

Status:  Positive or Neutral Judicial Treatment

**\*287 Siliadin v France**

Application No.73316/01

Before the European Court of Human Rights

26 July 2005

**(2006) 43 E.H.R.R. 16**

( The President, Judge Cabral Barreto; Judges Costa, Türmen, Jungwiert, Butkevych, Mularoni and Fura-Sandström)

July 26, 2005

Domestic workers; Forced labour; Just satisfaction; Positive obligations; Preliminary objections; Slavery; Victims

H1 The applicant had arrived in France from Togo in January 1994 in the company of Mrs D, a French national of Togolese origins. It had been agreed that the applicant would work at Mrs D's home until such time as she had earned enough to pay Mrs D back for her airfare, but that her immigration status would be regularised and that she would be educated. At the time, the applicant was aged 15 years and 7 months. She held a passport with a tourist visa, but that was subsequently confiscated by Mrs D. In October 1994, after having worked with Mrs D for a few months, the applicant was "lent" to Mr and Mrs B. Whilst she was with them, the applicant worked non-stop for approximately 15 hours a day without any rest days, without being paid, without being educated, without any identity documents and without her immigration status having been regularised. She slept in the baby's bedroom. In December 1995, the applicant was able to escape, but after a few months she returned to Mr and Mrs B, in obedience to her paternal uncle, on the understanding that they would regularise her immigration status. However, the situation remained unchanged.

H2 On an unspecified date, the applicant's case was reported to the authorities by the Committee against Modern Slavery and criminal proceedings were brought against Mr and Mrs B. In a judgment of June 10, 1999 the trial court found that the offence of obtaining performance of unpaid or inadequately remunerated services had been established. However, it concluded that the offence of subjecting a person to working or living in conditions incompatible with human dignity had not been established. The court nevertheless concluded that the offences of which Mr and Mrs B had been found guilty were particularly grave and should be punished by severe penalties. On appeal, the Court of Appeal, considering that, on the evidence before it, certain elements of the offences had not been made out, acquitted the accused of all charges. The applicant appealed against that judgment to the Court of Cassation in relation to the civil claim, whilst the public prosecutor did not lodge an appeal against the acquittal. The Court of Cassation upheld the applicant's appeal and referred the case to another Court of Appeal. That court, in relation to **\*288** the applicant's civil claim, found that the elements of the criminal offence of obtaining performance of unpaid or inadequately remunerated services had been established, but also concluded that the offence of subjecting a person to working or living conditions incompatible with human dignity had not been established. Finding that the treatment of the applicant had caused her extensive psychological trauma, the court awarded her damages. Subsequently, an employment tribunal awarded the applicant sums in respect of salary arrears and compensation in lieu of notice.

H3 Relying upon Art.4, the applicant claimed that her rights to be free from slavery, forced labour and servitude had been violated due to the lack of protection provided by French law.

H4 **Held**, unanimously:

- (1) that the Government's preliminary plea based on the applicant's loss of capacity as a victim be dismissed;
- (2) that there had been a violation of Art.4;

(3) that the respondent State was to pay the applicant a sum in respect of costs and expenses, from which had to be deducted the sums received in legal aid.

1. Preliminary objection: loss of victim status ( Art.34).

H5 The Government argued that the applicant had lost her status as a victim. That argument raised issues concerning the criminal provisions under French law relating to slavery, servitude and forced and compulsory labour and the interpretation afforded to them by the national courts. These issues were closely linked to the merits of the applicant's complaint, and, accordingly, they fell to be examined under the substantive provision of the Convention invoked by the applicant. [63]

2. Prohibition of forced or compulsory labour; right not to be held in servitude; positive obligation ( Art.4)

H6 With respect to certain Convention rights, the fact that a state had refrained from infringing the rights in question did not suffice to conclude that it had complied with its obligations deriving from Art.1. [77]

H7 In particular, positive obligations were inherent in the right to effective respect for private life under Art.8; those obligations could involve the adoption of measures even in the sphere of the relations of individuals between themselves. Similarly, under Art.3, states were required to take measures designed to ensure that individuals within their jurisdiction were not subjected to ill-treatment, including ill-treatment administered by private individuals. Children and other vulnerable individuals, in particular, were entitled to protection by the State, in the form of effective deterrence, against serious breaches of personal integrity. [78]–[81]

H8 Having regard to the Court's case law on positive obligations and to the relevant international instruments dealing with slavery and forced labour, restricting the application of Art.4 only to direct actions of the state authorities that breached the obligations enshrined in the relevant international instruments would have \*289 deprived that provision of its substance. Accordingly, Art.4 had to be read as imposing positive obligations on the State to enact provisions of criminal law punishing the practices prohibited therein and to apply those provisions in practice. [89]

H9 Article 4, which enshrined one of the fundamental values of democratic societies, made no provision for exceptions. Under Art.15(2) there could be no derogation from Art.4 even in the event of war or any other public emergency threatening the life of the nation. [112]

H10 On that basis, and in accordance with the standards enshrined in international instruments for the protection of human beings against slavery, servitude and forced or compulsory labour, the positive obligations of the Member States under Art.4 of the Convention had to be seen as requiring the penalisation and effective prosecution of any act conducive to keeping a person in that type of situation. [112]

H11 As to the question of whether the applicant's situation fell within Art.4, it was not disputed that the applicant had worked for Mr and Mrs B for years without respite, nor that she had not done so of her own volition. In addition, she had never received any pay from Mr and Mrs B for the work that she carried out. [113]–[114]

H12 The relevant ILO conventions, which were binding on almost all of the Member States of the Council of Europe, including France, had to be taken into account when interpreting Art.4. [115]

H13 In particular, Art.2(1) of the ILO Forced Labour Convention of 1930 provided that the term "forced or compulsory labour" meant "all work or service which is exacted from a person under the menace of any penalty and for which the said person has not offered himself voluntarily". [116]–[117]

H14 Although the applicant had not been under the menace of any "penalty" she had nevertheless been in an equivalent situation in light of the seriousness of the threat that she could have felt, being a young person unlawfully present in a country that was foreign to her, and afraid of being arrested by the police. In addition, Mr and Mrs B had maintained that fear while leading the applicant to believe that her status would be regularised. In light of the circumstances, and particularly in light of the fact that the applicant was a minor, it could be considered that her service had been exacted under menace of penalty. Finally, it was clear that the applicant had not performed that work of her own free will. [118]–[119]

H15 In the light of all the circumstances, the applicant had, at the least, been subjected to forced labour within the meaning of Art.4. [120]–[121]

H16 According to the 1927 Slavery Convention, “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Although the applicant had clearly been deprived of her personal autonomy, the evidence did not suggest that she had been held in slavery in the proper sense, in other words that Mr and Mrs B had exercised a genuine right of ownership over her, thus reducing her to the status of an “object”. [122]

H17 The concept of “servitude” encompassed, in addition to the obligation to provide services to another, the obligation on the “serf” to live on the property of another and an inability to change his circumstances. Accordingly, the concept of “servitude” within the meaning of Art.4 had to be regarded as consisting of being obliged to provide one’s services under coercion, and was to be linked to the concept of “slavery”. [123]–[124] \*290

H18 Furthermore, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery imposed on the respondent State an obligation to take all practicable and necessary measures to bring about the complete abolition or abandonment of a number of institutions and practices, including that whereby a child or young person under the age of 18 years was delivered to another person with a view to the exploitation of the child or young person, or of his labour. [125]

H19 The applicant had been compelled to carry out forced labour, and this work lasted for almost 15 hours a day, 7 days a week. She had not in any way chosen to work for Mr and Mrs B. Further, as a minor she had had no resources and had been vulnerable and isolated, and had had no means of subsistence other than in the home of Mr and Mrs B. She had been entirely at the mercy of Mr and Mrs B, since her papers had been confiscated. Although she had been promised that her immigration status would be regularised, that had never happened. Furthermore, the applicant was only allowed to go out to accompany the children to school and to their various activities. She therefore did not have any freedom of movement or free time. In addition, as she had not been educated, despite the promises made to her father, she could not hope that her situation would improve, and was completely dependent on Mr and Mrs B. [126]–[128]

H20 In these circumstances, it could be concluded that the applicant, a minor at the relevant time, had been held in servitude within the meaning of Art.4. [129]

H21 As to the domestic legislation and its application, it was noteworthy that a parliamentary committee in the respondent State had drawn attention to the deficiencies in applicable criminal law which prejudiced its uniform application and to the fact that the inadequacy of the relevant provisions of the Criminal Code was clearly apparent in the light of the seriousness of the circumstances encountered in modern slavery situations. [134]

H22 The applicant’s “employers” had been prosecuted under the applicable domestic law which criminalised the exploitation of a person’s labour and subjection of an individual to working or living conditions incompatible with human dignity. Although they had initially been convicted of exploitation of a person’s labour, and sentenced to severe penalties, those convictions had been overturned upon appeal. Further, they had not been convicted of the offence of subjection of an individual to working or living conditions incompatible with human dignity. On the appeal lodged by the applicant before the Court of Cassation on points of law, the judgment was overturned only in respect of its civil aspects. [135]–[140]

H23 Slavery and servitude were not criminalised as such under the criminal law of the respondent State; the relevant provisions of the criminal law did not specifically address the rights guaranteed by Art.4, but related, in a much more restrictive manner, to the exploitation of labour and subjection to living or working conditions incompatible with human dignity. [141]–[142]

