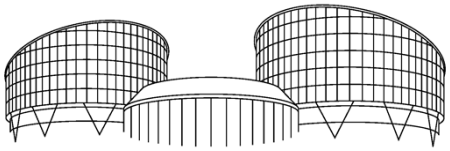

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF T.V. v. SPAIN

(Application no. 22512/21)

JUDGMENT

Art 4 • Positive obligations • Significant shortcomings in domestic procedural response to an arguable criminal complaint of human trafficking and forced prostitution, supported by prima facie evidence • Ineffective investigation • Failure to act with the requisite diligence at the initial investigation stage and to pursue obvious lines of enquiry • Decisions provisionally dismissing her case superficial and insufficiently reasoned • Defective manner of implementation of criminal-law mechanisms amounting to a breach of respondent State's procedural obligation • Significant procedural shortcomings demonstrating a blatant disregard for obligation to investigate serious human trafficking allegations

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 October 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of T.V. v. Spain,

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

Mattias Guyomar*, President*,
Lado Chanturia,
Stéphanie Mourou-Vikström,
María Elósegui,
Mykola Gnatovskyy,
Stéphane Pisani,
Úna Ní Raifeartaigh*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 22512/21) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Nigerian national, Ms T.V. ("the applicant"), on 20 April 2021;

the decision to give notice to the Spanish Government ("the Government") of the complaints under Article 4, Article 6 § 1 under its civil limb and Article 13 of the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the third-party comments submitted by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) and the AIRE Centre (Advice on Individual Rights in Europe), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 3 September 2024,

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

INTRODUCTION

1. The case mainly concerns a complaint under Article 4 of the Convention about the domestic authorities' alleged failure to duly investigate the applicant's criminal complaint that she had been a victim of human trafficking from Nigeria to Spain and sexual exploitation between 2003 and 2007.

THE FACTS

2. The applicant's date of birth is disputed. The documents available contain information on three different dates of birth, ranging between 1981 (as in the latest residence and work permit granted to her by the Spanish authorities, see paragraph 55 below) and 1989 (as in the application form). A

copy of a birth certificate issued by the National Population Commission of Nigeria shows that she was born in 1989. She lives in Spain and was represented by Ms P. Chandran, a barrister based in London, and Mr R. Uruthiravinayagan of Duncan Lewis Solicitors, a law firm based in London.

3. The Government were represented by Mr L.E. Vacas Chalfoun, co-Agent of Spain before the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S ACCOUNT OF THE EVENTS OF 2003-2011

5. According to the applicant, in 2003, when she was 14 years old and lived in Benin City, C., a female family acquaintance, approached her father and offered to take her to work in Spain on a forged adult passport. In return, she was to pay 70,000 euros (EUR) through her wages in Spain. She was not told the nature of her future work. According to the application form, in 2003 she travelled from Lagos (Nigeria) to Paris, and then to Madrid by plane. She then went to Arahal (a municipality south-east of Seville), where C. met her and took her to a house where she lived with her partner, U. According to the applicant's observations, she was "raped by U. and groomed by C.", and physically abused and threatened by both. She was forced to work as a prostitute and remained under C.'s control until 2007, when she managed to escape. She continued to work as a prostitute in various regions of Spain. In 2010 she started receiving assistance from the Apip-Acam Foundation, a non-governmental organisation (NGO) assisting people in need, including with housing and healthcare (see also paragraph 32 below).

II. CRIMINAL COMPLAINT AND THE ENSUING INVESTIGATION

A. The applicant's criminal complaint of 9 June 2011

6. On 9 June 2011 the applicant appeared before the Zaragoza Provincial Brigade of the National Police Unit against Illegal Immigration Networks and Document Forgery (*Unidad contra redes de Inmigración Ilegal y Falsedades Documentales* – "the UCRIF"). Relying on the legislation on protected witnesses, she complained that she had been a victim of human trafficking and sexual exploitation from 2003 to 2007, when she had been a minor. The Zaragoza UCRIF informed her of her rights as a victim or injured party, including the right to participate in the proceedings, to bring civil and/or criminal proceedings, to claim compensation or to waive such a claim (Article 109 of the Code of Criminal Procedure, see paragraph 61 below), to receive free legal aid and to obtain assistance as a victim of violent crimes or crimes against sexual freedom. Her complaint may be summarised as follows.

7. In 2003, when she was 14 years old, a family acquaintance known in Nigeria by the surname N. (who, as the applicant subsequently learned, was known in Spain as C.) contacted her and suggested that she go to Spain to work as a prostitute. C. offered to assist her in obtaining an "adult" passport and making travel arrangements in return for her undertaking to pay her EUR 70,000 as a "debt" for bringing her to Spain. She accepted the offer. C.'s father assisted her in obtaining the passport and a flight ticket. C.'s parents performed a "voodoo ritual" on her (see paragraph 77 below for further details) and made her promise not to report C. to the Spanish police, as otherwise "voodoo would kill her". Once the documents were ready in September 2003, she travelled from Lagos to Paris by plane, accompanied by a man in his fifties, a Nigerian national from Lagos whose name she could not remember. She travelled from Paris to Madrid, then by train from Madrid to Seville, and then by bus to Arahal, where C. met her. At the material time, C. was preparing to marry U., a Spanish national (whose surname C. eventually took). They lived in U.'s house in Arahal, at an address which the applicant could not remember. U. and C. married shortly after her arrival. C. taught her about prostitution and some words in Spanish. U. hit her with a belt and threatened her with further violence if she refused to pay the debt.

8. From the second month of her stay in Spain and for two years she worked as a prostitute in a club named R. in Arahal, which was managed by a Spanish man, "P." As C. had previously worked as a prostitute in that club, the manager trusted her and never asked the applicant to provide a passport. He was unaware that the applicant was underage.

9. Later, and almost always accompanied by C., she "went" to different clubs, such as E. in Arahal and unspecified clubs in Cordoba and Motril (Granada). She travelled with C. to Puerto del Rosario in Fuerteventura (Canary Islands), where she "went twice" to a club called B. During her second time there, she was arrested. The police seized her passport. C. then provided her with a new passport and forced her to leave the island and go to Asturias. She also worked in a club named D. in Jerez de la Frontera (Andalusia), where the police arrested her again and seized her passport. She then travelled to Cadiz and later to Huelva, accompanied by C. at all times. C. took all the money she earned. On the rare occasions when she was not accompanied by C., she had to deposit money in a La Caixa bank account using the pseudonym "J.". In 2005 C. separated from U. and moved with her to Seville. She started working as a prostitute in the east of the city, with other Nigerian women, under C.'s control.

10. In 2007 she escaped from C. She lived in Madrid, and then worked as a prostitute in Malaga and, since 2009, in Zaragoza. On one occasion she was arrested by the police in Zaragoza during a raid. She was taken to the city's social services due to her mental state. She was admitted to a medical facility and started receiving treatment. From 2007 onwards C. called her several times to remind her of the debt. In total, she had paid C. about EUR 25,000.

C. attempted to contact her until 2010, when the applicant lost her mobile phone. Since then, she had not had any further news of her former pimp, but she knew that C.'s family had destroyed her father's business in Nigeria and assaulted him in an attempt to make the applicant pay the debt.

11. The applicant (who spoke Spanish and English but had no education) explained that she had not reported the events earlier as she had been subjected to a "voodoo" ritual during which she had undertaken not to report the perpetrators. Once provided with social and medical assistance, she was able to overcome her fears and understand the importance of filing a complaint. She provided details on C. and U.'s physical appearance and approximate ages. She stated that C. could be living in Seville and that U. could be living in Arahal.

B. Criminal investigation

12. On 9 June 2011 the UCRIF informed the public prosecutor's office (*Ministerio Fiscal*) and Zaragoza Investigating Court no. 4 of the applicant's complaint. The applicant was granted a protected witness status. Her personal details were accordingly redacted by the authorities in the domestic documents pertaining to both the criminal proceedings described below and her immigration status, to protect her anonymity in the domestic proceedings. The parties provided the Court with copies of those documents with the applicant's personal data fully or partially redacted.

1. Measures taken between 2011 and early 2013

13. On 24 June 2011 the Zaragoza Investigating Court no. 4 opened a preliminary investigation but, in the same decision, discontinued it for lack of territorial jurisdiction to deal with the case. On 22 July 2011 it referred the case to an investigating court in Marchena with jurisdiction over Arahal.

14. On 7 November 2011 the Marchena Investigating Court no. 2 ("the investigating court") opened a preliminary investigation. It instructed the Marchena *Guardia Civil* to (i) identify the victim and obtain her testimony; (ii) establish the whereabouts of C. and U.; and (iii) identify the management of the R. club in 2003.

15. It appears that at some point an NGO which had provided legal assistance to the applicant since April 2012 (SICAR-Cat, see paragraph 56 below for details) complained to the Ombudsperson (*Defensor del Pueblo*) about the lack of progress in the applicant's case, which had had an adverse impact on her immigration status. In a letter of 25 October 2012 the Ombudsperson advised SICAR-Cat that no decision had been taken in the proceedings concerning her criminal complaint (see also paragraph 55 below in so far as her immigration status could be concerned).

16. On 24 January 2013 the investigating court instructed the Marchena *Guardia Civil* to provide the same information as previously (see

paragraph 14 above) and issued summonses in respect of C. and U. for questioning as suspects (*imputados*) for alleged trafficking in human beings. In addition, the applicant was to be heard as a victim.

17. On 9 and 26 February 2013 the *Guardia Civil* informed the investigating court that they had been unable to establish the whereabouts of C. and U. or to find them in their database, and that the R. club had been run in 2003 by F.M. and F.S. In February 2013 the investigating court summoned F.M. and F.S. for questioning on suspicion of trafficking in human beings (Article 177 *bis* of the Criminal Code).

2. The applicant's statement of 27 March 2013

18. On 27 March 2013 the applicant, assisted by SICAR-Cat, testified as a protected witness before an investigating court in the region where she was living. She was informed of her rights and confirmed that she was aware of the content of Articles 109 and 110 of the Code of Criminal Procedure (see paragraphs 61-62 below) and was claiming damages. She maintained her initial testimony and stated that she was currently receiving psychological treatment owing to a deterioration in her mental health caused by the events complained of. She further submitted that her family in Nigeria had relocated in order to avoid further threats and attacks.

3. Statements given in 2013 by the managers of the R. club

19. On 17 April 2013 F.M. and F.S. (see paragraph 17 above) testified before the investigating court as follows.

(a) F.M. stated that between 1994 and 2009 he had been a manager of the R. club, which had been a hostess club at the time of the events. He had charged certain amounts for the rent of rooms, but not for services provided in them. The club had usually hosted twelve to fifteen women, but they had not been employed by the club and had had no contractual relationship with it.

