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Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery

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On 7 January 2010, the European Court of Human Rights (the 'Court') rendered judgment in *Rantsev v Cyprus and Russia*,[1] a case that will be laurelled for revealing the human cost of sex tourism in Europe and the Court's willingness to take on the issue of trafficking of women. That human cost is brought into sharp relief with the fate of Oxana Rantseva, a 21-year-old woman from Russia, who stepped off a plane in Cyprus in 2001 and less than a fortnight later was dead. As important as this case is for taking aim at the exploitive nature of the sex industry and the willingness of States to turn a blind eye to it, *Rantsev* brings with it questions regarding the very ability of the Court to adjudicate over issues emanating from Article 4 of the European Convention on Human Rights (ECHR). With the determination of the Court that obligations emanating from Article 4 of the ECHR come into play because trafficking is based on slavery, the Court reveals itself as not having truly engaged with the legal distinctions that exist between these two concepts. As a result, the Court has further muddied the waters as to where legal distinction should be made regarding various types of human exploitation, be it the forced labour, servitude or slavery.

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1 *Rantsev v Cyprus and Russia* Application No. 25965/04, Judgment of 7 January 2010.

1. Trafficking in Cyprus

The *Rantsev* case revealed the Cypriot sex industry for what it is: one which allowed the systemic sexual exploitation of young women from the former Soviet Union by cabaret owners with the knowledge of the Cypriot authorities, if not the very structural assistance of that State. The sexual exploitation of foreign women in Cyprus would not have been brought to light but for the persistence of the applicant in *Rantsev*, the father of Oxana Rantseva, who sought justice for the death of his daughter in Cyprus, Russia and ultimately, at court in Strasbourg. The death of Oxana Rantseva thus acted as a catalyst, moving the Cypriot sex industry out of the shadows.

In 2003, as a result of the death of Oxana Rantseva and 'in light of similar cases which have been brought into publicity [sic] regarding violence or demises of alien women who arrives [sic] in Cyprus', the Cypriot Ombudsman took it upon herself to investigate the situation *ex officio*.[2] That investigation centred upon 'artiste' visas. While the Ombudsman's report noted that 'the word "artiste" in Cyprus has become synonymous with "prostitute" '; the Cypriot artiste visa could not be mistaken for anything but a prostitute visa, as temporary residency and work permits were granted upon satisfactory 'AIDS and other infectious or contagious diseases' tests.[3] The 'artiste' regime, which came into existence in the mid-1970s, was based on immigration and employment laws that saw tens of thousands of alien women come to Cyprus to work in cabarets and nightclubs.[4] The Ombudsman's report rings true for those familiar with cases of human trafficking and more so with the role played by the State in creating the super-structure, which allowed for exploitation to transpire:

> The majority of the women entering the country to work as artistes come from poor families of the post socialist countries. Most of them are educated . . . . Few are the real artistes. Usually they are aware that they will be compelled to prostitute themselves. However, they do not always know about the working conditions under which they will exercise this job. There are also cases of alien women who come to Cyprus, having the impression that they will work as waitresses or dancers and that they will only have drinks with clients ('*consommation*'). They are made by force and threats to comply with the real terms of their work . . . .
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> Alien women who do not succumb to this pressure are forced by their employers to appear at the District Aliens and Immigration Branch to declare their wish to terminate their contract and to leave Cyprus on ostensible grounds . . . . Consequently, the employers can replace them quickly with other artistes . . . .

2 Ibid. at para. 80.
3 Ibid. at para. 116.
4 'Approximately 4,000 artiste visas are issued each year', see ibid. at para. 96.

