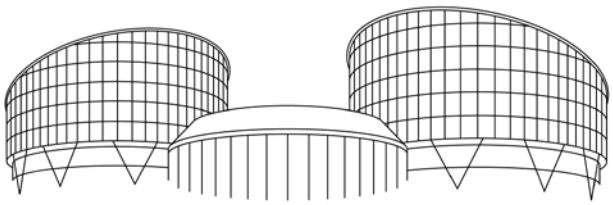

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

C.N. and V. v. FRANCE

(Application no. 67724/09)

JUDGMENT

STRASBOURG

11 October 2012

Final

11/01/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of C.N. and V. v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Angelika Nußberger,
Andre Potocki, *judges,*
and Claudia Westerdiek, *Section registrar,*

Having deliberated in private on 18 September 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 67724/09) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two French nationals, C.N. and V. ("the applicants"), on 23 December 2009. The President acceded to the applicants' request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicants were represented by Ms Bénédicte Bourgeois, Head of Legal Service and Advocacy for the Committee Against Modern Slavery. The French Government ("the Government") were represented by their Agent, Ms E. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. The applicants alleged in particular that they had been held in servitude and used as forced labour at the home of Mr and Mrs M., and that France had failed in its positive obligations under Article 4 of the Convention.

4. On 19 January 2011, the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, C.N. and V., are French nationals who were born in 1978 and 1984 respectively in Burundi. They are sisters.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. C. N. ("the first applicant") arrived in France in 1994, at the age of sixteen. V. ("the second applicant") and their three younger sisters arrived in France in 1995. The second applicant was ten years old at the time. Their arrival was arranged by their aunt, N., wife of Mr M., a national of Burundi.

8. The applicants left their country of origin, Burundi, following the civil war in 1993, during which their parents were purportedly killed. On a trip to Burundi, Mrs M. organised a family council. According to a record of the meeting dated 25 February 1995, it was decided to give guardianship and custody of the applicants and their younger sisters to Mr and Mrs M. The family considered that the couple, who lived in France, were the only members of the family "capable of taking care of [the applicants] and giving them a proper education and upbringing".

9. Mr M., a former government minister of Burundi, was a UNESCO staff member and, as such, enjoyed diplomatic immunity. The spouses owned a four-bedroom detached house in Ville d'Avray in the Hauts de Seine *département*. They had seven children, one of whom was disabled.

10. When they arrived in France the applicants were housed in what they described as a poorly heated unconverted cellar in the basement of the house. The Government pointed out that it was not a cellar as such, but a basement room with a door opening into the garden and a window. The room contained a boiler, a washing machine and two beds. At the beginning of their stay the applicants shared the room with their three younger sisters.

11. At the same time, Mr and Mrs M. contacted an evangelical church with a view to placing the applicants' three younger sisters with foster families, except in the school holidays. They were in fact taken in by two families in 1995 and 1996. In June 1996 two of the three sisters went to spend a few weeks with Mr and Mrs M.; the foster family, who had parental authority over them, had to take legal action to get them back in April 1997.

12. The applicants said that as soon as they arrived they had been made to do all the housework and domestic chores necessary for the upkeep of the house and the M. family of nine. They alleged that they had been used as "housemaids". The first, older applicant said that she had to look after the family's disabled son and do the gardening. They were not paid for their work or given any days off.

13. The applicants affirmed that they had had no access to a bathroom and only an unhygienic makeshift toilet at their disposal. The Government submitted that they were not denied access to the bathroom, but that it was limited to certain times of day. The applicants added that they were not allowed to eat with the family. They were given only pasta, rice and potatoes to eat, and occasionally leftovers from the family's meat dishes. They had no leisure activities.

14. The second applicant was a pupil in the Ville d'Avray primary school from May 1995, then in the special general and vocational learning department of a Versailles secondary school from the start of the 1997 school year. As a non-French speaker she had had integration difficulties which she said increased her isolation. Her aunt nevertheless objected to her seeing the school psychologist as suggested by the teaching staff. Nor was the second applicant given any additional help in learning to read French, allegedly because this would have meant paying for her to have school meals. In spite of these difficulties she did well at school. When she got home from school she would have to do her homework then help her sister with the domestic chores.

15. The first applicant was never sent to school or given any vocational training. She spent all day doing housework and looking after her disabled cousin. The Government pointed out that the applicant had admitted in the course of the subsequent criminal proceedings that she had in fact refused to go to school.

16. On 19 December 1995 the Hauts de Seine welfare department submitted a report on children in danger to the Nantes public prosecutor according to which there was a risk that the children were being exploited "to do household chores among other things". Following an investigation by the police child protection services, it was decided not to take any further action.

17. The first applicant turned eighteen on 23 March 1996. She contended that Mr and Mrs M. did nothing to legalise her situation *vis-à-vis* the authorities. According to the Government, her situation was not illegal because she was included in her aunt's diplomatic passport.

18. From September 1997 the aunt refused to pay the second applicant's bus fare to school. The applicant explained that when her uncle bought her a bus pass behind his wife's back, her aunt got very angry and threatened to hit her. When she had no bus pass the second applicant had either to walk to school, which was a forty-five minute walk from where she lived, or to take the bus without a ticket. The applicant said that her aunt also refused to pay for her to have school meals.

19. In July 1998 the second applicant, after going several months without urgent dental treatment, had had to go to a dentist near the school at her own initiative. She had never received the orthopaedic treatment the dentist prescribed. As to the first applicant, she alleged that she had been hospitalised three times under her cousin's name after being beaten by one of the of the boys in the family.

20. The applicants further alleged that they had been physically and verbally harassed on a daily basis by their aunt, who regularly threatened to send them back to Burundi to punish them and made disparaging remarks about their late parents. The second applicant claimed that once, when she

was sick in bed, her aunt had threatened to hit her with a broomstick to make her clean the kitchen.

21. On 4 January 1999 the association "*Enfance et Partage*" drew the attention of the Nanterre public prosecutor's office to the applicants' situation, stating that the conditions they lived in – in the insalubrious, unheated basement of the M. family's house – were contrary to human dignity, that the first applicant was used as a "housemaid" and had to look after the family's disabled eldest son, that their aunt refused to buy the second applicant a travel card or pay for her to have school meals, and that both girls complained of ill-treatment and physical aggression by their aunt. The applicants ran away from the house the next day and were taken into the association's care.

22. On 7 January 1999 the Nanterre public prosecutor's office applied to the Director General of UNESCO to have Mr M.'s diplomatic immunity lifted.

23. On 27 January 1999 that request was granted, exceptionally, as part of an investigation into allegations of ill-treatment. The immunity of Mr M.'s wife was also lifted.

