



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF M.A. AND OTHERS v. FRANCE

*(Applications nos. 63664/19 and 4 others –
see appended list)*

JUDGMENT *(Merits)*

Art 8 • General and absolute criminalisation of purchase of sexual acts as part of comprehensive legislative scheme to combat prostitution and trafficking in human beings • Interference with right to respect for private life, personal autonomy and sexual freedom of applicants engaging in prostitution • No common ground in Europe or internationally on best approach to prostitution and widely differing opinions on use of impugned criminalisation as instrument to combat trafficking in human beings • Wide margin of appreciation • Careful examination by Parliament of all aspects of scheme designed to regulate highly complex phenomenon raising very sensitive moral and ethical issues • Comprehensive scheme with four main focuses: repealing any legal provision that might encourage prostitution, but not actually prohibiting it; providing protection to prostituted individuals, particularly by punishing sexual exploitation of others; preventing people from entering prostitution; and helping people wishing to exit prostitution reintegrate into society • Fair balance struck between competing interests • Margin of appreciation not overstepped • National authorities to keep under constant review approach adopted and adapt it in line with developments in sphere and with effects of application of legislation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 July 2024

FINAL

16/12/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of M.A. and Others v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Lado Chanturia, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Stéphane Pisani, *judges*,
Catherine Brouard-Gallet, *ad hoc judge*,
and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the above applications lodged on 6 December 2019;

the decision to grant the applicants anonymity (Rule 33 of the Rules of Court);

the decision to give notice to the French Government (“the Government”) of the complaints under Articles 2, 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and to declare the remainder of the applications inadmissible;

the Court’s decision of 27 June 2023 to declare the applications admissible and to order their joinder in accordance with Rule 42 § 1;

the further written observations submitted by each of the parties (Rule 59 § 1);

the decision not to hold a hearing and not to relinquish jurisdiction in favour of the Grand Chamber, in response to the request by the applicants in their further observations (Rule 59 § 3);

Considering that Mattias Guyomar, the judge elected in respect of France, withdrew from sitting in the case (Rule 28) and the President of the Chamber decided to appoint Catherine Brouard-Gallet to sit as an *ad hoc* judge (Rule 29 § 1 (b));

Having deliberated in private on 2 July 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applications concern the criminalisation under French criminal law of the purchase of sexual relations. Relying on Articles 2, 3 and 8 of the Convention, the applicants submitted that this measure seriously endangered the physical and psychological integrity and the health of individuals who, like themselves, engaged in prostitution. They further complained that both their own and their clients’ right to respect for their private life – inasmuch as it encompassed the right to personal autonomy and sexual freedom – was severely infringed by the measure.

THE FACTS

2. The applicants are 261 men and women of various nationalities, namely Albanian, Algerian, Argentinian, Belgian, Brazilian, British, Bulgarian, Cameroonian, Canadian, Chinese, Colombian, Dominican, Equatorial Guinean, Ecuadorian, French, Nigerian, Peruvian, Romanian, Spanish and Venezuelan. They were represented by Mr P. Spinosi, a member of the bar of the *Conseil d'État* and the Court of Cassation.

3. The Government were represented by their Agent, Mr D. Colas, Director of Legal Affairs at the Ministry of European and Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicants stated that they “regularly engage[d] in prostitution in a manner that [was] lawful under the provisions of French law”. They complained about the criminalisation of the purchase of sexual relations, even between consenting adults, introduced by Law no. 2016-444 of 13 April 2016 on strengthening action against the prostitution system and supporting prostituted individuals, as codified in Articles 611-1 and 225-12-1 of the Criminal Code (see paragraph 14 below).

I. STATEMENTS BY SOME OF THE APPLICANTS

6. The applicants produced statements from 16 sex workers, who described how their situation had deteriorated since the criminalisation of the purchase of prostitution services. The following nine statements were made by individuals who are applicants before the Court (a tenth statement, which has not been reproduced, was made by an individual claiming to be an applicant but not revealing his or her identity):

A.M., 26 January 2021 (application no. 63664/19)

“... Before [the Law of 13 April 2016] was passed, since I worked online and had several regular messages from potential clients requesting appointments, I could easily set my own working conditions.

But since this law was passed in 2016, criminalising my clients, I have noticed that their numbers have fallen, leading to significant financial insecurity and unpayable debts.

What is more, I have lost the ability to protect myself effectively. Given that I have fewer clients, I have less choice. And since this law came into effect, I have had to agree to practices (and rates) that I used to be able to refuse.

So I have started accepting appointments at heavily discounted prices, which has made me even less financially secure.

For that reason, I find it very hard (if not impossible) to insist on a condom. My sexual health has suffered dramatically, and since this law was passed, I have regularly caught sexually transmitted infections and I am now HIV-positive.

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So this law is dangerous. It gives more power to my most dangerous clients, by allowing them to impose their terms on me, whereas I should be able to set my own.

... Stigmatising someone for being a client does not help me as a provider of paid sexual services ...

This also has an impact on my mental health, making me increasingly want to leave this world behind ...

Not only does this law put my health and finances in danger, but it also rules out any possibility of creating a society where people can engage in paid sexual services healthily ...”

T.S., 10 November 2021 (application no. 24387/20)

“... To protect my clients who do not want to be surprised by the police any more, I am forced to agree to hosting them at my house even if I do not want to, and to take the risk of having a fake client – an attacker pretending to be a client – know where I live and decide to harass me, threaten me or tell my neighbours what I do.

... [S]ince clients have been criminalised, prices for a session have gone down. Before the law was passed, we could afford to refuse clients when we did not agree on the terms of the service being provided. In my first 15 years of sex work, I managed to systematically make clients wear a condom, and I never had any sexually transmitted infections as part of my sex work. After the 2016 law came into force, everyone lost bargaining power, because clients got scared, including the ones not directly targeted by the police, as they did not know where or how the law applied. Now, we can no longer afford to turn down a client like before. The law has given clients considerably more power – while claiming to do the opposite.

Since 2016 I have increasingly had to agree to unprotected sex, which I would never have imagined doing before ... Since 2016 I have had to be treated for gonorrhoea and syphilis. I also have a lot of trouble taking pre-exposure prophylaxis properly because it makes me vomit. So I am very scared of becoming HIV-positive like a lot of colleagues I know have.

... Because of the law, a lot of us have to be more mobile and travel further to work, which means missing hospital appointments, getting less regular medical attention and sometimes interrupting treatment. ... Since the law came into force, we have had to adapt to clients’ demands, meaning even taking appointments late at night when the metro has stopped running and only escorts agree to travel. Lots of male sex workers have to agree to ‘chemsex’, i.e. taking drugs during sex, or even bringing the drugs themselves. Before, clients had to provide the drugs and did not negotiate so hard.

... Before the 2016 law was passed, I could ask for 200 euros an hour and now I can only ask for 100 euros maximum. I know escorts who agree to services for 50 euros. Street prices have dropped as low as 10 euros for oral sex in the woods. If I refuse to go bareback, I have practically no clients. For me, it is obvious that criminalisation has had a negative impact on prices in the sex industry and the normalisation of unprotected sex, because there is a domino effect spreading from one part of the sex industry to the next.

In any event, that was the aim of the people behind the law, who always said that sex work had to be less profitable so that we would be forced to do something else. But by pursuing that goal, I think they are putting my health and safety in danger, and telling me how I should behave sexually even though I am not hurting anyone. I am registered with the URSSAF [*Unions de recouvrement des cotisations de sécurité sociale et*

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d’allocations familiales – Social Security and Family Allowance Contribution Collection Offices] as a sex worker, and I pay my taxes, but I am not a citizen like anyone else, as if my life had no value, and I could die tomorrow and no one would care. Just the opposite, that would make one less whore, and they could say that their moral crusade against evil has been a big success ...”

S.T., 16 November 2021 (application no. 63664/19)

“... From working in an unconventional environment but having autonomy, independence and safety, lots of mutual support, respectful clients and the ability to choose what we did and with who, we saw our working conditions gradually start to change, for the worse, in the lead-up to the vote on the law. And deteriorate since the law was passed.

I have been depressed since 2015, like a number of colleagues. Some have committed suicide.

I used to be able to screen and choose my clients before this law was passed. Now there are so few of them, I take risks.

Some colleagues have been assaulted and robbed, whereas that never used to happen before in our optimal safety conditions and with the respect of the people who formerly used to solicit our services before the law came into force.

The law offers nothing to help me or my colleagues get out of the vulnerable situation it plunged us into.

The law offers nothing to protect us from stigma and violence.

The law took away my means of securing autonomy and a future, and the pride of a mother who could provide her child with a good education.

... This law is slowly destroying my autonomy, my safety and my life.

For me, the worst breach of people’s rights in this provision banning the purchase of sexual acts, and in all the provisions of the 2016 law in general ... is that the law considers that people who engage in prostitution have no psychological or moral capacity.

With this law the State becomes a *de facto* guardian, my guardian – and what a poor guardian it is, with a disgraceful, 400-euro-a-month exit programme, with conditions, which is below the poverty line, the equivalent of the average monthly budget in France for pets, with low-quality training, a situation of extreme vulnerability for people practising or quitting, exposure to the worst violence due to the stigma of being a victim and a ‘person in need’ – a guardian for all these people and who decides for them, since it puts them legally in a situation of incapacity.

... These provisions are incompatible with respect for people’s right to self-determination and cannot stand up to any scientific, moral or social scrutiny.

The state is reproducing what hurts people’s freedom the most: deciding for them. The legislature – here embodying state feminism – has taken over from the patriarchy and is maintaining the continuum of domination over the body and self-determination of the people concerned, without any viable solution being offered to those people, but worse, without any of the measures of the 2016 law having any impact on the issues targeted, i.e. eradicating violence and exploitation and helping people achieve greater freedom, whether they are sex workers or not.”

H.D., 16 November 2021 (application no. 63664/19)

“... [S]ince clients were criminalised I have had to change how I work. I do not look for clients in the street any more but instead via online ads, because clients no longer come into the street as they are afraid of being punished. In order to work, I have to perform sex work on a travelling basis all over France via online ads and use intermediaries to write my ads, find work flats and answer clients’ calls, since I do not speak French well enough.

For me, this means a loss of autonomy and a loss of income, and I am now in a more vulnerable position than before. Working via the internet out of town in particular is dangerous, because I am always alone in the flat and do not know anyone in the area. When I have clients who are violent or who come to rob me, I have less support from my friends and less means of defending myself.”

M.L., 16 November 2021 (application no. 63664/19)

“[I] hereby declare that I have suffered violence since the law of April 2016 criminalising clients of prostitution came into force. In December 2017 I accepted a client I would not have agreed to before, and he severely assaulted me and stole money from me. In July 2020 a client took out a knife and asked me for money. I had taken the risk of accepting him because the number of clients has fallen since the law criminalising clients was passed in 2016 and my financial situation is more insecure.

What is more, since the law criminalising clients came into force in April 2016, and still as of late 2020, there has been a group of thugs constantly in the building who frequently rob and threaten my clients. That has made my financial situation worse.

