

A Human Rights Approach to Human Trafficking by the ECtHR

Written for Sustainable Development Group International by Tenia Kyriazi

Rantsev v. Cyprus and Russia: The European Court of Human Rights Interprets Article 4 on a Landmark Trafficking Case

The landmark decision of the European Court of Human Rights in the case of Rantsev v. Cyprus and Russia¹ signifies a turning point in the Court's jurisprudence with regards article 4 of the European Convention for Human Rights and Fundamental Freedoms. For the first time slavery is interpreted *lato sensu*, trafficking in human beings is clearly recognized as falling within the scope of article 4 and the states' obligations that derive from the prohibition of slavery are defined.

Part I. The case²

I.1. The facts:

The applicant, Russian national, is the father of Ms Oxana Rantseva who died in strange and unestablished circumstances having fallen from a window of a private home in Cyprus in March 2001. Ms Rantseva arrived in Cyprus on 5 March 2001 on an "artist" visa. She started work on 16 March 2001 as an artiste in a cabaret in Cyprus only to abandon her place of work and lodging three days later leaving a note that she was going back to Russia. After finding her in a discotheque in Limassol some ten days later, at around 4 a.m. on 28 March 2001, the manager of the cabaret where she had worked took her to the police asking them to declare her illegal in the country and to detain her, apparently with a view to expelling her so that he could have her replaced in his cabaret. The police, after checking their database, concluded that Ms Rantseva did not appear to be illegal and refused to detain her. They asked the cabaret manager to collect her from the police station and to return with her later that morning to make further inquiries into her immigration status. The cabaret manager collected Ms Rantseva at around 5.20 a.m. Ms Rantseva was taken by the cabaret manager to the house of another employee of the cabaret, where she was taken to a room on the sixth floor of the apartment block. The cabaret

manager remained in the apartment. At about 6.30 a.m. on 28 March 2001 Ms Rantseva was found dead in the street below the apartment. A bedspread was found looped through the railing of the apartment's balcony.

Following Ms Rantseva's death, those present in the apartment were interviewed. A neighbor who had seen Ms Rantseva's body fall to the ground was also interviewed, as were the police officers on duty at Limassol police station earlier that morning when the cabaret manager had brought Ms Rantseva from the discotheque. An autopsy was carried out which concluded that Ms Rantseva's injuries were the result of her fall and that the fall was the cause of her death. The applicant subsequently visited the police station in Limassol and requested to participate in the inquest proceedings. An inquest hearing was finally held on 27 December 2001 in the applicant's absence. The court decided that Ms Rantseva died in strange circumstances resembling an accident, in an attempt to escape from the apartment in which she was a guest, but that there was no evidence to suggest criminal liability for her death.

Upon a request by Ms Rantseva's father, after the body was repatriated from Cyprus to Russia. Forensic medical experts in Russia carried out a separate autopsy and the findings of the Russian authorities, which concluded that Ms Rantseva had died in strange and unestablished circumstances requiring additional investigation, were forwarded to the Cypriot authorities in the form of a request for mutual legal assistance under treaties in which Cyprus and Russia were parties. The request asked, inter alia, that further investigation be carried out, that the institution of criminal proceedings in respect of Ms Rantseva's death be considered and that the applicant be allowed to participate effectively in the proceedings. In October 2006, Cyprus confirmed to the Russian Prosecution Service that the inquest into Ms Rantseva's death was completed on 27 December 2001 and that the verdict delivered by the court was final. The

¹ Rantsev v. Cyprus and Russia, App. No. 25965/04 (2010) ECHR.

² Source: European Court of Human Rights, Press Release Issued by the Registrar, 005 07/01/2010.

applicant has continued to press for an effective investigation into his daughter's death. The Cypriot Ombudsman, the Council of Europe's Human Rights Commissioner and the United States State Department have published reports which refer to the prevalence of trafficking in human beings for commercial sexual exploitation in Cyprus and the role of the cabaret industry and "artist" visas in facilitating trafficking in Cyprus.

