



Exploring Article 4 of the ECHR:

*Analysis of the ECtHR's Jurisprudence
on Human Trafficking for Sexual
Exploitation and Forced Prostitution*



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Introduction

Human trafficking is a complex and dynamic issue that constitutes a tremendous human rights violation, and it is prohibited under numerous treaties and conventions. According to the Counter Trafficking Data Collaborative, there are currently 156,330 individual human trafficking cases across 189 countries of exploitation and 187 nationalities (CTDC, 2023). In terms of global distribution, Eastern Europe is the region where the majority of victims are from, including Romania, Ukraine, Russia and Bulgaria (UNODC, 2022).

However, the number of detected victims had decreased for the first time due to the COVID-19 pandemic. For example, trafficking with the purpose of sexual exploitation decreased by 24 percent compared to 2019. It is suggested that this happened because the pandemic either led to a decrease in trafficking for sexual exploitation as a result of lockdown procedures, and/or there was a decrease in the ability to identify this type of crime (UNODC, 2022). One way or another, one of the greatest challenges in developing adequate policies and responses is the lack of reliable data, especially about the number of victims and their profiles. The majority of human trafficking court cases are filled by victims who manage to exit exploitation on their own, evidencing how the scope for action in identifying and eradicating the issue remains limited (Migration Data Portal, 2023; UNODC, 2022).

Women and girls are disproportionately affected by human trafficking, which corresponds to the large majority of identified victims. In 2020, 60 percent of the total number of detected victims were women and children, and for every 10 victims detected, four were adult women and two were girls. The risk of physical assault is also higher for female and child victims during trafficking. They are three times more likely to suffer explicit or extreme violence compared to men. In addition, trafficking for sexual exploitation is the most common form of trafficking worldwide, corresponding to 54 percent, and has women as the main targets. Of all sexual exploitation victims, 96 percent are female. Human trafficking has explicit gender motivations and violates women's human rights (ICAT, 2017; UNODC, 2022).

The root causes of the disproportionate impact of human trafficking on women and girls are plentiful. For example, gender inequality in educational and employment opportunities or limited control over financial resources can exacerbate the vulnerability of women and girls to trafficking. Furthermore, gender-based violence and cultural norms that normalise such violence are also contributing factors. The presence of discriminatory labour or migration laws can restrict women's mobility and their capacity to change jobs, pushing them towards seeking employment in unregulated and informal sectors. As a result, women become more susceptible to the risks of trafficking and exploitation. Finally, conflict, post-conflict settings, and humanitarian crises are risk multipliers for women and girls as they are more exposed to exploitation in the absence of the rule of law and more frequently targeted by armed groups for sexual slavery, domestic servitude, and forced and child marriages (ICAT, 2017). In conflict contexts, the escalation of poverty and limited economic prospects further enhances the vulnerability of women to trafficking. For instance, the current conflict in Ukraine has led to the largest forced population movement in Europe since the Second World War, with over 6 million people seeking refuge in neighbouring countries. Among these refugees, approximately 90 percent are women and children, making them highly vulnerable to human trafficking as throughout their migration journey, women face gender-specific vulnerabilities and risks that increase their susceptibility to trafficking (UNGA, 2022; ICAT, 2017).

The present report aims to shed light on the specific context of human trafficking throughout Europe, in light of Article 4 of the European Convention on Human Rights (ECHR), which prohibits slavery, servitude, and forced and compulsory labour, but does not explicitly mention the prohibition of human trafficking. It also seeks to emphasise the gender dimension of human trafficking and showcase the special vulnerabilities of women and girls in this regard. The challenges of prosecuting human trafficking have been due to the lack of international agreement on the definition of human trafficking, resulting in the failure to prosecute this kind of human rights violation until the early 2000s. Since then, however, through the jurisprudence of the European Court of Human Rights (ECtHR), the concept of trafficking in human beings has gained greater clarity and uncovered the gender aspect of human trafficking, specifically in cases involving sexual exploitation and forced prostitution.

Consequently, this paper revolves around three legal cases from the ECtHR where violations of Article 4 of the ECHR were established, concerning human trafficking related to sexual exploitation and/or forced prostitution. The paper consists of two parts. Chapter 1 seeks to provide a general overview of the content of Article 4, the positive obligations of State Parties, and the challenges of the prosecution of human trafficking in this regard. In Chapter 2, three legal case studies are presented which are crucial to understand as they have set precedents for subsequent convictions of trafficking crimes at the European level. For example, through these judgments, the ECtHR has ruled, inter alia, that human trafficking falls within the scope of Article 4 of the ECHR, clarified the positive obligations upon State Parties, and identified the three constituent elements of the international definition of human trafficking, while in all instances highlighting the gender dimension of human trafficking.

1. Article 4 of the European Convention on Human Rights (ECHR)

1.1 What is the ECHR?

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), is a legal instrument that aims to protect human rights and basic freedoms. The Convention was based upon the rights stated in the 1948 Universal Declaration of Human Rights, and made them binding by establishing the European Court of Human Rights as an international tribunal with the authority to examine cases against States that fail to uphold their obligations (ECtHR, 2021). Today, it protects and guarantees the rights, freedom, and dignity of over 700 million people in Europe. The ECHR was signed on November 4th, 1950, and ratified on September 3rd, 1953, by all 46 Council of Europe member countries. However, since September 2022, the Russian Federation has ceased to be a party to the Convention (Council of Europe, n.d.).

The Convention enshrines fundamental rights such as the right to life, the right to liberty and security, freedom of expression, and freedom of thought, conscience, and religion. It also establishes prohibitions against torture, slavery, forced labour, and discrimination (Council of Europe, 1950). The ECHR is a living instrument and thus evolves. Besides the rights already stated in the articles, the Convention has protocols that add one or more rights to the original Convention or amend certain of its provisions. Approximately 16 additional protocols have been adopted, such as Protocol No. 13 concerning the abolition of the death penalty in all circumstances (European Court of Human Rights (ECtHR), 2021).

Once ratified, the Convention has been incorporated into the States Parties' legislative framework. Therefore, the ECHR is applicable at the national level, and countries governments, parliaments, and courts must implement it (ECtHR, 2021). However, if the State fails to provide assistance, individuals can bring human rights complaints to the European Court of Human Rights.

The European Court of Human Rights, also known as the Strasbourg Court, is an international tribunal that applies the ECHR. Its primary responsibility is to ensure that State Parties uphold the rights and protections set forth in the Convention by examining cases applied for by individuals or, sometimes, by States that have directly experienced a violation of the Convention (ECtHR, n.d.). It is crucial to emphasise that the Court cannot take on cases of its own initiative and only has the jurisdiction to consider allegations of violations that have been applied for by individuals. In addition, cases can only be applied for after they have gone through the national courts, which gives the State a chance to remedy the violation at the national level (ECtHR, 2021). Thus, once domestic mechanisms have been exhausted, the cases can be applied to and assessed by the European Court of Human Rights.

