



Failure to adequately protect two potential victims of child trafficking

In today's **Chamber judgment**¹ in the case of [V.C.L. AND A.N. v. the United Kingdom](#) (applications nos. 77587/12 and 74603/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 4 (prohibition of forced labour) of the European Convention on Human Rights, and

a violation of Article 6 § 1 (right to a fair trial).

The case concerned two Vietnamese youths who police officers had discovered working on cannabis farms. They were arrested and charged with drugs-related offences, to which they pleaded guilty. Following their conviction they were detained in young offenders' institutes. A competent authority subsequently recognised them as victims of trafficking. However, the prosecution service having reviewed its decision to prosecute them, concluded that they were not victims of trafficking and the Court of Appeal found on the facts of each case that the decision to prosecute had been justified.

This was the first time the Court had considered the relationship between Article 4 of the Convention and the prosecution of victims and potential victims of trafficking. It considered that the prosecution of victims or potential victims of trafficking would not necessarily breach Article 4 of the Convention. However, given the competent authority's expertise in this area, the Court considered that the prosecution would have needed to present clear reasons consistent with the definition of trafficking for disagreeing with its findings, something which clearly had not happened in these cases. However, having regard to the duty to take operational measures to protect victims of trafficking, the Court held that once the authorities had become aware of a credible suspicion that an individual had been trafficked, he or she should be assessed by a qualified person. Any decision to prosecute should follow such an assessment, and while the decision would not necessarily be binding on a prosecutor, the prosecutor would need to have clear reasons for reaching a different conclusion. In the case of both V.C.L. and A.N., the Court found that despite the existence of credible suspicion that they had been trafficked, neither the police nor the prosecution service had referred them to a competent authority for assessment; although both cases were subsequently reviewed by the prosecution service, it disagreed with the conclusion of the competent authority without giving clear reasons capable of undermining the competent authority's conclusions; and the Court of Appeal limited itself to addressing whether the decision to prosecute had been an abuse of process. The Court therefore found that there had been a violation of Article 4 in both applicants' cases.

The Court found that, although the authorities had made some accommodations to the applicants after their guilty verdicts, the lack of any assessment of whether the applicants had been victims of trafficking may have prevented them from securing important evidence capable of helping their defence. As such the proceedings had not been fair, leading to a violation of Article 6 § 1.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicants, Mr V.C.L. and Mr A.N., are Vietnamese nationals who were born in 1994 and 1992 and live in Middlesex (UK) and London respectively.

They complained under Articles 4 and 6 of the Convention about their prosecution and conviction for drug-related offences following their discovery on cannabis farms while they had still been minors. At the relevant time guidance for both police officers and prosecutors indicated that Vietnamese minors discovered on cannabis farms were likely to be victims of trafficking. Following their conviction, both V.C.L. and A.N. were recognised as victims of trafficking by the State authorities (competent authority) responsible for determining whether a person has been trafficked for the purpose of exploitation.

On 6 May 2009 V.C.L. was discovered by police during a drugs raid in Cambridge. During his police interview, the applicant stated that he was 15 years old and had been smuggled into the UK by his adoptive father. He had been met by two men who had taken him to the cannabis farm and put him to work there. He was charged with production of a controlled drug following the raid.

The courts assessed his age as 17 (although it was later accepted that he had in fact been 15). Although concerns had been raised by social services and an NGO that he might have been a victim of trafficking, on 20 August 2009 he pleaded guilty to production of drugs. He was sentenced to 20 months in a young offenders' institution.

On 21 April 2009 the police entered residence in London following reports of a burglary. They discovered there a large cannabis farm, along with A.N. and several other Vietnamese nationals. During a police interview he gave his year of birth as 1972 (it is, in fact, 1992, a fact which was later accepted by the courts). He stated that after arriving in the UK he had met some Vietnamese people who had looked after him. He had been taken to the cannabis farm where he had been put to work without pay.

A.N. was charged with production of a controlled drug, and on the advice of his lawyer he pleaded guilty in July 2009. He was given an 18-month detention and training order.

Later, a social worker from the National Society for the Prevention of Cruelty to Children – National Child Trafficking Advice and Information Line considered that there was strong evidence that A.N. had been a victim of child trafficking, connected to his forced labour and confinement in the cannabis farm.

