

Further in – depth analysis of selected cases

Addendum to Section 5 of Case Digest¹

5.17 Case of Chowdury and Others v. Greece²

NOTE: This case is relevant to many aspects of anti – trafficking work. However, this document concentrates on its connection to the evidential issues addressed in the Case Digest. For those interested in the details of the ruling, I refer to the Appendix, though it too, is not exhaustive.

I. Kind of Crimes: Forced labour and human trafficking.

II. Kind of Evidence: This case before the European Court of Human Rights did not provide exhaustive details as to the kinds of evidence which were submitted to the Greek domestic court. All that can be gleaned is that a police officer testified that workers had complained of non - payment of wages days before the violent incident described in the section on "facts of the case", and that statements of 21 workers who were not injured during that violent incident were submitted to the public prosecutor in the context of an application to be recognized as victims of trafficking.

III. Strengths in the Mosaic of Evidence: Vulnerabilities (illegal migrant workers from Bangladesh, financially destitute); deception about payment of wages; difficult working and living conditions (low wages set in employment agreement, non – payment of even these low wages for periods of 6 months or shorter periods, long working hours, no vacations, accommodation in makeshift shacks without toilets or running water); a climate of fear (armed guards and constant threats), threats (by means of behavior reflected by wielding weapons, and by means of explicit words; content of threats - exercise of force and withholding of salaries); constant humiliation of workers, violence towards some workers. This mosaic of evidence was supported by a prior complaint by some workers to the police about the withholding of wages and by three strikes of workers to protest this withholding of wages.

IV. Weaknesses in the Mosaic of Evidence: Weaknesses in victim behavior (including delayed complaints as compared to other workers who complained immediately, complaints being submitted only after workers were informed that victims of trafficking receive residence permits; not leaving employment to seek alternative jobs, though they had opportunities to do so.); victim consent (*initially* to terms of employment agreement which they were in a position to negotiate and which reflected the wages usually paid by other producers in the region, and *during later stages* as shown by statements according to which the workers would have continued working under these conditions had they been paid); no restrictions of freedom in that

¹Case Digest on Evidential Issues in Trafficking in Persons Cases accessible at: https://www.unodc.org/documents/humantrafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf

² Chowdury and Others v. Greece (App. no. 21884/15), ECHR, 30 March 2017, the European Court of Human Rights.

the workers were permitted to move freely to shop in stores which operated by agreement with the accused persons and even play cricket and take part in an association; no isolation from the world; workers had the ability to say "no" as proven by three strikes initiated by them.

V. Particularly Difficult Evidentiary Challenges: Purported consent of alleged victims by initially accepting terms of employment contract which they had the ability to negotiate; by stating that they would have continued working for the accused persons had their wages been paid; and by means of their behaviour in not seeking alternative employment, even though they were free to come and go.

VI. Facts of the Case:

The applicants are 42 Bangladeshi migrants who were without legal residence or work permits in Greece. They were recruited on different dates between October 2012 and February 2013 to work in the largest strawberry farm at Manolada, Greece, as seasonal workers. These workers were part of a total of 150 workers in this farm, divided into three teams, each of which was headed by a Bangladeshi national. Their employers were Greek.

The workers were promised a wage of 22 euros for seven hours work and three euros for each hour of overtime, with three euros per day deducted for food. They worked in greenhouses every day from 7 a.m. until 7 p.m., picking strawberries under the supervision of armed guards. They lived in makeshift shacks made of cardboard, nylon and bamboo without toilets or running water. The workers did not receive their wages for months (some for six months and some for shorter periods of time); they only received a small sum for food which was deducted from their wages. According to the workers, their employers warned them that they would only receive their wages if they continued to work for them. They also underwent constant humiliation and were threatened with death should they cease to work. When they did not give into these threats, the employer told them to leave and that he would take on another team in their place and burn down their huts if they refused to leave.

On three occasions in February, March, and April 2013, the workers went on strike to demand payment of their unpaid wages, but without success. One or two days before April 17th 2013, some workers went to the local police station to complain about the withholding of wages.

On April 17, 2013, the employers recruited other Bangladeshi migrants to work in the fields. Consequently, fearing that they would not be paid, between one hundred and one hundred and fifty workers started moving towards the two employers. One of the armed guards opened fire against the workers, seriously injuring thirty of them, including some of the applicants.

The 2 employers, armed guard and supervisor were charged with grievous bodily harm and human trafficking.

The public prosecutor awarded the status of victims of human trafficking to 35 of the workers who had all been injured, thus making them legal residents of Greece.