24. On 29 January 1999 a preliminary investigation was opened on the instructions of the Nanterre public prosecutor's office.

25. On 2 February 1999 the police interviewed the two applicants, who confirmed the terms of the report by "*Enfance et Partage*". They did, however, explain that their uncle had tried to temper his wife's behaviour. The second applicant said that when their situation was first reported in 1995 she had not dared to tell the police the truth for fear of reprisals from her aunt.

26. That same day the association "*Enfance et Partage*" gave the police photos taken by the applicants in November 1998 of the basement they lived in. The photos confirmed the deplorable conditions of hygiene and insalubrity they lived in.

27. On 3 February 1999 Mr M. was interviewed by the police. He said he had done nothing wrong and that he had helped the applicants by bringing them to France. He told them that his wife, Mrs M., had left for Burundi on 15 January 1999. He also complained about an article in the press on 28 January 1999 making accusations against him and his wife.

28. The police established that, contrary to what Mr M. had told them, his wife had gone back to Burundi on 2 February 1999, a few days after the article appeared in the press.

29. Mr M. denied the investigators access to his house, alleging that his lawyer was not available. He added that renovation work was being done on the house.

30. On 16 February 1999 a judicial investigation was opened against Mr and Mrs M. for degrading treatment (Articles 225-14 and 225-15 of the Criminal Code) and against Mrs M. for wilful violence on a child under

fifteen years of age, by a person in a position of authority, not entailing unfitness for work for more than eight days. An arrest warrant was issued against Mrs M. and Mr M. was placed under judicial supervision.

31. The applicants joined the proceedings as civil parties.

32. On 22 April and 3 May 1999 the applicants were heard by the investigating judge. They confirmed their previous statements and added that their situation at the home of Mr and Mrs M. had gradually deteriorated. The second applicant told the judge that at the time of the first report and investigation in 1995-1996 she had said nothing to the police because "things were not [yet] all that bad" with her aunt (a fact confirmed by the first applicant at a later hearing on 30 June 2000). The applicants emphasised the leading role played by their aunt, who had no qualms about hitting them and waking them up in the middle of the night if there was the slightest problem. The first applicant said she had even had to sleep outside the house one night. The applicants confirmed that their uncle had tried to smooth things over, but he was frequently away from home. When present he would often try to reason with his wife, and had even paid their bus fares or bought them clothes without his wife knowing.

33. On 29 April 1999 Mr M. was charged with infringement of human dignity under Articles 225-14 and 225-15 of the Criminal Code.

34. On 30 June 1999 the results of the medico-psychological examination of the two applicants ordered by the investigating judge were submitted. They revealed that the applicants showed no signs of serious psychological disorders or psychiatric decompensation, but that the psychological impact of what they had experienced was characterised by mental suffering, combined, in the case of the first applicant, with feelings of fear and a sense of abandonment, as the threat of being sent back to Burundi was synonymous in her mind with a threat of death and the abandonment of her younger sisters. As to the second applicant, the report stated that being sent back to Burundi was felt to be "even worse" than living with Mr and Mrs M.

35. On 30 June and 14 September 1999 the investigating judge noted that Mrs M. had twice failed to appear. She explained that she had been in Burundi. She was not heard until 15 June 2000.

36. Investigations carried out at the home of Mr and Mrs M. at the judge's request revealed that the basement of the house had been completely refurbished after the applicants left.

37. On 5 February 2001 the investigating judge at the Nanterre *tribunal de grande instance* ordered Mrs M.'s committal for trial before the criminal court on charges of wilful violence on a child under fifteen years of age, by a person in a position of authority, not entailing unfitness for work for more than eight days (an offence punishable under Article 222-13 of the Criminal Code) in respect of the second applicant, and on charges of subjecting a person who is vulnerable or in a position of dependence to working

conditions (in respect of the first applicant) or living conditions (in respect of both applicants) incompatible with human dignity (offences punishable under Articles 225-14 and 225-15 of the Criminal Code). In the same order, the investigating judge requested the termination of the proceedings against Mr M. concerning the charges of offences against human dignity.

38. On 7 February 2001 the applicants appealed against the decision to terminate that part of the proceedings.

39. On 18 December 2002 the Investigation Division of the Versailles Court of Appeal ordered further inquiries to determine the exact scope and measure of the lifting of Mr M.'s immunity by the Director General of UNESCO, and whether it applied to the preliminary investigation alone or to the proceedings as a whole.

40. On 30 April 2003 the Investigation Division of the Versailles Court of Appeal set aside the order of 5 February 2001 terminating part of the proceedings and ordered Mr M.'s committal for trial by the criminal court for having subjected the applicants, and also their three younger sisters, to treatment contrary to human dignity. As to the scope of the lifting of Mr M.'s immunity, the court found that no immunity applied, for the following reasons:

> "The explicit terms of the letter addressed to the court on 20 January 2003 by the Protocol Department of the Ministry of Foreign Affairs on behalf of the Minister, who has authority to interpret and measure the scope of the immunity granted to diplomats, dispel all uncertainty about the situation of Mr [M.];
>
> the latter ceased to be a UNESCO staff member on 30 November 2001;
>
> as the deeds in question were not committed in the course of his duties, he no longer enjoys diplomatic immunity;
>
> there is accordingly no obstacle to his prosecution;"

41. Mr M. appealed against that ruling.

42. On 12 April 2005 the Criminal Division of the Court of Cassation confirmed that Mr M. did not enjoy diplomatic immunity, but set aside the Court of Appeal's judgment of 30 April 2003 in so far as it had ordered Mr. M.'s committal for trial for offences committed against the applicants' three sisters, as this was outside the remit of the investigating judge.

43. On 22 January 2007 the Nanterre Criminal Court rejected the objections as to admissibility raised by Mr and Mrs M. based on their diplomatic immunity. It adjourned the case to a hearing on 17 September 2007 to rule on the merits.

