

January 2010

Rantsev v. Cyprus and Russia - 25965/04

Judgment 7.1.2010 [Section I]

Article 4

Article 4-1

Trafficking in human beings

Trafficking in human beings: *Article 4 applicable*

Failure by Cyprus to establish suitable framework to combat trafficking in human beings or to take operational measures to protect victims: *violation*

Failure by Russia to conduct effective investigation into recruitment of a young woman on its territory by traffickers: *violation*

Article 1

Jurisdiction of states

Extent of Court's competence in cases involving international trafficking in human beings

Article 2

Article 2-1

Effective investigation

Failure by Cypriot authorities to conduct effective homicide investigation, in particular, as regards securing relevant evidence abroad under international convention for mutual assistance: *violation*

Facts – The applicant's daughter Ms Rantseva, a Russian national, died in unexplained circumstances after falling from a window of a private property in Cyprus in March 2001. She had arrived in Cyprus a few days earlier on a "cabaret-artiste" visa, but had abandoned her work and lodging shortly after starting and had left a note to say she wanted to return to Russia. After locating her in a discotheque some days later, the manager of the cabaret had taken her to the central police station at around 4 a.m. and asked them to detain her as an illegal immigrant. The police had contacted the immigration authorities, who gave instructions that Ms Rantseva was not to be detained and that her employer, who was responsible for her, was to pick her up and bring her to the immigration office at 7 a.m. The manager had collected Ms Rantseva at around 5.20 a.m. and taken her to private premises, where he had also remained. Her body had been found in the street below the apartment at about 6.30 a.m. A bedspread had been looped through the railing of the balcony.

An inquest held in Cyprus concluded that Ms Rantseva had died in circumstances resembling an accident while attempting to escape from an apartment in which she was a guest, but that there was no evidence of foul play. Although the Russian authorities considered, in the light of a further autopsy that was carried out following the repatriation of the body to Russia, that the verdict of the inquest was unsatisfactory, the Cypriot authorities stated that it was final and refused to carry out any additional investigations unless the Russian authorities had evidence of criminal activity. No steps were taken by either the Russian or Cypriot authorities to interview two young women living in Russia whom the applicant said had worked with his daughter at the cabaret and could testify to sexual exploitation taking place there.

In April 2009 the Cypriot authorities made a unilateral declaration acknowledging violations of Articles 2, 3, 4, 5 and 6 of the Convention, 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.

The Cypriot Ombudsman, the Council of Europe Commissioner for Human Rights 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 "artiste" visas in facilitating trafficking in Cyprus.

Law – Article 37 § 1: The Court refused the Cypriot Government's request for the application to be struck out. It found that, despite the unilateral declaration acknowledging violations of the Convention, respect for human rights in general required it to continue its examination of the case in view of the serious nature of the allegations, the acute nature of the problem of trafficking and sexual exploitation in Cyprus and the paucity of case-law on the question of the interpretation and application of Article 4 of the Convention to trafficking in human beings.

Conclusion: case not struck out (unanimously).

Article 1: Jurisdiction *ratione loci* – The Court did not accept the Russian Government's submission that they had no jurisdiction over, and hence no responsibility for, the events to which the application pertained. Since the alleged trafficking had commenced in Russia, the Court was competent to examine the extent to which Russia could have taken steps within the limits of its own territorial sovereignty to protect the applicant's daughter from trafficking and to investigate both the allegations of trafficking and the circumstances that had led to her death, in particular, by interviewing witnesses resident in Russia.

Conclusion: preliminary objection dismissed (unanimously).

Article 2: (a) Cyprus – (i) Substantive aspect: Although it was undisputed that victims of trafficking and exploitation were often forced to live and work in cruel conditions and may suffer violence and ill-treatment at the hands of their employers, a general risk of ill-treatment and violence could not constitute a real and immediate risk to life. In the instant case, even if the police ought to have been aware that Ms Rantseva might have been a victim of trafficking, there had been no indications while she was at the police station that her life was at real and immediate risk and the particular chain of events that had led to her death could not have been foreseeable to the police when they released her into the cabaret manager's custody. Accordingly, no obligation to take operational measures to prevent a risk to life had arisen.

Conclusion: no violation (unanimously).

(ii) *Procedural aspect:* The Cypriot authorities' investigation into the death had been unsatisfactory in a number of ways: inconsistencies in the evidence had been left unresolved; relevant witnesses had not been questioned; little had been done to investigate events at the police station and, in particular, possible corruption on the part of the police; the applicant had not been able to participate effectively in the proceedings; and the Cypriot authorities had refused a Russian offer of assistance that would have enabled them to obtain the testimony of two important witnesses. On this last point, the Court made it clear that member States were required to take necessary and available steps to secure relevant evidence, whether or not it was located on their territory, particularly in a case such as the instant one, in which both States were parties to a convention providing for mutual assistance in criminal matters.

Conclusion: violation (unanimously).

(b) *Russia – Procedural aspect:* Article 2 did not require the criminal law of member States to provide for universal jurisdiction in cases involving the death of one of their nationals outside their territory. The Russian authorities had, therefore, not been under a free-standing obligation to investigate Ms Rantseva's death in Cyprus. As to Russia's duty as a State where evidence was located to render legal assistance to the investigating State (Cyprus), there had been no obligation on the Russian authorities to take action of their own motion to secure the evidence of the two Russian witnesses in the absence of any request from the Cypriot authorities. Lastly, as regards the applicant's complaint that the Russian authorities had failed to request the initiation of criminal proceedings, the Court observed that they had made extensive and repeated use of the opportunities presented by the relevant legal-assistance agreements to press for action by the Cypriot authorities.

