

**IN THE EUROPEAN COURT OF HUMAN RIGHTS**

**Chowdury and Others**

**v.**

**Greece**

**APPLICATION TO THE EUROPEAN COURT OF HUMAN RIGHTS**

*Public version of an application submitted to the European Court of Human Rights by the Greek Council for Refugees and the Open Society Justice Initiative on 27 April 2015.*

**I. INTRODUCTION**

1. In Greece today thousands of irregular migrants are employed in agriculture. Greek laws on working conditions and payment of wages are routinely disregarded by employers and rarely enforced by the authorities. Ignorant of their rights and fearful of immigration enforcement, this workforce is exposed to a serious risk of the most extreme forms of exploitation: forced labour and trafficking contrary to Article 4. The Applicants were subjected to forced labour and/or trafficking, from which the Greek state failed to protect them and to prevent and punish these practices. Their application asks the Court to find a violation of Article 4 and to direct both individual and general measures to Greece to eliminate these practices.
2. In 2012-2013, around 150 Bangladeshi men worked at the Apostolopoulos farm in Nea Manolada, for up to six months – without being paid. Their employer took advantage of the fact that they had no immigration papers or permission to work. He provided the men with food as well as materials for temporary shelters, and promised them regular wages. The men worked long hours, often for seven days a week, sleeping in the shelters they had built. Their employer did not pay wages, but kept promising that he would. The men kept working, in the fear that if they quit their jobs, they would never receive the pay owing. As the amount of back pay owing grew larger, the men went on strike. Their employer demanded that they return to work, or leave the fields. For the men, leaving the fields meant abandoning their chance of back pay, and being without shelter, food and means of support. Moreover, as workless irregular migrants, they would face detention in inhuman conditions and deportation. When the employer brought in a new team to break the strike, the men protested, demanding their wages. The employer's guard shot at the workers, injuring 30 of them.
3. The shooter was convicted of dangerous bodily harm, but the Greek court acquitted the financier and the owner of the farm of human trafficking. Rejecting the prosecutor's

case on the law, the court ruled that the offence of trafficking requires proof that the employer exercised complete control over the workers: whereas the workers were free to leave the farm. The prosecutor refused to seek cassation appeal of the acquittal, which exhausted the Applicants' domestic remedies.

4. The Applicants are 42 of the workers concerned, including 21 of the victims named in the criminal proceedings. They complain that their treatment amounted to forced labour and trafficking and violated Article 4 of the Convention, as Greece (a) failed to prevent the Applicants from being subjected to treatment prohibited by Article 4; (b) failed to punish the persons who had subjected the Applicants to that treatment; and (c) failed to protect the Applicants after they had become subject to that treatment.

## II. FACTS

5. The Applicants were employed until April 2013 on a strawberry farm in the town of Nea Manolada ("Manolada"), Peloponnese, Greece. They contend that their employment amounted to forced labour and/or trafficking and that Greece failed to prevent and protect them from this treatment and to punish those responsible, breaching Greece's positive obligations under Article 4 of the Convention.

### Background

6. Where indicated, the facts are based upon the Judgment of the Court of Patras of 30 July 2014 concerning charges of human trafficking of the Applicants ("Court of Patras Judgment").<sup>1</sup>
7. Manolada is the key strawberry-growing region of Greece. Most strawberry pickers are Bangladeshi irregular migrants.<sup>2</sup> In April 2008, the Greek Ombudsman reported to the Greek Government his serious concern at the reported situation of irregular migrant workers in Manolada.<sup>3</sup> He called on five Government departments to take action to address the risk of labour exploitation and trafficking, in particular, to uphold the law and inform all workers of their rights to working conditions and wages, to ensure proper functioning of labour inspections and policing, and to consider the use of seasonal worker permits to bring the situation into one of formal legality. The Ministry of Labour inspected farms and filed reports for prosecution.<sup>4</sup> The Supreme Court Prosecutor issued a circular reminding prosecutors of Article 2(1) of the Greek Constitution (human dignity) as concerns the treatment of foreign workers.<sup>5</sup> In February 2011, a report by the Centre for the Reintegration of Migrant Workers found that the Government had taken no effective action to address the Ombudsman's concerns.<sup>6</sup> In April 2013, after the Applicants were shot at by their employers, the Ombudsman repeated these concerns.<sup>7</sup> The Mayor of Athens, who had been Ombudsman in 2008, stated that his 2008

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<sup>1</sup> Doc. 12.

<sup>2</sup> Patras Court Judgment, p. 429 "foreign workers in the region number approximately 4,000, the vast majority of whom [have] an illegal status in the country".

<sup>3</sup> Doc. 4, also available at <http://www.synigoros.gr/?i=human-rights.el.danews.98176>

<sup>4</sup> Doc. 5.

<sup>5</sup> Prosecutor of Supreme Court, Circular of 26 April 2008, available at [http://www.eisap.gr/sites/default/files/circulars/%CE%95%CE%B3%CE%BA%CF%8D%CE%BA%CE%BB%CE%B9%CE%BF%CF%82\\_2013\\_3.pdf](http://www.eisap.gr/sites/default/files/circulars/%CE%95%CE%B3%CE%BA%CF%8D%CE%BA%CE%BB%CE%B9%CE%BF%CF%82_2013_3.pdf)

<sup>6</sup> Doc. 6, also available at [http://www.ccme.be/fileadmin/filer/ccme/20\\_Areas\\_of\\_Work/10\\_Slavery\\_Anti-Trafficking/National\\_reports/2011-03-Greek\\_Report\\_GOING\\_BEYOND.pdf](http://www.ccme.be/fileadmin/filer/ccme/20_Areas_of_Work/10_Slavery_Anti-Trafficking/National_reports/2011-03-Greek_Report_GOING_BEYOND.pdf).

