

**FROM RANTSEV TO THE PRESENT:
MAPPING THE EUROPEAN COURT OF HUMAN RIGHTS'
JURISPRUDENCE ON TRAFFICKED MIGRANTS**

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Abstract

This paper examines the jurisprudential evolution of the European Court of Human Rights in protecting trafficked migrants under Article 4 of the European Convention on Human Rights. It traces the expansion of the "living instrument" doctrine, mapping the Court's transition from a narrow prohibition of slavery toward a framework of active, multi-dimensional State duties. The analysis is structured around three analytical pillars: the consolidation of the tripartite positive obligations of legislation, operation, and procedure; the harmonization of Strasbourg law with international anti-trafficking standards and the non-punishment principle; and the recent shift toward intersectional vulnerability, where gender and irregular immigration status converge. By evaluating the Court's widening interpretative lens, the paper illustrates how Article 4 has adapted to the specific complexities of modern migration. It demonstrates that the Court has established an authoritative legal standard for the protection of all persons within its jurisdiction, regardless of administrative standing. Ultimately, the paper provides a roadmap for understanding how the Court increasingly decouples fundamental human rights from legal status.

Keywords: *Human Trafficking, Migrant Protection, European Court of Human Rights, European Convention on Human Rights, Article 4, Positive Obligations, Intersectionality, Vulnerability*

1. INTRODUCTION

Migrants constitute a category of individuals belonging to a particularly vulnerable and underprivileged population group requiring special protection (*M.S.S. v. Belgium and Greece*, 2011, § 251; *Tarakhel v. Switzerland*, 2014, § 118). There is a broad international and European consensus regarding the necessity of such protection. However, it is precisely this inherent vulnerability, often compounded by precarious legal status and socio-economic marginalization, that exposes migrants to an increased risk of human trafficking (Costello, 2016; Ktistakis, 2016; Warin and Tsourdi, 2025). Indeed, an analysis of the jurisprudence of the European Court of Human Rights ("ECtHR" or "the Court") reveals that applicants in trafficking-related cases are predominantly non-citizens of the respondent State, with a significant majority being migrants in irregular or unstable situations.

The European Convention on Human Rights ("ECHR" or "the Convention") serves as the primary regional instrument for the protection of fundamental freedoms, guaranteeing rights to everyone within the jurisdiction of the Member States (Council of Europe, 1950). While the Convention text does not explicitly mention "trafficking," the ECtHR has developed an extensive body of case-law addressing the rights of migrants who are either at risk of, or have fallen victim to, this phenomenon (*Rantsev v. Cyprus and Russia*, 2010, § 277). The Court's interpretative approach identifies several Convention provisions as functionally relevant to the protection of migrants against exploitation (ECtHR, 2024). Article 4 (prohibition of slavery and forced labour) stands as the primary normative anchor in this field (*S.M. v. Croatia*, 2020, § 291). Through the application of Article 4, the Court has articulated rigorous standards for the protection of migrants, effectively bridging the gap between traditional definitions of servitude and contemporary forms of trafficking. Furthermore, the Court frequently employs a cross-disciplinary approach, drawing on other Convention pillars including Article 2 (right to life), Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), and Article 13 (right to an effective remedy) (ECtHR, 2024).

The absence of an explicit textual reference to human trafficking is a reflection of the Convention's mid-20th-century origins. However, the ECtHR consistently reaffirms that the Convention is a "living instrument" which must be interpreted "in the light of present-day conditions" (Stoyanova, 2017; *Tyrer v. the United Kingdom*, 1978, § 31). Consequently, the increasingly high standards required in the area of human rights protection necessitate a greater firmness in assessing violations of fundamental values, particularly where the "commodification" of human beings is concerned. The adoption of the 2000 United Nations "Palermo Protocol" (UN General Assembly, 2000) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe, 2005) marks a definitive shift in the legal landscape,

emphasizing that trafficking is no longer viewed merely as a matter of criminal law, but as a profound violation of human rights that triggers specific state obligations (*Rantsev v. Cyprus and Russia*, 2010, § 282).

