

GRETA's First National Report on Ireland: Identification of THB Victims

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GRETA: Article 10

- Challenges of identifying victims of THB: repeatedly recognised in GRETA reports and in general reports.
- Labour exploitation – continuums of exploitation, how to demarcate? (relevance of gender, ‘race’, age)
 - *Siliadin v France* – domestic work, long hours, no pay, ‘the lot of many mothers’, therefore not a violation of human dignity
- Role of consent (outside of THB for sexual exploitation) – irrelevance not understood in practice
 - Complicity in irregularity / illegality of work (CN v UK proceedings at domestic level)
- Victim – self-identification not required, yet..
 - *Osman v Denmark* (Court noted failure of applicant, a minor, or her mother, to complain of THB)

GRETA: Article 10

- Assessing credibility: mixing migration management, immigration control concerns with victim identification
- Weak regulation of labour markets, gaps in functions and competences of labour inspectorates and / or collective bargaining
- Exemptions for labour legislation, ‘tied’ nature of sponsorship programmes
- EEA nationals, not identified as victims of THB
- Precarious migration status, producing vulnerability
- Moving beyond stereotypes:
 - ‘It’s not Leyla Forever, therefore not a case of THB’
 - Identifying male victims of trafficking (gaps and fregailings)
 - Child victims and young people

Complicity: Immigration laws and policies creating vulnerability

- The contradictions and inconsistencies in the Cypriot position, was not of course, unique. Prof Audrey Macklin has written elsewhere on similar inconsistencies in Canadian immigration policy, arising from the operation of the so-called 'exotic-dancer' visa scheme. Destination states, she notes, may be complicit in human trafficking by continuing to operate immigration schemes that significantly increase the vulnerability of migrant women and by limiting access to secure migration status.
- 'Secure immigration status would mitigate a significant cause of the vulnerability of the trafficked sex worker. That it would not resolve it completely speaks to the multiple sources of the disempowerment that generate the migrant woman's vulnerability, including sex, nationality, class and race/ ethnicity.'

Rantsev v Cyprus and Russia (E.Ct of Human Rights)

- the respondent states had failed to discharge their positive obligations of due diligence to investigate, prevent and punish human trafficking.
- a procedural duty to investigate situations of potential trafficking, independently of any actual complaint having been made by the victim once the State was aware, or ought to have been aware, that a real and immediate risk of being 'trafficked or exploited'. Citing *Osman v Turkey*, the Court noted that the positive obligations on states must not create an 'impossible or disproportionate burden.' Para 286
- However, they went on to point out that both respondent states were signatories to the Palermo Protocol, which requires States to endeavour to provide for the physical safety of trafficked persons and to establish comprehensive programmes to prevent and combat trafficking. Significantly, the Court went further, however, to find that states were required not only to investigate offences of trafficking but also to cooperate effectively with other states in the context of cross-border trafficking.

Rantsev v Cyprus and Russia (on the scope of positive obligations)

- 286. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking.
- In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities 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 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 (see, *mutatis mutandis*, *Osman*, cited above, §§116 to 117; and *Mahmut Kaya*, cited above, §§ 115 to 116).

Positive Obligations: Article 4 ECHR

- 287. Bearing in mind the difficulties involved in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must, however, be interpreted in a way which does not impose an It is relevant to the consideration of the proportionality of any positive obligation arising in the present case that the Palermo Protocol, signed by both Cyprus and the Russian Federation in 2000, requires States to endeavour to provide for the physical safety of victims of trafficking while in their territories and to establish comprehensive policies and programmes to prevent and combat trafficking. States are also required to provide relevant training for law enforcement and immigration officials.
- Duty of cross-border cooperation:
 - In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories.

CN v UK (2012)

- *The UK Government had argued in its submissions that the reason no action was taken following the initial investigation of the applicant's complaints, was not because of the absence of specific legislation on servitude or forced labour, but because of the absence of evidence to support the allegations made Ibid., at paras. 80-81.*
- *The Court, however, did not accept that the applicant's complaint was found to be 'inherently implausible.' Drawing on Ranstev, they noted that a duty to investigate was triggered wherever a 'credible suspicion' existed that rights protected by Article 4 had been violated. In this case, the Court was particularly critical of the failure to interview key actors, notably the applicant's relative and the private recruitment agent.*
- *What was required, they said, was a 'thorough investigation', one premised on an understanding of, 'the many subtle ways an individual can fall under the control of another.' The Court was also critical of the failure to give any weight to the applicant's allegations that her passport was taken from her, her wages withheld and that she was subject to threats to denounce her to immigration authorities - all factors, as the Court noted, that came within the scope of the ILO indicators of forced labour. Ibid., at para. 72.*
- *Assessing credibility: intersections of gender, 'race' and ethnicity and migration status as significant factors in disadvantaging claimants. (Note in CN, findings of Poppy project).*