44. In a judgment of 17 September 2007 the Nanterre Criminal Court found Mr and Mrs M. guilty as charged. Mr M. was sentenced to twelve months' imprisonment, suspended, and fined 10,000 euros (EUR). Mrs M. was sentenced to fifteen months' imprisonment, suspended, and fined EUR 10,000. The couple were jointly ordered to pay the first applicant

EUR 24,000 in damages, and the second applicant one symbolic euro, as she had requested. The relevant passages of the judgment read as follows:

> "... It appears from the information available that [the applicants], who found themselves in a situation of total dependence at the time, who were orphans and minors and whose papers had been taken away, were housed by their uncle and aunt in deplorable conditions of hygiene in an unheated, insalubrious basement; the photos adduced by counsel for the civil parties ... show the state of the place they lived in from 1995 to 1999; they had no access to the bathroom and had to fetch a pail of water from the kitchen to wash themselves, and the elder sister [the first applicant] was used as a housemaid by the couple [Mr and Mrs M.] with no day off and no pay.
>
> It is further established that they did not pay for [the second applicant's] school meals or travel card, obliging her to walk several kilometres to school along a road through woods.
>
> It is also established that the accused refused to give them the medical treatment they needed, even though [Mr M.] had registered them with the UNESCO social security scheme.
>
> Although some of the girls' statements indicate that the role played by [Mr M.] was a rather passive one, probably to avoid having to stand up to his wife's strong character, he could not have been unaware of the difference in the way his nieces and his own children were treated.
>
> His frequent absences from home could not have made him unaware of the situation. In addition, he refused to let the police take photos of the basement, and then took pains to have it very comfortably refurbished when released from police custody.
>
> That being so, the *actus reus* and *mens rea* of the offence against human dignity in respect of the two accused are made out and they must be convicted."

45. Mr and Mrs M. appealed against that judgment on 24 and 25 September 2007.

46. On 29 June 2009 the Versailles Court of Appeal set aside the judgment on the charge of subjecting several vulnerable people, including at least one minor, to indecent living and working conditions, acquitted the defendants of that charge and dismissed the applicants' claims for compensation for the damage suffered in respect of that charge. However, it upheld the guilty finding against Mrs M. on the charge of aggravated wilful violence against the second applicant. She was fined EUR 1,500 and ordered to pay one euro in respect of non-pecuniary damage.

47. The relevant passages of the judgment read as follows:

> "<u>The charge of subjecting several vulnerable people, including at least one minor, to indecent living and working conditions</u>:
>
> It is not disputed that [Mrs M.] went to fetch her nieces at a time when a civil war was raging in Burundi that left 250,000 people dead and orphaned about 50,000 children; ... the elements of the proceedings show that [Mr and Mrs M.] paid their nieces' fare from Burundi to France; this shows that their concern was to protect these members of their family by placing the children out of harm's way; ...
>
> Under Article 225-14 of the Criminal Code in force at the material time, offences against human dignity were characterised by the fact of abusing a person's

vulnerability or situation of dependence to subject them to working or living conditions incompatible with human dignity, and were punishable by two years' imprisonment and a fine of 500,000 francs (FRF); the legislation now in force punishes such offences more severely and gives them a broader definition; ... the new, harsher law cannot be applied retroactively;

In the instant case, while the living and domestic working conditions were poor, uncomfortable and blameworthy, they cannot be qualified as degrading in the context and the circumstances of family solidarity with no intention of economic gain or of exploiting another's work; the living and working conditions the defendants gave their nieces were not intended to debase them as human beings or to violate their fundamental rights, but obeyed a duty to help them; ...

[Mr and Mrs M.] cannot be blamed for not having asked their own children, who shared their rooms, ... to give up their comfort; and they cannot reasonably be blamed for giving more to their own children than to their nieces; ...

The case materials show that the boiler which heated the house was in the basement where the complainants lived and the temperature recorded in their room during the investigation was in excess of 20°C;

As stated by the defendants' daughter ... and confirmed by [the second applicant], the aunt had not formally denied them access to the bathroom, but simply wanted to rationalise its use because of the large number of people who had to use it; ...

... even though more could have been done to secure [the first applicant's] integration, [Mrs M.] did call the welfare services for help; the fact that [the first applicant], who did not speak French and did not want to go to school, was required to play an active part in the housework as the eldest sister, even without pay, did not amount to working conditions incompatible with human dignity, or slave labour, or violation of any fundamental personal rights, but rather to repayment for her having been permanently taken into the home and care of an already large family; there is no evidence in the case file that [Mr and Mrs M.] stood to make any financial gain by taking their nieces into their home and care, for they were an extra financial burden for them, taken on out of moral obligation;

According to the testimony, the living and working conditions were compatible with [the applicants'] human dignity; and it has not been established that the defendants took advantage of the vulnerability of their orphaned nieces or the fact that they were dependent on them;

Therefore, as the *mens rea* of the charge of subjecting several vulnerable people, including at least one minor, to indecent living and working conditions has not been made out, the constituent elements of the offence have not been established and the judgment in respect of this charge must be set aside ...

<u>The charges against [Mrs M.] of wilful violence with two aggravating circumstances on [the second applicant], a child under 15 years of age, by a person in a position of authority:</u>

[The second applicant] told the police that her aunt hit her when she asked for a travel card or when her uncle bought her one ...; she also alleged that she was slapped when she accidentally dropped a plate; on one occasion her aunt allegedly threatened to hit her with a broom and on another occasion she violently scratched her hand; ...

There is no doubt that [the second applicant] was under fifteen years of age between January 1995 and 10 December 1998, and that she was an orphan under the authority

of her aunt, who had taken her in; the investigation established that [Mrs M.] shouted at [the second applicant], scolded her and threatened to send her back to Africa;

The facts are established ...; the charge is made out in all its elements ... ; the judgment convicting [Mrs M.] of aggravated violence must be upheld ..."

48. The applicants appealed against that judgment on 3 July 2009. Mrs M. also appealed. The Principal Public Prosecutor did not appeal.

49. On 23 June 2010 the Criminal Division of the Court of Cassation rejected the appeals lodged by the applicants and Mrs M. The relevant passage from the judgment reads as follows:

"The terms of the impugned judgment place the Court of Cassation in a position to affirm that the Court of Appeal, for reasons which are neither insufficient nor contradictory and which address the essential grounds raised in the pleadings submitted to it, stated the reasons for its decision that, in the light of the evidence before it, the charge of subjecting vulnerable or dependent people, including at least one minor, to living or working conditions incompatible with human dignity had not been made out against the accused, and had thus justified its decision dismissing the claims of the civil parties. ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code in force at the material time

Article 225-13

"Abusing a person's vulnerable or dependent situation to obtain the performance of unpaid services or services against which a payment is made which clearly bears no relation to the amount of work performed is punished by two years' imprisonment and by a fine of 500,000 francs."

Article 225-14

"Abusing a person's vulnerable or dependent situation by subjecting him or her to working or living conditions incompatible with human dignity is punished by two years' imprisonment and by a fine of 500,000 francs."

Article 225-15

"The offences under articles 225-13 and 225-14 are punished by five years' imprisonment and by a fine of 1,000,000 francs when they are committed against more than one person."

B. Criminal Code as amended by the Law of 18 March 2003 on homeland security

Article 225-13

"Obtaining the performance of unpaid services or services against which a payment is made which clearly bears no relation to the amount of work performed from a person whose vulnerability or dependence is obvious or known to the offender is punished by five years' imprisonment and by a fine of 150,000 euros."