(b) F.S. stated that until 2007 he had been a manager of the R. club, which had not been a hostess club. He had only received income from the rent of rooms.

4. Provisional dismissal of the case and the prosecutor's appeal in 2013

20. On 26 April 2013 the investigating court provisionally dismissed the case against C., U., F.M. and F.S., as it had not been sufficiently established that the offence leading to the opening of the investigation had been committed (Article 641 § 1 of the Code of Criminal Procedure, see paragraph 65 below).

21. On 20 May 2013 a public prosecutor appealed against that decision, taking into account the applicant's submissions to the court concerning her ongoing mental health treatment and allegations of threats to her family in

Nigeria. The prosecutor stated that the events described in the complaint could constitute the offences of trafficking in human beings and prostitution of a minor, as set out in Article 318 *bis* and Article 188 § 3 of the Criminal Code and in the wording of Institutional Law 11/2003 (see paragraphs 58-59 below), as well as the offence of illicit association (*asociacion ilicita*), although the latter offence had become time-barred. The prosecutor considered that an extended statement should be obtained from the applicant and compared with the "existing documents" to correctly determine the law applicable at the time of the events. The prosecutor accordingly proposed that the Seville UCRIF be requested to (a) determine the date of the applicant's entry into Spain and (b) identify, find and question C. and U.

22. On 21 April 2014 the investigating court allowed the appeal and ordered the above investigative measures to be taken. The court also held that the events complained of could constitute offences under Article 318 *bis* and Article 188 § 3 of the Criminal Code (see paragraphs 58-59 below).

5. Statements by C. and U. obtained in 2014

23. At some point no later than May 2014 the police identified U. and on 22 May 2014 interviewed him in the presence of a lawyer. U. stated that in 2004 he had met C. in the R. club, where she had been working as a prostitute. C. had moved in with him at his home on L. Street in Arahal and in December 2004 they had married. C. had stopped working in prostitution. He denied that C. had ever travelled to Nigeria to recruit women to work in prostitution in Spain, that he had picked up any of C.'s friends at the airport or that he or C. had controlled and coercively retained a woman at their home. None of C.'s friends whom the couple had hosted – who had been approximately C.'s age – had been sex workers. He recalled that in 2005 a Nigerian woman aged about 22 had stayed with them for a week. He did not know what she had been doing during her stay (as he had not been at home all the time) and he had heard nothing about her once she had gone. In approximately 2006 C. had left him.

24. On 22 May 2014 the Seville UCRIF informed the investigating court that they had identified C. and U., obtained U.'s testimony (see paragraph 23 above) and were taking measures to establish C.'s whereabouts. The police also informed the court that their extensive experience in investigating illegal immigration and human trafficking cases allowed them to identify the following "*modus operandi*" in respect of the relevant offences. Women, typically in difficult social, family or economic situations, were usually recruited by their compatriots in their home countries, offered assistance in obtaining travel documents, and promised a "decent job", normally in catering or service sector. They were rarely informed that they would be involved in prostitution. Once in the destination country, the women became dependent on the "organisations" (groups) which had brought them there, because of a "debt" generated by travel expenses. They had to work long

hours for little or no financial reward owing to the exorbitant debts, which could also be accompanied by a penalty system for various breaches of the "house rules" imposed on them. Consequently, the victims remained tied to the relevant "organisations" for longer than they could have expected. The pimps maintained control over the women using coercion, threats, and physical violence. Their freedom of movement was restricted, and their use of telephones monitored and controlled. They were threatened with "voodoo rituals" and potential harm to their relatives in their countries of origin or subjected to penalties if they disobeyed. Their vulnerability was further increased by their lack of knowledge of the language and customs of Spain.

25. On 8 August 2014 the police located C. On 20 August 2014 she testified before the investigating court as a suspect, denying the applicant's allegations. She submitted that she had arrived in Spain in 2000 by boat, and had moved to Arahal to work at the R. club, where at the age of 24 she had met U. She had married him that year and they had divorced in 2009. Except on days off, she had slept in R., the only Arahal club she had worked in. She denied U.'s involvement in any activity related to human trafficking or that he had threatened or hit another girl in her presence. A Nigerian girl, if any, would only have come to their home to have a meal with them. C. denied that she had brought the applicant or anyone else to Spain to work as a prostitute, or that she had asked anyone for money, otherwise she would have had to stop working as a prostitute herself. However, she had continued to work as a prostitute until 2012. She remembered having an argument with a Nigerian girl in 2006 and thought that the complaint could have been motivated by envy of C.'s looks and her having more clients.

26. On 3 October 2014 U. testified before the investigating court, reiterating his earlier testimony (see paragraph 23 above). He stated that neither U. nor anyone else had lived at 20 L. Street prior to September 2004, as there had been no water or electricity supply to the premises until then.

6. Further measures implemented in 2015 at the prosecutor's request

27. On 29 December 2014 the public prosecutor stated that C.'s alleged acts could fall under both Article 318 *bis* §§ 1 to 3 and Article 188 § 3 of the Criminal Code, and that those of U. could only fall under the latter provision. The prosecutor requested the investigating court to order the UCRIF to establish the applicant's date of birth and date of entry into Spain, and to check the information about C.'s arrival in Spain and her marriage to U. Referring to the psychological treatment the applicant had been receiving, the prosecutor further requested a report on the effects of the events complained of on her mental health. On 27 January 2015 the investigating court granted that request.

28. In February 2015 U.'s defence argued that it was essential to determine the applicant's age at the time of the events for a correct legal classification of the alleged acts and requested a forensic age assessment. In

the meantime, they provided documents relating to U.'s marriage to C. in 2004, a contract naming U. as the buyer of the house at 20 L. Street in Arahal (dated February 2004) and documents pertaining to the installation of water and sewerage facilities at that address (dated June 2004).

29. On 10 April 2015 the Seville UCRIF reported to the court as follows:

(i) On unspecified occasions the applicant provided three different dates of birth. The police report, admitted to the domestic investigation file with the applicant's personal data partially redacted, read that two of those dates started with "198".

(ii) There was no police record of her entry into the national territory, as she had entered the Schengen Area in France and the border checks must have been done there. There was no border check between Spain and France.

(iii) The applicant was arrested on 14 May 2005 in Puerto del Rosario in the Canary Islands and on 20 July 2005 in Cadiz for breaches of immigration law. In the UCRIF's view, that could corroborate her account that C. had provided her with a new passport to travel from the Canary Islands to the Spanish mainland. The details of that new passport were unknown. The applicant was arrested again on 27 March 2009 in Zaragoza for a breach of immigration law.

30. The Seville UCRIF also forwarded to the investigating court discharge notes drawn up by psychiatrists of two Zaragoza hospitals in respect of the applicant. According to two discharge reports issued in 2010 by psychiatrists from a hospital in Zaragoza, the applicant was admitted three times between April and June 2010 for adaptive and psychotic disorders. At the time of the admissions, she was confused, with psychomotor restlessness, incoherent speech revolving around "voodoo", and behavioural changes. Once her condition improved in April 2010, she moved to sheltered housing provided by the Apip-Acam Foundation. According to two undated discharge notes from another hospital, in 2011 she received inpatient treatment in connection with behavioural disturbances of a psychotic nature. The doctors noted, *inter alia*, that some of her behaviour patterns were related to a threat, real or fictious, for her and her family if she denounced the people who had brought her to Spain.

31. On 17 April 2015 F.M. and F.S. testified in court as suspects, reiterating their earlier submissions (see paragraph 19 above).

7. Social report of 21 May 2015

32. On 21 May 2015 the Apip-Acam Foundation (see paragraphs 5 and 30 above) prepared a social report in respect of the applicant, which was subsequently forwarded by the UCRIF to the investigating court. The report (admitted to the investigation file in a redacted version in so far as the applicant's personal data was concerned and submitted by the Government to

the Court in that version) summarised her story, as told by her to the NGO's members, as follows.

(a) The applicant arrived in Spain in 2004, when she was 14 years old. The process was facilitated by her family through an intermediary. She did not want to leave her family environment and was coerced to do so by a woman who had assumed control over her life, putting it at risk. The pimp and her associates obtained a passport, visa and ticket for her and covered her travel expenses.

(b) The applicant described her route to Spain (see paragraph 7 above) and stated that it had only been in Arahal that the pimp had explained to her and her family that she was going to work as a prostitute. She started working in the R. club, where she worked for two years, living with the pimp and her husband. As she was unfamiliar with the job, the pimp's husband told her how to interact with clients. He sometimes used physical violence against her. The couple controlled her movements, the number of customers she served and other aspects of her work, and restricted her contact with other sex workers. At the end of each night, they took everything she had earned. In the R. club, "they" gave her food and she did not pay to stay there. The pimp provided clothes for her. She remained isolated, she did not speak Spanish at that time and she did not have a mobile phone. The couple threatened to kill her using voodoo practices if she disobeyed.

(c) After two years in Arahal, the applicant worked in Fuerteventura in a club named B., under the constant supervision of the pimp, who procured a forged passport for her. She also worked in a club named M.A. in Jerez de la Frontera and in Asturias, and was also taken to an unspecified location in France. She became pregnant on three occasions and was given abortion pills. On one occasion she was forced to work seven days after the abortion. On another occasion she had to seek medical assistance at a hospital in Huelva. She managed to escape from the pimp with the assistance of a client. The pimp continued to threaten her.

(d) The report further specified that a social worker had referred the applicant to the Apip-Acam Foundation. At some point the police took her to a hospital in Zaragoza because of a behavioural issue. She received assistance from the Apip-Acam Foundation and entered its accommodation programme. Once an adequate regime of medical supervision was put in place, her condition improved.

8. Conversion of the preliminary investigation into ordinary proceedings and decision on additional investigative measures

33. On 8 June 2015 the investigating court converted the preliminary investigation into ordinary proceedings (*sumario ordinario*), issued an

indictment against C. and U. and provisionally dismissed the case against F.S. and F.M. for lack of evidence that an offence had been committed.

34. U.'s defence appealed. On 10 August 2015 the investigating court allowed the appeal in part and decided: (i) to admit a copy of the social report, redacted only as regards the applicant's personal details; (ii) to request a forensic institution in the region where the applicant was living to conduct an age assessment to determine her approximate biological age, leaving it to the experts to decide on the assessment methods to be used; (iii) to hear witnesses; (iv) to question F.S. and F.M., in particular about the presence of C. and any women accompanying her in the R. club at the time of the events; and (v) to summon C.

9. Statements by F.M., U. and C. in 2015

35. On 18 September 2015 the investigating court heard F.M. as a witness. He stated that he did not know C. or U. He had known some Nigerian girls who had been working in prostitution but had been unaware that any of them had been brought to Spain through an intermediary in Arahal. He had never suspected that any of them had been forced into prostitution. There had never been "such young girls" in the R. club.