Subsequently, one hundred and twenty other workers, including the 21 applicants who had not been injured, applied to the Amaliada public prosecutor for charges of human trafficking, attempted murder and assault. The police questioned each of these 21 applicants who signed a record containing their statements. However, the Amaliada public prosecutor rejected the application of the one hundred and twenty workers in view of their delayed complaints (submitted three weeks after the violent incident, whereas other workers had complained immediately). In doing so, he dismissed their claim that they had been afraid and had consequently left their huts during this time. Moreover, he noted that only four of the workers had been injured and these had not been hospitalized. Finally, he noted that the statements to police had been made after the workers were informed that they would receive residence permits as victims of human trafficking. His decision was approved by the Patras public prosecutor.

VII. Procedural History:

The application to the European Court of Human Rights was submitted after a series of decisions by Greek prosecutorial and judicial instances by which the 4 accused persons³ were not convicted of trafficking charges. These decisions included:

- the decision of a public prosecutor not to charge the accused persons with trafficking regarding their treatment of *some* applicants;
- the acquittal by a Greek domestic court (Patras Assize Court) of the accused persons regarding their treatment of *other* applicants;
- the rejection of an application to appeal the Assize Court's ruling by the public prosecutor of the Court of Cassation of Greece.

NOTE: Some of the applicants had been parties to the case in the Greek domestic court, whereas others had not, but had worked for the same employers under the same conditions.

For more details about the procedural history, see the **Appendix** to this document.

VIII. Legal Framework:

The Greek legislation relevant to the case is Articles 323 and 323A of the Criminal Code on trafficking in persons, and Article 22 & 3 of the Greek constitution which prohibits compulsory labour.

The ECHR ruled on the basis of Article 4&2 of the European Convention of Human Rights which prohibits slavery, servitude and forced labour. In addition it relied on various other international sources as interpretative aids, and in particular the Council

³ These persons were an employer charged with human trafficking and in addition, another employer, an overseer and an armed guard charged with aiding and abetting trafficking and other offences.

of Europe Convention on Action against Trafficking in Human Beings and the Explanatory Report regarding it.⁴ It should be noted that the international law sources cited by the Court obligate Greece.

See **Appendix** for the language of the Greek articles 323 and 323A of the Criminal Code, Article 22 & 3 of the Greek Constitution and Article 4 & 2 of the European Convention of Human Rights.

IX. Ruling of European Court of Human Rights:

The ECHR ruled that Greece had violated its obligations under Article 4 & 2 of the European Convention of Human Rights which prohibits forced or compulsory labour. In doing so, the **court ruled that the applicants' situation fell under forced labour and human trafficking**, and that though Greece had an appropriate legal and regulatory framework to combat trafficking, it had violated its obligations to effectively investigate the situation, and to prevent trafficking and protect its victims.

For a more detailed description of the ruling, see the **Appendix**.

The Court awarded pecuniary damages (for unpaid wages) and non-pecuniary damages (for degrading conditions, violence and lack of food) to the applicants and also awarded them costs and expenses.

X. Legal Issues Addressed:

1. Particular Difficult Evidential Challenge – Victim Consent:

Greek Domestic Court: The Greek domestic court's acquittal of the accused persons regarding human trafficking charges rested, in a large part, on its assumption that the workers had consented to their situation. The court stressed that the workers had *initially consented* to the employment contract and been informed of its terms which they found satisfactory. It noted that the workers had been in a position to negotiate the terms of the contract at the time of their recruitment and that the amount of the wages was the usual amount paid by other producers in the region, so that the workers were not obliged to accept this particular contract. Moreover, this consent extended to *later stages* of their employment, as most of the workers stated that they would have continued to work for these employers had their wages been paid. In addition, they were free to come and go and find alternative employment, if they had wished to do so.

⁴ Other sources cited included: ILO Convention no. 29 on forced labour, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and children, supplementing the United Nations Convention against Transnational Organised Crime, Article 5 of the European Union's Charter of Fundamental Rights which prohibits slavery, servitude, forced labour and trafficking in human beings, and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

European Court of Human Rights: The ECHR ruled that the *validity of the consent needs to be assessed in the light of all the circumstances of the case*. It further noted that the **prior consent of the victim is not sufficient to negate a charge of forced labour**, but rather the question whether an individual offers himself for work voluntarily is a factual question which must be examined in the light of all the relevant circumstances.