Article 225-14

"Subjecting a person whose vulnerability or dependence is obvious or known to the offender to working or living conditions incompatible with human dignity is punished by five years' imprisonment and by a fine of 150,000 euros."

Article 225-15

"The offences under articles 225-13 and 225-14 are punished by seven years' imprisonment and by a fine of 200,000 euros when they are committed against more than one person.

Where they are committed against a minor, they are punished by seven years' imprisonment and by a fine of 200,000 euros.

Where they are committed against two or more people, one or more of whom are minors, they are punished by 10 years' imprisonment and by a fine of 300,000 euros."

Article 225-15-1

"For the application of articles 225-13 and 225-14, minors or people who have been victims of the acts described by these articles upon their arrival on French national territory are considered to be vulnerable or in a situation of dependence."

C. Case-law cited by the applicants

50. Court of Cassation, appeal no. 08-80787, 13 January 2009:

"... As to the single ground for appeal based on the violation of Article 4 of the European Court of Human Rights, and of Articles 225-14 of the Criminal Code, 1382 of the Civil Code, 2, 591 and 593 of the Code of Criminal Procedure;

In so far as the judgment acquitted Affiba Z... of the charge of subjecting a vulnerable or dependent person to working or living conditions incompatible with human dignity; ...

Considering that according to the case file Affiba Z..., who employed and housed Marthe X..., who was born on 22 March 1979 in Côte-d'Ivoire, from December 1994, the date of her illegal arrival in France at the age of 15 and a half, until 2000, was sent before the criminal court on charges of aiding unlawful entry and residence, employing an alien with no work permit, obtaining unpaid services from a vulnerable person and subjecting that person to working and living conditions incompatible with human dignity; that the impugned judgment, ruling on the appeals lodged by the accused, the civil party and the public prosecutor, upheld the judgment in so far as it found Affiba Z... guilty of the first three charges and acquitted her of the last charge;

Considering that, for the reasons given and adopted, while Marthe X..., whose passport Affiba Z... took from her, had been made to do domestic chores on a permanent basis, with no holidays, in exchange for a little pocket money or subsidies paid in Côte-d'Ivoire, the judgment, in upholding the acquittal, took into account that the young woman had been housed in the same conditions as the family and the accused had shown true affection towards her, and the judges concluded that there had been no offence against human dignity;

However, in so ruling when all forced labour is incompatible with human dignity, the Court of Appeal failed to draw the legal conclusions of its own findings and to justify its decision *vis-à-vis* the above-mentioned texts; ...

Quashes the above judgment of the Paris Court of Appeal ... in respect of the civil action ...”

III. RELEVANT INTERNATIONAL LAW

51. The Court refers to paragraphs 49 to 51 of the *Siliadin v. France* judgment (no. 73316/01, ECHR 2005-VII) and to paragraphs 137 to 174 of the *Rantsev v. Cyprus and Russia* judgment (no. 25965/04, ECHR 2010 (extracts)), which present the relevant provisions of the international conventions concerning forced labour, servitude, slavery and human trafficking (Geneva Convention of 25 September 1926 prohibiting slavery; Convention no. 29 of the International Labour Organisation (ILO) of 28 June 1930, on forced labour; Supplementary Convention on the Abolition of Slavery of 30 April 1956; Convention on the Rights of the Child of 20 November 1989; Additional Protocol to the United Nations Convention against Transnational Organised Crime, known as the “Palermo Protocol”, of December 2000; Council of Europe Convention on action against trafficking in human beings, of 16 May 2005) and the relevant extracts from the Council of Europe’s work on the subject (Recommendations 1523 of 26 June 2001 and 1623 of 22 June 2004 of the Parliamentary Assembly, explanatory report of the Council of Europe Convention on action against trafficking in human beings).

52. The following extracts from “The cost of coercion: global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”, adopted by the International Labour Conference in 1999:

> “24. The ILO’s definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily. The work of the ILO supervisory bodies has served to clarify both of these elements. The penalty does not need to be in the form of penal sanctions, but may also take the form of a loss of rights and privileges. Moreover, the menace of a penalty can take many different forms. Arguably, its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when their employment status is illegal, or denunciation to village elders in the case of girls forced to prostitute themselves in distant cities. Other penalties can be of a financial nature, including economic penalties linked to debts. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.
>
> 25. As regards “voluntary offer”, the ILO supervisory bodies have touched on a range of aspects including: the form and subject matter of consent; the role of external constraints or indirect coercion; and the possibility of revoking freely-given consent. Here too, there can be many subtle forms of coercion. Many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The second applicant alleged that she had suffered inhuman and degrading treatment at the hands of her aunt and that the State had failed in its obligation to protect her. She relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

54. The Court notes that the domestic courts, including the Versailles Court of Appeal, established that the second applicant had been subjected to violence by her aunt (see relevant parts of judgment in paragraph 47 above).

55. However, the Court considers that, even assuming that the treatment in question falls within the scope of Article 3 of the Convention, the second applicant can no longer claim to be a victim of a violation of that provision. Indeed, the domestic courts found Mrs M. guilty of aggravated violence. In addition, the second applicant was awarded compensation for the suffering caused, in the amount she claimed. However, the Court will examine whether the ill-treatment inflicted on the second applicant falls within the scope of Article 4 of the Convention in so far as it might be linked to the alleged exploitation.

56. In these circumstances the Court finds that the second applicant can no longer claim to be a "victim" of a violation of the Convention within the meaning of Article 34. It follows that this complaint is manifestly ill-founded and that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 4 OF THE CONVENTION

57. The applicants alleged that they were held in servitude and subjected to forced or compulsory labour by Mr and Mrs M. They alleged that the failure of the French State to honour its positive obligations in the matter was in violation of Article 4 of the Convention.

58. The relevant parts of Article 4 read as follows:

> "1. No one shall be held in slavery or servitude.
>
> 2. No one shall be required to perform forced or compulsory labour.
>
> ..."

A. Admissibility

59. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The existence of "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention*

a) The parties' submissions

60. The first applicant affirmed that she had been used as a "housemaid" by Mr and Mrs M. with no pay and no time off. She got up early and went to bed late and sometimes had to get up in the middle of the night to tend to the couple's disabled son. She emphasised that during the four years she spent in the home of Mr and Mrs M. she received no vocational training that might have enabled her to look for another job and escape from their hold. The Versailles Court of Appeal had established that her working and living conditions were "poor, uncomfortable and blameworthy". She had never willingly agreed to do housework and domestic chores in such conditions. On the contrary, she had worked under the threat of being sent back to Burundi, which to her was synonymous with death and abandoning her younger sisters.