The primary objective of this paper is to analyze the overall protective framework established by the ECtHR for trafficked migrants. Tracing the Court's jurisprudential journey from its foundational milestone in *Rantsev v. Cyprus and Russia* to its most recent interpretations, this paper examines how protection standards have expanded over time. While the focus remains on the general evolution of these standards, this paper specifically identifies a critical emerging debate in the Court's latest jurisprudence: the recognition of minimum protection standards versus immigration status. This tension suggests a turn toward a "status-blind" application of human rights, where the state's duty to identify and support victims must prevail over administrative immigration controls.

In order to achieve this, the paper employs a doctrinal legal research methodology, complemented by a comprehensive literature review. It relies on a qualitative and systematic analysis of the ECtHR's case-law, starting from the *Rantsev* era, while integrating scholarly discourse, international treaties, and institutional documents to contextualize the Court's evolving standards. The analysis first maps the consolidation of positive obligations in the early jurisprudence, followed by an evaluation of the integration of international anti-trafficking standards and the recent turn toward intersectional vulnerability. The paper concludes by synthesizing these developments to define the authoritative legal standard currently governing the protection of trafficked migrants.

2. TRAFFICKED MIGRANTS IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS: PRINCIPLES AND STANDARDS

The European Court of Human Rights has delivered a series of landmark judgments that formulate the essential principles and standards for the protection of migrants against human trafficking. This evolution in jurisprudence reflects a transition from viewing trafficking as a mere criminal law issue to recognizing it as a profound human rights violation. Consequently, this shift has transformed Article 4 from a passive, narrow prohibition into a source of active, multi-dimensional State duties that require the affirmative responsibility of the State. A seminal moment in this doctrinal development occurred with the case of *Rantsev v. Cyprus and Russia* (2010), which involved the tragic death of a Russian national, Ms. Rantseva, in Cyprus. Having arrived on a "cabaret artist" visa, as a regulatory regime frequently flagged by international monitors as a facade for sexual exploitation, the victim died after a fall from a private balcony shortly after being held in the custody of a cabaret manager. The applicant, the victim's father, alleged that the Cypriot authorities

failed to protect his daughter from trafficking and failed to conduct an effective investigation into her death, while also challenging Russia's failure to investigate the recruitment networks operating within its own borders.

In this transformative judgment, the Court fundamentally affirmed that human trafficking, by its very nature and its objective of exploitation, falls within the protective scope of Article 4 of the ECHR (*Rantsev v. Cyprus and Russia*, 2010, §§ 272-282; Stoyanova, 2017). The Court's reasoning was fundamental: it noted that modern trafficking, like traditional slavery, is based on the exercise of powers attaching to the right of ownership, treating human beings as commodities and often involving physical or psychological confinement. Consequently, the Court derived a comprehensive tripartite framework of positive obligations (*Rantsev v. Cyprus and Russia*, 2010, §§ 283-289).

Scholarly commentary has extensively scrutinized this jurisprudential path. While some critics argue that the Court stretched the textual limits of Article 4 by reading an entirely unwritten phenomenon (trafficking) into a prohibition designed for traditional slavery (Allain, 2015), the prevailing academic consensus praises the Court for overcoming absolute textual rigidity. By utilizing systemic integration under Article 31(3)(c) of the Vienna Convention on the Law of Treaties, the ECtHR imported the international definition of trafficking from the Palermo Protocol directly into the regional ECHR framework, establishing that human dignity cannot be restricted by dated legal vocabulary (Gallagher, 2011).

First, States are under a positive legislative and administrative obligation to establish a domestic legal framework that not only criminalizes trafficking but also provides for effective victim protection and the regulation of sectors of risk (*Rantsev v. Cyprus and Russia*, 2010, § 284). In *Rantsev*, the Court found that the Cypriot "artiste visa" regime was structurally deficient. By making the artist legally dependent on an employer or agent, the State had created a system that actively increased the risk of exploitation rather than mitigating it (*Rantsev v. Cyprus and Russia*, 2010, §§ 290-293). The Court was particularly critical of the administrative practice whereby police officers delegated the supervision of migrants to their employers, a practice that the Court deemed unacceptable in a democratic society committed to the rule of law (*Rantsev v. Cyprus and Russia*, 2010, § 292).