Every year, it is estimated that the court receives over 50,000 applications (ECtHR, 2021). It is another form of protecting human rights in Europe, and it acts as a safety net (Council of Europe, n.d.). Once the Court decides that a violation of the ECHR has been committed, the country indicted must provide justice to the individual. Judgements are binding, which means the country is obligated to comply with the decision and must ensure that it will not occur again (ECtHR, n.d.).

1.2 Content of Article 4

Article 4 of the European Convention on Human Rights establishes the prohibition of slavery and

forced labour. As ascertained by the European Court of Human Rights, this Article enshrines one of the fundamental values of democratic societies (*Stummer v. Austria*, 2011). As such, paragraphs 1 and 2 determine, respectively, that “*no one shall be held in slavery or servitude*” and “*no one shall be required to perform forced or compulsory labour*” (Council of Europe, 1950). Therefore, it is necessary to analyse these concepts provided in the Convention.

Paragraph 1 provides the prohibition of slavery or servitude. The ECtHR adopts the classic concept of slavery provided by the 1926 Slavery Convention, as “*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*” (*Siliadin v. France*, 2005; League of Nations, 1926, Art. 1).

The Court has also clarified that the concept of servitude refers to “*an obligation to provide one’s services that is imposed by the use of coercion, and is to be linked with the concept of ‘slavery’*” (*Siliadin v. France*, 2005, para. 124). This concept aims at prohibiting a particularly serious form of denial of freedom, which includes, besides the obligation to perform services, the obligation to “*live on another person’s property*” and “*the impossibility of altering his condition*” (*Siliadin v. France*, 2005, para. 123).

Therefore, it can be seen that the two concepts possess similarities. The main difference relies on the fact that, in slavery, the victim is actually owned like a piece of property, while in servitude the element of ownership is not present, even though the individual might live on the person’s premises, work for them, and be unable to leave (Equality and Human Rights Commission, 2021).

It is relevant to establish that, under the terms of Article 15, paragraph 2, it is not possible to derogate from these provisions, even in times of war or other public emergencies threatening the life of the nation, and Article 4, paragraph 1, also does not provide for any possibilities of exceptions (ECtHR, 2022). Thus, the prohibition of slavery and servitude contained in the Convention cannot be waived in any circumstances. The fundamental character of the prohibition of slavery is reinforced as it is recognised as a *jus cogens* norm and as an *erga omnes* obligation (Kirchner & Frese, 2015). This means it is a peremptory norm of international law, from which no derogation is permitted and which can be only modified by a subsequent norm having the same character, and that all States can be held to have a legal interest in the protection of this right (United Nations, 1969; Barcelona Traction Case, 1970).

Paragraph 2 addresses the prohibition of forced or compulsory labour. However, the Convention does not provide a clear definition or guidance for its interpretation. As such, the ECtHR has turned to the International Labour Organisation (ILO) Convention No. 29 in order to define the term (ECtHR, 2022). Its Article 2 conceptualises forced or compulsory labour as “*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*” (ILO, 1930).

The Court has referred to servitude as an aggravated form of forced or compulsory labour. The main distinction between the two concepts lies in the victims’ feeling that their condition is permanent and that the situation is unlikely to change (*C.N. and V. v. France*, 2012).

Furthermore, paragraph 3 of Article 4 aids the interpretation of paragraph 2 (*Stummer v. Austria*, 2011). It delimitates that the term forced or compulsory labour shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

The ECtHR has clarified that this provision does not intend to limit the exercise of the rights assured in paragraph 2, but to delimit its content. Furthermore, it states that the ideas of the subparagraphs are grounded on the ideas of general interest, social solidarity, and what is normal in the ordinary course of affairs (*Stummer v. Austria*, 2011).

Furthermore, it is important to emphasise that the concept of forced or compulsory labour aims at the protection against cases of serious exploitation, irrespective of whether it is related to the specific human trafficking context, such as forced prostitution. It is seen that conduct relating to the human trafficking context may have elements qualifying it as servitude or slavery under Article 4, or may raise an issue under another provision of the Convention (*S.M. v. Croatia*, 2020).

For conduct to be characterised as human trafficking under Article 4 of the Convention, the constituent elements of the international definition of trafficking need to be present, under the Anti-Trafficking Convention and the Palermo Protocol (*S.M. v. Croatia*, 2020). These elements are identified as an action, such as the recruitment, transportation, transfer, harbouring, or receipt of persons; means, including the threat or use of force or other forms of coercion; and an exploitative purpose, such as the exploitation of prostitution and forced labour or services (ECtHR, 2022).

1.3 The Specific Context of Human Trafficking

Article 4 does not mention human trafficking explicitly because of the lack of international agreement on what constitutes “trafficking in persons” (ECtHR, 2022, p. 6). Only in the late 1990s did States commence the process of distinguishing trafficking from other commonly associated practices, like facilitating irregular migration. The first agreed definition of trafficking was incorporated into the 2000 Trafficking Protocol, called the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC), also referred to as Palermo Protocols (OHCHR, 2014). It defines human trafficking as:

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, Article 3 (a) (General Assembly Resolution, 2000).

Later, in 2018, in the *S.M. v. Croatia* case, the Court clarified the three key elements of human trafficking that must be present to establish the crime:

Action (e.g. recruitment, harbouring or transportation of persons);

Means (use of force or other forms of coercion, e.g. abduction, fraud or deception);

Exploitative purpose (e.g. sexual exploitation, forced labour or slavery) (ECtHR, 2022, p. 6-7).

Other important features of human trafficking include the fact that its definition encompasses both internal and cross-border trafficking. In other words, trafficking can occur within a single country, even within the victim's own nation. Moreover, trafficking is not solely dependent on movement. For example, the internationally recognised definition defines movement as merely one of the ways to fulfil the "action" aspect. Other terms like "receipt" and "harbouring" indicate that trafficking encompasses more than just the act of moving someone into exploitative situations. It also includes the act of keeping someone in a situation of exploitation. Lastly, it is important to highlight that consent is not a valid factor in human trafficking (OHCHR, 2014). As the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children states in Article 3(b,) the consent of a trafficking victim towards the intended exploitation holds no relevance when any of the means such as force, coercion, or fraud have been employed (UNODC, 2004, p. 43). In such cases, the presence of these means renders the victim's consent immaterial in light of the principle of international human rights law which emphasises that the inherent inalienability of personal freedom makes consent irrelevant in situations where that freedom is forcibly taken away (OHCHR, 2014).

The prohibition of human trafficking by international human rights law has gradually become more explicit. Although only two of the major human rights treaties - the Convention on the Elimination of All Forms of Discrimination against Women (Article 6)¹ and the Convention on the Rights of the Child (Article 35)² - contain substantive reference to trafficking, over the last decade, there has been a growing consensus within the international community that trafficking in itself constitutes a grave violation of human rights. For instance, both the 2005 Council of Europe's Convention on Action against Trafficking in Human Beings and the 2011 European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims identify trafficking as a violation of human rights (OHCHR, 2014, p. 5).

1.4 Positive Obligations of State Parties

Article 4 requires that Member States must effectively penalise and prosecute any actions aimed at perpetuating slavery, servitude, or forced or compulsory labour on individuals. Thus, under Article 4, States Parties have three positive obligations:

Establish an appropriate legislative and administrative framework;

Take operational measures;

3. The procedural obligation to investigate (ECtHR, 2022).

1 "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." (CEDAW, 1981, Article 6).