<sup>7</sup> Doc. 7, also available at <http://www.synigoros.gr/resources/deltio-typou-manol.pdf>

notification meant that “No-one is entitled to say they do not know what is happening in Manolada”.<sup>8</sup>

### The Applicants

8. The Applicants are 42 male Bangladeshi citizens who lacked Greek residence permits and permission to work, both at the time of their recruitment and throughout their employment. The police have powers to arrest irregular migrants.<sup>9</sup> In Manolada, the police did not use these powers against workers,<sup>10</sup> no doubt aware that the local industry depends on their labour.<sup>11</sup> However, persons who are not in work face a serious risk of arrest, detention<sup>12</sup> and deportation.<sup>13</sup> Conditions of administrative detention of migrants have been found by the Court to be inhuman and degrading and continue to be so, routinely.<sup>14</sup> Many of the Applicants had lived in Athens where the Greek police began mass arrests and detentions in August 2012, in Operation Xenios Zeus.<sup>15</sup>
9. The Applicants were all Bangladeshi nationals without permission to work who were members of three teams of workers, totalling around 150 men (“the workers”). They began work at different times between October 2012 and February 2013.<sup>16</sup> (Dates of employment of each Applicant are set out in Doc. 3.) They had been recruited from Athens and other parts of Greece to work on the largest strawberry farm in Manolada.<sup>17</sup> This is operated by Theodoros Apostolopoulos, but is funded by and under exclusive contract to supply strawberries to Nicholas Vaggelatos (together, “the Employers”).<sup>18</sup> Each team of workers was led by a Bangladeshi national (“team leader”) who reported

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<sup>8</sup> Doc. 8, also available at <http://www.aftodioikisi.gr/dimoi/kaminis-eixa-enimerosei-apo-to-2008-gia-ti-manolada>

<sup>9</sup> Under Greek law, it is a criminal offence for a non-EU national to enter and remain in Greek territory without requisite permission: Law 3386/2005, Articles 73, 83.

<sup>10</sup> Patras Court Judgment, p. 428 “the illegal status was not used by the employer ... and no inspection was ever made by the competent police authorities either on them (sc. the workers on Apostolopoulos’ farm) or on the other foreign workers in the region who numbered approximately 4,000, the vast majority of whom [had] illegal status in the country...”

<sup>11</sup> Patras Court Judgment, pp. 306-308 recording evidence of Orest Hamatai, local strawberry farmer and defence witness that all the local farmers openly hire undocumented Bangladeshi workers, the police are aware and do nothing.

<sup>12</sup> *Mission to Greece*, Report of the U.N. Special Rapporteur on the human rights of migrants, 18 April 2013, A/HRC/23/46/Add.4. Para. 43 “In most cases, the authorities consider that being in an irregular situation automatically constitutes sufficient reason for detention.” Para 46. “...the excessive duration of detention of migrants – six months, which may be extended up to 18 months if the person refuses to cooperate or if there are delays in obtaining necessary documentation.”

<sup>13</sup> “With regard to third country nationals who have returned through coercive measures, the dominant nationalities are: 1. Pakistan, 2. Albania, 3. Bangladesh. . .”, *Annual Policy Report 2012*, European Migration Network-Greece, March 2013, available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/annual-policy/2012/11a.greece\\_annual\\_policy\\_report\\_2012\\_en\\_version\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/annual-policy/2012/11a.greece_annual_policy_report_2012_en_version_en.pdf)

<sup>14</sup> In *M.S.S v. Belgium and Greece*, ECtHR Judgment of 21 January 2011, the Grand Chamber held that Greece’s detention in 2009 of an irregular migrant asylum-seeker had violated Article 3 of the Convention: paras. 229-233. The Committee of Ministers has declined to close examination of the judgment, including conditions of detention of irregular migrants, see Doc. 17.

<sup>15</sup> See Doc. 10, also available at <http://www.hrw.org/news/2013/08/02/dispatches-greece-one-year-abuses-continue-under-operation-xenios-zeus>.

<sup>16</sup> Patras Court Judgment pp. 422-423 “the rest were employed during the following harvesting season (from September 2012 to April 2013)”.

<sup>17</sup> Patras Court Judgment, pp. 286, 259, 227, 206, 282,273; Doc. 3, column “Previous Residence / Work in Greece”

<sup>18</sup> Patras Court Judgment, pp. 416-417.

to Apostolopoulos.<sup>19</sup> Before becoming employed by Apostolopoulos, the men had been promised wages of €22 for seven hours labour, with €3 p/h for overtime, less €3 per day for their food.<sup>20</sup> (The minimum wage in Greece is between €25-30 for a normal working day.<sup>21</sup>) They worked in plastic greenhouses, tending to the strawberry plants and picking strawberries,<sup>22</sup> as Apostolopoulos' own men stood guard, with guns.<sup>23</sup> The workers often worked from 7 a.m. – 7 p.m. every day,<sup>24</sup> in violation of Greek laws including those implementing the EU Working Time Directive.<sup>25</sup> They lived in makeshift tents made of cardboard boxes, nylon, and bamboo.<sup>26</sup> The Court cited evidence that there was “no toilet, no running water and it was so hot that the skin melted off people”.<sup>27</sup> The workers were scared of the guards.<sup>28</sup>

10. The Patras Court found that the Employers “were aware of the workers’ illegal status in Greece, that they did not speak Greek, that they needed to make a living and that they (i.e. the Employers) could secure labour from the [workers] without having to pay back wages”.<sup>29</sup> The workers were never paid any wages. The police evidence to the Patras Court was that they knew that the workers in question had not been paid.<sup>30</sup> The police said they had contacted Vaggelatos and informed him.<sup>31</sup> This was the only action the police took.<sup>32</sup> They did not contact labour inspectors or advise the workers on how to pursue a claim for their wages before a court. They also did not exercise their powers to open an investigation into trafficking.
11. The workers went on strike three times to demand their wages: at the end of February 2013, in the middle of March 2013, and lastly on 15 April, 2013.<sup>33</sup> Apostolopoulos and Vaggelatos still failed to pay any of the wages owed.<sup>34</sup> Instead, on 17 April 2013, they brought in a new gang of Bangladeshi migrants to work the fields.<sup>35</sup> The original workers, numbering 100-150,<sup>36</sup> fearing that they would now never receive their unpaid wages, went with the team leaders across the field towards their employers. One of Apostolopoulos’ guards, George Chaloulos, opened fire on the workers with a shotgun loaded with buckshot, firing several times at the workers, seriously injuring 30 of them.<sup>37</sup>

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<sup>19</sup> Patras Court Judgment, p. 419.