36. During his questioning, F.M. was presented with two photographs of U. He stated that he did not recognise the person on the photographs and had never seen him in the R. club.

37. On 2 October 2015 U. and C. testified before the investigating court as accused, maintaining their earlier statements (see paragraphs 25-26 above). U. added that a woman who had once stayed with them for one night at Christmas had been C.'s friend, an adult, whose name could have been A. He did not know where she had come from. She had spoken perfect Spanish and had had dinner with them and their friends. C. denied knowing anyone named J. (apparently, reference was made to the pseudonym allegedly used by the applicant to deposit money in a bank, see paragraph 9 above).

10. Statements by witnesses on U.'s behalf

38. On 18 September 2015 the investigating court heard five witnesses on U.'s behalf. Two of them were U. and C.'s neighbours in a gated community on L. Street; the third witness was U.'s friend since childhood; the fourth stated that he was U.'s acquaintance for twenty years, and the fifth was U.'s cousin and his best man at U.'s and C.'s wedding. All the witnesses stated that they had not seen anyone living with the couple in the house between 2004 and 2006, nor any indication of anyone else being there. The neighbours stated that they had never heard screams or loud voices at the couple's home. None of the five witnesses knew if C. or U. had frequented the R. club, or if C. had had been engaged in prostitution there. One of the neighbours stated that no one could have lived in the gated community in 2003, as the premises

had only been handed over to the residents in 2004. Two of the witnesses (U.'s cousin and U.'s friend) had not noticed any change in U.'s financial situation at the relevant time.

11. The applicant's court testimony of 23 November 2015

39. On 23 November 2015 the applicant, assisted by SICAR-Cat, testified before the court by videolink. According to a handwritten transcript of her testimony, she maintained her initial complaint. She submitted that at some point U. had attempted to hit her, but had not actually assaulted her, and that he had once threatened to cut off her fingers. She stated that she had slept both in the clubs where she had worked and in U. and C.'s house and provided a description of the house. After spending two years in Arahal, she had gone to the Canary Islands with C. after her separation from U. She had never given money to U., but had deposited money into C.'s account in the La Caixa bank. C. had hit her on a number of occasions, both in the club and at home. The applicant had not sought medical assistance as she had been unfamiliar with the medical system in Spain. At some point C. and U. had gone with her to the Canary Islands. When she had worked in the club, C. had no longer worked there as a prostitute. At the end of her shifts, she had returned to C.'s home to sleep. Sometimes she had gone to the club by bus or taxi, and sometimes U. had driven her there. In reply to the court's questions, she stated that she had been 15 or 16 years old, not 14, when she had lived in C.'s house.

12. Initial and further forensic age assessment reports

40. On 5 October 2015 a forensic expert conducted an age assessment of the applicant pursuant to the court's order (see paragraph 34 above). The applicant told the expert that she had been born in 1981. After studying the medical documents, examining the applicant, assessing the anthropometric and dental examination data and evaluating the development of secondary sexual characteristics, the expert provisionally concluded that the applicant's data were compatible with a person over 18 years old.

41. Further test results were received by the expert, such as (i) an X-ray examination of her left carpal bones conducted using the Greulich and Pyle method, which assessed her bone age to be that of an eighteen-year-old female; and (ii) an orthopantomography (a panoramic dental X-ray) which assessed her dental age to be above the age of 18. In a report dated 24 November 2015 the forensic expert concluded as follows:

> "In accordance with the criteria of the [German Working Group for Forensic Age Diagnostics, AGFAD] international protocol, and having studied the anamnesis, conducted a [physical] examination and examined the radiological data ... I conclude that all the [results] correspond to a person at least eighteen years old."

42. On 20 December 2015 U.'s defence requested the court to dismiss the case and acquit him. Referring to the age assessment results, U. argued that

the applicant had been 18 years old at the material time. She would therefore have been 6 years old at the time of her alleged entry into Spain. U.'s defence therefore assessed her account as irrational, improbable and in clear contradiction with the age assessment report.

43. Following a request by the prosecutor, in March 2016 the investigating court ordered that the forensic expert report be supplemented to establish the applicant's maximum possible age, that is, to determine the age range in which the applicant could fall according to the tests carried out.

44. In a supplementary forensic report dated 26 April 2016 the expert concluded as follows:

(i) according to the physical examination, the applicant was at "Tanner stage V", which corresponded to 15 years or older; the relevant guide did not contain any other scales for determining puberty;

(ii) the X-ray of the carpal bones was consistent with the standard for an eighteen-year-old or older according to the Greulich and Pyle Atlas; the atlas did not contain any images beyond the age of 18, as there were no further radiological changes in a female beyond that age that could be quantified;

(iii) as regards the orthopantomography, the condition of the applicant's molars was statistically consistent with an age interval of 22.4 years, with a margin of +/- 1.9 years.

13. *Termination of the investigation and referral of the case to the* Audiencia Provincial

45. On 26 September 2016 the investigating court observed that it had conducted all necessary proceedings to prove that an offence had been committed, that the accused had participated therein, and that it had established all the relevant circumstances. The court concluded the investigation and referred the case to the Seville *Audiencia Provincial.*

C. Proceedings before the Seville *Audiencia Provincial*

46. The public prosecutor requested that the case be provisionally dismissed. U.'s defence requested that the case be provisionally or definitively dismissed.

47. On 10 January 2017 the Seville *Audiencia Provincial* upheld the investigating court's decision to terminate the investigation and ordered the provisional dismissal of the case. The court summarised the applicant's complaint and further found as follows:

> "On 24 November 2015 the [forensic expert] issued a report on the biological age of the victim. [The expert had] studied the anamnesis, conducted a [physical] examination and reviewed the radiological evidence consisting of the X-ray of the left carpal bones and the orthopantomography. Based on the relevant medical and legal considerations

> and using the criteria of the [AGFAD] international protocol, [the expert concluded] that all the [results] corresponded to a person whose most likely minimum age [was] 18 years old.
>
> According to the [forensic] report, the victim was 6 years old in 2003, which makes it unlikely that she entered Spain on an adult passport as stated in the complaint or that she worked as a prostitute in establishments open to the public, since the police monitors the age of prostitutes.
>
> Therefore, it is appropriate to order the provisional dismissal as requested by the public prosecutor's office and [the] defence."

48. The applicant appealed, arguing that age assessments were generally ineffective and unreliable, as evidenced by several studies and highlighted, *inter alia*, in a report published in 2011 by the Ombudsperson entitled "Adults or Minors? Age assessment proceedings" and the domestic case-law. No alternative or further tests had been carried out in her case. In any event, the *Audiencia Provincial* had disregarded the content of the forensic report, concluding instead that the applicant had been 18 years old at the time of the assessment. Even assuming that she had been trafficked to Spain at the age of six, the proceedings could not have been dismissed based on the victim's age. The applicant stressed that the authorities had failed to take into account the entirety of her testimony, which had remained detailed and consistent throughout the proceedings. She had provided specific dates, described the routes she had taken and named the clubs where she had been exploited. Her submissions about her arrests were corroborated by other evidence, such as police records and her description of the R. club's manager corresponded to F.M. She could not have known about C. and U.'s marriage and separation if she had not personally witnessed those events. U. had admitted that a Nigerian woman had stayed at his home for a few days. Those elements justified the continuation of the investigation.

49. C. and U. objected to the appeal, reiterating that the presumption of innocence required a minimum amount of evidence, which was clearly lacking in the case at hand. U. insisted that the evidence had been duly collected and examined during the investigation, and that the applicant had neither made a timely request for the submission of any additional evidence nor appeared before the investigating authorities. The forensic report only highlighted and deepened the contradictions in her statements, thus depriving her allegations of a rational basis. The public prosecutor challenged the appeal on the grounds that there was insufficient evidence to maintain the accusations. Indeed, the only prosecution evidence was the victim's statement made four years after the events complained of, which could not be corroborated by other evidence concerning various aspects of the complaint, including the applicant's age.

50. On 14 June 2017 the Seville *Audiencia Provincial* upheld the decision of 10 January 2017 as follows:

> "The provisional dismissal of the proceedings is not based on the age of the protected witness, the alleged victim of the events under investigation, but on the inability [for her] to have entered Spain on a passport meant for an adult in 2003, when she was 6 years old; she could have only arrived in Spain from Nigeria accompanied by her parents which, according to the complaint, was not the case.
>
> Consequently, since the appeal does not challenge the medical forensic evidence which determines the [applicant's] age, it is appropriate to dismiss the appeal and to uphold the order ..."

D. The applicant's *amparo* appeal and its dismissal

51. On 27 July 2017 the applicant lodged an *amparo* appeal against the decisions of 10 January and 14 June 2017. Relying on Articles 14 (equality) and 24 (right to a fair hearing) of the Constitution, she contended that her case concerned an aspect of a fundamental right on which there had been no previous rulings by the Constitutional Court, in so far as (a) the implementation of the international standards for the protection of victims and investigation of human trafficking and (b) the relevance and effectiveness of age assessments and their interpretation were concerned. She complained, notably, as follows.

(a) The *Audiencia Provincial* had remained silent or rejected her specific arguments without giving sufficient reasons.

(b) Age assessments were not reliable, as demonstrated by various studies. The authorities had failed to carry out further tests to determine her age, or to request relevant information from the Nigerian consular authorities. Referring to her birth certificate issued in Nigeria, the defence had claimed that she had been 26 years old at the time of the expert assessment.

(c) The court's assessment of the expert report of 24 November 2015, and its finding that she had been 18 years old at the time of the expert examination, was manifestly erroneous and lacked logical reasoning. The predominant reliance on the court's own interpretation of the report *de facto* deprived all other evidence of its value – and her of effective protection of her rights. The court had interpreted the evidence selectively and arbitrarily. Her allegations had never been checked against police records, including that of her arrest in 2005. If the court's interpretation of her age – "six at the time of entry into Spain" – were accepted, that would mean that in 2005 she would have been 8 years old and the police should have transferred her to a child protection authority, which had not been the case.

(d) The concept of sexual exploitation had also been interpreted by the courts in an arbitrary manner, based on a sole unsubstantiated assertion that the police had carried out age checks on prostitutes. That clearly did not correspond with the statistics. Indeed, according to the State Centre of Intelligence Against Organised Crime (*Centro de*

Inteligencia contra el Crimen Organizado), approximately 45,000 people were involved in prostitution in Spain, and 13,983 of them were considered to be at risk of being in a situation of human trafficking and sexual exploitation. However, according to the Ministry of the Interior's data for 2014, only 900 victims had been identified, of whom 153 were victims of human trafficking for sexual exploitation and 747 were victims of sexual exploitation. Similarly, the court's assertion that the applicant could only have entered Spain accompanied by her parents was clearly at variance with the available statistics: according to the *Fiscalía General del Estado*, 3,341 unaccompanied minors had been registered in Spain in 2015.

