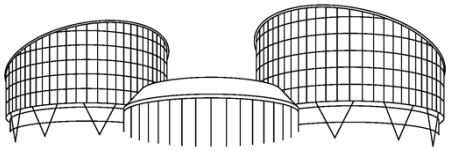

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF B.B. v. SLOVAKIA

(Application no. 48587/21)

JUDGMENT

Art 4 • Positive obligations • Failure to carry out an effective investigation into credible suspicion of human trafficking • Despite circumstances being indicative of human trafficking, domestic authorities limited their efforts to establishing the offence of pimping which carried lighter penalties and for which the perpetrator was convicted • Relevant background of persistent international criticism of domestic courts' lenient sentencing in human trafficking and ultimately, the respondent State's effectiveness of counter-trafficking efforts • Significant flaws in domestic proceedings • Failure to take all reasonable steps to collect evidence and clarify the circumstances of the case by demonstrating "an understanding of the many subtle ways and individual can fall under the control of another" • Failure to pursue obvious line of inquiry aggravated by the length of proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

24 October 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of B.B. v. Slovakia,

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

Ivana Jelić*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 48587/21) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Ms B.B. ("the applicant"), on 27 September 2021;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the complaints under Article 4 and 8 of the Convention of (i) a lack of an effective investigation into the alleged offence of human trafficking; and (ii) a violation of the applicant's right to respect for her private life on account of the manner in which the criminal proceedings were conducted and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 1 October 2024,

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

INTRODUCTION

1. The case concerns proceedings that resulted in the conviction of an individual for the offence of pimping, committed against the applicant in circumstances indicative of human trafficking. It mainly raises the issue whether, on the specific facts of the case, there was a positive obligation under Article 4 of the Convention on the part of the respondent State to carry out an effective investigation into the latter offence and, if such an obligation existed, whether the State complied with it.

THE FACTS

2. The applicant was born in 1990 and lives in Banská Bystica. She was represented by Mr R. Dula and Mr J. Takáč, lawyers practising in Banská Bystrica, and then by Professor P. Chandran, a barrister based in London, instructed by R. Rajeswaran Uruthiravinayagan, a solicitor also based in London.

3. The Government were represented by their Agent, Ms M. Bálintová.
4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. As regards her personal situation, the applicant submitted the following information, on some of which the Government considered themselves unable to comment.

6. The applicant is of Roma origin and from birth was brought up in State care. She subsequently stayed with a Roma family (hereinafter "the X family"), who took away all her savings. She worked for the X family as a maid and they made her marry their son, with whom she had a child. As she was unable to provide for the child, the child was also placed into State care. The X family eventually made the applicant leave their household and, when she was homeless and without any means of subsistence, arranged for her to meet an individual, Y.

7. As was later established by the Slovakian courts, in the summer of 2010 Y arranged (*zjednal*) in Slovakia for the applicant to engage in prostitution in the United Kingdom, subsequent to which she voluntarily travelled there with him and worked as a prostitute for at least one year, giving him all the money she had made by doing so.

8. According to the applicant, Y paid the X family money in return for having her passed on to him. In addition to having to hand over all proceeds of her prostitution to him, she also had to take care of his household and was given drugs.

9. Following Y's departure from the United Kingdom, the applicant stayed there voluntarily and came into contact with the police as described below (see paragraph 22). She was eventually taken into the care of the Salvation Army until her return to Slovakia on 10 April 2012 under a programme of the International Organisation for Migration ("IOM") for the support and protection of victims of trafficking in human beings.

10. On her arrival in Slovakia, the applicant was taken into the care of Caritas Slovakia ("Charita"), a Catholic charity with an exclusive contract with the Ministry of the Interior for the provision of assistance and support to victims of human trafficking.

11. The applicant was included in the Charita's programme for the support and protection of victims of trafficking in human beings until she was removed from it following a decision of the Ministry of the Interior of 10 March 2013. That decision was preceded by a communication from the Ministry to Charita dated 21 February 2013 explaining that Y had meanwhile been charged with pimping (*kupliarstvo*) (as opposed to human trafficking) (see paragraph 19 below) and that, accordingly, the applicant was to be removed from the programme.

12. According to a report drawn up by a sworn expert in psychology on 14 January 2013 in the context of the criminal proceedings (see paragraphs 15 et seq. below), the applicant had a borderline intellectual capacity. The report referred to a "mental illness" and a "psychotic illness" accompanied by visual and vocal hallucinations and signs of paranoia. It found it highly likely that the condition had begun during the applicant's stay in the United Kingdom as a result of her lifestyle there and stated that Y would have abused the applicant's dependence on him in the foreign environment.

13. According to a later medical report, since June 2012 the applicant had been receiving treatment for schizophrenia. Because of symptoms associated with her diagnosis, she was hospitalised between November and December 2012, in May 2014, between January and February 2016, in October 2019 and in January 2023. The report noted, among other things, that there was no indication that there had been any need for mental health intervention in the period prior to the applicant's return from the United Kingdom, where she had been a victim of trafficking. It could be presumed that her experience there had been a significant stress factor that could have triggered the onset of the illness. Other factors that could also lead to such an outcome included drug use.

14. In 2013 the applicant was granted social benefits for people unable to work.

II. CRIMINAL PROCEEDINGS

15. On 3 September 2012 Charita sent the police a statement from the applicant concerning her experience in the United Kingdom, including that she had already filed a criminal complaint there and had been identified as a potential victim of human trafficking.

