing it from the standpoint of whether it amounted to one of servitude with the consequence that none of the accused was convicted of trafficking in human beings and the appropriate penalties were not therefore applied (§§ 123-127).

73. In *S.M. v. Croatia**, the Court held that Croatia had failed to comply with its procedural obligations because the national authorities did not make a serious attempt to investigate in depth all relevant circumstances and to gather all available evidence. In particular, the Court observed, among other deficiencies, that the authorities did not interview a range of relevant witnesses, notably, those who might have been able to testify as to the true nature of the relationship between the applicant and the accused and that the national courts had failed to give adequate attention to these shortcomings when addressing the issue of whether the applicant had been forced to participate in a prostitution ring. It considered that, by, finding that the applicant had given sexual services voluntarily, the domestic courts did not have regard to the fact that according to Croatian law and international instruments in the area of human trafficking the consent of the victim is irrelevant. The Court further noted that, in dismissing the applicant’s testimony as unreliable, the domestic authorities did not make any assessment of the possible impact of psychological trauma on the applicant’s ability to consistently and clearly relate the circumstances of her exploitation (*ibid.*, § 80).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights (“the Commission”).

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: “The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43”. In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<http://hudoc.echr.coe.int>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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