> The alien artistes from the moment of their entry into the Republic of Cyprus to their departure are under constant surveillance and guard of their employers. After finishing their work, they are not allowed to go wherever they want. There are serious complaints even about cases of artistes who remain locked in their residence place. Moreover, their passports and other personal documents are retained by their employers or artistic agents. Those who refuse to obey are punished by means of violence or by being imposed fees, which usually consist in deducting percentages of drinks, '*consommation*' or commercial sex. Of course these amounts are included in the contracts signed by the artistes . . . .
>
> Generally, artistes stay at one or zero star hotels, flats or guest-houses situated near or above the cabarets, whose owners are the artistic agents or the cabaret owners. These places are constantly guarded. Three or four women sleep in each room. According to reports given by the Police, many of these buildings are inappropriate and lack sufficient sanitation facilities . . . .
>
> Finally, it is noted that at the point of their arrival in Cyprus alien artistes are charged with debts, for instance with travelling expenses, commissions deducted by the artistic agent who brought them in Cyprus or with commissions deducted by the agent who located them in their country etc. Therefore, they are obliged to work under whichever conditions to pay off at least their debts.[5]

For his part, the Council of Europe Commissioner for Human Rights had visited Cyprus and issued three reports between 2003 and 2008. In the last of these reports, the Commissioner noted: 'In 2008, the island still is a destination country for a large number of women trafficked from the Philippines, Russia, Moldova, Hungary, Ukraine, Greece, Vietnam, Uzbekistan and the Dominican Republic for the purpose of commercial sexual exploitation'. The Commissioner went on to say that a 'paradox certainly exists that while the Cypriot government has made legislative efforts to fight trafficking in human beings and expressed its willingness through their National Action Plan 2005, it continues to issue work permits for so-called cabaret artistes and licences for the cabaret establishments'.[6] As the Court noted in its judgment in *Rantsev*, there could be 'no doubt that the Cypriot authorities were aware that a substantial number of foreign women, particularly from the former Soviet Union, were being trafficked to Cyprus on artistes visas and, upon arrival, were being sexually exploited by cabaret owners and managers'.[7]

5 Ibid. at para. 85.
6 Ibid. at paras 101 and 103.
7 Ibid. at para. 294.

It was into this regime of artistes' visas that Oxana Rantseva flew on 5 March 2001. Having been granted a temporary residence and work permit under this scheme, she started work on 16 March but left that employment after 3 days. A week later, in the early hours of 28 March, she was spotted in a discotheque in the Cypriote seaside resort of Limassol. Her previous employer, Marios Athanasiou, was informed and with the assistance of a security guard from his cabaret, took Ms Rantseva to a police station, where she was detained. After looking into the matter for some time, the police officer on duty, having found that as Ms Rantseva was not in Cyprus illegally, was instructed to contact Mr Athanasiou to say that if he did not return to pick Ms Rantseva up, she would be released. Mr Athanasiou collected Ms Rantseva, her passport and other documents, and brought her to an apartment of one of his male employees at around 5.45 am, where she was, in the European Court's assessment, placed in a bedroom against 'her own free will'.[8] At 6.30 am Ms Rantseva was found dead on the street below. The police later found a bedspread looped around the balcony of the fifth-floor apartment. On 29 March a Cypriot autopsy concluded that the injuries she sustained were consistent with the fall that caused her death.

The inquest into the death of Ms Rantseva determined that there 'was no evidence . . . that suggests criminal liability of a third person for her death'.[9] A later autopsy came to a different conclusion. Conducted in Chelyabinsk, Russia[10] in May 2001, after Ms Rantseva's body had been repatriated, an autopsy was conducted at the behest of her father. This autopsy concluded 'without a doubt' that the injuries sustained 'happened while she was alive' and transpired 'within a very short time period, one after another', just before she died.[11]

2. The Case before the European Court of Human Rights

In the wake of this second autopsy, Nicolay Rantsev sought to have his daughter's case in Cyprus reopened. However, what followed was a long string of misunderstandings and a lack of cooperation between Russian and Cypriot authorities. In 2004, with little progress taking place on this front, Nicolay Rantsev made an application to the European Court of Human Rights (the 'Court') complaining, *inter alia*, of violations of Article 2 (right to life), Article 3 (prohibition against torture), Article 4 (prohibition against exploitation) and Article 5 (right to liberty). In April 2009, with the case pending before the Court, Cyprus made a unilateral declaration acknowledging violations of positive obligations with regard to Articles 2, 3, 4, acting inconsistently with Article 5(1) of the ECHR, and offering to pay €37,000. In its unanimous