(e) The authorities had failed to investigate her complaint in so far as it concerned her having deposited funds with the bank, the telephone calls or the clubs in which she had worked other than the R. club. Even though she had been consistent in her allegations, and despite the requests of the public prosecutor, the inquiry had remained limited to the identification and questioning of the managers of one of the clubs (in respect of whom the case had been dismissed) and identification of the two co-accused. The evidence collected during the inquiry had been used against her. The recruitment aspect of the case had not been elucidated and not even a minimum inquiry had been conducted into her situation in her country of origin. No attempt had been made to request information from the competent French authorities on the date of her entry into the Schengen area. The investigation had been held up by significant delays, despite its narrow scope, her cooperation with the authorities and the utmost importance of the case for her from the standpoint of her mental health, but also for her immigration status (she highlighted the delays in renewal of her residence permit).

52. On 5 October 2020 the Constitutional Court declared the *amparo* appeal inadmissible owing to the "non-existence of a violation of a fundamental right". On 20 October 2020 the applicant was notified of the above decision.

III. OTHER RELEVANT INFORMATION

A. Information about the applicant's immigration status

53. On 15 July 2009 and 2 July 2010 the government sub-delegation in Zaragoza issued two deportation orders in respect of the applicant, as she was in irregular situation at that time.

54. As a follow-up to her criminal complaint of 9 June 2011 and the decision to start the inquiry, and referring to section 59 *bis* of Institutional Law 4/2000 and section 142(5) of Royal Decree 557/2011 (see paragraphs 66-67 below), on 4 July 2011 the Zaragoza UCRIF requested the

government delegation in Aragón to suspend the above deportation orders and issue the applicant with a temporary residence permit. As there were reasonable grounds to believe that she was a victim of human trafficking and sexual exploitation, the UCRIF advised her of the possibility of her cooperating with the police, which could also imply a closure of her administrative file. The report read that she had been born in 1981.

55. On 5 July 2011 the government delegation in Aragón suspended the deportation orders of 2009 and 2010 until 3 October 2011 and authorised the applicant's temporary stay in Spain during that period. According to the Ombudsperson's letter of 25 October 2012 (see paragraph 15 above), there had been no decision concerning her immigration status after July 2011, but in June 2012 the UCRIF had requested a competent authority to issue the applicant with a new residence permit. Between 6 September 2012 and February 2021, the applicant was granted several temporary residence and work permits as a victim of human trafficking and based on her personal situation. She submitted, without providing supporting documents, that at some point in 2018 her residence and work permit had been "withdrawn", allegedly because of the dismissal of the criminal case, and that she had had to apply for a new residence and work permit based on her personal situation. It follows from the case material that, pursuant to an application lodged in November 2018, on 5 June 2019 she was granted a temporary residence and work permit for exceptional circumstances, valid for five years. She submitted a copy of the latest temporary residence and work permit, issued on 2 February 2021 and valid until 5 June 2024.

B. Information about the applicant provided to SICAR-Cat by *Medicos del Mundo* in 2012

56. In April 2012 the applicant started receiving medical, social, legal and employment assistance from SICAR-Cat, an NGO providing comprehensive care and assistance to women and children victims of human trafficking. The applicant relied on a SICAR-Cat's written statement, according to which in April 2012 the NGO had recognised the applicant as a victim of human trafficking based on a referral report by *Medicos del Mundo* and her formal identification as a victim of trafficking by the police. The referral report had stated that the applicant had been 22 years old at the time of referral (that is, in 2012) and had identified the following human trafficking indicators in her case: a disproportionate debt; arranged or assisted travel; a lack of documents; her age (14 years old) at the time of being trafficked; physical and economic dependency, owing to the amount of the debt; her country of origin being known for human trafficking; a high number of abortions; signs of mental health problems and a lack of access to medical care; abusive and unacceptable conditions of providing "services". According to the

SICAR-Cat's statement, she had been an adult in 2012 and her age corresponded to that stated in *Medicos del Mundo*'s report.

C. Information about the applicant's state of health

57. In 2013 the applicant was diagnosed with paranoid schizophrenia. On 26 March 2013 she was recognised as 70% disabled.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC MATERIAL

A. Criminal liability for human trafficking offences (provisions relied on by the domestic authorities).

58. Under Article 188 of the Criminal Code (in its version applicable, according to the Government, to the events between 2003 and 2007), whoever, by using violence, intimidation or deception, or by abusing a situation of superiority or need or the vulnerability of the victim, forced an adult person to engage in prostitution or to remain in prostitution, would be punished by two to four years' imprisonment and a fine. The same penalty would apply to anyone who benefited financially from the prostitution of another person, even with that person's consent (Article 188 § 1). Under Article 188 § 3, a more severe punishment would apply if the offence was committed in respect of a minor or a disabled person, in order to engage him or her in prostitution or to make him or her remain in prostitution.

59. Article 318 *bis* of the Criminal Code (in its version applicable, according to the Government, to the events between 2003 and 2007) provided as follows:

> "1. Whoever directly or indirectly encourages, favours or facilitates the illegal trafficking or clandestine immigration of persons from, in transit or with their destination in Spain, shall receive a penalty of four to eight years' imprisonment.
>
> 2. If the purpose of the illegal trafficking or clandestine immigration is the sexual exploitation of individuals, the [perpetrator] shall receive a penalty of five to ten years' imprisonment.
>
> 3. Whoever commits the acts referred to in either of the two preceding paragraphs for financial gain or by using violence, intimidation, deception, or by abusing a situation of superiority or special vulnerability of the victim, or in respect of a minor or incapacitated person, or by endangering the life, personal health or physical integrity of individuals, shall receive a penalty in the upper half of the range."

B. Compensation for damage

1. Criminal Code

60. Under Article 109 of the Criminal Code, the execution of an act constituting a crime or an offence under the Code obliges the perpetrator to repair, under the conditions provided by law, the damage and prejudice caused (§ 1). The injured party may, in any case, bring a civil claim before a civil court (§ 2). Civil liability includes restitution, reparation of the damage and compensation for pecuniary and non-pecuniary damage (Article 110).

2. Code of Criminal Procedure

61. Article 109 of the Code of Criminal Procedure provides that, where a judge receives a complaint from an aggrieved party, he or she will be advised of his or her right to join as a party in the proceedings and waive, or not, restitution, reparation of the damage and compensation for damage caused by the punishable act.

62. Under Article 110, persons injured by a crime or misdemeanour who have not waived their right, may, if they do so prior to the offence being classified, join as parties to the case and bring such civil action as they deem appropriate. If the persons injured do not join as parties in the proceedings, this does not mean that they waive their right to restitution, reparation or compensation which may be awarded in their favour in the final decision. A waiver should be formulated in a clear and unequivocal manner.

63. Under Article 116, the termination of criminal proceedings does not mean the termination of a civil action, unless the termination is the result of a final decision stating that the facts on which the civil action may have been based did not exist. In all other cases, the person entitled to bring a civil action may do so before the appropriate civil court and through civil proceedings against the person who is obliged to repair or compensate for the damage caused.

3. Civil Code

64. Anyone who, by action or omission, causes harm to another, through imprudence or negligence, is obliged to repair the damage caused (Article 1902). Civil obligations arising from crimes or misdemeanours are governed by the provisions of the Criminal Code (Article 1092).

C. Provisional dismissal of a criminal case

65. Under the Code of Criminal Procedure, a case may be dismissed definitively or provisionally. A final dismissal order (*sobreseimiento libre*) is made where (i) there is no reasonable indication (*indicios racionales*) that the act which gave rise to the opening of the case has been committed; (ii) the act

does not constitute a crime; or (iii) the accused is exempt from criminal liability (Article 637 §§ 1 to 3). A provisional dismissal order (*sobreseimiento provisional*) is made where (i) it has not been duly established that the offence leading to the opening of the investigation has been committed, or (ii) it appears from the investigation that an offence has been committed, but there are insufficient grounds for accusing a specific individual of that offence (Article 641 of the Code).

D. Institutional Law 4/2000 of 11 January 2000 and its implementing provisions

66. Section 59 *bis* of Institutional Law 4/2000 of 11 January 2000 on the rights and freedoms of aliens in Spain and their social integration (as in force in June 2011, the date of the applicant's criminal complaint) provided that, where the competent administrative bodies considered that there were reasonable grounds to believe that an illegal immigrant was a victim of trafficking in human beings, they had to submit a proposal to the competent authority for a decision on whether a recovery and reflection period should be granted in the case. Such period should last at least thirty days and should be sufficient to enable the victim to decide whether he or she wished to cooperate with the authorities in the investigation of the crime and, if appropriate, in the criminal proceedings. Any infringement proceedings that could have been instituted and any expulsion or deportation decisions that could have been adopted should be suspended. During the recovery and reflection period, the person concerned should be authorised to stay temporarily in the territory and the competent authorities should ensure his or her subsistence and, if necessary, the safety and protection of the victim (section 59 *bis* (2)). The competent authority could declare a victim exempt from any administrative responsibility and provide him or her, at the victim's choice, with assisted return to his or her home country or with a residence and work permit for exceptional circumstances if this was deemed necessary for the purposes of his or her cooperation in the investigation and punishment of the traffickers or in view of his or her personal circumstances (section 59 *bis* (4)).

67. Under section 142(1) to (5) of Royal Decree 557/2011 of 20 April 2011 (as in force in June 2011), implementing the above-cited Institutional Law 4/2000, once the person concerned had been identified by immigration police units, they had to, within a maximum of forty-eight hours and with the consent of the victim, submit a relevant proposal to the government delegation or sub-delegation of the province where the person had been identified. The proposal would be in favour of granting the recovery and reflection period if there were reasonable grounds to believe that the foreigner was a victim of human trafficking and, in such a case, it had to specify the duration of the recovery and reflection period (section 142(1)). The decision

had to expressly mention, among other things, the temporary suspension of a sanction and/or the execution of an expulsion or return order (section 142(5)). Section 144 of the Decree set out the procedure for a foreign national to apply for a residence and work permit for exceptional circumstances, based on either the victim's cooperation with the investigating authorities or his or her personal situation.

E. State compensation for victims of serious and violent crimes

68. Law 35/1995 of 11 December 1995 on the Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom (implemented by Royal Decree 738/1997 of 23 May 1995) sets out a system of State compensation for direct or indirect victims of serious and violent crimes committed in Spain and resulting in death, serious bodily injury or physical or mental harm. Those who, at the time the crime was committed, were Spanish citizens or residents, nationals of another EU State or nationals of another State which provides similar assistance to Spanish citizens in its territory, are eligible for such compensation (section 2(1) of the Law).

