Northern Ireland
Legal Quarterly
Vol. 76 AD1 (2025) 15–25
Commentaries and Notes DOI: 10.53386/nilq.v76iAD1.1212

Human trafficking, intersectionality and the relationship between Articles 4 and 14 of the ECHR

Jason Haynes
Birmingham Law School
Correspondence email: j.k.haynes@bham.ac.uk.

ABSTRACT

This comment examines the landmark European Court of Human Rights case of *FM and Others v Russia* (2024), which assessed the relationship between Articles 4 and 14 of the European Convention on Human Rights in the context of human trafficking and related forms of exploitation. The case involved five Central Asian women subjected to severe labour exploitation in Russia, where authorities repeatedly failed to investigate their claims or offer protection. The court found that Russia violated its positive obligations by condoning trafficking and labour exploitation. While welcoming this watershed ruling, the comment expresses some disappointment at the court's incomplete engagement with intersectional discrimination, arguing that the judgment focuses primarily on gender and migrant status while neglecting other factors like ethnicity and social position. It also highlights the court's missed opportunity to fully articulate the role of human dignity in anti-trafficking adjudication, despite acknowledging its importance in passing.

Keywords: human trafficking; intersectionality; discrimination; European Court of Human Rights; human dignity.

INTRODUCTION

In December 2024, the Third Section of the European Court of Human Rights (ECtHR) rendered its first, and arguably its most far-reaching, judgment to date on the relationship between Article 4 of the European Convention on Human Rights (ECHR), which prohibits slavery, servitude and forced labour, and Article 14, which prohibits discrimination. In *FM and Others v Russia*,[1] the ECtHR found that, in circumstances where five female victims were recruited from Kazakhstan and Uzbekistan and subsequently exploited in conditions the court described as 'particularly cruel',[2] Russia breached its

1 *FM and Others v Russia*, Judgment (Merits and Just Satisfaction), Third Section, (Application Nos 71671/16 and 40190/18).

2 Ibid para 143.

positive obligations under Article 4, in conjunction with Article 14, by failing to put in place an adequate legislative and administrative framework to prohibit and prevent trafficking, forced labour and servitude and to protect its victims; by failing to take operational measures, namely identifying the applicants as (potential) victims of trafficking, and providing them with protection and assistance; by failing to cooperate effectively with other states concerned in cross-border trafficking cases; and, by its inaction, condoning trafficking, labour and gender-based violence against the applicants on the basis of their gender and migrant status. This comment argues that, while the judgment represents an important milestone in the court's burgeoning jurisprudence on Articles 4 and 14, the judgment falls somewhat short because it insufficiently engages with intersectional discrimination and the precise role of the principle of human dignity in anti-trafficking adjudication.

BACKGROUND AND CONTEXT

Russia has one of the largest migrant populations, second only to the United States.[3] As noted by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee)[4] and the Committee on the Elimination of Racial Discrimination (CERD Committee),[5] a high percentage of this population are vulnerable to exploitation, largely on account of their economic disenfranchisement, irregular migration status, and cultural and societal factors that normalise exploitation. Notwithstanding the state's recognition of this reality,[6] and its ratification of the Protocol to Suppress and Punish Trafficking in Persons (Palermo Protocol),[7] very few victims of trafficking, slavery, servitude and forced labour have been identified in

3 Erin Trouth Hofmann, 'Who goes to Russia? Understanding gendered migration patterns' (2017) 58(1) Eurasian Geography and Economics 1–22.

4 CEDAW Committee, 'Concluding Observations on the Eighth Periodic Report of the Russian Federation' (27 October 2015) UN Doc CEDAW/C/RUS/CO/8; CEDAW Committee, 'Concluding Observations on the Ninth Periodic Report of the Russian Federation' (November 2021) UN Doc CEDAW/C/RUS/CO/9.

5 Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Twentieth to the Twenty-Second Periodic Reports of the Russian Federation' (February 2013) UN Doc CERD/C/RUS/CO/20-22.

6 Mary Buckley, 'Human trafficking from Russia: political responses and public opinion' (2008) 4(1) St Antony's International Review 115–134.

7 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol). Ratified by Russia on 26 May 2004.