16. On 9 September 2012 the police headquarters transferred the matter to the Banská Bystrica police in order to obtain clarification from the applicant on what was understood to be her criminal complaint. An interview took place on 25 September 2012, the minutes of which indicated that it concerned human trafficking within the meaning of Article 179 of the Criminal Code (Law no. 300/2005 Coll., as amended).

17. The matter was subsequently transferred to the Humenné police department ("HPD") for reasons of jurisdiction, where it was treated as a case of suspected pimping within the meaning of Article 367 of the Criminal Code.

18. Following the opening of an investigation on 7 December 2012, the applicant was interviewed again, to obtain her position as that of a victim of the suspected offence (20 November 2012). The applicant described the circumstances of her transfer to the United Kingdom, stay there and repatriation to Slovakia, explaining that she had accepted Y's proposal to go work in the United Kingdom as a prostitute as she had not wanted to end up having to live on the street. In her submission, Y had abused her situation and

she had seen him giving money to the X family, which she understood as being in return for referring her to him. Y and three other individuals were also interviewed and the HPD requested that circumstances of his and the applicant's stay in the United Kingdom be enquired about with the UK authorities.

19. On 5 February 2013 Y was charged with pimping, but on 28 February 2013, following an interlocutory appeal, the charges were dropped by the Humenné District Office of the Public Prosecution Service ("the PPS") as arbitrary on the grounds that they were not sufficiently substantiated.

20. On 18 March 2013 Y was charged again and a further interlocutory appeal was dismissed on 2 May 2013.

21. On 3 April 2013 the investigator heard the applicant again, questioning her about similar matters as on 7 December 2012 (see paragraph 18 above) and the applicant giving further details in that respect.

22. On 19 May 2013 the HPD received a communication from the respective service of the Ministry of the Interior, transmitting information seemingly stemming from a database of the UK authorities in response to HPD's request (see paragraph 18 above). This communication indicates that, when dealing with the applicant's case, the UK Border Agency had come to the conclusion that she had fallen victim to human trafficking. In so far as can be seen from the actual underlying information, it further indicated that the applicant had come to the attention of the UK authorities on several occasions in connection with prostitution and that "she had disclosed that she had been trafficked". The report also noted the applicant's behaviour had been strange, but that she had stated that she had no mental or behavioural problems.

23. The pre-trial stage of the proceedings ended on 26 June 2013 and on 31 July 2013 Y was indicted to stand trial on the pimping charge in the Humenné District Court. Y was found guilty in summary proceedings and received a one-year prison sentence, suspended for one year, by way of a penal order (*trestný rozkaz*) issued on 31 July 2013. However, following an objection (*protest*) lodged by him, the order was automatically quashed and the matter had to be resolved in ordinary proceedings. On 9 December 2013, in the course of those proceedings, the applicant was heard as a victim.

24. On 23 April 2014 the District Court acquitted Y on the grounds that the only incriminating evidence, which had come from the applicant, was unconvincing in confrontation with other evidence, taking into account also "[the applicant's] mental retardation".

25. The PPS appealed, arguing that the court had failed to take into account the report of the UK authorities, which had corroborated the applicant's version of events.

26. On 28 October 2014 the Prešov Regional Court quashed the acquittal and remitted the case to the District Court for the taking of new evidence and

re-examination. It noted that the latter had failed properly to enquire into inconsistencies between the incriminating and exculpatory evidence and found that it was necessary to take evidence from a further witness, Z.

27. In the new trial, the applicant contracted legal representation and made written submissions to the court. In those of 20 May 2015 she stated that attending the hearings would require her to travel for a few hours, which was unfeasible for her, and made a general reference to her state of health, attaching a doctor's note specifying that she suffered from an acute musculoskeletal disorder. In a further submission, dated 22 June 2015, she argued that Y should be prosecuted for the offence of human trafficking, particularly since she had been lured into prostitution by him abusing her vulnerable position. She also asked to be heard by a court nearer to her place of residence, since she was living in social housing and was afraid to leave. In addition, she made a general reference to the rules protecting victims of human trafficking from secondary victimisation through unnecessary repetition of questioning and attached a doctor's note to the effect that, in view of her state of health, she was unable to travel unaccompanied outside the area where she lived. She repeated similar arguments in a submission of 30 September 2015 and again asked to be heard by a court nearer to her place of residence.

28. Meanwhile, on 25 May 2015, the District Court heard Z, who stated that she knew nothing of the matter and presumed that the person to be heard was in fact someone else with the same name who, according to her information, was staying in the United Kingdom.

29. On 5 October 2015 the District Court heard the applicant and the closing statements of the parties. According to the transcript of the hearing, the applicant's lawyer was interrupted as his statements went beyond the scope provided for by the Code of Criminal Procedure.

30. In a written submission of 28 October 2015 the applicant's lawyer referred to the previous hearing and stated that, in so far as it had involved the taking of evidence from the applicant, no new questions had been put to her and that it had solely served the purpose of enabling the defence to create the impression that her evidence was inconsistent. He also complained of what he considered to be a violation of the applicant's right to have closing statements made on her behalf and, accordingly, made them in writing.

31. On 30 November 2015 the District Court found Y guilty as charged and sentenced him to one year's imprisonment, suspended for sixteen months. It noted that the applicant had claimed damages but had failed to specify her claim. She was therefore referred to pursue her claim before the civil courts.

32. The applicant appealed on 14 December 2015 and amended her appeal by submissions of 14 June and 23 August 2016, arguing that the matter should have been treated as one of human trafficking and that she should have been awarded damages. As the perpetrator had been found guilty of pimping, the offence he had committed had not been adequately punished and the

objectives of individual and general prevention had not been adequately achieved.