<sup>20</sup> Patras Court Judgment p. 420. The victims’ testimony to the Patras Court was that the employer had made an arrangement with a local shop to provide 80-90 Euros per worker per month worth of food and necessities, to be deducted from wages: Patras Court Judgment p. 209.

<sup>21</sup> Law 4093/2012, see <http://www.taxheaven.gr/laws/circular/view/id/15303>

<sup>22</sup> Patras Court Judgment, p. 420.

<sup>23</sup> Patras Court Judgment, pp. 348, 449.

<sup>24</sup> Statement of Prosecutor to Patras Court, Judgment, p. 395. The Court did not contradict this.

<sup>25</sup> For Directive, see <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

<sup>26</sup> Patras Court Judgment, pp. 394-395.

<sup>27</sup> Patras Court Judgment, p. 427.

<sup>28</sup> See workers’ testimony, Patras Court Judgment, pp. 182, 189, 206, 236, 286, 299.

<sup>29</sup> Patras Court Judgment, p. 425.

<sup>30</sup> Police officer’s testimony: “someone, probably, the team leaders had come to the police station to complain that the workers have not been paid their wages.” Patras Court Judgment, p. 218.

<sup>31</sup> Police officer’s testimony: “one or two days, I don’t remember, before the [shooting], one of my colleagues, called Vaggelatos and told him.” Patras Court Judgment, p. 219.

<sup>32</sup> Patras Court Judgment, p. 219.

<sup>33</sup> Patras Court Judgment, p. 424.

<sup>34</sup> Patras Court Judgment, p. 424.

<sup>35</sup> Patras Court Judgment, p. 437.

<sup>36</sup> Patras Court Judgment, p. 440.

<sup>37</sup> Patras Court Judgment, p. 438.

12. The police attended the hospital and took statements from those seriously injured and of the team leaders. They did not seek to take statements or record the details of the other workers.<sup>38</sup>
13. On 18 April 2013, the police arrested Vaggelatos and, on 19 April 2013, Apostolopoulos, George Chaloulos and another guard, Konstantinos Chaloulos (“Defendants”). On 18 April 2013, the Prosecutor of Amaliada charged them with attempted murder and lesser offences and, at the direction of the Public Prosecutor of the Supreme Court, with of human trafficking under Article 323A of the Greek Penal Code. The charges of attempted murder were later reduced to dangerous bodily harm.<sup>39</sup> They remained in custody until trial.
14. On 22 April 2013, the Prosecutor of Amaliada recognised 31 workers and four of the team leaders as victims of trafficking. The effect of this decision was that the residence of these workers became regular.<sup>40</sup> On 8 May 2013, 120 other workers (including 21 of the Applicants) asked the Prosecutor to charge the Defendants with trafficking and assault against them in addition to the 35 already accepted victims. During Summer 2013, the police took formal statements from 102 of the 120 men. The requests of all 120 were rejected by the Prosecutor of Amaliada on 4 August 2014 by Decision No. 26/14.<sup>41</sup> These men (including 21 of the Applicants) exercised their right of appeal but this was rejected on 28 January 2015 by the Prosecutor of the Court of Appeals of Patras on the ground that there was insufficient evidence that the persons concerned had been present at the shooting, since they had not immediately informed the police of this fact.<sup>42</sup> There is no possibility of appeal from this decision.
15. In September 2013, the 35 workers recognised as victims of trafficking applied for a residence permit as such.<sup>43</sup> The Prosecutor’s refusal to recognise the other workers as victims of trafficking meant that they did not qualify for issue of the permit.
16. The Defendants were tried by the Mixed Jury Court of Patras (“Patras Court”) from 6 June 2014. The 35 workers were civil parties to the trial of the Defendants, represented by Vasilis Kerasiotis and Moses Karabeides. There was no legal aid for their representation: the Greek Council for Refugees and Hellenic League for Human Rights provided lawyers and met the court fees and supporters of the workers provided transportation.
17. At the trial, asked by the President of the Court, many of the workers gave evidence that they were afraid to leave the Manolada area, from where they were tolerated,<sup>44</sup> to a place where they could lose their money and be arrested for their irregular status.<sup>45</sup> Some workers explained that they had been recruited in Athens.<sup>46</sup>

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<sup>38</sup> Patras Court Judgment, p. 329. Police Officer stated: “I don’t know how many people were there, our first priority was to transfer the injured to hospitals.” There was no evidence of any police action thereafter in relation to the non-injured workers.

<sup>39</sup> Doc. 11, Ordinance 71/2014 of the Judicial Council of Patras Court of Appeal

<sup>40</sup> Article 12, para. 1,2 of Law 3064/2002.

<sup>41</sup> Doc. 13.

<sup>42</sup> Doc. 16.

<sup>43</sup> Under Article 44 of Law 3386/2005, as amended.

<sup>44</sup> Patras Court Judgment, p. 174.

<sup>45</sup> Patras Court Judgment, p. 269.

