

PRACTICAL CASE TWO

CURRENT EU LEGAL FRAMEWORK THAT ALLOWS MEMBER STATES TO COOPERATE ACROSS INTERNATIONAL BORDERS AND FACILITATE JUDICIAL PROCEDURES IN CASES RELATED TO HUMAN TRAFFICKING

What could judge, prosecutors and lawyers challenge in next cases?

- Is the return in conditions of safety and dignity?
- Is the return in line with the state's non-refoulement obligations?
- Are the rights of the victim protected in case of return?
- Is the person involved in legal proceedings? Can her rights and interests be presented in proceedings?
- Is the Protection available and accessible for returning victims?
- Is Protection effective and for sufficient to prevent re-trafficking and for re-victimization?
- Does the country of return meet the minimum standards of Protection?
- Are witness Protection programmes available? Are they accessible to victims of trafficking?

CASE LAW EXAMPLES OF CRIMINALISATION

CASE A

A 16 year-old, Nigerian girl agreed to be taken to the UK to escape an arranged marriage in Nigerian with a 63 year-old man who already had many wives.

In the UK she was raped and forced into prostitution, with a debt bondage of EUR. 60,000 imposed on her by the traffickers.

She escaped from the brothel and was later caught by the police using a false identity document to board a bus to France to escape her trafficker. Despite the girl explaining what had happened to her, her lawyer advised her to plead guilty to the documents offence and the judge accepted that guilty plea and convicted her. The judge treated the girl's account as being relevant only to mitigate/reduce her sentence and sentenced her to 8 months 'imprisonment in an adult prison. This was despite the fact that the police thought the girl looked "very Young" and was clearly not the 31-year old woman that the false document claimed her to be

Mid-way through her sentence an NGO visiting the suspected her of being a child victim of trafficking. They contacted lawyers who brought an appeal against her conviction and drew the Court of Appeal's attention to the UK's obligations as a signatory to CoE Convention, which at the time the UK had signed but not yet ratified. The Court accepted the submissions of the girl's lawyers that under Art. 18 of the Vienna Convention on the Law of Treaties the UK was obliged not to act in a manner that defeated the objectives of the CoE Convention which it had signed namely to protect the human rights of trafficking victims and not to punish them for unlawful activities committed as a direct consequence of their trafficking. The Court also considered the appeal under the

European Convention on Human Rights (Art. 6, fair trial guarantees).The evidence the girl's lawyers placed before the Court established that the girl was only 16 or 17 years old and it emerged that the social workers of the Poppy Project NGO, who had prepared a report for the Court of Appeal assessing her to be a credible victim of trafficking for sexual exploitation, had asked the girl's original defence lawyers to adjourn her original trial so that they could properly assess her for trafficking indicators, by their request had been ignored.

The Court of Appeal found that the original prosecutor had not addressed the question of whether it was in the public interest to prosecute the girl, that her original defence lawyers had not considered whether she might have had a defence of duress and that nobody at that time had considered the State's duty to treat and protect her as a child. The Court of Appeal found that the circumstances of her conviction by the original court were "shameful" and quashed the girl's conviction, finding that a fair trial had not taken place.

She was eventually granted asylum in the UK.

Her trafficker was never investigated by the police.

By the time the girl had successfully appealed against her conviction she had been subjected not only to trafficking, rape and sexual exploitation at the hands of her traffickers and exploiters but she had also suffered extreme harm by way of her arrest, detention, prosecution, conviction and imprisonment at the hands of the State.

Case reported in the OSCE Recommendations on the Non-Punishment Provision 2013

Source: England and Wales Court of Appeals, Case of Regina v O, EWCA Crim 2535 (2008).

CASE B

CASE LAW EXAMPLES OF INTERNATIONAL PROTECTION

The case concerns a Moldovan female victim of trafficking for sexual exploitation, who had been found to be at risk of treatment which would breach Art. 3 of the European Convention on Human Rights. She had been granted humanitarian leave but appealed against the refusal to recognise her as a refugee. This is among the first cases that settle the question of law in regard to trafficking victims and membership of a particular social group.

Membership of a particular social group requires that its members – in addition to being persecuted – are connected by a factor they in common and that is recognised as making them different by surrounding society. In the Moldovan case, the past experience of having been trafficked is a historical and permanent feature that victims of trafficking share, and that Moldovan society perceives to be different from other groups in their society. Belonging to such a group of an objective social fact which does not depend on the Will of its members.

SOURCE: Asylum and immigration Tribunal / Immigration Appellate Authority, SB (PSG-Protection Regulations – Reg 6) Moldovan v. Secretary of State for the Home Department, CG.