Russia to date,[8] and even fewer have been offered appropriate support and assistance.[9]

It is against this backdrop that the case of *FM and Others v Russia* arose. The case concerned three Kazakh nationals and two Uzbek nationals who were allegedly trafficked between 2002 and 2016 from Kazakhstan and Uzbekistan to Russia for labour exploitation lasting from several months to 10 years at a convenience store in Moscow belonging to nationals of the Russian Federation – sisters (ZI and ZhI) and their respective husbands (RM and SM). More pointedly, the first applicant was forced to work from 6 am to 2 am daily, while having to sleep on the floor of the storage rooms at the store and having to eat spoilt food. She was prohibited from speaking with the other workers, placed under permanent surveillance and repeatedly beaten. Her attempt to escape her exploiters' grasp only led to the police returning her to the store sometime later, at which point the beatings escalated.[10]

Similarly, the second applicant, immediately after having arrived at the store, was ordered to help as a sales assistant, as well as cook and look after the store owners' child. Her identity document was taken away, and she was subject to regular beatings. The owners of the store even shaved her head. Despite being seriously injured, she was refused medical treatment and was repeatedly forced to drink vodka.[11]

Meanwhile, the third applicant was forced to work from 5 am to 3 am daily, which included lifting unbearably heavy loads. She was repeatedly severely punished (kicked and beaten with a stick) for any mistake made and was required to sleep in the storage room. She was required to eat expired products, was forced to drink vodka, and remained under constant surveillance by the store owners, who did not allow her to speak to anyone. She also suffered the indignity of being burned with boiling water and being raped by a male co-worker on the store owners' orders. When she became pregnant, she was required to have an abortion, the payment for which was made by the store owners, who insisted that this was a debt for which she remained liable.[12]

Separately, the fourth applicant's every movement was controlled, and was subject to a range of punishments, including beatings with heavy objects, scratching of her skin and the pulling of her hair. Despite suffering broken fingers, damaged ears, knocked-out teeth and

8 Lauren McCarthy, 'A gendered perspective on human trafficking perpetrators: evidence from Russia' (2020) 6(1) Journal of Human Trafficking 79–94.

9 Irina Molodikova, 'One step forward and two steps back: migration policy and human trafficking in the Russian Federation since the Palermo Protocol of 2020' (2020) 6(2) Journal of Human Trafficking 141–155.

10 *FM and Others v Russia* (n 1 above) para 66.

11 Ibid para 152.

12 Ibid para 67.

multiple scars, she was not afforded medical treatment, and in fact was forced to swallow appalling meals within one to two minutes. When she attempted to escape, she was captured, severely beaten and threatened with being made disabled if she tried to escape again. In circumstances where she complained to the police, the police simply returned her to the store owners, where the abuse continued. Her daughter was also taken from her, and her daughter's whereabouts remained unknown at the time of the hearing.[13]

Finally, the fifth applicant, whose identity document, mobile phone and other personal belongings were taken away from her immediately upon arrival at the store, was forced to work for 20–21 hours daily without any days off. She, like the other women, was also beaten and forced to drink vodka. When she attempted to escape, she was forced to return to the store because of her dire circumstances, including the prospect of destitution and fear of reprisals from the police.[14]

In each of these cases, the applicants, when finally rescued with the support of a local non-governmental organisation (NGO) and journalists, were not characterised by the local authorities as victims of trafficking, slavery, servitude or forced labour. In fact, the authorities repeatedly failed to offer them support, failed to properly investigate or institute legal proceedings against the accused persons, and even threatened the applicants with deportation. In these circumstances, the applicants, having failed to secure appropriate redress from the local authorities, including the prosecutor and judiciary, brought an action before the ECtHR alleging that Russia had been a breach of Article 4 of the ECHR in conjunction with Article 14. Regrettably, Russia did not participate in the proceedings, though this did not prevent the court from being satisfied by the available evidence that the claim was well founded in fact and law.[15]

THE COURT'S FINDINGS

Violation of Article 4

As the court has repeatedly noted in its extant jurisprudence,[16] Article 4 of the ECHR is an absolute right from which no exceptions or derogations are permitted. At the elementary level, on the facts, the court found that the seizure of the applicants' identity documents,

13 Ibid para 68.

14 Ibid para 118.

15 Ibid para 227.

16 Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017).

their alleged confinement in the store, their insufficient understanding of Russian, the lack of payment for work done and their recurrent abuse, when viewed in the light of their age, gender, precarious economic status and irregular immigrant status, provided grounds for credible suspicion of them being victims of trafficking for labour exploitation, thereby triggering the application of Article 4.[17] In this context, Article 4 not only imposed a positive obligation on the state to refrain from engaging in conduct giving rise to exploitation, but, more pertinently for the purposes of this case, positive obligations to (i) put in place a legislative and administrative framework to prohibit and punish trafficking, (ii) take operational measures to protect actual or potential victims of trafficking and (iii) investigate situations of potential trafficking.