In order to work, I have had to change how I work and I now perform sex work on a travelling basis all over France via online ads. That means I have to use intermediaries to write my ads and find work flats, since I do not speak French well enough. I also suffer more violence out of town because I am in a more isolated position. In Lyon on 23 April 2021 I was assaulted by two people who had booked as clients, but as soon as they entered the flat they started punching me and demanded money from me. They came back twice in the same day. Then, in Bordeaux on 25 August 2021 a client raped me and strangled me. He stopped when my flat mate came home and then punched me and robbed me. Since the law criminalising clients came into force, I am in a more vulnerable and dangerous position than before, with a loss of autonomy and a loss of income.”

X.H., 17 November 2021 (application no. 63664/19)

“[I] hereby declare that I have suffered violence since clients were criminalised.

In 2016 I was the victim of robbery by three individuals on three occasions. I was also raped in 2016. I accepted a client I would not have agreed to before, but I took the risk of accepting him because I had had very little work or income for several days owing to a drop in the number of clients since the 2016 law criminalising clients came into force.

I would point out that I still work via online ads and I continue to receive clients, but I have had to change how I work (working hours, duration, etc.) and to lower my criteria when screening clients (or no longer screen at all when I do not have many clients), in order to be able to work.

Since clients were criminalised in 2016, more and more clients negotiate rates and practices, and I sometimes have to agree to rates set by the client. What is more,

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formerly good clients can become aggressive. On two occasions, in 2018 and 2020, two long-standing clients, who never used to be a problem, threatened me and demanded money after the ‘trick’.

This has put me at significant risk of being assaulted and led to a large loss of income, and I am now in a much more vulnerable position than before.”

G.L., 18 November 2021 (application no. 63664/19)

“[I] hereby declare that I have suffered violence and a loss of autonomy since the April 2016 law criminalising clients of prostitution came into force.

Since clients were criminalised in 2016, I have had to change how I work. I no longer look for clients in the street, because there are fewer of them and I have less and less work. So I have had to change how I work, by looking for clients online. But since I have been receiving clients via ads, I have been more exposed to violence because I cannot screen clients in advance and I cannot refuse certain people like before, when I looked for clients in the street.

In addition, I have to use intermediaries to write my ads and find work flats, since I do not speak French well enough. I depend on them and am no longer autonomous in my work, and I am now in a more vulnerable position than before.”

J.W., 18 November 2021 (application no. 63664/19)

“[I] hereby declare that I have suffered violence since the law of April 2016 criminalising clients of prostitution came into force.

Since 2016 the number of clients in the street has fallen significantly and my financial situation has become more precarious. Sometimes, I have no clients and no work for days on end. That forces me to accept clients I would not have agreed to before.

The 2016 law criminalises clients but, in the end, I am the one who is being punished and I am now in a more vulnerable and dangerous position.”

M.S., 20 November 2021 (application no. 63664/19)

“... Between 2012 and 2016 the number of calls I received per day was by far enough to allow me to carefully screen the people I agreed to meet. If I had the slightest doubt I would refuse the appointment.

... When the law ‘criminalising clients’ was passed in April 2016, the number of calls I received fell dramatically. On some days I do not receive any calls at all.

I am now obliged to work over longer periods and I can no longer justify taking days off, because there are not enough clients any more.

In fact, since that day I can no longer afford to screen clients as much and I sometimes agree to receive people I do not trust. I can no longer insist on using a condom during oral sex, because that would make me lose the few clients I have left.

Increasingly often I receive inappropriate requests (unprotected sex, acts that I do not practise) and I have to accept some disrespectful people I would have never agreed to before.

During the summer of 2018, my financial situation was terrible and I could not afford to pay my rent. On 21 August 2018 I was obliged to accept an appointment with a person who made me very uncomfortable. But I had no other choice if I wanted to be able to pay my rent.

This person showed up to the appointment but he was actually a thug who had only come to rob me.

Since I had no money, he raped me and beat me up, resulting in 21 days of total unfitness for work and 30 days of temporary unfitness for work for psychological reasons (case decided by the Paris Court on 14 April 2021).

Following this assault I was unable to work for more than six months. Since then I have been terrified that it will happen again.

... To keep safe I started working in a ‘massage parlour’, which meant that I had to give a large share of my profits to a third party. ... I still work alone now, but I no longer earn a proper living. I had to move out of my flat because I could no longer afford it.”

II. PROCEEDINGS BEFORE THE *CONSEIL D'ÉTAT*

7. On 1 June 2018 the Sex Workers' Union (*Syndicat du travail sexuel* – STRASS) and non-governmental organisations (NGOs) Médecins du Monde, Parapluie Rouge, Les Amis du Bus des Femmes, Cabiria, Grisélidis, Paloma, AIDES and Acceptess-T, together with five individuals including four of the applicants (T.S., application no. 24387/20; M.S., application no. 24393/20; C.D., application no. 24391/20; and M.C., application no. 64450/19), applied to the Prime Minister seeking the repeal of Decree no. 2016-1709 of 12 December 2016 on, *inter alia*, the awareness-raising course on the fight against the purchase of sexual acts, an additional penalty introduced by the Law of 13 April 2016 (codified in point 9° *bis* of Article 131-16 and point 9° of Article 225-20 § I of the Criminal Code).

8. On 5 September 2018 they applied to the *Conseil d'État* to have the Prime Minister's implicit refusal set aside for misuse of authority. They argued, in particular, that the decree had no legal basis, since it had been issued in order to implement legislative provisions that were incompatible with the Constitution and with Article 8 of the Convention.

9. They requested that the *Conseil d'État* make a preliminary reference on constitutionality (*question prioritaire de constitutionnalité* – “QPC”) to the Constitutional Council as to whether Article 611-1, Article 225-12-1, point 9° *bis* of Article 131-16 and point 9° of Article 225-20 § I of the Criminal Code, as amended by the Law of 13 April 2016, were compatible with the rights and freedoms guaranteed by the Constitution.

10. The *Conseil d'État* made that preliminary reference to the Constitutional Council on 12 November 2018.

A. Constitutional Council decision of 1 February 2019

11. On 1 February 2019 the Constitutional Council delivered the following decision (no. 2018-761 QPC):

“...

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5. [Article 611-1, Article 225-12-1, point 9° *bis* of Article 131-16 and point 9° of Article 225-20 § I are criticised] for criminalising any purchase of sexual acts, including where such acts are carried out freely between consenting adults in private. That general and absolute prohibition allegedly constitutes an interference with the freedom of prostituted individuals and their clients that cannot be justified by the maintenance of public order, the fight against procuring and trafficking in human beings or the protection of prostituted individuals. This allegedly amounts to an infringement of the right to respect for private life, and of the resulting right to personal autonomy and sexual freedom. It further allegedly amounts to an infringement of freedom to conduct business and freedom to contract. Lastly, it is argued that the criminalisation of any use of prostitution contravenes the principles of the necessity and proportionality of punishment.

6. Consequently, the preliminary reference on constitutionality concerns the first paragraph of Article 225-12-1 and Article 611-1 of the Criminal Code.

7. In addition, some of the intervening parties submitted that the impugned provisions will have the effect of increasing the isolation of prostituted individuals and pushing them further underground, thereby exposing them to a heightened risk of violence from their clients and forcing them, in order to continue practising their profession, to accept hygiene standards that would infringe their right to protection of health.

As regards the complaint of an infringement of personal freedom:

...

9. It is for the legislature to strike a balance between, on the one hand, the constitutional objective of maintaining public order and preventing crime, and, on the other, the exercise of constitutionally guaranteed freedoms, which include the personal freedom protected by Articles 2 and 4 of the Declaration [of the Rights of Man and of the Citizen] of 1789.

...

11. First, it is apparent from the drafting history that, in choosing to criminalise buyers of sexual services under the disputed provisions, the legislature sought, by depriving procurers of sources of profit, to combat that activity and trafficking in human beings for the purpose of sexual exploitation, both of which are criminal activities based on coercion and human enslavement. It thus sought to protect human dignity against these forms of enslavement and pursued the constitutional objective of maintaining public order and preventing crime.

12. Second, Article 61-1 of the Constitution does not confer on the Constitutional Council the same general power of assessment and decision-making as that of Parliament, but grants it solely jurisdiction to rule on whether the laws referred to it are compatible with the Constitution. If the legislature has criminalised all use of prostitution, including where sexual acts are presented as carried out freely between consenting adults in private, it is because it has considered that the vast majority of individuals who engage in prostitution are victims of procuring and trafficking and that these offences are made possible by the existence of a demand for paid sex. By prohibiting that demand through the criminalisation in dispute, the legislature has taken an approach that is not manifestly inappropriate for the public-policy objective pursued.

13. It follows from the foregoing that the legislature has struck a balance that is not manifestly uneven between, on the one hand, the constitutional objective of maintaining public order and preventing crime, and the protection of human dignity, and, on the

other, personal freedom. The complaint alleging an infringement of that freedom must therefore be dismissed.

As to the other complaints:

...

16. Secondly, under the 11th paragraph of the Preamble to the 1946 Constitution, the Nation ‘shall guarantee to all, especially to children, mothers and aged workers, the protection of health ...’. It is not for the Constitutional Council to substitute its assessment for that of the legislature as to the health consequences of the disputed provisions for prostituted individuals, provided that such assessment is not manifestly inadequate in the light of current knowledge. The complaint alleging a breach of the right to protection of health must therefore be dismissed.

17. Lastly, it is open to the legislature to impose limitations on freedom to conduct business and freedom to contract, which derive from Article 4 of the Declaration of 1789; those limitations may be linked to constitutional requirements or justified by the public interest, provided that this does not result in disproportionate harm in relation to the objective pursued.

18. For the same reasons as those set out in paragraphs 11 and 12, the complaints alleging an infringement of freedom to conduct business and freedom to contract must be dismissed.

19. It follows from the foregoing that the first paragraph of Article 225-12-1 and Article 611-1 of the Criminal Code, which do not breach the right to respect for private life or any other right or freedom guaranteed by the Constitution, must be declared compatible with the Constitution. ...”

B. Decision of the *Conseil d’État* of 7 June 2019

12. The *Conseil d’État* dismissed the application in a decision of 7 June 2019. Referring to the Constitutional Council’s decision of 1 February 2019, it rejected the argument that Articles 225-12-1 and 611-1 of the Criminal Code were unconstitutional. It then rejected the argument based on Article 8 of the Convention for the following reasons:

“...

5. It is apparent ... from the parliamentary proceedings prior to the enactment of the Law of 13 April 2016 that the legislature, noting that the vast majority of individuals who engaged in prostitution were victims of procuring and trafficking in human beings made possible by the existence of a demand for paid sex, intended, by introducing a minor offence punishing the act of soliciting, accepting or obtaining sexual relations from an individual who engages in prostitution in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit, to deprive procurers of sources of profit, to combat that activity and trafficking in human beings for the purpose of sexual exploitation and to ensure the protection of human dignity and the maintenance of public order.

6. Prostitution, where it is forced, is incompatible with human rights and dignity. The decision to prohibit demand for paid sex by the creation of an offence under the disputed provisions of the Law of 13 April 2016 is based on the finding, as stated in paragraph 5, that the vast majority of individuals who engage in prostitution are victims of procuring and trafficking in human beings made possible by the existence of such demand. In

these circumstances, the impugned provisions, even though they may concern sexual acts presented as carried out freely between consenting adults in private, cannot, having regard to the public-interest purposes which they pursue, be regarded as constituting an excessive interference with the exercise of the right to respect for private life under Article 8 of the [Convention]. It follows that the argument that the decree of 12 December 2016 was issued to implement legislative provisions that were incompatible with those stipulations must be rejected ...”