- **Initial stages:** The Court stressed that the applicants began working at a time when they were in a *situation of vulnerability* as irregular migrants without resources and at risk of being arrested, detained and deported. Any attempt to leave their work would have made this more likely, and in addition, would have left them with no hope to receive the wages due to them, even in part. Moreover, the non – payment of wages to the applicants did not allow them to live elsewhere in Greece, nor to leave the country.

The Court ruled that **where an employer abuses power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily**. By initially promising the workers rudimentary shelter and a daily wage of 22 euro, which was their only means of subsistence, the employer was able to obtain their consent at the time of recruitment in order to exploit them later.

- **Later stages:** Even if the workers initially offered themselves for work voluntarily, the situation subsequently changed as a result of their employers' conduct – which included threats, carrying firearms, having the workers work under extreme physical conditions and for exhaustingly long hours, subjecting them to constant humiliation, telling them they would be killed if they did not continue working, and subsequently when they did not succumb to the threat, warning them that another team would be employed in their place and that their huts would be burned if they refused to leave.

The Court concluded that the applicant's situation falls under human trafficking and forced labour, both of which are prohibited by Article 4 & 2 of the European Convention of Human Rights.

2. Do trafficking and forced labour require restriction of freedom and isolation?

While the Greek domestic court answered this question in the affirmative, the ECHR ruled that trafficking and forced labour do not require a situation of restriction of freedom resulting in exclusion from the world and lack of all possibility of abandoning jobs and seeking alternatives. It distinguished between the offence of servitude which requires such restriction of freedom and isolation and trafficking and forced labour which do not.

NOTE: Over and above the theoretical discussion, the Court's analysis of the applicants' vulnerabilities shows that they had **no freedom in practice** to leave their employment situations. The Court stressed that the applicants were illegal migrants completely dependent upon their wages which remained unpaid. Leaving their employers would have exposed them to the danger of arrest or detention and left them no hope of being paid their wages, even in part. Moreover their lack of funds did not allow them to live elsewhere in Greece or to leave Greece (see below "when is a person considered to be vulnerable?").

3. When is a person considered to be vulnerable?

The Greek domestic court adopted a narrow understanding of vulnerability and ruled, in consequence, that the applicants were not vulnerable persons. According to this Court vulnerability requires the victim to be in a state of absolute weakness, preventing him from protecting himself; in a state of impoverishment such that his refusal to submit to the offender would appear absurd. It ruled that the applicants were not in such a situation.

The ECHR, on the other hand, stressed the vulnerability of the applicants. It ruled that the applicants began working at a time when they were in a situation of vulnerability as irregular migrants without resources and at risk of being arrested, detained and deported. It stressed that the applicants were aware that their irregular status put them at risk of being arrested and detained and subsequently removed from Greece. Consequently, any attempt to leave their work would have made this more likely and in addition, would have left them with no hope to receive the wages due to them, even in part. Moreover, the non – payment of wages to the applicants did not allow them to live elsewhere in Greece, nor to leave the country.

4. When is a situation categorized as forced labour?

The ECHR defines forced labour, in principle, and in the context of this case.

In principle: firstly, the Court states that the term "forced labour" brings to mind the idea of physical or mental coercion. It must be work exacted under "menace of penalty" and also performed against the will of the person concerned. Secondly, the **prior consent of the person does not necessarily negate forced labour**. In order to examine the "validity of the consent", it must be assessed **in the light of all the circumstances of the case**. Thirdly, the Court defines a number of situations which do NOT qualify as forced labour in view of the **nature and volume of the activity**:

- Work carried out in pursuance of a freely negotiated contract, even if violation of that contract carries with it sanctions.
- Work reasonably required on the basis of family assistance or cohabitation.

In the case at hand, the Court concluded that the applicants had undergone human trafficking and forced labour on the basis of the facts of the case, and in particular the **applicants' difficult working conditions**. It also noted the **vulnerabilities** of the applicants (illegal migrants without financial resources except what they would receive from the employers who withheld their salaries); the **abusive behavior of the employers** (withholding the applicants' salaries, threatening them by explicit words and the carrying of weapons, imposing harsh physical conditions, constantly humiliating the applicants and exercising overt violence, though not all the applicants were injured by it).

The Court stresses that human trafficking and forced labour do not require restrictions of freedom that result in a state of exclusion from the outside world, without any possibility of abandoning a given job and seeking an alternative, as is required to establish the crime of servitude.