Furthermore, the *Rantsev* judgment articulated a positive operational obligation to protect actual or potential victims (*Rantsev v. Cyprus and Russia*, 2010, § 286). This duty is triggered whenever the authorities "were aware or ought to have been aware" of circumstances giving rise to a credible suspicion that an individual was at real and immediate risk of trafficking (*Rantsev v. Cyprus and Russia*, 2010, § 286). Despite the general background of exploitation in the Cypriot cabaret industry, and the specific indicators of trafficking present when Ms. Rantseva was brought to the police station, such as the manager's

possession of her passport and her sudden "departure" from work, the authorities failed to intervene (*Rantsev v. Cyprus and Russia*, 2010, §§ 294-298). Instead of providing the medical, psychological, or legal support mandated by the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings, the police simply surrendered her back to the custody of her employer.

In addition, States are under a procedural obligation to investigate potential human trafficking (*Rantsev v. Cyprus and Russia*, 2010, § 288). In this case, the failure of the operational duty was compounded by a procedural violation on the part of the Russian Federation. The Court established that in cross-border trafficking cases, the duty to investigate extends to the State of origin (*Rantsev v. Cyprus and Russia*, 2010, § 307). Because recruitment is a constituent element of the trafficking process, Russia had a duty to identify the recruiters and methods used on its soil, the failure of which allowed the recruitment chain to operate with total impunity (*Rantsev v. Cyprus and Russia*, 2010, § 308).

The protection of life under Article 2 of the ECHR was also a central pillar of the *Rantsev* analysis. The Court found that Cyprus failed in its procedural duty to investigate the victim's death effectively. The investigation was marred by numerous significant deficiencies, including conflicting testimonies that were never resolved and a failure to reconcile the discrepancies between Cypriot and Russian forensic reports regarding the victim's physical condition prior to her fall (*Rantsev v. Cyprus and Russia*, 2010, § 236). The Court emphasized that for an investigation to be "effective" in a trafficking context, it must look beyond the immediate moment of death to the broader context of the victim's arrival and stay in the country. Moreover, the Cypriot authorities failed to ensure the applicant's right to participate in the proceedings and refused to utilize mutual assistance treaties to secure testimony from witnesses in Russia, thereby fundamentally undermining the integrity of the fact-finding process (Council of Europe, 1959; *Rantsev v. Cyprus and Russia*, 2010, § 241).

The specific structural vulnerabilities faced by irregular migrants were addressed with even greater depth in the landmark case of *Chowdury and Others v. Greece* (2017). This case concerned 42 Bangladeshi migrants subjected to forced labor in the Manolada strawberry fields. The applicants lived in squalid conditions - cardboard and plastic shacks - and worked under the supervision of armed guards without receiving their wages for months. The Court's analysis in *Chowdury* is a cornerstone of modern human rights law because it established the irrelevance of prior consent where an employer has taken advantage of a victim's vulnerability (*Chowdury and Others v. Greece*, 2017, §§ 90, 96; *L.E. v. Greece*, 2016). The Court observed that the applicants' irregular status meant they were under a constant threat of arrest and deportation, which the employers exploited to keep them in a state of debt bondage and forced labor (*Chowdury and Others v. Greece*, 2017, § 95).

From a conceptual standpoint, *Chowdury* significantly advanced the academic dialogue regarding the boundary between exploitative, substandard labour conditions and actual forced labour under Article 4. Scholars like Stoyanova (2018) emphasize that by declaring prior consent legally irrelevant under coercion, the Court prevented states from utilizing the "voluntary" entry of irregular migrants into poor working arrangements as an excuse to avoid protective duties. However, the judgment also exposed an analytical gap: while the Court diagnosed the symptoms of severe economic exploitation, it stopped short of confronting the broader macroeconomic policies and restrictive immigration laws that drive irregular migrants into these illegal agricultural labour markets in the first place.

