

Address by Judge Päivi Hirvelä of the European Court of Human Rights

At the Conference marking the 10th anniversary of the opening for signature of the Council of Europe Convention on Action against Trafficking in Human Beings on 16.6.2015

Madam Chair, Ladies and gentlemen,

Introduction

It is an honour for me to address this Conference marking the 10th anniversary of the opening for signature of the Council of Europe Convention on Action against Trafficking in Human Beings.

Ladies and gentlemen, let me start with some general observations regarding this phenomenon and the international treaties combating this criminality. After that I will take the opportunity to present the landmark human trafficking case in the case-law of the Court of Human Rights, namely *Rantsev v. Cyprus and Russia*, in which the Court had the opportunity to apply several aspects of the Anti-Trafficking Convention.

Trafficking is a multiple phenomenon and can take various forms: It can occur within a country or transnationally, where different countries in Europe and in the whole world can be the countries of origin, transit countries and countries of destination. It can occur in the form of sexual exploitation, forced labour, forced marriages, domestic servitude, forced organised begging, petty crime or even as trafficking of organs.

What is essential in all forms of human trafficking is that human trafficking is trade. It is an extremely profitable form of trade and the fastest growing transnational criminal activity. The ILO has estimated that it is the third largest source of criminal profit after drugs and arms trafficking.

The second fundamental aspect of trafficking is that it is trade in people - making money by exploiting persons and depriving them of their human rights. According to the ILO, the

number of victims across the world can be estimated at over 21 million: 21 million women, men and children - the majority of them women and girls – who are robbed of their fundamental rights.

The third essential feature in trafficking is that there is no trade without demand. The fact that human trafficking is profitable means that the market situation is good and that there is demand. This indicates that there is any amount of customers ready and willing to use these “services” and to exploit the victims of the traffickers.

International documents

At the time the Convention on Human Rights was adopted, the term “trafficking in Human beings” did not exist. However, the term “slavery and forced labour” did exist. The Convention on Human Rights in its Article 4 expresses an absolute prohibition of slavery and forced labour. The Court has further stated that it enshrines one of the most fundamental values of the Convention.

Several international Organisations and States have actively put this prohibition into force and engaged in combating human trafficking. On the European level, at the heart of this fight is the Council’s Anti-Trafficking Convention which was opened for signature exactly 10 years ago and entered into force in 2008.

In addition to that, the EU directive of 2011 preventing and combating trafficking in human beings and protecting victims, together with the Anti-Trafficking Convention shows a clear declaration of war against this phenomenon.

The Council of Europe Convention is a comprehensive treaty and contains the main measures of the 3 Ps:

- Prevention of trafficking,
- Prosecution of traffickers and
- Protection of the victims.

Furthermore, the Convention is not only a piece of paper and wishful thinking but provides a practical monitoring mechanism, GRETA, the group of experts, controlling the implementation of the obligations contained in the Convention.

Let me now turn to the landmark case Rantsev v. Cyprus and Russia

In the *Rantsev* case, the facts were that a steady flow of young women entered Cyprus to work as “cabaret artistes”. They included a young Russian woman, *Oxana Rantseva*, who arrived in Cyprus to work as an artiste in a nightclub. The owner of the nightclub had applied for an artiste’s visa for her before she entered the country. After working for 2 weeks in the club, *Oxana* left the apartment where she was staying and took all her belongings in order to return to Russia. The club owner, after noticing *Oxana*’s escape, informed the immigration office that she was in the country illegally. Later in the evening *Oxana* was found by the police and handed over to the owner of the nightclub. Early next morning she was found dead on the street below the balcony of the owner’s apartment.

