

Article 4 & Human Trafficking

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Abstract

This article explores why Article 4 of the European Convention on Human Rights, which states that 'no one shall be held in slavery or servitude' and that 'no one shall be required to perform forced or compulsory labour', should be the first right included into a proposed British Bill of Rights. In the UK, trafficking is developing into an ever-increasing problem and it is questionable as to whether the UK can improve and extend their current legislative provisions.

Keywords

Article 4; ECHR; Trafficking; UK

While slavery or servitude is strictly prohibited by Article 4 of the European Convention on Human Rights, the issues in relation to trafficking are ongoing and worsening in the UK, 'the number of potential trafficking and modern slavery victims reported to the authorities has risen by 36% in a year, National Crime Agency figures show', and it is questionable as to whether or not the UK can extend their legislative provisions and enforce further implementation to prevent trafficking under the proposed British Bill of Rights.¹

Article 4 is an absolute right, 'these do not allow for any exception at all.'² The Article is incorporated into the UK by the Human Rights Act 1998, this was 'a logical step forward for a government seriously committed to individual rights and freedoms and represents a significant extension of the rule of law.'³ The Act has changed the court process in the United Kingdom as human rights can now be relied on in court. Previous to this, Lord Irvine, who served as Lord Chancellor outlined the framework, 'our citizens should be able to secure their human rights not only from a court in Strasbourg but from our own judges.'⁴ The Human Rights Act 1998 gives further effect to the ECHR, the Act takes convention rights and Strasbourg jurisprudence into account when interpreting UK law. Lord Bingham in *R (Ullah) v Special Adjudicator* [2004] stated courts should 'follow any clear and constant jurisprudence of the Strasbourg court.'⁵ At each stage of every case, prosecutors must apply the principles of the ECHR in accordance with the Human Rights Act 1998, 'the Convention itself did not provide individuals with rights; it was only the enactment of a statute specifically awarding such rights that enabled individuals to take action.'⁶ However, in 2010, there was a proposal for new primary legislation.

The British Bill of Rights was proposed by David Cameron in 2010 to replace the Human Rights Act 1998 with a new piece of primary legislation. This was part of the 'Conservative plans to dramatically change the human rights landscape in the UK.'⁷ The new legislation would mean that the ECHR and Strasbourg jurisprudence would no longer be directly enforceable before

¹ Claire Jones, 'Modern slavery cases 'rise by over a third'' (BBC News, 16 March 2019) <<https://www.bbc.co.uk/news/uk-47582353>> accessed 4 March 2020.

² Scott Slorach and others, *Legal Systems & Skills* (3rd edn, OUP 2017) 136.

³ Hilaire Barnett, *Constitutional and Administrative Law* (13th edn, Routledge 2020) 463.

⁴ Ian Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction* (8th edn, OUP 2018) 518.

⁵ *R (Ullah) v Special Adjudicator Do v Immigration Appeal Tribunal* [2004] 2 AC 323.

⁶ Peter Halstead, *Unlocking Human Rights* (2nd edn, Routledge 2014) 27.

⁷ Katja Ziegler, *The UK and European Human Rights: A Strained Relationship?* (Hart Publishing 2018) 19.

domestic courts. Geoffrey Cox QC is behind the idea, 'European Convention of Human Rights...had not won the affection of the British people.'⁸ As a result, Article 4 of the ECHR should be the first article included into a proposed British Bill of Rights, as trafficking and slavery is an ongoing problem.

Breaches of Article 4

A case which illustrates a breach of Article 4 is *R (TDT) v Secretary of State for the Home Department* (2018).⁹ In this case, a Vietnamese national was found in the back of a lorry in Kent, the national was seen as a potential victim of trafficking. He was placed in immigration detention and shortly after he was released. After his release he had disappeared, with it likely that the traffickers had captured him. It was seen that there was sufficient evidence that he was a trafficking victim and that there was a risk of him being re-trafficked when released. Underhill LJ stated, 'it is prudent to regard any past victim of trafficking as a potential victim of re-trafficking.'¹⁰ As there were no measures in place to protect him, the Secretary of State for the Home Department had breached Article 4 of the ECHR, and the European Convention on Action against Trafficking in Human Beings 2005.¹¹ This case illustrates that Article 4 should be included first into a proposed British Bill of Rights, as it is clear that there is a lack of implementation in regards to preventing trafficking and that the UK should extend their legislative provisions.

The breach of Article 4 relates directly to the leading case of *Rantsev v Cyprus and Russia* (2010) as it was concluded in that case, and referred to in *TDT v Secretary of State* (2018) that '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.'¹² The Palermo Protocol supplements the Convention against Transnational Organised Crime, and Article 3 specifically has the purpose of 'prevent,

⁸ Andrew Woodcock, 'New Bill of Rights could be 'hugely constructive', chief law officer says' Independent (12 February 2020)

<<https://www.independent.co.uk/news/uk/politics/human-rights-act-new-bill-law-government-geoffrey-cox-a9332386.html>> accessed 26 February 2020.

⁹ *R (TDT) v Secretary of State for the Home Department* [2018] 1 WLR 4922.

¹⁰ Ibid.

¹¹ Council of Europe Convention on Action against Trafficking in Human Beings [2005] CETS 197.