Drawing upon the balancing test of "disproportionate burden" first articulated in *Van der Musselle v. Belgium* (1983, § 37), the Court adapted its standards to the realities of contemporary economic exploitation. It concluded that the situation in Manolada fell squarely within the scope of trafficking and forced labor under Article 4 § 2 of the Convention (*Chowdury and Others v. Greece*, 2017, § 101). Significantly, the Court found that the Greek State had failed in its preventive and protective obligations. Despite being aware of the systemic exploitation in the region through numerous reports from the Greek Ombudsman and international NGOs, the state failed to conduct inspections or take administrative measures to dismantle the exploitative system (*Chowdury and Others v. Greece*, 2017, §§ 48, 54, 95). By failing to identify the applicants as victims of trafficking before they were subjected to further violence, the State breached its operational duties. This judgment reinforces the principle that the Convention requires States to proactively seek out and identify victims in risk sectors, rather than waiting for victims, who often fear the authorities, to come forward on their own.

Building upon these developments, the Court's doctrinal framework was further solidified by the Grand Chamber in *S.M. v. Croatia* (2020). While the applicant was a Croatian national, the judgment is of paramount importance for migrant protection as it provides the definitive clarification of how Article 4 should be interpreted in light of international standards. The Court clarified that Article 4 is triggered whenever the three components of the international definition of trafficking are present: an action (such as recruitment or harboring), the use of specific means (such as the abuse of vulnerability or coercion), and an exploitative purpose (including forced prostitution or labor) (*S.M. v. Croatia*, 2020, §§ 290, 296, 303).

Beyond this definition, the ruling underscored that the procedural obligation to investigate is an independent duty. In this instance, the authorities' failure to follow obvious lines of inquiry, such as digital evidence of recruitment via social media or interviewing relevant third-party witnesses, thereby creating a situation where the victim's testimony is unfairly pitted against the trafficker's denial without supporting evidence (*S.M. v. Croatia*, 2020, §§ 337, 343). The

Court noted that a "risk of overreliance on the victim's testimony alone" exists, especially given the impact of psychological trauma. Thus, the state's failure to proactively gather independent evidence constitutes a procedural violation regardless of the ultimate outcome of the criminal proceedings (*S.M. v. Croatia*, 2020, §§ 344-346).

Following the foundational jurisprudence established in *Rantsev* and *Chowdury*, the European Court of Human Rights has continued to refine the specific protections owed to migrants through two landmark judgments: *V.C.L. and A.N. v. the United Kingdom* and *Zoletić and Others v. Azerbaijan*. These cases are of particular academic and legal significance as they address, respectively, the innovative "non-punishment principle" for trafficked children and the rigorous procedural requirements for investigating transnational labor exploitation in the construction sector.

The case of *V.C.L. and A.N. v. the United Kingdom* (2021) represents a transformative moment in the Court's jurisprudence regarding the intersection of criminal law and human rights. It concerned two Vietnamese minors who were discovered working as "gardeners" in cannabis factories. Despite clear indicators of exploitation, they were charged with drug-related offenses and pleaded guilty on the advice of counsel. It was only after their conviction that they were formally recognized as victims of trafficking by the UK's Competent Authority. The applicants argued that the State had failed in its duty to protect them by pursuing criminal prosecution instead of providing the support required for victims of modern slavery.

This judgment is the first in which the ECtHR considered the relationship between Article 4 and the prosecution of trafficking victims, effectively incorporating the non-punishment principle found in Article 26 of the Council of Europe Anti-Trafficking Convention into the ECHR framework. While the Court acknowledged that its jurisdiction is limited to the ECHR, it reaffirmed that Article 4 must be interpreted in harmony with international law, including the interpretations provided by the Group of Experts on Action against Trafficking in Human Beings of the Europe (GRETA, 2020; *V.C.L. and A.N. v. the United Kingdom*, 2021, § 150). The Court clarified that while international law does not grant absolute immunity from prosecution to victims of trafficking, a conflict arises when prosecution hinders the State's operational duty to protect individuals from further harm and facilitate their recovery (Jovanović, M., and Niezna, M., 2023; *V.C.L. and A.N. v. the United Kingdom*, 2021, § 159).