F. Report by the Ombudsperson

69. The relevant parts of a report published in 2012 by the Ombudsperson entitled "Human Trafficking in Spain: Invisible Victims" (*Defensor del Pueblo. Trata de seres humanos en España: víctimas invisibles (2012)*) read as follows:

> "According to the estimation of the United Nations Office on Drugs and Crime in Europe, only 1 out of 20 potential victims of human trafficking for the purpose of sexual exploitation is detected. [The Centre for Intelligence against Organised Crime, CICO] data confirms this trend in Spain and the figures clearly demonstrate that the number of victims identified is much lower than the number of individuals detected in an at-risk situation. In 2009, 1,301 victims were identified compared to 6,157 persons detected to be at risk; in 2010, 1,641 victims were identified compared with 15,075 persons detected to be at risk; and in 2011, 1,082 victims were identified while 14,730 at-risk persons were detected.
>
> Investigations carried out by the Ombudsman Institution ... reveal that the Public Administration does not account for a group of potential victims, whose number is unknown: foreigners, mostly women, mainly of Nigerian nationality. They are undocumented and are detected when trying to access national territory, or are identified by police during immigration controls in public places.
>
> ...
>
> As noted by the United Nations Office on Drugs and Crime, in the process of recruiting Nigerian victims of human trafficking for sexual exploitation, acquaintances, close friends or family members play an important role. [It] usually takes place in the home of the victim and resorts to a system of debt bondage. Victims are forced to travel to Europe ... and to pay exorbitant sums to the smugglers who transport them, mainly by plane from Lagos or other international airports in West Africa ... The presence of

Nigerian victims of human trafficking for sexual exploitation in Spain is cited in several major international reports ... [I]n the case of Nigerian citizens who enter Europe illegally, several studies point to the prevalence of travel via plane by using forged or stolen documentation.

...

The figures provided by CICO ... focus on inspections conducted in locations where prostitution occurs and where there may be people at risk, mainly in clubs and hotels. Inspections conducted on the street to detect individuals at risk are virtually non-existent (1.71% of those conducted in 2010, and 2.71% in 2011) resulting in the low number of detections of Nigerian women at risk of sexual exploitation ... According to CICO, in 2009, 210 Nigerian women were identified during inspections in locations at risk for prostitution, while in 2010 the figure doubled to 436. However, in that same year (2010), only 52 Nigerian women were eventually identified as victims of sexual exploitation, of which almost all (51) were considered to be victims of trafficking for sexual exploitation.

...

[A]nother characteristic of Nigerian victims of sexual exploitation is the importance throughout the process of the so-called 'emigration pact', which the woman signs and which binds her to return all the money to a person known as a sponsor. The sponsor is responsible for paying all travel and living expenses abroad, including documentation and the cost of travel to the traffickers [the report refers in this part to report 'Migration, Human Smuggling and Trafficking from Nigeria to Europe' prepared for the International Organisation for Migration, see paragraph 77 below].

...

Later in the process (if something goes wrong from the point of view of the traffickers), local religious traditions may often be evoked as a clear element of abuse. Moreover, if women do not cooperate after arriving to Europe, they may be subjected to a mixture of physical violence and new rituals."

II. RELEVANT INTERNATIONAL MATERIAL

A. Relevant international law and practice

70. The relevant international material is summarised in *S.M. v. Croatia* ([GC], no. 60561/14, §§ 107-26, 129-30, 133-46, 148-71 and 173-209, 25 June 2020).

71. The relevant provisions of the Convention on the Rights of the Child of 20 November 1989 ("the CRC"), General Comments Nos. 6 (2005), 12 (2009) and 14 (2013) of the UN Committee on the Rights of the Child and the decision of 27 September 2018 on individual complaint no. 11/2017 lodged against Spain in relation to the Optional Protocol to the CRC on a communications procedure (communication no. 11/2017, *N.B.F. v. Spain*, CRC/C/79/D/11/2017) are summarised in *Darboe and Camara v. Italy* (no. 5797/17, §§ 57-63, 21 July 2022).

72. Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their

Families and No. 23 (2017) of the UN Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return provides, in particular, that the benefit of the doubt should be given to the individual being assessed and that States should refrain from using medical methods based on, *inter alia*, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes (see, for other relevant parts, *Darboe and Camara*, cited above, § 65).

73. The applicant (in her observations) and the AIRE centre (in their intervening third-party submissions in the present case) referred to individual decisions (Views) concerning Spain adopted by the Committee under the Optional Protocol to the CRC on a communications procedure related to determination of the age of alleged unaccompanied minors[1]. In various contexts the Committee reiterated, in particular, the inaccuracy of X-ray age assessments and highlighted various defects in the age assessment procedure applied to the complainants.

B. Council of Europe - GRETA Reports in respect of Spain

74. The relevant extracts of the GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain (First evaluation round, no. (2013) 6, adopted at the 17th meeting on 1-5 July 2013 and published on 27 September 2013), read as follows:

> "10. Spain is mainly a country of destination and transit for victims of trafficking in human beings (THB). According to the Spanish authorities, 443 victims of trafficking were identified in 2009, 1,605 in 2010 and 234 in 2011. All victims identified between 2009 and 2011 were subject to trafficking for the purpose of sexual exploitation and most of them were women, originating principally from China, Brazil, Paraguay, Nigeria, Romania and the Dominican Republic.
>
> ...
>
> 154. The Spanish authorities have reported an increase in the number of police inspections carried out in 2011 in places at risk of THB for the purpose of sexual exploitation, with 2,375 administrative inspections by police forces in places where prostitution takes place. ...GRETA notes the high estimates published by CICO on the number of persons detected in situations of risk of sexual exploitation or trafficking for

[1] Communications nos. 16/2017 (*A.L. v. Spain*, CRC/C/81/D/16/2017); 22/2017 (*J.A.B. v. Spain*, CRC/C/81/D/22/2017); 17/2017 (*M.T. v. Spain*, CRC/C/82/D/17/2017); 27/2017 (*R.K. v. Spain*, CRC/C/82/D/27/2017); 21/2017 (*A.D. v. Spain*, CRC/C/83/D/21/2017); 24/2017 (*M.A.B. v. Spain*, CRC/C/83/D/24/2017); 25/2017 (*H.B. v. Spain*, CRC/C/83/D/25/2017); 26/2017 (*M.B.S. v. Spain*, CRC/C/85/D/26/2017); 40/2018 (*S.M.A. v. Spain*, CRC/C/85/D/40/2018); 37/2017 and 38/2017 (*L.D. and B.G v. Spain*, CRC/C/85/D/37/2017 and CRC/C/85/D/38/2017); 63/2018 (*C.O.C. v. Spain*, CRC/C/86/D/63/2018); and 76/2019 (*R.Y.S. v. Spain*, CRC/C/86/D/76/2019)

the purpose of sexual exploitation (6,157 in 2009, 15,075 in 2010 and 14,730 in 2011) and the disparity between the number of identified victims of trafficking according to the Report of the Ombudsperson, quoting CICO as the source, and figures provided to GRETA.

...

262. ... The ... annual report of the Prosecution Service for 2011 mentions that, as Article 177 *bis* of the [Criminal Code] entered into force in December 2010, criminal proceedings under this article were initiated in only one case in 2010, but 64 investigations for THB were opened in 2011 (92% of them concerned sexual exploitation and the rest labour exploitation and the exploitation of begging). In 2012 the Prosecution Service initiated 212 proceedings related to THB; 84% of them concerned trafficking for the purpose of sexual exploitation.

...

265. The majority of the criminal proceedings initiated for THB are based on denunciation by the victims themselves, directly or through NGOs, after being detected by police forces during raids or checks in the places where they are exploited. This means that the victim's testimony is often the only effective evidence, which has serious implications for the final outcome of the case. The Prosecution Service has indicated that changes in the victims' testimony were common, due to fear of the traffickers and psychological pressure that they can exercise throughout the proceedings, as well as victims going missing due to mistrust of the police and judicial systems. Public prosecutors generally request the testimony of the possible victim as pre-constituted evidence ...

266. GRETA considers that the Spanish authorities should strengthen their efforts to ensure that crimes related to THB for all types of exploitation are investigated and prosecuted promptly and effectively."

75. The relevant parts of the GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain (Second evaluation round, no. (2018)7, adopted on 23 March 2018 and published on 20 June 2018) read as follows:

"184. [Under the domestic law], when there are doubts about the age of a victim, this person is to be considered a child for the purposes of the provisions of the Act. Medical tests can be made to determine the person's age, such as an X-ray of the left-hand carpus or oral cavity examination and dental X-ray study. GRETA notes that these methods of age assessment do not take into account psychological, cognitive or behavioural factors and therefore are not reliable.

...

Further conclusions

...

- GRETA invites the Spanish authorities to review the age assessment procedures, ensuring that the best interests of the child are effectively protected, and taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child ...;"

...

- GRETA considers that the Spanish authorities should take measures to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by: continuing to improve the knowledge of investigators, prosecutors and judges about the seriousness of THB, the severe impact of exploitation on the victims and the need to respect their human rights ..."

76. The relevant parts of the GRETA Evaluation Report in respect of Spain of 2023 (Third evaluation round, Access to justice and effective remedies for victims of trafficking in human beings, no. (2023)10, published on 12 June 2023) read as follows:

"...Victims of trafficking can claim compensation from the perpetrators during criminal proceedings as civil claimants and/or in a civil court, as well as compensation from the State in the form of "public aid" for victims of violent offences. However, the number of victims who have obtained compensation from the perpetrators remains low and no victim of trafficking has obtained state compensation. ...

While welcoming the reinforced law enforcement and judicial response to human trafficking, GRETA is concerned by the low numbers of investigations, prosecutions and convictions for human trafficking for the purpose of labour exploitation. GRETA urges the Spanish authorities to increase proactive investigations into this type of trafficking and to ensure that trafficking offences are prosecuted and classified as such every time the circumstances of a case allow this ...

....

GRETA also considers that the age assessment procedures should be reviewed, involving a comprehensive assessment of the child's physical and psychological development."

C. Other material referred to by the applicant

77. The applicant referred to a 2006 report entitled "Migration, Human Smuggling and Trafficking from Nigeria to Europe" prepared by Mr. J. Carling, a researcher of the International Peace Research Institute of Oslo, for the International Organisation for Migration (IOM). The relevant parts of the report read as follows:

"... Poverty, crime, corruption and violence have been part of a vicious circle adversely affecting the development of Nigerian society, where violence is in part related to ethnic and religious differences and conflict. ...[R]ings of organized crime are specialized in forging and selling travel documents to Nigerian citizens who themselves may not be aware of existing legal procedures for the issuance of passports and visas. Traffickers offer young women to travel to Europe, usually luring them with promises of good jobs. Although women are increasingly becoming aware that they will have to work in the sex business, for many this often comes as a surprise. Before the journey, the woman and the traffickers agree that she incurs a debt in the order of approximately 40,000 to 100,000 [United States dollars] ... The pact is sealed through religious rituals and is perceived as binding. In Europe, these rituals are often characterized as voodoo ... In Nigeria, international trafficking is mainly but not exclusively concentrated around Edo State with its capital Benin City ...