61. The first applicant also declared that Mr and Mrs M. had kept her in an illegal administrative situation *vis-à-vis* the French authorities. On this point, in her observations in reply to those of the Government the applicant pointed out that even if it was established that she and the second applicant were included in their aunt's diplomatic passport, she was still required, as an alien, to be able to present a valid residence permit to the police in the event of an identity check. She also pointed out that according to the agreement of 2 July 1954 between the Government and UNESCO dispensing the spouses and "dependent family members" of diplomats from residence formalities, her situation on French territory was lawful only as long as she stayed with Mr and Mrs M. and was "dependent" on them. She had no possibility of finding accommodation or work outside the home of Mr and Mrs M. and was accordingly all the more dependent on them. According to the first applicant, these circumstances showed that she did the work in question under coercion.

62. The second applicant, who went to school, affirmed that she had to assist, or even replace the first applicant in the household chores when she came home from school. She considered that Mr and Mrs M. treated her and the first applicant like "dogs", considering that even a "maid" was paid for

the work she did. In her observations in reply to those of the Government, she submitted that the fact that she went to school did not mean that the housework she had to do when she was not in school could not be classified as forced or compulsory labour or servitude. She argued that the mere fact that the work concerned was done at specific times did not suffice to establish that she did it of her own free will or that it was not done under the threat of some form of punishment. On the contrary, she argued that her aunt constantly threatened to send her back to Burundi and that she maltreated her when she refused to do as she was told. As the violence her aunt inflicted on her had been punished by the domestic courts, there could be no doubt that the work she had done had been done under threat of punishment. Lastly, she argued that as she had been between ten and fourteen years old at the material time she could not be considered to have consented to do the housework, which had not been merely occasional or from time to time.

63. The applicants concluded that as they had been made to do housework for Mr and Mrs M. against their will, they had been subjected to forced or compulsory labour.

64. The Government completely ruled out the possibility that the second applicant had been subjected to forced labour. They contended that she had been involved in the housework only occasionally, like any other member of the household.

65. The Government admitted that the first applicant had been relied on more heavily by Mr and Mrs M. to do the housework, as she did not go to school and was the eldest sister. However, the existence of a threat of punishment had not been established in respect of the first applicant. The Government pointed out that the aunt had contacted the social services seeking assistance for her, and had found her a paid job. These factors belied the idea that Mrs M. wanted to keep the applicant in a state of dependency.

66. The Government concluded that neither the first nor the second applicant had any grounds to claim that they were subjected to forced or compulsory labour within the meaning of Article 4 § 2 of the Convention.

b) Third-party intervention of the “Aire Centre”

67. The “Aire Centre”, a non-governmental organisation whose mission is to promote awareness of European human rights law and assist individuals in vulnerable circumstances to assert those rights, submitted that the notion of “control” of an individual was a crucial element common to all the forms of exploitation of human beings covered by Article 4 of the Convention. It stressed the psychological aspects of this “control” in so far as it was exercised in relation to the victim’s vulnerability. It pointed out that the term “control” was not defined in the Convention and called on the Court to specify its meaning and the degree required for the purposes of

Article 4, in the light of the relevant international instruments. The "Aire Centre" also asked the Court to explain more precisely to the States, non-governmental organisations and above all the victims, exactly what is covered by the notions contained in Article 4.

c) The Court's assessment

68. The Court reiterates that Article 4 enshrines one of the fundamental values of democratic societies. The first paragraph of this Article makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Siliadin*, cited above, § 112).

69. It further reiterates that under Article 4 of the Convention the State may be held responsible not only for its direct actions but also for its failure to effectively protect the victims of slavery, servitude, or forced or compulsory labour by virtue of its positive obligations (see *Siliadin*, cited above, §§ 89 and 112, and *Rantsev*, cited above, §§ 284-288).

70. The Court will first examine whether the applicants were subjected to forced or compulsory labour, and then whether they were kept in servitude by Mr and Mrs M.

71. In *Van der Mussele v. Belgium* (23 November 1983, § 32, Series A no. 70) and *Siliadin* (cited above, § 116) the Court considered, in terms largely inspired by those of Article 2 § 1 of ILO Convention no. 29 of 1930 on forced labour, that forced or compulsory labour within the meaning of Article 4 § 2 of the European Convention means "work or service which is exacted from any person under the menace of any penalty, against the will of the person concerned and for which the said person has not offered himself voluntarily".

72. In the instant case the Court observes that the first and second applicants allege that they did work, in the form of household chores, at the home of Mr and Mrs M. against their will.

73. However, the Court is not persuaded that the two applicants were placed in a similar situation as regards the amount of work done. The first applicant, who did not attend school, was responsible for all the household chores at the home of Mr and Mrs M. and had to take care of their disabled son. She worked seven days a week, with no day off and no pay, rising early and going to bed late (and sometimes even having to get up in the middle of the night to take care of Mr and Mrs M.'s disabled son), and she had no time for leisure activities. In comparison, the second applicant attended school and had time to do her homework when she got home from school. Only then did she help the first applicant with the household chores.

74. In order to clarify the notion of "labour" within the meaning of Article 4 § 2 of the Convention, the Court specifies that not all work exacted from an individual under threat of a "penalty" is necessarily "forced or compulsory labour" prohibited by this provision. Factors that must be taken

into account include the type and amount of work involved. These factors help distinguish between "forced labour" and a helping hand which can reasonably be expected of other family members or people sharing accommodation. Along these lines, in the case of *Van der Mussele v. Belgium* (23 November 1983, § 39, Series A no. 70) the Court made use of the notion of a "disproportionate burden" to determine whether a lawyer had been subjected to compulsory labour when required to defend clients free of charge as a court-appointed lawyer.

75. In the present case the Court considers that the first applicant was forced to work so hard that without her aid Mr and Mrs M. would have had to employ and pay a professional housemaid. The second applicant, on the other hand, has not adduced sufficient proof that she contributed in any excessive measure to the upkeep of Mr and Mrs M.'s household. Furthermore, while it is not disputed that the second applicant was the victim of ill-treatment by her aunt, it has not been established that the said violence was directly linked to the alleged exploitation, that is, to the housework in question. The Court is therefore of the opinion that the ill-treatment inflicted on the second applicant by her aunt does not fall within the scope of Article 4.

76. In view of the above, the Court considers that only the first applicant meets the first of the conditions of "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention, namely that the individual did the work without offering herself for it voluntarily. It remains to be seen whether the work was done "under the menace of any penalty".

