

CA 11196/02

**Michael Frudenthal****v.****The State of Israel**

The Supreme Court Sitting as the Court of Criminal Appeals

[August 3, 2003]

*Before Justices D. Beinisch, A. Grunis, E. Chayot*

Appeal of the judgment of the Tel Aviv-Jaffa District Court from April 11, 2002, in C.C. 1064/02, given by the honorable judges: N. Amit, M. Sokolov, and T. Shapira.

Appeal denied.

**Facts:** Appellant was convicted, in the Tel Aviv-Jaffa District Court, of trafficking in persons for the purpose of employing them as prostitutes, in violation of section 203A(a) of the Penal Law, 1977, as well as for the additional crimes of pimping for prostitution, threats, and false imprisonment. Appellant contested the District Court's interpretation of the statutory provisions.

**Held:** The Court held that the elements of the crime of trafficking in persons – sale and purchase – should not be interpreted according to criteria borrowed from civil law. As such, the Court refused to interpret those terms in their narrow sense. Rather, it held that every link in the chain of sale is an act of trafficking, so long as it permits people to be treated as property or chattel that can be transferred for trade.

**Basic Laws Cited:**

Basic Law: Human Dignity and Liberty

**Statutes Cited:**

Penal Law, 1977

Sale Law, 1968

**Israeli Supreme Court cases cited:**

[1] CR 7542/00 *Arthur Chanuchov v. State of Israel* (unreported decision)

[2] CR 1449/03 *Irena Fishman v. State of Israel* (unreported decision)

[3] CR 3438/02 *Michael Frudenthal v. State of Israel*(unreported decision)

For the appellant—Dan Gilad

For the respondent—Alon Einfeld

## JUDGMENT

**Justice D. Beinisch**

On August 3, 2003, we heard oral arguments and notified the parties of our decision to deny the appeal. We now present the reasons for our decision.

1. The appellant was tried together with two co-defendants in the Tel Aviv-Jaffa District Court for trafficking in persons for the purpose of employing them as prostitutes, in violation of section 203A(a) of the Penal Law, 1977, as well as for the additional crimes of pimping for prostitution, threats, and false imprisonment.

Under plea agreements reached with the prosecution, the other defendants pleaded guilty to the crimes charged and were sentenced separately. The appellant admitted to the facts alleged in the amended indictment but claimed that they do not support a conviction of trafficking in persons. At most, the appellant claimed, the facts to which he admitted support a conviction of pimping for prostitution. The lower court heard factual and legal arguments regarding the charge of trafficking and accepted the state's contention that the defendant's actions

constitute the crime of trafficking in persons. The court convicted the appellant of the crimes charged in the indictment.

The plea agreement between the appellant and the prosecution provided that if the appellant were convicted of trafficking, the prosecution would request no more than three years imprisonment. The prosecution did so, and the court sentenced the appellant to 24 months imprisonment and an 18-month suspended sentence.

The appellant now appeals his conviction of trafficking in persons. As mentioned, the learned counsel's central argument is that the facts to which his client admitted do not rise to the level of trafficking in persons. The appellant asks this court to classify his employment of the complainants as pimping for prostitution and to convict him accordingly.

Before we clarify our position regarding the crime of trafficking, we will briefly discuss the facts of the conviction.

2. According to the facts of the original indictment, the first defendant acquired the two complainants in November of 2001 and brought them to a facility in Tel Aviv run by the second defendant, for the purpose of employing them as prostitutes. He imprisoned the complainants in the facility, took their passports, and abused them physically. The second defendant, who served as the manager of the facility, supervised the complainants to ensure that they worked as prostitutes and collected the fee that customers paid. At this stage, the appellant entered the picture. According to the facts of the indictment, to which he admitted, in or around February of 2002, the first defendant "transferred" the complainants to the custody and supervision of the appellant, with their knowledge and consent, so that they would work as prostitutes. The appellant housed the complainants in his apartment and employed them in prostitution. He received orders from clients who called his cellular phones, transported the complainants to the clients and, when they finished providing sexual services, he returned them to his apartment. The appellant collected the fees for each act of prostitution. According to the arrangement with the first defendant, each complainant received 40 New Israeli Shekels ("NIS") per client from the fee paid.

From each client's fee, the appellant took 40 NIS for himself and gave 60 NIS to the first defendant during weekly meetings. Each complainant paid the appellant 20 NIS per day from her profits in exchange for food and rent. The appellant prevented the complainants from leaving the apartment without his permission and supervision, and on various occasions he threatened to return them to the first defendant and threatened that "they and their parents would lose their lives" if they went to the police.

On these facts, the district court held that the appellant "took power, possession, and control of the two complainants in a way that can be described as a deposit in trust for the first defendant, or as a rental or loan, and he made 'use' of them as described in the indictment, by imprisoning and threatening them." The question before the district court was, given this set of facts, whether the appellant committed the crimes of false imprisonment, threats, and pimping alone, or whether he was guilty of trafficking in persons for the purpose of prostitution. As noted, the court held that the crime of trafficking had been committed, a ruling which the appellant now appeals.