H24 Although the applicant had been subjected to treatment contrary to Art.4, the perpetrators of those acts had not been convicted under the criminal law due to the fact that the public prosecutor had not appealed on points of law against the judgment of the Court of Appeal acquitting the defendants. [145]–[146]

H25 In the circumstances, the legislation in force at the material time had not afforded the

applicant, who was a minor, specific and effective protection against **\*291** the actions of which she had been a victim. Changes which were subsequently made to the legislation had not affected the applicant's situation. Consequently, there had been a violation of the positive obligations incumbent on the respondent State under Art.4. [148]–[149]

3. Just satisfaction: cost and expenses; default interest (Art.41).

H26 The applicant had not claimed any damages; however she had claimed reimbursement of the costs of her representation, less the sums received in legal aid. Although the applicant had not submitted any evidence to prove that she had paid the amount claimed in respect of costs and expenses, her representative had undeniably carried out a considerable amount of work in presenting and arguing the case in a field in which there was as yet very little case law. In these circumstances, ruling on an equitable basis, the applicant was awarded all of the costs claimed. [151]; [154]

H27 Default interest was based on the marginal lending rate of the European Central Bank, plus 3 percentage points. [155]

## **H28 The following cases are referred to in the Court's judgment:**

1. [\*A v United Kingdom\*: \(1999\) 27 E.H.R.R. 611](#)
2. [\*Airey v Ireland \(A/32\)\*: \(1979–80\) 2 E.H.R.R. 305](#)
3. [\*Amuur v France\*: \(1996\) 22 E.H.R.R. 533](#)
4. [\*Brumarescu v Romania\*: \(2001\) 33 E.H.R.R. 35](#)
5. [\*Chahal v United Kingdom\*: \(1997\) 23 E.H.R.R. 413](#)
6. [\*E v United Kingdom\*: \(2003\) 36 E.H.R.R. 31](#)
7. [\*Gnahoré v France\*: \(2002\) 34 E.H.R.R. 38](#)
8. [\*Ireland v United Kingdom\*: \(1979–80\) 2 E.H.R.R. 25](#)
9. [\*Isayeva v Russia\*: \(2005\) 41 E.H.R.R. 38](#)
10. [\*MC v Bulgaria\*: \(2005\) 40 E.H.R.R. 20](#)
11. [\*Marckx v Belgium \(A/31\)\*: \(1979–80\) 2 E.H.R.R. 330](#)
12. [\*Selmouni v France\*: \(2000\) 29 E.H.R.R. 403](#)
13. [\*Soering v United Kingdom \(A/161\)\*: \(1989\) 11 E.H.R.R. 439](#)
14. [\*Stubbings v United Kingdom\*: \(1997\) 23 E.H.R.R. 213](#)
15. [\*Van der Mussele v Belgium \(A/70\)\*: \(1984\) 6 E.H.R.R. 163](#)

16. [Van Droogenbroeck v Belgium \(B/44\): \(1982\) 4 E.H.R.R. 443](#)
17. [X and Y v Netherlands \(A/91\): \(1986\) 8 E.H.R.R. 235](#)
18. [Z v United Kingdom: \(2002\) 34 E.H.R.R. 3](#)
19. Application No.9327/81, X v Netherlands, Dec. 3.5.1983
20. Application No.32967/96, Calvelli and Ciglio v Italy, January 17, 2002
21. Application No.34574/97, GG v Italy, Dec. 10.10.2002
22. Application No.39288/98, Association Ekin v France
23. Application No.42400/98, Seguin v France, Dec. 7.3.2000
24. Application No.43622/98, Malama v Greece, November 25, 1999
25. Application No.62503/00, Karahalios v Greece, December 11, 2003
26. [Application No.36505/02, August v United Kingdom, Dec. 21.1.2003](#)

## H29 Representation

**\*292**

Mrs Clement of the Paris Bar, Counsel; assisted by Mrs Bourgeois, lawyer for the Committee against Modern Slavery for the applicant. **\*292**

Mrs Belliard, Director of Legal Affairs, Ministry of Foreign Affairs (Agent).

Mr Dutertre, Magistrate, on secondment to the Human Rights Section, Legal Affairs Department, Ministry of Foreign Affairs.

Mrs Vailhe, Special Advisor, European and International Affairs Service, Ministry of Justice.

Mrs Puren, Criminal Affairs and Pardons Department, Ministry of Justice, Counsel for the Government.

## The Facts

### I. The circumstances of the case

9 The applicant was born in 1978 and lives in Paris.

10 She arrived in France on January 26, 1994, aged 15 years and 7 months, with Mrs D, a

French national of Togolese origin. She had a passport and a tourist visa.

11 It had been agreed that she would work at Mrs D's home until the cost of her air ticket had been reimbursed and that Mrs D would attend to her immigration status and find her a place at school. In reality, the applicant became an unpaid housemaid for Mr and Mrs D and her passport was taken from her.

12 In the second half of 1994 Mrs D "lent" the applicant to Mr and Mrs B, who had two small children, so that she could assist the pregnant Mrs B with household work. Mrs B also had another daughter from a first marriage who stayed with her during the holidays and at weekends. The applicant lived at Mr and Mrs B's home, her father having given his consent.

13 On her return from the maternity hospital, Mrs B told the applicant that she had decided to keep her.

14 The applicant subsequently became a general housemaid for Mr and Mrs B. She worked seven days a week, without a day off, and was occasionally and exceptionally authorised to go out on Sundays to attend mass. Her working day began at 7.30am, when she had to get up and prepare breakfast, dress the children, take them to nursery school or their recreational activities, look after the baby, do the housework and wash and iron clothes.

In the evening she prepared dinner, looked after the older children, did the washing up and went to bed at about 10.30pm. In addition, she had to clean a studio flat, in the same building, which Mr B had made into an office.

The applicant slept on a mattress on the floor in the baby's room; she had to look after him if he woke up.

15 She was never paid, except by Mrs B senior, who gave her one or two 500 franc notes.

16 In December 1995 the applicant was able to escape with the help of a Haitian national who took her in for five or six months. She looked after the latter's two children, was given appropriate accommodation and food, and received 2,500 French francs (FRF) per month.

17 Subsequently, in obedience to her paternal uncle, who had been in contact with Mr and Mrs B, she returned to the couple, who had undertaken to put her immigration status in order. However, the situation remained unchanged: the applicant continued to carry out household tasks and look after the couple's children. She slept on a mattress on the floor of the children's bedroom, then on a \*293 folding bed, and wore second-hand clothes. Her immigration status had still not been regularised, she was not paid and did not attend school.

18 On an unspecified date, the applicant managed to recover her passport, which she entrusted to an acquaintance of Mr and Mrs B. She also confided in a neighbour, who alerted the Committee against Modern Slavery, which in turn filed a complaint with the prosecutor's office about the applicant's case.

19 On July 28, 1998 the police raided Mr and Mrs B's home.

20 The couple were prosecuted on charges of having obtained from July 1995 to July 1998 the performance of services without payment or in exchange for payment that was manifestly disproportionate to the work carried out, by taking advantage of that person's vulnerability or state of dependence; with having subjected an individual to working and living conditions that were incompatible with human dignity by taking advantage of her vulnerability or state of dependence; and with having employed and maintained in their service an alien who was not in possession of a work permit.

21 On June 10, 1999 the *Paris tribunal de grande instance* delivered its judgment.

22 It found that the applicant's vulnerability and dependence in her relationship with Mr and Mrs B was proved by the fact that she was unlawfully resident in France, was aware of that fact and feared arrest, that Mr and Mrs B nurtured that fear while promising to secure her leave to remain—a claim that was confirmed by her uncle and her father—and by the fact that she had no resources, no friends and almost no family to help her.

23 As to the failure to provide any or adequate remuneration, the court noted that it had been

established that the young woman had remained with Mr and Mrs B for several years, was not a member of their family, could not be regarded as a foreign au pair who had to be registered and given free time in order to improve her language skills, was kept busy all day with housework, did not go to school and was not training for a profession and that, had she not been in their service, Mr and Mrs B would have been obliged to employ another person, given the amount of work created by the presence of four children in the home.

It therefore concluded that the offence set out in Art.225-13 of the Criminal Code<sup>1</sup> was substantiated.

24 The court also found it established that Mr and Mrs B were employing an alien who was not in possession of a work permit.

25 The court noted that the parties had submitted differing accounts concerning the allegations that the working and living conditions were incompatible with human dignity.

It found that the applicant clearly worked long hours and did not enjoy a day off as such, although she was given permission to attend mass. It noted that a person who remained at home with four children necessarily began his or her work early in the morning and finished late at night, but had moments of respite during the day; however, the scale of Mrs B's involvement in this work had not been established.

26 The court concluded that, while it seemed established that employment regulations had not been observed in respect of working hours and rest time, this \*294 did not suffice to consider that the working conditions were incompatible with human dignity, which would have implied, for example, an infernal rhythm, frequent insults and harassment, the need for particular physical strength that was disproportionate to the employee's constitution and having to work in unhealthy premises, which had not been the case in this instance.

27 As to the applicant's accommodation, the court noted that Mr and Mrs B, who were well-off, had not seen fit to set aside an area for the applicant's personal use and that, although this situation was regrettable and indicated their lack of consideration for her, her living conditions could not be held to infringe human dignity, given that a number of people, especially in the Paris region, did not have their own rooms. Accommodation which infringed human dignity implied an unhygienic, unheated room, with no possibility of looking after one's basic hygiene, or premises which were so far below the applicable norms that occupation would be dangerous.