<sup>46</sup> Doc. 3, col. “Previous Residence/Work in Greece”

18. The Court accepted that the back pay for the 2012-2013 harvesting season had not been paid.<sup>47</sup>
19. On 30 July 2014, the Patras Court acquitted the Defendants of human trafficking. The court did not consider that the Employers' treatment of the workers constituted trafficking. The central reason given by the court was that the workers were at liberty to leave the farm. The Court also found that the workers were not in the employment of Vaggelatos. George Chaloulos was convicted of serious bodily harm and illegal use of firearms, in respect of 30 of the workers named in the charge and the two team leaders. Apostolopoulos was convicted as accessory to the charge of dangerous bodily harm. These two men were sentenced to 14 years and 7 months, and 8 years and 7 months in jail, respectively. These sentences were immediately converted to monetary fines. The court ordered the two men to pay €50 to each worker for the assault, a total of €1,500. The other charges were dismissed.
20. Under Greek law, a unanimous verdict of acquittal by the Mixed Jury Court can only be challenged by way of cassation to the Supreme Court (*Areios Pagos*) by the Prosecutor of the Supreme Court.<sup>48</sup> To take this step, the Prosecutor of the Supreme Court must obtain a transcript of the Court's judgment, which she requested on 1 August 2014. She invited the Applicants' lawyer, Kerasiotis, to make a request to her to seek cassation. On 21 October 2014, the lawyers for the civil parties to the trial - Kerasiotis, Karabeides and Chatzinikolaou - submitted that request to the prosecutor to seek cassation to set aside the trial outcome and institute a new trial.<sup>49</sup> The grounds of this request included that the court had failed properly to address the charge of trafficking, in particular, had misinterpreted the notion of trafficking by basing a rejection of this charge on the liberty of the workers to leave the farm. On 27 October 2014, the Prosecutor rejected the application and Kerasiotis was informed on the same day.<sup>50</sup> The prosecutor's reason was that the requirements of the law for cassation were not met. This decision is not subject to appeal.
21. On 30 July 2014, at the conclusion of the trial, the convicted Defendants exercised their right of appeal against their convictions for assault and illegal use of firearms.<sup>51</sup> This appeal is pending and will be re-heard *de novo* by the Mixed Jury Court of Appeals of Patras. The convicted Defendants have not paid the compensation ordered: the effect of the order is suspended pending the appeal.
22. After the shooting, a few of the workers left Manolada, but at least two of them were arrested and deported.<sup>52</sup> Most of the Applicants stayed living in shelters on the farm, provided with food from supporters, finding a few days' work now and then.<sup>53</sup> After the Defendants when released from custody on their acquittal, they forced the remaining workers to leave the farm.

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<sup>47</sup> Patras Court Judgment, p. 429.

<sup>48</sup> Greek Code of Criminal Procedure, Article 505(2)

<sup>49</sup> Doc. 14, endorsed as received 21 October 2014, No. 6892.

<sup>50</sup> Doc. 15, endorsed by the Supreme Court Prosecutor with reasons for refusal, dated 29 October 2014.

<sup>51</sup> Appeal No. 6 and 7/30-7-2014

<sup>52</sup> Evidence of Miha Sofik, Patras Court Judgment, p. 214.

<sup>53</sup> Patras Court Judgment, p. 187 and testimonies at pp. 237, 242, 248, 257, 275, 278.

### III. VIOLATIONS OF THE CONVENTION AND RELEVANT ARGUMENTS

23. The Applicants are victims of a violation by Greece of that state's positive obligations under Article 4 of the Convention. In support of this claim, the Applicants make the following arguments:
- *A. Scope of Article 4.* The Employers' treatment of the Applicants amounted to treatment contrary to Article 4.
  - *B. Failure to Prevent.* Greece's failure to prevent the Applicants from being subjected to that treatment was a breach of Greece's positive obligations under Article 4.
  - *C. Failure to Punish.* Greece's failure to punish the treatment of the Applicants was also a breach of those obligations.
  - *D. Failure to Protect.* Greece's failure to protect the Applicants after they had become subject to that treatment was also a breach of that duty.
- A. The Employers' treatment of the Applicants amounted to treatment contrary to Article 4**
24. The Applicants' work for the Employers amounted to forced labour. They worked under the menace of penalty: of losing the wages owed to them and of detention and deportation if they ended their relationship with the Employers. The work cannot be considered voluntary.
25. The Greek authorities characterized the circumstances as trafficking. (Greek law does not criminalise forced labour as such: see para. 38 below.) In light of the approach that the European Court has taken to cases where both forced labour and trafficking are raised,<sup>54</sup> the Applicants' primary case is under forced labour. Nevertheless, they also argue that the treatment of them amounted to trafficking: they were recruited, harboured and received by the Employers by means of fraud, deception, abuse of power and/or of a position of vulnerability, for the purposes of exploitation.

#### Relevant Legal Standards: Scope of Article 4

26. Article 4(1) provides that "No one shall be held in slavery or servitude." Article 4(2) provides that "No-one shall be required to perform forced or compulsory labour." The Court has held that Article 4 "enshrines one of the most fundamental values of democratic societies. [It] makes no provision for exceptions and no derogation from it is permissible"<sup>55</sup>.
27. Article 4 originates in Conventions of the International Labour Organisation ("ILO"), in particular, the prohibition on "forced or compulsory labour" in *Forced Labour Convention, 1930 (No. 29)*.<sup>56</sup> The Court expressly took into account ILO Convention No. 29 and the *Abolition of Forced Labour Convention, 1957 (No. 105)* in the

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<sup>54</sup> *C.N. and V. v. France*, ECtHR Judgment of 11 October 2012, para. 88: '[T]he facts of the present case concern activities related to "forced labour" and "servitude", legal concepts specifically provided for in the Convention. Indeed, the Court considers that the present case has more in common with the *Siliadin* case than with the *Rantsev* case.'

<sup>55</sup> *Siliadin v. France*, ECtHR Judgment of 26 July 2005, para.112.