33. Y also appealed and both appeals were heard by the Regional Court at a public session (*verejné zasadanie*) on 16 March 2017. In her oral submissions, the representative of the PPS acknowledged that the matter could have been treated as one of human trafficking, particularly since Y had known the applicant's personal circumstances. However, as no appeal had been lodged by the PPS, that aspect of the judgment was outside the scope of the appellate review. Nevertheless, the member of the PPS responsible for the case would be reproached for not having appealed on that point.

34. Following the public session, on the same day the Regional Court upheld the first-instance judgment convicting and sentencing Y. The offence of human trafficking was more serious than that of pimping. Y's actions could only have been examined under the former if the respective part of the first-instance judgment had been challenged by way of an appeal, and only the PPS was entitled to lodge such an appeal. As no such an appeal had been lodged, Y's actions could not be considered under the provisions concerning human trafficking.

35. As regards the applicant's claim for damages, the Regional Court noted that such a claim had to be made, at the latest, by the end of the investigation. As she had made no claim at all by that point, there was in fact no claim with which she could be referred to the ordinary courts. As no further appeal was possible, Y's conviction became final and binding.

36. Nevertheless, on 21 June 2017, the applicant asked the Minister of Justice to exercise her discretion to appeal on points of law on the applicant's behalf.

37. On 7 December 2017 the Minister granted that request and lodged an appeal on points of law, arguing that the legal classification of the actions attributed to Y had long been disputed and that their classification as human trafficking depended on whether the applicant had been in a vulnerable position and, if so, whether Y had abused that position. In that context, it was irrelevant whether or not the applicant had voluntarily engaged in prostitution.

38. On 21 June 2018 the Supreme Court declared the Minister's appeal inadmissible. It found that the appeal had been based on a legal provision allowing for an appeal on points of law in the event of an error in the application of the law to properly established facts. Such an appeal could not involve a re-examination of the factual findings underlying the application of the law in question. In such circumstances, the Supreme Court was bound by the factual findings of the lower courts and could only review whether their application of the substantive law to those facts was correct. The facts as established by the lower courts fell within the definition of the offence of pimping and the relevant rules had been correctly applied. In other words, since the facts as defined in the lower courts' judgments did not include any

element of abuse of the applicant's vulnerable position, there was no room in law for classifying them as the offence of human trafficking.

39. On 10 May 2019 the District Court found that Y had fulfilled the conditions of his suspended sentence, which was considered to have been served.

III. CONSTITUTIONAL PROCEEDINGS

40. The applicant asserted her rights before the Constitutional Court on two occasions. Her first complaint was rejected as premature on 14 February 2018, since at that time the appeal on points of law lodged by the Minister of Justice on her behalf was still pending.

41. In her second complaint, lodged on 16 October 2018 and amended in several subsequent submissions, the applicant alleged a violation of her rights under, *inter alia*, Article 4 of the Convention. In particular, she argued that the offence committed by Y against her should have been treated as human trafficking, that it had been unnecessary repeatedly to question her about the traumatising events constituting it, that the authorities had failed to inform her of her procedural rights in a manner adapted to her limited intellectual capacity and that, as a result of that failure, she had been unable to bring her claim for damages in accordance with the applicable requirements.

42. In her submissions of 12 February 2020 and 19 April 2021 the applicant also complained about the fact that the proceedings in her constitutional complaint were still ongoing.

43. On 27 May 2021 the Constitutional Court declared the complaint inadmissible. It was noted that the authorities had identified, charged and convicted the perpetrator. The Constitutional Court was not a court of fact and it was not its task to review the legal classification given by the competent authorities to the factual findings made by them. The prosecuting authorities and the courts had established the facts in such a way that there was no indication that an offence of human trafficking had been committed, particularly since their findings had not included any indication that Y had exploited any vulnerability on the part of the applicant. Moreover, the court found that the applicant had been unable to show that the authorities had failed to inform her of how properly to bring a claim for damages. In any event, there was nothing to prevent her from bringing such a claim before the ordinary courts. The possibility of doing so did not depend on the type of the offence of which Y had been convicted, but rather on what constituted the actual damage.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Criminal Code

44. Human trafficking falls under the category of offences against the person and is defined in Article 179 of the Criminal Code, the relevant part of which reads as follows:

> "1. Whoever ... by ... abusing ... the helplessness or an otherwise vulnerable position [of another person] entices, transports [or] harbours [that] person, even with [his or her] consent, for the purposes of prostitution ... shall be punished by four to ten years' imprisonment."

45. Pimping falls under the category of offences against other rights and freedoms (as dealt with elsewhere in the Code) and is defined in Article 367, the relevant part of which reads as follows:

> "Whoever arranges, incites, seduces, exploits, procures or proposes another person for the purpose of engaging in prostitution, or who exploits or facilitates the performance of prostitution by another person, shall be punished by up to three years' imprisonment."

B. Code of Criminal Procedure

46. The procedural position of a victim of a criminal offence is regulated by the provisions of Articles 46 et seq. of the Code of Criminal Procedure. In this context, a victim is a person who has suffered damage to health, property, non-pecuniary damage or other loss, or whose rights, legally protected interests or freedoms have been violated or threatened as a result of a criminal offence. The victim's entitlements include the right to bring a claim for damages and make closing statements at a hearing (Article 46 § 1).

47. Article 46 § 3 specifically provides that if the victim of an offence is legally entitled to compensation for the damage caused by that offence, he or she may request that, in the event of a conviction, the judgment include an order for the perpetrator to pay compensation for that damage. Such a request must be made by the end of the investigation and specify the grounds on which it is based and the amount.