CN v UK (2012)

- Police authorities concluded: ‘no evidence that would support exploitation of any kind’;
- Assessments undertaken by the Poppy project, a Government funded project to support victims of trafficking, and a clinical psychologist specialising in violence against women, found that the applicant presented in ways consistent with a victim of trafficking and forced labour.’ Specifically, the Poppy project assessment concluded that she had been ‘subjected to five of the six indicators of forced labour’ (as identified by the ILO).
- Of note are comments in correspondence from the police at one point that the situation was basically that, ‘one criminal (her uncle) has taken all the proceeds of *their* crime.’ (emphasis added). The reference to ‘their crime’ reveals a preoccupation with the irregularity and illegality of the applicant’s employment.
- Elsewhere, with reference to the taking of the applicant’s documents on her arrival to the UK, the police noted that the documents were false suggesting again that the illegality of the applicant’s entry to and presence in the UK somehow weakened her claims. As the applicant submitted to the Court, the conclusion that the lack of payment was no more than, ‘an absence of ‘honour among thieves’, betrayed a fundamental disregard of the ILO’s key indicators of forced labour and ‘a troubling ignorance of the vulnerabilities of illegal immigrants.’ Ibid., at para. 23.

O.O.O. v Commissioner of Police for the Metropolis (articles 3 and 4 ECHR / HRA)

- The High Court, drawing on *Rantsev*, concluded that a duty of effective investigation arose for the authorities whenever a credible allegation was received that Articles 3 and / or 4 ECHR may have been infringed, 'however that information comes to their attention.' In particular, the Court found that the absence of an identified victim did not, as a matter of principle, preclude the duty to investigate from arising. The Court accepted that the claimants in this case were concerned about their migration status in the UK and that this concern had impacted on their willingness to cooperate in an investigation. However, they concluded that 'reasonable sensitivity' on the part of the police officers could have overcome this obstacle. The duty of effective investigation arising under Articles 3 and 4 ECHR, they found, had not been met. (at para. 163).

Ireland: complying with GRETA?

- Article 10: Identification is of fundamental importance to effectiveness of anti trafficking measures.
- ‘Without trafficked people being identified as such, the whole system of assistance and protection would become irrelevant.’
- Effective system for proactive identification of victims, irrespective of nationality and immigration status.
- Onus of identification lies with the State. (Victims may not identify themselves as such).
- Identification – a collaborative process, involving multi-agency, multi-disciplinary cooperation between State and victim support groups.

Article 10: Greta 'urges' Ireland to..

- Ensure that all victims are properly identified and can benefit from assistance and protection measures:
 - Multi-agency involvement in victim identification, formalise input of specialised NGOs and other relevant actors (eg. labour inspectors, social workers, medical and health care professionals)
 - Formal identification procedures to extend to all victims regardless of nationality or immigration / asylum status
 - De facto guarantee that identification is not dependant on victim cooperation with police authorities

Article 10: GRETA

- Child victims : consider establishing a child specific victim identification mechanism, ensuring best interests of the child are the primary consideration.
- Welcomes attention given to private homes in NERA inspections, and encourages continuation of such inspections as a tool for preventing and detecting THB, alongside inspections in other sectors 'at risk'.
- Develop multi-agency training on identification of THB victims and ensure regular exchange of information
- Invites the State to consider separating THB identification procedures and structures from those relating to immigration.

GRETA: Key concerns

- Role of GNIB – mixed (immigration control and management, with identification of THB victims);
- Practice: potential risk for immigration control to be prioritised;
- Practice: risk that cooperation with police investigation becomes a condition of identification ;
- EEA nationals / asylum seekers not formally identified as victims of THB and consequences of such;
- Strengthen identification through formalised structures of cooperation with NGOs;
- Appeal mechanism – JR not a re-examination of facts, and so a limited remedy only;
- Time: delays in identification process;
- Child victims: need for continuing specialisation and training .