<sup>56</sup> Available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029)

interpretation of Article 4 as treaties “which are binding on nearly all the member States of the Council of Europe”.<sup>57</sup>

28. “Forced or compulsory labour” means “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.”<sup>58</sup> “[T]he notion of ‘penalty’ is used in the broad sense. ... The ‘penalty’ may go as far as physical violence or restraint, but it can also takes subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal.”<sup>59</sup>
29. In considering whether a person offered himself voluntarily for the work in question, the Court considers all of the circumstances of the case. Prior consent of a person is not sufficient to rule out forced labour per se.<sup>60</sup> “While remunerated work may also qualify as forced or compulsory labour, the lack of remuneration and of reimbursement of expenses constitutes a relevant factor when considering what is proportionate or in the normal course of affairs.”<sup>61</sup>
30. Article 4 also prohibits human trafficking, as defined in Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings (“Anti-Trafficking Convention”).<sup>62</sup> Article 4 of the Anti-Trafficking Convention provides that:
  - “(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;
  - (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;”
31. Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (“Palermo Protocol”) contains the same definitions.<sup>63</sup> Unlike the Anti-Trafficking Convention, the Palermo Protocol only applies to transnational cases.
32. The ILO *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislators and Law Enforcement*, (2004) (“ILO Guidelines”) set out the obligations imposed by ILO Conventions relevant to combatting forced labour and trafficking.<sup>64</sup>

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<sup>57</sup> *Van der Musselle v. Belgium*, ECtHR Judgment of 23 November 1983, para. 32.

<sup>58</sup> *Van der Musselle*, para. 34.

<sup>59</sup> *C.N. and V. v. France*, para. 77, citing ILO guidance .

<sup>60</sup> *Van der Musselle*, para. 36.

<sup>61</sup> *Van der Musselle*, para. 40.

<sup>62</sup> “[T]he Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.”: *Rantsev v. Cyprus and Russia*, ECtHR Judgment of 7 January 2010, para. 282.

<sup>63</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime 2000, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I).

<sup>64</sup> Chapter 1, ‘Purpose and Scope of the Guide’, p.1. Available at [http://apflnet.ilo.org/resources/human-trafficking-and-forced-labour-exploitation-guidance-for-legislation-and-law-enforcement/at\\_download/file1](http://apflnet.ilo.org/resources/human-trafficking-and-forced-labour-exploitation-guidance-for-legislation-and-law-enforcement/at_download/file1).

33. The ILO Guidelines identify “six elements [which] point to a forced labour situation; usually two or more are imposed on a worker in a combined fashion”:<sup>65</sup>

1. Physical or sexual violence, or threats of same.
2. Restriction of movement to the workplace or a limited area.
3. Debt bondage, such as where the worker works to pay off a debt or loan, and work is undervalued.
4. Withholding wages or refusing the pay the worker at all.
5. Retention of passports and identity documents, particularly in case of migrant workers.
6. Threat of denunciation to the authorities, primarily where the worker is in an irregular migrant.

34. The ILO Guidelines state:<sup>66</sup>

“the seemingly “voluntary offer” of the worker may have been manipulated or was not based on an informed decision. Where migrant workers were induced by deceit, false promises and retention of identity documents or force to remain at the disposal of an employer, the ILO supervisory bodies have noted a violation of the Convention. They have also noted that in cases where an employment relationship is originally the result of a freely concluded agreement, the workers’ right to free choice of employment remains inalienable<sup>67</sup> - i.e., a restriction on leaving a job, even when the worker freely agreed to enter it, can be considered forced labour.”

35. In 2002, after facts considered in the *Siliadin*, *Rantsev*, and *C.N. & V.* cases,<sup>68</sup> the European Union (“EU”) adopted EU Framework Decision 2002/629.<sup>69</sup> This required Member States to criminalise trafficking, defined in similar terms to the Anti-Trafficking Convention. This Decision was transposed into Greek law by Law 3064/2002 which inserted a new Article 323A of the Greek Penal Code (see para. **Error! Reference source not found.** below). This Decision was replaced by EU Directive 2011/36<sup>70</sup> with effect from 6 April 2013 which was implemented in Greece by Law 4198/2013 of 11 October 2013 with immediate effect.

#### *Greek Law*

36. Greece had ratified, before the events in question: the Slavery Convention, 1926;<sup>71</sup> Supplementary Convention on the Abolition of Slavery, 1926;<sup>72</sup> ILO Forced Labour Convention, 1930;<sup>73</sup> ILO Abolition of Forced Labour Convention, 1956;<sup>74</sup> and Palermo

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<sup>65</sup> pp. 20-21.

<sup>66</sup> p. 23.

<sup>67</sup> ILO (2003): *Fundamental Rights at Work and International Labour Standards*, Geneva, pp. 36 – 38; available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_087424.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087424.pdf)

<sup>68</sup> See notes 54, 55 and 62, respectively.

<sup>69</sup> Council Framework Decision 2002/629 on combatting trafficking in human beings, *Official Journal* L203, 01/08/2002, p. 1.

<sup>70</sup> Directive 2011/36 of the European Parliament and Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, *Official Journal* L101, 15.4.2011, p. 1-11

<sup>71</sup> Ratified by Greece on 4 July 1930.

<sup>72</sup> Ratified by Greece on 13 December 1972.

<sup>73</sup> Ratified by Greece on 13 June 1952.

<sup>74</sup> Ratified by Greece on 30 May 1962.

Protocol, 2000.<sup>75</sup> The Anti-Trafficking Convention was signed by Greece on 17 November 2005 and ratified on 11 April 2014.

37. Article 22(3) of the Constitution of Greece provides: “Any form of compulsory work is prohibited.”

38. Article 323A of the Greek Penal Code provides:

“Trafficking in Human Beings

1. Whoever with the use of violence, threat, power and abuse of power or with any other means, hires, transfers, promotes in the country or outside the country, detains, remands, harbours, encourages, delivers with or without compensation, or takes from another person a person in order to take organs from his body, or to exploit his labour, is punished with incarceration up to ten years and pecuniary fine of 10.000 to 50.000 euros.

2. This sentence is also imposed to offenders who attain the same end misleading victims taking advantage of their situation by making false promises and commitments, offering gifts, presents or other benefits.”

39. Article 323A was adopted to give effect to Greece’s obligations under EU Framework Decision 2002/629. The purpose of this was to adopt “a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part”: Recital 7.

40. The Greek Penal Code does not contain a crime of forced labour per se.

**Argument**

41. The situation of the Applicants fell within Article 4 as forced labour because (a) the Applicants worked for the Employers, (b) this work was exacted under the menace of a penalty, and (c) this work was not voluntary. The Applicants contend that the situation also amounted to trafficking, contrary to Article 4.