II. INTERNATIONAL MATERIAL

48. Relevant information on international law and practice regarding the combatting of trafficking in human beings and on relevant European Union law can be found in *S.M. v. Croatia* [GC], (no. 60561/14, §§ 107-26, 152-80 and 195-209, 25 June 2020).

Slovakia succeeded to the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others and to

the Convention on the Elimination of All Forms of Discrimination against Women as from 1 January 1993 (Notice of the Ministry of Foreign Affairs no. 53/1994 Coll.).

The United Nations Convention against Transnational Organized Crime entered into force with respect to Slovakia on 2 January 2004 (Notice of the Ministry of Foreign Affairs no. 621/2003 Coll.).

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, entered into force with respect to Slovakia on 21 October 2004 (Notice of the Ministry of Foreign Affairs no. 34/2005 Coll.).

The Council of Europe Convention on Action against Trafficking in Human Beings entered into force with regard Slovakia on 1 February 2008 (Notice of the Ministry of Foreign Affairs no. 487/2008 Coll.).

III. RELEVANT COUNTRY INFORMATION

49. This section provides a brief overview of selected reports from various public sources concerning relevant aspects of human trafficking in Slovakia at or around the relevant time.

A. United Nations Committee on the Elimination of Discrimination against Women

50. In its concluding observations on the combined fifth and sixth periodic reports of Slovakia (CEDAW/C/SVK/CO/5-6), concerning the period 2008–2013, the Committee noted with concern the ineffective identification of victims of trafficking in persons and the lenient sentencing of perpetrators, including many suspended sentences, as well as the greater vulnerability of Roma women and girls to trafficking for the purposes of sexual exploitation (paragraph 22 of the report).

51. In that regard, the Committee recommended that Slovakia ensure the prosecution and adequate punishment of perpetrators of trafficking-related crimes, commensurate with the gravity of the crime (paragraph 23 of the report).

B. Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)

52. The following are extracts from GRETA reports concerning the implementation by Slovakia of the Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force for the country on 1 February 2008 (Notice of the Ministry of the Foreign Affairs no. 487/2008 Coll.).

53. In GRETA's report published on 19 September 2011, the results of national research were cited, which showed that up to 60% of victims of trafficking in human beings came from the Roma community, that the most frequent form of exploitation was forced prostitution, that most of the victims were women between 19 and 35 years of age, that they came predominantly from areas affected by unemployment and from vulnerable families, that a considerable number of victims depended on social benefits and that victims were also trafficked to the United Kingdom (paragraph 61 of the report).

54. In its report published on 9 November 2015, GRETA stressed that the failure to convict traffickers and the absence of effective sentences undermined efforts to combat trafficking in human beings and support victims' rehabilitation and reintegration. GRETA urged the Slovakian authorities to take additional legislative and practical measures to ensure, *inter alia*, that cases of trafficking in human beings were investigated proactively, prosecuted successfully and led to effective, proportionate and dissuasive sanctions (paragraph 161 of the report).

55. In its report published on 10 June 2020, GRETA noted that the United Kingdom had been the main country of destination of persons trafficked from Slovakia for the purposes of sexual and labour exploitation (point 13 of the report).

GRETA was concerned by the lenient sentences given to traffickers and stressed that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermined efforts to combat trafficking in human beings. It further stated that not all complaints about possible trafficking in human beings cases were taken seriously by the police and that if the police and prosecutors made more extensive use of special investigation techniques, this would increase the efficiency of investigations and ultimately successful prosecution of trafficking in human beings offences (paragraph 112 of the report). The Slovakian authorities were encouraged to take further steps to ensure that all possible human trafficking offences were promptly investigated, making use of special investigation techniques in order to gather evidence and not having to rely exclusively on testimony by victims or witnesses (paragraph 113 of the report).

Furthermore, GRETA urged the Slovakian authorities to take measures to ensure that trafficking in human beings cases led to effective, proportionate and dissuasive sanctions; to continue providing training and develop the specialisation of investigators, prosecutors and judges to deal with human trafficking cases; and to ensure that such cases were not reclassified as other offences which carried lighter penalties (paragraph 114 of the report).

C. United States Department of State Reports on Trafficking in Persons

56. In the part of the 2011 and 2012 reports concerning Slovakia, it was noted that Roma individuals from socially segregated rural settlements had been disproportionately vulnerable to human trafficking, and that traffickers had found victims through family and village networks, preying on individuals with large debts from usurers or individuals with disabilities.

57. The 2012 report also stated that short sentences given to convicted offenders had remained a weakness of the Slovakian courts, with only three out of the nine offenders convicted in 2011 receiving prison sentences that had not been suspended. In the part of the report concerning the United Kingdom, Slovakia was identified as one of the most common countries of origin.

58. The report for 2014 stated that the government had demonstrated limited efforts to prosecute and convict trafficking offenders. It further stated that sentences imposed had remained weak and had failed to deter traffickers, and that short and suspended sentences given to convicted offenders had remained a weakness of the Slovakian courts.

59. The 2023 report stated that the government had maintained uneven law-enforcement efforts. While investigations and prosecutions had increased, convictions had significantly decreased. For the second time in the previous five years, all convicted traffickers had received fully suspended sentences and had served no jail time. Article 179 of the Criminal Code had criminalised sex trafficking and labour trafficking and prescribed penalties of four to ten years' imprisonment. Such penalties had been sufficiently stringent and, with respect to sex trafficking, commensurate with those prescribed for other serious crimes, such as rape. However, in practice, lenient sentencing had remained a serious concern. It had undercut efforts to hold traffickers accountable, weakened deterrence, created potential security and safety concerns, and had not been equal to the seriousness of the crime. As regards the trafficking profile, the report noted that traffickers exploited Slovak women in sex trafficking in, among other European countries, the United Kingdom, with those of Romani descent being particularly vulnerable to sex trafficking. Traffickers transported them to the United Kingdom by force or deception, including for the purpose of sex trafficking.