3. Learned counsel for the appellant presented detailed arguments, orally and in writing, in an attempt to convince us that the lower court erred in determining that the complainants were like a deposit that the appellant held in trust. In any event, he argued that we should reject the lower court's ruling that the means by which the appellant held the complainants under his control and his role in the matter rise to the level of trafficking in persons. The main contention of counsel for the appellant concerns the interpretation of the crime of trafficking in persons for the purpose of prostitution, under section 203A of the Penal Law. Counsel expressed the view that the legislature criminalized the "sale" or "purchase" of a person for employment in prostitution, but did not criminalize any "other transaction," in contrast to the broader language it uses to criminalize drug trafficking. Thus – the claim goes – in defining the factual elements of the crime of trafficking in persons, the legislature intended the terms "sale and purchase" in their narrow sense. According to counsel, the legislature intended the factual elements of the crime to be "sale and purchase" according to their meaning in the Sale Law, 1968 and

other civil laws. Counsel asked us to interpret these phrases in section 203A(a) of the statute as they customarily are interpreted in civil statutes addressing the transfer of property rights in a sales transaction for the purpose of acquiring ownership. Applying this test, counsel argues that because “the appellant did not own the women [and] did not have the option to sell them in exchange for full consideration,” he cannot be convicted of the crime of trafficking. Counsel for the state asked us to reject the defense claims and presented two counter-arguments: First, the state argued that the semantic meaning of the word “purchase” is not limited to the acquisition of ownership rights. Second, the state argued that the purpose of the legislation compels us to reject the narrow interpretation offered by the appellant’s counsel.

4. We cannot and should not accept the learned counsel’s narrow interpretation of this legislation, which was recently passed in an amendment to the Penal Law. The Knesset passed section 203A(a) in July of 2000, in the Penal Law (amendment no. 56), 2000. The amendment was passed to address a vile scourge that has spread through our midst in recent years: the phenomenon of trafficking in persons for the purpose of prostitution. Israeli society has been exposed to a criminal element that is among the most contemptuous in the world of crime. It is an unprecedented phenomenon whose criminal side affects require law enforcement officials to respond in new ways. The criminal phenomenon of trafficking in persons for the purpose of prostitution exploits the deep distress of the women who fall victim to it. At its core is the treatment of women as merchandise to be traded. Women come to Israel through all means of illegal routes and are transferred from hand to hand like chattel, and can be acquired in exchange for money or some other consideration. Those involved transfer and take possession in order to profit from the shameless exploitation of these women in distress, who find themselves in a foreign country at the “mercy” of their acquirers. The phenomenon violates fundamental human rights including the rights to liberty, bodily integrity, and human dignity. This is the phenomenon that the legislature sought to prohibit and de-legitimize, and to punish those who take part in it, in order to eradicate it at its root. This was the reason that section 203A(a) was passed, using the following language:

*Trafficking in Persons for the Purpose of Employment in Prostitution*

203A. (a) Whoever sells or purchases a person to employ him/her in prostitution or whoever negotiates such sale or purchase will be punished with 16 years imprisonment; For these purposes, “sell or purchase” means in exchange for money, value, service, or any other benefit.

Section 203A(a) has yet to be given a binding interpretation by this court. However, on more than one occasion, individual justices of this court have expressed their position on the appropriate interpretation of this article, in the context of proceedings reviewing the arrest of those suspected of trafficking in persons. Every justice who addressed the interpretation of the article expressed the unequivocal position that the behavioral elements of the crime – sale and purchase – should not be interpreted according to criteria borrowed from civil law. Justice Cheshin held as such in CR 7542/00 *Arthur Chanuchov v. State of Israel*, when he interpreted section 203A(a)’s reference to “sale” and “purchase”:

I doubt that the terms “sell” and “purchase” in section 203A of the Penal Law should be interpreted according to their meaning in Israel's civil Sale Law. I venture to say that I have no doubt this is not the case. On this issue, I will note, lowering my eyes in shame, that the meaning of the terms “selling” and “purchasing” a person to employ in prostitution – under section 203A of the Penal Law – includes “renting” a person to employ in prostitution. To be precise, let me add that, in the context we discuss here, “renting” a person for prostitution is the same as “temporarily selling” for prostitution. I lower my eyes in shame because the sale and purchase of a person – like the renting of a person – for the purpose of prostitution is, in one sense, a prostitution of the language. Yet what are we to do when words fail to describe deeds as ugly as those described in the indictment? We know, however, that the terms “sell” and

“purchase” are terms borrowed from another world; because they are borrowed from the contexts and fields of another life, they in any event undergo transformation, and we can understand them only as a metaphor to describe phenomena of life so ugly, language is inadequate to paint a precise picture of what they are.

And as Justice Grunis held in CR 1449/03 *Irena Fishman v. State of Israel*:

Using civil law terms to relate to the painful subject of trafficking in persons for the purpose of prostitution is difficult to the point of repulsion. (see the Honorable Justice M. Cheshin’s holding in C.R. 7542/00 *Arthur Chanuchov v. State of Israel* (unpublished)). In any event, I see no substantive difference between a one-time payment and other payment options, like the arrangement in the case at hand or “rental” payments paid daily or at any other period. It is hard to imagine that the payment arrangements between the “seller” and the “buyer” are what determine whether or not trafficking has taken place.