...

> It is relatively easy to get genuine documents with partially or completely wrong information as long as one is willing to pay. In addition, there is a well-developed industry specialized in altering data in documents already issued ... Nigerian passports are often produced only based on birth certificates, and birth certificates may be issued based on the information provided by the applicants themselves ... For many European countries it as a major problem in the immigration administration that Nigerian documents are so unreliable ... [V]erification [of documents] will often require extensive investigations in Nigeria in form of interviews with relatives, friends and colleagues, and searches in the archives of schools, churches and hospitals."

78. According to the report, Nigerian trafficking in Europe is "built on a pact between the person trafficked and the traffickers" and has a specific organisational form. Many women do not understand the extent of what they are committing themselves to because they are not familiar with European currencies. Once a woman has agreed to go to Europe, she is taken to a shrine where the pact of emigration is confirmed and sealed. The emigration pact is perceived as a strongly binding agreement between the parties. It is sealed not only by the religious rituals, but also by the relation to the local community in Nigeria, and occult threats are understood by various competent authorities across Europe as the main reason driving the women to remain in slave-like prostitution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 4 AND 13 OF THE CONVENTION

79. Referring to the provisional dismissal of the criminal case against C. and U. and the reasons given by the domestic court, the applicant complained under Article 4 of the Convention that the authorities had failed to investigate, prosecute and punish those who had subjected her to human trafficking. She further complained under Article 13 that the failure to investigate her case had deprived her of the only effective remedy available to her, namely a criminal complaint against the perpetrators. In addition, the applicant complained that the authorities failed to take measures to protect her as a victim of human trafficking. She submitted that her case should be seen in the context of the obligation to put in place a legislative and policy framework to deter human trafficking. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court finds it appropriate to examine these complaints under Article 4 of the Convention only. That provision reads as follows:

Article 4

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour."

80. The Court reiterates that the general framework of positive obligations under Article 4 includes: (i) the duty to put in place a legislative and administrative framework to prohibit and punish trafficking; (ii) the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking; and (iii) a procedural obligation to investigate situations of potential trafficking. In general, the first two aspects of the positive obligations can be denoted as substantive, whereas the third aspect designates the States' (positive) procedural obligation (see *S.M. v. Croatia* [GC], no. 60561/14, § 306, 25 June 2020).

A. Admissibility

81. As regards the applicant's complaint that the authorities had failed to take measures to protect her as a victim of human trafficking, as well as her reference, in broad terms, to the State's failure to put in place a legislative and policy framework to deter human trafficking, the Government argued that the complaint was inadmissible because the applicant had failed to exhaust domestic remedies by raising the relevant issues in any domestic proceedings. In particular, she should have brought administrative proceedings to challenge any alleged failure to take operational measures to protect her. In any event, the complaint was manifestly ill-founded.

82. The applicant argued in reply, without further details, that the rule of exhaustion of domestic remedies was to be applied with some degree of flexibility and without excessive formalism.

83. The Court reiterates that it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014). The rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention (ibid., § 70; and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 221, ECHR 2014 (extracts)). Having regard to the scope of the complaints raised by the applicant at domestic level (see, in particular, paragraphs 48 and 51 above), the Court finds that she did not raise in domestic proceedings of any kind the complaints now made before the Court about the authorities' failure to take operational measures to protect her as a victim of human trafficking and to put in place a legislative and policy framework to deter human trafficking. As a result, the authorities of the respondent State did not examine those issues. Accordingly, this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

84. As regards the complaint about the alleged failure to conduct an effective investigation, the Court notes that it is neither manifestly ill-founded

nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

85. The applicant submitted that she had been recognised as a victim of human trafficking both by the police in 2011 and by civil society organisations, including SICAR-Cat. However, once she had filed her criminal complaint and thus brought the matter to the attention of the authorities, they had failed to investigate it of their own motion. The investigation had been protracted and the collection of evidence delayed. With the assistance of SICAR-Cat, she had had to take additional measures, including a complaint to the Ombudsperson, to expedite the proceedings. The delays had adversely impacted her mental health and immigration status. Moreover, the authorities had given predominant weight to her own testimony and the results of the age assessment expert examination. Referring to international material, including the findings of the UN Committee on the Rights of the Child, Council of Europe documents and GRETA findings in respect of Spain (see paragraphs 71-74 above), she argued that the age assessment techniques used in respect of her had been inaccurate and unreliable and should not have been the sole means of determining her age. However, other information concerning her age had never been obtained or had been disregarded. For instance, contrary to the relevant recommendations, her psychological maturity had not been assessed. Moreover, the *Audiencia Provincial* had failed to take into account that, at least since 2009, all the relevant authorities, including the police, social services, medical specialists and NGOs, had considered her to be an adult and treated her as such. In any event, the domestic court's interpretation of the forensic expert's conclusions regarding her age had been arbitrary, unfounded and inconsistent with other circumstances of the case. The case had been dismissed predominantly on the basis of such a narrow and arbitrary interpretation of the age assessment expert report, while the authorities had manifestly failed to take reasonable steps to collect evidence and elucidate the circumstances of the case, including by pursuing obvious lines of inquiry, despite the fact that she had drawn their attention to such obvious shortcomings in the domestic proceedings.

(b) The Government

86. The Government argued that the investigation into the applicant's complaint had complied with the standards of the Convention. It had started promptly and had been independent. As regards the alleged delays (to which

the applicant only referred in her *amparo* appeal), the length of the investigation had been reasonable in view of the lapse of time between the events complained of and the applicant's complaint and the scarce and fragmentary information provided therein. The investigation had been adequate as relevant evidence had been collected. C. and U. had been identified and charged. No plausible line of inquiry had been left unexplored. The applicant had been advised of her rights and could participate in the proceedings; however, her participation had been limited to an appearance before the investigating court at an advanced stage of the investigation, and she had not supplemented her complaint with any evidence. The *Audiencia Provincial*'s decision to provisionally dismiss the case struck a fair balance between a victim's right to bring criminal proceedings against the alleged perpetrators (which did not, however, include a right to obtain the prosecution or conviction of any particular person) and the defence rights of the accused. The assessment made by the public prosecutor and the court's subsequent decisions to dismiss the case had not been arbitrary or manifestly erroneous. The dismissal had not been based solely on the result of the X-ray examination, but on two key elements: the forensic expert's report (which, in turn, had been based on an analysis of the results of various tests and an examination of the applicant) and, most importantly, on the lack of minimum evidence to corroborate her allegations. That last element, taken alone, had justified the dismissal.

87. The Government further pointed to several inconsistencies in the applicant's account of events. Notably, she had provided contradictory information about her age at the time of the events complained of, which was also inconsistent with the age interval referred to by the forensic expert (see paragraph 44 above). Her assertion that she had arrived at C. and U.'s home in 2003 was in contradiction with evidence that the premises had only been occupied since 2004 (see paragraphs 28 and 38 above). Her submissions as to her stay in Arahal until 2005 sat ill with the police records concerning her arrests in Tenerife and Cadiz. Lastly, they argued that the provisional dismissal of the case allowed it to be reopened if the applicant submitted new evidence.

(c) Submissions of the third-party interveners

(i) Group of Experts on Action against Trafficking in Human Beings (GRETA)

88. The intervener referred to its findings made in the evaluation reports in respect of Spain (see paragraphs 74-76 above). GRETA reiterated, notably, that it had invited the Spanish authorities to review the age-assessment procedures to ensure effective protection of the best interest of a child. The intervener submitted that investigations into suspected human trafficking should be proactive, making use of special investigative techniques and financial investigations to collect evidence. If proceedings were built solely

upon the victim's testimony, that put an exorbitant amount of pressure upon the victim, who was often vulnerable and possibly traumatised, which had a negative impact on the effectiveness of the investigation. Owing to the physical and psychological trauma suffered, victims of trafficking could change their statements over time. The age assessment procedure was not to be used to cast doubt on a person's claim that he or she was a victim of human trafficking.

(ii) Advice on Individual Rights in Europe Centre (AIRE Centre)

89. After providing a comprehensive overview of the Court's standards regarding the obligation to conduct an effective investigation, the intervener submitted that where the authorities were made aware of potential victims of human trafficking or conduct that fell within the scope of Article 4 of the Convention, they had to conduct a thorough and effective investigation. Failing to pursue such an investigation or dismissing complaints with limited investigation would amount to significant flaws under the procedural limb of Article 4. The intervener provided a summary of the international and EU law regarding the obligation to conduct effective investigations into trafficking and invited the Court to interpret the relevant obligations in the light of those legal instruments. In particular, the AIRE Centre invited the Court to consider evidence of the systemic shortcomings of the Spanish authorities identified by GRETA (see paragraph 75 above), in so far as the age assessment procedures were concerned. They stressed that effective and comprehensive criminal investigations into trafficking, conducted on the initiative of State authorities, could reduce the likelihood of secondary or repeat victimisation and were particularly important when the victim was a child.

2. The Court's assessment

(a) Whether the circumstances of the present case raise an issue under Article 4 of the Convention

90. It is settled in the Court's case-law that trafficking in human beings (both national and transnational) falls within the scope of Article 4 of the Convention (see *S.M. v. Croatia*, cited above, § 296; *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, § 148, 16 February 2021; and *Zoletic and Others*, no. 20116/12, § 154, 7 October 2021). This is the case, however, only if all three elements of the definition of trafficking set out in Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (also known as the Palermo Protocol) and Article 4 (a) of the Convention on Action against Trafficking in Human Beings (also known as the Anti-Trafficking Convention) – often described as "action", "means" and "purpose", although the presence of "means" is not necessary in the case of a child – are in place (see *S.M. v. Croatia*, cited above, §§ 290 and 296). The question of whether

a situation involves all the elements of trafficking in human beings – and whether Article 4 of the Convention thus applies – is one of fact, to be examined in the light of all the circumstances of the case (see *S.M. v. Croatia*, § 302; *V.C.L. and A.N. v. the United Kingdom*, § 149; and *Zoletic and Others*, § 157, all cited above).

91. The Court notes that as of 9 June 2011, throughout the domestic proceedings and at a later stage (in particular, when providing her with a residence permit for exceptional circumstances, see paragraphs 6, 12 and 54-55 above), the domestic authorities consistently regarded the applicant as a victim of human trafficking, and that the Government did not raise any objection as to the applicability of Article 4 to the case (see, in the same vein, *T.I. and Others v. Greece*, 40311/10, § 108, 18 July 2019, and *L.E. v. Greece*, no. 71545/12, § 58, 21 January 2016).