D. Netherlands Helsinki Committee and Human Rights League

60. A 2013 report entitled "Current situation with regard to legal counselling and legal aid/representation of trafficked persons and their treatment as victims/witnesses in criminal and other relevant legal proceedings" noted that provisions of the Criminal Code on procuring/pimping were sometimes used to prosecute trafficking, mainly

when there was insufficient evidence to prosecute trafficking or when there were difficulties in proving the use of coercive means.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

61. The applicant complained that the respondent State had failed to carry out an effective investigation into the offence of human trafficking that she alleged had been committed against her. She relied on Article 4 of the Convention, the relevant part of which reads as follows:

> "1. No one shall be held in slavery or servitude.
>
> 2. No one shall be required to perform forced or compulsory labour."

A. Admissibility

62. The Government contested that Article 4 of the Convention was applicable to the circumstances of the case *ratione materiae*. Having regard to the content of their argument in that respect (see paragraphs 69 and 70 below), the Court finds that its assessment is closely linked to the assessment of the substance of the applicant's complaint. The Government's objection must therefore be joined to the merits of the case.

63. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

64. The applicant argued that the State had failed to fulfil its positive obligation to carry out an effective investigation into the offence of human trafficking that she alleged had been committed against her. As a result, she had been denied the status of a victim of that offence in Slovakia, which had deprived her of the benefit of the programme for the support and protection of victims of human trafficking and excluded her from the scope of the legislation on State compensation for victims of that and certain other offences.

65. The applicant emphasised that the Slovakian authorities had been aware that she had previously been recognised by the UK authorities as a potential victim of human trafficking and that the Slovakian authorities had had at their disposal elements gathered by the UK authorities for that purpose. She referred to her interviews with the investigator on 7 December 2012 and 3 April 2013 (see paragraphs 18 and 21 above) in support of an argument that

she had felt compelled to accept Y's offer to work as a prostitute in the United Kingdom as she had had no other alternative to becoming homeless.

66. Furthermore, the applicant argued that the Slovakian authorities had considered it being pivotal that she had been aware that she would be engaging in prostitution and that she had done so voluntarily. However, relying on *Krachunova v. Bulgaria* (no. 18269/18, § 153, 28 November 2023), she submitted that this was not decisive. What really mattered was her vulnerable position and the lack of any real or reasonable alternatives at the relevant time.

67. At the procedural level, the applicant asserted that the Slovakian authorities had unduly relied on her testimony, without taking into account her state of health, and had failed to pursue obvious lines of inquiry to obtain further witness evidence. The proceedings had been lengthy, and the authorities had failed to ensure the protection of her procedural rights at an early stage, for example by providing her with legal representation (which she had not had until the later stages of the proceedings), as a result of which she had been unable to make her claim for damages in time.

68. In addition, the applicant argued that she had not been treated equally with the other parties since, for example, she had been denied the right to make closing statements at the hearing before the District Court on 5 October 2015 (see paragraph 29 above)

69. The Government pointed out that there had been no objection to the legal framework applicable to the offence committed against the applicant.

In so far as it had been referred to as human trafficking at the very initial stage of the proceedings, that had been in response to its description given in the first submissions of Charita. Once the applicant had been heard and had provided explanations, the offence had been understood as that of pimping and had been treated as such throughout the proceedings.

There was no room for questioning the legal classification given by the domestic authorities to the factual findings made by them. In so far as a representative of the PPS had admitted before the Regional Court that the offence could have been treated as human trafficking (see paragraph 33 above), that was to be seen as her individual opinion rather than the official position of the PPS.

70. Furthermore, the Government referred to a statement issued by the Prosecutor General for the purposes of the proceedings before the Court to the effect that a change in the legal classification of the offence committed by Y against the applicant to that of human trafficking would only have been possible if evidence had been collected to a different extent in the pre-trial proceedings. In particular, it would have been necessary to focus the investigation on establishing intent on the part of Y to abuse any vulnerability on the part of the applicant. In other words, it would have been necessary to show that Y had had subjective knowledge that the applicant had been in an objectively vulnerable position at the relevant time and that he had wanted

to take advantage of that by having her work as a prostitute in the United Kingdom. This could theoretically have been done by taking evidence from the applicant's husband, mother-in-law and sister in-law, but in practice that had been impossible since they had been staying in the United Kingdom and their address had been unknown to the Slovakian authorities. In that regard, the Prosecutor General had referred to a note in the file dated 8 October 2012.

71. Lastly, the Government submitted that, as the Minister of Justice's appeal on points of law had not challenged the factual findings of the courts, it could not have changed the outcome of the proceedings.

72. In view of the above, they argued that, in contrast to *S.M. v. Croatia* [GC], no. 60561/14, 25 June 2020), Article 4 of the Convention was inapplicable to the applicant's complaint.

73. For the eventuality that the Court should find Article 4 applicable, the Government pointed out that the investigation had begun immediately after the case had been brought to the attention of the authorities. They had then promptly opened criminal proceedings and obtained the necessary evidence, with the pre-trial proceedings being concluded in just over eight months. At trial level, a penal order had been issued immediately (31 July 2013) and Y's conviction had been upheld (16 March 2017) after three years and some eight months, thereby becoming final, the Minister of Justice's appeal on points of law having no impact on it. The Government admitted that the proceedings had been protracted by the first judgment (23 April 2014), which had had to be quashed on appeal (28 October 2014), However, in the subsequent proceedings, hearings had had to be repeatedly adjourned owing to the non-attendance of the applicant and witnesses.

