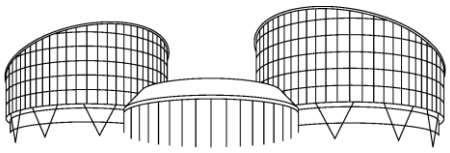

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 56921/09
Elizabeth KAWOGO
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 3 September 2013 as a Chamber composed of:

Ineta Ziemele, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney,
Faris Vehabović, *judges*,

and Francoise Elens-Passos, *Section Registrar*,

Having regard to the above application lodged on 14 October 2009,

Having regard to the Government's observations submitted on 12 October 2010 and to the third party interventions by the Aire Centre and Kalayaan, Interights, the Helsinki Foundation for Human Rights and La Strada Foundation Against Trafficking in Persons and Slavery, and the Equality and Human Right Commission,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Elizabeth Kawogo, is a Tanzanian national who was born in 1982 and lives in Harrow. She was represented before the Court by Ms E. Gibbs of North Kensington Law Centre, a Non-Governmental Organisation based in London. The United Kingdom Government ("the Government") were represented by their Agents, Ms L. Dauban and Ms Megan Addis, of the Foreign and Commonwealth Office.

The applicant complained under Article 4 of the Convention, read alone and together with Article 13, that she was subjected to servitude or forced

labour in the United Kingdom and that she had no effective domestic remedy available to her.

THE LAW

The applicant complained that the domestic law in place in the United Kingdom failed to provide adequate criminal penalties in respect of forced labour or servitude, that the domestic authorities failed to take adequate steps to investigate her complaints and prosecute those responsible, and that deficiencies in the criminal law deprived her of an effective remedy for her Convention complaints. She relied on Article 4 of the Convention read alone and together with Article 13. Article 4 provides as follows:

> "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."

After unsuccessful friendly settlement negotiations, the Government informed the Court by letter dated 5 September 2011 that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government of the United Kingdom regret the occurrence of the actions which have led to the bringing of the present application, in particular the lack of a criminal prosecution of those responsible for the conditions in which the applicant was kept as a domestic worker in the United Kingdom. It is the understanding of the Government that the suspects are no longer in the United Kingdom.
>
> The Government accept that in this case the relevant authorities could have done more to investigate the applicant's situation with a view to possible criminal prosecution and conviction of those involved in her domestic servitude in the United Kingdom. This amounted to a procedural violation of Article 4 of the Convention.
>
> The Government are confident that the domestic criminal law provisions in force at the time of the applicant's complaint constituted an extensive set of protections which,

by their reach, criminalised the wide range of conditions and circumstances associated with servitude and forced or compulsory labour. As well as trafficking for the purposes of forced labour, and being an accessory to such trafficking, there are offences covering kidnap, false imprisonment, blackmail, and a range of employment offences concerning, for example, minimum wages and maximum working hours. The Government regret that these provisions were not applied effectively in the applicant's particular case.

The Government note that the applicant successfully brought a civil claim in the Employment Tribunal against the individuals responsible for her domestic servitude and was awarded GBP 58, 585.80 in damages against them.

The Government would draw the Court's attention to the fact that, since the circumstances which led to the applicant's complaint, there is now a further offence relating to the prohibition in Article 4 of the Convention. This is in section 71 of the Coroners and Justice Act 2009, which came into force in April 2010. The offence consists of holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour. Section 71 of the Act provides that references to holding a person in slavery or servitude and requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Convention.

The new legislation provides further protection for potential victims of slavery, servitude or forced labour, and makes it easier for the relevant authorities to investigate and prosecute such cases where there has been no trafficking, or it is difficult to prove trafficking. Guidance has been issued to the police, and the judicial and prosecuting authorities about the new offence. The Government are, therefore, confident that this further measure and the associated guidance will help to ensure that there will not be a repeat of the circumstances that gave rise to the applicant's complaint under Article 4 of the Convention. Given the offence is relatively new, no statistics are yet available as to the number of prosecutions brought. These will become available in the autumn of 2011.

In light of the declarations above, and having regard to the particular facts of the applicant's case, the Government offers to pay to the applicant the amount of EUR 18,000 (eighteen thousand euros), which includes the amount of EUR 500 (five hundred euros) for any legal costs and expenses, to be converted to and paid in pounds sterling to a bank account named by the applicant within three months from the date of the striking-out decision of the Court pursuant to Article 37 of the Convention. This payment will constitute final settlement of the applicant's case."

In a letter of 7 November 2011 the applicant expressed the view that the award offered by the Government was wholly inadequate to provide just satisfaction for her complaints. In particular, it did not represent a minimal amount of wages or compensation for the significant continuing uncertainty and psychological damage she had suffered. Moreover, the sum of EUR 500 was wholly inadequate to cover her legal fees. The applicant further submitted that respect for human rights required examination of the application because the Government had not conceded that she had been a victim of trafficking or had been subjected to slavery; there had been no attempt to investigate her claims; and guidance was required from the Court as to the positive obligations of *in situ* support under Article 4 of the Convention.

On 13 November 2012 the Court handed down its judgment in *C.N. v. the United Kingdom*, no. 4239/08, 13 November 2012, a case which also concerned the adequacy of criminal penalties in the United Kingdom in respect of forced labour or servitude. In that case the Court found that the investigation into the applicant's complaints of domestic servitude was ineffective due to the absence of specific legislation criminalising such treatment.