28 Accordingly, the court found that the offence set out in Art.225-14 of the Criminal Code had not been substantiated.

Nonetheless, the judges concluded that the offences of which Mr and Mrs B were convicted were incontestably serious and were to be severely punished, particularly as the couple considered that they had treated the applicant quite properly.

Accordingly, they sentenced them to 12 months' imprisonment each, of which seven months were suspended, imposed a fine of FRF 100,000 and ordered them to pay, jointly and severally, FRF 100,000 to the applicant in damages. In addition, Mr and Mrs B forfeited their civic, civil and family rights for three years.

29 Mr and Mrs B appealed against this decision.

30 On April 20, 2000 the Paris Court of Appeal gave an interlocutory judgment ordering further investigations.

31 On October 19, 2000 it delivered its judgment on the merits.

32 The Court of Appeal found that the additional investigation had made it possible to confirm that the applicant had arrived in France aged 15 years and 7 months, in possession of a passport and a three-month tourist visa. During the period that she lived with Mrs D, from January to October 1994, she had been employed by the latter, first, to do housework, cook and look after her child, and, secondly, in the latter's clothing business, where she also did the cleaning and returned to the rails clothes that customers had tried on, without remuneration.

33 In or about October 1994 the applicant had spent a few days at Mr and Mrs B's home, shortly before Mrs B gave birth to her third child. She travelled by underground to Mr and Mrs B's home

every day and returned to Mrs D's house in the evening to sleep.

34 In July to August 1995 she was "lent" to Mr and Mrs B, and stayed in their home until December 1995, when she left for Mrs G's home, where she was remunerated for her work and given accommodation. She had returned to Mr and Mrs B in May to June 1996 on her uncle's advice.

35 The appeal court noted that it had been established that the applicant was an illegal immigrant and had not received any real remuneration.

Further, it noted that it appeared that the applicant was proficient in French, which she had learnt in her own country. **\*295**

In addition, she had learnt to find her way around Paris in order, initially, to go from Mrs D's home to the latter's business premises, and later to travel to Maisons-Alfort, where Mrs G lived, and finally to return to Mr and Mrs B's home.

36 She had a degree of independence, since she took the children to the locations where their educational and sports activities were held, and subsequently collected them. She was also able to attend a Catholic service in a church near Mr and Mrs B's home. In addition, she left the house to go shopping, since it was on one of those occasions that she had met Mrs G and agreed with her to go to the latter's home.

37 The Court of Appeal further noted that the applicant had had an opportunity to contact her uncle by telephone outside the G's home and to pay for calls from a telephone box. She had met her father and her uncle and had never complained about her situation.

38 Furthermore, Mrs B's mother confirmed that the applicant spoke good French and that she was in the habit of giving her small sums of money for family celebrations. She had frequently had the applicant and her grandchildren to stay in her country house and had never heard her complain of ill-treatment or contempt, although she had been free to express her views.

39 The applicant's uncle stated that she was free, among other things, to leave the house and call him from a telephone box, that she was appropriately dressed, in good health and always had some money, which could not have come from anyone but Mr and Mrs B. He had offered to give her money, but she had never asked for any. He added that he had raised this question with Mrs B, who had told him that a certain amount was set aside every month in order to build up a nest-egg for the applicant, which would be given to her when she left, and that the girl was aware of this arrangement.

He stated that, on the basis of what he had been able to observe and conclude from his conversations with the applicant and with Mrs B, the girl had not been kept as a slave in the home in which she lived.

40 The Court of Appeal ruled that the additional investigations and hearings had shown that, while it did appear that the applicant had not been paid or that the payment was clearly disproportionate to the amount of work carried out (although the defendants' intention to create a nest egg that would be handed over to her on departure had not been seriously disputed), in contrast, the existence of working or living conditions that were incompatible with human dignity had not been established.

It also considered that it had not been established that the applicant was in a state of vulnerability or dependence since, by taking advantage of her ability to come and go at will, contacting her family at any time, leaving Mr and Mrs B's home for a considerable period and returning without coercion, the girl had, in spite of her youth, shown an undeniable form of independence, and vulnerability could not be established merely on the basis that she was an alien.

Accordingly, the Court of Appeal acquitted the defendants of all the charges against them.

41 The applicant appealed on points of law against that judgment. No appeal was lodged by the principal public prosecutor's office. **\*296**

42 In a letter of October 27, 2000 to the Chair of the Committee against Modern Slavery, the public prosecutor attached to the Paris Court of Appeal wrote:

"In your letter of 23 October 2000 you asked me to inform you whether the public prosecution office under my direction has lodged an appeal on points of law against the judgment delivered on 19 October 2000 by the 12th Division of the court which heard the appeal in the criminal proceedings against Mr and Mrs B.

The Court of Appeal's decision to acquit the defendants of the two offences of insufficiently remunerating a person in a vulnerable position and subjecting a person in a vulnerable or dependent state to demeaning working conditions was based on an assessment of elements of pure fact.

Since the Court of Cassation considers that such assessments come within the unfettered discretion of the trial courts, an appeal on points of law could not be effectively argued.

That is why I have not made use of that remedy".

43 The Court of Cassation delivered its judgment on December 11, 2001. It ruled as follows:

"All judgments must contain reasons justifying the decision reached; giving inadequate or contradictory reasons is tantamount to giving no reasons;

After an investigation into the situation of [the applicant], a young Togolese national whom they had employed and lodged in their home since she was 16, V. and A. B. were directly summoned before the criminal court for, firstly, taking advantage of a person's vulnerability or dependent state, to obtain services without payment or any adequate payment, contrary to Article 225-13 of the Criminal Code and, secondly, for subjecting that person to working or living conditions incompatible with human dignity, contrary to Article 225-14 of the same Code;

In acquitting the defendants of the two above-mentioned offences and dismissing the civil party's claims in connection therewith, the appeal court, after having noted that [the applicant] was a foreign minor, without a residence or work permit and without resources, nonetheless stated that her state of vulnerability and dependence, a common constituent element of the alleged offences, had not been established, given that the girl enjoyed a certain freedom of movement and that vulnerability could not be established merely on the basis that she was an alien;

Furthermore, in finding the offence set out in Article 225-13 of the Criminal Code unsubstantiated, the courts added that "... it did appear that the applicant had not been paid or that the payment was clearly disproportionate to the amount of work carried out (although the defendants' intention to create a nest egg that would be handed over to her on departure had not been seriously disputed);

Finally, in acquitting the defendants of the offence set out in Article 225-14 of the Criminal Code, the courts found that subjection to working or living conditions incompatible with human dignity 'had not been established';

However, in ruling in this way, with reasons that were inadequate and ineffective with regard to the victim's state of vulnerability and dependence \*297 and contradictory with regard to her remuneration, and without specifying the factual elements which established that her working conditions were compatible with human dignity, the Court of Appeal failed to draw from its findings the legal conclusions which were required in the light of Article 225-13 of the Criminal Code and did not justify its decision in the light of Article 225-14 of that Code;

The judgment must therefore be quashed

For these reasons;

[The Court of Cassation] quashes the above-mentioned judgment of the Paris Court of Appeal dated 19 October 2000 but only in respect of the provisions dismissing the civil party's requests for compensation in respect of the offences provided for in Articles 225-13 and 225-14 of the Criminal Code, all other provisions being expressly

maintained, and instructs that the case be remitted, in accordance with the law, for a rehearing of the matters in respect of which this appeal has been allowed; (...).”

44 The Versailles Court of Appeal, to which the case was subsequently referred, delivered its judgment on May 15, 2003. It ruled, *inter alia*, as follows:

“As was correctly noted at first instance, the evidence shows that (the applicant), an alien who arrived in France at the age of sixteen, worked for several years for Mr and Mrs B., carrying out household tasks and looking after their three, and subsequently four, children for seven days a week, from 7 am to 10 pm, without receiving any remuneration whatsoever; contrary to the defendants' claims, she was not considered a family friend, since she was obliged to follow Mrs B.'s instructions regarding her working hours and the work to be done, and was not free to come and go as she pleased;

In addition, there is no evidence to show that a nest egg has been established for her, since the list of payments allegedly made by the defendants is in Mrs B.'s name;

It was only at the hearing before the *tribunal de grande instance* that the defendants gave the victim the sum of 50,000 francs;

Finally, far from showing that [the applicant] was happy to return to Mr and Mrs B.'s home, the conditions in which she did so after an absence of several months are, on the contrary, indicative of the pressure she had been subjected to by her family and of her state of resignation and emotional disarray;

With regard to the victim's state of dependence and vulnerability during the period under examination, it should be noted that this young girl was a minor, of Togolese nationality, an illegal immigrant in France, without a passport, more often than not without money, and that she was able to move about only under Mrs B.'s supervision for the purposes of the children's educational and sports activities;

Accordingly, it was on appropriate grounds, to which this court subscribes, that the court at first instance found that the constituent elements of the offence punishable under Article 225-13 of the Criminal Code were substantiated in respect of the defendants;  
**\*298**

With regard to the offence of subjecting a person in a vulnerable or dependent position to working or living conditions that are incompatible with human dignity:

As the court of first instance correctly noted, carrying out household tasks and looking after children throughout the day could not by themselves constitute working conditions incompatible with human dignity, this being the lot of many mothers; in addition, the civil party's allegations of humiliating treatment or harassment have not been proved;

Equally, the fact that [the applicant] did not have an area reserved for her personal use does not mean that the accommodation was incompatible with human dignity, given that Mr and Mrs B.'s own children shared the same room, which was not in the least unhygienic;

Accordingly, the constituent elements of this second offence have not been established in respect of Mr and Mrs B.;

Independently of the sums due to [the applicant] in wages and the payment of 50,000 francs in a belated gesture of partial remuneration, Mr B., whose intellectual and cultural level was such as to enable him to grasp fully the unlawfulness of his conduct, but who allowed the situation to continue, probably through cowardice, has, together with Mrs B., caused [the applicant], considerable psychological trauma, for which should be awarded 15,245 euros in compensation, as assessed by the court of first instance”.