5. Trafficking can transpire without bodily harm:

In this case, while there was one violent incident where some employees were injured, not all the applicants was injured. Nevertheless, the Court ruled that the elements of trafficking and forced labour were satisfied in regard to all of them. The Court distinguishes between grievous bodily harm and human trafficking, both of which were charged in this case. In addition, it states that "*the term "forced labour" brings to mind the idea of physical or mental coercion.*"

Interestingly, the Greek public prosecutor's decision not to recognize some of the applicants as victims of trafficking rested, in part, on the fact that most were not injured and even those who were – were not hospitalized. This may point to his assumption that trafficking requires bodily harm.

In this regard, it is also useful to refer to section 3.2.1 of the Case Digest: on "*Violence or Force: the effect on victims of violent abuse of others.*"

6. Circumstances which were important to the Court's ruling:

- **The primacy of difficult work conditions:**

In concluding that the case can be categorized as one of human trafficking and forced labour, the Court stresses, in particular, the difficult work conditions of the applicants thus: "*The facts of the case, and in particular the applicants' working conditions...clearly demonstrate the existence of human trafficking and forced labour.*"

As can be seen in "the facts of the case", these included long hours of work under the supervision of armed guards, no vacations, withholding of wages for periods up to 6 months, difficult living conditions in makeshift shacks with no toilets or running water.

- **Vulnerability of applicants:**

An additional circumstance emphasized by the Court is the vulnerability of the applicants who were illegal migrants with no financial resources other than those provided by their employers. This limited their ability to find alternative jobs, as to do so, they must have relinquished any hope of being paid and could be arrested or detained by the authorities. The Court dismisses the Greek domestic court's narrow understanding of vulnerability as a state of absolute weakness (see above "who is considered to be vulnerable?").

- **Threats:**

In dealing with the issue of consent, the Court stressed the abusive behaviour of the employers which included threats of force and financial threats of non – payment of wages. In addition, the Court took into account both explicit threats and threats by means of the behaviour of the accused persons by carrying weapons.

- **Climate of Fear:**

In analyzing the case, the Court describes as relevant factors the constant intimidation the applicants underwent, performing work under the supervision of armed guards, amid constant threats of force and withholding of wages.

- **Constant humiliation:**

The Court stresses the constant humiliation undergone by the applicants as a factor relevant to trafficking and forced labour. Its approach to this aspect of the situation can also be seen in its award of non-pecuniary damages for degrading conditions, among the rest.

7. The relationship between trafficking and forced labour:

In concluding that the applicants' situation was one of human trafficking and forced labour, the Court pauses to dwell on the connection between the two crimes. It states that exploitation through work is one of the forms of exploitation covered by the definition of trafficking, which fact highlights the intrinsic relationship between forced labour and human trafficking.

8. Addressing delayed complaints:

The Greek prosecution and Assize Court relied upon the delayed complaints of the applicants to impugn their credibility.

These delayed complaints took place in various contexts:

- **A delay of 3 weeks in submitting complaints to police:** The Amaliada public prosecutor noted that some of the applicants, (who were not parties to the case in the Greek domestic court), delayed complaining to police about the

violent incident at the workplace on April 17th (see above "facts of the case"), for a period of 3 weeks. While some workers, immediately submitted complaints, some of the applicants did not do so until May 8th. The Amaliada public prosecutor did not accept the workers' explanation that they had left their huts during this period due to their fear. He stressed that they had not been close to the scene of the incident and that, in any case, they could have returned and made their complaints when the police arrived. He also noted the applicants' admission that they had made statements to the police after learning that they would receive residence permits as victims of human trafficking.

- **A delay until Court hearing regarding certain complaints:** The Greek Assize Court rejected the workers' allegations that they had not received wages and had been subjected to a threatening and intimidating atmosphere throughout the duration of their work, because these allegations had been raised for the first time at the hearing and not at the stage of the preliminary enquiries or investigation.

The ECHR explicitly dismissed the prosecutor's conclusions about applicants' lack of credibility, as based on the 3 weeks of delay in complaints to police. It ruled that these conclusions disregarded the regulatory framework governing human trafficking, which provides for a 'recovery and reflection period' of at least 30 days for alleged victims to be able to recover and escape from the influence of the traffickers and knowingly take a decision about cooperating.⁵ The Court does not explicitly address the Greek Assize Court's approach in impugning the credibility of appellants who first raised claims of withholding of wages and intimidation at the hearing. However, it accepts these facts, as described by the workers, in its analysis.

9. The values at the root of trafficking:

The ECHR discusses the values at the base of the prohibition of trafficking, stating that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and with the values of the European Convention on Human Rights. Though seemingly theoretical, this discussion may be of practical value as well, in giving practitioners an additional tool by which to evaluate if a given case meets the threshold of trafficking.

