EUROPEAN COURT OF HUMAN RIGHTS

Application No. 21884/15

BETWEEN:

Chowdury and Others

Applicants

-and-

Greece

Respondent

SUBMISSIONS FOR THE INTERVENORS

The AIRE Centre (Advice for Individual Rights in Europe)[1] *and Platform for International Cooperation on Undocumented Migrants (PICUM)*

This intervention is submitted on behalf of the AIRE Centre and PICUM. The intervention will confine itself to those issues which were set out in our letter of 9 November 2015 requesting permission to intervene. Other intervenors will address the elements of this case which relate primarily to human trafficking so our intervention does not focus on this aspect of the case. Instead, we address six discrete issues. For convenience, we have taken issues (ii) and (iii) and dealt with them together.

(i) What are the elements that are essential to be present in order for labour conditions (a) to fall within the scope of Art 4(2) and (b) to violate that provision?

1. Article 4(2) ECHR states "no one shall be required to perform forced or compulsory labour", that is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[2] (Annex 1)

2. "Forced or compulsory labour" thus refers to work "exacted … under the menace of any penalty."[3] "Penalty" in this sense "may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as **threats to denounce victims to the police or immigration authorities when their employment status is illegal.**"[4] In *CN v. France*, the Court concluded that the "penalty" was being sent back to Burundi and the "menace" was the **threat** of being sent back.[5]

3. In this context, control is an implicit and crucial element of acts contrary to Article 4 ECHR. "Control" is not defined in Article 4. Control is directly linked to the exploitation of the vulnerable situation of the victim and is particularly relevant in situations involving trafficking to which we briefly refer. The Council of Europe Convention on Trafficking makes this clear in Article 4(a) and (b) (Contrary to popular perception, trafficking is not confined to the recruitment of victims from abroad).

   (*a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

   (b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

4. The European Union Directive 2011/36/EU on Trafficking (see section 37 below) defines in Article 2(2) a "position of vulnerability" as being a situation where "the person

concerned has no real or acceptable alternative but to submit to the abuse involved." (Annex 2)

5. The Court has regard to all the circumstances of the case and the underlying objectives of Article 4 when deciding whether a service is "forced or compulsory labour".[6] The proportionality of the burden imposed will also be taken into account.[7]

6. For work to constitute forced labour,[8] the "physical or mental constraint" must render the work involuntary, which is not the case under a normal contract, which has been **freely** negotiated. Work exacted from an individual under the menace of a penalty is a necessary, but not sufficient, element of a breach of Article 4, which also requires an assessment of the level of control of the employer over the victim, the nature of the menace and the severity of the penalty, all of which affect the freedom of choice of the victim. The International Labour Organisation (ILO) has provided guidance on what factors indicate that control is being exercised over an individual in order to compel them to carry out the forced labour. Such factors include violence, **restriction of movement,** debt bondage, **withholding of wages**, retention of passports and **threat of denunciation to authorities**.[9] (Annex 3)

(ii) and (iii) In particular, the degree of restriction on liberty or on freedom of movement or interference with personal autonomy and personal dignity that is required in order to bring treatment within the scope of Article 4 (For convenience, the intervenors are treating these two points together as they flow one from the other).

7. Restrictions on liberty and freedom of movement should be examined when considering "physical and mental constraint" for the purposes of Article 4(2) ECHR. Physical or mental constraint is one of the essential elements of violations of Article 4(2) ECHR.[10]