45 On October 3, 2003 the Paris industrial tribunal delivered judgment following an application submitted by the applicant. It awarded her &euro;31,238 in respect of arrears of salary, &euro;1,647 in respect of the notice period and &euro;164 in respect of holiday leave.

## II. Relevant law

### A. Criminal Code as worded at the material time

46

#### *“Article 225-13*

It shall be an offence punishable by two years' imprisonment and a fine of 500,000 francs to obtain from an individual the performance of services without payment or in exchange for payment that is manifestly disproportionate to the amount of work carried out, by taking advantage of that person's vulnerability or state of dependence.

#### *Article 225-14*

It shall be an offence punishable by two years' imprisonment and a fine of 500,000 francs to subject an individual to working or living conditions which are incompatible with human dignity by taking advantage of that individual's vulnerability or state of dependence”. \*299

### B. Criminal Code as amended by the Law of March 18, 2003

47

#### *“Article 225-13*

It shall be an offence punishable by five years' imprisonment and a fine of EUR 150,000 to obtain from an individual whose vulnerability or state of dependence is apparent or of which the offender is aware the performance of services without payment or in exchange for payment which is manifestly disproportionate to the amount of work carried out.

#### *Article 225-14*

It shall be an offence punishable by five years' imprisonment and a fine of EUR 150,000 to subject an individual whose vulnerability or state of dependence is apparent or of which the offender is aware to working or living conditions which are incompatible with human dignity.

#### *Article 225-15*

The offences set out in Articles 225-13 and 225-14 shall be punishable by seven years' imprisonment and a fine of 200,000 euros if they are committed against more than one person.

If they are committed against a minor, they shall be punishable by seven years' imprisonment and a fine of 200,000 euros.

If they are committed against more than one person, including one or more minors, they shall be punishable by ten years' imprisonment and a fine of 300,000 euros”.

### C. Information report by the French National Assembly's joint fact-finding taskforce on the various forms of modern slavery, tabled on December 12, 2001 (extracts)

48

“The situation of minors, who are more vulnerable and ought to receive special protection on account of their age, strikes the taskforce as highly worrying: (...), children

doomed to work as domestic servants or in illegal workshops ... represent easy prey for traffickers of all kinds (...)

What solutions can be proposed in view of the growth in these forms of slavery? Some already exist, of course. We have available a not inconsiderable arsenal of punitive measures. However, these are not always used in full and are proving an insufficient deterrent when put to the test. The police and the justice system are obtaining only limited results.

(...)

The determination of the drafters of the new Criminal Code to produce a text imbued with the concept of human rights is particularly clear from the provisions of Articles 225-13 and 225-14 of the Code, which created new offences making it unlawful to impose working and living conditions that are contrary to human dignity. As demonstrated by the explanatory memorandum to the initial 1996 bill, the purpose of those provisions was primarily to combat 'slum landlords' or other unscrupulous entrepreneurs who shamelessly exploit foreign workers who are in the country illegally.

**\*300**

(...)

The concept, found in both Articles 225-13 and 225-14 of the Criminal Code, of the abuse of an individual's vulnerability or state of dependence contains ambiguities that could be prejudicial to their application.

(...)

Thus, by failing on the one hand to specify the possible categories of individuals defined as vulnerable and, further, by failing to require that the vulnerability be of a 'particular' nature, the legislature has conferred on Articles 225-13 and 225-14 an extremely wide, or even vague, scope, one that is likely to cover circumstances of vulnerability or dependence that are 'social or cultural in nature'.

(...)

The current wording of the Criminal Code, especially that of Article 225-14, is highly ambiguous, since it requires, on the one hand, that the victim has been subjected to working or living conditions that are incompatible with human dignity and, on the other, that those conditions have been imposed through the 'abuse' of his or her vulnerability or state of dependency.

It may therefore logically be concluded, as Mr Guy Meyer, deputy public prosecutor at the Paris public prosecutor's office, stated before the Taskforce, that, 'by converse implication (...) provided one has not taken advantage of [an individual's] vulnerability, it is alright to undermine human dignity (...) Undermining human dignity ought to be an offence in itself and, possibly, abuse of [an individual's] vulnerability or status as a minor an aggravating factor'.

That said, and since the law is silent, it is up to the court to determine where the scope of those provisions ends. In this connection, analysis of the case-law reveals differences in evaluation that impede the uniform application of the law throughout France, since, as Ms Françoise Favaro rightly noted when addressing the Taskforce: 'We are in a sort of ephemeral haze in which everything is left to the judge's assessment'.

(...)

Even more surprisingly, on 19 October 2000 the same Court of Appeal refused in another case to apply the provisions of Articles 225-13 and 225-14 in favour of a young woman, a domestic slave, despite the fact that she was a minor at the relevant time. In its judgment, the court noted, inter alia: 'It had not been established that the applicant was in a position of vulnerability or dependence as, by taking advantage of the possibility of coming and going at will, contacting her family at any time, leaving Mr and Mrs X.'s home for a considerable period and returning without coercion, the girl had, in

spite of her youth, shown an undeniable form of independence, and vulnerability could not be established merely on the basis that she was an alien'.

(...)

It is therefore apparent that, in the absence of legal criteria enabling the courts to determine whether there has been abuse of [an individual's] vulnerability or state of dependence, the provisions of Articles 225-13 and 225-14 of the Criminal Code are open to interpretation in different ways, some more restrictive than others. \*301

(...)

Whether with regard to actual or potential sentences, the shortcomings of the provisions are clearly visible, in view of the seriousness of the factual elements characteristic of modern slavery.

(...)

Bearing in mind, on the one hand, the constitutional status of the values protected by Articles 225-13 and 225-14 of the Criminal Code and, on the other, the seriousness of the offences in such cases, the inconsequential nature of the penalties faced by those guilty of them is surprising, and raises questions about the priorities of the French criminal-justice system.

(...)

The minors whose cases the taskforce has had to examine are minors caught up or at risk of being caught up in slavery, whether for the provision of sex or labour. More often than not they are illegal immigrants”.

#### *D. Documents of the Parliamentary Assembly of the Council of Europe*

49

Report by the Committee on Equal Opportunities for Women and Men, dated May 17, 2001(extract)

“In France, since its foundation in 1994 the Committee against Modern Slavery (CEM) has taken up the cases of over 200 domestic slavery victims, mostly originating from West Africa (Ivory Coast, Togo, Benin) but also from Madagascar, Morocco, India, Sri Lanka and the Philippines. The majority of victims were women (95%). One-third arrived in France before they came of age and most of them suffered physical violence or sexual abuse.

The employers mostly came from West Africa or the Middle East. 20% are French nationals. 20% enjoyed immunity from prosecution, among them one diplomat from Italy and five French diplomats in post abroad. Victims working for diplomats mainly come from India, Indonesia, the Philippines and Sri Lanka. It has been estimated that there are several thousand victims of domestic slavery in France”.

Recommendation 1523 (2001), adopted on June 26, 2001

“1. In the last few years a new form of slavery has appeared in Europe, namely domestic slavery. It has been established that over 4 million women are sold each year in the world.

2. In this connection the Assembly recalls and reaffirms Article 4, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which prohibits slavery and servitude, and also the definition of slavery derived from the opinions and judgments of the European Commission of Human Rights and the

European Court of Human Rights.

3. The Assembly also recalls Article 3 of the ECHR, which provides that no one shall be subjected to torture or to inhuman or degrading treatment or \*302 punishment, and Article 6, which proclaims the right of access to a court in civil and criminal matters, including cases where the employer enjoys immunity from jurisdiction.

5. It notes that the victims' passports are systematically confiscated, leaving them in a situation of total vulnerability with regard to their employers, and sometimes in a situation bordering on imprisonment, where they are subjected to physical and/or sexual violence.

6. Most of the victims of this new form of slavery are in an illegal situation, having been recruited by agencies and having borrowed money to pay for their journey.

7. The physical and emotional isolation in which the victims find themselves, coupled with fear of the outside world, causes psychological problems which persist after their release and leave them completely disoriented.

9. It regrets that none of the Council of Europe member states expressly make domestic slavery an offence in their criminal codes.

10. It accordingly recommends that the Committee of Ministers ask the governments of member states to:

i. make slavery and trafficking in human beings, and also forced marriage, offences in their criminal codes;

ii. strengthen border controls and harmonise policies for police co-operation, especially with respect to minors;

vi. protect the rights of victims of domestic slavery by:

a. generalising the issuing of temporary and renewable residence permits on humanitarian grounds;

b. taking steps to provide them with protection and with social, administrative and legal assistance;

c. taking steps for their rehabilitation and their reintegration, including the creation of centres to assist, among others, victims of domestic slavery;

d. developing specific programmes for their protection;

e. increasing victims' time limits for bringing proceedings for offences of slavery;

f. establishing compensation funds for the victims of slavery; (...)"