74. Furthermore, the Government pointed out that the applicant understood Slovak perfectly and that she had duly been informed of her rights in connection with all her official interviews and hearings. The fact that she had omitted to join her claim for damages to the criminal proceedings in time had been her own fault, but it had not prevented her from pursuing that claim in the civil courts.

75. In addition, to the extent that the applicant's lawyer had been interrupted in making closing statements on her behalf at the hearing of 5 October 2015, this had been because he had repeatedly gone beyond the scope provided by law for such statements. When such statements came from a victim of an offence, their scope was limited to the matter of damages and did not include the matters of guilt and punishment.

76. In sum, the Government considered that the State had fulfilled any positive obligation it might have had in connection with the offence committed by Y against the applicant.

2. The Court's assessment

(a) General principles

77. It is now well established that both national and transnational trafficking in human beings, irrespective of whether or not it is connected with organised crime, falls within the scope of Article 4 of the Convention. As such, it is not necessary to identify whether the treatment of which the applicant complains constitutes "slavery", "servitude" or "forced [or] compulsory labour (see *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, § 148, 16 February 2021, and the references therein).

78. Moreover, the Court has consistently held that Article 4 of the Convention lays down positive obligations for the Contracting States and that these include a procedural obligation to investigate situations of potential trafficking (see *Krachunova*, cited above, § 158, with further references).

79. More generally, the Court reiterates that, like Articles 2 and 3, Article 4 also entails a procedural obligation to investigate where there is a credible suspicion that an individual's rights under that Article have been violated (see *C.N. v. the United Kingdom*, no. 4239/08, § 69, 13 November 2012, and *S.M. v. Croatia* [GC], no. 60561/14, §§ 324-25, 25 June 2020). The procedural obligation under Article 4 of the Convention, as an element of the broader concept of positive obligations, essentially relates to the domestic authorities' duty to apply in practice the relevant criminal-law mechanisms put in place to prohibit and punish conduct contrary to that provision. This entails the requirements of an effective investigation concerning allegations of treatment contrary to Article 4 of the Convention. The procedural obligation under the converging principles of Articles 2 and 3 of the Convention informs the specific content of the procedural obligation under Article 4 of the Convention (see *S.M. v. Croatia*, cited above, §§ 308-11).

80. These procedural requirements primarily concern the authorities' duty to institute and conduct an effective investigation. As explained in the Court's case-law, that means instituting and conducting an investigation capable of leading to the establishment of the facts and of identifying and – if appropriate – punishing those responsible (see ibid., § 313, and *Rantsev v. Cyprus and Russia*, no. 25965/04, § 288, ECHR 2010 (extracts)). The authorities must act of their own motion once the matter has come to their attention. In particular, they cannot leave it to the initiative of the victim to take responsibility for the conduct of any investigatory procedures (see *S.M. v. Croatia*, cited above, § 314). For an investigation to be effective, it must be independent from those implicated in the events. 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. The victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate

interests (see *Rantsev*, cited above, § 288; *L.E. v. Greece*, no. 71545/12, § 68, 21 January 2016; and *C.N. v. the United Kingdom*, cited above, § 69).

81. The procedural obligation is a requirement of means and not of results. There is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable. Thus, the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such. Moreover, the procedural obligation must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities. Nevertheless, the authorities must take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible. As to the level of scrutiny to be applied by the Court in this regard, it is important to stress that, although the Court has recognised that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, it has to apply a "particularly thorough scrutiny" even if certain domestic proceedings and investigations have already taken place (see *S.M. v. Croatia*, cited above, §§ 315-17, with further references).

82. Compliance with the procedural obligation must be assessed on the basis of several essential parameters. These elements are interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. The possible defects in the relevant proceedings and the decision-making process must amount to significant flaws in order to raise an issue under Article 4. In other words, the Court is not concerned with allegations of errors or isolated omissions but only significant shortcomings in the proceedings and the relevant decision-making process, namely those that are capable of undermining the investigation's capability of establishing the circumstances of the case or the person responsible (see ibid., §§ 319-20, with further references).

(b) Application of the general principles to the present case

83. The Court will start by examining whether there was a credible suspicion of human trafficking before the domestic authorities triggering their obligation to conduct an effective investigation (see paragraph 79 above). It will therefore inquire whether in the light of the applicant's allegations and her situation there was prima facie evidence of the constituent elements of the international definition of human trafficking, that is action, means and purpose (see *S.M. v. Croatia*, cited above, §§ 113-14 and 303). In that regard,

the Court reiterates that a conclusion as to whether there was such evidence has to be based on the circumstances prevailing at the time when the relevant allegations were made or when the prima facie evidence of treatment contrary to Article 4 was brought to the authorities' attention and not on a subsequent conclusion reached upon the completion of the investigation or the relevant proceedings (ibid., § 325).

84. The applicant made a statement that was transmitted to the police as essentially constituting a criminal complaint, drawing the domestic authorities' attention to the fact that she had been identified as a potential victim of human trafficking (see paragraph 15 above). When questioned in more detail, she described her transfer to the United Kingdom, her stay there and her repatriation to Slovakia. She pointed out that she had accepted Y's proposal to go to work as a prostitute in the United Kingdom as she had had no other alternative to becoming homeless at the time. She also alleged that Y had given the X family money for having referred her to him (see paragraph 18 above).

