Europe’s modern slave trade

A case currently before the European Court of Human Rights illustrates the severity of the problem of people trafficking for the sex industry, argues SUZANNE GOLDBERG

The UK officially abolished the trans-Atlantic slave trade more than 250 years ago, but it turns out that the practice is far from dead.

A case recently filed in the European Court of Human Rights (ECtHR), M v the United Kingdom, shows just how vigorous and heinous the slave trade continues to be. But the trade’s character has changed, with £5 billion generated each year largely from traffickers’ control of women and children, making trafficking in persons the second largest criminal activity in the world.

M, who was forcibly transported from Uganda into the UK’s sex industry, is but one of the hundreds of thousands of women trafficked into Western Europe each year. The sheer numbers demand that states respond not only as prosecutors but also as protectors of victims. Since traffickers often force their victims to evade immigration control and violate other criminal laws, states regularly treat trafficking victims – who are notoriously difficult to identify as such – as illegal immigrants and criminals. As a result, victims frequently face detention, prosecution, expulsion, and destitution in the destination country.

With clearer attention to the facts and more developed identification systems, the international community has begun to see these women and children for what they are – victims of severe human rights abuses.

This abuse can take many forms. For some, traffickers offer non-existent jobs and false promises of economic freedom in a foreign country to induce them to migrate. In other cases, traffickers move victims by force from one country to another. In all circumstances, traffickers exploit physical vulnerability and dependency to hold women and children (and occasionally, men) as captives and force them into positions of domestic and/or sexual slavery, often using violence and rape as additional means of control.

Abduction

M’s own case highlights this vulnerability. After losing her parents and being raped and impregnated by her stepfather by the time she was 15 years old, M fled to a refugee camp. She sought protection from a soldier in the camp, but was victimised yet again. Traffickers abducted her child, enslaved her, and trafficked her to the UK. There, her captors forced her to work as a prostitute until she managed to escape and seek protection from the authorities.

Without friends or family in Uganda, and fearful of being re-trafficked, she sought asylum in the UK, but her application was denied, both originally and then on appeal to the Asylum and Immigration Tribunal. After the High Court rejected reconsideration of the claim, M took her case to the ECtHR, assisted by lawyers from the London-based Advice on Individual Rights in Europe (AIRE) Centre, together with the solicitor and barrister who handled the domestic proceedings.

AIRE Centre lawyers regularly provide information, advice and representation in the UK and Europe on the rights of vulnerable and marginalised people under European law, including European Community law provisions and the European Convention on Human Rights.

The core question now for M, like many other trafficking victims, concerns the state’s obligation under international law to protect her against re-victimisation and re-enslavement. M’s ECtHR claim maintains that the UK cannot deport her without violating her rights under the European Convention on Human Rights to be free from inhuman and degrading treatment (article 3); to be free from involuntary servitude and slavery (article 4); and to be shown respect for her private life (article 8).

A critical point, then, is whether and how the convention’s article 4 anti-slavery provision protects trafficking victims. As a third-party intervention submitted by the US-based Columbia Law School’s sexuality and gender law clinic argued, the severe human exploitation that defines both slavery and trafficking is more than enough to establish the link between article 4 and trafficking.

Intertwined violations

Specifically, the clinic’s submission to the ECtHR highlighted the many fora that already treat sex trafficking and slavery as fundamentally intertwined human rights violations. The UN, the Council of Europe, the Organisation for Security and Co-operation in Europe and the Organisation of American States, among others, understand trafficking to be a form of slavery, as do many states in their domestic laws.

For example, according to the UN Office of the High Commissioner for Human Rights, the term ‘slavery’ encompasses ‘the traffic in persons’ and ‘the exploitation of prostitution’.

The International Criminal Court’s Rome Statute similarly instructs that enslavement involves ‘the exercise of any or all of the powers attaching to the right of ownership over a person’, including the use of ‘such power in the course of trafficking in persons, in particular women and children’. And the Organisation for Security and Co-operation in Europe, recognising the magnitude of the problem, has stated as part of its action plan to combat people trafficking that ‘trafficking in human beings and other modern forms of slavery constitute an abhorrent violation of the dignity and rights of human beings’.

