***F.M. and Others v Russia*: the role of the prohibition on discrimination**

**for migrant victims of slavery**

**F.M. and Others v. Russia (Application nos 71671/16 and 40190/18)**

European Court of Human Rights (Chamber): Judgment of 10 December 2024

**Key words:** migration status, exploitation, slavery, human trafficking, servitude, forced labour, discrimination, intersectional discrimination

***Introduction***

Article 4 of the European Convention on Human Rights (ECHR) has gradually been an object of more interpretation by the Court since more judgments have been delivered, where applicants claim that they have been victims of abuses that can be defined as slavery, servitude, forced labour or human trafficking. The currently existing judgments under Article 4 address generally two questions: first, the definitional scope of the provision, and second, the positive obligations upon States to protect and assist victims. As to the first issue, the most important development was triggered with *Rantsev v Cyprus and Russia* with the addition of human trafficking within the definitional limits of Article 4.[[1]](#footnote-1) In *S.M. and Others v Croatia*,[[2]](#footnote-2) the Grand Chamber further clarified that ‘it is not possible to characterize a conduct or a situation as an issue of human trafficking [under Article 4 of the ECHR] unless it fulfills the criteria for the phenomenon in international law.’[[3]](#footnote-3) As to States’ positive obligations, the Court has drawn from its case law under Article 2 (the right to life) and 3 (the right not to be subjected to torture or inhuman or degrading treatment) of the ECHR to develop the scope and the content of these obligations.[[4]](#footnote-4) As much importantly, the Court draws inspiration from the Council of Europe Convention on Action against Human Trafficking CETS No. 197 to funder expand and specify the scope of these positive obligations, in light of the specific situation of victims of human trafficking.[[5]](#footnote-5)

Overall, Article 4 of the ECHR has been an object of important developments for the last decade. These developments have, however, omitted two areas. The first one concerns the definition of slavery and the application of the legal concept of slavery to contemporary circumstances. It was in *Siliadin v France*, where the Court refused to use the concept of slavery to legally characterize the forms of abuses suffered by the applicant.[[6]](#footnote-6) Instead, the harm was legally characterized as forced labour and servitude. This refusal has persisted in the case law.[[7]](#footnote-7) The second area that has remained undeveloped concerns the application of the right not to be discriminated against. The Council of Europe Convention on Action against Human Trafficking does contain a provision about non-discrimination. More specifically, Article 3 of the treaty provides that

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

However, the role of this provision has remained unclear. Similarly, the role of Article 14 in conjunction with Article 4 of the ECHR, has remained unexplored.

The objective of this contribution is to explain whether and how these two gaps (the application of the legal definition of slavery and the role of anti-discrimination for migrant victims of severe forms of exploitation) have been addressed in *F.M. and Others v Russia*.[[8]](#footnote-8) This is important since a review of the facts reveals the severity of the abuses suffered by the applicants. This in turn raises the question why the Court avoided the concept of slavery. This avoidance opens the question as to when factual circumstances can ever be legally classified as slavery under Article 4 of the ECHR.

While, as I will further show below, *F.M. and Others v Russia* did not contribute to the closing of the first of the above-mentioned gaps since it circumvented the legal concept of slavery, this judgment does make a significant contribution for addressing the second gap. In other words, *F.M. and Others v Russia* is a key judgment since it is the first case where the Court addressed Article 14 of the ECHR in conjunction with Article 4. As much important, it found a violation of this provision since the respondent State failed to fulfil its positive obligation to protect the applicants as ‘women who were foreign workers with an irregular immigration status’.

***The Factual Circumstances in* F.M. and Others v Russia *and the Findings of the Court***

Prior to explaining the gaps, the factual circumstances of the case need some brief introduction.