2 "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." (CRC, 1990, Article 35).

The appropriate legislative and administrative framework must ensure practical and effective protection of victims' rights, which includes the introduction of measures to regulate businesses that are often used as front organisations for trafficking, the establishment of immigration rules to address concerns about the encouragement, facilitation, or tolerance of trafficking, and the need for States to ensure that law enforcement and immigration officials are adequately trained (Barnes, 2020).

States' duty to take operational measures refers to preventive measures such as strengthening coordination at the national level between the various anti-trafficking bodies, discouraging the demand for all forms of exploitation of persons, facilitating the identification of victims by qualified persons, and assisting victims in their physical, psychological, and social recovery. However, operational measures should be interpreted in a manner that does not place an impractical or disproportionate burden on the authorities (ECtHR, 2022, p. 17-18). The duty to take operational measures arises when the public authority is aware, or should reasonably be aware, of circumstances indicating a credible suspicion that a specific individual has been subjected to treatment prohibited by Article 4 (Barnes, 2020).

The procedural obligation to investigate does not rely on a complaint from the victim or their relatives. Instead, the authorities must take action using their own initiative once they become aware of the matter. Moreover, an effective investigation must be conducted independently from those involved in the events, ensuring the possibility of identifying and penalising the responsible individuals. The investigation's findings must be founded on a comprehensive, unbiased, and impartial analysis of all pertinent factors. Additionally, States are obliged to conduct domestic investigations not only into incidents on their own territory but also into cases of cross-border trafficking. They have the obligation to cooperate efficiently with the relevant authorities of other involved States in investigating events that occurred outside their territories (ECtHR, 2022, p. 19).

2. Legal Case Studies

These case studies were chosen to highlight the complexities of interpreting Article 4 to modern-day challenges of slavery and forced labour as well as to illuminate the gender-specific aspects of human trafficking and to underscore the distinct vulnerabilities faced by women and girls in such scenarios. In the following three legal cases, the ECtHR established violations of Article 4 of the ECHR concerning human trafficking related to sexual exploitation and/or forced prostitution. Consequently, these landmark cases set precedents for subsequent convictions of trafficking crimes at the European level.

2.1. Rantsev v. Cyprus and Russia

Rantsev v. Cyprus and Russia is a landmark case as the ECtHR set a precedent by unanimously ruling that human trafficking falls within the scope of Article 4 of the European Convention on Human Rights. On January 7th, 2010, the Court rendered a verdict pertaining to the trafficking of individuals for the purpose of exploitation of the prostitution of others in the Rantsev case by concluding that both Cyprus and Russia violated Article 4 of the ECHR. The Court clarified the positive obligations upon States to investigate allegations of trafficking, emphasising extraterritorial responsibilities and implementing measures to prevent and protect people from human trafficking (Nandagopal, 2010; Human Rights Council, 2017).

2.1.1. Background of the Case

The Rantsev case involved a 21-year-old Russian woman, Oxana Rantseva, who was initially recruited in Russia and later brought to Cyprus, where she worked as a prostitute and subsequently died on 29 March 2001 in ambiguous circumstances after falling from a window of a private property. Oxana Rantseva arrived in Cyprus on March 5th, 2001 with an “artiste” visa obtained by the owner of a cabaret in Limassol. Ms Rantseva was granted a permit to work until June 8th, 2001 as an artiste in a cabaret and stay in an apartment with other young women working in the same cabaret. On March 19th, her employer, Marios Athanasiou (M.A.) was informed by a roommate of Ms Rantseva that she had left the apartment and taken all her belongings with her and only left a note in Russian saying that she was tired and wanted to return to Russia. On the same day, M.A. informed the Immigration Office in Limassol that Ms Rantseva had left her workplace and residence and wanted her to be expelled from Cyprus so he could bring another girl to work in the cabaret. However, Ms Rantseva’s name was not on the list wanted by the police as she was not an illegal immigrant (ECtHR, 2010/a, paras. 15-16; ECtHR, 2010/b).

The events of March 28th, 2001 led to the death of Ms Rantseva. In the early morning of that day, she was spotted in a discotheque and after her former employer, M.A. was informed, he took Ms Rantseva to a police station where she was detained. After conducting an inquiry for a period, the on-duty police officer found that Ms Rantseva was not in Cyprus illegally and informed M.A. that if he did not come to collect Ms Rantseva, she would be released. Consequently, M.A. collected Ms Rantseva along with her passport and other documents, and took her to an apartment belonging to one of his male employees at approximately 5.45 am. According to the ECtHR’s evaluation, she was placed in a bedroom against her free will (ECtHR, 2010/a, paras. 17-19; Allain, 2010). However, M.A. in his police statement said that “[s]he just looked drunk and did not seem to have any intention to do anything. I did not do anything to prevent her from leaving the room in the flat where I had taken her” (ECtHR, 2010/a, para. 20). At around 6:30 am, Ms Rantseva’s lifeless body was discovered in the street below her apartment. She

was wearing her handbag over her shoulder. Upon investigation, the police observed a bedspread tied to the railing of the smaller balcony adjacent to the room where Ms Rantseva had been residing on the upper floor of the apartment building (ECtHR, 2010/a, para. 24).

It was her father, Mr Nikolay Mikhaylovich Rantsev (the applicant), a Russian national, who made an application to the ECtHR on May 26th, 2004, complaining of violations of Article 2 (right to life), Article 3 (prohibition against torture), Article 4 (prohibition against exploitation), Article 5 (right to liberty), and Article 8 (rights to privacy) of the ECHR. He complained about the investigation surrounding his daughter's death, the Cypriot police's failure to provide adequate protection while she was still alive, and the failure of Cypriot authorities to take steps to punish those responsible for his daughter's death and ill-treatment. Additionally, he complained under Articles 2 and 4 about the failure of Russian authorities to conduct a proper investigation into the alleged trafficking and subsequent death of his daughter, and for neglecting to take the necessary measures to safeguard her from the dangers of trafficking (Allain, 2010; ECtHR, 2010/a, para. 2).

2.1.2. Human trafficking in Cyprus

Trafficking of human beings for commercial sexual exploitation in Cyprus was particularly prevalent in the early 2000s and facilitated by the role of the cabaret industry and "artiste" visas which were essentially used as prostitute visas, bringing young women to Cyprus under false pretences. Due to the persistence of the applicant, the Rantsev case has brought to light the trafficking and sexual exploitation industry of foreign women in Cyprus. Oxana Rantseva's tragic death served as a catalyst to reveal the long-standing sex industry in Cyprus, as the Cypriot Ombudsman, the Council of Europe Commissioner for Human Rights, and the United States State Department have all published reports on the prevalence of human trafficking for sexual exploitation in Cyprus. These reports disclosed that foreign women entering Cyprus with an artiste visa were subjected to constant surveillance and guarding by their employer, kept in poor living conditions, and had their passports and personal documents confiscated by their employers. Moreover, many of them were burdened with debts (such as travelling expenses or commissions deducted by the agent who located them in their country), leaving them susceptible to exploitation (Allain, 2010; ECtHR, 2010/b; ECtHR, 2010/a, para. 84).