8 Ibid. at para. 316.
9 Ibid. at para. 41.
10 Located in Central Asia, north of central Kazakhstan.
11 *Rantsev*, supra n. 1 at para. 45.

judgment of 10 January 2010, the First Section of the European Court rejected this unilateral declaration on the basis that the case raised serious allegations and that it was the 'Court's duty to elucidate, safeguard and develop the rules instituted by the Convention' as the case at hand raised 'trafficking issues', which 'the Court has yet to rule on'.[12]

The Court's judgment centred on Article 4. However, it concluded that where Article 2 was concerned, Cyprus had violated its procedural obligations, 'because of the failure to conduct an effective investigation into Ms Rantseva's death'.[13] With regard to Article 5, the Court found 'that the detention of Ms Rantseva at the police station and her subsequent transfer and confinement to the apartment amounted to a deprivation of liberty' that was both unlawful and arbitrary. The Court did not deem it necessary to consider the Article 3 complaint separately. As for Russia, the Court held that it had failed in its procedural obligation under Article 4 by failing to assist the Cypriot authorities in investigating 'the recruitment aspect of alleged trafficking' which would in turn 'allow an important part of the trafficking chain to act with impunity'.[14] Ultimately, the Court held that the Cyprus must pay €43,150 in costs and non-pecuniary damages while Russia was to pay €2,000 in damages.

3. Trafficking as Slavery

The Court saw the *Rantsev* case as one dealing with trafficking and falling under the provisions of Article 4 of the ECHR, which reads:

(1) No one shall be held in slavery or servitude.
(2) No one shall be required to perform forced or compulsory labour.
(3) For the purpose of this article 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.

At a normative level, the Court's judgment in the *Rantsev* case, raises fundamental questions about the manner in which the Court engages with Article 4.

12 Ibid. at para. 200.
13 Ibid. at Operative para. 5.
14 Ibid. at para. 307.

By its own admission, the 'Court is not regularly called upon to consider the application of Article 4'.[15] In fact, but for this and the previous *Siliadin* judgment rendered in 2005,[16] the Court has not truly engaged with the fundamental nature of Article 4; that is: with human exploitation. Instead, as a 1999 book which considered the jurisprudence of the Court up to that point noted: 'The leading case on Article 4 is *Van der Mussele* . . . , in which a lawyer complained about the obligations to provide free legal assistance to poor clients'.[17] This is hardly the stuff of slavery or forced labour. The lack of engagement of the Court with Article 4 is manifest in its understanding of the very nature of that provision. The Court stated in *Rantsev* that Article 4, like Article 2 (right to life) and Article 3 (prohibition against torture), 'enshrines one of the basic values of the democratic societies making up the Council of Europe', and went on to say that Article 4 'makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation'.[18] This is factually wrong and a glaring error by the Court. Only Article 4(1), dealing with slavery and servitude, is non-derogable; the obligations under Article 4(2) and (3), relating to forced or compulsory labour, may be derogated from and, as such, are not listed under Article 15(2).

Where Article 4 is concerned, the Court noted that the term 'trafficking' was absent from its provisions. It then considered the general rules of treaty interpretation as set out by Article 31 of the 1969 Vienna Convention on the Law of Treaties (re: ordinary meaning, in context, with a look to the object and purpose of the treaty), and determined that trafficking fell within the purview of Article 4, though it considered 'it unnecessary to identify whether the treatment about which the applicant complains constitutes "slavery", "servitude" or "forced and compulsory labour" '.[19] Yet, it should be stated at the outset that, there is in law an established definition in the law of trafficking, which has been repeated in both the UN 2000 Palermo Protocol and the Council of Europe's 2005 Convention on Action against Trafficking in Human Beings:

> Trafficking in human beings' 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

15 Ibid. at para. 279.
16 *Siliadin v France* 43 EHRR 16 at paras 91, 92, 98 and 100. See Cullen, '*Siliadin v France*: Positive Obligations under Article 4 of the European Convention on Human Rights', (2006) 6 *Human Rights Law Review* 585.
17 Lawson and Schermes (eds), *Leading Cases of the European Court of Human Rights*, 2nd edn (Nijmegen: Ars Aequi Libri, 1999) at xx.
18 *Rantsev*, supra n. 1 at para. 279.
19 Ibid. at para. 282.