Recommendation 1663 (2004), adopted on June 22, 2004

"1. The Parliamentary Assembly is dismayed that slavery continues to exist in Europe in the twenty-first century. Although, officially, slavery was abolished over 150 years ago, thousands of people are still held as slaves in Europe, treated as objects, humiliated and abused. Modern slaves, like their counterparts of old, are forced to work (through mental or physical threat) with no or little financial reward. They are physically constrained or have \*303 other limits placed on their freedom of movement and are treated in a degrading and inhumane manner.

2. Today's slaves are predominantly female and usually work in private households, starting out as migrant domestic workers, au pairs or 'mail-order brides'. Most have come voluntarily, seeking to improve their situation or escaping poverty and hardship, but some have been deceived by their employers, agencies or other intermediaries, have been debt-bonded and even trafficked. Once working (or married to a "consumer husband"), however, they are vulnerable and isolated. This creates ample opportunity for abusive employers or husbands to force them into domestic slavery.

(...)

5. The Council of Europe must have zero tolerance for slavery. As an international organisation defending human rights, it is the Council of Europe's duty to lead the fight against all forms of slavery and trafficking in human beings. The Organisation and its member states must promote and protect the human rights of the victim and ensure that the perpetrators of the crime of domestic slavery are brought to justice so that slavery can finally be eliminated from Europe.

6. The Assembly thus recommends that the Committee of Ministers:

i. in general:

a. bring the negotiations on the Council of Europe draft convention on action against trafficking in human beings to a rapid conclusion;

b. encourage member states to combat domestic slavery in all its forms as a matter of urgency, ensuring that holding a person in any form of slavery is a criminal offence in all member states;

c. ensure that the relevant authorities in the member states thoroughly, promptly and impartially investigate all allegations of any form of slavery and prosecute those responsible;

ii. as concerns domestic servitude:

a. elaborate a charter of rights for domestic workers, as already recommended in Recommendation 1523 (2001) on domestic slavery. Such a charter, which could take the form of a Committee of Ministers' recommendation or even of a convention, should guarantee at least the following rights to domestic workers:

— the recognition of domestic work in private households as 'real work', that is, to which full employment rights and social protection apply, including the minimum wage (where it exists), sickness and maternity pay as well as pension rights;

— the right to a legally enforceable contract of employment setting out minimum wages, maximum hours and responsibilities;

— the right to health insurance;

— the right to family life, including health, education and social rights for the children of domestic workers; **\*304**

— the right to leisure and personal time;

— the right for migrant domestic workers to an immigration status independent of any employer, the right to change employer and to travel within the host country and between all countries of the European Union and the right to the recognition of qualifications, training and experience obtained in the home country; (...)"

Council of Europe Convention on Action against Trafficking in Human Beings, opened for signature on May 16, 2005

## 50 Preamble (extracts)

“Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: (...) 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;”

### Purposes of the Convention

“1. The purposes of this Convention are:

(a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;

(b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;

(...)”.

### Definitions

“For the purposes of this Convention:

(a) ‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; **\*305**

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

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

(d) ‘Child’ shall mean any person under eighteen years of age;

(e) ‘Victim’ shall mean any natural person who is subject to trafficking in human beings as defined in this article”.

### Criminalisation of the use of services of a victim

“Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings”.

## E. Other international conventions

Forced Labour Convention, adopted on June 28, 1930 by the General Conference of the International Labour Organisation (ratified by France on June 24, 1937)

“Article 2

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

2. Nevertheless, for the purposes of this Convention the term *forced or compulsory labour* shall not include:

(a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, **\*306** flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

Article 3

For the purposes of this Convention the term *competent authority* shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.

Article 4

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member”.

Slavery Convention, signed in Geneva on September 25, 1926, which entered into force on March 9, 1927, in accordance with the provisions of Art.12

“Article I

For the purpose of the present Convention, the following definitions are agreed upon:

1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised; (...)

2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

#### Article 4

The High Contracting Parties shall give to one another every assistance with the object of securing the abolition of slavery and the slave trade. \*307

#### Article 5

The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

It is agreed that:

1. Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labour may only be exacted for public purposes;

2. In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence;

3. In all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned".

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on April 30, 1956 and which entered into force in respect of France on May 26, 1964

#### Institutions and practices similar to slavery

##### Article I

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition (b) status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status; (...) \*308

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

International Convention on the Rights of the Child, dated November 20, 1989 (entered into force in respect of France on September 6, 1990)

#### “Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

#### Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare”. \*309

## Judgment

### I. Alleged violation of Article 4 of the Convention

52 The applicant complained that there had been a violation of Art.4 of the Convention. This provision states:

- “1. No one shall be held in slavery or servitude.
- 2. No one shall be required to perform forced or compulsory labour”.

### A. Whether the applicant had “victim” status

53 The Government contended by way of primary submission that the applicant could no longer claim to be the victim of a violation of the Convention within the meaning of Art.34.

It stated at the outset that it did not contest that the applicant had been the victim of particularly reprehensible conduct on the part of the couple who had taken her in, or that the Paris Court of Appeal's judgment of October 19, 2000 had failed to acknowledge the reality of that situation as a matter of law. However, it noted that the applicant had not appealed against the first instance judgment which had convicted her “employers” solely on the basis of Art.225-13 of the Criminal Code and that it should be concluded from this that she had accepted their conviction under that Article alone.

Accordingly, the applicant could not use the absence of a conviction under Art.225-14 of the Criminal Code to argue that she still had victim status.

54 Furthermore, the Government noted that the applicant's appeal on points of law had still been pending when her application was lodged with the Court. Nonetheless, following the Court of Cassation's judgment quashing the ruling by the Paris Court of Appeal, the court of appeal to which the case was subsequently remitted had recognised the applicant's state of dependence and vulnerability within the meaning of Art.225-13 of the Criminal Code, as well as the exploitation to which she had been subjected, although it had been required only to examine the civil claims. They emphasised that, in line with the case law, a decision or measure favourable to an applicant was sufficient to deprive him or her of “victim” status, provided that the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention.

55 The Government concluded that the sanction imposed by the Versailles Court of Appeal was to be considered as having afforded redress for the violation alleged by the applicant before the Court, especially as she had not appealed on points of law against its judgment. In addition, it pointed out that the Paris industrial tribunal had made awards in respect of unpaid wages and benefits.

56 Finally, the applicant's immigration status had been regularised and she had received a residence permit enabling her to reside in France lawfully and to pursue her studies. In conclusion, the Government considered that the applicant could no longer claim to be the victim of a violation of the Convention within the meaning of Art.34. **\*310**

57 The applicant did not dispute that certain measures and decisions had been taken which were favourable to her.

58 However, she stressed that the national authorities had never acknowledged, expressly or in substance, her complaint that the State had failed to comply with its positive obligation, inherent in Art.4, to secure tangible and effective protection against the practices prohibited by this Article and to which she had been subjected by Mr and Mrs B. Only a civil remedy had been provided.

59 She alleged that Arts 225-13 and 225-14 of the Criminal Code, as worded at the material time, were too open and elusive, and in such divergence with the European and international criteria for defining servitude and forced or mandatory labour that she had not been secured effective and sufficient protection against the practices to which she had been subjected.

60 Article 34 of the Convention provides:

“The Court may receive applications from any person (...) claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto (...).”

61 The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention.<sup>2</sup>

62 It is the settled case law of the Court that the word “victim” in the context of Art.34 of the Convention denotes the person directly affected by the act or omission in issue, the existence of

a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Art.41. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention.<sup>3</sup>

63 The Court considers that the Government's argument alleging that the applicant had lost her status as a victim raises questions about the French criminal law's provisions on slavery, servitude and forced or compulsory labour and the manner in which those provisions are interpreted by the domestic courts. Those questions are closely linked to the merits of the applicant's complaint. The Court consequently considers that they should be examined under the substantive provision of the Convention relied on by the applicant.<sup>4</sup>

## B. The merits

### Applicability of Article 4 and the positive obligations

64 The Court notes that the Government do not dispute that Art.4 is applicable in the instant case. **\*311**

65 The applicant considered that the exploitation to which she had been subjected while a minor amounted to a failure by the state to comply with its positive obligation under Arts 1 and 4 of the Convention, taken together, to put in place adequate criminal law provisions to prevent and effectively punish the perpetrators of those acts.

66 In the absence of rulings on this matter in respect of Art.4, she referred in detail to the Court's case law on states' positive obligations with regard to Arts 3 and 8.<sup>5</sup>

67 She added that, in the various cases in question, the respondent States had been held to be responsible on account of their failure, in application of Art.1 of the Convention, to set up a system of criminal prosecution and punishment that would ensure tangible and effective protection of the rights guaranteed by Arts 3 and/or 8 against the actions of private individuals.

68 She emphasised that this obligation covered situations where the state authorities were criticised for not having taken adequate measures to prevent the existence of the impugned situation or to limit its effects. In addition, the scope of the State's positive obligation to protect could vary on account of shortcomings in its legal system, depending on factors such as the aspect of law in issue, the seriousness of the offence committed by the private individual concerned or particular vulnerability on the part of the victim. This was precisely the subject of her application, in the specific context of protection of a minor's rights under Art.4.