10. The importance of proper language interpretation to effective investigation:

In the Court's description of the facts of the case, it notes that during the preliminary investigation by the local police, a number of other Bangladeshis, **including some who worked with the suspects**, were used as interpreters. While the Court does not comment explicitly on this topic, clearly, the use of persons dependent on the suspects has the potential to weaken the foundation of a case. It is useful to refer to the

⁵ The Court cited Article 13 of the Council of Europe's Convention on Action against Trafficking in Human Beings as the source of this obligation.

UNODC "Anti – Human Trafficking Manual for Criminal Practitioners, Module 10: Interpreters in trafficking in persons investigations" which lists best practices in this regard.

11. Interpretation of domestic law by the light of international instruments:

The Court noted that under Article 28 of the Greek constitution, international treaties ratified by the legislature, once entered into force, form an integral part of domestic law and prevail over any contrary provision of law. This places an obligation upon courts to interpret domestic law by taking into account international instruments to which Greece is a party. According to the Court, the domestic Greek court did not do so, when it defined the concept of trafficking narrowly, equating it to servitude.

I. Patterns and Trends

Some characteristics of this case are connected to worldwide patterns and trends, and for example:

1. **Male victims of forced labour:** The UNODC Global Report on Trafficking in Persons 2016⁶ reveals that 79% of detected victims of trafficking are women and children. However, the percentage of detected victims of trafficking who are men has been steadily increasing over the last decade. In the period from 2012 – 2014 one in five detected victims of trafficking were men.⁷ Moreover, in some regions men represent the greatest percentage of detected victims (Eastern Europe and Central Asia). Detected male victims – men and boys - are mainly trafficked for forced labour.⁸
2. **Increasing prevalence of forced labour:** While sexual exploitation is the most common worldwide detected form of trafficking, trafficking for forced labour has been increasing world - wide, and in some regions, like South Asia and the Sub Saharan region of Africa forced labour is the most common detected form of trafficking. In Southern and Western Europe forced labour represents about 30% of detected cases, but this form of trafficking is increasing.⁹
3. **Forced labor in agricultural contexts:** Agriculture is one of the areas in which forced labour occurs, including in plantations and in seasonal agricultural work such as berry picking in Nordic countries or fruit and vegetable collection in the Mediterranean region. Victims of trafficking for forced labour have also been detected in the fishing industry in South Asia and Africa.¹⁰

⁶ This report can be accessed at http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf

⁷ Ibid. pp. 23-25.

⁸ Ibid. pp. 28

⁹ Ibid. pp.28-29, 31, 72, 109.

¹⁰ Ibid. pp. 28- 29.

4. **Victims who are illegal migrants:** In this case the victims were illegal migrants from Bangladesh. The vulnerability of illegal migrants to trafficking and forced labour is a prevalent factor in cases worldwide. See Case Digest, sections **3.2.5.1** on *immigration status* and **3.2.5.6.** on *lack of familiarity with language and/or culture*.
5. **Restrictions of freedom which are not lock and key imprisonment:** This case reflects restrictions of freedom which are not lock and key imprisonment, but rather financial restrictions (by means of non – payment of salaries) and by means of fear of arrest, as the victims were illegal migrants. These forms of restrictions of freedom are prevalent in cases worldwide. See Case Digest, sections **3.2.6.4** on *subtle restrictions: instilling fear*; **3.2.6.5** on *subtle restrictions: nowhere to go*; **3.2.6.6.** on *subtle restrictions: financial dependence*.

Appendix

I. Procedural History in Detail:

Decisions of Amaliada Public Prosecutor prior to Court hearings – The first decision of the Amaliada Public Prosecutor was to recognize 35 workers who had all been injured during the violent incident at the worksite, as victims of human trafficking, thus making them lawful residents of Greece and allowing the submission of charges of trafficking and other offences against them to the Greek Assize Court. A subsequent decision denied such recognition to a group of 120 other workers, including 21 applicants who had not been injured in the violent incident of April 17th at the worksite. This denial was based on their delayed complaints and motivation to gain residence status in Greece, both of which impugned their credibility. Consequently, they were not recognized as victims of trafficking and charges of trafficking and assault regarding them were not submitted against the accused persons.

Decision of Public Prosecutor at Patras Court of Appeal prior to Court hearings – He dismissed the appeals of the 120 workers against the above decision on the grounds that the material in the case file did not substantiate their allegations and that their motivation in representing themselves as victims of trafficking was to obtain residence permits.