A central tenet of the *V.C.L. and A.N.* ruling is the paramount importance of early identification. The Court established that as soon as authorities have a "credible suspicion" that a person suspected of a crime may be a victim of trafficking, they must immediately conduct an assessment by qualified personnel (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 160). This is especially critical for children, where the "means" of trafficking (such as

coercion or force) need not be proven to establish victim status. Furthermore, the Court held that any decision to prosecute should ideally wait until a trafficking assessment is completed. If a prosecutor chooses to disagree with a formal finding of trafficking, they must provide "clear reasons" consistent with the Palermo Protocol definition (V.C.L. and A.N. v. the United Kingdom, 2021, § 162). In finding a violation of both Article 4 and the right to a fair trial under Article 6 § 1, the Court emphasized that the failure to identify the applicants as victims fundamentally undermined their defense, as their status as trafficked persons was an important factor that should have been considered by the domestic courts (V.C.L. and A.N. v. the United Kingdom, 2021, §§ 184-210).

The complexities of labor exploitation in the construction industry were further addressed in *Zoletić and Others v. Azerbaijan* (2021). This case involved 33 citizens of Bosnia and Herzegovina who were recruited for construction projects in Azerbaijan. The applicants were subjected to classic indicators of forced labor: their passports were confiscated, their movement was restricted, they worked without contracts or permits, and their wages were withheld for several months. Despite these severe allegations, the Azerbaijani authorities failed to initiate an effective criminal investigation.

Applying the principles established in *Rantsev*, *Chowdury*, and *S.M.*, the Court found that the totality of the applicants' circumstances constituted an "arguable claim" of treatment contrary to Article 4 (*Zoletić and Others v. Azerbaijan*, 2021, § 193). A key legal takeaway from this case is the Court's clarification on the "trigger" for a State's procedural obligation. The Court ruled that even in the absence of a formal criminal complaint from the victims, who may be deterred by their irregular status or fear of the employer, the authorities must act on their own initiative if the situation is "sufficiently drawn" to their attention. In this instance, reports from NGOs such as Astra and international bodies like GRETA and the International Labour Organization provided more than enough information to necessitate an *ex officio* investigation (*Zoletić and Others v. Azerbaijan*, 2021, §§ 118, 120).

The Court ultimately found a procedural violation of Article 4 § 2 (prohibition of forced labor), noting that the Azerbaijani government failed to demonstrate that any meaningful investigation had taken place, even after being contacted by Bosnian authorities for legal assistance (*J. and Others v. Austria*, 2017; *Zoletić and Others v. Azerbaijan*, 2021, § 201). This judgment underscores that the State's duty to protect trafficked migrants is not passive; it requires an active, self-starting investigative apparatus capable of addressing the realities of transnational exploitation where victims are often silenced by their structural vulnerability.

The Court's focus on the operational and procedural duties was further sharpened and modernized in the landmark judgment of *T.V. v. Spain* (2024). This case involved a Nigerian national trafficked to Spain for sexual exploitation who, despite multiple interactions with authorities, faced a

domestic investigation marred by "unexplained defects" and long periods of passivity (*T.V. v. Spain*, 2024, §§ 97, 99). The judgment is significant because it clarifies that the "operational duty" under Article 4 requires a proactive assessment of the victim's personal circumstances, specifically acknowledging the methods of control used by traffickers, such as the use of "voodoo" rituals to guarantee debt payment and ensure non-exposure to the police, which correspond to documented recruitment patterns in Nigeria (*T.V. v. Spain*, 2024, § 92).

