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The case law under Article 4 of the [ECHR](#) [1] which enshrines the right not to be held in slavery, servitude and forced labour, is scarce. This is more than surprising against the backdrop of ample empirical evidence showing that migrants, including sex workers, are subjected to severe forms of exploitation in Europe (see, for example, the report by the EU Fundamental Rights Agency published in 2015 [Severe Labour Exploitation: Workers Moving within or into the European Union. States' Obligations and Victims' Rights](#) [2]). To be more precise, the existing judgments in which the Court has dealt with abuses inflicted by non-state actors (i.e. employers) reaching the level of severity of Article 4 are six: [Siliadin v. France](#) [3], [Rantsev v. Cyprus and Russia](#) [4], (See [V. Stoyanova, Dancing on the Borders of Article 4: Human Trafficking and the European Court of Human Rights in the Rantsev case](#) [5]) [C.N. and V. v. France](#) [6], [C.N. v. The United Kingdom](#) [7] , [M. and Others v. Italy and Bulgaria](#) [8] (the complaint under Article 4 was found inadmissible in this case) and *L.E. v. Greece* (See [V. Stoyanova, L.E.v. Greece: Human Trafficking and the Scope of States' Positive Obligations under the ECHR](#)[9])

On 21 June 2016 the ECtHR rendered a decision in [G.J. v. Spain](#) [10] (App. no. 59172/12). *G.J. v. Spain* could have offered the Court another opportunity to develop its limited practice under Article 4 of the ECHR. More specifically, it could have given the Court a chance to enhance the quality of the national victims of human trafficking identification procedures by aligning them with States' positive obligations under Article 4 of the ECHR. In particular, the representatives of the applicant complained under Article 3 and 4 of the ECHR that the domestic authorities had failed to carry out an appropriate identification procedure and consequently had not assessed the risk that the applicant, who was pregnant, would face upon return in Nigeria, where the authorities were not capable to protect her.

This opportunity remained, however, unutilized since the application was found inadmissible on technical grounds. More specifically, the Women's Links Worldwide, the organization whose representatives filed the case to the ECtHR, had no power of attorney signed by G.J. The Women's Links Worldwide could not present any written authority to represent the applicant and has had no direct contact with the applicant since her expulsion. For these reasons, the ECtHR decided that the Women's Links Worldwide had no standing to lodge the application. This part of the case has been already commented upon [elsewhere](#) [11]. My objective here is rather to scrutinize some other aspects of the case. In particular, the factual substratum of this case provides us with important insights as to the legal and practical challenges that victims of human trafficking face in Europe and it also shows us the ineffective interaction between asylum proceedings and victim identification proceedings. Before further elaborating on these two issues, I

will briefly outline the factual circumstances of the case.

The first application for asylum submitted by the applicant in 2006 was rejected in 2010. After her detention for the purposes of deportation in February 2010, she filed another asylum application. This time she changed her original story and stated that she was from Nigeria. She had left her country of origin with the assistance of V., who upon arrival in Spain forced her into prostitution in order to repay her travel expenses. She became pregnant and intended to have an abortion; however, her arrest and immigration detention prevented her from completing this plan. The UNHCR supported her application and considered that she had been a victim of human trafficking. On 5 March 2010 her second asylum application was rejected. The national authorities did not find a risk of religious persecution (claim from the applicant herself subsequently departed) and any risks associated with the fact that she had been trafficked (it is not clear whether the asylum authorities in any way conclusively determined that indeed G.J. was a victim of trafficking). G.J. initiated separate proceedings for suspension of her deportation until her identification as a victim of human trafficking is completed. The national judge rejected this request and in no way considered Spain's obligations under the CoE Convention on Action against Trafficking in Human Beings (para.14 of the decision). On 12 March 2010 with the help of Women's Links Worldwide, G.J. applied for a 'recovery and reflection period' under Section 59 bis of Organic Law 4/2000 on the rights and freedoms of aliens in Spain (para. 16 of the decision). On 16 March 2010 the responsible national authorities took a decision not to grant the period. The reasons were as follows: 'there was no evidence to support the argument that the applicant was a victim of human trafficking. It was clear that she has not been forced into prostitution since she worked independently and voluntarily without being controlled, lived alone and had not been deprived of her freedom of movement. Furthermore, she had no relatives in Nigeria who might be threatened.' On the following day, i.e. 17 March 2010, G.J. was expelled from Spain.