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Relevant legislation

1. Law no. 2014-873 of 4 August 2014 on substantive gender equality

13. Section 1 of Law no. 2014-873 of 4 August 2014 provides:

“The State and the territorial authorities, together with their public institutions, shall implement a gender-equality policy based on an integrated approach. They shall ensure that all their measures are assessed. The gender-equality policy shall include:

1° Prevention and protection measures to combat violence against women and attacks on their dignity;

2° Measures to strengthen action against the prostitution system;

3° Measures to prevent and combat gender stereotypes;

4° Measures to ensure women have control over their sexuality, including through access to contraception and abortion;

5° Measures to combat vulnerability among women;

...”

2. Law no. 2016-444 of 13 April 2016 on strengthening action against the prostitution system and supporting prostituted individuals

14. Law no. 2016-444 of 13 April 2016 provides for a set of measures whose main focuses are summarised below.

(a) Measures to strengthen the means of combating procuring and trafficking in human beings for the purpose of sexual exploitation

15. Chapter II, Part 2 of Law no. 2016-444 of 13 April 2016, transposing Article 8 of Directive 2011/36/EU into French law, repeals the offence of soliciting (which was punishable under the former Article 225-10-1 of the Criminal Code).

16. Law no. 2016-444 also inserts the following Articles into the Criminal Code:

Article 611-1

“The act of soliciting, accepting or obtaining sexual relations from an individual who engages in prostitution, including on an occasional basis, in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit shall be punishable by the fine applicable to Class 5 minor offences [maximum of 1,500 euros].

Individuals who are guilty of the minor offence provided for in the present Article shall also be liable to one or more of the additional penalties referred to in Article 131-16 and the second paragraph of Article 131-17.”

Article 225-12-1

“Where committed as a repeat offence under the conditions laid down in the second paragraph of Article 132-11, the act of soliciting, accepting or obtaining sexual relations from an individual who engages in prostitution, including on an occasional basis, in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit shall be punishable by a fine of 3,750 euros.

The act of soliciting, accepting or obtaining sexual relations in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit from an individual who engages in prostitution, including on an occasional basis, shall be punishable by three years’ imprisonment and a fine of 45,000 euros where that individual is a minor or has a particular vulnerability, whether apparent or known to the perpetrator, owing to illness, infirmity, disability or pregnancy.” [This provision was amended by Law no. 2021-478 of 21 April 2021 on protecting minors from sexual crimes and incest. The penalty is now five years’ imprisonment and a fine of 75,000 euros.]

17. The legislation in question further creates an awareness-raising course on the fight against the purchase of sexual acts, which may be ordered as an alternative to prosecution, as a voluntary reparation order or as an additional penalty in order to prevent repeat offences more effectively.

18. It also provides victims of human trafficking and procuring who have given evidence and whose life or physical integrity is under serious threat with the right to receive protection and to use a borrowed identity.

(b) Measures to improve support for individuals engaging in prostitution

19. The same legislation creates a programme to exit prostitution and integrate into society and the labour market, which is to be offered to any victim of prostitution, procuring or trafficking in human beings for the purpose of sexual exploitation. The programme is based on an assessment of the health, employment and social needs of the individual concerned, and is designed and implemented in collaboration with that individual by a specialist association. The measure is financed by a combination of State funds and the proceeds of confiscations ordered in respect of certain offences, relating in particular to human trafficking and procuring.

20. In addition, it places individuals who have entered an exit programme or who have been victims of human trafficking or procuring on the priority list for social housing.

21. The legislation in question supplements the Public Health Code by adding a new Title on the risk-mitigation policy for prostituted individuals, which seeks to prevent sexually transmitted infections and diseases along with other health risks and social and psychological risks related to prostitution. The policy is aimed at anyone engaging in prostitution and involves initiatives such as direct engagement with prostituted individuals, a voluntary outreach programme and the creation of a mobile, multidisciplinary health and social team to facilitate these activities.

22. The measures set out in the legislation in issue were subsequently rolled out by the government in various pieces of implementing legislation. These included Decree no. 2016-1467 of 28 October 2016 on the programme to exit prostitution and integrate into society and the labour market and the approval of associations involved in its design and implementation, Decree no. 2017-281 of 2 March 2017 approving the national risk-mitigation framework for prostituted individuals and supplementing the Public Health Code, Circular no. DGCS/B2/2017/18 of 31 January 2017 on the implementation of the programme to exit prostitution and integrate into society and the labour market and Instruction no. DGCS/SDFE/DGEF/DIMM/2022/7 of 13 April 2022 on the granting of rights under the programme to exit prostitution and integrate into society and the labour market.

23. The legislation also increases the penalties for certain crimes committed against an individual engaging in the practice of prostitution, where such acts are committed in the course of that activity. Lastly, it enables victims of procuring to bring a claim before the Criminal Damage Compensation Board.

(c) Measures for migrants engaging in prostitution

24. The legislation provides that individuals who have lodged a complaint against a person accused of human trafficking or procuring, or who are giving evidence in criminal proceedings against such a person, are now automatically issued with a temporary residence permit. (Previously the decision to issue such a permit was left to the competent authorities.) It has also supplemented the Immigration and Asylum Code, which now provides that provisional leave to reside in France for at least six months may be granted to victims of trafficking or procuring who have entered an exit programme, regardless of their cooperation with the justice system.

(d) Measures to prevent people from entering prostitution

25. In addition, the legislation in question supplements the Education Code by providing that information must be dispensed in secondary schools about the reality of prostitution and the dangers of commodifying the body.

B. Parliamentary resolution adopted on 6 December 2011

26. On 6 December 2011 the National Assembly unanimously adopted a resolution reaffirming France's abolitionist position on prostitution (adopted text no. 782, ordinary session 2011-2012, single article). It reads:

“The National Assembly,

Having regard to Article 34-1 of the Constitution,

Having regard to Rule 136 of the Rules of Procedure,

Having regard to the third paragraph of the Preamble to the Constitution of 1946, which provides that ‘the law shall guarantee women equal rights to those of men in all spheres’;

Having regard to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949, which states that ‘prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person’;

Having regard to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, Article 5 of which provides that ‘States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’;

Having regard to the Palermo Protocol, or the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, signed on 15 November 2000, and the Warsaw Convention, or the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005, which are the two authoritative international instruments in the field of action against trafficking in human beings;

Having regard to Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, which provides member States with a common framework for combating human trafficking and Article 8 of which provides that ‘competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings’;

Having regard to Article 16 of the Civil Code, which states that ‘the law secures the primacy of the person [and] prohibits any assault on human dignity’;

Having regard to Article 16-5 of the same Code, which provides that ‘any agreements which have the effect of conferring a pecuniary value on the human body or parts or products thereof shall be null and void’;

Having regard to the 2011-2013 interministerial plan to combat violence against women, which considers prostitution as a form of violence against women;

Whereas the principle that the human body is not property is one of the cardinal principles of our law and prevents the human body from being considered, as such, as a source of profit;

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Whereas the sexual, physical and psychological assault which most often accompanies prostitution constitutes a particularly serious attack on the bodily integrity of prostituted individuals;

Whereas prostitution is predominantly carried out by women and its clients are virtually all men, thus contravening the principle of gender equality;

1. Reaffirms the abolitionist position of France, whose ultimate goal is a society without prostitution;

2. Declares that the notion of irrepressible sexual needs reflects an archaic conception of sexuality which cannot legitimise prostitution any more than it justifies rape;

3. Considers that, in view of the coercion which most often underlies entry into prostitution, the violence inherent in this activity and the physical and psychological damage resulting from it, prostitution cannot under any circumstances be equated with an occupational activity;

4. Deems it paramount that public policies provide credible alternatives to prostitution and safeguard the fundamental rights of prostituted individuals;

5. Hopes that the fight against trafficking in human beings and procuring will be a genuine priority, since the vast majority of prostituted individuals are victims of sexual exploitation;

6. Considers that prostitution can decline only by means of a gradual change in attitudes and patient efforts towards prevention, education and accountability among clients and throughout society as a whole.”

C. Legislative history and parliamentary proceedings

27. Discussions on prostitution issues were initiated following the enactment of Law no. 2010-769 of 9 July 2010 on violence specifically against women, intimate-partner violence and its effects on children. This initiative was reinforced by the resolution adopted by the National Assembly in December 2011 (see paragraph 26 above) in response to an information report on prostitution in France (National Assembly report no. 3334, deposited on 13 April 2011) which, *inter alia*, assessed public policies in the area in France and internationally. A working group was then set up within the National Assembly. Following many interviews, field work in Paris and greater France and a trip to Stockholm, they drafted an information report on strengthening action against the prostitution system (National Assembly report no. 1360, deposited on 17 September 2013). An initial bill was subsequently introduced on 10 October 2013 and was examined by a dedicated special committee within the National Assembly. Another special committee was formed within the Senate.

28. During the examination of the above-mentioned bill, the two committees conducted many interviews in order to learn about the reality of prostitution in France and the most appropriate means of combating that phenomenon and supporting prostituted individuals. As part of that process, the committee members spoke to representatives of institutions and associations, current and former prostituted individuals, various experts,

doctors and researchers working in the area and representatives of specialist law-enforcement agencies from France and abroad, with the latter participants relating how prostitution was approached in their respective countries. Some committee members also carried out field trips both in France and internationally to take direct statements from prostituted individuals and observe first-hand the situation in other countries, regardless of the model adopted (see, for more details, National Assembly report no. 1558, deposited on 19 November 2013, and Senate report no. 697, deposited on 8 July 2014).

29. The various people interviewed thus had an opportunity to present their – sometimes opposing – opinions on the matter, with some considering that prostitution was “inherently violent” and others attesting to the existence of so-called “traditional”, freely chosen prostitution. Others presented mixed views on the application of the various models adopted in other States, be it the “Swedish” model or the “regulatory” model (see, in particular, report no. 697, cited above, pp. 27-31).

30. Upon completion of this work, the members of Parliament were first able to prepare an overview of the prostitution landscape in France and the risks weighing on prostituted individuals, along with the impact of the phenomenon on the rest of society, particularly young people. Among the risks, they noted isolation and increased exposure to violence, which had been aggravated since soliciting had been made an offence. They then reviewed all public policies that had been implemented in France and abroad.

31. With regard to how prostitution had changed over time and the part played in the phenomenon by procuring and human-trafficking networks, the committees’ work led to the following observation, as summarised in Senate report no. 697 (pp. 19-20, footnotes and emphasis omitted):

“It is extremely hard to assess precisely how many prostituted individuals there are. While police statistics and those obtained from the annual reports of associations working with prostituted individuals nevertheless make it possible to have an overview of the situation, it remains incomplete owing to the difficulty in taking account of more discrete forms of prostitution, whether they be practised online or in closed spaces such as massage parlours.

The Central Office for the Suppression of Trafficking in Human Beings [*Office central pour la répression de la traite des êtres humains* – OCRTEH], in its written replies to this special committee, estimated the number of prostituted individuals practising in France at approximately 30,000. In 2013 the proportion of French nationals charged with soliciting was 5.4%, out of a total of 1,129 people. The proportion of French nationals who were found to be victims as part of proceedings in respect of procuring or trafficking in human beings for the purpose of sexual exploitation was 22.6%, or 206 out of a total of 912. The three most highly represented countries, whether in soliciting or in procuring and trafficking proceedings, were Romania, Nigeria and China.