> 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.[20]

This definition, developed within a criminal law paradigm, requires three elements to be present before a person is criminally liable for trafficking in human beings. Trafficking requires an individual to be involved in one of the following activities: 'recruitment, transportation, transfer, harbouring or receipt of persons'. This involvement must have taken place by the 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'. The methods and the means utilised must then have as their ultimate object: exploitation of the person. The definition then sets out what is to be considered, at minimum, as human exploitation: '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'.

Within the European context, the various types of human exploitation enumerated in the European Convention against Trafficking have an established treaty regime attached to each of them. Thus the language of 'the exploitation of the prostitution of others' comes directly from the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others'; 'forced labour or services' from the 1930 ILO Convention No. 29: Forced Labour Convention; 'slavery or practices similar to slavery, servitude' from the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; while the 'removal of organs' is governed by the 1997 Council of Europe Convention on Human Rights and Biomedicine. Where the types of exploitation enumerated in Article 4 of the ECHR are concerned—slavery, servitude and forced labour—the Court has taken its cue for the definition of slavery from the 1926 Convention and of forced labour from the 1930 Convention; while developing its own jurisprudence with regard to servitude.[21]

20 See Article 3(a), United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, GA Res. 55/25, 8 January 2001, A/55/383, at 31; and Article 4(a), 2005 Council of Europe Convention on Action against Trafficking in Human Beings, CETS No: 197. Note that the Palermo Protocol speaks of 'Trafficking in persons' not 'Trafficking in human beings'.

21 Note that 'practices similar to slavery' and 'servitude' should be understood as being identical in normative terms: see Allain, 'On the Curious Disappearance of Human Servitude from General International Law', (2009) 11 *Journal of the History of International Law* 303.

Regarding the link between Article 4 and trafficking, the Court noted that it is 'appropriate in the present case to examine the extent to which trafficking itself may be considered to run counter to the spirit and purpose of Article 4 of the Convention such as to fall within the scope of the guarantees offered by that Article without the need to assess which of the three types of proscribed conduct [i.e. slavery, servitude and forced labour] are engaged by the particular treatment in the case in question'.[22] That said, it is rather disingenuous for the European Court to say that it 'has had only one occasion to date to consider the extent to which treatment associated with trafficking fell within the scope of that Article (*Siliadin* . . .)', as the Court itself makes no mention of the issue of trafficking in the substance of that case, despite the applicant having raised the issue.

The Court determined that it 'considers that 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 then stated that

> in view of its obligation to interpret the Convention in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes 'slavery', 'servitude' or 'forced and compulsory labour'. Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.[23]

The first of these pronouncements raises fundamental concerns regarding the Court's approach to Article 4 and its unwillingness to engage normatively with what it calls the 'three types of proscribed conduct' (slavery, servitude and forced labour). The Court stated that it 'considers that 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'.[24] In effect, the Court made a determination that trafficking is based on slavery; as the final phrase—'exercise of powers attaching to the right of ownership'—is the substance of the definition of slavery as established by the 1926 Slavery Convention, which reads: 'Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'. With this pronouncement, the Court excluded from its understanding of trafficking, the elements of 'recruitment, transportation, transfer, harbouring or receipt of persons'; as well as the utilisation of specific means, such as 'the threat or use of force or other forms of coercion, of abduction', etc. Furthermore, the Court excluded the other types of exploitation which could be at play in a case of trafficking, such as 'the exploitation of the prostitution of others or other forms of sexual

22 *Rantsev*, supra n. 1 at para. 290.
23 Ibid. at para. 282.
24 Ibid. at para. 281.

exploitation, forced labour or services, . . . practices similar to slavery, servitude or the removal of organs'. In sum, with this pronouncement, the Court rids the content of trafficking of the methods of trafficking, the means of trafficking, and seven of the eight types of human exploitation as set out in the 2000 Palermo Protocol and the Council of Europe's 2005 Convention on Action against Trafficking in Human Beings.[25]

If we replace the phrase 'the exercise of powers attaching to the right of ownership' in the Court's pronouncement with the term 'slavery' it reads: the Court 'considers that trafficking in human beings, by its very nature and aim of exploitation, is based on [slavery]'. How then are we to understand a case where trafficking takes place with the purpose not of slavery, but for the removal of organs; is this slavery? Or, for that matter, what are we to make of the work of the International Labour Organisation with regard to trafficking into forced labour; is such trafficking slavery? This is the reading that the Court has given to trafficking in *Rantsev*.