69 The applicant added that, in the absence of any appropriate criminal law machinery to prevent and punish the direct perpetrators of alleged ill-treatment, it could not be maintained that civil proceedings to afford reparation of the damage suffered was sufficient to provide her with adequate protection against possible assaults on her integrity.

70 She considered that the right not to be held in servitude laid down in Art.4(1) of the Convention was an absolute right, permitting of no exception in any circumstances. She noted that the practices prohibited under Art.4 of the Convention were also the subject of specific international conventions which applied to both children and adults.

71 Accordingly, the applicant considered that the states had a positive obligation, inherent in Art.4 of the Convention, to adopt tangible criminal law provisions that would deter such offences, backed up by law enforcement machinery for the prevention, detection and punishment of breaches of such provisions.

72 She further observed that, as the public prosecutor's office had not considered it necessary to appeal on points of law on the grounds of public interest, the acquittal of Mr and Mrs B of the offences set out in Arts 225-13 and 225-14 of the Criminal Code had become final. Consequently, the court of appeal to which the case had been remitted after the initial judgment was quashed could not return a guilty verdict nor, *a fortiori*, impose a sentence, but could only decide whether to award civil damages. She considered that a mere finding that the constituent elements of the offence set out in Art.225-13 of the Criminal Code had been substantiated and the imposition of a fine and damages could not be regarded as an acknowledgment, whether

express or in substance, of a breach of Art.4 of the Convention. **\*312**

73 With regard to possible positive obligations, the Government conceded that, if the line taken by the *European Commission of Human Rights in the case of X and Y v Netherlands* were to be applied to the present case, then it appeared that they did indeed exist. It pointed out, however, that states had a certain margin of appreciation when it came to intervening in the sphere of relations between individuals.

74 In this respect, they referred to the Court's case law, and especially the judgments in *Calvelli and Ciglio v Italy*,<sup>6</sup> *A v United Kingdom*,<sup>7</sup> and *Z v United Kingdom*,<sup>8</sup> as well as the decision in the case of *GG v Italy*<sup>9</sup> in which the Court had noted in connection with Art.3 that:

“criminal proceedings did not represent the only effective remedy in cases of this kind, but civil proceedings, making it possible to obtain redress for the damage suffered must in principle be open to children who have been subjected to ill-treatment”.

75 On that basis, the Government argued that, in the instant case, the proceedings before the criminal courts which led to the payment of damages were sufficient under Art.4 in order to comply with any positive obligation arising from the Convention.

76 In the alternative, the Government considered that in any event French criminal law fulfilled any positive obligations arising under Art.4. They submitted that the wording of Arts 225-13 and 225-14 of the Criminal Code made it possible to fight against all forms of exploitation through labour for the purposes of Art.4 of the Convention. They stressed that these criminal law provisions had, at the time of the events complained of by the applicant, already resulted in several criminal court rulings, thus establishing a case law, and that, since then, they had given rise to various other decisions to the same effect.

77 The Court points out that it has already been established that, with regard to certain Convention provisions, the fact that a state refrains from infringing the guaranteed rights does not suffice to conclude that it has complied with its obligations under Art.1 of the Convention.

78 Thus, with regard to Art.8 of the Convention, it held as long ago as 1979:

“Nevertheless it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective ‘respect’ for family life.

This means, amongst other things, that when the State determines in its domestic legal system the regime applicable to certain family ties such as those between an unmarried mother and her child, it must act in a manner calculated to allow those concerned to lead a normal family life. As envisaged by Article 8, respect for family life implies in particular, in the Court's view, the existence in domestic law of legal safeguards that render possible as from the moment of birth the child's integration in his family. In this connection, the State has a choice of various means, but a law that fails to satisfy this **\*313** requirement violates paragraph 1 of Article 8 without there being any call to examine it under paragraph 2”.<sup>10</sup>

79 It subsequently clarified this concept:

“Positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection”.<sup>11</sup>

80 As regards Art.3 of the Convention, the Court has found on numerous occasions that:

“(…) the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals”.<sup>12</sup>

81 It has also found that:

“Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity”.<sup>13</sup>

82 The Court considers that, together with Arts 2 and 3, Art.4 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe.

83 It notes that the Commission had proposed in 1983 that it could be argued that a Government's responsibility was engaged to the extent that it was their duty to ensure that the rules adopted by a private association did not run contrary to the provisions of the Convention, in particular where the domestic courts had jurisdiction to examine their application.<sup>14</sup>

84 The Court notes that, in referring to the above-mentioned case, the Government accepted at the hearing that positive obligations did appear to exist in respect of Art.4. **\*314**

85 In this connection, it notes that the Art.4 of the Forced Labour Convention, adopted by the International Labour Organisation on June 28, 1930 and ratified by France on June 24, 1937, provides:

“1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations”.

86 Furthermore, Art.1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on April 30, 1956, which entered into force in respect of France on May 26, 1964, states:

“Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926: (...), [d]ebt bondage, (...) [a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

87 In addition, with particular regard to children, Art.19 of the International Convention on the Rights of the Child of November 20, 1989, which entered into force in respect of France on September 6, 1990, provides:

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, (...), maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child;”.

Article 32 provides:

"1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article". **\*315**

88 Finally, the Court notes that it appears from the Parliamentary Assembly's findings <sup>15</sup> that "today's slaves are predominantly female and usually work in private households, starting out as migrant domestic workers (...)".

89 In those circumstances, the Court considers that limiting compliance with Art.4 of the Convention only to direct action by the state authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective. Accordingly, it necessarily follows from this provision that governments have positive obligations, in the same way as under Art.3 for example, to adopt criminal law provisions which penalise the practices referred to in Art.4 and to apply them in practice. <sup>16</sup>

#### Alleged violation of Article 4 of the Convention

90 With regard to the violation of Art.4 of the Convention, the applicant noted from the outset that the right not to be held in servitude laid down in this provision was an absolute one, in the same way as the right not to be compelled to perform forced or compulsory labour.

91 She said that, although the Convention did not define the terms servitude or "forced or compulsory labour", reference should be made to the relevant international conventions in this field to determine the meaning of these concepts while importance had to be attached in the instant case to the criteria laid down by both the United Nations and the Council of Europe for identifying modern forms of slavery and servitude, which were closely linked to trafficking in human beings, and to the internationally recognised necessity of affording children special protection on account of their age and vulnerability.

92 She pointed out that her situation had corresponded to three of the four servile institutions or practices referred to in Art.1 of the Supplementary Geneva Convention of April 30, 1956, namely debt bondage, the delivery of a child or adolescent to a third person, whether for reward or not, with a view to the exploitation of his or her labour, and serfdom. She noted that she had not come to France in order to work as a domestic servant but had been obliged to do so as a result of the trafficking to which she had been subjected by Mrs B, who had obtained her parents' agreement through false promises.

She concluded that such "delivery" of a child by her father, with a view to the exploitation of her labour, was similar to the practice, analogous to slavery, referred to in Art.1(d) of the United Nations Supplementary Convention of 1956.

93 The applicant also referred to the documentation published by the Council of Europe on domestic slavery and pointed out that the criteria used included confiscation of the [individual's] passport, the absence of remuneration or remuneration that was disproportionate to the services provided, deprivation of liberty or self-imposed imprisonment, and cultural, physical and emotional isolation.

94 She added that it was clear from the facts that her situation was not temporary or occasional in nature, as was normally the case with "forced or compulsory labour". Her freedom to come and go had been limited, her passport had been taken away **\*316** from her, her immigration status

had been precarious before becoming illegal, and she had also been kept by Mr and Mrs B in a state of fear that she would be arrested and expelled. She considered that this was equivalent to the concept of self-imposed imprisonment described above.

95 Referring to her working and living conditions at Mr and Mrs B's home, she concluded her exploitation at their hands had compromised her education and social integration, as well as the development and free expression of her personality. Her identity as a whole had been involved, which was a characteristic of servitude but not, in general, of forced or compulsory labour.

96 She added that in addition to the unremunerated exploitation of another's work, the characteristic feature of modern slavery was a change in the individual's state or condition, on account of the level of constraint or control to which his or her person, life, personal effects, right to come and go at will or to take decisions was subjected.

She explained that, although she had not described her situation as "forced labour" in the proceedings before the Versailles Appeal Court, the civil party had claimed in its submissions that:

"the exploitation to which Ms Siliadin was subjected (...) had, at the very least, the characteristics of 'forced labour' within the meaning of Article 4 § 2 of the Convention (...); in reality, she was a domestic slave who had been recruited in Africa".

97 As to the definition of "forced or obligatory labour", the applicant drew attention to the case law of the Commission and the Court, and emphasised that developments in international law favoured granting special protection to children.

98 She noted that French criminal law did not contain specific offences of slavery, servitude or forced or compulsory labour, still less a definition of those three concepts that was sufficiently specific and flexible to be adapted to the forms those practices now took. In addition, prior to the enactment of the law of March 18, 2003, there had been no legislation that directly made it an offence to traffick in human beings.

99 Accordingly, the offences to which she had been subjected fell within the provisions of Arts 225-13 and 225-14 of the Criminal Code as worded at the material time. These were non-specific texts of a more general nature, which both required that the victim be in a state of vulnerability or dependence. Those concepts were as vague as that of the offender's "taking advantage", which was also part of the definition of the two offences. In this connection, she emphasised that both legal commentators and the National Assembly's taskforce on the various forms of modern slavery had highlighted the lack of legal criteria enabling the courts to determine whether such a situation obtained, which had led in practice to unduly restrictive interpretations.