I.II. The legal basis of the applicant's complaint Relying on articles 2, 3, 4, 5 and 8, Mr Rantsev complained about the investigation into the circumstances of the death of his daughter, about the failure of the Cypriot police to take measures to protect her while she was still alive and about the failure of the Cypriot authorities to take steps to punish those responsible for her death and ill-treatment. He also complained under articles 2 and 4 about the failure of the Russian authorities to investigate his daughter's alleged trafficking and subsequent death and to take steps to protect her from the risk of trafficking. Finally, he complained under article 6 of the Convention about the inquest proceedings and an alleged lack of access to court in Cyprus.

I.III. The Decision on the Merits

Article 2: The right to life

As regards Cyprus, the Court considered that the Cypriot authorities could not have foreseen the chain of events leading to Ms Rantseva's death and they had therefore no obligation to take practical measures to prevent a risk to her life.

However, the investigation carried out by the Cypriot authorities was not effective: there had been conflicting testimonies which had not been resolved; no steps to clarify the strange circumstances of Ms Rantseva's death had been made after the verdict of the court in the inquest proceedings; the applicant had not been advised of the date of the inquest and as a result had been absent from the hearing when the verdict had been handed down; and although the facts had occurred in 2001 there had not yet been a clear explanation as to what had happened. Therefore, Cyprus did not comply with its positive obligation under article 2, according to which states are required to effectively investigate violations of the right to life. The failure of the Cypriot authorities to investigate effectively Ms Rantseva's death had constituted a procedural violation of article

2 of the Convention.

As regards Russia, the Court considered that the Russian authorities were not obliged themselves to investigate Ms Rantseva's death, which had occurred outside their jurisdiction. The Court emphasized that the Russian authorities had requested several times that Cyprus carry out additional investigation and had cooperated with the Cypriot authorities. Therefore Russia had not violated of article 2 of the Convention.

Article 3: Freedom from torture and ill-treatment

The Court held that any ill-treatment which Ms Rantseva may have suffered before her death had been inherently linked to her alleged trafficking and exploitation and that it would consider this complaint under article 4.

Article 4: Freedom from slavery

The Court held that trafficking in human beings, although absent from the wording of article 2, was prohibited by article 4. It concluded that there had been a violation by Cyprus of its positive obligations arising under that article on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect Ms Rantseva from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking. In light of its findings as to the inadequacy of the Cypriot police investigation under article 2, the Court did not consider it necessary to examine the effectiveness of the police investigation separately under article 4.

There had also been a violation of this article by Russia on account of its failure to investigate how and where Ms Rantseva had been recruited and, in particular, to take steps to identify those involved in Ms Rantseva's recruitment or the methods of recruitment used.

Article 5: The right to liberty

The Court found that the detention of Ms Rantseva for about an hour at the police station and her subsequent confinement to the private apartment, also for about an hour, did engage the responsibility of Cyprus. It held that

the detention by the police following the confirmation that Ms Rantseva was not illegal had no basis in domestic law. It further held that her subsequent detention in the apartment had been both arbitrary and unlawful. There was therefore a violation of article 5 § 1 by Cyprus. The Court rejected the applicant's other complaints.

Article 41

Under article 41 (just satisfaction) of the Convention, the Court held that Cyprus had to pay the applicant 40,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,150 for costs and expenses, and that Russia had to pay him EUR 2,000 in respect of non-pecuniary damages.

Part II. Comments on the Court's interpretation of article 4³

In the rich jurisprudence of the European Court of Human Rights consideration of the scope and interpretation of the content of article 4 has been scarce. The first time that the Court dealt with the scope of the prohibition of slavery was in the case *Siliadin v France*⁴, a case associated with trafficking within the sphere of article 4. In *Rantsev v. Cyprus and Russia* the Court examined yet again a trafficking case that required consideration of the scope of article 4 and interpretation of the concepts contained therein. A review of the two decisions clearly reflects the progressive realization from the Court of the need to adopt a human rights approach when considering cases of trafficking in human beings. It is thus imperative to study the ECtHR decision in *Siliadin v. France* in order to highlight the evolution of its jurisprudence with the groundbreaking decision in *Rantsev v. Cyprus and Russia*.