There were five applicants, three from Kazakhstan and two from Uzbekistan. They were women taken from Kazakhstan and Uzbekistan to work in convenience stores in the Golyanovo district of Moscow, between 2002 and 2016. They were severely exploited in this context in dreadful conditions and beaten for periods ranging from six months to ten years. They were not paid for the hard work that included *inter alia* excessive working hours and carrying of heavy objects. Their identity documents were taken away. They had no labour contracts. Their migration status was irregular. They were confined in the stores and constantly subjected to surveillance. The violence included not only beatings, but also rapes, forced pregnancies, forced abortion and removal of their children.[[9]](#footnote-9)

They all suffered severe physical and mental injuries, which were medically documented. The applicants managed to escape and return to their home countries. With the help of an NGO, they filed criminal complaints to the Russian authorities. The International Organization for Migration was also involved and submitted relevant information to the Russia authorities. The Ministry of the Interior of Kazakhstan sent a legal assistance request to the General Prosecutor’s Office of Russia in relation to a criminal investigation concerning offences allegedly committed against the first applicant and her minor sister, the second applicant. The Kazakhstani Ombudsman also officially contacted the Russian Ombudsman to report the exploitation and the ill-treatment. The Russian authorities initiated preliminary inquiries. However, no official criminal investigation was opened at domestic level.

The Court unanimously found that Russia breached both the substantive and the procedural limb of Article 4 of the Convention. In particular, Russia failed to ‘put in place an adequate legislative and administrative framework to prohibit and prevent trafficking, forced labour and servitude and to protect its victims.’ Russia also failed to take operational measures to protect the applicants. As to the procedural limb, the Court concluded that Russia failed to conduct effective investigation. As already mentioned above, violation of Article 14 in conjunction with Article 4 was also found. Finally, it should be also mentioned that substantial sums were awarded to the applicants for non-pecuniary damages (ranging between 52 000 to 78 000 EUR).

***The Role of the Legal Concept of Slavery***

After describing in detail all the severe forms of abuses that the applicants had suffered, the Court first concluded that ‘all the constituted elements of the international definition of human trafficking were present in the applicants’ case.’[[10]](#footnote-10) In particular, they were recruited, received and harboured by deception and abuse of position of vulnerability for the purpose of exploitation. As a second step, the Court also concluded that the applicants were also subjected to forced labour. Specifically, the Court held that

The Court further concludes that the applicants, who were subjected to the use of force and other forms of coercion, worked at the Golyanovo stores without offering themselves for that work voluntarily and were, at the least, subjected to forced labour within the meaning of Article 4 of the Convention.[[11]](#footnote-11)

Having characterised the harm as falling within the definitional scope of human trafficking and forced labour, the Court also added that

In addition to the obligation to do the work imposed by the use of coercion, the applicants were obliged to live on their employers’ property and had no opportunity to alter their situation, feeling that it was permanent and unlikely to change, which corresponds to the notion of servitude within the meaning of Article 4 of the Convention.[[12]](#footnote-12)

Given the severity of the abuses, all these legal classifications are justifiable. However, in light of the extreme forms of the abuses, one cannot but wonder why there is no discussion about slavery in the reasoning. Given the brutality, the rapes, forced pregnancies and forced abortions, the Court should have also detemined whether the applicants were victims of slavery? After all, the text of Article 4 of the ECHR does demand engagement with this question.

To be more precise, in the part of the judgment entitled ‘General principles’ the Court did mention slavery. More specifically, it was stated that ‘according to the 1926 Slavery Convention, “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”’.[[13]](#footnote-13) No discussion exists in the reasoning as to whether this legal definition could be applied to the facts. To make things worse, the Court used the legal definition of slavery to also define human trafficking: ‘The Court considers that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership.’[[14]](#footnote-14) This could mean that the legal concepts of human trafficking and slavery are understood by the Court as overlapping and converging in terms of the type and the severity of the harm inflicted. In the future therefore it will not make a difference which one is invoked. However, given the more recent legal regulation of human trafficking,[[15]](#footnote-15) it is this concept that is given preference.

Considering the facts, it was easy to accept that the applicants were victims of human trafficking. However, given its ambiguity the legal definition of human trafficking covers a wide scope of abuses with varying levels of severity.[[16]](#footnote-16) In contrast, *F.M. and Others v. Russia* reveals extreme forms of brutality. This renders the legal concept of human trafficking inadequate or, at best, only supplementary. Slavery should have been also considered. In light of its openness to various interpretations that allow the capture of minor harms, human trafficking does not reflect the actual brutality of what the applicants were subjected to.