In view of these statistics, OCRTEH estimates that 83% of prostituted individuals practising in France are foreign nationals. On this point, the figures provided by OCRTEH align with those supplied by associations such as Grisélidis which, in its 2013

annual report, evaluates the share of female migrants working in street prostitution in Toulouse at 88%. Most of these women appear to originate from sub-Saharan Africa and Eastern Europe. These data reflect a profound change in prostitution in the last 20 years. Whereas in the early 1990s 80% of prostituted individuals were French nationals, the proportions have now more than reversed. This inversion correlates with the sharp decline in so-called ‘traditional’ prostitution in France.

While all stakeholders agree that people in the hold of trafficking or procuring networks account for the vast majority of prostituted individuals, the exact percentage is a subject of debate. The lack of consensus can be attributed to the fact that there are no consolidated data that make it possible to establish an accurate profile of prostituted individuals in France, regardless of how they practise. According to OCRTEH, whose analysis is based chiefly on street prostitution, foreign prostituted individuals practising in France are almost fully dependent on a network that exploits them. This estimate is considered overstated by associations such as AIDES.”

32. The committees examined other reports, including those dealing more specifically with the health situation of prostituted individuals, such as Senate information report no. 46 prepared on behalf of the Social Affairs Committee (“Health and social situation of prostituted individuals: shifting focus”, 8 October 2013) and a report by the General Inspectorate of Social Affairs (“Prostitution: health challenges”) drafted in December 2012. One such report highlighted the rise in unprotected sexual encounters at the request of clients (the rate was one in five, according to Grisélidis). That trend was purportedly driven by the growth in the supply of prostitution and the resulting increase in competition, which forced prostituted individuals to accept clients’ demands.

33. A further contribution to the parliamentary proceedings was an information report prepared on behalf of the Delegation on the Rights of Women and Equal Opportunities (Senate report no. 590, deposited on 5 June 2014). The report included the findings of the Delegation’s own interviews and field trips, on the basis of which it made 11 recommendations, including the adoption of the principle of buyer accountability. In support of that principle, the Delegation noted that violence against prostituted individuals was committed above all by procurers, networks and clients themselves. Clients in particular were in a position of power in comparison with a prostituted individual, who was considered a criminal on account of the offence of soliciting. The bill would reverse these very power dynamics by holding the buyer accountable. The Delegation also asserted that the measure would above all act as a deterrent and build significant awareness, beyond its punitive effect. Lastly, it emphasised the importance of the measure in combating the growing phenomenon of child prostitution, where efforts were often hampered by the difficulty in proving that the client had known that the prostituted individual was a minor.

34. The rapporteur for the bill in the National Assembly, Maud Olivier, formulated its objectives as follows:

“... [T]he effectiveness of any scheme to combat the prostitution system in France will depend on the implementation of an integrated set of measures designed to address all aspects of the problem. ... [I]t is not enough, for example, to target procurers in order to put an end to prostitution if, at the same time, we do not make our country unwelcoming by discouraging demand and, consequently, holding clients accountable. Similarly, it is not enough to attempt to combat these networks if we do not offer their victims the financial, social and legal means to exit prostitution.

Both multi-directional and simultaneous measures must therefore be initiated by the public authorities, as part of an integrated legal framework, underpinned by France’s long-standing abolitionist ambition.

That is the aim of the bill before us [...] which puts in place an integrated system of measures meeting four objectives: strengthen action against sexual exploitation networks; more effectively support prostituted individuals seeking to exit prostitution; improve prevention of both prostitution practices and the purchase of sexual acts; and hold the clients of prostitution accountable.”

35. The rapporteur for the bill in the Senate, Michelle Meunier, noted the following (Senate report no. 697, p. 27):

“A feeling of stigma is also a recurring feature among prostituted individuals and fuels their distrust of institutions. Many report sometimes humiliating treatment by some police officers, who see them more as offenders in the making than potential victims of trafficking networks. This phenomenon has been exacerbated by the greater use of police custody under the 2003 Domestic Security Act. It is to counter this recurring feeling of stigma that the report by your President Jean-Pierre Godefroy and Chantal Jouanno called for a ‘shift in focus’ on prostituted individuals.

Your rapporteur considers that health and social support for prostituted individuals, which has long been neglected, is one of the key drivers for the fresh impetus that must be given to France’s abolitionist commitment. These efforts need to be accompanied by a change in how society views these individuals, which is still too often stigmatising. There is a consensus on this assessment among the members of your special committee, who welcomed the social aspect of the text submitted to them.”

36. The bill, as amended following the above-mentioned proceedings, was then examined by a joint committee set up following a lack of agreement between the National Assembly and the Senate, in particular concerning the provision on the criminalisation of clients of prostituted individuals. In the absence of a consensus, the National Assembly passed the bill regardless at final reading. In presenting the bill the rapporteur, supported by the government, had emphasised the following (verbatim record of the sittings of 6 April 2016):

“... [T]his is a far-reaching, comprehensive and practical law that changes how society views prostitution. And I still have not got to the ban on buying sexual acts, a measure that has caused so much controversy! I believe it is only one aspect of the scheme – an important one, for sure, but still only one.

... [T]he main aim of this law is to improve the safety of prostituted individuals and the support available to them.

That requires everything I have talked about: being able to find protection when in danger; being able to report someone to the police; having alternatives in any situation;

getting support for all aspects of reintegration; obtaining justice against an attacker or an exploitative mafia network, where applicable; and knowing where to turn for help, support, when in need.

Changing the lives of people engaging in prostitution also means changing the power dynamics. That requires decriminalising the activity of prostituted individuals and banning the purchase of sexual acts. Prostituted individuals will no longer be able to be prosecuted; clients will instead. And that is a game changer.

In this unequal relationship, where the person who pays has the power, we are putting an end to client impunity. Those who stay in prostitution will be empowered to report to the police anyone who does not abide by their rules – by making them perform unprotected sex, for example –, anyone who assaults them and anyone who rapes them.

I am not saying that everything will be rosy in prostitution. Prostitution is always violent. But by banning the purchase of sexual acts, we can loosen clients' all-powerful grip on prostituted individuals.

Banning the purchase of sexual acts also puts another spanner in the well-oiled works of procuring and human-trafficking networks. By interfering with their day-to-day, by sapping demand, we will make their business less profitable. The goal is obviously to reduce the number of victims.”

37. The vote had been preceded by the rejection of amendments proposed by some members of the National Assembly to remove the measure criminalising clients. Echoing the arguments put forward by associations including Les Amis du Bus des Femmes, Médecins du Monde and AIDES, and those set out in the opinion of the National Advisory Commission on Human Rights (*Commission nationale consultative des droits de l'homme – CNCDH*) of 22 May 2014, they had asserted that it weakened, excluded and marginalised prostituted individuals, who sometimes fell into the hands of violent clients. They had further argued that the measure did not enable effective health care and made access to rights and to support and prevention associations more difficult. The mixed results of the application of a similar Swedish law had also been emphasised (verbatim record of the sittings of 6 April 2016).

D. Opinions of the National Advisory Commission on Human Rights and the *Défenseur des droits* on the bill on strengthening action against the prostitution system

38. On 22 May 2014 the CNCDH issued the following opinion:

“...

19. Sections 16 and 17 of the bill prohibit and punish the purchase of sexual acts. The CNCDH considers that they are problematic in more than one regard. The demand that clients of prostitution be held accountable and the expressive and educational functions of criminal law are indeed arguments that can be put forward in favour of prohibiting the purchase of sexual acts and criminalising clients of prostituted individuals. However, criminalising the client will necessarily have consequences for the prostituted individual, since the prohibited act requires a partner engaging in prostitution. Thus,

even if the client is criminalised and not the individual engaging in prostitution, these provisions indirectly treat prostitution as an illegal activity.

20. The CNCDH also questions the legislature's decision to base its fight against prostitution on the idea that it infringes the principle of dignity, without taking the precautions that such an interpretation requires, especially given that the interviews it conducted show how divisive the issue is. In this connection, the CNCDH would point out that the various works of the Constitutional Council, the *Conseil d'État* and the 2009 committee on rewriting the Preamble to the Constitution of 1958 all emphasise not only the pre-eminent nature of this principle, but also its ambivalence ...

21. The bill also considers the issue of prostitution through the lens of gender equality, reasoning that since prostitution is a sexual act imposed by means of money and financial coercion, it is in itself a form of violence against women and an obstacle to equality. The CNCDH notes, first, that the diversification of prostitution scenarios (female, male and transgender) makes it difficult to rely on the principle of equality. Secondly, it observes that legislation on human trafficking and exploitation, legislation against the use of prostitution involving children and particularly vulnerable persons, [and] legislation on rape ... are all legal instruments that already make it possible to punish the various forms of forced prostitution and the related violence.

22. Moreover, the relevance of the provision criminalising clients seems questionable, since it is likely to be counterproductive. Criminalising clients would in fact relegate prostituted individuals to more remote and therefore more dangerous places. The power to 'bargain' with and to screen clients would be reduced; health-care and social workers would have more difficulty in gaining access to these individuals. There is also a risk of greater mistrust of the police and therefore less of a tendency to turn to them in the event of violence, which would in fact amount to a retrenchment of the law. This paradoxical benevolence would therefore induce evasion strategies that would not be without serious impacts on the health and rights of prostituted individuals.

23. Indeed, rather than introducing a new punitive instrument, it would be better to ask why there are so few prosecutions and convictions for the use of child prostitution. ... The CNCDH considers that the top priority of penal policy should be the prosecution of clients of children.

24. The criminalisation of clients, aside from being hard to implement, would potentially have an impact only on visible prostitution – that is, street prostitution – and not on other forms of exploitation of prostitution. It would undoubtedly contribute to accelerating the development of other forms of prostitution, known as 'indoor' prostitution. Yet this 'invisible' prostitution is more fluid, if not elusive. Consequently, since the victims of these forms of exploitation are less accessible to associations and the public authorities, the issue of care and support services arises. Furthermore, given the patchwork of legislation in Europe, criminalising clients risks pushing them to the borders (see what happens at the Franco-Spanish border, in La Junquera, or in Danish territorial waters, between Sweden and Denmark).

25. The coherence of the planned scheme may also be questioned more broadly. If the aim is to include prostitution in the scope of violence and attacks on human dignity, then why is the new offence of use of prostitution considered merely as a small disturbance of public order, punishable as a Class 5 minor offence? Furthermore, what would the effect on the symbolism of criminal law be if, in addition to the uncertainty surrounding how effectively the ban could be implemented, it were discredited by the insignificance of the minor-offence penalty that accompanied it? Lastly, effective enforcement would entail surveillance systems being set up and put into widespread use, which would obviously run counter to the requirements of a free society.

...

Recommendation 8: the CNCDH considers that the prohibition of the purchase of sexual acts and the penalisation of clients of prostitution is not an appropriate measure to combat human trafficking and exploitation of prostitution.

...”

39. On 16 December 2015 the *Défenseur des droits* (Defender of Rights) issued the following opinion (no. 15-28):

“... The *Défenseur* points out that the prohibition of the purchase of sexual acts based on the Swedish model is not the most effective measure to ‘reduce prostitution and to deter human-trafficking and procuring networks from establishing themselves throughout the county’, and much less ‘the most protective solution for those who remain in prostitution’ as announced in the bill.