In *Siliadin v. France* the applicant, a minor, arrived in France with a French national of Togolese origin, Mrs D. According to an

arrangement made with Siliadin's father, Mrs D was supposed to regularize the applicant's immigration status and arrange for her education, while the applicant did the housework for long enough to pay off the cost of her transportation. Instead, Mrs D confiscated the applicant's passport and she became an unpaid servant, first in the household of Mrs D and then in the household of Mrs D's friend, Mrs B. The applicant left the household and went to work in other paid employment, but soon, on the advice of her uncle, she returned to the household of Mrs B where she continued to provide unpaid domestic labour. This situation continued until the applicant disclosed her situation to a neighbour four years after her arrival in France.

Considering the case, the Court examined the definitions of the terms «slavery», «servitude» and «forced labour», as contained in the wording of article 4. It attempted to interpret them, drawing a distinction among various treatments that fall within the scope of each one of the three terms⁵. To define slavery and examine the practices that identify as such, the Court used as a tool the definition of slavery provided in the 1926 Slavery Convention⁶. According to article 1 slavery is defined as: «*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*». Interpreting this definition *strictu sensu*, it used the element of ownership as the sole indication of enslavement. On this basis, it held that the deprivation of personal autonomy does not in itself constitute exercise of the right of ownership and therefore is not enough to determine the status of slavery⁷.

Examining the scope of article 4 in relation to the particular facts of the case, it held that the applicant's treatment fell short of slavery because her perpetrators did not fully exercise upon her the right of ownership⁸. However, the Court acknowledged that the treatment of the victim amounted to servitude, because she was deprived of her autonomy and had been submitted to coercion. Furthermore, the applicant was subsequently

³ For thorough commentaries on the case see, Farrior St., Introductory note to the ECtHR: *Rantsev v. Cyprus and Russia*, 49 ILM 415 (2010), pp. 415-473, Pati R., States' positive obligations with respect to human trafficking: The European Court of Human Rights breaks new ground in *Rantsev v. Cyprus and Russia*, B.U. Int'l L.J. Vol.29:79 (2011), pp. 82-142, Kyriazi T., ECHR: *Rantsev v. Cyprus & Russia*, Case Commentary, *Criminal Justice* 5/2010, 568-580, in Greek.

⁴ *Siliadin v. France*, (2006) 43 EHRR 16.

⁵ For commentaries on the case *Siliadin v. France* see also, Cullen H., *Siliadin v. France*: Positive obligations under article 4 of the European Convention on Human Rights, *HRLR 2006 (6)* 585-592, Mantouvalou V., Employment and Discrimination: treatment of unpaid household servant, Case Comment: *Siliadin v. France*, *EHRLR 2005 (6)* 660-664.

⁶ Slavery Convention 60 LNTS 153 (1926).

⁷ *Siliadin v. France*, (2006) 43 EHRR 16, para.122.

⁸ *Ibid.*

forced to work against her will, living in a state of fear due to her illegal status in the country of destination and her young age. Therefore, according to the Court she was also submitted to forced labour⁹.