***The Role of Anti-discrimination for Migrants Victims of Severe Forms of Exploitation***

*F.M. and Others v Russia* does not, however, disappoint in relationship to the analysis of positive obligations corresponding to Article 4. In fact, given the nature of the omissions, the analysis of the Court is straightforward. Specifically, Article 4 of the ECHR triggers the procedural positive obligation upon the national authorities to investigate abuses.[[17]](#footnote-17) Article 4 of the ECHR also triggers two substantive positive obligations: ‘(1)  the duty to put in place a legislative and administrative framework to prohibit and punish trafficking; (2)  the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking.’[[18]](#footnote-18) These obligations have been well-established in the case law.[[19]](#footnote-19)

As to the procedural obligation, given the ‘credible suspicion’[[20]](#footnote-20) and even the ‘prima facie evidence’[[21]](#footnote-21), the national authorities had an obligation which they failed to comply with. The reason was that no official criminal investigation was opened.[[22]](#footnote-22) A distinctive feature that should be noted here is that the procedural obligation to investigate under Article 4 also includes the additional duty:

to take all reasonable steps to unmask possible discriminatory motives and to establish whether or not violence was induced by, for instance, racial or religious intolerance or motivated by gender-based discrimination. Treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. Despite the fact that the systemic exploitation and physical abuse of female migrant workers from Kazakhstan and Uzbekistan in the Golyanovo stores in Moscow was repeatedly reported to the Russian authorities, the likelihood that the traffickers had used the applicants’ vulnerability as females and migrants in order to exploit them was left without any assessment, in breach of the above duty.[[23]](#footnote-23)

While this additional duty to ‘unmask possible discriminatory motives’ as part of the content of the procedural obligation to investigate has been applied previously in the context of Articles 2 and 3,[[24]](#footnote-24) *F.M. and Others v Russia* is the first time when it is also included in the assessment of breach under Article 4. The failure to unmask discriminatory motives also played a role in the assessment of breach of Article 14 in conjunction with Article 4, to which I will revert below. Prior to this, it should be mentioned that Russia was found to have breached the two substantive positive obligations under Article 4. In particular, the national criminal legal framework was found deficient since *inter alia* consent by the victim was used as a justification for not initiating criminal proceedings.[[25]](#footnote-25) The authorities also failed to take operations measures to protect the applicants.[[26]](#footnote-26)

All these omissions that were the basis for finding breaches of the procedural and the substantive positive obligations under Article 4,[[27]](#footnote-27) were part of wider structural patterns as to how female migrant workers were treated by the Russian authorities. This was important in the analysis under Article 14 ECHR, to which I turn now.

The applicants complained that they had been subjected to discrimination on the grounds of their ‘gender, ethnicity and immigration status’.[[28]](#footnote-28) This meant that there were three grounds that intersected with each other.[[29]](#footnote-29) The Court agreed and formulated the group to which the applicants belonged as ‘female foreign migrant workers in an irregular situation’.[[30]](#footnote-30)

To find a breach of Article 14 in conjunction with Article 4, the Court drew inspiration from its approach to the assessment of breach in the context of domestic violence: ‘The Court has found that a State’s failure to protect women against domestic violence breaches their right to equal protection before the law and that this failure does not need to be intentional.’[[31]](#footnote-31) To amount to discrimination, these failures have to be not ‘simply failure and delay in dealing with the violence in question’. The failures have to rather manifest as repeated condonation of violence reflecting ‘a discriminatory attitude towards the complainant’.[[32]](#footnote-32)

This threshold of ‘repeated condonation of violence’ was found met in *F.M. and Others v Russia* regarding female foreign migrant workers in an irregular situation. The threshold was found met for the following reasons. First, disproportionate number of women and girls are victims of human trafficking.[[33]](#footnote-33) Second, disproportionate number of victims are irregular migrants: ‘Another disproportionately affected group is that of migrants, notably immigrants without close family, friends or other support networks, whose irregular migration status makes them afraid or reluctant to contact local authorities’.[[34]](#footnote-34) Third, the respondent State did not recognize the rights of victims of human trafficking.[[35]](#footnote-35)