On 29 November 2012 the applicant made further submissions to the Court in response to the judgment in *C.N.* She submitted that there were a number of legal issues raised in her application which were not determined by the Court in *C.N* and which therefore remained live issues, including the duty of the respondent State to investigate the individuals who had subjected her to domestic servitude; the steps that the respondent State could have taken to prevent her from being subjected to forced labour and servitude; the lack of effectiveness of the employment proceedings when not backed up by a criminal investigation; the extent of the obligation to provide *in situ* support; and the amount of just satisfaction to which the applicant was entitled. The applicant submitted that each of these issues raised a point of wider public importance and should therefore be considered by the Court in a formal judgment.

On 1 March 2013 the Government submitted a revised unilateral declaration in order fully to reflect the Court's conclusions in *C.N*. The only changes to the original declaration were to paragraph 3 and in the penultimate paragraph. The Government further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The revised declaration provided as follows:

> "The Government of the United Kingdom regret the occurrence of the actions which have led to the bringing of the present application, in particular the lack of a criminal prosecution of those responsible for the conditions in which the applicant was kept as a domestic worker in the United Kingdom. It is the understanding of the Government that the suspects are no longer in the United Kingdom.
>
> The Government accept that in this case the relevant authorities could have done more to investigate the applicant's situation with a view to possible criminal prosecution and conviction of those involved in her domestic servitude in the United Kingdom. This amounted to a procedural violation of Article 4 of the Convention.
>
> Following the judgment of the Court in *C.N. v. the United Kingdom*, the Government regret that the domestic criminal law provisions in force at the time of the applicant's complaint were not applied effectively in the applicant's particular case and were inadequate to afford practical and effective protection against treatment falling within the scope of Article 4 of the Convention.
>
> The Government note that the applicant successfully brought a civil claim in the Employment Tribunal against the individuals responsible for her domestic servitude and was awarded GBP 58,585.80 in damages against them.
>
> The Government would draw the Court's attention to the fact that, since the circumstances which led to the applicant's complaint, there is now a further offence

> relating to the prohibition in Article 4 of the Convention. This is in section 71 of the Coroners and Justice Act 2009, which came into force in April 2010. The offence consists of holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour. Section 71 of the Act provides that references to holding a person in slavery or servitude and requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Convention.
>
> The new legislation provides further protection for potential victims of slavery, servitude or forced labour, and makes it easier for the relevant authorities to investigate and prosecute such cases where there has been no trafficking, or it is difficult to prove trafficking. Guidance has been issued to the police, and the judicial and prosecuting authorities about the new offence. The Government are, therefore, confident that this further measure and the associated guidance will help to ensure that there will not be a repeat of the circumstances that gave rise to the applicant's complaint under Article 4 of the Convention. The offence is relatively new and statistics for the period up until the end of 2011 show that there has been a total of one prosecution with a conviction under section 71 of the Coroners and Justice Act 2009.
>
> In light of the declarations above, and having regard to the particular facts of the applicant's case, the Government offers to pay to the applicant the amount of EUR 18,000 (eighteen thousand euros), which includes the amount of EUR 500 (five hundred euros) for any legal costs and expenses, to be converted to and paid in pounds sterling to a bank account named by the applicant within three months from the date of the striking-out decision of the Court pursuant to Article 37 of the Convention. This payment will constitute final settlement of the applicant's case."

On 21 March 2013 the applicant once again expressed the view that the award offered by the Government was wholly inadequate to provide just satisfaction for her complaints. In doing so, she reiterated the arguments raised in her submissions of 7 November 2011 and 29 November 2012.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

In considering whether it would be appropriate to strike out the present application on the basis of the unilateral declaration, the Court makes the following observations.

First, the applicant's complaints are serious in nature and Article 4 of the Convention requires Contracting States to take positive steps to protect potential victims both within and without the framework of criminal investigations and prosecutions (see, for example, *Siliadin v. France*, no. 73316/01, § 112, ECHR 2005-VII and *Rantsev v. Cyprus and Russia*, no. 25965/04, § 284, ECHR 2010 (extracts)).

Secondly, the Employment Tribunal has already found that the applicant was not paid for her work and that her assertion that she had been treated as a slave was "an uncomfortable but fairly apt description". Moreover, the Government have accepted that that they were in breach of their procedural obligations under Article 4 of the Convention insofar as they failed to investigate the applicant's complaints "with a view to possible criminal prosecution and conviction of those involved in her domestic servitude in the United Kingdom". The Government regret that the applicant was as a result obliged to bring an application under the Convention.

Thirdly, the Government have accepted that the domestic criminal law provisions in force at the time of the applicant's complaint were inadequate to afford practical and effective protection against treatment falling within the scope of Article 4 of the Convention.

Fourthly, the Government have now introduced new legislation which should provide greater protection for potential victims of slavery, servitude and forced labour. Consequently, the complaints raised by the applicant concern a "historical" problem, the facts of which are unlikely to be repeated.

Fifthly, with regard to the amount of the payment proposed by the Government, redress was available to the applicant in the form of an award of damages made by the Employment Tribunal. Although the applicant has not received this award, it remains open to her to pursue the enforcement of the judgment in the domestic courts. The sum proposed by the Government should not, therefore, include compensation for loss of earnings.

Sixthly, with regard to the amount proposed in respect of the applicant's legal fees, as her current representatives were only appointed following the submission of the application and exchange of observations, it is appropriate for the award to be reduced accordingly.

Finally, although the Government's declaration does not explicitly refer to the applicant's Article 13 complaints, the Court is nonetheless of the view that the scope of the acknowledgement of a breach of the Convention is sufficiently broad to deal with the complaint.

Therefore, having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court

considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein,

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President