8. Deprivation of liberty is governed by Article 5 ECHR. The case of *Riera Blume v. Spain* paragraph 35 makes clear that the ***acquiescence*** of the authorities in deprivation of liberty effected by private individuals can engage the responsibility of the state. Restrictions on freedom of movement are governed by Article 2 of Protocol 4 (A2P4). A2P4 applies, in principle, only to those who are "lawfully" within the territory of a state. As far as the intervenors are aware, there does not appear to be any comparable case law to *Riera Blume* on restriction of movement by private actors and the case law on this provision concerns state actors restricting liberty or movement. The intervenors suggest that the Court should adopt the same approach to A2P4 – in relation to restrictions on freedom of movement by private actors, serious enough to approach deprivations of liberty, as the European Committee on Social Rights (ECSR) has adopted to the exclusion of "unlawfully present foreigners" from measures relating to human dignity under the European Social Charter (ESC). Alternatively, they suggest that such restrictions amount to serious interferences with the right to personal autonomy guaranteed under the right to respect for private life rubric of Article 8 ECHR. As a precedent for such an approach the intervenors invite the Court to recall that in *Demir and Baykara v. Turkey*,[11] the Court

interpreted Article 11 ECHR in light of certain provisions of the European Social Charter not ratified by Turkey. This was because those provisions of the Social Charter informed the understanding of the content of Article 11 ECHR. The Convention is a holistic instrument and must be interpreted as a whole. Although Article 2(1) of Protocol 4 is a *lex specialis* for those who are lawfully on the territory, it is a manifestation of the principle of personal autonomy running through the Convention and enshrined in the private life rubric of Article 8 ECHR. Restrictions on freedom of movement must be consonant with personal autonomy and dignity, recognised in the private life rubric of Article 8 ECHR, irrespective of immigration status. Article 4(2) ECHR should accordingly be interpreted in light of the principles of personal autonomy and dignity, which require a high degree of freedom of movement. Where restrictions of freedom of movement are component elements of violations of Article 4 – a non-derogable right – it would be unconscionable to restrict the benefit of A2P4 to those lawfully resident (see para 19 below). This approach would reflect the Court's position in *Rantsev v. Cyprus and Russia*, in which the Court found that where the state was aware, or ought to have been aware of circumstances giving rise to a credible suspicion that identified individuals were at risk of being trafficked or exploited as a consequence (*inter alia*) of the obvious restrictions placed on their freedom of movement, the state was required to take operational measures to remedy the situation.

9. Deprivation of (and restrictions on) liberty are common to both slavery and forced or compulsory labour. However, a higher degree of restriction of liberty applies to slavery than to forced or compulsory labour. Article 4(1) (prohibition of slavery) is relevant to the whole of Article 4 in terms of restrictions of liberty. The Court has noted that slavery is an "aggravated" form of forced or compulsory labour.[12] The distinguishing feature between the two is that in the context of slavery, the victim regards the situation as permanent.[13] Denial of liberty is common to both slavery and forced or compulsory labour. The Court views servitude as "linked with the concept of slavery"[14] and as a "particularly serious form of denial of liberty."[15] Servitude means "an obligation to provide one's services that is imposed by the use of coercion."[16] As slavery is an "aggravated" form of forced or compulsory labour, and as servitude, linked to slavery, is a "particularly serious", or "aggravated", form of denial of liberty, there will be a correspondingly less severe form of denial of liberty which is linked to forced or compulsory labour. In other words, forced or compulsory labour may involve less severe forms of deprivation of or restriction of liberty than that constituting an element of slavery. This less severe restriction of liberty will be sufficient to bring a treatment within the scope of Article 4 ECHR.

10. The degree of restriction of liberty necessary and sufficient to constitute this less severe form of restriction of liberty should be seen as the imposition of some degree of mental and physical constraint, sufficient to deny the victim a free choice as to whether or not to carry out the labour. The lack of choice of the victim was a decisive factor in the Court's decision in *Siliadin v. France*:

"*She was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police. Indeed, Mr and Mrs B. nurtured that fear and led her to believe that her status would be regularised. … As to whether she performed this work of her own free will, it is clear from the facts of the case that it cannot seriously be maintained that she did. On the contrary, it is evident that she was not given any choice*."[17]

"127. In addition, the applicant, who was afraid of being arrested by the police, was not in any event permitted to leave the house, except to take the children to their classes and various activities. Thus, she had no freedom of movement and no free time.[18]

11. This led the Court to decide that the Applicant in that case was subjected to forced and compulsory labour within the scope of Article 4 ECHR.