The Council of Europe Commissioner for Human Rights personally visited Cyprus in June 2003 and highlighted the paradox of the Cypriot government's efforts to combat trafficking while simultaneously granting permits to cabaret artistes and licences to establishments engaged in exploitation. He stated that despite the fact that the Cypriot authorities were aware that foreign women entering the country with an artiste visa would work in prostitution, approximately 4000 visas were issued per year to women mostly originating from Eastern Europe (ECtHR, 2010/a, paras. 90-95; Allain, 2010). Finally, the U.S. State Department report of June 2008 found that Cyprus had failed to provide evidence of its increased efforts to combat human trafficking and suggested the Cypriot government abolish or greatly restrict the use of artiste visas, launch a comprehensive campaign aimed at clients and the larger public to reduce widespread misconceptions of trafficking and the cabaret industry, dedicate more resources to its anti-trafficking units, and improve the quality of prosecutions (ECtHR, 2010/a, para. 106).

2.1.3. Violation of Article 4 of the ECHR by Cyprus

The ECtHR in its judgment on January 7th, 2010, unanimously ruled that Cyprus did not fulfil its positive obligations under Article 4 on two grounds. Firstly, Cyprus failed to put in place an appropriate legal and administrative framework to combat human trafficking. Secondly, the police did not take

suitable protective measures to protect Ms Rantseva from trafficking (ECtHR, 2010/b).

Following the application submitted to the Court by Ms Rantsev's father, in April 2009, the Cypriot authorities made a unilateral declaration acknowledging violations of Articles 2, 3, 4, 5 and 6 of the ECHR and offering to pay compensation to the applicant and advising that independent experts had been appointed to investigate the circumstances of Ms Rantseva's death, employment, and stay in Cyprus. In addition, with reference to the inquest held in Cyprus, which concluded that Ms Rantseva died in circumstances resembling an accident while trying to escape from an apartment where she was staying as a guest, Cyprus requested the Court to halt the application of Mr Nikolay Mikhaylovich Rantsev. However, the Court rejected Cyprus's appeal due to the gravity of the allegations, the pressing issue of trafficking and sexual exploitation in Cyprus, and the limited precedents regarding the interpretation and application of Article 4 of the ECHR to human trafficking (ECtHR, 2010/b).

After the Court's examination of the positive obligations of Cyprus to put in place an appropriate legislative and administrative framework under Article 4, it came to the following conclusions. Cypriot legislation prohibiting trafficking and sexual exploitation was adopted in 2000 with satisfactory provisions that reflect those of the Palermo Protocol. However, concerns arise in terms of the adequacy of Cypriot immigration policy. Despite several repeated concerns about the reports prepared by the Council of Europe Commissioner for Human Rights, Cyprus failed to introduce preventive control measures to stop the flow of young women entering Cyprus with an artiste visa. Moreover, Cyprus did not abolish the concerning artiste visa regime despite repeated requests from the Commissioner who found it particularly alarming that cabaret managers were required to make the application for an entry permit for an artist, thus rendering the artist dependent on her manager or agent and increasing the risk of trafficking. The Court also found alarming the practice that cabaret owners and managers were required to lodge a bank guarantee to cover potential future costs of the artists they employ, and the fact that there have been separate bonds signed in the Rantsev case according to which M.A. was responsible for Ms. Rantseva, which is why he came to pick her up from the police station (ECtHR, 2010/a, paras. 289-291).

In these circumstances, the ECtHR concluded that *“the regime of artiste visas in Cyprus did not afford Ms Rantseva practical and effective protection against trafficking and exploitation. There has accordingly been a violation of Article 4 in this regard”* (ECtHR, 2010/a, para. 292).

As far as Cyprus' positive obligation to take protective measures is concerned, the Court concluded that the police authorities committed multiple failures, such as not questioning Ms Rantseva when she arrived at the police station, nor making further inquiries into the background facts. Moreover, they did not release her, but decided to confide her to the custody of M.A. Thus, the Court concluded that

[...] these deficiencies, in circumstances which gave rise to a credible suspicion that Ms Rantseva might have been trafficked or exploited, resulted in failure by the Cypriot authorities to take measures to protect Ms Rantseva. There has accordingly been a violation of Article 4 in this respect also (ECtHR, 2010/a, para. 297).

2.1.4. Violation of Article 4 of the ECHR by Russia

In response to Russia's submission which opposed the complaint of Mr Nikolay Mikhaylovich Rantsev under Article 4 by emphasising the absence of any slavery, servitude, or forced or compulsory labour in the case, the Court ruled that trafficking itself, as defined by Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, fell under the purview of Article 4 of the European

Convention. The Court stated the following: Firstly, trafficking in human beings, by its very nature and purpose, relied on the exercise of ownership-like powers, treating individuals as mere commodities to be bought, sold, and exploited through forced labour, often receiving meagre or no payment. It involves subjecting victims to constant monitoring, restricting their movements, and employing violence and threats against those living and working in adverse conditions. There was no doubt that trafficking poses a significant threat to the human dignity and fundamental freedoms of its victims, making it incompatible with the principles of a democratic society and the values upheld in the Convention; Secondly, considering its responsibility to interpret the Convention in the context of contemporary circumstances, the Court deemed it unnecessary to determine whether the treatment mentioned in the applicant's complaint fell under the categories of "slavery," "servitude," or "forced and compulsory labor" (ECtHR, 2010/b).

In its judgment, the ECtHR unanimously ruled that Russia failed to conduct an effective investigation in light of the subsequent death of Ms Rantseva and the mystery surrounding the circumstances of her departure from Russia, and thus violated Article 4 by not fulfilling its procedural obligation to investigate (ECtHR, 2010/b). The Court also highlighted the extraterritorial obligation of States with regard to human trafficking where they exercise effective control over the victims or have a significant influence or control over the perpetrators. Therefore, the Russian authorities had an obligation to investigate the potential involvement of individual networks or agents operating within Russia in trafficking Ms Rantseva to Cyprus (ECtHR, 2010/a, para. 306).

However, the Court found no violations of Article 4 concerning the positive obligations of Russia to establish an adequate legislative and administrative framework and to implement protective measures. The Applicant did not point to any particular failing in Russian criminal law and efforts to publicise the risks of trafficking through an information campaign have been made by the Russian authorities through the media. Regarding Russia's positive obligation to implement protective measures, the Court's ruling stated that there was no evidence indicating that the Russian authorities were aware of circumstances leading to a credible suspicion of a real or immediate risk to Ms Rantseva herself before her departure to Cyprus (ECtHR, 2010/a, paras. 301-302).

Moreover, merely demonstrating a general risk concerning young women travelling to Cyprus on artistes visas is insufficient to establish an obligation to implement urgent operational measures by Russia. The Court acknowledges that the Russian authorities did warn citizens about trafficking risks, but given the circumstances of Ms Rantseva's case, there was no positive obligation for Russia to take operational measures to protect her, and there has accordingly been no violation of Article 4 in this regard either (ECtHR, 2010/a, paras. 304-305).