In finding a violation, the Court emphasized that a victim's initial "cooperation" or even their apparent consent to engage in sex work is not decisive. Under international standards, such consent is irrelevant if any of the "means" of trafficking, such as the abuse of a position of extreme vulnerability, have been used (*T.V. v. Spain*, 2024, §§ 92–93). Furthermore, the Court held that the authorities must not remain "completely passive" once circumstances give rise to a "credible suspicion" of trafficking (*T.V. v. Spain*, 2024, §§ 96, 99). This case serves as a vital bridge in the jurisprudence, reinforcing that the State's duty is to identify the vulnerability even when the victim is unable to articulate it themselves due to their precarious status (*N.S. and Others v. Italy*, 2020; Stoyanova, 2021; *T.V. v. Spain*, 2024, §§ 115–118). For migrants, this means that the state's procedural obligation to follow "obvious lines of inquiry" must prevail over administrative assumptions, ensuring that fundamental protections are decoupled from the victim's formal immigration standing.

The evolutionary arc of the Court's jurisprudence from the breakthrough in *Rantsev* to the procedural rigor of *Zoletić* and the victim-centered approach in *T.V. v. Spain* has culminated in a robust, though often challenged, framework of "minimum standards" for trafficked persons. However, the most recent and significant test for this framework lies at the precarious intersection of anti-trafficking duties and the rigid administrative realities of migration control. This tension is most vividly illustrated in the judgment of *F.M. and Others v. Russia* (2024), which centers on the critical question of whether a State's sovereign interest in the prioritization of immigration enforcement or administrative removal can ever supersede its proactive duty to identify and protect victims of exploitation. The case serves as a contemporary benchmark, testing the extent to which the European Court of Human Rights has succeeded in truly decoupling fundamental human rights protections from a victim's precarious legal standing within the domestic immigration apparatus.

3. APPROACH OF THE EUROPEAN COURT OF HUMAN RIGHTS IN *F.M. AND OTHERS V. RUSSIA*: MINIMUM STANDARDS VERSUS IMMIGRATION STATUS

The intersection between immigration control and human rights protection remains one of the most contested areas of modern legal scholarship. While international anti-trafficking laws are often characterized by a tension between the state's prerogative to control its borders and its obligation to protect

vulnerable individuals, it seems that the jurisprudence of the European Court of Human Rights has recently moved toward a more robust prioritization of victimhood over administrative status. This trend reached a significant milestone in the landmark judgment of *F.M. and Others v. Russia* (2024).

The case of *F.M. and Others v. Russia* (2024) concerned five women from Uzbekistan and Kazakhstan who were trafficked into Russia and held in conditions of extreme servitude within a chain of grocery stores in Moscow (European Human Rights Advocacy Centre, 2025; *F.M. and Others v. Russia*, 2024, §§ 4-133). The applicants were subjected to physical violence, had their travel documents confiscated, and were forced to work excessive hours, sometimes up to 20 hours a day, without pay. Despite repeated interventions by NGOs and clear evidence of "modern slavery," the Russian authorities consistently refused to initiate criminal proceedings or recognize the applicants as victims, often citing their irregular migration status as a reason to dismiss their claims.

In a groundbreaking ruling, the Court found that the authorities had failed in their positive obligations under Article 4 of the Convention. Notably, the Court situated its assessment within an intersectional analysis, applying Article 14 of the Convention in conjunction with Article 4 (*F.M. and Others v. Russia*, 2024, §§ 335-347). The Court concluded that the state's persistent inaction was not merely a procedural oversight, but was rooted in a discriminatory attitude toward the applicants based on the intersection of their gender, national origin, and precarious immigration status (Haynes, 2025; Stoyanova, 2025a). This aligns with recent scholarly arguments that Article 4 obligations must be interpreted through an intersectional lens to be truly effective (Haynes, 2025).

As noted by Trajer (2025), the *F.M. and Others* judgment underscores the principle that states owe fundamental protection obligations to victims regardless of their immigration status. This reflects a broader turn in the Court's approach toward ensuring a "minimum level of treatment" for those at risk of severe harm, a concept further developed in recent scholarship regarding discrimination based on immigration status (Stoyanova, 2025b). By prioritizing these safeguards over administrative standing, the Court in *F.M. and Others* effectively bypasses the legalistic hurdles that often hinder the protection of irregular migrants. Consequently, the judgment reinforces the absolute nature of the positive obligations established in Stoyanova's foundational work (Stoyanova, 2017), affirming that Article 4 duties are triggered by the risk of severe harm rather than a victim's specific residency status (Stoyanova, 2025b; Trajer, 2025).