(iv) How must these provisions be interpreted so as to avoid violations of Arts 17 and 18 ECHR.

12. The intervenors are conscious that when considering the approach that should be taken to Article 4, some aspects of the present case do not appear to fall neatly within some of the other relevant provisions of the Convention – for example A2P4. They invite the Court to consider in the context of Article 17 that to deny the Applicants the benefit of that provision and of Article 4 itself would imply that groups of persons – such as employers in arguable cases of forced labour – could engage with impunity in activities which were aimed at the destruction of the rights and freedoms of the Convention and in particular the all-pervading right to dignity and respect for personal autonomy enshrined in Articles 3, 4, 5, and 8 and A2P4.

13. With regard to Article 18, the case law of the Court has primarily been directed to politically or commercially motivated prosecutions (e.g. *Gusinsky v. Russia*, *Lutsenko v. Ukraine*), not to a failure to prosecute effectively or to acquittals. The intervenors invite the Court to be alert to the risk that facilitating a restrictive interpretation of the scope of Article 4 will amount to condoning the failure by the state to adopt the necessary strong preventive measures to stop forced labour and/or trafficking or to provide effective remedies for violations which have occurred. This will permit abusive employers to act with impunity. This will also render the measures adopted at European level to combat trafficking and forced labour theoretical and illusory rather than practical and effective.

(v) To what extent can the provisions of the European Social Charter and the Revised European Social Charter (and the decisions of the CSR) be invoked under Art 53 of the ECHR in cases involving Art 4 ECHR.

14. The intervenors submit that the Court, in interpreting ECHR provisions that are coterminous and complementary to provisions in the European Social Charter (ESC) and

the Revised European Social Charter, should take note of the European Committee on Social Rights' (ECSR) jurisprudence concerning the application of fundamental social rights enshrined in the ESC to undocumented migrants.

15. Under Article 53 ECHR, the ESC, as interpreted through ECSR jurisprudence, is relevant to the present case in two ways. First, the rule of law is a fundamental tenet of Convention case-law and it is for this Court to consider the respondent Government's obligations under the applicable provisions of the ESC *acquis* (as interpreted and construed by the ECSR) when assessing whether a Contracting Party's actions comply with both the Convention and rule of law principles. Second, the Court will wish to take into account the ECSR's jurisprudence highlighting that fundamental social rights enshrined in the Charter extend to migrants irrespective of their residence status, with a view to "*give life and meaning to fundamental social rights*".[19]

16. Being a complement to the ECHR in the field of economic and social rights, the ESC and the Revised ESC lay down standards governing fundamental rights in working life, as well as social protection and the protection of particularly vulnerable groups, such as migrant workers and their families.

17. In relation to working conditions, the Court will note that in the complaint against Greece to the ECSR made by the Marangopoulos Foundation (Complaint 30/2005) the Committee found:

> *"228. …compliance with the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (International Commission of Jurists v. Portugal, decision cited above, §33). The enforcement of health and safety regulations required by Article 3§2 is therefore essential if the right embodied in Article 3 is to be effective.*
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> *229. States that have ratified the Charter have undertaken, under Article 20§5, to "maintain a system of labour inspection appropriate to national conditions". The Committee considers that states have a measure of discretion regarding not only how they organise their inspection services but also what resources they allocate to them. However, since such services are the main safeguard of health and safety in the workplace, "there must be a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Article 3" (Conclusions XIV-2, Belgium, p. 127) and that the risk of accidents is reduced to a minimum. The Committee stresses that this limits states' discretion and that the Charter is violated when the staffing of the inspection services and the number of visits carried out is manifestly inadequate for the number of employees concerned.*
> *(…)*
>
> *231. The Committee considers that in the areas such as the right to safety and health at work, which are so intimately linked with the physical integrity of individuals, the*

state has a duty to provide precise and plausible explanations and information on developments in the number of occupational accidents and on measures taken to ensure the enforcement of regulations and hence to prevent accidents. In the present case, the Committee considers that Greece has failed to honour its obligation to effectively monitor the enforcement of regulations on health and safety at work."