At the outset, the Strasbourg Court assessed whether Article 4 was applicable to the case, and found that it was. The Court noted that, like slavery, 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 labour, usually in the sex industry. It implies close surveillance of the activities of victims and involves the use of violence and threats against the victims. Accordingly the Court, referring to the Anti-trafficking Convention, held that trafficking itself was prohibited by Article 4 of the European Convention on Human Rights.¹

Furthermore, the Court stated that Article 4 entails *positive obligations* whereby a State must take *active actions* to guarantee that human rights are true and practical - not only theoretical and illusory. Thus, the positive obligation of the State requires *actions by the States*: Firstly, it is their duty to put in place national *legislation and an administrative framework to prohibit and punish trafficking* and to penalise and prosecute those involved. Secondly, they must take operational measures to protect the victims or potential victims of trafficking. The third

¹*Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 279-282, 7.1.2010.

obligation is to carry out an *effective investigation* of cases and in cross-border trafficking to co-operate with relevant authorities of other States concerned.²

In fact, the positive obligations illustrate *the three Ps of the Anti-Trafficking Convention*: prevention, prosecution and protection.

How did the authorities in the Rantsev case comply with these obligations?

First the obligation to put in place a legislative and administrative framework

In the case the Court found that, although Cyprus had legislation prohibiting trafficking, there were a number of weaknesses in the legal and administrative framework. The *artiste visa* regime actually tied the victim to the employer and exposed the victims (thousands of young foreign women) to trafficking and did not afford practical protection against exploitation. The visa regime did not afford to *Oxana* practical and effective protection against trafficking and this was a violation of Article 4.

Secondly, the obligation to take protective measures

The Court further observed that the Cypriot authorities knew that many young women, particularly from Russia, who entered the country on *artiste's visas* would work in prostitution and were trafficked by cabaret owners. Accordingly, as *Oxana* was taken to the police station, there was a credible suspicion for the police that she was at real and immediate risk of being trafficked. Therefore, there arose a positive obligation to take operational measures to protect her, to release her and to investigate whether she was a victim of trafficking. The authorities failed to do that and this aspect was also in violation of Article 4.³

Thirdly, the procedural obligation to investigate trafficking and to co-operate in dealing with cross-border offences

In addition to appropriate criminal and administrative provisions and protection, the States are under a duty to conduct an effective investigation.

² *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 283-289, 7.1.2010.

³ *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 297-298, 7.1.2010.

In the *Rantsev* case, the Court noted that the investigation should cover all aspects of trafficking from recruitment to exploitation. The Court reiterated that trafficking is a problem which is often cross-border and not confined only to the domestic arena. Also, in the *Rantsev case*, the country of origin (country of recruitment) and the country of destination (country of exploitation) were different. When investigating, the States are under a duty to co-operate effectively with relevant authorities of other States concerned.⁴

This duty starts immediately when the authorities learn about the matter. Furthermore, the investigation must be independent, impartial, swift and sufficient to cover all circumstances of trafficking. Since *Oxana* was found dead in unclear circumstances and the Cypriot authorities did not carry out an adequate investigation, there was also a violation in that respect.

Regarding the country of origin, Russia, and the obligation to investigate potential trafficking, the Court found that the Russian authorities knew that the traffickers recruited young women from Russia by their agents and networks. However, the Russian authorities had failed to make any attempt to investigate how and where *Oxana* had been recruited. Therefore, the Court found a violation against Russia under Article 4.

Ladies and gentlemen,

This section of the conference is discussing new challenges in combating human trafficking. As stated at the beginning of this presentation, trafficking is trade and the main aim of the traffickers is to earn money by exploiting others. The harsh fact is that there is no trade and earnings without customers who use the services of the victims. In *Oxana*'s case there was demand for the services she had to offer. Therefore, in my opinion, one of the most important new challenges in combating trafficking is to make this business unprofitable: to confiscate the profits earned and to discourage the demand by raising awareness and by criminalising the use of the victims' services.

The Council's Anti-Trafficking Convention is a necessary instrument in this fight as it gives clear and practical instructions to the States to prevent trafficking, to prosecute those involved and to protect the victims.

⁴ *Rantsev v. Cyprus and Russia*, no. 25965/04, § 289, 7.1.2010.

Thank you very much for your attention