On point (i), the court considered that, although Russian legislation[18] criminalised human trafficking, the relevant provision was not properly applied by the domestic authorities to the applicants' case.[19] More pointedly, the authorities repeatedly refused to carry out an investigation into the applicants' complaints or indeed institute criminal proceedings on the erroneous basis that the applicants were able to leave their workplace at any point, but that they had freely chosen to stay at the store; that is, they had consented to their exploitation. However, given Russia's ratification of the Palermo Protocol which makes it clear that a person cannot consent to their exploitation,[20] the authorities had erred by using the apparent consent of the applicants as the basis for their inaction. Relatedly, on the question of forced labour (or 'slave labour' as defined by Article 127(2) of the Russian Criminal Code), the authorities again erroneously considered the applicants not to have been subject to this offence because they supposedly were free to exercise their freedom of movement and apparently consented to the work required of them. However, the court was clear that, in the context of forced labour within the meaning of Article 4 of the ECHR, the restriction of freedom of movement is not a prerequisite for a finding of forced labour.[21] Meanwhile, although it accepted that restriction of freedom of movement is an element of servitude, it was concerned that the relevant legislation did not provide for a separate offence of servitude, and, in any event, the offence on the books – 'exploitation of a person' – did not adequately countenance subtle forms of coercion, particularly of a psychological nature, such as threats to denounce the

17 *FM and Others v Russia* (n 1 above) para 263.
18 Article 127(1) of the Russian Criminal Code.
19 *FM and Others v Russia* (n 1 above) para 293.
20 Palermo Protocol (n 7 above) Article 3(b).
21 *FM and Others v Russia* (n 1 above) para 287.

victims to the police or immigration authorities because of their illegal employment status.[22]

Meanwhile, on point (ii), the court equally found that the state had failed to take appropriate operational measures to protect the applicants in question as actual or potential victims of trafficking.[23] More particularly, despite being aware from the communication received from the International Organisation for Migration of circumstances giving rise to a credible suspicion that the applicants were at a real and immediate risk of being trafficked or otherwise exploited, the domestic authorities failed to take appropriate measures to remove the applicants from the situation. While acknowledging that the obligation in this context could not be interpreted to impose an impossible or disproportionate burden on the authorities, the court was clear that the heightened vulnerability of the applicants and their corroborating allegations of abuse should have prompted the authorities to act with a degree of urgency. Instead of being removed from the exploitative situation, some of the applicants were threatened with the prospect of being deported by the police on account of their irregular employment or migration status.[24]

Finally, on point (iii), the court similarly found that there had been a violation of the state's obligation to investigate.[25] More particularly, the court found that the authorities did not institute or conduct an investigation capable of leading to the identification and, if appropriate, punishment of those responsible.[26] The court criticised the fact that the investigator's decision to institute criminal proceedings was hastily set aside by the prosecutor's office.[27] It was also concerned that, despite credible allegations of gender-based physical, sexual and reproductive violence, supported by ample medical evidence, the seizure of identity documents, the lack of employment contracts, and evidence of non-payment of salaries and substandard accommodation, the authorities failed to carry out an effective investigation.[28] This breach was exacerbated by the failure of the authorities to cooperate with both national agencies (namely NGOs) and the applicants' countries of origin, as well as the fact that there were no specially trained police officers, investigators, prosecutors, or judges involved in the applicants' cases.[29]

---

22 Ibid para 288.
23 Ibid para 305.
24 Ibid para 147.
25 Ibid para 330.
26 Ibid para 312.
27 Ibid para 315.
28 Ibid para 317.
29 Ibid para 324.

Violation of Article 14, in conjunction with Article 4

The court reiterated the general principle espoused in earlier Article 14 cases that a breach of this provision may be found where a general policy has disproportionately prejudicial effects on a particular group, even where it is not specifically aimed at that group, and there is thus no discriminatory intent.[30] In its view, general and discriminatory passivity by the authorities, even if unintentional, can create a climate conductive to exploitation and thus violate Article 14. The facts of the case did not merely demonstrate a simple failure or delay in dealing with the exploitation in question but clearly demonstrated the repeated condoning of such exploitation by the authorities, thus reflecting discriminatory attitudes towards the applicants as women from Eastern and Central Asia. Indeed, although there was evidence that these women were disproportionately vulnerable to exploitation on account of their migrant status, notably the absence of familial support in Russia and their reluctance to contact the authorities due to their irregular migration status, there were only 'meagre efforts to detect and prosecute trafficking'[31] in this case. In this connection, the state could not justify its inaction in repeatedly condoning trafficking, labour exploitation and related gender-based violence, as such conduct unjustifiably violated Article 14. Such conduct, according to the court, was grounded in discriminatory attitudes directed at the applicants as women who were 'foreign workers with an irregular immigration status'.[32] In short, this 'general and discriminatory passivity'[33] on the part of the state created a climate conducive to trafficking and related exploitation, in breach of Article 14.