18. States are under particular obligations in cases which raise evidence of the occurrence of slavery and forced labour, contrary to Article 4 ECHR but also covered by Article 1(2) of the 1961 Charter and Revised Charter, under which the Contracting Parties undertake "*to protect effectively the right of the worker to earn his living in an occupation freely entered upon*".[20] The interveners further highlight that, Article 2 of the ESC – the right to fair and just working conditions, requires workers' effective protection against violations.

19. Although the Appendix to the Charter provides that that the rights should be applied to foreigners "*only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*", ECSR jurisprudence has gradually expanded the scope of these provisions, asserting their applicability, in specific circumstances, irrespective of residence status. As far as the personal scope of application of the ESC and Revised ESC, many of the rights guaranteed therein apply to migrant workers irrespective of nationality or residence status.[21] In this sense, it is to be noted that, in particular, the ECSR has issued key decisions on the social rights of undocumented migrant children and found that certain rights are so linked to human dignity that it would be contrary to the ESC and Revised ESC to deny these rights on the grounds of residence status.[22]

20. When determining the object and purpose of the ESC and Revised ESC in the case of *International Federation for Human Rights (FIDH) v. France*, the ECSR took account of the fact that the Charter is a living human rights instrument dedicated to the values of dignity, autonomy, equality and solidarity, and closely complements the European Convention on Human Rights. The ECSR further highlighted that the Charter must be interpreted so as to "*give life and meaning to fundamental social rights*"[23] and that restrictions on rights must therefore be read restrictively.

21. Although the application of the Charter to undocumented migrants may not be the norm, the ECSR considered that "*excluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health) and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and of lawfully resident foreigners*".[24] The ECSR further confirmed its line of argument, establishing that "*when human dignity is at stake, the restriction of the personal scope included into the Appendix of the Charter should not be read in such a way as to deprive foreigners within the category of*

unlawfully present migrants of the protection of their most basic rights enshrined in the Charter, nor impair their fundamental rights".[25]

22. The Court will be aware that human dignity is a right enshrined in the Greek Constitution. Article 2 (1) of the Greek Constitution states that "*[R]espect and protection of the value of the human being constitute the primary obligations of the State*". [26] The Greek Constitution also guarantees in Article 2(5) that "*[A]ll persons living within the Greek territory shall enjoy full protection of their life, honour and liberty, irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law*".[27]

23. In light of the violation of the pre-eminent right to human dignity that is engaged in relation to incidents of forced labour and the non-derogable nature of that right, the interveners submit that, in line with ECSR jurisprudence, the scope of the protection offered by the Charter to undocumented migrants must encompass the fundamental social rights enshrined in the Charter, including protection against slavery and forced labour Art 1(2) ESC and Art 4 ECHR.

(vi) To what extent are the EU acquis on Health and Safety at work and in particular the EU working time Directive relevant under Art 53 ECHR to an assessment of whether Art 4 ECHR is engaged.

24. This section of the intervention will consider the relevance of the applicable provisions of EU law in relation to fair and just working conditions.

25. The intervenors are aware that, whilst Article 4 ECHR prohibits forced labour, there is no specific provision of the ECHR entitling people to fair and just working conditions. However, since its inception, the EU has provided for social, as well as economic rights. The intervenors particularly wish to draw the attention of the Court to these positive obligations under EU law in the light of the approach taken by the Court when it was considering the lack of provision of reception conditions for asylum seekers in Greece. In *M.S.S. v. Belgium and Greece*, the Grand Chamber noted (at para 249)[28]:

*"249. (...) Article 3 cannot be interpreted as obliging Contracting Parties to provide everyone within their jurisdiction with a home (*Chapman*). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (*Muslim v Turkey *no. 53566/99). The Court distinguishes the present case from* Muslim *in holding that now there is a positive obligation to provide accommodation and decent material conditions to impoverished asylum seekers under EU Law – Directive 2003/9 the 'Reception Directive'."*

26. The intervenors invite the Court to note the positive obligation under EU law for states to provide the fair and just working conditions mandated in EU law.