77. The Court notes that in the global report "The cost of coercion" adopted by the International Labour Conference in 1999 (see paragraph 52 above), the notion of "penalty" is used in the broad sense, as confirmed by the use of the term "any penalty". The "penalty" may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal (ibid.).

78. In the present case the Court notes that Mrs M. regularly threatened to send the applicants back to Burundi, which for the first applicant represented death and abandoning her younger sisters (see paragraph 34 above). It also notes that according to her observations the first applicant had done the work required of her under the threat of being sent back to her country of origin (see paragraph 60 above). In the opinion of the Court, being sent back to Burundi was seen by the first applicant as a "penalty" and the threat of being sent back as the "menace" of that "penalty" being executed.

79. The Court therefore concludes that the first applicant was subjected to "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention by Mr and Mrs M. The second applicant, on the other hand, was

placed in a different situation which did not fall within the scope of that provision.

2. The existence of "servitude" within the meaning of Article 4 § 1 of the Convention

a) The parties' submissions

80. Under this second heading the applicants repeated the allegations set out above (paragraphs 61 and 63) concerning the work they had to do for Mr and Mrs M. In reply to the Government's observation that she had not been held in servitude because she had not been made to work full time, the second applicant argued that in the *Siliadin* case, in finding that there was a state of servitude the Court had taken the excessive number of hours worked by the applicant into account among other factors but had not made it the decisive factor. Instead, the Court had defined servitude as "an obligation to provide one's services that is imposed by the use of coercion", without specifying the scale of the services concerned.

81. The applicants alleged that they had been kept in a state of complete administrative and financial dependence on Mr and Mrs M. and had had no choice but to stay in their house and continue to work for them. The first applicant pointed out in particular that she had had no hope of her situation ever improving, repeating the arguments set out in paragraphs 60 and 61 above concerning the lack of any vocational training and her situation as an illegal alien. The second applicant submitted that as a minor placed in the care of her aunt and uncle she had had no choice but to live in their home, and no means of escape from the situation imposed on her.

82. The applicants contended that the manner in which they had found themselves in the care of Mr and Mrs M. amounted to deceit just like the circumstances in which the applicant in the *Siliadin* case had been recruited. In their submission the true intentions of Mr and Mrs M. had been anything but to take the place of their late parents and provide for and educate them. On this point the second applicant affirmed that the work she had to do for Mr and Mrs M. had prevented her from doing well at school, leading to her being sent to a school for pupils in difficulty in 1996, even though her teachers had described her as a bright and lively pupil. She further submitted that Mr and Mrs M. had not taken proper care of her health and her development. She had not been given proper dental treatment and had been deprived of all the leisure, games and artistic or sporting activities children of her age normally engaged in.

83. The applicants concluded that they had been obliged to live and work without pay on another person's property, facts which amounted to a state of servitude. In addition, they alleged that Mr and Mrs M., in taking them in to exploit them, by deceit and taking advantage of their vulnerability, had behaved in a manner which resembled human trafficking

within the meaning of the Council of Europe Convention on action against trafficking in human beings.

84. The Government disagreed. They pointed out that the second applicant had not worked full time and had attended school. She had admitted to the investigating judge that she had time to do her homework when she got home from school. Indeed, her school reports showed very satisfactory results.

85. The Government considered that the living conditions in the home of Mr and Mrs M. had not been contrary to human dignity, and that although access to the television and the bathroom were restricted to certain times of day, they had not been denied access. They further observed that the applicants had been brought to France with the approval of the family council back in Burundi, and that being taken in by Mr and Mrs M. offered them better prospects than those of most war orphans in their country of origin. They considered that the applicants' situation bore no resemblance whatsoever to human trafficking. Far from being presented as housemaids, the applicants were considered as members of the family by Mr and Mrs M. The Government further argued that they had not been in an illegal situation *vis-à-vis* the French authorities, because their names were in their aunt's diplomatic passport.

86. The Government concluded that the applicants had not been the victims of servitude within the meaning of Article 4 § 1. This did not mean that they had not been ill-treated, particularly the younger sister, but Mrs M. had already been convicted of that charge by the domestic courts.

b) Third-party intervention of the "Aire Centre"

87. The third-party intervention of the "Aire Centre" generally concerned the notions of "forced or compulsory labour" and "servitude" (see paragraph 67 above).

c) The Court's assessment

88. The Court notes at the outset that the applicants alleged that they were victims of treatment that amounted to human trafficking, referring in that connection to the Council of Europe Convention on action against trafficking in human beings. It is true that in the case of *Rantsev v. Cyprus and Russia* (cited above, § 279) the Court affirmed that human trafficking itself falls within the scope of Article 4 of the Convention in so far as it is without doubt a phenomenon that runs counter to the spirit and purpose of that provision. However, it considers that, above all, the 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.

89. The Court next reiterates that servitude is a "particularly serious form of denial of liberty" (see the Commission's report in the *Van Droogenbroeck v. Belgium* case, 9 July 1980, § 80, Series B no. 44). What servitude involves is "an obligation to provide one's services that is imposed by the use of coercion" (see *Siliadin*, cited above, § 124). As such it is to be linked with the concept of "slavery" within the meaning of Article 4 § 1 of the Convention (ibid.).

90. Having regard to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, of 30 April 1956, the Commission considered that "in addition to the obligation to perform certain services for others, the notion of servitude embraces the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition" (Commission report in the *Van Droogenbroeck* case, cited above, § 79).

91. In the light of these criteria the Court observes that servitude corresponds to a special type of forced or compulsory labour or, in other words, "aggravated" forced or compulsory labour. As a matter of fact, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victim's feeling that their condition is permanent and that the situation is unlikely to change. It is sufficient that this feeling be based on the above-mentioned objective criteria or brought about or kept alive by those responsible for the situation.

92. In the present case the first applicant was convinced that her administrative situation in France depended on her living with Mr and Mrs M., and that she could not free herself from their hold without placing herself in an illegal situation. That feeling was strengthened by certain incidents, such as her hospitalisation under the name of one of her cousins (see paragraph 19 above). What is more, the applicant did not attend school (the Court cannot take her refusal to enrol when she was a minor into consideration), and she received no training that might have given her any hope of ever finding paid work outside the home of Mr and Mrs M. With no day off and no leisure activities, there was no possibility for her to meet people outside the house whom she might ask for help. The Court accordingly considers that the first applicant had the feeling that her condition – that of having to do forced or compulsory labour at the home of Mr and Mrs M. – was permanent and could not change, especially as it lasted four years (see, *mutatis mutandis*, *Siliadin*, cited above, §§ 126-129). That state of affairs started when she was still a minor and continued after she came of age. The Court therefore considers that the first applicant was effectively kept in a state of servitude by Mr and Mrs M.