REFLECTIONS

The court's judgment is a landmark ruling on the application of Article 4 read in conjunction with Article 14. Although the court has in its jurisprudence previously addressed states' duties to put in place a legislative and administrative framework to prohibit and punish trafficking,[34] take operational measures to protect actual or potential victims of trafficking,[35] and investigate situations of potential

30 Ibid para 341.
31 Ibid para 343.
32 Ibid para 346.
33 Ibid.
34 *CN v United Kingdom* App No 4239/08 (ECtHR, 13 November 2012).
35 *VCL and AN v United Kingdom* App Nos 77587/12 and 74603/12 (ECtHR, 16 February 2021).

trafficking,[36] this is the first time that the court has expressly linked a failure to fulfil these obligations to Article 14, which prohibits discrimination on the ground of, *inter alia*, sex and 'other status'. In so ruling, the court demonstrated an acute awareness of the fact that unless reasonable steps are taken to unmask discriminatory treatment of women subject to gender-based violence, victims of trafficking and related forms of exploitation will not be appropriately identified and supported. More pointedly, the state's inaction in the face of systemic exploitation of migrant workers from Kazakhstan and Uzbekistan effectively legitimised the abuse of the vulnerability of the applicants on the basis of their sex and migrant status. Discrimination, in this connection, not only fostered a sense of impunity among the traffickers, but it also precluded the applicants' recovery and the opportunity to seek compensation for the harm sustained. Even in the absence of discriminatory intent, the court was emphatic that general discriminatory attitudes, passivity and acts that condone exploitation would result in a breach of Article 14.

Notwithstanding the court's recognition of the intersectional nature of the discrimination in this case, the court's analysis was regrettably limited to a 'dual' conception of intersectional discrimination that focused principally on the applicants' sex and migrant status. In so ruling, the court did not comprehensively engage with the full nature or extent of the intersectional discrimination experienced by the applicants in question. Indeed, despite the applicants' pointed submission that they were subject to intersectional discrimination on the grounds of their gender, ethnicity and social position, the court chose to focus its attention on gender/sex and migrant status. Regrettably, the court's incomplete approach to intersectional discrimination effectively meant that it missed an important opportunity to demonstrate the gravity of harms that the victims suffered by virtue of the 'matrix of domination'[37] occasioned (all at once) not only by their inferior position as women and foreigners in a patriarchal Russian society, but also the pervasive nature of abuse occasioned by economic disenfranchisement and the 'othering' of their minority ethnic status. In other words, the combination of gender, ethnicity, social position, migrant status

36 *Rantsev v Cyprus and Russia* App No 25965/04 (ECtHR, 7 January 2010).

37 Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Unwin Hyman 1990) 221–238. See also Kimberle Crenshaw, 'Mapping the margins: intersectionality, identity politics, and violence against women of color' (1991) 43(6) Stanford Law Review 1241–1299.

and age (in the case of the second applicant,[38] who was an orphan minor at the time of being trafficked) operated as sites of oppression fuelled by stereotypes and state inaction. Regrettably, as noted by Atrey[39] and Haynes[40] respectively, in the context of international treaty bodies' engagement with intersectionality, an incomplete picture of intersectional discrimination is a systemic weakness that pervades the jurisprudence of courts and tribunals globally. This not only elides the 'diversity of women's experiences of inequality' but deprives us of a complete understanding of the fact that 'women are inhibited by multiple forms of structural disadvantage at once, and that the transformation of women's condition means uplifting all women from and upturning all structures of disadvantage'.[41] This reality has been recognised in recent years by the CEDAW Committee in General Recommendations No 35 (2017)[42] and No 38 (2020).[43]

Separately, the court must be commended for noting that 'trafficking threatens the human dignity'[44] of its victims and is therefore incompatible with a democratic society, and that the failure to execute an effective investigation left the applicants without the opportunity to seek compensation in respect of damage suffered by them, including the withholding of earnings from them by their traffickers, which was an affront to their dignity.[45] However, given the increasing importance