The significance of this approach lies in its ability to limit the permissible scope of differential treatment. While the Council of Europe Anti-Trafficking Convention permits certain distinctions in support based on whether a victim is "lawfully resident," the ECtHR's interpretation suggests that Article 4 operates

as a corrective safeguard (Council of Europe, 2005; *S.M. v. Croatia*, 2020). The Court's jurisprudence implies that while states maintain interests in immigration enforcement, these interests cannot override the absolute prohibition of treatment contrary to human dignity. By recognizing that protection must be granted regardless of the victim's potential contribution to criminal proceedings or their residency status, the Court ensures that human rights are not contingent upon administrative compliance.

The "minimum standards" approach utilized in *F.M. and Others* builds upon the foundational principles established in earlier cases such as *M.A. and Others v. Lithuania* (2018), which affirmed the State's duty to identify vulnerable individuals during border procedures. This was further refined into a specific autonomous obligation under Article 4 in *S.M. v. Croatia* (2020, § 324), where the Court held that the duty to protect and investigate is triggered the moment authorities have, or ought to have, a credible suspicion that an individual is at risk of exploitation. The Court in *M.A. and Others* made it clear that the state cannot bypass its protective duties by relying on summary immigration procedures or "push-back" policies (*M.A. and Others v. Lithuania*, 2018, §§ 105-115). This earlier precedent established that access to protection should not depend on legal status, a principle that the *F.M. and Others* judgment subsequently "constitutionalized" by ruling that withholding such protection constitutes a substantive discriminatory violation (*F.M. and Others v. Russia*, 2024; *M.A. and Others v. Lithuania*, 2018; *T.I. and Others v. Greece*, 2019).

The development of these protective duties is continued by the "non-punishment principle," which addresses the tension between the State's power to prosecute and its operational duty to protect. The Court clarified in *V.C.L. and A.N. v. the United Kingdom* (2021) that while international law does not grant absolute immunity from prosecution to victims of trafficking, a conflict arises when prosecution hinders the State's operational duty to facilitate a victim's recovery. This principle reinforces the idea that the duty to identify is an objective obligation that exists independently of the victim's ability to cooperate, particularly where psychological trauma or fear of authorities creates a barrier to disclosure (Jovanović and Niezna, 2023; *V.C.L. and A.N. v. the United Kingdom*, 2021, §§ 158–160).

Furthermore, the failure to provide this protection is often not a neutral administrative error but is deeply linked to the structural prejudices inherent in migration control systems. As argued by Haynes (2025), when the State prioritizes immigration enforcement over the identification of trafficking indicators, it effectively ignores the overlapping vulnerabilities of migrant women. This creates what may be termed as an intersectional blind spot in the legal framework, where institutional neglect transitions into a violation of Article 14 (Haynes, 2025; Stoyanova, 2025a). Such a blind spot often results in a procedural imbalance where the victim's testimony is unfairly pitted against the trafficker's denial without supporting evidence, essentially shifting the

burden of proof onto the vulnerable party. By allowing administrative suspicion to overshadow credible indicators of exploitation, the state fails to fulfill its role as a proactive guarantor of Convention rights.

However, this movement toward a "status-blind" standard faces practical challenges: the current political and administrative climate of migration control in Europe. While the Strasbourg court lays down robust, humanitarian duties, European states are actively pivoting toward restrictive policies focused on border externalization, summary returns, and the systematic criminalization of irregular entry (Dembour, 2015). This creates an operational paradox. Under Article 4, local police and border officials are legally required to act as proactive, sensitive human rights protectors who look past legal status to trace subtle indicators of exploitation. Concurrently, under domestic political mandates, these exact same state actors are pressured to operate as rigid border enforcement agents maximizing deportations and administrative exclusions (Bigo, 2008).