93. The Court does not have the same assessment of the second applicant's situation. Unlike her elder sister she attended school and her activities were not confined to Mr and Mrs M.'s home. She was able to

learn French, as witnessed by her good marks at school. She was less isolated than her sister, which is why she was able to alert the school nurse to her situation. Lastly, she had time to do her homework when she got home from school (see paragraph 14 above). The Court accordingly considers that the second applicant was not kept in servitude by Mr and Mrs M.

94. In conclusion, the Court considers that the situation of the first applicant fell within the scope of Article 4 §§ 1 and 2 of the Convention in so far as they concern servitude and forced labour respectively. As to the second applicant, the Court has established that her situation did not fall within the scope of Article 4 §§ 1 and 2, so the State cannot be held responsible for any violation of that provision in her respect.

95. The Court must now examine whether the State complied with its positive obligations under that provision.

3. The Respondent State's positive obligations under Article 4 of the Convention

a) The parties' submissions

96. The applicants contended that French criminal law as it stood at the material time made no provision for the effective repression of forced or compulsory labour or servitude. They referred to the *Siliadin* case (cited above), where the Court considered that Articles 225-13 and 225-14 of the Criminal Code did not deal specifically with the rights guaranteed by Article 4 of the Convention but concerned, in a much more restrictive way, exploitation through labour and subjection to working and living conditions incompatible with human dignity. The applicants affirmed that this lacuna in French law had paradoxically been confirmed by a judgment of the Court of Cassation of 13 January 2009 (see paragraph 50 above) which made an evolutive interpretation of Articles 225-13 and 225-14 of the Criminal Code.

97. The applicants also criticised the fact that the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment acquitting Mr and Mrs M. of the offence under Article 225-14 of the Criminal Code. Without such an appeal the acquittal had become final and the appeal to the Court of Cassation concerned only the civil aspect of the case. They pointed out that in the *Siliadin* judgment the Court had taken the lack of an appeal by the Principal Public Prosecutor into account in finding a violation of France's positive obligations under Article 4 of the Convention.

98. The applicants considered more generally that the prosecuting authorities in France had a particularly restrictive conception of the notions of human trafficking, servitude and forced labour. They affirmed in particular that numerous cases of human trafficking for purposes of

domestic servitude were dropped by the prosecution. Furthermore, the classification of the facts in such cases often reflected neither the totality nor the gravity of the constituent elements of servitude.

99. In this connection the applicants referred to the obligation for the State to conduct an effective investigation when facts covered by Articles 2 or 3 of the Convention were brought to their attention. The Court had clearly confirmed the existence of such an obligation in respect of the rights guaranteed under Article 4 of the Convention in its *Rantsev v. Cyprus and Russia* judgment of 7 January 2010. In the present case the applicants pointed out that when the social services submitted a report on children in danger to the public prosecutor in 1995, no further action had been taken. Not until a second report in 1999 was a judicial investigation opened. The applicants alleged that their exploitation continued from 1995 to 1999 even though the prosecuting authorities were aware of the situation. They also complained that the judicial investigation opened in 1999 had only concerned the offence under Article 225-14 of the Criminal Code, and that Mr M. had been brought before the courts only thanks to the applicants, the public prosecutor having failed to appeal against the finding of the investigating judge that there were no grounds for prosecution. Lastly, the applicants wondered whether the judicial authorities – the judges of the Versailles Court of Appeal, in particular – had any real desire to punish those responsible for the offences concerned.

100. As their main submission, the Government maintained that the acquittal of Mr and Mrs M. on appeal was explained by the fact that the applicants were not the victims of treatment contrary to Article 4 of the Convention.

101. In the alternative, the Government submitted that the investigation carried out by the police child protection team at the home of Mr and Mrs M. in 1995 had led to no further action because there had been no proof of any wrongdoing. The applicants themselves had been “reluctant” to confide in the authorities and provide them with any evidence of an offence. The Government also pointed out that the second report, in 1999, had led to the criminal proceedings at the origin of the case before the Court.

102. Concerning the Principal Public Prosecutor’s failure to lodge an appeal on points of law, the Government pointed out that the Prosecutor only used that power when there was a possibility that the Court of Appeal had committed an error of law in its judgment. There was therefore no requirement under Article 13 of the Convention, or positive obligation under Article 4, that such an appeal by the Principal Public Prosecutor should be automatic; that would deprive him of his fundamental role in criminal proceedings. The Government submitted that in the present case the Prosecutor had considered that no error of law made it necessary for him to appeal to the Court of Cassation. In addition, the Government explained that the rule according to which a civil party could appeal on points of law

only in respect of his civil interests did not prevent the Court of Cassation from verifying the conformity with the law of the judgment given by the Court of Appeal in the criminal proceedings. The civil part of the proceedings was contingent on the outcome of the criminal proceedings. In the present case the Court of Cassation had considered that the Court of Appeal had found, without any inadequacy, contradiction or infringement of the law, that proof of the offence had not been established.

b) Third-party intervention of the "Aire Centre"

103. The "Aire Centre" affirmed that the Council of Europe Convention on action against trafficking in human beings was the reference text when it came to determining the positive obligations incumbent on the State under Article 4 of the Convention. As interpreted in the light of Article 10 of the Council of Europe Convention on action against trafficking in human beings, Article 4 requires the competent authorities to be able to identify victims of actions that breach its provisions. Having regard to that same Council of Europe Convention, and in particular Article 4 (c) thereof, the "Aire Centre" invited the Court to take into consideration the special vulnerability of children in its determination of the positive obligations of the State.

c) The Court's assessment

104. The Court reiterates that States have positive obligations under Article 4 of the Convention (see *Siliadin*, cited above, § 89). In the present case the Court will distinguish between the positive obligation to penalise and effectively prosecute actions in breach of Article 4 (ibid., § 112) and the procedural obligation to investigate situations of potential exploitation when the matter comes to the attention of the authorities (see *mutatis mutandis*, *Rantsev*, cited above, § 288).

i. The positive obligation to penalise and effectively prosecute actions in breach of Article 4

105. In order to honour this obligation the States must set in place a legislative and administrative framework that prohibits and punishes forced or compulsory labour, servitude and slavery (see *Siliadin*, cited above, §§ 89 and 112, and, *mutatis mutandis*, *Rantsev*, cited above, § 285). So, in order to determine whether there has been a violation of Article 4, the relevant legal or regulatory framework in place must be taken into account (see *Rantsev*, cited above, § 284).