The Applicants worked for the Employers

42. The Applicants tended the strawberry plants on the farm operated and funded by the Employers. They began this work on differing dates between October 2012 and February 2013. The Applicants who were civil parties to the criminal trial were found by the Patras Court to have worked for the Employers.<sup>76</sup> In the case of the remaining Applicants, they rely upon their applications to the Prosecutor for recognition as victims of trafficking<sup>77</sup> and their statements of fact in this application, set out in Doc. 3.

The Applicants’ work was exacted by the Employers under the menace of a penalty

43. The Applicants were promised wages by the Employers throughout the period of employment. Yet they were paid nothing, so were owed an ever-increasing amount. The failure to pay persisted despite the police being told of it. The circumstances of the case demonstrate that the Applicants believed that continuing their employment relationship with the Employers was essential to recovering the money they were owed and that they

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<sup>75</sup> Ratified by Greece on 11 January 2011.

<sup>76</sup> See, e.g., Patras Court judgment, p. 424. “It has been proven that both the aforementioned civil plaintiffs and the other worker who were also Bangladeshi citizens, worked on an orderly basis in the fields owned by Theodoros Apostolopoulos.”

<sup>77</sup> Doc. 13.

had no effective remedy for this debt. The Applicants were provided with food and shelter by the Employers, albeit inadequate. They worked under degrading conditions.

44. The Applicants were Bangladeshi nationals, lacking the residence permit and work permit required by Greek immigration law. They knew that this made them liable to be detained by the Greek authorities for prolonged periods in inhumane conditions, and that leaving their work would make this a very real risk. They lacked the resources to live safely elsewhere in Greece or to leave Greece.
45. The Applicants' alternative to continuing to labour for the Employers was to abandon their shelter and supply of food, give up the possibility of obtaining the wages they were owed and expose themselves to the risk of complete destitution or detention and deportation. The circumstances of the case demonstrate that the Employers knew all these facts.
46. The Applicants do not contend that their irregular status alone meant their employment was forced labour. Nor do they contend that the back pay owed, or their fear of losing their claim to it, was itself enough to make their labour forced.
47. The Applicants contend that the totality of their situation constituted "forced labour". The Employers' actions had placed them in a situation where only continuing to work without payment gave them the hope of receiving their back pay, whereas ending their relationship with the Employers would be not only to abandon their back pay (a very significant sum in their circumstances) but to leave them facing destitution, detention and deportation. This situation was "the menace of a penalty".

The Applicants' work for the Employer was not voluntary

48. The Applicants work cannot be considered voluntary. They continued to work for the Employer because they had no real or acceptable situation but to submit to the abuse involved.
49. Under the Court's case-law, the issue of voluntariness is determined in light of all the circumstances. The ILO Guidelines (see paras. 32-34 above) draw particular attention to refusal to pay the worker, to the irregular migrant's fear of enforcement action by the authorities and to restrictions on leaving the job.
50. Furthermore, given that Article 4 prohibits human trafficking as defined in international instruments, the coherent development of the notion of forced labour under Article 4 should be informed by the texts of anti-trafficking instruments relating to consent. Under these instruments, the "means" of trafficking include "abuse of power or of a position of vulnerability, for the purpose of exploitation . . . Exploitation shall include, at a minimum, . . . forced labour." EU law defines "position of vulnerability" as "a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved."<sup>78</sup> The consent of such a victim to exploitation is irrelevant.<sup>79</sup> The Applicants submit that that where an employer uses abuse of power or a "position of vulnerability" for the purposes of exploitation, the labour of the victim is not "voluntary" for the purposes of forced labour under Article 4. This is so whether or not the treatment included the "recruitment, transportation, transfer, harbouring or receipt" required by the definition of trafficking.
51. The Applicants began their employment in a position of vulnerability, as irregular migrants with insufficient resources, at risk of detention in inhumane conditions and of

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<sup>78</sup> Article 2(2) of Directive 2011/36.

<sup>79</sup> Article 4(b) of the Anti-Trafficking Convention and Article 2(2) of Directive 2011/36.

deportation. The Applicants and the Employers understood that, if the Applicants stopped working, they would not receive their back pay. It follows that, as the back pay owed to the Applicants increased each day, their need to continue their employment relationship with the Employers increased. They had “no real or acceptable alternative to submit to the abuse involved”. As the Patras Court found (see para. 10 above), the Employers knew that they could secure labour from the Applicants without having to pay back wages. The Employer’s promise to pay was an empty one, made for the purposes of exploitation.

52. In this situation, any consent of the Applicants to labour, or continued labour, for the Employers was irrelevant.
53. Even were it to be determined that the situation did not constitute forced labour at the outset, that does not preclude it becoming so during the employment.
54. A finding of forced labour is sufficient to establish that the situation falls within Article 4. The Applicants also maintain that not only was the treatment of them forced labour, but that the situation met any additional requirements – such as recruitment, harbouring and/or reception by the Employers – for that treatment to amount to trafficking. The Prosecutor’s case on these elements was not rejected by the Patras Court.

#### **B. Failure to Prevent**

55. Greece breached its positive obligations under Article 4 by failing to prevent the Applicants from being subjected to forced labour and trafficking, by failing properly to regulate employers, failing to uphold Greek laws on working conditions and payment of wages, and failing to ensure workers’ access to information and justice mechanisms.

#### Relevant Legal Standards: Failure to Prevent

56. International law requires Greece to have in place a legislative and administrative framework of: safeguards against forced labour and trafficking, measures to regulate businesses, training for law enforcement officers, investigation and penalization of forced labour and trafficking.
57. As set out in Argument C below, the positive obligations under Article 4 of the Convention require “the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation.”<sup>80</sup> In *Rantsev*, a trafficking case, the Court considered the content of this obligation in more detail, holding that “[i]n order to comply with this obligation, member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking.”<sup>81</sup> This is not merely a *post facto* obligation, but also extends to preventive measures: “[T]he spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking.”<sup>82</sup>
58. The Applicants submit that these aspects of the positive duty under Article 4 are not limited to trafficking, but apply to all forms of forced labour. The following obligations should therefore be taken to apply not only to trafficking but to other forms of forced labour:

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<sup>80</sup> *Siliadin*, para. 112.