¹² *Rantsev v Cyprus and Russia* [2010] 51 EHRR 1.

suppress and punish trafficking.’¹³ This links to how the right regarding that no one shall be held in slavery and servitude and no one shall be required to perform forced or compulsory labour should be included first into the proposed British Bill of Rights. This is because the same mistakes keep appearing and that there is not enough enforcement regarding legislation preventing trafficking, ‘government’s proposal will require changes to primary legislation and no commitments have been made on timing for this.’¹⁴ Victims are getting released too early and the initial investigations into cases seem to be ineffective, ‘criminal investigation into human trafficking cases is generally complex and time consuming.’¹⁵ The challenge is implementation and enforcement. There are faults in the existing system which need to be rectified to minimise trafficking within the UK. In the journal *Human trafficking, vulnerability and the state*, Fouladvand states that:

states do not only provide, or fail to provide, the resources needed to sustain the resilience of potential trafficking victims, i.e., their ability to recover when they have been harmed. Rather, they often create, either as a matter of deliberate policy ... or by ineptitude and corruption, the very vulnerabilities (in the sense of increased risks of harm to their basic interests) that traffickers exploit.¹⁶

Domestic Legislation and its Issues

Following on from this in regard to domestic legislation, the Modern Slavery Act 2015 may have to be changed as it links directly to Article 4 as it has the aim to prevent trafficking, slavery, and servitude. The Government issued an independent review of the Act which was published in May 2019. The review stated that:

¹³ United Nations, ‘United Nations Convention against Transnational Organised Crime and the Protocols Thereto (*United Nations*)’ <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed 28 July 2020.

¹⁴ Lexis PSL, ‘The Modern Slavery Act 2015 and Multinational Organisations’ (*Lexis Nexis*) <The Modern Slavery Act 2015 and multinational organisations - Lexis®PS... (lexisnexis.com)> accessed 23 March 2021.

¹⁵ Philip Reichel and others, *Human Trafficking: Exploring the International Nature, Concerns, and Complexities* (Taylor and Francis Group 2012) 131

<<https://ebookcentral.proquest.com/lib/sunderland/reader.action?docID=1446761>> accessed 28 July 2020.

¹⁶ Shahrzad Fouladvand and Tony Ward, ‘Human Trafficking, Vulnerability and the State’ (2019) 83 JCL 39.

‘the Act has contributed to a greater awareness of modern slavery in companies’ supply chains, but it emphasised that “a number of companies are approaching their obligations as a mere tick-box exercise” and estimated that 40 per cent of eligible companies are not complying with the legislation at all.’¹⁷

This is another reason as to why the right regarding trafficking should be included first within the British Bill of Rights as it is clear that businesses need to take more care in ensuring that legislation is adhered to as currently businesses can be seen to be in a ‘trap of a lengthy, complicated process.’¹⁸ The overall problem regarding trafficking is vast and enforcement of legislation is needed to minimise the problem, however as the ‘financial aspects of human trafficking are not priority at local level’, this is a reason as to why some cases of human trafficking are left ignored.¹⁹ In the UK alone, the UK Human Rights Blog states ‘estimates vary hugely as to how many victims of trafficking or modern slavery there are in the UK, from 13,000 to 136,000,’²⁰ this highlights how ambiguous the situation regarding trafficking is in the UK as it is not even known how many victims there are. It can be seen that the Modern Slavery Act 2015 does not work effectively enough as Mantouvalou states there is a ‘lack of clarity when it comes to accountability, that the identity, support and protection of victims is inadequate, and that there have been few prosecutions.’²¹ This is why it should be first right incorporated within the proposed British Bill of Rights as it will help support the growing problem and existing legislation.

In regards to both cases, *R (TDT) v Secretary of State for the Home Department* (2018) and *Rantsev v Cyprus and Russia* (2010), but particularly *Rantsev* (2010), Sarah Champion MP, stated in the House of Commons that:

sexual exploitation does not end when you turn 18. Indeed, it is the main driver of modern slavery and trafficking of women in this country. So will the Prime Minister

¹⁷ Jonathan Tuck and Laura Bentham, ‘Modern Slavery – Where Are We Now?’ (2019) 8 CRisk 2.

¹⁸ Ben Middleton and Others, ‘The Financial Investigation of Human Trafficking in The UK: Legal and Practical Perspectives’ (2019) JCL 34.

¹⁹ Ibid.

²⁰ Alasdair Henderson, ‘Human trafficking: is our system for combatting it fit for purpose?’ (*UK Human Rights Blog*, 28 September 2018) <<https://ukhumanrightsblog.com/2018/09/28/human-trafficking-is-our-system-for-combatting-it-fit-for-purpose/>> accessed 3 March 2020.

²¹ Virginia Mantouvalou, ‘The UK Modern Slavery Act 2015 Three Years On’ [2018] MLR 1017-1045.

join other countries around the world by bringing in legislation to end demand, making it illegal to buy sexual consent?²²

It is highlighted here that the UK needs to update its domestic legislation in regards to sex trafficking.²³ This should be included first into the British Bill of Rights as it highlights that the case of Rantsev 2010 was not enough to enforce change in the United Kingdom, there needs to be a greater push in order for substantial change to happen. Trafficking is a huge problem which affects many people, not just in the UK but in the world. The International Labour Organisation states 'in 2016, an estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage.'²⁴

In conclusion, it is clear that the right regarding trafficking, slavery and servitude should be included first within the British Bill of Rights. This is down to the importance of the rights and what it intends to prevent. The right seems to need some further and improved legislation, as the Modern Slavery Act 2015 lacks clarity and fails to give the victim any support or protection, combined with a low prosecution rate. A greater implementation and enforcement process is needed in order to minimise the risk of trafficking and slavery to current victims and potential future victims.

²² HC Deb 29 January 2020, vol 670, col 773.

²³ Ibid.

²⁴ International Labour Organization, 'Forced Labour, Modern Slavery and Human Trafficking' (*International Labour Organization*) <<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>> accessed 3 March 2020.