On the other hand, in *Rantsev v. Cyprus and Russia*, the Court interpreted slavery *latu sensu* following the ruling of ICTY in *Prosecutor v. Kunarac*, where it was held that the exercise of the right of ownership does not constitute the sole indication of enslavement¹⁰. According to the findings of the ICTY, the concept of slavery has evolved to include contemporary forms of slavery involving the exercise of one or more powers attaching to the right of ownership. The ICTY held that characteristics of situations similar to slavery include lack of free movement or/and control exercised upon the victim, coercion, ill-treatment, elements of psychological control, etc. In this framework, in *Rantsev v. Cyprus and Russia* the Court acknowledged that trafficking in human beings, due to its very nature and exploitative aim, involves indeed the exercise of powers attached to ownership. Therefore, being a “modern form of the old worldwide slave trade” and a “regime of modern slavery” human trafficking is a practice similar to slavery. According to the express wording of the Decision:

“trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labor, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions.”¹¹

Furthermore, the Court stressed that the various provisions of the Convention must be interpreted as a whole in conformity with its object and purpose. Referring to its own jurisprudence, it underlined that the Convention

is a “living instrument” and should be “interpreted in the light of present-day conditions”¹². Thus, taking into account that trafficking in human beings is a severe violation of human rights, the identification of the treatment of a victim of trafficking as slavery or servitude or forced labour was considered “unnecessary”. Notwithstanding the absence of explicit reference to trafficking in human beings in article 4, the Court stressed that “*Trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.*”¹³

When defining the content of the states’ obligations, the Court admitted that the standards of human rights protections “require greater firmness in assessing breaches of the fundamental values of democratic societies” stressing the need to broaden its standards of interpretation of the guarantees safeguarded in the Convention. In *Rantsev v. Cyprus and Russia*, the Court confirmed its ruling in *Siliadin v. France* on the issue of the states’ positive obligations deriving from article 4. But, it went one step further, extending the scope of the states’ obligations. It held that states are not only required to adopt legislation for the criminalization of trafficking in human beings but they also have broader obligations of procedural nature. These include the obligation to effectively investigate trafficking cases, from victims’ recruitment to their exploitation, to adopt measures for the protection of persons belonging to vulnerable social groups from trafficking risks, to protect trafficking victims living in their territory, to implement programs aiming at preventing and combating trafficking in human beings and to train the personnel of the competent authorities. The Court also highlighted the obligation of the states to take measures for the exercise of control over businesses that are used as “cover-ups” for trafficking networks, as well as to adopt appropriate immigration regulations that can *inter alia* effectively address the neglected issues of demand and tolerance of human trafficking.

In conclusion, the European Court of Human Rights Decision in the case *Rantsev v. Cyprus and Russia* is a major development in the field of combating trafficking. For the first time the

⁹ Para. 109-129.

¹⁰ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vokovic*, Judgment, ICTY Trial Chamber III, IT-96-23-T & IT-96-23/1-T, para.117-119.

¹¹ *Rantsev v. Cyprus and Russia*, App. No. 25965/04 (2010) ECHR, para.281.

¹² *Ibid*, para. 277.

¹³ *Ibid*, para. 282.

human rights approach, addressing trafficking as a violation of fundamental human rights and as a modern form of slavery, is clearly reflected in a judicial decision¹⁴. The Court, interpreting article 4 in the light of the purpose and the aim of the Convention, adopted a broad definition of slavery, considered «unnecessary» to distinguish between the concepts of slavery, servitude and forced labor and finally acknowledged that trafficking in human beings falls within the scope of article 4 as a whole. Additionally, the Court defined the content of the states' obligations for the protection of victims of trafficking. It stressed that the states are not only required to criminalize acts that violate human rights in general and the prohibition of slavery in particular. But they also have the procedural obligation to adopt measures to prevent such violations, to investigate effectively trafficking cases, to prosecute and punish the traffickers and to offer protection and restitution to the victims.

[Tenia Kyriazi](#) is a human rights lawyer and founding member of SDGI. She holds a Ph.d in International Human Rights Law from the National University of Athens, Greece.

¹⁴ For the human right perspective on trafficking in human beings, Kyriazi T., *Human Trafficking – International and European Human Rights Law*, Marangopoulos Foundation for Human Rights, Nomiki Vivliothiki (Publisher), Athens 2010, in Greek.