(See also Justice Levy’s holding in CR 3438/02 *Michael Frudenthal v. State of Israel*).

5. I will add that the offense involved in trafficking in persons has become a phenomenon of global concern, and many countries have declared war on it. As part of its efforts to join the international struggle against trafficking in persons, Israel signed the United Nations Convention Against Transnational Organized Crime, including the Protocol to Prevent, Suppress, and Punish Trafficking in Persons which supplements the Convention. The Convention and the Protocol, which will enter into force shortly, have yet to be ratified in Israel, but Israel’s joining the Convention expresses its aspiration to take an active part in the norms that the family of nations has created around this issue. The above-mentioned protocol uses the following formulation to express the

opinion of the signatory-nations regarding the definition of the prohibited trafficking in persons:

Section 3  
*Use of Terms*

For the purposes of this Protocol:

(a) ‘Trafficking in persons’ 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.

*(PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME).*

Under the terms of the Protocol, the victim’s consent to being transferred or traded using one of the means defined is irrelevant to the prohibition. The approach taken by the protocol gives expression to an international norm that should be applied to every form of trafficking in persons in violation of fundamental human rights.

In amending the Penal Law, Israel’s legislature sought to take part in the international struggle against trafficking in persons – at this stage, trafficking for the purpose of prostitution – because the phenomenon has already infiltrated Israel. Consequently, the purposes of the legislation are identical to the purpose of the above-mentioned protocol. We therefore should interpret the provisions of the Israeli statute in accordance with the spirit of the Convention, which seeks to prevent the exploitation of power in the form of transferring people and trafficking in them for the purpose



of prostitution or slavery. We should, therefore, interpret the statute according to its purpose, and in a way that will not defeat the goal of the legislation.

As is the case in other areas of crime, the criminals in this field seek to circumvent the prohibitions of the statute. The struggle to enforce the law is a constant struggle to close loopholes. It is unthinkable that the legislature, in complete ignorance of fundamental human rights including the right to liberty and dignity, would allow criminals to circumvent the provision prohibiting sale or purchase of persons by permitting other kinds of property transactions. In Israel, the offenders have already developed various methods to continue sustaining trafficking in persons as a “commercial field,” despite the provisions of section 203A(a). Developing the forbidden trade by adding links to the chain of transferring women from hand to hand, in exchange for money or other consideration, for the purpose of employing them as prostitutes, will not succeed in depriving the statutory provisions of their content. There is no doubt that substantively, every link in the chain is an act of trafficking, so long as it permits people to be treated as property or chattel that can be transferred for trade.

Gone are the dark days when it was possible to view a person as the property of someone else. A human being's humanity prevents him/her from being used as an object in which property rights may be acquired. People are born free, and their right to liberty is protected by fundamental human rights, those that they are enacted into legislation and those about which not a single word has been written. The amendment to the Penal Law is based on those values which our legal system has now grounded in the Basic Law: Human Dignity and Liberty. These fundamental principles do not allow “business transactions” in a person's body, and a human being cannot be the subject of another person's property. These basic principles mandate that a prohibition on the “sale and purchase” of another person under section 203A(a) of the Penal Law constitutes a prohibition on any so-called property transaction in persons. It should be noted that the crime of pimping for acts of prostitution, which is serious in itself, criminalizes deals in which a person exploits another by profiting from sexual services that the other person performs through

prostitution. The crime of trafficking in persons prohibits transacting in a person's body, transferring him/her from hand to hand like an object in which rights can be acquired in exchange for money or other value, in order to employ the person in prostitution. Without any hesitation, we can determine that both language and legislative purpose require us to interpret section 203A(a) to prohibit any deal intended to create a property relationship in which a person acquires rights in another human being. The legislature used this article to outlaw any deal in which a person is treated as property, whether it is through ownership, possession, rental, borrowing, or any other relationship of acquisition. Therefore, the meaning of the phrases, "sale and purchase" in section 203A(a) refer to any deal, in exchange for any consideration, that grants a person any kind of "property" right in another human being who serves as the object of the deal. It makes no difference if it is a "business arrangement" under the guise of ownership, rental, borrowing, partnership, or any other means of creating a property interest in a person. All of these are considered trafficking under the provisions of section 203A(a).

6. Now to the case at hand. The appellant admits that he received the complainants from the first defendant who "transferred" them to his custody and supervision, for the purpose of employing them in prostitution. He also admits that in return for transferring the complainants to him, he and the first defendant reached an agreement for sharing profits according to percentages. These circumstances clearly constitute a "business arrangement" that creates a property interest in a human being. Therefore, he meets the legal criteria for having committed the crime of trafficking in persons.

The appeal must therefore be denied. The punishment to which the appellant was sentenced is extremely light relative to the severity of the crimes of which he was convicted, and we did not see fit to intervene to grant further leniency.

The appeal of the conviction and the sentence is denied.

**Justice A. Grunis**

I concur.

**Justice E. Chayot**

I concur.

Held as per the opinion of Justice D. Beinisch.  
August 3, 2003