2.1.5. Criticisms of the ECtHR's Judgment

The Court's judgment in the *Rantsev v. Cyprus and Russia* case has been criticised by several international lawyers. Firstly, critics argue that the classification of human trafficking under Article 4 of the ECHR seems disconnected from the established legal definition in the Palermo Protocol (Allain, 2010). By ruling that human trafficking falls within the purview of Article 4 of the Convention, and by consequently expanding the scope of the Article, the Court's interpretation of trafficking undermines the clarity of Article 4 as it failed to provide a clear understanding of its meaning and content. For example, the Court did not engage with the fundamental components of trafficking, such as its methods, means, and other forms of exploitation. As a result, the Court's interpretation of trafficking appears to be excessively narrow. Moreover, the ECtHR did not thoroughly explain how the factual circumstances

of the case related to human trafficking. Thus, the judgment lacked a clear understanding of the distinctions between slavery, servitude, forced labour, and human trafficking, leading to uncertainties about legal reasoning and having potential implications for future cases involving similar circumstances (Stoyanova, 2012; Allain, 2010).

Secondly, critics stressed that the ECtHR should have focused on elaborating the meaning of slavery, servitude, and forced labour in Article 4 and giving these practices a progressive interpretation instead of resorting to the concept of human trafficking. In other words, the ECtHR should have refrained from employing the human trafficking framework and instead focused on the abusive practices pertinent to Article 4 (Stoyanova, 2012).

Thirdly, the Court broadly referred to the concept of exploitation within the context of prostitution which raises uncertainty about whether the threshold of exploitation is lower than that of slavery, servitude, and forced labour, for example. Therefore, the absence of clarity and legal precedents concerning the definition of exploitation impedes a meaningful legal discussion on this issue (Stoyanova, 2012).

While the Court's recognition of positive obligations such as to take protective measures, conduct an effective investigation, and establish appropriate legal and administrative framework to combat human trafficking is appreciated, critics argue that the legal analysis related to these measures in the Rantsev case lacks persuasiveness as the Court's interpretation lacks clarity and narrows the understanding of trafficking (Stoyanova, 2012; Allain, 2010). Nevertheless, the Rantsev case serves as a crucial reminder of the ongoing challenges in combating human trafficking and the need for clear legal frameworks to protect the rights and dignity of victims. The judgment sets a precedent for future cases and underscores the importance of international cooperation in addressing this crime.

2.1 S.M. v. CROATIA

In *S.M. v. Croatia*, the European Court of Human Rights examines a complaint under Article 4 of the Convention. As seen in this report, the Court already addressed the issue of human trafficking as a violation of Article 4, in *Rantsev v. Cyprus and Russia*. However, in this particular case, the Court assessed for the first time whether Article 4 applies to the trafficking and exploitation of women for the purposes of prostitution (ECtHR, 2018b).

2.2.1 Background of the Case

The case concerns a Croatian woman, Ms S.M., born in 1990, who lodged an application with the European Court of Human Rights on August 27th, 2014 against the Republic of Croatia. The applicant alleged that she had been forced into prostitution and that Croatian domestic authorities failed to respond effectively to her complaint (ECtHRs, 2018b).

On September 27th, 2012, the applicant lodged a criminal complaint with the local police against T.M., a former policeman. In that complaint, S.M. declared that she had been physically and psychologically forced into prostitution by T.M. from the summer of 2011 until September 2011. In her statement, she claims that he gave her a mobile telephone in order to communicate with the clients, drove her to meet with them, and if she refused to give sexual services, T.M. would physically abuse her. The applicant and T.M. lived in the same flat, intensifying the control he had over her. It is additionally important to stress that the defendant had been convicted of the criminal offences of pandering and rape, and was sentenced to six years and six months of imprisonment in Croatia (ECtHR 2018a).

On November 6th, 2012, T.M. was indicted in the Croatian Criminal Court under allegations of forcing someone into prostitution as an aggravated offence of organising prostitution under Article 195 of Croatia's Criminal Code. This article addresses trafficking in human beings and slavery (ECtHR, 2018a). A month later, on December 21st, 2012, the Applicant was officially given the status of victim of human trafficking by the Office for Human and Minority Rights of the Government of Croatia, which provided her with some assistance such as the right to counselling and free legal aid (ECtHR, 2018b).

The hearing was held on January 13th and February 15th, 2013. The Croatian Court's final verdict was that although T.M. had formed a prostitution ring and recruited M.S., it could not be proven that he compelled her into prostitution. It was proven, however, that the Accused gave a mobile telephone to the victim; the victim indeed provided sexual services in the flat; and on some occasions, the Accused drove the victim to the client's addresses (ECtHR, 2018a). However, the Court claimed that the applicant's testimony was incoherent and hesitant, and therefore not reliable. In conclusion, the Criminal Court did not convict T.M. because there was insufficient evidence to support that the applicant was forced, but rather had given sexual services voluntarily (ECtHR, 2018b).

After this decision, the Applicant lodged a constitutional complaint with the Constitutional Court on March 31st, 2014. In this new complaint, the Applicant addressed the criminal law mechanisms used in her case, especially the insufficiency of the domestic legal framework and the lack of an appropriate procedural response from domestic authorities to her complaints.

Some of her allegations include that the local authorities failed to investigate all the circumstances of her case. In particular, the fact that she had no means of subsistence, which made her economically dependent on T.M., and that he used various means of coercion against the applicant and threatened her and her family. Further on, M.S. claimed that the authorities did not properly investigate and address the element of force; that she did not receive any psychological assistance during the court hearing; and finally, that officials were not adequately trained on how to treat victims of sexual-related offences, failing to provide her with clear instructions on her rights as a victim. On June 10th, 2014, the Constitutional Court declared the applicant's constitutional complaint inadmissible. The applicant then filed an application to the European Court of Human Rights on August 27th, 2014 (ECtHRs, 2018a).

3.3.2. Violation of Article 4 of the ECHR by Croatia

After the application was received, the Court started assessing the case under Article 4 of the Convention. In order to determine if there was a violation of such an article, the Court divided the Applicant's complaints into three main aspects. The first one lies in whether there is an appropriate domestic legal and administrative framework to address, investigate, and punish trafficking. The Court verified that the exploitation of prostitution, including forced prostitution and personal offerings of sexual services, is illegal in Croatia. Furthermore, the country's Government adopted a number of strategic documents targeted at preventing and combating human trafficking. Thus, the ECtHR concluded that at the time the complaint was submitted by S.M, Croatia had an adequate legal framework in place to deal with the Applicant's offence (ECtHR, 2018a). The second aspect refers to the support given to the Applicant. The Court confirmed that S.M. had received proper support and assistance throughout the process as she had been recognised as a victim of human trafficking by the Croatian authorities. Finally, the third category was whether the national authorities complied with their procedural obligations. The Court's analysis concluded that national authorities failed to adequately investigate all relevant circumstances and did not acquire all available evidence. In summary, Croatia's authorities did not interview key

witnesses, such as the applicant's clients; they made no meaningful attempt to investigate her allegations of threats and financial dependence on T.M.; and the national court erroneously concluded that S.M. had not been coerced and gave sexual services voluntarily, not taking into consideration that according to Croatian law, the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, and the Council of Europe Anti-trafficking Convention, the consent of the victim is irrelevant (ECtHR, 2018a; European Court of Human Rights, 2018b).