Apart from the fact that neither France nor Sweden has reliable figures and so it is difficult to quantify the effects of the legislation on the prostitution system, the Swedish model cited as a benchmark is today highly controversial.

The impact of such a provision on the phenomenon of prostitution in France is therefore likely to be limited, if not nil. The effects on people’s health, safety and access to fundamental rights, on the other hand, are well documented by international institutions (WHO, UNAIDS and UNDP) and their French counterparts (CNS, IGAS and INVS). As with the effects of criminalising soliciting in France, criminalising clients will heighten the vulnerability of prostituted individuals by forcing them further underground. Such a measure will shift prostitution from the street to increasingly remote and/or isolated areas, worsening the already tough working conditions.

In this regard, as the phenomenon is pushed further underground, the police will have greater difficulty in combating human trafficking and procuring. How can these networks be stopped if the victims are no longer visible and accessible?

The provision will also have the effect of making prostitutes more vulnerable to violence from certain clients and to HIV and/or viral-hepatitis infections. WHO, UNAIDS and the CNS are unanimous in saying that criminalising prostitution harms the health of those who engage in it. People offering paid sexual services, whether they have been forced into prostitution or not, will find themselves with less bargaining power, forcing them to accept certain practices or unprotected sex.

Furthermore, their access to prevention and treatment will be even more problematic because the measure will distance them from the support networks of existing associations and medical organisations and complicate the work of prevention stakeholders. How can a proper risk-mitigation policy be applied – as is even enshrined in the law – where people are engaging in prostitution in places unknown or inaccessible to associations?

Lastly, by perpetuating the conflation of sex work and crime, the criminalisation of prostitution increases the legal vulnerability of prostitutes, who are sometimes victims of police harassment, unjustified police custody and humiliating treatment. As a result, associations have observed greater mistrust towards the police and less likelihood of their being turned to in the event of violence. Instead of being a source of protection, punishing clients for using prostitution hinders prostituted individuals’ ability to access rights ...”

E. Evaluation of the Law of 13 April 2016 on strengthening action against the prostitution system and supporting prostituted individuals

40. On 1 April 2019 the Prime Minister's chief of staff instructed the General Inspectorates of Social Affairs, Administration and Justice to carry out an evaluation of Law no. 2016-444. They issued their report on the matter in December 2019. The key findings are as follows:

“Three and a half years after the legislation was passed, prostitution in France has undergone several fundamental changes. Contact between clients and individuals engaged in prostitution now mainly takes place via the internet. Street prostitution has decreased and has in some instances moved to peripheral areas, while indoor prostitution has increased. However, given the absence of reliable statistics from before the legislation was passed, and the failure to introduce tools to assess the phenomenon subsequently, it is impossible to determine how much of this change is attributable to the new legislation and how much to structural trends. The growing invisibility of the phenomenon further complicates any attempts at quantitative evaluation. We were nevertheless able to identify some trends and evaluate the application of the legislation.

The implementation of the legislation has been greatly held back by a lack of political endorsement and proactive involvement by the public authorities. Implementation is the remit of several ministries, but insufficient impetus has been given at national level. This has resulted in poor application of certain measures (information to pupils about the commodification of the body, for example), and a mishmash of practices across the country (in terms of admission to exit programmes, for example). Similarly, although the financial resources allocated to social and occupational support for individuals engaged in prostitution have risen since the legislation was passed, they have suffered from a lack of forward planning, excessive dissipation and the variability of devolved budgets. Very few public-awareness measures have been rolled out since 2016, and too few training courses on the phenomenon of prostitution and its development have been put in place for the various stakeholders tasked with applying the legislation (police, judiciary, social workers, teachers, etc.). Thus, although the legislation has reaffirmed France's commitment to abolition, insufficient resources have been deployed to achieve this objective. The interministerial committee set up to monitor the legislation should be reconvened, and ministerial circulars should be issued to clarify the implementation of the legislation.

There has been an improvement in the results achieved in the fight against procuring and trafficking in human beings for the purpose of sexual exploitation. The number of criminal investigations conducted into these matters in France has increased by 54% in four years. However, the technical, financial and human resources allocated to specialist investigation teams are inadequate, especially given that procuring is an increasingly mobile, cross-border operation made more opaque by the use of the internet, social media and encrypted communication technology. The growing importance of the internet in prostitution would alone justify an increase in the resources allocated to cyber-procuring investigation teams.

Some criminal-law provisions of the legislation are rarely applied. We have observed a convergence in the case-law of the criminal courts towards greater severity against procuring and sex trafficking. However, there have been few convictions for the minor offence of the purchase of sexual acts created by the legislation, with only 1,939 people charged in 2018, concentrated in a small number of regions (Paris accounts for 50% of

proceedings). Awareness-raising courses on the fight against the purchase of sexual acts are underdeveloped. And the special protection scheme for human-trafficking or procuring victims in danger on French territory, which was created by the legislation, has never been used.

The legislation's measures concerning support for victims of prostitution and procuring have been rolled out progressively but unevenly across the country. Anti-prostitution committees are still being set up; 25% of *départements* have such a body. While prefects and associations generally view this system positively, the committees each take different approaches to their role of drawing up strategic guidelines, and not all have begun examining exit programmes. *Département* women's rights delegations lack the resources needed to implement this system effectively while carrying out their other responsibilities. Exit programmes still concern only a limited number of people compared with the potential target audience, with some 230 individuals engaged in such a programme at end-June 2019. This low figure partly reflects the significant differences from one *département* to the next in eligibility criteria for the exit programmes, particularly in relation to beneficiaries' residency status (the programmes almost exclusively concern foreign nationals without residency rights). We consider that these criteria should be clarified and harmonised at national level as a priority.

Although the legislation improves access to rights for individuals exiting prostitution, there is still room for improvement, be it in terms of access to housing (accommodation is often insufficient to meet demand), grants of residence permits, labour-market integration and access to health care. The sole means of improving such access to rights is by allocating greater resources to associations, which are the first point of contact for individuals engaging in prostitution. Their resources have not been increased to cover the work performed in implementing the programmes or in leading the risk-mitigation initiatives provided for in the legislation."

F. Evaluation of the national action plan against trafficking in human beings

41. On 12 January 2023 the CNCDH issued an opinion ("Evaluation of the national action plan against trafficking in human beings (2019-2022)"). It states, in so far as relevant:

"61. In accordance with Articles L. 425-1 and L. 425-3 of the Immigration and Asylum Code, anyone who reports the offences of human trafficking of any kind or procuring, or who gives evidence in criminal proceedings concerning such offences, must be issued with an automatically renewable one-year temporary residence permit for the duration of the criminal proceedings. In the event that the accused is convicted in a final judgment, a residence permit must be issued to the victim. However, these provisions are still rarely applied and their implementation varies widely from one prefecture to another. The CNCDH has observed a genuine reluctance to issue residence permits on this basis. That can be attributed, first, to the fact that the conditions of such issuances are unsuited to the situation of the victims and, second, to a widespread climate of suspicion of migrants, which leads people to prioritise the fight against illegal immigration over victim protection.

...

65. Furthermore, where a victim reports a matter that is not characterised as human trafficking, but instead as a minor offence where the specific circumstances describe a

similar situation, namely indecent working conditions, the holding of individuals against their will or acts of violence and control, the victims cannot assert their right to regularisation under the provisions on foreign nationals who are victims of human trafficking or procuring or have entered an exit programme. The prefectures tend to take into account only the criminal-law characterisation. The ability of prefects to issue residence permits on exceptional grounds under their power to regularise status is insufficient to remedy this, as not all prefectures have appointed a contact person for human-trafficking issues, and objectives for protecting human-trafficking victims continue to be unmet in practice.”

G. Other relevant documents

42. Between 2016 and 2018 the NGO Médecins du Monde carried out a study under the supervision of two political-science and sociology researchers, in cooperation with associations, to assess how the Law of 13 April 2016 had impacted the living and working conditions of prostituted individuals. One-to-one interviews were conducted with 70 prostituted individuals (38 others were consulted as part of focus groups and workshops) and 24 interviews and focus groups were held with sex-worker associations. A quantitative survey was also conducted, to which 583 prostituted individuals responded.

43. The resulting report, entitled “What sex workers think of the prostitution law: study on the impact of the Law of 13 April 2016 against the prostitution system”, was published in April 2018. The relevant parts of the executive summary read:

“... [D]espite the legislation’s stated aim of protecting people, most of the sex workers interviewed consider that criminalising clients has caused more harm to themselves than the former measure criminalising public soliciting. The vast majority say they have less control over their working conditions, while the number of clients has dropped since the enactment of the legislation, if not since the parliamentary debates, given the widespread media coverage. The incomes of sex workers have been significantly impacted. In these circumstances, virtually all respondents say they are against the criminalisation of clients.

...

Although sex workers have continued to work nevertheless since clients were criminalised, their working conditions have declined substantially. In spite of what the legislation proclaimed – namely, that criminalising demand (clients) would also reduce supply – interviews with associations indicate that there has been no fall in the number of sex workers. The adverse effects of the legislation can be felt on their safety, their health and their living conditions in general. The legislation has had a negative impact on their ability to work autonomously, the risks they have to take, the stigma they experience and their financial situation. Virtually all the sex workers and all the associations surveyed describe a loss of power in relationships with clients, who can impose their own terms more often (unprotected sex, lower prices, attempts not to pay, etc.) because they are shouldering the risks. This situation has made people poorer, especially migrant women working in the street and others already in a vulnerable position.

Fully 62.9% of respondents to the quantitative survey have noted a deterioration in their living conditions since April 2016, and 78.2% have noticed a fall in their income. This situation has led them to take more risks at work, and the impact on their health is concerning. The qualitative interviews worryingly testify to a decline in condom use and treatment gaps among HIV-positive individuals. The stress resulting from greater vulnerability has given rise to various psychosomatic issues, problems with drinking, smoking and other substances for some, and even suicidal thoughts. The findings of the qualitative survey highlight a rise in multiple forms of violence, from insults in the street to physical violence, sexual violence, theft and burglary. Increased vulnerability, sexual risk-taking and exposure to violence form a vicious circle.

...

Two years after the law was passed, it is the criminal-law aspect that has had the most effect on sex workers, by exacerbating situations of vulnerability, violence and stigma and exposing them to health risks.”

44. The report subsequently qualifies these statements as follows:

“However, many social workers are cautious about making a connection between the application of the legislation and the increase in violence because, in the same period, a lot of them developed forums or initiatives to encourage reporting and to support victims of violence. Other associations that have not implemented any special initiatives in this area say that trust has recently improved, which could have prompted the reports.”

II. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. United Nations

45. The relevant international instruments are set out in previous judgments of the Court, such as *S.M. v. Croatia* ([GC], no. 60561/14, §§ 109-22, 25 June 2020) and, more recently, *Krachunova v. Bulgaria* (no. 18269/18, §§ 67-75, 28 November 2023). Only those parts which are directly relevant to the present case are reproduced below.

1. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

46. The United Nations (UN) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted on 2 December 1949, 96 UNTS 271) makes a direct link between prostitution and human trafficking by stating in its Preamble that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person”. It was ratified by France in 1960.