With respect to remedies, the Palermo Protocol (sometimes known by its longer name, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially
Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime) provides important interpretive guidance. The protocol urges states to permit trafficking victims to remain in their territory to protect them against future exploitation. The Organisation for Security and Co-operation in Europe makes the same point – trafficking victims are especially vulnerable to additional harm, and residency permits may be a necessary remedy.

‘Human slavery’
The Council of Europe’s Convention on Action against Trafficking in Human Beings (COE Trafficking Convention) also defines trafficking in persons as a ‘present form of human slavery’ and considers residency an appropriate remedy. Importantly, the council – whose 47 member states include all of the 27 EU member countries – not only guarantees through its convention opportunities to seek state assistance, such as safe housing and emergency medical support, but also addresses the possibility of longer-term residency for victims at risk of being re-trafficked if deported to their home country. The UK has undertaken to ratify this convention by the end of this year, which will provide greater protection for individuals such as M.

However, the trafficking convention alone may prove inadequate, as the residence permits it authorises can be linked to victims’ co-operation with the authorities. This and similar limitations – including that Council of Europe member states must ratify the European Convention on Human Rights but need not ratify the trafficking convention – make the ECtHR’s elaboration of standards under the European Convention on Human Rights all the more important, as those standards will apply uniformly across the Council of Europe.

This widespread recognition of the slavery/trafficking link by other bodies should prove a critically important resource for the ECtHR, which has developed relatively little law on states’ obligations to trafficking victims under the article 4 slavery clause. Indeed, it is a particularly important time for ensuring that governments face careful scrutiny because they may be both providing insufficient protection to victims and could also be exacerbating the dangers of re-victimisation.

A report published last year by the Joseph Rowntree Foundation documents that the UK’s response to trafficking is biased towards law enforcement at the expense of victims, and reveals that many victims are deported to their home country where they face gang assault and the possibility of being re-trafficked.

Ideal prey
In addition, the nature of human trafficking to Western European states is changing quickly and requires a comprehensive, context-sensitive response by the ECtHR. Traditionally, victims have been individuals like M who are trafficked from outside Europe and subject to immigration control. However, with the accession of 10 Central and East European countries to the EU in the past four years, we now see a growing number of EU nationals being trafficked to Western Europe.

Under EU free movement provisions, these individuals are not subject to immigration control in Western Europe but can face restrictions on their right to work, making them ideal prey for traffickers. While they do not necessarily risk expulsion, they do face destitution resulting from restrictions on their ability to access basic social services. M v the United Kingdom thus offers an important opportunity, during a crucial moment, for the ECtHR to clarify the obligations of Council of Europe member states to trafficking victims. A ruling in M’s favour would reinforce that sex trafficking is a modern form of slavery and should be treated with as much seriousness as we treat the trans-Atlantic slave trade of the past. It would also clarify and underscore states’ responsibilities to victims in their territories who have suffered human rights abuses, including the duty not to act in ways that expose victims to further harm.

In addition, a positive ruling would provide the impetus for national courts to enhance their jurisprudence on trafficking victims’ human rights, including under the UK’s Human Rights Act and similar legislation that implements the European Convention on Human Rights in other European states. In all of these domains, a positive ECtHR ruling will make clear that when a trafficking victim is at risk of being re-trafficked if returned to the home country, or is at risk of some other form of harm, states must treat residence permits and other forms of protection and support as being required not only by a moral obligation but by a binding legal obligation as well.

The sexuality and gender law clinic based at Columbia University in New York enables students to work directly on sexuality and gender law issues while they are in law school. Clinic students researched and drafted the ECtHR submission. They routinely handle litigation and legislative advocacy throughout the US, assist with a range of projects outside the country, and participate in advocacy before supranational bodies.

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