Thus, the ECtHR concluded that the local authorities had failed to sufficiently investigate the case, preventing a just ruling, and considering the aspects mentioned above, there had therefore been a procedural breach of Article 4 of the Convention in this case. In terms of reparations, it was decided by six votes to one that the respondent State had to pay the applicant EUR 5,000 in respect of non-pecuniary damage (ECtHR, 2018a).

Through this decision, the ECtHR established that not only trafficking itself but also the exploitation of prostitution fall within the scope of Article 4 of the European Convention.

The Court considers it unnecessary to identify whether the treatment of which the applicant complained constituted “slavery”, “servitude” or “forced and compulsory labour”. Instead, the Court concludes that trafficking itself as well as exploitation of prostitution, within the meaning of Article 3(a) of the Palermo Protocol, Article 4(a) of the Anti-Trafficking Convention, Article 1 of the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others and the CEDAW, fall within the scope of Article 4 of the Convention (ECtHRs, 2018a).

In these circumstances, the ECtHR considered it irrelevant that there was no international element in the present case and that the applicant was actually a citizen of the respondent State. To corroborate this argument, the Court cited Article 2 of the Anti-Trafficking Convention, ratified by Croatia, which covers “all forms of trafficking in human beings, whether national or transnational”. As a result, Article 4 safeguards those who are subjected to trafficking within a domestic setting and also in a transnational context (ECtHR, 2018b).

Furthermore, the Court's decision referred to *Rantsev v. Cyprus and Russia*, where trafficking in human beings was often described as a form of modern slavery without the need to classify it as “slavery”, “servitude” or “forced labour.” The Court then stated that:

[...] the identified elements of trafficking – the treatment of human beings as commodities, close surveillance, the circumscription of movement, the use of violence and threats, poor living and working conditions, and little or no payment – cut across these three categories” (ECtHR, 2018a, p. 24).

In *S.M. v. Croatia*, the Court and the Grand Chamber reaffirmed that trafficking does indeed fall within the material scope of Article 4 under the justification that human trafficking is comparable and similar to the abuses of slavery, servitude, and forced labour. The Court adds that forced prostitution can also fall within the parameters of Article 4.

The Court finds that the notion of “forced or compulsory labour” under Article 4 of the Convention aims to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether, in the particular circumstances of a case, they are related to the specific human trafficking context. Moreover, any such conduct may have elements qualifying it as “servitude” or “slavery” under Article 4, or may raise an issue under another provision of the Convention (S.M. v. Croatia, Grand Chamber, 2020, p. 75).

This Grand Chamber statement indicates that forced prostitution may be included in Article 4 regardless of whether it serves the aims of human trafficking, forced labour, slavery, or servitude (Stoyanova, 2020).

3.3.3. Criticisms of the ECtHR's Judgment

The ECtHR has sought to reinterpret Article 4 in ways that render it applicable to human trafficking and modern slavery. However, the ambiguity of what constitutes 'human trafficking' and its conceptual proximity or overlap with the terms of Article 4 still remains. It is still argued whether trafficking falls within the scope of Article 4, as the nature of the intrinsic relationship between trafficking and the concepts within Article 4 are not well clarified, as well as whether there are any convergences between trafficking and forced labour (Kane, 2021).

To begin with, Stoyanova argues that human trafficking might be comparable with slavery, servitude, and forced labour to some extent. However, there is no convergence between them, and the Court's final position ignores their differences. There is no concrete evidence provided by the Court that corroborates or clarifies this relationship. Nevertheless, the Court's decision was useful in terms of the clarification that 'forced prostitution' can be covered by Article 4 (Stoyanova, 2020).

Furthermore, ECtHR Judge Koskelo, in her dissenting opinion, pointed out several flaws in the Court's arguments. She stated that a complaint consists of two elements: factual allegations and legal arguments, and that the Applicant's case had failed in both aspects. She affirmed that the Applicant did not mention in her statement any inadequacy by the domestic court in the collection of evidence, nor any omissions in respect of possible additional witnesses. Thus, the Court had no jurisdiction to examine issues not complained of by the Applicant. Besides this, the Judge made clear that the Court did not have proper evidence to consider that there had been a failure by the respondent State's authorities in assessing S.M.'s case (ECtHRs, 2018a).

Following her reasoning, the Judge declared that the Applicant's complaint was filed under Articles 3, 6, and 8, not Article 4. As a result, she suggested that the initial recognition of a person as a victim of trafficking by local authorities was insufficient to engage in the application of Article 4. Koskelo criticised how this case was used as an opportunity by the Court to expand the scope of the application of Article 4 without any significant analysis, discussion, or explanation intended to clarify the situation, particularly by including trafficking and the exploitation of prostitution within the scope of Article 4 as there is no consensus on whether prostitution always involves exploitation or not (ECtHR, 2018a).

2.3. T.I. and Others v. Greece

The judgment in T.I. and Others v. Greece was pronounced on July 18th, 2019, by the ECtHR, addressing important aspects of Article 4 of the Convention. It dealt mainly with the failure of the authorities to conduct an effective investigation concerning the issuing of visas by public officials, which allegedly enabled human trafficking (ECtHR, 2019a). The case adds to the relatively scarce case law concerning Article 4 and makes positive findings regarding the procedural aspects of the provision and the duty to adopt an adequate legal framework (EHRAC, 2019).

2.3.1. Background of the case

The case concerns the claims of three Russian nationals who obtained visas from the General Consulate of Greece in Moscow between June and October 2003. The consulate employees were allegedly bribed

by Russian traffickers, issuing visas to facilitate their entry into Greece for the purpose of sexual exploitation (EHRAC, 2019).

The Greek authorities recognised the Applicants as “victims of human trafficking” under national law and brought proceedings against the suspected traffickers (EHRAC, 2019). Two sets of criminal proceedings were instituted by authorities against the individuals directly involved in the exploitation of the victims, and proceedings were also instituted concerning the issuing of visas (ECtHR, 2019a).

Regarding the first and second Applicants, two traffickers were convicted for forgery, use of forged documents, and falsification of certificates, but were acquitted of organised crime and human trafficking. Concerning the third victim, two traffickers were convicted on the counts of criminal conspiracy, human trafficking, and sexual exploitation, but not on the count of unlawful confinement (EHRAC, 2019). Furthermore, regarding the visas issued by the consulate, several individuals were acquitted by the Athens Criminal Court, including consular employees, due to the allegation that the offences of human trafficking were time-barred (EHRAC, 2019).