27. As the Court is well aware, **the EU Charter of Fundamental Rights** (EUCFR) brought together in one instrument the rights of the Council of Europe's ECHR and of the Council of Europe's ESC and RSC, as well as the provisions of the Community Charter of the Fundamental Social Rights of Workers (1989). As long ago as 2007, the ECJ (now the CJEU) held in the case *ITWF v. Viking* (C-438/05, 2007) (at para 78):

"Article 2 EC states that the Community is to have as its task, inter alia, the promotion of 'a harmonious, balanced and sustainable development of economic activities and 'a high level of employment and of social protection'." [29]
para 79: *"Since the Community has thus not only an economic but also a social purpose, the rights under the provisions of the Treaty on the free movement of goods, persons, services and capital must be balanced against the objectives pursued by social policy, which include, as is clear from the first paragraph of Article 136 EC, inter alia, improved living and working conditions, so as to make possible their harmonisation while improvement is being maintained, proper social protection and dialogue between management and labour."* [30]

28. Whilst the provisions of the Council of Europe's ESC and the RSC can apply to the determination of the content of ECHR rights (through Article 53 ECHR - see *mutatis mutandis Demir and Baykara v. Turkey*, already cited), the provisions of the EUCFR are, discretely, legally binding on all EU Member States in any circumstances in which the Charter applies.

29. The EUCFR became legally binding, justiciable and assumed equal status with the EU Treaties themselves as a consequence of Article 6(1) of the Lisbon Treaty. It applies in all circumstances which fall within the scope of EU law.[31] Articles 151, 153 and 156 of the TEU bring working conditions for everyone working anywhere in the EU within the scope of EU law. Since 1989, the Framework Directive (Directive 89/391) (and its 'daughter directives') has provided the necessary secondary legislation. Whilst it has not directly considered whether the working *conditions* requirements apply to those whose presence on the territory is not lawful, the CJEU has recently held in the case of *Tümer* (case C-311/13) that other EU provisions for social protection in the workplace apply irrespective of the individual's residence status and/or whether they are working in the Member State.[32]

30. In *Tümer*, the AG noted in his opinion (Annex 4) at para 52:

"The exclusion of workers who are third-country nationals from protective measures applicable to employees who are nationals of a Member State of the European Union sits ill with the purposes of the European Union's social policy as set out in the first paragraph of Article 136 EC, not least because such exclusion could encourage the practice of recruiting foreign labour in order to reduce wage costs. In its judgment in Germany and Others v. Commission, *(281/85, 283/85 to 285/85 and 287/85, EU:C:1987:351), the Court drew attention to the close interrelationship between the*

European Union's social policy and the policy that may be pursued with regard to workers from third countries. It is in the light of that fact that the scope of measures adopted by the European Union in the social field falls to be construed."[33]

31. The CJEU in its judgment in the same case (Annex 5) held at para 49:

"… *Directive 80/987 must be interpreted as precluding national legislation on the protection of employees…, under which a third-country national who is not legally resident in the Member State concerned is not to be regarded as an employee with the right to an insolvency benefit —…, even though that third-country national is recognised under the civil law of the Member State as having the status of an 'employee' with an entitlement to pay which could be the subject of an action against his employer before the national courts."*[34]

32. Several articles of the EUCFR are relevant to this intervention. The key provisions of Title IV's Article 31 (the right to fair and just working conditions) must be read together with the provisions of Title I (Dignity) and in particular with:
    (i) the right to dignity itself found in Article 1 and
    (ii) the right to physical and mental integrity (Article 3) and
    (iii) in extreme cases, the prohibition on torture and inhuman and degrading treatment (Article 4).

    These latter provisions collectively broadly correspond to Article 8 ECHR and, in similarly extreme cases, to Article 3 ECHR. They must also be read in conjunction with Article 35 of the Charter, the right to health care. All employers are required to pay social security contributions in respect of those who work for them, and
    (iv) Article 5(2), which corresponds to Article 4 ECHR.