2. *Convention on the Elimination of All Forms of Discrimination against Women*

47. The UN Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, 1249 UNTS 13 – “CEDAW”), under its Article 6, calls for States to take “all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. It was ratified by France in 1979.

48. CEDAW General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration (20 November 2020, UN Doc. CEDAW/C/GC/38) by the Committee on the Elimination of Discrimination against Women reads, in so far as relevant:

“30. Sexual exploitation persists due to the failure of States parties to effectively discourage the demand that fosters exploitation and leads to trafficking. Persistent norms and stereotypes regarding male domination and the need to assert male control or power, enforce patriarchal gender roles and male sexual entitlement, coercion and control, which drive the demand for the sexual exploitation of women and girls. Massive financial gains with few risks owing to impunity are still widespread. Under article 9 (5) of the Trafficking in Persons Protocol, States should adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. The need to address the demand that fosters sexual exploitation is especially important in the context of digital technology, which exposes potential victims to an increased risk of being trafficked.”

3. *UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences*

49. In a press release of 6 September 2023 on the occasion of a visit to Canada, Special Rapporteur Tomoya Obokata expressed his concern about the misuse of anti-trafficking legislation to target sex workers, which seriously impacted their human rights. He further stated that full decriminalisation of sex work was necessary to prevent further abuses.

4. *UN Special Rapporteur on violence against women and girls*

50. In a statement of 27 October 2023 on French Law no. 2016-444, Special Rapporteur Reem Alsalem welcomed the holistic approach taken by France on prostitution, which both protected and provided alternatives for prostituted persons, while combating those who exploited their vulnerabilities, namely traffickers, pimps and sex-buyers. Referring in particular to the CEDAW, General Recommendation No. 38, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted on 15 November 2000, 2237 UNTS 319 – “the Palermo Protocol”) and UN General Assembly

Resolution 77/194 on trafficking in women and girls (15 December 2022, 77th session, UN Doc. A/RES/77/194), she considered:

“The criminalization of the purchase of sexual acts has a strong legal basis in international human rights law as it is recognized as a legitimate instrument that States can resort to in order to protect anyone, including women and girls against exploitation and abuse.”

51. She then presented the positive consequences of the French legislation, pointing out (footnotes omitted):

“Although the law is still relatively recent, encouraging effects have already been observed:

Comparative estimates of the number of prostituted persons between France and other European countries, which have decriminalised the purchase of sexual acts, illustrate that it had a limiting effect.

1,247 prostituted persons, almost all women and girls from the most discriminated groups, have had access to a State-sponsored exit programme. These programmes have radically changed their lives, as 95% of them have left prostitution permanently at the end of the course. This is an initiative that is currently unique in the world and should be encouraged.

Regarding the fight against trafficking for the purpose of sexual exploitation, the approach taken under the French law also appears to have reinforced access to justice, compensation and support for prostituted persons.

These preliminary results are in conformity with results from countries that have also criminalized the purchase of sex for longer periods of time.

Finally, the benefits of the law and associated measures appear to be understood and supported by the majority of the French population. According to an independent national survey carried out in 2019, 65% of the population considered that buying a sexual act should not be possible in a society that advocates equality between women and men, and 73% felt that doing so amounted to profiting from the distress of prostituted persons for personal satisfaction. 71% considered that it should not be possible to buy access to the body and sexuality of others, and 74% said that prostitution was a form of violence. Each of these statements was supported by a majority of both women and men, which seems to confirm the Haut Conseil à l’Egalité’s assertion on the role of the law as an instrument for the achievement of formal and real equality between women and men.”

52. Warning of the dangers of any repeal of the legislation, the Special Rapporteur stated (footnotes omitted):

“... [F]ar from ensuring access to the rights guaranteed by articles 2, 3 and 8 of the [Convention], the potential repeal of the criminalization of the purchase of sexual acts would further expose the most discriminated women and girls, who are the overwhelming majority in the sex trade, to the control, violence and inhuman and degrading treatment of trafficking networks and sex buyers.

... [T]he negative impact of this repeal would not be limited to France, but may also expand to include other Member States of the Council of Europe, and possibly beyond, which for the moment have the same or similar legislation to France as it may open the door for the roll-back from an internationally recognized tool to fight against the

demand that fosters trafficking in human beings for the purchase [*sic*] of sexual exploitation, in denial of international Human Rights law and international standards.”

53. She then criticised the argument that decriminalising demand for the purchase of sexual acts improved the safety, dignity and living conditions of prostituted women, observing that it was not supported by facts and noting (footnotes omitted):

“Prostitution results in grave human rights violations for those women and girls involved, and negatively impacts their physical, psychological and social health. Furthermore, they suffer stigma, systematic violence, including assault, rape, killing or attempted killing, inhumane and degrading treatment, rising to the level of torture.

Furthermore, in countries where the purchase of sex is legal, a rise in trafficking and pimping networks has been observed, with the objective of providing the ‘supply’ to answer the increasing demand for the purchase of sexual acts.

It has been observed that large and highly organized trafficking networks have developed in order to provide the ‘supply’ to answer the increasing demand for the purchase of sexual acts in countries that have decriminalized and/or legalized it.”

54. In her conclusion, the Special Rapporteur urged the French government to continue to intensify its fight against the demand for the purchase of sexual acts and commended the French legislation, stating:

“... [The legislation] represents a significant step towards advancing the legal obligations of Article 9(5) of the Palermo Protocol – namely, discouraging the demand that fosters sexual exploitation that leads to trafficking – while also providing important support for persons who have been or are at risk of becoming trafficked for the purpose of sexual exploitation. All efforts should therefore be made to maintain the law as is, and to ensure that it is fully implemented throughout the country.”

5. UN Working Group on discrimination against women and girls

55. On 7 December 2023 the Working Group on discrimination against women and girls issued a guidance document on “Eliminating discrimination against sex workers and securing their human rights” (A/HRC/WG.11/39/1), discussing ways to achieve those aims pursuant to UN Human Rights Council Resolution 15/23 on elimination of discrimination against women (8 October 2010, UN Doc. A/HRC/RES/15/23) and Resolution 50/18 on elimination of all forms of discrimination against women and girls (8 July 2022, UN Doc. A/HRC/RES/50/1). In the document the Working Group highlighted violations of sex workers’ human rights resulting from different policies, drawing in particular on their perspectives. It also clarified and reaffirmed international human rights standards and made recommendations to States and other stakeholders.

56. Regarding the client criminalisation (or “end demand”) model, the Working Group noted (footnotes omitted):

“13. The model of the criminalization of clients also has problematic human rights implications and has been widely criticized by sex workers, including during the consultations held by the Working Group. The broad criminalization of all sex work-

related activities of third parties (including renting an apartment to a sex worker) leads to violations of sex workers' right to private life, right to housing and right to non-discrimination. It has been shown that this model intensifies the surveillance and harassment of sex workers by the police, leading to increases in arrests and detentions, as well as to the deportation of migrant sex workers, while simultaneously undermining sex workers' access to justice. By pushing sex work underground, it also furthers the stigmatization and discrimination of sex workers, who report impeded access to housing and financial institutions, as well [*sic*] refusal of services. The model also has a negative impact on sex workers' health and safety, as recognized by the Joint United Nations Programme on HIV/AIDS (UNAIDS), which found that the criminalization of the clients of sex workers negatively affected sex workers' health and safety, including by reducing condom access and use, and increasing the rates of violence. During consultations held by the Working Group, participants explained how, due to clients' fear of the police, sex work had been displaced to less safe places and sex workers had less control over working conditions, including screening clients. Moreover, they described how the illegal status of sex work had left them without any social protection during the time of the coronavirus disease (COVID-19) pandemic."

B. Council of Europe

1. Convention on Action against Trafficking in Human Beings

57. The Council of Europe Convention on Action against Trafficking in Human Beings (opened for signature on 16 May 2005, came into force on 1 February 2008, CETS 197 – "the Anti-Trafficking Convention") states, under its Article 6 "Measures to discourage the demand":

"To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a research on best practices, methods and strategies;
- b raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c target information campaigns involving, as appropriate, *inter alia*, public authorities and policy makers;
- d preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being."

58. Chapter VII of the Anti-Trafficking Convention provides for the introduction of a monitoring mechanism to supervise the implementation of that Convention by the member States. It is based on two pillars: (1) the Group of experts on action against trafficking in human beings (GRETA), a group of independent experts, and (2) the Committee of the Parties, a political body composed of representatives of all member States Parties to the Anti-Trafficking Convention.

59. GRETA has completed three evaluation rounds on France. In its third evaluation report, published on 18 February 2022, GRETA addressed

developments specific to Law no. 2016-444 of 13 April 2016. The relevant parts read (footnotes omitted):

IV.7. Investigations, prosecutions, sanctions and measures (Articles 22, 23 and 27)

“...

105. According to statistics provided by the French authorities, there has been an increase in the number of investigations and prosecutions conducted in [trafficking in human beings – “THB”] cases between 2016 and 2020, despite a drop in 2020 due to the health crisis caused by the COVID-19 pandemic. The number of investigations initiated for THB was 112 in 2016, 129 in 2017, 113 in 2018, 171 in 2019 and 98 in 2020. The number of prosecutions was 57 in 2016, 75 in 2017, 95 in 2018, 150 in 2019, and 126 in 2020. By comparison with these figures, there were few convictions for THB: 26 in 2016, 19 in 2017, and 20 in 2018. This suggests that unlike related offences such as pimping and working and accommodation conditions contrary to human dignity, the offence of THB is often requalified as another offence during criminal proceedings.

...”

V.3. Measures to raise awareness of trafficking and discourage demand

“198. While occasional awareness-raising activities have been organised by some NGOs insofar as their means allow, such as the one launched in 2019 by the ALC together with the International Organization for Migration (IOM) France called ‘Silhouettes’, the French authorities have not run any nationwide awareness-raising campaigns. All civil society actors agree on the urgent need for a large-scale national campaign on this issue to encourage the reporting of suspected cases of THB by the public and discourage demand for services provided by victims of THB. The second Action Plan provides for the organisation of a government-led awareness-raising campaign (measure 1), which is supposed to be Internet-based, but in the view of civil society, this would not be sufficient, and a nation-wide campaign should involve different media (television, radio, social media, newspapers, posters...).

199. Law [no.] 2016-444 of 13 April 2016 [on strengthening action against the prostitution system and supporting prostituted individuals] makes buying sexual services a criminal offence. According to the French authorities, this contributes to the reduction in demand for services provided by victims of trafficking for the purpose of sexual exploitation. However, some interlocutors highlighted the lack of sufficiently reliable research to provide estimates of the impact of this law in terms of reducing demand for sexual services provided by victims of trafficking, and more generally on the phenomenon of human trafficking in France. According to some NGOs, criminalising clients of prostitutes is counterproductive for the fight against THB, as clients become more reluctant to report situations of exploitation that they may observe, and persons engaged in prostitution become more dependent on intermediaries to find clients over the Internet, which exposes them to risks of exploitation. Some civil society actors have also noted that the legislation has encouraged a move away from prostitution on the streets to prostitution in hotels and flats, which hinders the detection of victims of trafficking not only by law enforcement agencies but also by NGOs, which are often the first means of exit from exploitation (see also paragraph 208).