NOTE: The 35 recognized workers joined the subsequent proceedings before the Assize Court as civil parties and were represented by their lawyers.

Acquittal in the Greek domestic court (Patras Assize Court) - the accused persons were acquitted of trafficking in persons charges, but two of the four accused persons were convicted of grievous bodily harm and unlawful use of firearms during the violent suppression of a strike on the worksite. They were given sentences of 14 years and 7 months and 8 years and 7 months respectively. These prison sentences were commuted to a financial penalty of 5 euros a day of detention and they were ordered to pay the 35 workers recognized as victims a sum of 1500 euros (about 43 euros per worker).

Application to Appeal: The lawyer of the workers who had been recognized as victims of trafficking and thus taken part in the Assize Court hearing, lodged an application with the public prosecutor at the Court of Cassation asking him to appeal against the Assize Court judgment, which had not properly applied the Greek law on trafficking which requires an examination if the accused has taken advantage of any vulnerability of the workers. The Prosecutor refused to lodge an appeal. Thus, the Assize Court judgment concerning human trafficking became irrevocable.

Application to European Court of Human Rights: 42 Bangladeshi workers, (some of whom had been parties to the case before the Greek Assize Court and some of whom had not), lodged an application with the ECHR claiming that their work in the

strawberry fields in Manolada, Greece amounted to forced labour and human trafficking in violation of Article 4 of the European Convention on Human Rights.

II. Legal Framework:

Articles 323, 323A of Greek Criminal Code:

Article 323

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

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

..."

Article 323A

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

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

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

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

...

(b) is committed repeatedly;

...

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

Article 22&3 of Greek Constitution:

"Any form of compulsory labour shall be prohibited."

Article 4 of European Convention of Human Rights:

"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."

III. ECHR Ruling – in Detail:

The ECHR ruled that Greece had violated its obligations under Article 4 & 2 of the European Convention of Human Rights which prohibits forced or compulsory labour. In doing so, the court ruled that the applicants' situation fell under forced labour and human trafficking, and that though Greece had an appropriate legal and regulatory framework to combat trafficking, it had violated its obligations to effectively investigate the situation, and to prevent trafficking and protect its victims.

The Court stresses that States have positive obligations to combat trafficking which include: to put into place a legislative and administrative framework to allow for comprehensive treatment, by punishing perpetrators, preventing trafficking and protecting victims; to take operational measures to protect victims; to proactively investigate potential trafficking situations – not dependent upon a formal complaint by a victim or his relative – with reasonable expedition or even urgency when it is possible to remove the victim from a harmful situation. The Court ruled that not all these obligations were fulfilled by Greece in this case.

The failure to effectively investigate included the following omissions:

- **The Amaliada public prosecutor's decision** not to recognize some of the applicants as victims of trafficking and consequently not to charge the accused persons in regard to their treatment of these applicants was based on considerations having to do with the violent assault which took place at the worksite (see "facts of the case"), and failed to examine the claim regarding trafficking in persons. This - though the signed complaints of 21 applicants could have substantiated their claim by proving that they were working for the same employers and under the same conditions as the applicants who had been recognized as victims of trafficking. In addition, the prosecutor's reliance on the delayed complaints of these applicants to justify his decision, disregarded the regulatory framework governing human trafficking which requires giving alleged victims a "recovery and reflection period" of at least 30 days to decide if they wish to cooperate with the authorities.
- **The Patras Assize Court** did not conduct an effective judicial proceeding, as its criteria for trafficking were far too narrow, both in its understanding of vulnerability, as victims' inability to protect themselves, and in its ruling that trafficking requires that freedom of movement be restricted. The ECHR ruled that while restriction of freedom is an element of servitude, it is not a required element of trafficking in persons. Moreover the Court failed in its obligations by commuting the prison terms of two of the accused persons and by obligating them to pay 1500 euros instead of compensating the victims adequately and taking steps to establish a victim compensation fund.
- **The public prosecutor for the Court of Cassation** refused to appeal on points of law against the acquittal and replied laconically and without

adequate reasoning to the allegation of the workers' lawyers that the Assize Court had not properly examined the charge of human trafficking.

The failure of the State to prevent trafficking and protect victims of trafficking involved not undertaking adequate measures to accomplish these aims, despite the knowledge of the State regarding the situation of workers in the strawberry fields where the applicants worked. The sources of this knowledge were press reports, an Ombudsman report, and complaints submitted to the relevant police station.