33. Article 31 EUCFR (the *lex specialis*) states (Annex 6):
    (1) Every worker has the right to working conditions, which respect his or her health, safety and dignity.
    (2) Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

34. The Explanations to the EUCFR[35] make clear that the twin paragraphs of Article 31 are based on, in the case of Art 31(1), Directive 89/391, Art 3 ESC, point 19 of the Community Charter on the Rights of Workers and Art 26 of the RSC. They also note that the expression "working conditions" is to be understood in the sense of Art 156 of the TFEU (Annex 7). Article 26 of the RSC requires states to promote awareness, information and prevention of *inter alia* negative and offensive actions in the workplace. The RSC case law makes clear that Article 26 of the RSC requires states to provide **effective legal protection** through access to an independent body to adjudicate complaints and to apply a reverse burden of proof and adequate remedies. Importantly – protection is assured from victimisation for enforcing legal rights.

35. In the case of Article 31 para 2, the provisions are based on Directive 2003/88 (the Working Time Directive) (Annex 8), Article 2 of the ESC (Annex 9) and point 8 of the Community Charter on the Rights of Workers (Annex 10). The Working Time Directive provides – *inter alia* for minimum rest periods, rest breaks during working days longer than 6 hours and an uninterrupted 24-hour period of rest every seven-day period.

36. This section of the intervention concludes by mentioning briefly the EU Anti-Trafficking Directive (Directive 2011/36) to which reference has already been made above. The Directive had to be transposed into national law by 6th April 2013. It is the intervenors' understanding that Greece did indeed transpose the Directive. However, the intervenors invite the Court to note that a key principle of EU law is the requirement for "effective legal protection", which corresponds to the ECHR principle of "practical and effective"; that is, states must make sure that they have adopted, and more importantly that they enforce, the laws necessary to give **effective legal protection** to measures, which have been adopted at EU level. As the CJEU said in the case of *Marks and Spencer*:

> "*Member States remain bound actually to ensure the full application of the directives even after the adoption of those implementing measures* ***… where the national measures implementing the directive are not being applied in such a way as to achieve the result sought by it.***"[36]