200. As explained in GRETA’s second report, the Law of 13 April 2016 also provides for [a programme to exit prostitution and integrate into society and the labour market] (*parcours de sortie de la prostitution et d’insertion sociale et professionnelle* -

PSP) for victims of pimping and trafficking for the purpose of sexual exploitation. However, a report released in December 2019 by the Inspectorate General for Social Affairs, the Inspectorate General for Administration and the Inspectorate General for Justice states that a limited number of people have taken up the offer of exit from prostitution. The refusal rate was 20%, and admission to the PSP varied widely due to the lack of any instructions on the admissibility criteria. According to the report, some prefectures refuse to offer the PSP to persons who are subject to the Dublin procedure, under an obligation to leave French territory or applying for asylum, persons who have not yet completely exited prostitution, and those who have not yet begun the first steps towards integration (such as learning French as a foreign language), while for other prefectures the only requirement is to present an integration project. NGOs have raised concerns about the lack of clear instructions and concrete incentives from the State to encourage the implementation of the Law of 13 April 2016 and the disparities and differing interpretations arising out of it, called on the authorities to take additional measures to make the PSP more attractive, and remind the competent departmental authorities that the only requirement for access to the PSP is a wish to exist [*sic*] prostitution. The French authorities informed GRETA that a circular on the PSP was being prepared in order to generalise the PSP scheme and harmonise practices throughout the country, in particular by recalling the conditions of access both with regard to the cessation of prostitution activities and the asylum situation of persons.

...

208. One barrier to identification of victims pointed out by several interlocutors during GRETA's visit is that victims of sexual exploitation are increasingly being put in contact with clients online. Law enforcement officials met by GRETA indicated that the criminalisation of the purchase of sexual services had resulted in a drastic reduction in the number of people prostituting themselves on the streets, which has made it extremely difficult for investigators to identify potential victims. In addition, victims are changing flats/hotels far more often, which makes identification even more difficult. As a result, the police are concentrating on identifying traffickers rather than victims. Thus, in September 2020, when the police dismantled a Colombian pimping and trafficking network, it was unable to contact any of the 20 or so victims that it had detected before the operation, as they had all been moved on by the traffickers. To adjust to these changes, the police are trying to establish partnerships with accommodation platforms and websites used by persons engaged in prostitution to find clients (such as sexemodel.com). The OCRTEH recently instituted a partnership with representative [*sic*] of Airbnb in France, as a result of which Airbnb sent all its hosts the contact details of the OCRTEH so that they could contact it if they suspected that their flats were being used for prostitution on the basis of indicators that they had received. However, the OCRTEH has stated that Airbnb is refusing to reply to requests to notify police investigators of premises let through Airbnb by known pimps or traffickers. Another barrier to identification highlighted by various interlocutors is the lack of human resources of police and gendarmerie units specialising in combating organised crime."

60. GRETA made the following recommendations to the French authorities:

"201. GRETA reiterates the recommendations made in its second report and considers that the French authorities should step up their efforts to raise public awareness of all forms of human trafficking, including trafficking for the purpose of labour exploitation and discourage the demand for services provided by persons who have been trafficked.

202. Further, GRETA considers that the French authorities should continue to evaluate the effects of criminalising the act of buying sexual services on the identification of trafficked persons, the protection and assistance offered to them and the prosecution of traffickers. The effects of criminalising the purchase of sexual services on the reduction in demand for services provided by victims of trafficking, and, more generally, on the phenomenon of trafficking for the purpose of sexual exploitation, should be researched and evaluated on an ongoing basis.”

2. Council of Europe Commissioner for Human Rights

61. On 15 February 2024 the Council of Europe Commissioner for Human Rights published a Human Rights Comment on “Protecting the human rights of sex workers”. The relevant sections read (footnotes omitted):

“Criminalisation of sex work

In many countries, sex work or the involvement by third parties, i.e., the so-called ‘procurement services’, such as the purchase of sex, ‘pimping’, ‘brothel-keeping’, renting out flats to sex workers and advertising, is criminalised or such criminalisation is being considered. Available evidence submitted by international human rights organisations, relevant UN bodies and the accounts from sex workers themselves indicate, however, that the protection of sex workers and their rights cannot be assured via the criminalisation of sex work.

...

According to sex workers’ organisations and rights defenders, the criminalisation of third parties - even in the absence of criminalisation of sex work itself automatically and directly affects sex workers themselves as their working space overall becomes criminalised, with increased stigmatisation of their work and greater risks of violence. ...

...

In 2023, the UN Working Group found that ‘there is now sufficient evidence on the harms of any forms of criminalisation of sex work, including criminalisation of clients and “third parties” related activities’.

Sex work in relation to sexual exploitation and trafficking in human beings

As also recently pointed out by the UN Working Group, highly polarised views on the relationship between sex work, [trafficking in human beings and sexual exploitation,] feminism and human rights have restricted any real progress in protecting the human rights of sex workers.

The argument, often advanced in favour of the criminalisation and suppression of sex work, or some aspects of it, which equates sex work involving consenting adults with violence against women, disregards the distinction between sex work and violence in sex work. It also disregards the fact that gender-based violence is already criminalised and that member states are under the human rights obligation to prevent and combat this form of violence, whether the victims are engaged in sex work or not. In addition, it overlooks the diversity of people who engage in sex work and of their lived realities and contexts, without respecting their autonomy and agency in making choices about their bodies and lives.

GREVIO has noted that the Istanbul Convention does not define sex work (prostitution) in itself as a form of violence against women. Instead, it focuses on the

support and protection of women who engage in sex work for any instances of gender-based violence that they may experience. In this line, GREVIO has called on states to take into account in their policies and measures addressing violence against women, the specific risk of multiple and intersectional discrimination to which women sex workers are exposed, as well as their challenges in accessing general and specialist support services, including access to shelters. In the same line, Amnesty International and Human Rights Watch have stressed that the conflation of human trafficking with sex work can result in over-reaching initiatives that can make sex workers and people who have been trafficked more vulnerable to violence and harm. In addition, there is a lack of evidence to suggest that such approaches are successful in addressing trafficking in terms of preventing, identifying and protecting victims and supporting the prosecution of perpetrators.

As far as third-party criminalisation is concerned, proponents argue that such legislation reduces demand, helps decrease the volume of sex work overall and contributes to the fight against gender-based violence and human trafficking for the purpose of sexual exploitation. However, there are consistent reports showing that, in some states, not only have commercial sexual services not been reduced but they have possibly even increased in the period following the criminalisation. Moreover, several anti-trafficking organisations, including the Global Alliance Against Traffic in Women and La Strada International, consider that the criminalisation of the purchase of sex has no proven impact on preventing and combating human trafficking and may even undermine the identification of victims of trafficking among sex workers and their protection.

These divisive debates and misconceptions also stem from the lack of consultation of the major stakeholders. The sex workers and their representatives I spoke with explained to me that they are either not consulted at all before decisions concerning their work and lives are taken or, even when they are consulted, their views are not seriously considered.”

3. *Parliamentary Assembly of the Council of Europe*

62. In Resolution 1983 (2014) on prostitution, trafficking and modern slavery in Europe of 8 April 2014, the Parliamentary Assembly of the Council of Europe (PACE) addressed, *inter alia*, the following issues:

“3. Although they are distinct phenomena, trafficking in human beings and prostitution are closely linked. It is estimated that 84% of trafficking victims in Europe are forced into prostitution; similarly, victims of trafficking represent a large share of sex workers. ... [C]onsidering the significant overlap between the two phenomena, the Assembly believes that legislation and policies on prostitution are indispensable anti-trafficking tools.

...

5. Legislation and policies with regard to prostitution vary across Europe, ranging from legalisation to criminalisation of prostitution-related activities. ...

6. Forced prostitution and sexual exploitation should be considered as violations of human dignity and, as women are disproportionately represented among victims, as an obstacle to gender equality.

...

M.A. AND OTHERS v. FRANCE (MERITS) JUDGMENT

8. The Assembly acknowledges that different legal approaches and cultural sensitivities make it difficult to propose a single model of prostitution regulations that would fit all member States. It believes, however, that human rights should be the main criteria in designing and implementing policies on prostitution and trafficking.

9. Irrespective of the model chosen, legislators and law-enforcement officials should be aware of their responsibility to ensure that sex workers, where prostitution is legalised or tolerated, may carry out their activity in dignified conditions, free from coercion and exploitation, and that the protection needs of those who are victims of trafficking can be adequately identified and addressed.

...

11. Furthermore, in all cases, the authorities should refrain from considering prostitution regulations as a substitute for comprehensive action aimed specifically at human trafficking, based on a sound legal and policy framework and implemented effectively. ...

12. In the light of these considerations, the Assembly calls on Council of Europe member ... States ... to:

12.1.1. consider criminalising the purchase of sexual services, based on the Swedish model, as the most effective tool for preventing and combating trafficking in human beings;

...”

III. EUROPEAN UNION

European Parliament

63. On 26 February 2014 the European Parliament adopted a resolution on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)). In particular, it calls on European Union (EU) member States to enact legislation “aimed both at purchasers of sex and at women and minors, through sanctions, awareness-raising campaigns and education”.

64. On 21 January 2021 European Parliament resolution on the EU Strategy for Gender Equality (2019/2169(INI)) was adopted. In Recital K, it states that the prostitution market fuels human trafficking and exacerbates violence against its victims, particularly in countries where the sex industry has been legalised.

65. On 10 February 2021 the European Parliament adopted a resolution on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)). It indicates that there are EU member States where prostitution is legal, making it much easier for traffickers to use a legal environment in order to exploit their victims. It also emphasises those member States’ legal obligation to discourage and reduce the demand for all forms of exploitation.

66. The same topic was subsequently addressed in European Parliament resolution of 14 September 2023 on the regulation of prostitution in the EU:

its cross-border implications and impact on gender equality and women's rights (2022/2139(INI)). The relevant parts read (footnotes omitted):

“The European Parliament,

...

AF. whereas the Nordic/Equality model, which entails the decriminalisation of the person in prostitution while criminalising the buyer, is not a fix-all solution to reduce demand, sex trafficking, violence or exploitation; whereas however, evidence from Sweden and other countries shows that street prostitution declined by half when the Nordic/Equality model was implemented; whereas the demand for people in prostitution in Sweden fell from 13,6 % to 7,9 % [*sic*] between 1995 and 2008 as a result of the implementation of the Nordic/Equality model; whereas evidence from France also shows that the Nordic/Equality model leads to positive results as more than 800 people in prostitution in the country have benefited from an exit programme since 2016, with 87,5 % [*sic*] of the persons supported by French grassroots organisations finding a stable job by the end of the exit programme; whereas the number of criminal investigations regarding pimping and trafficking has increased by 54 % since 2016; whereas nearly EUR 2,35 million [*sic*] confiscated from pimps have been reinvested in the protection and rehabilitation of victims of prostitution and sex trafficking; whereas however, insufficient budgeting for exit programmes is a persistent problem and whereas therefore financing that allows for a life without prostitution must be increased;

...