38 *FM and Others v Russia* (n 1 above) para 352. The court found that 'while the respondent State's inaction in providing protection against trafficking in human beings, forced labour and servitude concerned all the applicants, it had an aggravated effect on the second and fourth applicants. The second applicant, an orphan who was trafficked to Russia while a minor, spent three additional years (out of six years in total) in servitude after her situation had been reported to the Russian authorities and they had been requested to take measures to protect her aggravated effects of the relevant violations on the second and fourth applicants, the Court finds it appropriate to award them EUR 78,000 each, plus any tax that may be chargeable, in respect of non-pecuniary damage.'

39 Shreya Atrey, 'Fifty years on: the curious case of intersectional discrimination in the ICCPR' (2017) 35(3) Nordic Journal of Human Rights 220–239.

40 Jason Haynes, 'International human rights law's complicity in status subordination: a postcolonial critique of treaty bodies' engagement with human trafficking' (forthcoming) Leiden Journal of International Law 1–33.

41 Shreya Atrey, 'Women's human rights: from progress to transformation, an intersectional response to Martha Nussbaum' (2018) 40(4) Human Rights Quarterly 859–904, 869.

42 CEDAW Committee, 'General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19' (2017) UN Doc CEDAW/C/GC/35.

43 CEDAW Committee, 'General Recommendation No 38 on Trafficking in Women and Girls in the Context of Global Migration' (2020) UN Doc CEDAW/C/GC/38.

44 *FM and Others v Russia* (n 1 above) para 239.

45 Ibid para 330.

of dignity in its recent jurisprudence,[46] including landmark cases like *Vinter*,[47] the court could arguably have done more to centre dignity in its analysis. More particularly, the court could have been clearer on the precise functions of the principle of dignity in cases which raise issues for consideration under Articles 4 and 14. Does dignity, for example, serve as a basis for recognising the aggravating nature of exploitation only, therefore justifying an increase in compensation, as the court seemed to suggest in passing at the end of its judgment,[48] or does it simply serve an expressive function,[49] that is, highlighting the seriousness with which the court views trafficking in contemporary society? Or, is the court's passing reference to dignity, as some scholars suggest in other contexts, illustrative of the 'vacuous [nature of the] concept',[50] adding nothing substantively to the court's extant jurisprudence? In this context, a clearer delineation of the role of dignity in anti-trafficking adjudication,[51] particularly in respect of the interpretation and application of Article 4 in conjunction with Article 14, was arguably warranted in this case.

CONCLUSION

The ECtHR's judgment in *FM and Others v Russia* marks a watershed moment in anti-trafficking jurisprudence, particularly in establishing the nexus between Articles 4 and 14 of the ECHR in trafficking cases. By expressly recognising how discrimination can enable and perpetuate the exploitation of vulnerable women, the court has provided important insights on how states' inaction in addressing trafficking can amount to discriminatory treatment. The judgment firmly establishes that states have multifaceted positive obligations to protect potential victims of trafficking, especially when those victims face multiple axes of discrimination. Nevertheless, the court's analysis of intersectionality remains incomplete. By focusing predominantly on sex and migrant status while insufficiently addressing ethnicity, social position and age, the court arguably missed an opportunity to fully capture the matrix of oppression that facilitates trafficking. Further,

46 Natasa Mavronicola, 'Inhuman and degrading punishment, dignity, and the limits of retribution' (2014) 77(2) Modern Law Review 292–307.

47 *Vinter* Application Nos 66069/09, 130/10 and 3896/10) [2016] III ECHR 317.

48 *FM and Others v Russia* (n 1 above) para 330.

49 Tarunabh Khaitan, 'Dignity as an expressive norm: neither vacuous nor a panacea' (2012) 32(1) Oxford Journal of Legal Studies 1–19.

50 Mirko Bagaric and James Allan, 'The vacuous concept of dignity' (2006) 5(2) Journal of Human Rights 257–270.

51 Jason Haynes, 'the functions of the principle of dignity in anti-trafficking adjudication' (2023) 190 Law and Justice: The Christian Law Review 62–118.

while acknowledging that trafficking threatens human dignity, the court did not sufficiently articulate how dignity functions as an interpretive principle in Article 4 cases. Despite these shortcomings, however, the judgment represents significant progress in developing a more nuanced approach to addressing the scourge of human trafficking and related forms of exploitation.