100 Thus, Art.225-13 of the Criminal Code made it an offence to obtain another person's labour by taking advantage of him or her. In assessing whether the victim was vulnerable or in a state of dependence, the courts were entitled to take into account, among other circumstances, certain signs of constraint or control of the individual. However, those were relevant only as the prerequisites for a finding of exploitation, not as constituent elements of the particular form of the offence that **\*317** was modern slavery. In addition, this article made no distinction between employers who took advantage of the illegal position of immigrant workers who were already in France and those who deliberately placed them in such a position by resorting to trafficking in human beings.

101 She added that, contrary to Art.225-13, Art.225-14 required, and continued to require, an infringement of human dignity for the offence to be substantiated. That was a particularly vague concept, and one subject to random interpretation. It was for this reason that neither her working nor living conditions had been found by the court to be incompatible with human dignity.

102 The applicant said in conclusion that the criminal law provisions in force at the material time had not afforded her adequate protection from servitude or from forced or compulsory labour in their contemporary forms, which were contrary to Art.4 of the Convention. As to the fact that the criminal proceedings had resulted in an award of compensation, she considered that this could not suffice to absolve the state of its obligation to establish a criminal law machinery which penalised effectively those guilty of such conduct and deterred others.

103 With regard to the alleged violation of Art.4 of the Convention, the Government first observed that the Convention did not define the term “servitude”. It submitted that, according to the case law, “servitude” was close to “slavery”, which was at the extreme end of the scale. However, servitude reflected a situation of exploitation which did not require that the victim be objectified to the point of becoming merely another's property.

104 As to the difference between “servitude” and “forced or compulsory labour”, it concluded from the case law of the Commission and the Court that servitude appeared to characterise situations in which denial of the individual's freedom was not limited to the compulsory provision of labour, but also extended to his or her living conditions, and that there was no potential for improvement, an element which was absent from the concept of “forced or compulsory labour”.

105 With regard to the difference between “forced labour” and “compulsory labour”, the Government noted that, while the case law's definition of “forced labour” as labour performed under the influence of “physical or psychological force” seemed relatively clear, the situation was less so with regard to “compulsory labour”.

106 The Government did not deny that the applicant's situation fell within Art.4 of the Convention and emphasised that she herself had specifically described her situation as “forced labour” within the meaning of Art.4 of the Convention.

107 However, they submitted that the domestic judicial authorities had undisputedly remedied the violation of the Convention by ruling that the elements constituting the offence set out in Art.225-13 of the Criminal Code had been substantiated.

108 Finally, the Government pointed out that the wording of Arts 225-13 and 225-14 of the Criminal Code made it possible to combat all forms of exploitation of an individual through labour falling within Art.4 of the Convention.

109 The Court notes that the applicant arrived in France from Togo at the age of 15 years and 7 months with a person who had agreed with her father that she would work until her air ticket had been reimbursed, that her immigration status would be regularised and that she would be sent to school. **\*318**

110 In reality, the applicant worked for this person for a few months before being “lent” to Mr and Mrs B. It appears from the evidence that she worked in their house without respite for about 15 hours per day, with no day off, for several years, without ever receiving wages or being sent to school, without identity papers and without her immigration status being regularised. She was accommodated in their home and slept in the children's bedroom.

111 The Court also notes that, in addition to the Convention, numerous international conventions have as their objective the protection of human beings from slavery, servitude and forced or compulsory labour. <sup>17</sup> As the Parliamentary Assembly of the Council of Europe has pointed out, although slavery was officially abolished more than 150 years ago, “domestic slavery” persists in Europe and concerns thousands of people, the majority of whom are women.

112 The Court reiterated that Art.4 enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos 1 and 4, Art.4 makes no provision for exceptions and no derogation from it is permissible under Art.15(2) even in the event of a public emergency threatening the life of the nation. <sup>18</sup>

In those circumstances, the Court considers that, in accordance with contemporary norms and trends in this field, the Member States' positive obligations under Art.4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation. <sup>19</sup>

113 Accordingly, the Court must determine whether the applicant's situation falls within Art.4 of the Convention.

114 It is not disputed that she worked for years for Mr and Mrs B, without respite and against her will.

It has also been established that the applicant has received no remuneration from Mr and Mrs B for her work.

115 In interpreting Art.4 of the European Convention, the Court has in a previous case already taken into account the ILO Conventions, which are binding on almost all of the Council of Europe's Member States, including France, and especially the 1930 Forced Labour Convention.<sup>20</sup>

116 It considers that there is in fact a striking similarity, which is not accidental, between para.3 of Art.4 of the European Convention and para.2 of Art.2 of Convention No.29. Paragraph 1 of the last-mentioned Article provides that "for the purposes" of the latter Convention, the term "forced or compulsory labour" shall mean:

"all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

117 It remains to be ascertained whether there was "forced or compulsory" labour. This brings to mind the idea of physical or mental constraint. What there has to be **\*319** is work "exacted (...) under the menace of any penalty" and also performed against the will of the person concerned, that is work for which he "has not offered himself voluntarily".<sup>21</sup>

118 The Court notes that, in the instant case, although the applicant was not threatened by a "penalty", the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat.

She was an adolescent girl in a foreign land, unlawfully present in French territory and in fear of arrest by the police. Indeed, Mr and Mrs B nurtured that fear and led her to believe that her status would be regularised.<sup>22</sup>

Accordingly, the Court considers that the first criterion was met, especially since the applicant was a minor at the relevant time, a point which the Court emphasises.

119 As to whether she performed this work of her own free will, it is clear from the facts of the case that it cannot seriously be maintained that she did. On the contrary, it is evident that she was not given any choice.

120 In these circumstances, the Court considers that the applicant was, at the least, subjected to forced labour within the meaning of Art.4 of the Convention at a time when she was a minor.

121 It remains for the Court to determine whether the applicant was also held in servitude or slavery.

Sight should not be lost of the Convention's special features or of the fact that it is a living instrument which must be interpreted in the light of present-day conditions, and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.<sup>23</sup>

122 The Court notes at the outset that, according to the 1927 Slavery Convention, "slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised".

It notes that this definition corresponds to the "classic" meaning of slavery as it was practiced for centuries. Although the applicant was, in the instant case, clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense, in other words that Mr and Mrs B exercised a genuine right of legal ownership over her, thus reducing her to the status of an "object".

123 With regard to the concept of "servitude", it "prohibits a particularly serious form of denial of freedom".<sup>24</sup> It includes,

"in addition to the obligation to provide certain services to another (...) the obligation on the 'serf' to live on the other's property and the impossibility of changing his status".

**\*320**

In this connection, in examining a complaint under this paragraph of Art.4, the Commission paid particular attention to the Convention on the Abolition of Slavery.<sup>25</sup>

124 It follows in the light of the case law on this issue that for Convention purposes “servitude” means an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of “slavery” described above.<sup>26</sup>

125 Furthermore, under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, each of the states parties to the Convention must take all practicable and necessary legislative and other measures to bring about the complete abolition or abandonment of the following institutions and practices:

“(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

126 In addition to the fact that the applicant was required to perform forced labour, the Court notes that that this labour lasted almost 15 hours a day, 7 days per week.

Brought to France by a relative of her father's, she had not chosen to work for Mr and Mrs B.

As a minor, she had no resources and was vulnerable and isolated, and had no means of subsistence other than in the home of Mr and Mrs B, where she shared the children's bedroom as no other accommodation had been provided. She was entirely at Mr and Mrs B's mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which had never occurred.

127 In addition, the applicant, who was afraid of being arrested by the police, was not in any event permitted to leave the house, except to take the children to their classes and various activities. Thus, she had no freedom of movement and no free time.

128 As she had not been sent to school, despite the promises made to her father, the applicant could not hope that her situation would improve and was completely dependent on Mr and Mrs B.

129 In those circumstances, the Court concludes that the applicant, a minor at the relevant time, was held in servitude within the meaning of Art.4 of the Convention.

130 Having regard to its conclusions with regard to the positive obligations under Art.4, it now falls to the Court to examine whether the impugned legislation and its application in the case in hand had such significant flaws as to amount to a breach of Art.4 by the respondent State.

131 According to the applicant, the provisions of French criminal law had not afforded her sufficient protection against the situation and had not made it possible for the culprits to be punished. \*321

132 The Government, for its part, submitted that Arts 225-13 and 225-14 of the Criminal Code made it possible to combat the exploitation through labour of an individual for the purposes of Art.4 of the Convention.

133 The Court notes that the Parliamentary Assembly of the Council of Europe, in its Recommendation 1523(2001), “[regretted] that none of the Council of Europe member states expressly [made] domestic slavery an offence in their criminal codes”.

134 It notes with interest the conclusions reached by the French National Assembly's joint taskforce on the various forms of modern slavery.<sup>27</sup>

More specifically, with regard to Arts 225-13 and 225-14 as worded as the material time, the taskforce found, in particular:

“We have available a not inconsiderable arsenal of punitive measures. However, these are not always used in full and are proving an insufficient deterrent when put to the test.

(...)