2.3.2. Violation of Article 4 of the ECHR by Greece

The Applicants alleged the failure of the Greek State to fulfil its obligations to prosecute and penalise acts relating to human trafficking and protested the inadequacy and shortcomings of authorities in the investigation and judicial proceedings. They instituted proceedings invoking Articles 4, 6, and 13 of the Convention, which concern the prohibition of slavery and forced labour, the right to a fair trial, and the right to an effective remedy, respectively. Nonetheless, the ECtHR decided to analyse the claims solely in light of Article 4 of the Convention (ECtHR, 2019b).

In its assessment, the Court reiterated that Article 4 enshrines one of the fundamental values of democratic societies and, due to its importance, the scope of the Article cannot be limited to direct actions of the State authorities. Therefore, the provision imposes positive obligations on the State parties concerning the prevention and suppression of trafficking, as well as the protection of its victims (ECtHR, 2019b).

Firstly, the Court found a breach of Article 4 due to the fact that the legal framework at the time, under which the proceedings took place, was not effective or sufficient to punish the traffickers or to ensure the effective prevention of trafficking. It also concluded that the conduction of investigations amounted to a breach of the procedural aspects of Article 4, as the authorities did not treat the case with the level of diligence required by the Convention. Due to the non-pecuniary damage suffered by the applicants as a result of the infringement of their rights guaranteed by Art. 4, the Court awarded each of them EUR 15,000 (ECtHR, 2019b).

Nonetheless, the Court could not conclude that the domestic authorities had failed to undertake operational measures in order to offer the applicants protection as victims of human trafficking. The Court explained that the positive obligation to prevent all potential violence, deduced from Article 4, must be interpreted in a way so as not to impose an unbearable or excessive burden on the authorities (ECtHR, 2019b).

Thus, in the case, it was determined that the suspension of the applicant’s expulsion orders and issuing of temporary resident permits by the authorities, were sufficient to comply with the State’s positive obligations under Article 4, relying on the “impossible and disproportionate burden” test (EHRAC,

2019).

2.3.3. Criticisms of the ECtHR's Judgment

The judgment of the *T.I. and Others v. Greece* case was upheld unanimously by the European Court of Human Rights, adding the relatively scarce case law concerning Article 4 (ECtHR, 2019b). However, the case did not spark much controversy in the media or among international scholars.

The European Human Rights Advocacy Centre formulates one of the few criticisms concerning the case. It defends that, when analyzing whether the domestic authorities had failed to undertake operational measures to offer the applicants protection as victims of human trafficking, the Court applied the “impossible and disproportionate burden” test, which imposes a very light burden on the State authorities (EHRAC, 2019).

This test is widely applied by the ECtHR, as observed in the cases of *C.N. v. the United Kingdom*, and *Rantsev v. Cyprus and Russia*. (ECtHR, 2022) As explained in *T.I. and Others v. Greece*, the notion that the obligation to protect actual or potential victims of treatment contrary to Article 4 must not be interpreted as imposing an unbearable or excessive burden on the authorities derives from the police’s difficulties in carrying their functions in contemporary societies, the unpredictability of human behavior, and the operational choices to be made in terms of priorities and resources (ECtHR, 2019b).

When analyzing the conduct of the UK, Elizabeth Bates defends the existence of emerging evidence, suggesting that the UK authorities used the “impossible and disproportionate burden” test as “*a putative on/off switch for the investigatory obligation, and a cost/benefit test as to whether to proceed with an investigation*” (Bates, 2020, p. 4). Although this finding does not address the applicability of Article 4, it does support the claim that this test imposes a light burden on States, demonstrating how they can interpret and use it for their benefit.

Furthermore, some critiques regarding other ECtHR cases could equally be applied to *T.I. and Others v. Greece*. For instance, as in the *Rantsev v. Cyprus and Russia* case, the Court assesses the applicability of Article 4 in the context of human trafficking, however, it does not engage with the fundamental components of trafficking, leading to a narrow interpretation of the concept (ECtHR, 2019b).

Conclusion

The purpose of this paper was to shed light on the specific context of human trafficking on the European level, in light of Article 4 of the European Convention on Human Rights (ECHR) which prohibits slavery, servitude, and forced and compulsory labour, but does not explicitly mention the prohibition of human trafficking. As a result, this study delved into the jurisprudence of the European Court of Human Rights through the examination of three case studies on human trafficking linked to sexual exploitation and forced prostitution: *Rantsev v. Cyprus and Russia*, *S.M. v. Croatia* and *T.I. and Others v. Greece*. These case studies were chosen to highlight the complexities of interpreting Article 4 to modern-day challenges of slavery and forced labour as well as to illuminate the gender-specific aspects of human trafficking and to underscore the distinct vulnerabilities faced by women and girls in such scenarios.

Despite the variations in circumstances and details, the ECtHR ruled in all these three cases that human trafficking, including sexual exploitation and/or forced prostitution, falls within the scope of Article 4 as these offences share characteristics akin to slavery, servitude, and forced labour. In each case, the Court highlighted the necessity for an effective legal and administrative framework to combat trafficking, signalling that States hold a positive obligation to create a robust system for addressing such grave violations. Moreover, the ECtHR stressed the significance of effective investigations, underscoring that the failure to conduct thorough inquiries can constitute a breach of the procedural obligations set forth in Article 4. The Court's judgments also underscore the pivotal role of gender dimensions in human trafficking cases. It consistently recognised the special vulnerabilities of women and girls in this context, reinforcing the significance of protecting their rights and well-being. Lastly, the Court's decisions reveal a consistent willingness to apply Article 4 both in cases with transnational and national elements. Consequently, as was explained in the cases of *Rantsev v. Cyprus and Russia* and *T.I. and Others v. Greece*, States are held accountable for addressing human trafficking that transcends national borders.

In contrast, the abundance of critiques around the jurisprudence of the ECtHR in these three cases of human trafficking makes it clear that the application of Article 4 of the ECHR requires further debate and scrutiny by judges and legal experts. One common theme of criticism revolves around the Court's classification of human trafficking under Article 4. The Court's judgments have been scrutinised for lacking sufficient clarification of this relationship and for their potential implications for future cases. Furthermore, the Court's treatment of the concept of exploitation, particularly within the context of prostitution in the *S.M. v. Croatia* case lacks clarity and hinders in-depth legal discussions about this critical aspect of human trafficking cases.

In summary, the critiques of the three judgments by the ECtHR underscore the complex nature of interpreting and applying Article 4 to modern forms of exploitation, such as human trafficking and forced prostitution. Nonetheless, through these cases, the ECtHR sets important precedents that contribute to the evolving jurisprudence surrounding human trafficking linked to sexual exploitation and the more effective prosecution of future incidents.

Bibliography

Allain, J. (2010). *Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery*. *Human Rights Law Review*, (10)3. Retrieved August 07, 2023, from <https://www.corteidh.or.cr/tablas/r26537.pdf>

Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970.

Barnes, K. (2020). Establishing a breach of Article 4 ECHR. *39 Essex Chambers*. Retrieved July 24, 2023, from <https://www.39essex.com/sites/default/files/KB-Trafficking-Slides-Art-4.pdf>

Bates, E. S. (2020). ‘Impossible or Disproportionate Burden’: The UK’s Approach to the Investigatory Obligation under Articles 2 and 3 ECHR. *European Human Rights Law Review*, 2020(5), 499–511.