85. In the Court's view, with regard to Y, the applicant's allegations indicated both an action (arranging for her transfer to the United Kingdom) and a purpose (to engage her in prostitution there). Indeed, these elements were later confirmed by Y's conviction for pimping which in itself presupposes an action and a purpose (see paragraph 45 above).

86. As regards the means element of the international definition of trafficking, the Court finds the applicant's factual submissions at the national level and in the Convention proceedings (see paragraph 6, 18, 21 and 27 above) to be indicative of her vulnerability at the relevant time, which lends support to her claim that the means employed by Y consisted of having abused that position of hers. In particular, the authorities must have been aware of the applicant's young age and of her coming from a disadvantaged social and economic background. Her allegations of having been recruited in Slovakia for the purpose of engaging in prostitution in the United Kingdom (see paragraphs 6 and 7 above) essentially corresponded to the trafficking profile in Slovakia and the United Kingdom that existed at the relevant time (see paragraphs 50, 53, 56 and 57 above). Moreover, her dealings with the UK authorities were understood by their Slovakian counterparts as including a conclusion that she had fallen victim to human trafficking (see paragraph 22 above). She was returned to Slovakia under an IOM programme for the support and protection of victims of trafficking in human beings and was initially treated in Slovakia as a victim of human trafficking (see paragraphs 9, 10 and 15 above). In this connection the Court reiterates that administrative recognition of the status of a potential victim of human trafficking cannot be taken as recognition that the elements of the offence of human trafficking have been made out (*S.M. v. Croatia*, cited above, § 322). Nevertheless, seen against the background described above, the Court attaches weight to the initial treatment of the applicant's criminal complaint

by the Banská Bystrica police as one concerning human trafficking, the reclassification of which into pimping at the HPD having in no way been explained (see paragraphs 16 and 17 above). Furthermore, in their submissions at national level, some of the domestic authorities themselves admitted that, under certain conditions the offence committed by Y against the applicant could have been viewed as that of human trafficking (see paragraphs 33 and 37 above). In that regard, the Court also notes the Government's observations before the Court referring to a statement by the Prosecutor General (see paragraph 70 above).

87. These circumstances leave no room for doubt that there was a credible suspicion before the domestic authorities that the applicant had been subjected to human trafficking and thereby to a violation of her rights protected under Article 4 of the Convention, so as to give rise to a positive obligation on their part to ensure that an effective investigation into it was carried out (see the case-law cited in paragraphs 78 et seq. above).

88. It accordingly remains to be ascertained whether that positive obligation has been complied with.

89. From that perspective, the Court notes that Y's actions with regard to the applicant were in fact investigated and that he was eventually convicted, albeit for the offence of pimping and not for human trafficking. The scale applicable to the former offence provides for lighter penalties than those applicable to the latter (see paragraphs 44 and 45 above), and it has been noted that the former was sometimes used instead of the latter if evidence or other elements were lacking (see paragraphs 55 and 60 above).

90. The Court finds that the above-mentioned phenomenon is to be seen in the light of the persistent criticism as regards the lenient sentencing by the Slovakian courts in the area of human trafficking, which by its very nature relates to issues of deterrence, security and safety and, ultimately, the effectiveness of Slovakia's counter-trafficking efforts (see paragraphs 50, 54, 55, 57, 58 and 59 above).

91. Against this background, the Court considers that, in order to assess the respondent State's compliance with the above-mentioned positive obligation, it is not enough that the offence committed by Y against the applicant was treated at national level as that of pimping, but it is necessary to examine how the domestic authorities responded to the possibility that it could have constituted that of human trafficking.

92. It is not disputed by the parties and the Court accepts that Y's actions could have amounted to human trafficking if, at the relevant time, the applicant had objectively been in a vulnerable position and Y had subjectively known that and had intended to take advantage of it.

93. As regards the applicant's objective situation as well as the subjective position of Y, the Government themselves admitted that they could theoretically have been established by taking evidence from the applicant's husband, mother-in-law and sister-in-law, which is only natural since they

would have been familiar with the applicant's situation at the relevant time and, as she submitted, would have been involved in the transaction with Y (see paragraph 18 above). As to the point last mentioned, the Court reiterates specifically that "giving or receiving of payments or benefits to achieve the consent of a person having control over another person" is considered to be a "means" of human trafficking (*S.M. v. Croatia*, cited above, §§ 113-114 and 155).

94. However, no evidence from the applicant's relatives was taken, the Government referring to a position taken by the Prosecutor General that they had been unreachable for the purposes of the proceedings because they had been staying in the United Kingdom at an unknown address.

95. Nevertheless, there was no allegation or other indication that any efforts had actually been made to locate these individuals and take evidence from them. In that regard, the Court notes that the mutual assistance between the Slovakian and UK authorities otherwise appears to have functioned efficiently (see paragraphs 18 and 22 above) and reiterates that, in cross-border trafficking cases, member States are also subject to a duty to cooperate effectively with the relevant authorities of other States concerned (see, *mutatis mutandis*, *Rantsev*, cited above, § 289).

96. Furthermore, the Court notes that the domestic proceedings in the present case took place over an extended period of time, which inherently provided an opportunity for the situation concerning the availability of the applicant's relatives to evolve and for efforts to be made to obtain evidence from them. The position taken by the Prosecutor General was based on a note in the file dated 2012, and there is no indication that any attempt was ever made to find these individuals during the many years in which the proceedings continued after that time.

97. Similarly, the Court notes that the judgment quashing Y's initial acquittal required that evidence be taken from Z and that a person with that name was heard only to find out that the person to be heard was in fact another person with the same name (see paragraphs 26 and 28 above). There is no indication that any efforts have ultimately been made to find and hear that other person.