<sup>81</sup> *Rantsev*, para. 285

<sup>82</sup> *Rantsev*, para. 284.

- a) *Regulation*. “[T]o put in place adequate measures regulating businesses often used as a cover for human trafficking;”<sup>83</sup>
- b) *Protection*. To take appropriate measures to protect victims where State authorities are “aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an identified person had been or was at a real and immediate risk of being trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention”.<sup>84</sup>
- c) *Training*. To provide relevant training for law enforcement officials.<sup>85</sup>
- d) *Investigation*. To investigate situations of potential trafficking, once the matter has come to the attention of the authorities, regardless of whether a complaint has been made.<sup>86</sup>

*European Union law*

59. EU Law imposes an explicit requirement to train law enforcement officials, and for the payment of unpaid wages. Article 18 of Directive 2011/36 provides that:

“3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.”

60. EU Directive 2009/52 on sanctions against employers of illegally staying third-country nationals sets out a specific obligation on Greece to ensure that the employers make back payments to the workers, and that they must be informed of this right.<sup>87</sup>

*Other Council of Europe material*

61. The Council of Europe has developed standards that set out specific preventive measures that should be introduced, including regulation, inspection, training, policy review, and legal aid for victims. Resolution 1922 (2013) of the Parliamentary Assembly of the Council of Europe (PACE) “Trafficking of migrant workers for forced labour”, adopted 25 January 2013, states:<sup>88</sup>

“8. . . . Recommends that Council of Europe member and observer States, as well as partners for democracy:

8.1. tackle the phenomenon of trafficking of migrant workers for forced labour, while taking into account the particular vulnerability of these persons, by: . . .

8.1.3. encouraging regular and co-ordinated inspections by organisations responsible for regulating employment, health and safety sectors most at risk,

<sup>83</sup> *Rantsev*, para. 284.

<sup>84</sup> *Rantsev*, para 286.

<sup>85</sup> *Rantsev*, para 287.

<sup>86</sup> *Rantsev*, para 288.

<sup>87</sup> *Official Journal* L168, 30.6.2009, pp. 24-32.

<sup>88</sup> The Court’s jurisprudence recognises PACE resolutions and recommendations as relevant international legal documents. See, e.g., *El-Masri v. Former Yugoslav Republic of Macedonia*, Grand Chamber Judgment of 13 December 2012 (citing to PACE Resolution 1433 (2005) on lawfulness of detentions by the United States in Guantanamo Bay and PACE Resolution 1463 (2005) on enforced disappearances); *Sitaropoulos and Giakoumopoulos v. Greece*, Grand Chamber Judgment of 15 March 2012 (citing to PACE Resolution 1459 (2005) on abolition of restrictions on the right to vote and PACE Recommendation 1714 (2005) on the abolition of restrictions on the right to vote).

encouraging workers to self-organise, and also associating employment agencies with action against human trafficking;

8.1.4. strengthening the role of labour inspectors and allocating sufficient human and financial resources to allow them to effectively regulate employment, including domestic work and the functioning of informal business and workplaces, where forced labour practices are most prevalent;

8.1.5. taking steps to discourage demand for the services of trafficked persons for the purpose of forced labour, particularly in domestic services and in the agriculture, fisheries, construction, hospitality, care and cleaning sectors; . . .

8.1.8. ensuring that all relevant professionals, including judges and prosecutors, labour inspectors, law-enforcement officials, border guards, immigration officials, staff working in immigration detention centres, local authorities staff . . . receive comprehensive and multi-disciplinary training to identify victims of human trafficking for forced labour purposes and help these victims in line with the Council of Europe Convention on Action Against Trafficking;

8.2. review their immigration and return policies to bring them into line with the recommendations of [the Council of Europe Group of Experts on Action against Trafficking in Human Beings] so as to ensure that persons trafficked for forced labour are treated primarily as victims in need of protection rather than violators of migration control. . .

8.2.7. ensuring victims access to the courts and guaranteeing their effective access to legal aid and interpretation services.”

#### Argument

62. Greece failed to adopt appropriate general measures to prevent all forms of forced labour and failed to take appropriate particular measures to protect the Applicants.

#### *Failure to adopt general preventive measures*

63. Greece is required by international law to adopt comprehensive policies, programmes and other measures to prevent forced labour, see para. 57 above. These include:
- a) Adequate **safeguards** in national legislation to ensure the practical and effective protection of the rights of potential victims of forced labour, see para. 57 above.
  - b) Relevant **training** for law enforcement officials, including identifying potential victims see para 58.c) above;
  - c) Systematic and objective **information** to irregular migrants about their rights to recover unpaid wages, see para. 60 above.
  - d) Adequate measures **regulating businesses** likely to be concerned with forced labour, see para. 50(a) above.
64. Greek legislation establishes minimum conditions and wages for workers, penalizes non-payment of wages and provides for inspection and enforcement by the authorities.<sup>89</sup>
65. Throughout Manolada there is systemic employment of irregular migrants in strenuous, low paid work. This makes it especially fertile ground for forced labour and trafficking situations. The Ombudsman had expressly called on the Government to act in 2008. The Government has taken no effective steps to address the situation. In the Applicants’

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<sup>89</sup> Article 2 of Law 3996/2011 on the Labour Inspectorate

case, the police were aware of the Employers' failure to pay the Applicants. Yet neither the police nor any other authority identified the situation as one of potential or actual forced labour or trafficking, until the Employer's shootings of the workers.<sup>90</sup> Neither the police nor any other authority informed the workers of the potential protection of anti-trafficking measures or the means by which they could recover the wages due to them, either before or after the shootings. There was no inspection of the working or living conditions on the farm during their employment.

66. There is nothing to suggest that the lack of consideration or action was unusual or isolated. While Greece has legislation to prevent forced labour, it had failed to adopt the necessary general policies, programmes and other measures.