92. In any event, the Court reiterates that a conclusion as to whether the domestic authorities' procedural obligation arose has to be based on the circumstances prevailing at the time when the relevant allegations were made or when the prima facie evidence of treatment contrary to Article 4 was brought to the authorities' attention and not on a subsequent conclusion reached upon the completion of the investigation or the relevant proceedings (see *S.M. v. Croatia*, cited above, § 325). In the present case, the applicant complained before the domestic authorities that she had been trafficked into Spain and forced into prostitution by C. Her allegations, which, despite some divergent elements, remained consistent throughout the domestic proceedings (and were also coherent with her accounts given to the NGOs assisting her, see paragraphs 32 and 56 above) were that she had been recruited by C., transported to Spain and harboured at C. and U.'s home when she had been a minor for the purpose of sexual exploitation, and that she had been exploited as a prostitute between 2003 and 2007. The applicant's account of the means used by C. when she allegedly recruited the applicant - contact via a relative, the alleged use of a "voodoo" ritual to guarantee payment of the debt and non-exposure of the alleged traffickers to the Spanish police – corresponds to one of the means often used by traffickers to recruit their victims in Nigeria, particularly in Benin City (see paragraphs 24, 69 and 77 above). The applicant clearly and consistently referred in her complaints to C. and U.'s use of coercion and threats against her and her family in Nigeria if she disobeyed, to the constant monitoring of her actions and to C.'s taking of her earnings. According to her, C. and U. made the necessary arrangements for her to provide sexual services by securing accommodation, transportation and other facilities (see paragraphs 7-9, 18, and 39 above; compare *S.M. v. Croatia*, cited above, § 326, and *Krachunova v. Bulgaria*, no. 18269/18, § 153, 28 November 2023). Lastly, the applicant's alleged personal situation between 2003 and 2011 undoubtedly pointed to her having been in a position of extreme vulnerability at the time of the events (see paragraphs 30, 32, and 56 above).

93. As to whether the applicant was aware of the nature of the "work" she was expected to perform in Spain (compare paragraphs 5, 7 and 32 above), the fact that she may have, at least initially, consented to engage in sex work for C.'s benefit is not decisive (see, *mutatis mutandis*, *Chowdury and Others v. Greece,* no. 21884/15, § 96, 30 March 2017). In any event, under the definitions of the Anti-Trafficking Convention, such consent is irrelevant if any of the "means" of trafficking have been used (see *Krachunova*, cited above, § 153).

94. The Court is therefore satisfied that the applicant has made an arguable claim, supported by prima facie evidence, that she was subjected to human trafficking and forced prostitution (see *S.M. v. Croatia*, cited above, §§ 302 and 332).

(b) Compliance with the procedural obligation under Article 4 of the Convention

95. The Court will examine the applicant's complaints in the light of the applicable principles, as summarised in *S.M. v. Croatia* (cited above, §§ 306 and 308-320). In making this assessment, it will examine whether there were significant flaws or shortcomings in the relevant domestic proceedings and decision-making processes. In particular, it will assess whether the applicant's allegations under Article 4 were properly investigated and carefully considered in accordance with the applicable standards of its case-law (ibid., § 334).

96. The Court accepts that the formal inquiry was opened immediately, once the authorities became aware of the existence of circumstances giving rise to a credible suspicion that the applicant was a victim of human trafficking and forced prostitution (see *S.M. v. Croatia*, cited above, § 336). They promptly granted her protected witness status and issued her with a residence permit based on her cooperation with the authorities, as there were reasonable grounds to believe that she was a victim of human trafficking and sexual exploitation (see paragraphs 6, 12 and 54 above).

97. Mindful of its approach that the procedural obligation is a requirement of means and not of result, the Court nonetheless considers that the investigation was tainted by the following unexplained defects.

(i) Failure to act with the requisite diligence at the initial stage of the investigation

98. The Court reiterates that a requirement of promptness and reasonable expedition is implicit in all cases (see *Rantsev v. Cyprus and Russia*, no. 25965/04, § 288, ECHR 2010 (extracts)).

99. First, in the present case, despite the formal opening of the investigation, it took the authorities five months (from 6 June to 7 November 2011) to transfer the case to an investigating court with jurisdiction over the matter. Once the investigation was opened on 7 November 2011 in Marchena (see paragraphs 13-14 above), the investigating court instructed the

Guardia Civil to identify the victim, establish the identity and whereabouts of the alleged perpetrators and identify the R. club's management. However, the case file contains no information on any investigative action taken until at least early 2013 (see also paragraph 15 above for the Ombudsperson's letter to SICAR-Cat in respect of the period before 25 October 2012). Moreover, on 25 January 2013 the investigating court issued exactly the same instructions to the same unit of the *Guardia Civil* as in 2011 (see paragraphs 14 and 16 above). In the absence of any other material, the Court concludes that the authorities remained completely passive and took no effective investigative steps, including the very basic ones listed in the initial order of 7 November 2011, until January 2013, that is, for almost one and a half years from the date of the complaint. The Court also notes that this inaction appears to have had an adverse effect on the applicant's immigration status after 3 October 2011 (the date of expiry of her initial residence permit), as it was not until summer 2012 that the police filed a new request to regularise her situation (see paragraph 55 above). Moreover, the authorities' action between 24 January and 21 April 2013 was limited to questioning the two managers of the R. club and subsequently provisionally dismissing the case for lack of evidence (see paragraphs 16-20 above), even though no traceable attempts to identify the alleged perpetrators had been made in the meantime. Lastly, the Court notes that a further eleven months of inactivity elapsed between the prosecutor's appeal of 20 May 2013 against the above-mentioned decision to dismiss the case and the investigating court's subsequent decision of 21 April 2014 to order additional – and yet very basic - investigative steps, such as identification and questioning of the alleged perpetrators (see paragraphs 21-22 above).

100. The Court acknowledges that the applicant's complaint relates to events which allegedly unfolded at least four years prior to her complaint to the police, which could have complicated the task of identifying the alleged perpetrators and securing evidence. However, the Court is concerned that the authorities appear not to have taken any measures at all to investigate the applicant's case during the first two years of the investigation. Furthermore, it appears that the first meaningful steps to identify the alleged perpetrators were not taken until May and June 2014, that is, almost three years after the date on which the complaint had been lodged.

101. Accordingly, it clearly cannot be said that the authorities acted with the requisite diligence at the initial stage of the investigation (see, *mutatis mutandis*, *L.E. v. Greece*, § 82, and *T.I. and Others v. Greece*, § 160, both cited above).

(ii) Failure to pursue obvious lines of inquiry

102. The Court further reiterates that the authorities must take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case (see *S.M. v. Croatia*, cited above, § 316). As the prosecuting

authorities are better placed than a victim to conduct the investigation, any action or lack of action on the part of the victim cannot justify a lack of action on the part of the prosecuting authorities (ibid., § 336). In the Court's view, the Spanish authorities failed to take several obvious steps to investigate all the relevant aspects of the applicant's criminal complaint, as follows.

103. The Court notes that in her complaint, which she consistently maintained throughout the proceedings, the applicant provided a rather detailed description of the alleged events, including the circumstances of her arrival in Spain and her work as a prostitute under C.'s control in several specific clubs. She also referred to her stays in various regions of Spain and her arrests by the police there. However, there is nothing to suggest that those aspects of the case were investigated thoroughly or at all.

104. As regards the applicant's work in the only club in respect of which any investigative measures were taken, the R. club, the Court notes that the investigators' actions were limited to identifying and questioning its two managers at the time of the alleged events. The Court notes significant discrepancies in the key statements of these two people. For instance, one of them confirmed that R. had been a hostess club at the time of the events, whilst the other denied this (see paragraphs 19 and 31 above). However, it appears that no additional questions were put to either manager and it is unclear what further measures were taken to check their statements against each other or against other testimony, such as, for instance, C.'s statements (see paragraph 25 above). The investigation therefore clearly fell short of resolving that obvious contradiction (see, *mutatis mutandis,* in the context of Article 2, *Gvozdeva v. Russia*, no. 69997/11, § 70, 22 March 2022). There is nothing in the case material to suggest that the investigators ever inquired as to the availability of any police records relating to age checks on women who could have worked in the club during the relevant period (see, for a general reference to such checks, the *Audiencia Provincial*'s decision cited in paragraph 47 above) or any other evidence pertaining to the R. club status between 2003 and 2007. Furthermore, for some unexplained reason, only photographs of U. but not C. were shown to one of the R. club's managers for identification purposes (see paragraph 36 above), even though the applicant had clearly pointed out in her complaint that C. had been well known in the club and that this had been why the management had failed to check her documents (see paragraph 9 above; see also, for C.'s own statement pertaining to her work in the R. club, paragraph 25 above). Therefore, it appears that the persons heard by the investigating court as suspects or witnesses were never asked certain key questions (see, *mutatis mutandis, Velikova v. Bulgaria*, no. 41488/98, § 79, ECHR 2000-VI). It further appears that the investigative court's order to summon and put additional questions to F.S., the second manager of the club (see paragraph 34 above), was never implemented. Thus, the authorities clearly failed to take all reasonable steps to elucidate the circumstances of the applicant's alleged work in the R. club.

105. As regards the applicant's allegations regarding other specific "clubs" she had worked in between 2003 and 2007 (namely E. and B., see paragraph 9 above), it appears that this aspect of the complaint was not followed up at all. The investigators never attempted to identify or question relevant witnesses. Neither C. nor U. were asked about those clubs at any stage of the proceedings, nor were any witnesses (see paragraph 38 above). Likewise, no action appears to have been taken to explore whether there was a traceable record of the applicant's having deposited money into C.'s bank account (see, for the relevant parts of her complaints, paragraphs 9 and 39 above).

106. Further, turning to the applicant's account concerning the events in Puerto del Rosario and Cadiz (see paragraph 9 above), the Court notes that there were police records of her arrests on two occasions in 2005 in Puerto del Rosario and Cadiz for breaches of immigration law which, according to the UCRIF report, could corroborate her account that C. had provided her with a new passport to travel from the Canary Islands to the Spanish mainland (see paragraph 29 above). However, there is nothing to suggest that these records were admitted to the investigation file or that they were checked against the applicant's submissions, or that the investigative authorities otherwise attempted to address the circumstances of the applicant's alleged travels to and from the Canary Islands in any detail.

107. Lastly, the Court reiterates that, in addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories (see *Rantsev*, cited above, § 289). As late as 2015 the police reported that there was no record of the applicant's entry into Spain, as she must have crossed the border in France, and the border checks had to be conducted in that country (see paragraph 29 above). However, it appears that the Spanish authorities at no point took any steps to obtain the relevant information from their French counterparts, nor did they refer to any circumstance which would have prevented them from making the relevant requests to the French authorities.