The concept, found in both Articles 225-13 and 225-14 of the Criminal Code, of the abuse of an individual's vulnerability or state of dependence contains ambiguities that could be prejudicial to their application.

(...)

That said, and since the law is silent, it is up to the court to determine where the scope of those provisions ends. In this connection, analysis of the case-law reveals differences in evaluation that impede the uniform application of the law throughout France ...

(...)

Whether with regard to actual or potential sentences, the shortcomings of the provisions are clearly visible, in view of the seriousness of the factual elements characteristic of modern slavery.

(...)

Bearing in mind, on the one hand, the constitutional status of the values protected by Articles 225-13 and 225-14 of the Criminal Code and, on the other, the seriousness of the offences in such cases, the inconsequential nature of the penalties faced by those guilty of them is surprising, and raises questions about the priorities of the French criminal- justice system”.

135 The Court notes that, in the present case, the applicant's “employers” were prosecuted under Arts 225-13 and 225-14 of the Criminal Code, which make it an offence, respectively, to exploit an individual's labour and to submit him or her to working or living conditions that are incompatible with human dignity.

136 In the judgment delivered on June 10, 1999, the Paris *tribunal de grande instance* found Mr and Mrs B guilty of the offence defined in Art.225-13 of the Criminal Code. Conversely, it found that the offence set out in Art.225-14 had not been substantiated.

137 The defendants were sentenced to 12 months' imprisonment, seven of which were suspended, and ordered to pay a fine of FRF 100,000 each and to pay, jointly and severally, FRF 100,000 to the applicant in damages. \*322

138 On an appeal by Mr and Mrs B, the Paris Court of Appeal delivered a judgment on October 19, 2000 in which it quashed the judgment at first instance and acquitted the defendants.

139 On an appeal on points of law by the applicant alone, the Court of Cassation overturned the Court of Appeal's judgment, but only in respect of its civil aspects, and the case was remitted to another court of appeal.

140 On May 15, 2003 that court gave a judgment upholding the findings of the *tribunal de première instance* and awarded the applicant damages.

141 The Court notes that slavery and servitude are not as such classified as offences under French criminal law.

142 The Government referred to Arts 225-13 and 225-14 of the Criminal Code.

The Court notes, however, that those provisions do not deal specifically with the rights guaranteed under Art.4 of the Convention, but concern, in a much more restrictive way, exploitation through labour and subjection to working and living conditions that are incompatible with human dignity.

It therefore needs to be determined whether, in the instant case, those articles provided effective penalties for the conduct to which the applicant had been subjected.

143 The Court has previously stated that children and other vulnerable individuals, in particular, are entitled to state protection, in the form of effective deterrence, against such serious breaches of personal integrity.<sup>28</sup>

144 Further, the Court has held in a case concerning rape that:

“the protection afforded by the civil law in the case of wrongdoing of the kind inflicted on Miss Y is insufficient. This is a case where fundamental values and essential aspects of private life are at stake. Effective deterrence is indispensable in this area and it can be achieved only by criminal-law provisions; indeed, it is by such provisions that the matter is normally regulated”.<sup>29</sup>

145 The Court observes that, in the instant case, the applicant, who was subjected to treatment contrary to Art.4 and held in servitude, was not able to see those responsible for the wrongdoing convicted under the criminal law.

146 In this connection, it notes that, as the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment of October 19, 2000, the appeal to the Court of Cassation concerned only the civil aspect of the case and Mr and Mrs B's acquittal thus became final.

147 In addition, according to the report of December 12, 2001 by the French National Assembly's joint taskforce on the various forms of modern slavery, Arts 225-13 and 225-14 of the Criminal Code, as worded at the material time, were open to very differing interpretations from one court to the next, as demonstrated by this case, which, indeed, was referred to by the taskforce as an example of a case in which a court of appeal had unexpectedly declined to apply Arts 225-13 and 225-14. \*323

148 In those circumstances, the Court considers that the criminal law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim.

It notes that the legislation has been changed but the amendments, which were made subsequently, were not applicable to the applicant's situation.

It emphasises that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.<sup>30</sup>

149 The Court thus finds that in the present case there has been a violation of the respondent state's positive obligations under Art.4 of the Convention.

## **II. Application of Article 41 of the Convention**

150 Under Article 41 of the Convention,

“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**

151 The applicant did not make a claim in respect of damage.

### **B. Costs and expenses**

152 The applicant sought &euro;26,209.69 for the costs of legal representation, from which the sums received by way of legal aid were to be deducted.

153 The Government first observed that the applicant had not produced any evidence that she had paid this sum.

They also considered that the amount sought was excessive and should be reduced to a more reasonable level.

154 The Court considers that the applicant's representative has undoubtedly done a considerable amount of work in order to submit and argue this application, which concerns an area in which there is very little case law to date.

In those circumstances, the Court, ruling on an equitable basis, awards the applicant the entire amount claimed in costs.

### C. Default interest

155 The Court considers it appropriate that the default interest should be based on an annual rate equal to the marginal lending rate of the European Central Bank, to which should be added 3 percentage points.

### Order

For these reasons, THE COURT unanimously,

1. *Dismisses* the Government's preliminary objection based on the applicant's loss of victim status; **\*324**
2. *Holds* that there has been a violation of Art.4 of the Convention;
3. *Holds* :
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Art.44(2) of the Convention, &euro;26,209.69 in respect of costs and expenses, plus any tax that may be chargeable;
  - (b) that the sums received by way of legal aid are to be deducted from that amount;
  - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period to which shall be added 3 percentage points.

**\*325**

1. See [46] below.

2. See App. No.62503/00, *Karahalios v Greece*, December 11, 2003, at [21]; and App. No.43622/98, *Malama v Greece*, November 25, 1999.

3. See, among other authorities, *Amuur v France*: (1996) 22 E.H.R.R. 533, at [36]; *Brumarescu v Romania*: (2001) 33 E.H.R.R. 35, at [50]; and App. No.39288/98, *Association Ekin v France*.

4. See, in particular, the following judgments: *Airey v Ireland (A/32)*: (1979-80) 2 E.H.R.R. 305; *Gnahoré v France*: (2002) 34 E.H.R.R. 38, at [26]; and *Isayeva v Russia*: (2005) 41 E.H.R.R. 38, at [161].

5. See the judgments in: *X and Y v Netherlands (A/91)*: (1986) 8 E.H.R.R. 235; *A v United Kingdom*: (1999) 27 E.H.R.R. 611; and *MC v Bulgaria*: (2005) 40 E.H.R.R. 20.

6. App. No.32967/96, *Calvelli and Ciglio v Italy*, January 17, 2002.

7. Cited above.

8. *Z v United Kingdom*: (2002) 34 E.H.R.R. 3, at [109].

9. App. No.34574/97, GG v Italy, Dec. 10.10.2002.
10. [Marckx v Belgium \(A/31\): \(1979–80\) 2 E.H.R.R. 330](#), at [31].
11. [X and Y v Netherlands](#), cited above at [23], [24] and [27]; [App. No.36505/02, August v United Kingdom, Dec. 21.1.2003](#); and [MC v Bulgaria](#), cited above, at [150].
12. See the following judgments: A v United Kingdom, cited above, at [22]; [Z v United Kingdom](#), cited above, at [73]–[75]; [E v United Kingdom: \(2003\) 36 E.H.R.R. 31](#); and [MC v Bulgaria](#), cited above, at [149].
13. See, *mutatis mutandis*, the judgments in [X and Y v Netherlands](#), cited above, at [21]–[27]; [Stubbings v United Kingdom: \(1997\) 23 E.H.R.R. 213](#), at [62]–[64]; and A v United Kingdom, cited above, as well as the United Nations Convention on the Rights of the Child, Arts 19 and 37.
14. App. No.9327/81, X v Netherlands, Dec. 3.5.1983.
15. See “Relevant law” above.
16. See [MC v Bulgaria](#), cited above, at [153].
17. See “Relevant law”.
18. See, with regard to Art.3, the following judgments: [Ireland v United Kingdom: \(1979–80\) 2 E.H.R.R. 25](#), at [163]; [Soering v United Kingdom \(A/161\): \(1989\) 11 E.H.R.R. 439](#), at [88]; [Chahal v United Kingdom: \(1997\) 23 E.H.R.R. 413](#), at [79]; and [Selmouni v France: \(2000\) 29 E.H.R.R. 403](#), at [79].
19. See, *mutatis mutandis*, [MC v Bulgaria](#), cited above, at [166].
20. See [Van der Mussele v Belgium \(A/70\): \(1984\) 6 E.H.R.R. 163](#), at [32].
21. See [Van der Mussele v Belgium](#), cited above, at [34].
22. See [22] above.
23. See, among many other authorities, [Selmouni v France](#), cited above, at [101].
24. See the Commission's report in the case of [Van Droogenbroeck v Belgium \(B/44\): \(1982\) 4 E.H.R.R. 443](#), at [78]–[80].
25. See also the decision in App. No.7906/77.
26. See App. No.42400/98, Seguin v France, Dec. 7.3.2000.
27. See “Relevant Law”.
28. See, *mutatis mutandis*, the judgments in [X and Y v Netherlands](#), cited above, at [21]–[27]; [Stubbings v United Kingdom](#), cited above, at [62]–[64]; and A v United Kingdom, cited above, at [22]; and also the United Nations Convention on the Rights of the Child, Arts 19 and 37.
29. See [X and Y v Netherlands](#), cited above, at [27].
30. See [121] above.