98. The content of the case file accordingly gives the impression that, although it was clear what was relevant to the assessment of whether or not Y's actions amounted to human trafficking, the authorities consciously refrained from enquiring into such matters and limited their efforts to establish the facts to those relevant to the assessment of his actions as pimping. In the circumstances, it seems paradoxical to argue that the facts established corresponded to the offence of pimping.

99. Accordingly, the authorities cannot be said to have taken all reasonable steps to collect evidence and clarify the circumstances of the case by demonstrating, in particular, "an understanding of the many subtle ways an individual can fall under the control of another" and thereby to elucidate

the true nature of the applicant's relationship with the alleged trafficker (compare, for instance, S.*M. v. Croatia*, cited above, § 345, and *C.N. v. the United Kingdom*, cited above, § 80).

100. In the Court's view, the failure to pursue an obvious line of inquiry was aggravated by the length of the proceedings. Having commenced on 3 September 2012, they were ultimately completed on 27 May 2021, of which the phase before the Constitutional Court alone took more than two years and seven months (see paragraphs 15, 41, and 43 above).

101. These defects in the proceedings amounted to significant flaws within the meaning of the Court's case-law. The domestic proceedings concerning the credible suspicion of a violation of the applicant's rights under Article 4 therefore did not satisfy the requirements of the positive obligation to carry out an effective investigation into that matter.

102. In conclusion, the Court dismisses the Government's objection to the applicability of Article 4 of the Convention *ratione materiae* (see paragraphs 83 - 87 above) and finds that there has a been a violation of Article 4 of the Convention in its procedural limb.

103. In view of that finding, the Court considers it unnecessary to examine the merits of the remaining aspects of the applicant's complaint under Article 4 (concerning the instructions given to her as regards procedural rights and the right to have closing statements made on her behalf at a hearing).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

104. The applicant complained that, in the criminal proceedings against Y, she had been repeatedly questioned about traumatising events. She relied in substance on Article 8 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to respect for his private ... life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

105. The Government pointed out that at no stage in the domestic proceedings had the applicant objected to any question being put to her or declared that she was unwilling to give evidence or answer a question. They submitted that there was no indication that any of the questions put to her had been inappropriate.

106. The Court for its part is mindful of the sensitivity from the perspective of a victim of a sexual offence of giving evidence about that offence (see *Y. v. Slovenia*, no. 41107/10, §§ 103-08, ECHR 2015 (extracts), with further references). On the facts of the present case, however, it notes

the general tone of the applicant's complaint. In particular, neither at domestic level nor before the Court did she specify any particular aspect of her questioning as having been contrary to her right to respect for her private life, such as being confronted with the perpetrator, being asked humiliating intimidating questions or having her hearing organised in an inappropriate manner. This is consistent with the content of her submissions at domestic level, which may be understood as seeking to be heard closer to home rather than not being heard at all (see paragraph 27 above).

107. In sum, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the applicant's rights under Article 8 of the Convention.

Accordingly, the complaint under that provision is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 109,500 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage allegedly caused to her by the offence committed against her by Y, as well as a further EUR 50,000 in respect of non-pecuniary damage owing to the alleged flaws in the proceedings.

110. The Government objected that there was no causal link between the alleged violation (concerning a positive obligation on the part of the State) and the alleged damage (caused by Y's actions). In addition, they argued that the applicant could have claimed compensation for that damage at domestic level in accordance with the applicable requirements, but had failed to do so. Furthermore, they submitted that the claim in respect of non-pecuniary damage was in any event overstated.

111. The Court does not discern any causal link between the violation found and the damage alleged in connection with Y's actions; it therefore rejects the claims in that regard.

112. To the extent the applicant's claim concerns the violation found, the Court awards her EUR 26,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

113. The time-limit for the applicant to submit her observations and just satisfaction claims in this case was set for 27 July 2023. At the request of her legal representative, and because of changes in her representation (see paragraph 2 above), this time-limit was extended until 24 August, 28 September, 2 October, 30 November and 5 December 2023.

114. Within the latter time-limit, the applicant claimed EUR 18,237.92 for fees and costs associated with her representation by Mr R. Dula and Mr J. Takáč at domestic level and before the Court, and EUR 6,000 for legal fees of Professor P. Chandran in the proceedings before the Court.

115. On 8 December 2023 the applicant submitted that her previous claim was incomplete in that it did not cover the legal fees of Mr R. Rajeswaran Uruthiravinayagan, in respect of which she wished to claim EUR 1,887.

116. The above claims were based on contingency fee arrangements.

117. The Government objected that the claim in respect of Mr R. Rajeswaran Uruthiravinayagan's legal fees had been filed out of time and that some of the other costs had not been actually and necessarily incurred in order to prevent or rectify the alleged violations of the Convention.

118. 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 were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

119. Under Rule 60 § 2 of the Rules of Court, the applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.

120. In the present case, the claim in respect of Mr R. Rajeswaran Uruthiravinayagan's legal fees was made out of time, no such fees were paid, and would only be payable if awarded by the Court. To the extent that it is substantiated, the Court has found no exceptional circumstances for accepting this claim (see, for example, *Nagmetov v. Russia* [GC], no. 35589/08, § 69, 30 March 2017, with further references). It is accordingly dismissed.

121. As to the remaining claims, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 15,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits of the complaint under Article 4 of the Convention the Government's objection to its applicability *ratione materiae*, and *dismisses* it;

2. *Declares* the complaint under Article 4 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 4 of the Convention in its procedural limb;

4. *Holds*
   (a) that the respondent State is to pay the applicant, 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) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President