108. Accordingly, the authorities did not effectively investigate all the relevant circumstances of the case. In the Court's view, they failed to follow obvious lines of inquiry in order to gather the available evidence, in accordance with their procedural obligation under Article 4 (see *S.M. v. Croatia*, cited above, § 343).

(iii) Failure to give relevant and sufficient reasons for the decision to provisionally discontinue the proceedings

109. Bearing in mind its above findings, the Court will now turn to the reasons underlying the *Audiencia Provincial*'s decisions to provisionally dismiss the case.

110. The Court reiterates that, although it has recognised that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, it has to apply a "particularly thorough scrutiny" even if certain domestic proceedings and investigations have already taken place (see *S.M. v. Croatia*, cited above, § 317, with further references).

111. In so far as the *Audiencia Provincial* relied on the age-assessment report prepared in respect of the applicant, the Court is mindful of the applicant's concerns as regards the alleged unreliability of the assessment techniques used to determine her age and the deficiencies of the relevant procedures from the standpoint of European and international legal standards (see paragraphs 70-73 above). The Court considers, however, that, in the present case, it is not its task to decide whether the relevant national, European and international legal standards were met in so far as the age-assessment techniques used to assess the applicant's age were concerned (see, *mutatis mutandis*, in the context of the assessment under Article 8, *Darboe and Camara*, cited above, § 141). Rather, in line with its case-law under Article 4 of the Convention, the Court will have to establish whether there were significant shortcomings in the proceedings and the relevant decision-making processes, and whether the conclusions of the investigation were based on a thorough, objective and impartial analysis of all relevant elements (see *S.M. v. Croatia*, cited above, § 316), of which the age assessment is one.

112. Notwithstanding the accuracy of the forensic age assessment, the Court is concerned with the manner in which the *Audiencia Provincial* assessed the evidence collected in the case, including, first and foremost, the forensic expert's conclusions.

113. The Court notes at the outset that the *Audiencia Provincial* based its findings on the forensic age assessment report of 24 November 2015 (see paragraphs 47 and 50 above) without mentioning the second (supplementary) one, drawn up pursuant to the investigating court's order (see paragraph 43 above). Be that as it may, the Court notes that both reports contained the same conclusion, namely that the applicant was *at least* 18 years old at the time of the relevant forensic examinations (see paragraphs 41 and 44 above), thus making it clear that they determined solely the applicant's minimum age and not her exact age. However, despite this, the *Audiencia Provincial* on two occasions concluded that the applicant "[had been] 6 years old in 2003" (see paragraphs 47 and 50 above). No reasons were provided in either of the relevant court decisions for interpreting the expert's conclusions as referring

to the applicant's exact age, and the *Audiencia Provincial* did not deal with the applicant's argument to that effect raised in her statement of appeal (see paragraph 48 above).

114. Moreover, as rightly pointed out by the applicant at domestic level (see paragraphs 48 and 51 above), the assessment of her age by the *Audiencia Provincial* – based on unexplained interpretation not supported by the text of the expert's reports referred to above – was at no point checked against several other items of evidence admitted to the case file and clearly suggesting that the applicant had been perceived as an adult by various authorities and other people in Spain long before the age assessment took place. Indeed, there is nothing to suggest that she was perceived as a child by the police in 2005 or 2009 when she was arrested for breaches of immigration law (see paragraph 29 above) or when deportation orders were issued in respect of her in 2009 and 2010 (see paragraph 53 above); by doctors from the hospital in Zaragoza where she received medical treatment in 2010 and 2011 (see paragraph 30 above), by the immigration police unit that dealt with her initial complaint (see paragraph 7 above) or by members of the Apip-Acam Foundation who provided a detailed social report on her, which was requested and admitted by the investigating court (see paragraph 32 above). Further, the *Audiencia Provincial'*s interpretation of the applicant's age is clearly inconsistent with the fact that there were no records of any attempt to refer her to the relevant child protection authorities at the time of her interactions with the police between 2005 and 2010.

115. Furthermore, it is striking that the *Audiencia Provincial* limited the scope of analysis of the case, which involved serious and detailed allegations of human trafficking, to assessing the contradictions between the applicant's account of events – more precisely, a fraction of it concerning her alleged age in 2003 – and the domestic court's own unexplained interpretation of the age assessment report. The Court notes in that regard the Government's submission that the dismissal decision was based not only on the result of the age assessment but also on the lack of minimum evidence to corroborate the applicant's allegations. That argument was indeed raised in the prosecutor's objection to the applicant's appeal and also constituted a key argument of the co-accused (see paragraph 49 above). However, no assessment of that argument can be found in the *Audiencia Provincial'*s decisions. Similarly, as to various purported inconsistencies in the applicant's account of the events highlighted by the Government in their observations (see paragraph 87 above), the Court notes that the domestic court never referred to them. Overall, contrary to the Government's submissions, the *Audiencia Provincial'*s findings were not accompanied by any analysis of other evidence than the forensic report, let alone of relevance and sufficiency of that evidence.

116. Instead, in a decision of 10 January 2017 the *Audiencia Provincial* dismissed the case solely with reference to the applicant's inability, at the age

of six, to travel to Spain on an "adult" passport and, moreover, to work as a prostitute for the sole reason that "the police monitor[ed] the age of prostitutes" (see paragraph 47 above). However, as shown in paragraph 104 above, the case file contains no material pertaining to such monitoring in respect of any of the clubs referred to by the applicant in her complaint (see further, for the relevant considerations regarding the low rate of identification of trafficking victims, including through police checks, the 2012 report by the Ombudsperson, cited in paragraph 69 above, and GRETA material cited in paragraph 74 above). Similarly, in the decision of 14 June 2017, the *Audiencia Provincial* merely stated that the applicant's travelling to Spain with her parents was the only possible scenario for her entry into the destination country in 2003 (see paragraph 50 above), in the absence of a police record of her entry into the national territory and, more generally, despite the lack of border checks between Spain and France to which the police referred in the report of 10 April 2015. The Court further notes that the applicant claimed to have travelled from Nigeria to Spain accompanied by an adult (see paragraphs 9 and 29 above; see further, in so far as relevant, the police observations summarised in paragraph 24 above and included in the domestic investigation file; the Ombudsperson's report cited in paragraph 69 above, and paragraphs 73-74 above, for the UN CRC and GRETA material).

117. In sum, the Court considers that the *Audiencia Provincial*'s decisions to provisionally dismiss the case – each limited to strikingly brief, one-paragraph conclusions – were not based on thorough and objective analysis of all relevant elements, but rather on unexplained assumptions, and were not sufficiently reasoned.

(iv) Conclusion

118. In view of the above considerations, the Court finds that the manner in which the criminal-law mechanisms were implemented in the instant case was defective to the point of constituting a violation of the respondent State's procedural obligation under Article 4 of the Convention (see *S.M. v. Croatia*, cited above, § 346). By failing to act promptly and to pursue several obvious lines of inquiry, and by provisionally dismissing the case in 2017 in a superficial manner, the domestic authorities displayed blatant disregard for the obligation to investigate serious allegations of human trafficking, an offence with devastating consequences for its victims. The fact that the case was discontinued provisionally, and not by a final dismissal order, does not affect the Court's conclusion.

119. There has therefore been a violation of Article 4 of the Convention in its procedural limb.

II. OTHER COMPLAINTS UNDER THE CONVENTION

120. The applicant complained under Article 6 of the Convention that the dismissal of the criminal case had deprived her of the right to claim damages as a victim of human trafficking. She referred to unspecified "procedural hurdles" and submitted, citing, in particular, GRETA material (see paragraph 76 above) that only a low number of victims had been able to obtain compensation from perpetrators of such offences, as civil claimants in criminal proceedings in Spain. She further argued in her observations that she would be unable to benefit from the State compensation system (see paragraph 68 above).

121. The Government submitted that the complaint was inadmissible for non-exhaustion and was manifestly ill-founded. The applicant had never attempted to claim compensation, even though she had been informed of her right to do so. She had been able, under domestic law (see paragraphs 60-63 above) and, in particular, under Article 116 of the Code of Criminal Procedure (see paragraph 63 above), to bring such an action even after the provisional dismissal of her case, as that decision would not have had res judicata effect on any subsequent civil proceedings. They cited domestic case-law in support of their position.

122. The Court notes that, despite being informed of the possibility to claim damages (see paragraph 6 above), and her stated intention to do so (see paragraph 18 above), the applicant never attempted to lodge a civil action for compensation of damage under Article 116 of the Code of Criminal Procedure and otherwise did not substantiate why such action, if lodged, would be necessarily destined to fail. In these circumstances, her complaint that she was denied access to court for a determination of her civil rights is unsubstantiated (see, in so far as relevant, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 200-01, 25 June 2019), and there is no need to deal with the Government's non-exhaustion objection. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

125. The Government submitted that no award should be made under that head and that there had been no violation of the applicant's rights. In any event, they disputed the claim as excessive and unsubstantiated.

126. Having regard to the procedural nature of the violation found, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and dismisses the remainder of the claim under this head.

B. Costs and expenses

127. The applicant also claimed 26,455 pounds sterling (GBP) for the costs and expenses incurred before the Court. She submitted a conditional fee agreement and a detailed breakdown of the work done by her representatives and two other lawyers of Duncan Lewis Solicitors.

128. The Government objected, pointing to a lack of clarity as to the final amount claimed and submitting that the applicant had failed to show that she had made any payment linked to the alleged violations.

129. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. A representative's fees are actually incurred if the applicant has paid or is liable to pay them. The fees payable to a representative under a conditional fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction. If the applicant does not submit documents showing that he or she has paid or is under a legal obligation to pay the fees charged or the expenses incurred, the claims should be dismissed (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-72, 28 November 2017). Contingency (no-win no-fee) agreements – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred but also to whether they have been reasonably incurred (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI). Accordingly, the Court must examine the other information provided by the applicant in support of the claim (see *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 234, 10 September 2019, and *Mukhin v. Russia*, no. 3642/10, § 195, 14 December 2021). Costs and expenses are only recoverable to the extent that they relate to the violation found (see *Denisov v. Ukraine* [GC], no. 76639/11, § 146., 25 September 2018).

130. The Court notes, in particular, that the applicant's complaints were only partially successful and that her pleadings under Articles 3, 6 and 8 of the Convention and a part of her complaints under Article 4 of the Convention concerned an inadmissible part of the application. In such circumstances, it may be appropriate to reduce the award in respect of costs and expenses (see

Denisov, cited above, and *Bykov v. Russia* [GC], no. 4378/02, § 114, 10 March 2009). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 12,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant, and to dismiss the remainder of the claim under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under the procedural limb of Article 4 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 4 of the Convention in its procedural limb;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President