106. The Court reiterates that in the *Siliadin* judgment, it considered that Articles 225-13 and 225-14 of the Criminal Code in force at the time did not afford the applicant, who was a minor, practical and effective protection against the actions of which she was a victim (*Siliadin*, cited above, § 148). In reaching that conclusion the Court found that the provisions concerned

were open to very differing interpretations from one court to the next (ibid., § 147). It also noted that, as the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment acquitting the offenders, the appeal to the Court of Cassation concerned only the civil aspect of the case (ibid., § 146). Emphasising that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably required greater firmness in assessing breaches of fundamental values, the Court found in the *Siliadin* judgment that there had been a violation of the French State's positive obligations under Article 4 of the Convention.

107. In the present case, the Court notes that the domestic law situation is the same as in the *Siliadin* case. The amendments made to the legislation in 2003 (see "Relevant domestic law and practice") do not alter the Court's finding in that regard. Furthermore, as in the *Siliadin* case, the fact that the Principal Public Prosecutor did not appeal on points of law against the Court of Appeal's judgment acquitting Mr and Mrs M. of the charge under Article 225-14 of the Criminal Code meant that in the present case too the appeal to the Court of Cassation concerned only the civil aspect of the case.

108. The Court sees no reason in the present case to depart from its finding in the *Siliadin* case. It follows that there has been a violation of Article 4 of the Convention in respect of the first applicant as regards the State's positive obligation to set in place a legislative and administrative framework to effectively combat servitude and forced labour.

ii. The procedural obligation to investigate situations of potential exploitation

109. To be effective, the investigation must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of the individuals responsible. It is an obligation not of result but of means (see *Rantsev*, cited above, § 288). A requirement of promptness and reasonable expedition is implicit in all cases, but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency (ibid.).

110. The Court notes that an investigation was carried out in 1995 by the police child protection services. Following that investigation the public prosecutor found that there was not enough evidence that an offence had been committed; the Court will not question that assessment of the facts in the absence of any evidence of a lack of diligence on his part. Furthermore, the Court points out that the applicants admitted to the investigating judge that their situation at the home of Mr and Mrs M. at the time had not yet deteriorated to the point that it was unbearable (see paragraph 32 above). The second applicant also admitted that she had not fully explained her situation to the police in 1995 (see paragraph 25 above). In these circumstances the Court sees no evidence of unwillingness on the part of the

authorities to identify and prosecute the offenders, particularly considering that in 1999 a new investigation had taken place, which led to the criminal proceedings now before the Court.

111. The Court accordingly considers that there has been no violation of Article 4 of the Convention in respect of the first applicant as regards the procedural obligation of the State to conduct an effective investigation into cases of servitude and forced labour.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

112. The applicants also complained that they had not had an effective remedy in so far as there had been no effective investigation following their complaint that was capable of leading to the punishment of those responsible. They relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

113. The Court notes that this complaint is subsumed by the complaint alleging a violation of the positive procedural obligations under Article 4, which form a *lex specialis* in relation to the general obligations under Article 13. After examining the merits of the complaint that no effective investigation had been carried out from the standpoint of the State's positive obligations under Article 4, the Court found that there had been no violation of that provision on this count.

114. The Court accordingly considers it unnecessary to examine separately the complaint concerning the alleged violation of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. Article 41 of the Convention provides:

> "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

116. The first applicant claimed EUR 24,000 in respect of pecuniary damage. She pointed out that the Nanterre Criminal Court had awarded her that amount in compensation for the damage sustained. However, as the Versailles Court of Appeal had acquitted Mr and Mrs M. of the charges

under Articles 225-14 and 225-15 of the Criminal Code, all the first applicant's claims in the civil proceedings had been dismissed.

117. The second applicant made no claim in respect of pecuniary damage.

118. The applicants each claimed EUR 15,000 EUR in respect of non-pecuniary damage. They argued that they had been placed in a situation contrary to Article 4 of the Convention for four years without the persons responsible being convicted and without the first investigation carried out in 1995 putting a stop to the situation.

119. The Government pointed out that the Nanterre Criminal Court had awarded the first applicant EUR 24,000 in compensation for all damage sustained, without distinguishing between the pecuniary and non-pecuniary dimensions, which were difficult to distinguish. The Government considered that that sum of EUR 24,000 should be considered as compensation for all the damage sustained by the first applicant. They acknowledged, however, that there was also the specific complaint resulting from the need to apply to the Court to find a violation of the rights guaranteed under Article 4 of the Convention. They considered that, should the Court find a violation of Article 4, a total award of EUR 30,000 would suffice as just satisfaction for the damage sustained by the first applicant.

120. As to the second applicant, the Government pointed out that she had never asked the domestic courts for any compensation other than one symbolic euro. Her situation had also been different from that of the first applicant in several respects. The Government therefore considered that if the Court were to find violation of Article 4 of the Convention in respect of the second applicant, she should be awarded EUR 6,000 in respect of non-pecuniary damage.

121. The Court notes first of all that it has found no violation of the Convention in respect of the second applicant. There is therefore no reason to award her just satisfaction. As to the first applicant, the Court has found a violation of Article 4 in so far as the criminal law of the respondent State did not afford her practical and effective protection against the treatment of which she was a victim, which amounted to servitude and forced labour. Ruling on an equitable basis, the Court awards the first applicant the sum of EUR 30,000, plus any taxes that may be payable on that sum. It considers, in agreement with the Government, that this sum is awarded in respect of all the damage sustained by the first applicant.

B. Costs and expenses

122. In their initial observations the applicants explained that they were not able at that stage in the proceedings to calculate their total costs and expenses. They would submit the exact figures to the Court as soon as they were available.

123. The Government noted that no claim for costs and expenses had been submitted in the form prescribed by the Court.

124. According to the Court's case-law, an applicant's costs and expenses may be reimbursed only if they have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes, like the Government, that no quantified claim for costs and expenses has been submitted in the requisite form and time. In such conditions no award can be made to the first applicant in that respect.

C. Default interest

125. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible save for the complaint of a violation of Article 3 of the Convention concerning the second applicant;

2. *Holds* that there has been a violation of Article 4 of the Convention in respect of the first applicant as regards the State's positive obligation to set in place a legislative and administrative framework to effectively combat servitude and forced labour;

3. *Holds* that there has been no violation of Article 4 of the Convention in respect of the first applicant as regards the procedural obligation of the State to conduct an effective investigation into cases of servitude and forced labour;

4. *Holds* that there has been no violation of Article 4 of the Convention in respect of the second applicant;

5. *Holds* that it is not necessary to examine separately the complaint under Article 13;

6. *Holds*

(a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the sum of EUR 30,000 (thirty thousand euros) in respect of all damage sustained, plus any tax that may be chargeable;

(b) 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 plus three percentage points;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in French, and notified in writing on 11 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President