Both applicants were granted permission to appeal out of time. They argued, among other things, that as victims of human trafficking they should not have been prosecuted. On 20 February 2012, the Court of Appeal found that victims of trafficking did not automatically acquire immunity from prosecution. In any case, it reasoned that the UK's obligation under international law to provide for the possibility of not punishing victims of trafficking could be achieved by prosecutors exercising their discretion not to prosecute in appropriate cases. This would require a judgment to be made by the prosecutor based on all the available evidence. The applicants' appeals were dismissed because in each case the court found that the decision to prosecute had been amply justified and had not been an abuse of process. V.C.L.'s sentence was however reduced to 12 months' detention and A.N.'s to a four-month detention and training order.

The applicants were refused leave to appeal to the Supreme Court. A second appeal by V.C.L. was also unsuccessful, with the Court of Appeal stating that "the decision to prosecute [had been] amply justified".

Complaints, procedure and composition of the Court

Relying on Articles 4 (prohibition of forced labour) and 6 § 1 (right to a fair trial), the applicants complained, in the main, of a failure on the part of the authorities to protect them in the aftermath of their trafficking, that the authorities had failed to conduct an adequate investigation into their trafficking (V.C.L.), and of the fairness of their trial.

The applications were lodged with the European Court of Human Rights on 20 and 21 November 2012 respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Article 4

The Court noted that to date it had not had the opportunity to examine a case of a possible victim of trafficking who had then been prosecuted. It stated that the relevant international treaties did not provide immunity from prosecution, although States were within their rights not to prosecute where forced criminal activity – identified early if possible – was apparent. Nevertheless, the Court considered that the prosecution of potential victims of trafficking might be at odds with the State's duty to take operational measures to protect them where there was a credible suspicion that an individual had been trafficked. Once the authorities had become aware of such a suspicion, the individual should be properly assessed by a properly qualified person qualified. A decision to prosecute should only follow such an assessment, especially where an individual was a minor, and a prosecutor would need clear reasons consistent with international law to disagree with the assessment.

Mr V.C.L. had been discovered at a raid on a cannabis farm while he had still been a minor. Although A.N. had initially claimed to be 37, a little over one week after his arrest it had been accepted that he had been 17. For the Court, the fact that the applicants had been discovered on cannabis farms while still minors should by itself have given rise to a credible suspicion that they had been victims of trafficking. However, instead of referring them to the body responsible they had been charged with criminal offences and allowed to plead guilty. The prosecution services subsequently reviewed their decisions to prosecute and found that they had been justified as the applicants had not been victims of trafficking. In the Court's view, however the prosecution had not given clear reasons consistent with the definition of trafficking for reaching a different conclusion to that of the competent authority.

Although their cases had subsequently been considered by the Court of Appeal (twice, in the case of V.C.L.), the Court noted that its review had been limited to a consideration of whether the prosecution had been an abuse of process. Moreover, in finding that the decision to prosecute had been justified, the court, like the prosecution service, had relied on factors which did not appear to go to the core of the internationally accepted definition of trafficking.

In sum, the Court found that the authorities had failed to take adequate operational measures to protect V.C.L. and A.N., both of whom had been potential victims of trafficking.

Article 6 § 1

The Court reiterated that it had to determine whether the failure to recognise the applicants as potential victims of trafficking raised issues under the Convention, whether the applicants had waived their rights, and whether the proceedings as a whole had been fair.

The Court found that although the applicants' pleas had been unequivocal, in the absence of an assessment of whether they had been trafficked, those pleas had not been made "in full awareness of the facts". The Court therefore concluded that they had not waived their rights under Article 6.

Although the authorities had made some accommodations to the applicants after their guilty verdicts, the Court nevertheless found that the lack of an assessment as to whether the applicants had been victims of trafficking had potentially prevented them from securing evidence which might have helped their defence. Furthermore, the Court did not consider that this "unfairness" had been cured on appeal since – as already noted – the Court of Appeal's review had been limited to a consideration of whether the prosecution had been an abuse of process, and it had relied on factors which did not appear to go to the core of the internationally accepted definition of trafficking.

As such the proceedings had not been fair, leading to a violation of Article 6 § 1.

Just satisfaction (Article 41)

The Court held that the United Kingdom was to pay the applicants 25,000 euros (EUR) each in respect of non-pecuniary damage, and EUR 20,000 each in respect of costs and expenses.

Separate opinion

Judge Motoc expressed a concurring opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.