38. The intervenors trust that these brief comments will be of assistance to the Court.

[1] Nuala Mole, AIRE Centre Senior Lawyer, Markella Io Papadouli, Registered European Lawyer and AIRE Legal Project Manager and Anna Błuś, AIRE Legal Project Manager, worked on this intervention. We are also grateful to AIRE Centre Legal Caseworkers Paul Erdunast and Irina Darthevel for their invaluable assistance in preparing these submissions.
[2] International Labour Organisation, Forced Labour Convention, 1930 (No. 29) Article 2; *Van der Mussele v. Belgium*, App no. 8919/80 (ECtHR, 23 November 1983) para 32; *Graziani-Weiss v. Austria* App no. 31950/06 (ECtHR, 18 January 2012) para 36; *Stummer v. Austria* App no. 37452/02 (ECtHR, 7 July 2011) para 118.
[3] *Van der Mussele v. Belgium* para 34; *Graziani-Weiss v. Austria* para 36.
[4] *CN and NV v. France* para 77.
[5] The Cost of Coercion, International Labour Organisation Global Conference 1999, confirmed by *CN & V v. France* para 77). In *CN & V v. France* App no. 67724/09 (ECtHR, 11 January 2013) para 78.
[6] *Graziani-Weiss v. Austria* para 37; *Bucha v. Slovakia*, App no. 43259/07 (ECtHR, 20 September 2011) para 37.
[7] *Graziani-Weiss v. Austria* para 38; *Mihal v. Slovakia* App no. 23360/08 (ECtHR, 28 June 2011) para 64.
[8] *Van der Mussele v. Belgium* para 34.
[9] ILO Report*, Human Trafficking and Forced Labour Exploitation Guidance for Legislation and Law Enforcement* (2005) pp. 20-21.
[10] *Van der Mussele v. Belgium* para 34; *Siliadin v. France* App no. 73316/01 (ECtHR, 26 October 2005) para 117.
[11]*Demir and Baykara v. Turkey*, App no. 34503/97 (ECtHR, 12 November 2008).
[12] *CN & V v. France* para 89.
[13] ibid, para 91.
[14] *Siliadin v. France* para 124; *CN & V v. France* para 89.
[15] *CN & V v. France* para 89.
[16] *Siliadin v. France* para 124; *CN & V v. France* para 89.
[17] *Siliadin v. France* paras 118-119.
[18] *Siliadin v. France,* para 127.
[19] Decision on the Merits, 8 September 2004, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003.
[20] In *Quaker Council for European Affairs v. Greece*, the European Committee of Social Rights stated that Article 4(3) of the ECHR must be taken into account when interpreting Article 1(2). See: ECSR, *Quaker Council for European Affairs v. Greece*, (coll. compl. No. 8/2000), dec. (merits) of 25 April 2001.
[21] Arts 18, 19 ESC.
[22] See: *International Federation for Human Rights (FIDH) v. France*, Complaint No. 14/2003; *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008; *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011; *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012; *Conference of European Churches (CEC) v. the Netherlands,* Complaint No. 90/2013. A similar reasoning has been adopted by the ECSR in cases concerning migrant Roma. For example, in *Médecins du Monde – International v. France* (Complaint No. 67/2011), the Committee found that the lack of access to universal sickness coverage (CMU) for migrant Roma not having resided in France lawfully or worked there regularly for more than three months constitutes an unjustified difference in treatment in comparison to nationals.
[23] *International Federation for Human Rights (FIDH) v. France*, No. 14/2003, Decision on the merits of September 2004, para 29.
[24] *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, Decision on the merits of 23 October 2012, para 35.
[25] *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Decision on admissibility, para 13.
[26] Translation from the original text in Greek "Ο σεβασμός και η προστασία της αξίας του ανθρώπου αποτελούν την πρωταρχική υποχρέωση της Πολιτείας." taken from The Constitution of Greece, as revised after the voting procedures of the 27th March 2008 of the 7th Revising Greek Parliament, The Greek Parliament. (Annex 11)
[27] Translation from the original text in Greek "Όλοι όσοι βρίσκονται στην Ελληνική Επικράτεια απολαμβάνουν την απόλυτη προστασία της ζωής, της τιμής και της ελευθερίας τους, χωρίς διάκριση εθνικότητας, φυλής, γλώσσας και θρησκευτικών ή πολιτικών πεποιθήσεων. Εξαιρέσεις επιτρέπονται στις περιπτώσεις που προβλέπει το διεθνές δίκαιο.", taken from The Constitution of Greece, as revised after the voting procedures of the 27th March 2008 of the 7th Revising Greek Parliament, The Greek Parliament. (Annex 11)
[28]*M.S.S. v. Belgium and Greece*, App No. 30696/09 (ECtHR, 21 January 2011), para 249.

[29] CJEU, *ITWF v. Viking*, Case C-438/05, Judgment of the Court (Grand Chamber) of 11 December 2007, para 78.
[30] ibid, para 79.
[31] CJEU, *Aklagaren v. Akerberg Fransson*, Case C-617/10, Judgment of the Court (Grand Chamber) of 26 February 2013.
[32] CJEU, *O. Tümer v. Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen,* Case C-311/13, Opinion of Advocate General Bot delivered on 12 June 2014.
[33] ibid, para 52.
[34] CJEU, *O. Tümer v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen,* Case C-311/13, Judgment of the Court (Fifth Chamber) of November 2014.
[35] Explanations relating to the Charter of Fundamental Rights (2007/C 303/02).
[36] CJEU, *Marks and Spencer v. Commissioners of Customs and Excise,* Case C-62/00, Judgment of the Court (Fifth Chamber) of 11 July 2002, para 27.