Ultimately, however, the approach in *F.M. and Others* signals a definitive turn in the Court's hierarchy of norms, effectively placing the non-derogable protections of Article 4 above the administrative interests of migration management. By characterizing the failure to identify victims as a form of institutional neglect that is exacerbated by the victims' precarious legal standing, the Court reinforces the status-blind nature of human rights (Stoyanova, 2025a). This ensures that the State's duty to provide immediate safety and an effective investigation remains a mandatory prerequisite that cannot be bypassed by the prioritization of immigration enforcement or administrative removal (Baumgärtel, 2026; *F.M. and Others v. Russia*, 2024, §§ 335-337; Stoyanova, 2017; Trajer, 2025). Consequently, the judgment serves as the current doctrinal benchmark for the principle that a person's human dignity must be protected by the State, regardless of their compliance with immigration formalities. Taken together, these cases demonstrate a consistent trajectory in Strasbourg: the ECtHR treats trafficking protection as a "human status" rather than a "legal residency status," compelling States to ensure that their immigration enforcement measures do not bypass the minimum procedural and substantive safeguards required by the Convention.

4. CONCLUSION

The European Court of Human Rights has established a profound and sophisticated body of jurisprudence regarding the protection of migrants, recognizing them as a group characterized by heightened structural vulnerability and an increased risk of human trafficking. This paper has demonstrated that the Court's protective reach is comprehensive, ensuring that virtually all facets of modern slavery, from sexual exploitation to forced labor and domestic servitude, are scrutinized under the rigorous normative framework of Article 4 of the Convention.

The core contribution of the Court to the protection of trafficked migrants lies in its transition from a passive prohibition of slavery to a source of active, tripartite positive obligations: the duty to criminalize and regulate (legislative), the duty to protect potential victims (operational), and the duty to investigate (procedural). As explored in this paper, landmark rulings such as *Rantsev*, *Chowdury*, and *V.C.L. and A.N.* have "constitutionalized" international standards, effectively harmonizing the European Convention on Human Rights with the Council of Europe Anti-Trafficking Convention and the expert guidance of GRETA. These developments have provided migrants with essential safeguards, including the right to early identification, the irrelevance of prior consent in exploitative conditions, and the critical principle of non-punishment for acts committed as a result of trafficking.

While the overall protection framework is now firmly established, the Court's most recent jurisprudence highlights the ongoing refinement of these standards. The emerging approach in cases like *F.M. and Others* suggests that the Court is moving toward a standard where human rights protections are increasingly decoupled from administrative standing. By recognizing that minimum standards of protection must be applied regardless of immigration status, the Court ensures that the Convention remains a "living instrument" capable of protecting the most marginalized individuals within a State's jurisdiction.

Furthermore, the integration of a trauma-sensitive lens into the Court's analysis marks a significant step toward addressing the internal barriers that prevent victims from seeking justice. By acknowledging that psychological control, fear of retribution, and cultural coercion can fundamentally impact a victim's behavior, the Court has clarified that the State's obligations must be sensitive to the lived realities of exploitation. This evolution ensures that procedural safeguards are not merely formalistic requirements but are designed to penetrate the silence imposed by traffickers, thereby ensuring that the protection of human dignity is prioritized over the rigid application of administrative rules.

However, the practical efficacy of this jurisprudential evolution remains fragile. As this paper highlights, the implementation of these high legal standards faces operational hurdles within a European political climate increasingly dominated by strict migration control and enhanced border enforcement. The structural paradox of expecting state border personnel to simultaneously serve as human rights guarantors and migration gatekeepers creates a potential operational systemic failure.

In conclusion, the European Court of Human Rights' consistent and proactive approach serves as a vital roadmap for Member States. By ensuring that protection is "practical and effective" rather than merely theoretical, the Court has transformed the landscape of human rights in Europe. The standards developed by the Court not only provide a shield for trafficked migrants but also compel States to resolve the inherent tension between immigration control and fundamental dignity in favor of the latter.

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