The High Court of Australia (High Court), has taken a very different approach, in the 2008 case of *The Queen v Tang*.[26] There, the High Court's approach began along similar lines to that of the European Court. But the High Court later discounted this thinking:

> It is unnecessary, and unhelpful, for the resolution of the issues in the present case, to seek to draw boundaries between slavery and cognate concepts such as servitude, peonage, forced labour, or debt bondage. The 1956 Supplementary Convention in Art 1 recognised that some of the institutions and practices it covered might also be covered by the definition of slavery in Art 1 of the 1926 Slavery Convention. To repeat what was said earlier, the various concepts are not all mutually exclusive. Those who engage in the traffic in human beings are unlikely to be so obliging as to arrange their practices to conform to some convenient taxonomy.[27]

That said, the High Court then went on to say: 'It is important not to debase the currency of language . . . by giving slavery a meaning that extends beyond the limits set by the text, context, and purpose of the 1926 Slavery Convention . . . .The term "slave" is sometimes used in a metaphorical sense to describe victims of such conditions, but that sense is not of present relevance'.[28] Moving on to consider the meaning given to slavery by the 1926 Slavery Convention, the High Court determined that it applied to situations where either *de jure* or *de facto* a person exercised powers over a person which were tantamount to those that a person could exercise over a thing which

25 This argument is developed further in Allain, 'Book Review: Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery*', (2008) 20 *European Journal of International Law* 453.
26 [2008] HCA 39.
27 Ibid. at para. 29.
28 Ibid. at para. 32.

they owned. By making reference to the work of the UN Secretary General in 1956, the High Court determined that slavery required, either the *de facto* or *de jure*, buying, selling, transferring of a person, or the total control of their labour or the fruits of that labour.[29] In this manner, the High Court, in a criminal case, gave legal certainly to the term 'slavery' as being distinct from forced labour, servitude, etc.

Turning to the European Court's second pronouncement that trafficking falls within the scope of Article 4 of the ECHR but that it was unnecessary to identify whether the treatment alleged by the applicant fell within 'slavery', 'servitude' or 'forced labour' the following comments may be made. In a contradictory manner, the Court did not narrow the scope of application to make trafficking synonymous with slavery, but instead expanded the scope of Article 4, beyond its textual boundaries of slavery, servitude and forced labour, to make it applicable to any type of exploitation including those others enumerated in the treaty definitions of 'trafficking in human beings' (i.e. exploitation of the prostitution of others or other forms of sexual exploitation and the removal of organs). The Court made a determination that, in light of the present-day conditions, trafficking itself falls within the scope of Article 4 of the ECHR. As a result of these conflicting pronouncements—that on the one hand trafficking equals slavery, and, on the other hand, that, teleologically, trafficking falls within the scope of Article 4 without determining under which provision—the Court has failed to demonstrate or set out a clear understanding of the substance or content of Article 4.

Beyond the possibility that the Court should not have dealt with issues of trafficking at all, as this falls within the competence of the supervisory body of the Council of Europe's 2005 Convention on Action against Trafficking in Human Beings: the Group of Experts on Action against Trafficking in Human Beings or 'GRETA', the Court having considered trafficking within its remit, should have followed the lead of the trafficking conventions and determined that Article 4 seeks to address human exploitation. Such exploitation—the *purpose* of trafficking, as set out in the definition—is best understood in the context of negative obligations. As a result of *Rantsev*, Member States of the Council of Europe now have an obligation to suppress not only slavery, servitude and forced labour, but any type of human exploitation on their territory. The nexus of such human exploitation to trafficking is best understood (with the proviso that not all human exploitation will take place in the context of trafficking) with regard to positive obligations, of which the *Rantsev* is