Having established that the threshold of ‘repeated condonation of violence’ was met for these three reasons, the Court as a next step in its analysis noted *the link* between the general condonation of the violence and the specific abuses suffered by the specific applicants as belonging to the group of ‘female foreign migrant workers in an irregular situation’.[[36]](#footnote-36) To put it more precisely, there was a link since the specific applicants suffered abuses of the same nature as those generally suffered by ‘female foreign migrant workers in an irregular situation’. According to the Court’s reasoning, this demonstrated ‘a discriminatory attitude towards the applicants as women who were foreigner workers with an irregular migration status.’[[37]](#footnote-37) This is an important finding since it reveals how the right not to be discriminated under Article 14 ECHR can be successfully utilized by undocumented migrants or migrants with insecure migration status. More generally, Article 14 has not been of much benefit in the area of migration and treatment of migrants.[[38]](#footnote-38) In contrast, F*.M. and Others v. Russia* introduces a new development, where this benefit clearly materialised, including possible in the award for damages. Admittedly, F*.M. and Others v. Russia* concerned circumstances where Article 14 was applied in conjunction with Article 4 ECHR, thus demonstrating how the differentiated treatment resulted in severe harm. The threshold of substantive harm and the causal link between this harm, on the one hand, and that the differentiated treatment, on the other, were relatively straightforward.

***Conclusion***

*F.M. and Others v Russia* is an important addition to the Court’s case law under Article 4 of the ECHR. The recognition of ‘female foreign migrant workers in an irregular situation’ as a group that can trigger the application of Article 14 of the Convention is an essential development. Yet, the persistent refusal by the Court to interpret and apply the legal definition of slavery can be criticised, especially in the context of *F.M. and Others v Russia* that uncovered brutal forms of abuses.