Council of Europe (1950). European Convention on Human Rights. Retrieved on July 20, 2023, from <https://www.echr.coe.int/european-convention-on-human-rights>

Council of Europe (n.d). The European Convention on Human Rights - how does it work? Retrieved July 20, 2023, from <https://www.coe.int/en/web/impact-convention-human-rights/how-it-works>

CTDC (2023). Global Dataset: Counter Trafficking Data Collaborative. Retrieved August 10, 2023, from <https://www.migrationdataportal.org/themes/human-trafficking#:~:text=The%202022%20report%20estimates%20that,were%20in%20a%20forced%20marriage>.

European Court of Human Rights. (2019a, July). *Information Note on the Court’s case-law 231*. Retrieved August 10, 2023, from <https://hudoc.echr.coe.int/tur?i=002-12558>

European Court of Human Rights. C.N. and V. v. France, Application no. 67724/09 (11 October 2012).

ECtHR. S.M. v. Croatia, Application no. 60561/14 (2020).

ECtHR. Siliadin v. France, Application no. 73316/01 (2005).

ECtHR. Stummer v. Austria, Application no. 37452/02 (2011).

ECtHR. T.I. and Others v. Greece, Application no. 40311/10 (2019b).

Equality and Human Rights Commission. (2021, June 3). *Article 4: Freedom from slavery and forced labour*. Retrieved July 24, 2023, from <https://www.equalityhumanrights.com/en/human-rights-act/article-4-freedom-slavery-and-forced-labour#:~:text=Slavery%20is%20when%20someone%20actually,under%20the%20threat%20of%20punishment>.

European Court of Human Rights. (2018a). First section Case of S.M. v. CROATIA. Retrieved July 31, 2023, from https://sherloc.unodc.org/cld/uploads/res/case-law-doc/traffickingpersons/crimetype/hrv/2020/application_n_6056114_html/CASE_OF_S.M._v._CROATIA.pdf

European Court of Human Rights. (2018b). ECHR finds rights violation in case of Croatian woman who alleged she was forced into prostitution. Retrieved July 31, 2023, from <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6150030-7955970&filename=Judgment%20S.M.%20v.%20Croatia%20-%20case%20of%20Croatian%20woman%20allegedly%20forced%20into%20>

0prostitution.pdf

European Court of Human Rights. (2021). The ECHR in 50 Questions. Retrieved July 20, 2023, from https://www.echr.coe.int/documents/d/echr/50questions_eng

European Court of Human Rights. (2022). Guide on Article 4 of the European Convention on Human Rights - Prohibition of slavery and forced labour. *Council of Europe/European Court of Human Rights*. p. 5-21. Retrieved July 24, 2023, from https://www.echr.coe.int/documents/d/echr/guide_art_4_eng

European Court of Human Rights. (n.d). Questions & Answers. Retrieved July 20, 2023, from https://www.echr.coe.int/documents/d/echr/questions_answers_eng

European Court of Human Rights, ECtHR/a (7 January 2010). Case of *Rantsev v. Cyprus and Russia - Judgment*. Application no. 25965/04. Strasbourg.

European Court of Human Rights, ECtHR/b. (January 2010). *Rantsev v. Cyprus and Russia - 25965/04*. Information Note on the Court's case-law No. 126. Retrieved August 07, 2023, from <https://hudoc.echr.coe.int/fre?i=002-1142>

European Human Rights Advocacy Centre ("EHRAC"). (2019, October 2). *T.I. & Others v. Greece*. Retrieved August 10, 2023, from http://ehrac.org.uk/en_gb/resources/t-i-others-v-greece/

Grand Chamber. (2020). Case of S.M. v. CROATIA. Retrieved July 31, 2023, from https://sherloc.unodc.org/cld/uploads/res/case-law-doc/traffickingpersonscrimetype/hrv/2020/application_n_6056114_html/CASE_OF_S.M._v._CROATIA_1.pdf

Human Rights Council. (2017). Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. HRC 36th session. UN Doc. A/HRC/36/43. Retrieved August 07, 2023, from https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/43

ICAT. (2017). The Gender Dimensions of Human Trafficking. Retrieved on August 10, 2023, from <https://icat.un.org/sites/g/files/tmzbd1461/files/publications/icat-ib-04-v.1.pdf>

International Labour Organization (ILO). *Forced Labour Convention, C29*, 28 June 1930.

Kane, G. (2021). Building a House upon Sand? Human Trafficking, Forced Labor, and Exploitation of Prostitution in S.M. v. Croatia. Retrieved on August 03, 2023, from https://brill.com/view/journals/ilrc/7/1/article-p74_74.xml?alreadyAuthRedirecting

Kirchner, S., & Frese, V.M. (2015, November 16). Slavery under The European Convention on Human Rights and the *Jus Cogens* Prohibition of Human Trafficking. *Denning Law Journal*. Retrieved July 24, 2023, from <http://www.ubplj.org/index.php/dlj/article/view/1105>

League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Registered No. 1414.

Migration Data Portal. (2023). Human Trafficking. Retrieved on August 10, 2023, from <https://www.migrationdataportal.org/themes/human-trafficking#:~:text=The%202022%20report%20estimates%20that,were%20in%20a%20forced%20marriage.>

Nandagopal, P. (2010). European Court Delivers Judgment in Landmark Human Trafficking Case. *Human Rights Law Center*. Retrieved August 07, 2023, from <https://www.hrlc.org.au/human-rights-case-summaries/rantsev-v-cyprus-and-russia-2010-echr-2596504-7-january-2010>

Office of the United Nations High Commissioner for Human Rights, OHCHR. (2014). Human Rights and Human Trafficking. Fact Sheet No. 36. *United Nations Human Rights Office of the High Commissioner*. Retrieved July 24, 2023, from https://www.ohchr.org/sites/default/files/Documents/Publications/FS36_en.pdf

Stoyanova, V. (2012). Dancing on the Borders of Article 4. Human Trafficking and the European Court of Human Rights in the Rantsev case. Lund University Faculty of Law. *Netherlands Quarterly of Human Rights* (30)2. Retrieved August 07, 2023, from https://works.bepress.com/vladislava_stoyanova/5/

Stoyanova, V. (2020). The Grand Chamber Judgment In S.M. V Croatia: Human Trafficking, Prostitution And The Definitional Scope Of Article 4 ECHR. Retrieved August 03, 2023, from <https://strasbourgobservers.com/2020/07/03/the-grand-chamber-judgment-in-s-m-v-croatia-human-trafficking-prostitution-and-the-definitional-scope-of-article-4-echr/>

UNGA. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (adopted 15 November 2000). UNGA Res 55/25. Retrieved July 24, 2023, from <https://www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf>

United Nations. (1969). Vienna Convention on the Law of Treaties. *Treaty Series*, 1155, 331.

UNODC. (2004). *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. United Nations Office on Drugs and Crime, Vienna. Retrieved July 24, 2023, from <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

UNODC. (2022). Global Report On Trafficking In Persons 2022. Retrieved August 10, 2023, from https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf



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