I will first comment on the Spanish legislation intended to incorporate the State obligations under the [CoE Convention on Action against Trafficking in Human Beings](#) [12]. Then I will turn to the asylum proceedings.

Article 10(2) of the CoE Trafficking Convention is very clear to the effect that upon reasonable grounds to believe that a person is a victim of human trafficking, the deportation proceedings have to be suspended until the completion of the identification process. Such a requirement appears to be absent in the Spanish legislation, which had a clear negative impact on G.J.'s situation. Section 59 bis of Organic Law 4/2000 of 11 January on the Rights and Freedoms of Aliens in Spain only ensures that upon reasonable grounds to believe that a migrant is a victim, a decision has to be taken on *whether* a recovery and reflection period should be granted. In the CoE Trafficking Convention, the recovery and reflection period is regulated in a provision different from the above mentioned Article 10(2), namely Article 13(1).

As to the recovery and reflection period itself, there are strong arguments that this period has to be granted irrespective of the willingness or the intention of the alleged victim to cooperate in the investigation of the crime. Indeed, GRETA (the monitoring mechanisms mandated to monitor how States comply with their obligations under the CoE Trafficking Convention) has consistently taken the position that recovery and reflection period has to be granted to presumed victims of human trafficking without any pre-conditions. In contrast, Section 59 bis of Organic Law 4/2000 of 11 January on the Rights and Freedoms of Aliens in Spain links the period with criminal proceedings. As it is translated in the Court decision, the national legislation says that the period 'shall be sufficient for the victim to make a decision on cooperating with the authorities in the investigation of the crime.' As a consequence, the period cannot have purely protection-orientated objectives. The confusion as to the circumstances under which recovery and reflection period has to be granted stems from another European legal framework, which operates in parallel with the CoE

Trafficking Convention. In particular, note should be taken of the [Council Directive 2004/81/EC](#) [13] on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Article 6(1) of the latter instrument links the granting of a recovery and reflection period with cooperation: 'Member States shall ensure that the third-country nationals concerned are granted a reflection period [?] *so that they can take an informed decision* as to whether to cooperate with the competent authorities [emphasis added]. In contrast, the framing of Article 13(1) of the CoE Trafficking Convention is different: 'Such a period shall be *sufficient* for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities [emphasis added]'. On its textual reading, Article 13(1) does not indicate that the purpose of the period is to take an informed decision.

The factual circumstances of *G.J. v. Spain* also raise intriguing questions about the interrelationship between the refugee status determination procedure and the procedure for identification of victims of human trafficking. As it is clear from the decision, the authorities responsible for the refugee status determination procedure did not refer G.J. to the authorities responsible for identification of victims of human trafficking. Such referrals are essential since as the empirical data shows many victims of human trafficking apply for asylum and it is therefore important that the asylum system adequately responds to their specific circumstances. Such [a response](#) [14] should include not only identification of their vulnerabilities and special needs in terms of reception conditions and procedural guarantees, but also referral to the national authorities responsible for identification of victims of human trafficking. The latter can ensure extension of a recovery and reflection period and provision of any additional assistance and protection measures.

Hopefully, there will be further possibilities for the ECtHR to engage with the above raised issues on their substance.

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Keywords:

Vulnerable person
Trafficking in human beings
Reception conditions
Protection
Procedural guarantees

Links:

- [1] http://www.echr.coe.int/Documents/Convention_ENG.pdf
- [2] http://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf
- [3] <http://hudoc.echr.coe.int/eng?i=001-69891>
- [4] <http://hudoc.echr.coe.int/eng?i=001-96549>
- [5] http://oppenheimer.mcgill.ca/IMG/pdf/Stoyanova_-_Dancing_on_the_Borders_of_Article_4_Human_Trafficking_and_the_European_Court_of_Human_Rights_2012.pdf
- [6] <http://hudoc.echr.coe.int/eng?i=001-114032>

- [7] <http://hudoc.echr.coe.int/eng?i=001-114518>
- [8] <http://hudoc.echr.coe.int/eng?i=001-112576>
- [9] https://works.bepress.com/vladislava_stoyanova/13/
- [10] <http://hudoc.echr.coe.int/eng?i=001-165241>
- [11] <https://strasbourgobservers.com/2016/09/01/g-j-v-spain-and-access-to-justice-for-victims-of-human-trafficking/>
- [12] <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197>
- [13] <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>
- [14] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2480318
- [15] http://works.bepress.com/vladislava_stoyanova/