1. *Rantsev v Cyprus and Russia* (2010) 51 E.H.R.R. 1; V. Stoyanova, “Dancing on the Borders of Article 4. Human Trafficking and the European Court of Human Rights in the Rantsev case” (2012) 30(2) Netherlands Quarterly of Human Rights 163. [↑](#footnote-ref-1)
2. *S.M. and Others v Croatia* Application no. [60561/14](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2260561/14%22]}) 25 June 2020. [↑](#footnote-ref-2)
3. *S.M. and Others v Croatia,* para 290. See [The Grand Chamber Judgment in S.M. v Croatia: Human Trafficking, Prostitution and the Definitional Scope of Article 4 ECHR - Strasbourg Observers](https://strasbourgobservers.com/2020/07/03/the-grand-chamber-judgment-in-s-m-v-croatia-human-trafficking-prostitution-and-the-definitional-scope-of-article-4-echr/) [↑](#footnote-ref-3)
4. V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017). [↑](#footnote-ref-4)
5. V. Stoyanova, “L.E. v Greece: Human Trafficking and the Scope of States’ Positive Obligations under the ECHR” (2016) 3 *European Human Rights Law Review* 290. For more recent development, see [Krachunova v. Bulgaria: New Positive Obligation under Article 4 ECHR to Compensate Victims of Human Trafficking for Pecuniary Damages - Strasbourg Observers](https://strasbourgobservers.com/2024/03/19/krachunova-v-bulgaria-new-positive-obligation-under-article-4-echr-to-compensate-victims-of-human-trafficking-for-pecuniary-damages/) [↑](#footnote-ref-5)
6. *Siliadin v France* (2006) 43 E.H.R.R. 16. [↑](#footnote-ref-6)
7. See also *C.N. and V. v France* (App. No.67724/09), judgment of 11 October 2012. See also V Stoyanova, ‘ [Sweet Taste with Bitter Roots: Forced Labour and *Chowdury and Others v Greece*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3091056)’ (1) European Human Rights Law Review (2018). [↑](#footnote-ref-7)
8. *F.M. and Others v Russia* App nos 71671/16 and 40190/18, 10 December 2024. [↑](#footnote-ref-8)
9. The first four applicants were made pregnant. The third applicant had forced abortion. The children of the first and fourth applicants were removed from their mothers after being born in captivity. [↑](#footnote-ref-9)
10. *F.M. and Others v Russia* para 272. [↑](#footnote-ref-10)
11. *F.M. and Others v Russia* para 276. [↑](#footnote-ref-11)
12. *F.M. and Others v Russia* para 277. For elaboration on the distinction between forced labour and servitude, see V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017) 260. [↑](#footnote-ref-12)
13. *F.M. and Others v Russia* para 241. [↑](#footnote-ref-13)
14. *F.M. and Others v Russia* para 241. See V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017) 292. [↑](#footnote-ref-14)
15. See Council of Europe Convention on Action against Trafficking in Human Beings No. 197 Warsaw, 16.V.2005. See also Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. [↑](#footnote-ref-15)
16. V. Stoyanova, *Human Trafficking and Slavery Reconsidered. Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press, 2017) 32-72. [↑](#footnote-ref-16)
17. For detailed analysis of this obligation see V Stoyanova, *Positive Obligations under the European Convention on Human Rights. Within and Beyond Boundaries* (Oxford University Press 2023) 123. [↑](#footnote-ref-17)
18. *F.M. and Others v Russia* para 245. [↑](#footnote-ref-18)
19. V Stoyanova, *Positive Obligations under the European Convention on Human Rights. Within and Beyond Boundaries* (Oxford University Press 2023) 171. [↑](#footnote-ref-19)
20. *F.M. and Others v Russia* para 248 and 261, 312. [↑](#footnote-ref-20)
21. *F.M. and Others v Russia* para 256. [↑](#footnote-ref-21)
22. *F.M. and Others v Russia* para 329. [↑](#footnote-ref-22)
23. *F.M. and Others v Russia* para 325 (references omitted) [↑](#footnote-ref-23)
24. V Stoyanova, *Positive Obligations under the European Convention on Human Rights. Within and Beyond Boundaries* (Oxford University Press 2023) 146. [↑](#footnote-ref-24)
25. *F.M. and Others v Russia* para 279-293. [↑](#footnote-ref-25)
26. *F.M. and Others v Russia* para 295-305. [↑](#footnote-ref-26)
27. How omissions are the basis for finding breaches of positive obligations under the ECHR, see V Stoyanova, ‘Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete’ (2023) Human Rights Law Review 1. [↑](#footnote-ref-27)
28. *F.M. and Others v Russia* para 238. [↑](#footnote-ref-28)
29. The applicants did use the term ‘intersection discrimination’ in their arguments (see para 340). The Court did not in its reasoning. [↑](#footnote-ref-29)
30. *F.M. and Others v Russia* para 244 and 346. [↑](#footnote-ref-30)
31. *F.M. and Others v Russia* para 241 citing *Opuz v Turkey*, App no 33401/02, para 191. [↑](#footnote-ref-31)
32. *F.M. and Others v Russia* para 241 citing *Tkhelidze v Georgia* App no 33056/17, 8 July 2021, para 51. [↑](#footnote-ref-32)
33. Here it is notable that the Court refers only to victims of human trafficking. [↑](#footnote-ref-33)
34. *F.M. and Others v Russia* para 342. [↑](#footnote-ref-34)
35. *F.M. and Others v Russia* para 343. [↑](#footnote-ref-35)
36. *F.M. and Others v Russia* para 345. [↑](#footnote-ref-36)
37. *F.M. and Others v Russia* para 345. [↑](#footnote-ref-37)
38. Colm O’Cinneide, ‘Why Challenging Discrimination at Borders is Challenging (and Often Futile)’ (2021) 115 AJIL Unbound 362; Jean-Baptiste Farcy, ‘Equality in Immigration Law: An Impossible Quest?’ (2020) 20 Human Rights Law Review 725; V Stoyanova, ‘Access to Basic Services for Migrants’ in Vincent Chetail (ed) *Oxford Commentary of the Global Compact for Safe, Orderly and Regular Migration* (Oxford University Press, forthcoming). [↑](#footnote-ref-38)