Conclusion: no violation (unanimously).

Article 4: (a) *Applicability* – In response to the Russian Government's submission that the complaint under Article 4 was inadmissible *ratione materiae* in the absence of any slavery, servitude or forced or compulsory labour, the Court noted that trafficking in human beings as a global phenomenon had increased significantly in recent years. The conclusion of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("the Palermo Protocol") in 2000 and the Council of Europe Convention on Action against Trafficking in Human Beings in 2005 demonstrated the increasing recognition at international level of the prevalence of trafficking and the need for measures to combat it. It was thus appropriate to examine the extent to which trafficking itself could be considered to run counter to the spirit and purpose of Article 4. By its very nature and aim, trafficking in human beings was based on the exercise of powers attaching to the right of ownership. It treated human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere. It implied close surveillance of the activities of victims, whose movements were often circumscribed and involved the use of violence and threats against people who lived and worked under poor conditions. There could be no doubt that trafficking threatened the human dignity and fundamental freedoms of its victims and could not be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the Court considered it unnecessary to identify whether the treatment about which the applicant complained constituted "slavery", "servitude" or "forced and compulsory labour". Instead, trafficking

itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, fell within the scope of Article 4 of the European Convention.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits – Positive obligations:* It was clear from the provisions of the Palermo Protocol and the Anti-Trafficking Convention that the Contracting States had formed the view that only a combination of measures could be effective in the fight against trafficking. This gave rise to positive obligations to take measures to prevent trafficking, to protect victims and potential victims and to prosecute and punish those responsible for trafficking. As regards the latter point, it was a feature of trafficking that in many cases it was not confined to the domestic arena. Victims were often trafficked from one State to another. Relevant evidence and witnesses could be located in more than one State. For this reason, in addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States were also subject to a duty in cross-border trafficking cases to cooperate effectively with the other States concerned in the investigation, in order to ensure a comprehensive international approach to trafficking in the countries of origin, transit and destination.

(i) *Compliance by Cyprus:* Cyprus had failed to comply with its positive obligations under Article 4 on two counts: firstly, it had failed to put in place an appropriate legal and administrative framework to combat trafficking and, secondly, the police had failed to take suitable operational measures to protect Ms Rantseva from trafficking. (The issue whether the Cypriot authorities had discharged their procedural obligation to investigate the trafficking had been subsumed by the general obligations under Article 2 and did not need to be examined separately.)

As to the first point, although the domestic legislation on trafficking did not in itself appear to give rise to any concern, both the Council of Europe Commissioner for Human Rights and the Cypriot Ombudsman had criticised the “cabaret-artiste” visa regime, which they considered to have been responsible for encouraging large numbers of young foreign women to come to Cyprus, where they were at risk of trafficking. Further, while it was legitimate for immigration-control purposes to require employers to notify the authorities when an artiste left her employment, the responsibility for ensuring compliance with immigration obligations had to remain with the authorities themselves. Measures which encouraged cabaret owners and managers to track down or take personal responsibility for the conduct of artistes were unacceptable and the practice of requiring owners and managers to lodge a bank guarantee to cover potential future costs associated with artistes they had employed was particularly troubling. These factors had been at play in Ms Rantseva’s case. The regime of artiste visas had thus failed to afford Ms Rantseva practical and effective protection against trafficking and exploitation.

As to the second point, the State had been under a positive obligation to take measures to protect Ms Rantseva as there had been sufficient indicators available to the police to give rise to a credible suspicion that she was at real and immediate risk of trafficking or exploitation. There had been multiple failings on the part of the police, who had failed to make immediate further inquiries to establish whether she had been trafficked, had confined her into the custody of the cabaret manager instead of releasing her and had not complied with their statutory duty to protect her.

Conclusion: violations (unanimously).

(ii) *Compliance by Russia*: The Court found no violations of Article 4 as regards the positive obligations to put in place an appropriate legislative and administrative framework and to take protective measures. As to the need for an effective investigation in Russia, the Russian authorities had been best placed to conduct an effective investigation into Ms Rantseva's recruitment, which had occurred on Russian territory. No investigation had taken place, however, a failing that was all the more serious in the light of Ms Rantseva's subsequent death and the mystery surrounding the circumstances of her departure from Russia.

Conclusion: violation (unanimously).

Article 5: Ms Rantseva's detention at the police station and her subsequent confinement in the apartment amounted to a deprivation of liberty. Although it could be inferred that she was initially detained to enable her immigration status to be checked, there had been no basis in domestic law for the police's decision, once they had established that her papers were in order, to continue to hold her or to consign her to the cabaret manager's custody. Cyprus's responsibility was also engaged for Ms Rantseva's detention in the apartment because, even though she had been held by a private individual, it was clear that this would not have been possible without the active cooperation of the police. Her detention in the apartment had been both arbitrary and unlawful.

Conclusion: violation by Cyprus (unanimously).

Article 41: Awards in respect of non-pecuniary damage of EUR 40,000 against Cyprus and EUR 2,000 against Russia.