29 See Allain, '*The Queen v. Tang*: Clarifying the Definition of 'Slavery' in International Law', (2009) 10 *Melbourne Journal of International Law* 246 at 257. See also United Nations, Economic and Social Council, Slavery, the Slave Trade, and other forms of Servitude, Report of the Secretary-General, 27 January 1953, E/2357, at 28.

primarily concerned. The definition of trafficking in persons sets out a blueprint of the activities to be dealt with so as to suppress exploitation. This is a situation in which, through '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' a person is recruited, transported, transferred, harboured or in receipt of persons.

The Court, in *Rantsev*, set out an overall regime incumbent on States to ensure that trafficking does not take place in violation of Article 4:

> The Court considers that the spectrum of safeguards set out in national legislation must be 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 . . . .[30]

Where positive obligations are concerned, the Court notes that operationally, States must demonstrate that where they 'were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being trafficked or exploited', they must remove that individual from the situation of risk' or find themselves in violation of Article 4.[31] Procedurally, States must investigate potential cases of trafficking; whereas States of origin or transit have a duty to cooperate effectively in cross-border cases.[32]

With regard to Cyprus, the Court held that its immigration regime of 'artiste' visas 'did not afford to Ms Rantseva practical and effective protection against trafficking and exploitation', and as such a violation of Article 4 had transpired. The Court went on to consider the positive obligations incumbent on Cypriot authorities to take protective measures against trafficking, which they failed to do in the case of Ms Rantseva, thus breaching Article 4. Where Russia is concerned, the Court held that it had failed to fulfil its procedural obligation under Article 4 by not assisting the Cypriot authorities in investigating 'the recruitment aspect of alleged trafficking' which would in turn 'allow an important part of the trafficking chain to act with impunity'.[33]

30 Supra n. 1 at para. 284.
31 Ibid. at para. 286.
32 Ibid. at para. 289.
33 Ibid. at para. 307.

4. Conclusion

With its determination in *Rantsev v Cyprus and Russia*, the European Court of Human Rights has further muddied the waters of the normative elements of human exploitation but also muddled the jurisprudence of Article 4. In its 2005 *Siliadin* case, the Court determined that slavery was not at issue, as its

> definition corresponds to the 'classic' meaning of slavery as it was practiced for centuries. Although the applicant was, in the instant case, clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense, in other words that Mr and Mrs B. exercised a genuine right of legal ownership over her, thus reducing her to the status of an 'object'.[34]

And yet, in *Rantsev*, the Court determined that trafficking was based on the definition of slavery. It will be recalled that the Court stated that it 'considers that 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'. As a result, the Court appears to determine that for trafficking to take place a genuine right—a *de jure* right—of legal ownership must be present. This is, of course, a legal impossibility, and thus, following the logic of the development of the Court's jurisprudence regarding Article 4, it must be understood that, legally speaking, trafficking cannot transpire within Europe as there exists no legal right to own a person within the Council of Europe.

Having identified State complicity in trafficking through Cypriote 'artiste' visas, the Court in essence assimilated trafficking to slavery, at the expense of recognising that it was seeking to deal with human exploitation and not 'slavery' in the metaphorical sense. In so doing, it did not engage with the constituent elements of what constitutes trafficking (its methods, means, or the various lesser servitudes than slavery, including debt bondage and forced labour) and thus provided what appears to be a very narrow understanding of trafficking. That said, in a rather contradictory manner, by determining that Article 4 is a vehicle for considering issues of trafficking, the Court appears to have widened the scope of that Article by providing for issues beyond slavery, servitude and forced labour, to be considered within the purview of the ECHR, most obviously with regard to trafficking in persons for the removal of organs.

While *Rantsev* will be used to good effect by the advocates of human rights and those dealing with trafficking or 'modern forms of slavery' in legal terms it is deeply flawed.

34 *Siliadin v France*, supra n. 16 at para. 122.