

Opinion N° 6/2010 of the Group of Experts on Trafficking in Human Beings of the European Commission

On the Decision of the European Court of Human Rights in the Case of *Rantsev v. Cyprus and Russia*

The Group of Experts on Trafficking in Human Beings of the European Commission, having taken into consideration the following:

The Decision of the European Court of Human Rights in *Rantsev v. Cyprus and Russia*,¹

The Stockholm Programme, which states that after the entry into force of the Lisbon Treaty, the rapid accession of the EU to the European Convention on Human Rights is of key importance,

Also taking into consideration the Action Plan implementing the Stockholm Programme and its Annex, in which the first action under the title “Promoting citizens’ rights: a Europe of rights. A Europe built on fundamental rights” is the recommendation to authorise negotiation of EU accession to the Convention for the Protection of Human Rights and Fundamental Freedoms,

Adopts the following Opinion:

[1] The Group of Experts on Trafficking in Human Beings of the European Commission has examined the decision of the European Court of Human Rights in the case of *Rantsev v. Cyprus and Russia*.

[2] The Group notes that the European Union, and all of its Member States, is bound by the principles of human rights contained in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and interpreted by the European Court of Human Rights.

[3] The Group considers that the decision offers important guidance on the human rights aspects of THB. This is important also in view of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings and its monitoring mechanism “GRETA”.

[4] While THB is generally a crime perpetrated by private individuals, the State nevertheless has human rights obligations towards people who have been trafficked or who are at risk of being trafficked in the future, because of the State’s obligation, under Article 1 of the ECHR, to “secure to everyone within their jurisdiction the rights

¹ Application No. 25965/04, 7 January 2010.

and freedoms” defined in the convention. The Group welcomes the clarification of the meaning of this obligation with regard to THB.

[5] Article 4 of the ECHR prohibits the holding of anyone in slavery or servitude. It also prohibits, with limited exceptions, forced or compulsory labour. No derogations are permitted from that prohibition. The obligations established in Article 4 extend to the prevention of any of these practices by private individuals. As the Court noted in *Siliadin v. France*:

Limiting compliance with Article 4 of the Convention only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective. Accordingly, it necessarily follows from this provision that States have positive obligations ... to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice...²

[6] The Group notes with approval the acceptance by Cyprus that it had obligations to ascertain whether individuals, who come to the attention of State authorities as potential victims of THB, have in fact been trafficked or subjected to sexual or any other kind of exploitation.³

[7] The decision emphasizes that THB is prohibited by Article 4 of the ECHR without the need to define it either as slavery, servitude or forced labour. However, the Group welcomes the statement by the Court that THB may be very similar to slavery because traffickers exercise powers tantamount to ownership,⁴ and that “trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention.”⁵

[8] The Group notes that the obligation under Article 4 of the ECHR extends beyond the duty to prosecute and penalize effectively anyone who has engaged in acts aimed at holding another in slavery, servitude or forced labour. That duty clearly includes having in place national legislation

adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State’s immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking.⁶

The Group welcomes this recognition that the State’s obligation extends beyond the criminal law to include significant victim-protection measures, not only for those who have already been trafficked but also for those at risk of being trafficked in the future. Furthermore, these obligations apply to all persons within the State’s jurisdiction, irrespective of whether the victim’s State of origin is in the European Union.

² *Siliadin v. France*, Chamber Judgment, Application No. 73316/01, 26 October 2005, para 89.

³ Para 187.

⁴ Para 281.

⁵ Para 282

⁶ Para 284.

In addition the Group also notes positively that the Court has addressed the issue of immigration regulations that can contribute to trafficking; in this regard the Group underlines the importance of systematically assessing the impact of immigration legislation and policy on the prevention of trafficking and the protection of victims' rights.

[9] The Group notes further the Court's statement that State authorities may be required to take immediate practical measures of protection of victims or potential victims of THB where

the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified victim had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk.⁷

Accordingly, it is not open to the State to plead ignorance of an individual's situation where it should have made itself aware of the risk faced.

In the opinion of the Group of Experts, such practical measures include:

- the securing of the immediate physical safety of the trafficked person, or person at risk of being trafficked;
- their physical, psychological and social recovery, with the immediate provision of information about their rights and options in a language that they understand;
- referral to assistance and support with the aim of long-term social inclusion.

[10] The Group considers that these immediate measures should be taken regardless of whether the person is able or willing to cooperate with the authorities. In addition, such measures might include, but are not restricted to:

- ensuring that the person has legal assistance and access to justice;
- evaluating the need for short or longer-term international protection, whether through refugee status or subsidiary/complementary protection.⁸
- safe and dignified repatriation involving cooperation with the source State and relevant NGOs and following an individual risk assessment;

[11] The Group furthermore welcomes the statement by the Court that the State's obligation under Article 4 includes a procedural duty to investigate situations of potential trafficking, independently of any actual complaint having been made by the victim, once the State is aware of such a situation. This duty will require urgent action

⁷ Para 286.

⁸ UNHCR, Guidelines on International Protection No.7: *The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the status of refugees to victims of trafficking and persons at risk of being trafficked* (2006); Group of Experts on Trafficking in Human Beings set up by the European Commission, Opinion No. 4/2009 of 16 June 2009, *On a possible revision of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issues to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, para 20.

by the State where there is a possibility to remove an individual from a harmful or potentially harmful situation.⁹

[12] The Group notes the recognition by the Court that not only destination States but also source and transit States have obligations under Article 4 to establish their jurisdiction over any trafficking offence committed on their territory, as well as to cooperate with the relevant authorities in other States.¹⁰ The Group considers that such cooperation is essential in cases of transnational THB.

[13] The decision of the Court makes clear that THB is not only a serious criminal act; States must take significant action in order to meet their obligation to secure to all those within their jurisdiction the right to be free from the threat of enslavement, servitude and forced labour and to live in dignity. Such action is required by the procedural obligation to investigate possible cases of THB and the substantive obligation to prosecute effectively those accused of THB and to put in place effective systems to protect those at risk and to provide access to justice for victims. Such systems should involve both immediate (urgent) and longer-term measures.

[14] The Group notes with approval that the decision of the Court makes clear that a comprehensive approach, encompassing all aspects of prevention, protection and prosecution, is essential in securing effective (State) action against THB.¹¹

22 June 2010

⁹ Para 288.

¹⁰ Para 289.

¹¹ Para 285.