*Failure to adopt particular preventive measures*

67. Greece had a duty to "take appropriate measures to protect victims where State authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an identified person had been or was at a real and immediate risk of being trafficked or exploited", see para 58.b) above.
68. The Greek police were aware of all the factors of the situation of the Applicants which brought it within Article 4. In particular, the police were aware that the Employers' workers were irregular migrants and had not been paid, and they were aware of the working and living conditions of the migrants. They were aware, or must have been aware, of the practice of police elsewhere in Greece of detaining irregular migrants for prolonged periods in degrading conditions.
69. The situation of the Applicants gave rise to a positive obligation of Greece to adopt proportionate, particular measures to prevent them from remaining in a situation of forced labour or trafficking. Greece breached that duty by failing to take any steps until the shooting. Greece ought to have, as a minimum, ensured (a) payment to the Applicants of their back pay, by taking criminal or civil action itself to compel such payment or ensuring the Applicants had the means to take such action and (b) that the conditions of any continued employment and living conditions met minimum standards.

**C. Failure to Punish**

70. Greece breached the positive obligation under Article 4 by failing to adopt an adequate legislative and administrative framework that effectively penalized all forms of forced labour in accordance with international standards, and by failing to convict the Employers of the offence of trafficking. The latter failure arose because of the Patras Court's overly narrow interpretation of the law and the failure of the Prosecutor to seek cassation to reverse this interpretation.

Relevant Legal Standards: Failure to Punish

71. Article 4 requires a legislative and administrative framework ensuring penalization and effective prosecution of any act aimed at maintaining a person in a situation failing with that Article (see para. 56 above).
72. In *Siliadin*, the Court considered whether France had failed in its duty to penalize trafficking because "the impugned legislation and its application in the case in issue had such significant flaws as to amount to a breach of Article 4 by the respondent State."<sup>91</sup> The Court concluded that French legislation did not afford the applicant practical and

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<sup>90</sup> See Patras Court, pp. 216-219 (testimony of police officer)

<sup>91</sup> *Siliadin*, para. 130.

effective protection because the persons responsible for subjecting the applicant to treatment contrary to Article 4 were not convicted, the prosecutor did not seek cassation, and the French laws “were open to very differing interpretations from one court to the next.”<sup>92</sup>

#### Arguments

73. Greece failed to penalize conduct prohibited by Article 4. Greek law does not penalise forced labour per se. The only Greek law addressing forced labour is Article 323A of the Greek Penal Code, which prohibits human trafficking. The Patras Court’s narrow interpretation of this law led to its acquittal of the defendants on the charge of trafficking, and the prosecutor’s refusal to appeal the acquittal meant that it was impossible for this failure under Article 4 to be remedied.
74. The Court did not dispute the essence of the Applicants’ situation set out above at paras. 42 – 51 above. The Court expressly accepted that the defendants began their employment on the understanding that wages would be paid promptly. The Court also expressly accepted that the Employers knew of the Applicants’ irregular status, that they could secure their labour without paying the back wages due, that they repeatedly promised to pay the wages but never did pay the wages.
75. The Court acquitted the defendants of trafficking because of its narrow interpretation of human trafficking. The Court held that this offence required, as a *sine qua non*, that “the victim should have been absolutely powerless to defend himself . . . only when he completely surrenders his freedom to the sphere of influence of the perpetrator at the initiative of the latter and experiencing complete exclusion from the outside world.”<sup>93</sup> The Court held that this condition was not satisfied, because the Employers did not restrict the freedom of movement of the workers by requiring them to stay on the farm.<sup>94</sup>
76. The Applicants do not dispute this finding of fact. The workers were not physically prevented from abandoning their employment (and the food and shelter that accompanied it) and leaving the farm. However, while restriction of freedom of movement is an indicator of forced labour, neither absolute powerlessness, nor complete surrender of freedom are essential ingredients of situations contrary to Article 4. As the ILO Guidelines recognise, situations of forced labour and of trafficking exist even where the person affected is free to leave the employer’s premises.
77. The effect of the Court’s acquittal was to leave completely unpunished the situation of the Applicants contrary to Article 4. The Applicants had no right to seek cassation of the acquittal and the Prosecutor refused to do so.
78. Furthermore, since Article 323A is limited only to trafficking, Greece failed properly to penalize forms of forced labour other than trafficking and so failed in its positive obligations under Article 4.

#### **D. Failure to Protect**

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<sup>92</sup> *Siliadin*, para 144. See similar approach under Article 2 in *Opuz v. Turkey*, ECtHR Judgment of 9 June 2009: “[t]he obstacles resulting from the legislation and failure to use the means available undermined the deterrent effect of the judicial system in place and the role it was required to play in preventing a violation of the applicant’s mother’s right to life...”

<sup>93</sup> Patras Court Judgment, p. 427.

<sup>94</sup> Patras Court Judgment, p. 426.

79. Greece failed to protect the Applicants after they became subject to treatment contrary to Article 4. This failure left the Applicants to be subjected to trafficking, without knowledge of their remedies, and without compensation (though the criminal court) for their losses.
80. Greece also failed to protect those Applicants who were not parties to the Defendants' trial, by the Prosecutor's decision that those Applicants had not been victims of trafficking. This decision was not based on adequate enquiry or consideration of relevant facts. The Prosecutor was right to find that the Applicants concerned did not notify the police of their situation immediately after the shooting. However, this fact was not a sufficient basis to decide that they had not been victims of trafficking. The Prosecutor's own case was that the total number of workers was around 200 and that all these had been in the same situation of trafficking, meaning there were some 160 victims of trafficking in addition to the 35 persons recognised by the Prosecutor as victims of trafficking. The police had not sought to identify any of these 160 workers and there was no obvious reason for workers who had not been seriously injured to approach the police in the immediate aftermath of the shooting. The Applicants gave statements to the police detailing their employment by the Employers. The Prosecutor gave no proper reason for rejecting their statements.