

CC decision 1526/2017

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4 March 2021

# Trafficking in Human Beings

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- It concerns the violation of Article 26 of the Constitution (prohibition of slavery, servitude, and forced labour) and Article 32, para. 1 of the Constitution (trial within a reasonable time)
- Child victim of THB exposed to severe abuse
- Issues before the CC:
  - - the length of the trial as many hearings were postponed
  - - direct examination of the victim and her secondary victimization ( the status of particularly sensitive witness was not granted
  - - reclassification of charge from THB to mediation in prostitution
  - - lack of adequate protection and support



# The CC decision

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Decision is anonymouss

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THB is included in Article 26 of the Constitution

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Positive obligations on the part of the State in relation to THB

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The court insisted on a procedural aspect of the case - the obligation to investigate and prosecute for the criminal offense of THB

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The decision points to the misapplication of the principle of opportunity

# Sources on which the CC relied

- the national legal framework

- the Group of Experts on Combating Trafficking in Human Beings (GRETA)'s findings for Serbia

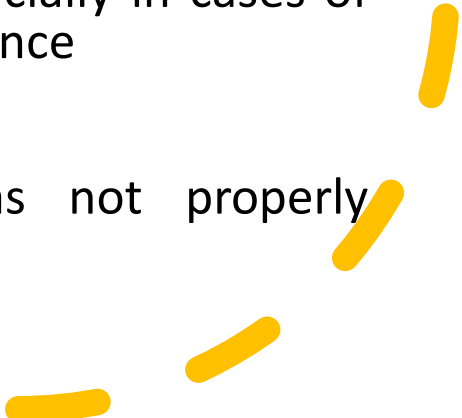
- standards and principles that derive from the relevant jurisprudence of the ECtHR

- other relevant sources

## Critics (1))?

- the court found that the trial within a reasonable time was violated, but the CC itself needed four years to deliver the decision (question of urgency and prioritization)
- the CC insisted on the procedural aspect of the THB, while the substantive part was neglected
- substantive aspect is perceived only as a matter of the legislative framework, and not how it is understood and applied ( (reclassification)) – the nature of the act
- the use of the principle of opportunity in cases that concern gender-based violence (discretionary power)

## Critics (2)?

- the CC did not take into account the gender perspective of human trafficking, which is particularly underlined in CEDAW general comments, and OHCHR thematic reports
  - particular importance need to be given to sexual exploitation and its effects and its distinction from prostitution
  - Some aspects of the GRETA report were omitted in the decision (formalistic approach in invoking international sources)
  - the court should better articulate the importance of proportionate and dissuasive sanctions, especially in cases of gender discrimination and gender-based violence
  - the issue of secondary victimization was not properly underlined
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# CEDAW General comment no. 38 (2020)

While trafficking is defined as a criminal offence in international law, States parties' primary obligation is to address trafficking in a way that respects, protects and fulfils the human rights of persons, particularly of marginalized groups

**Socio-economic status** - Trafficking in women and girls is rooted in sex and gender-based discrimination, gender-based structural inequality and the feminization of poverty. Significantly, women and girls most vulnerable to being trafficked belong to marginalized groups whose life experience is marked by serious rights deprivation

**Root causes** of trafficking in women and girls - Identifying, addressing and eliminating the root causes are key to States parties' obligations to prevent trafficking and sexual exploitation in women and girls: (a) systemic gender-based discrimination creating the economic and social injustice experienced disproportionately by women and girls; and, (d) the demand that fosters exploitation and leads to trafficking

Thank you :)