4. Notes the fact that several European countries strive to protect people in prostitution and their rights by creating different legal frameworks on different facets of prostitution, include traditionally discriminated against and marginalised people in prostitution in policy-making and provide subsidies to support their grassroots organisations in better addressing the needs of the most marginalised; notes that in countries like Austria, Germany and the Netherlands, authorities have come to the conclusion that it would be most beneficial for the rights of people in prostitution to create a legal framework legalising all facets of prostitution, while other countries such as Sweden, France, Spain and Ireland have instead decided to protect the rights of women in prostitution by opting to decriminalise people in prostitution while criminalising buyers, by applying the ‘Nordic/Equality model’ approach;

...

7. Underlines that the European Parliament recognised, in its resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality, that prostitution and sexual exploitation are violations of human dignity, contravene human rights principles such as gender equality and are therefore contrary to the principles of the Charter; recalls that it defined prostitution as a serious form of violence and exploitation in its resolution of 5 July 2022 on women's poverty in Europe;

...

11. Underlines that an inherent element of agency is the capacity to give and withhold consent; notes that consent can only be given freely when there is no power imbalance between the people involved and when there is no use of threat, violence, deception or coercion; notes, further, that consent obtained through the giving or receiving of payments or benefits is baseless; notes, at the same time, that it can be extremely difficult for people to realise that they are victims, especially when they are not aware of their rights, and recalls the dynamics of an abusive relationship; underlines, in

addition, that the voices of women in prostitution should always be listened to and recalls the need for informative, respectful educational and awareness-raising programmes to make women aware of their rights and obligations and give them agency and the possibility to make informed and free decisions about their private and sexual life;

...

Demand

14. Notes that prostitution and trafficking for sexual exploitation exist because there is a demand for it; stresses that, besides addressing the vulnerability of potential victims and prosecuting traffickers and facilitators, among others, demand reduction is a key instrument for the prevention and reduction of human trafficking, as it targets financial incentives; believes, therefore, that this should be developed further in the revision of the EU Anti-Trafficking Directive; underlines the importance of discouraging demand in a way that does not harm or create negative repercussions for those in prostitution; notes that strategies to address demand should focus on the rights of individuals and on addressing discriminatory attitudes and beliefs, particularly those directed against women and migrants;

15. Notes that the ‘knowing use’ approach of victims of trafficking has proven to be ineffective in order to reduce sexual exploitation due to the impossibility of proving a buyer’s knowledge; points out, in this context, that people voluntarily in prostitution are so few in number that they alone cannot meet demand; calls, therefore, for awareness to be raised about the fact that people who want to buy ‘sexual services’ are at high risk of de facto buying exploitation due to the high number of people forced or lured into prostitution;

16. Notes that the decriminalisation of pimping and of the purchase of sex increases demand, empowers the demand side and normalises sex buying; underlines that the stigmatisation of people in prostitution nevertheless persists in this system; refers to studies showing that the normalisation of buying women’s bodies goes hand in hand with a greater use of violence against women and a greater sense of entitlement towards women in prostitution and women in general; notes that only if demand is reduced can the prostitution market, and therefore the number of those exploited in it, shrink;

17. Notes the fact that a number of countries are taking up and implementing the Nordic/Equality model in different ways; supports the overarching gender-specific objective of this model which seeks to reduce demand and its goal of achieving gender equality, including a paradigm shift; highlights the model’s positive effects on the rights of people, in particular women, in prostitution, the normative effect in society and the fight against human trafficking; highlights, however, that work and research are still needed to ensure the practical achievement of the model’s goals; underlines that when implementing the Nordic/Equality model, Member States should take advantage of best practices employed in other Member States;

18. Stresses that the decriminalisation of people in prostitution is the most efficient way in which people in prostitution can build trust in law enforcement and other assistance services; highlights that all measures taken may neither cause harm nor create negative repercussions for those in prostitution and must provide sufficient safeguards ensuring the eradication of discrimination against people who are experiencing more vulnerability due to their gender identity, sexual orientation, social and economic situation, legal status and origins, which permeates all aspects of their life, including in the context of poverty and migration;

19. Calls on the Member States to take urgent measures to tackle online advertisement and contact facilitation that directly or indirectly encourage prostitution or seek to attract buyers in order to prevent the exploitation of the prostitution of others also online, including the prostitution of students, in particular of young women, and the sexual exploitation of minors by wealthier and more influential men, also known as ‘sugar daddyism’ ...”

67. The same approach was taken in the report of 10 October 2023 on the proposal for a directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The draft legislative resolution includes the following amendment under a new Article 18 a:

“1a. Member States shall also consider taking measures regarding those who solicit, accept or obtain a sexual act from a person in a situation of prostitution in exchange for remuneration, the promise of remuneration, the provision of a benefit in kind or the promise of such a benefit.

1b. For other cases of exploitation referred to in Article 2, Member States shall take the necessary measures to establish as a criminal offence the use of such services when the user knew or could have reasonably known that the person was a victim of such exploitation.”

IV. COMPARATIVE LAW

68. The Court conducted a comparative-law survey covering 41 States Parties to the Convention other than France (Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Republic of Moldova, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine and the United Kingdom).

69. In 27 member States (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Liechtenstein, Luxembourg, Malta, Montenegro, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Switzerland and Türkiye), paid sexual services between consenting adults in private are not considered an illegal activity, and neither the prostituted individual nor the client face liability. Two jurisdictions of the United Kingdom (England and Wales, and Scotland) also fall into this category.

70. In five other States (Armenia, Croatia, Georgia, North Macedonia and Ukraine) and in the Brčko District of Bosnia and Herzegovina, a prostituted individual faces a sanction for a minor (administrative) offence, while the client is not liable. In a further three States (Lithuania, the Republic of Moldova and Serbia), as well as in both the Federation and the Republika Srpska of Bosnia and Herzegovina, administrative sanctions apply to both the prostituted individual and the client. In Albania both the prostituted

individual and the client are criminally liable. In some countries administrative sanctions may include short prison sentences or significant fines, making them similar to “criminal” sanctions.

71. A system similar to that adopted in France applies in Iceland, Norway and Sweden. Northern Ireland, which is one of the three jurisdictions of the United Kingdom, also belongs to this group.

72. There is no single approach to regulating prostitution-related activities. The most abusive forms of exploitation of prostitution, such as trafficking in human beings, are prohibited in all European States, although the exact definition and, in particular, the type of coercion required for criminal law to apply vary from one country to another. For example, brothels and similar establishments operate legally or are at least tolerated in eight of the member States surveyed, provided that prostitutes are not exploited or abused (Austria, Belgium, the Czech Republic, Germany, Greece, the Netherlands, Slovakia and Türkiye).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

73. The applicants submitted that the French legislation criminalising the purchase of sexual acts, even between consenting adults in private, seriously endangered the physical and psychological integrity and the health of individuals who, like themselves, engaged in prostitution. They further complained that their right to respect for their private life – inasmuch as it encompassed the right to personal autonomy and sexual freedom – was severely infringed by the measure. They relied on Articles 2, 3 and 8 of the Convention.

74. The Court reiterated that it is not bound by the legal grounds adduced by the applicant party under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant party (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

75. In the present case, it notes that in the above complaints the applicants primarily alleged that they had suffered adverse consequences owing to the legislative choice made by the respondent State in terms of the legal framework for prostitution on its territory. That had rendered how they chose to live their lives – namely, by engaging in prostitution – ineffective because of the many constraints and restrictions resulting from that measure, particularly on account of poorer working conditions and greater health risks. Having regard to the wording of the applicants’ complaints and to the nature of the measure in question, the consequences of which were complained of,

the Court therefore considers that it would be more appropriate to examine the allegations under Article 8 of the Convention. This approach will allow it to put all the potential consequences of the impugned legislative measure into their general context, including those likely to raise issues under Articles 2 and 3 of the Convention, and thus to understand this complex phenomenon in its entirety (for a similar approach, see *S.M. v. Croatia* [GC], no. 60561/14, §§ 242-43, 25 June 2020).

76. Article 8 of the Convention, in so far as relevant, reads:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties’ submissions

1. The applicants

77. The applicants challenged the impugned legislation, submitting that it was based on a voluntary confusion between forced and child prostitution, on the one hand, and the freely chosen, consensual activity of sex workers, on the other. They strongly reaffirmed that they did not deny the compelling need to combat forced prostitution, but considered that such aims could be pursued by means of the range of criminal offences that already existed outside the legislation in issue. They referred to the Criminal Code in this regard, specifically to Articles 225-4-1 to 225-4-9, which criminalised trafficking in human beings, Articles 225-5 to 225-12, which made procuring an offence, and the second paragraph of Article 225-12-1, which concerned the use of prostitution involving children and particularly vulnerable persons, along with all the offences provided for in Book II of that Code, covering all crimes against the person. They concluded that the State already had the necessary arsenal to combat trafficking in human beings and that there was therefore no need to criminalise the purchase of sexual acts in addition.

78. The applicants further argued, on the basis of international research on human trafficking conducted by Strada International, Amnesty International and many others, that criminalising clients was not an effective means of combating this phenomenon. They also disputed the Government’s assertion that the vast majority of people who engaged in prostitution were under the control of trafficking networks or in extremely vulnerable situations. They referred in that connection to a 2015 survey carried out by N. Mai, a professor of sociology and migration studies at London Metropolitan University, and pointed out that 7% of sex workers in France were victims of human trafficking (11% for foreign nationals), a figure

comparable with that in neighbouring countries such as the United Kingdom, Denmark and the Netherlands.

79. The applicants further argued that not only was the impugned measure ineffective, it was also counterproductive in relation to the stated aim, namely combating forced prostitution. Far from protecting prostituted individuals and, more broadly, public order, hygiene and health, criminalising the purchase of sexual acts made sex workers more isolated and pushed them further underground by fuelling crime, violence and the risk of infections and by restricting access to prevention, health-care and reintegration services. In that regard, they referred to an April 2018 study describing the negative impact of the legislation on the ability of prostituted individuals to work autonomously, the risks they were being led to take, their stigmatisation and their financial situation (see paragraphs 42-43 above). The same observations could be found in the report by the three Inspectorates, the GRETA report drawn up as part of its third evaluation round for France (see paragraphs 40 and 59 above), and statements by international figures and bodies (see paragraphs 49 and 55 above). Those publications and, to an even greater extent, other field research specifically aimed at assessing the effects of the impugned legislation on the situation of prostituted individuals – all of which were corroborated by statements made as part of the present proceedings –, clearly demonstrated the existence of a causal link between the enactment of the legislation in issue and the deterioration in the working and living conditions of people who engaged in prostitution.

80. The applicants asserted that, in any event, those protective measures could be implemented without the criminalisation of the purchase of sexual acts – assuming they were effective. However, that was not the case, first and foremost because a very large proportion of victims of human trafficking feared being deported on account of the domestic authorities' restrictive policy on granting residence permits. In that regard, the applicants referred to the observations of the CNCDH (see paragraph 41 above). They further criticised the complexity and restrictive nature of the administrative arrangements and the lack of resources allocated to the exit-programme scheme, citing the above-mentioned joint report by the Inspectorates (see paragraph 40 above).

81. In addition, the applicants pointed out that the impugned scheme criminalised all purchases of sexual acts, even where they were performed freely between consenting adults and took place solely in private. Given the general and absolute scope and application of the criminalisation, it covered in itself the use of prostitution of any form and amounted to a blanket ban on prostitution as such. The applicants acknowledged, referring to the judgment in *Parrillo v. Italy* ([GC], no. 46470/11, § 169, ECHR 2015), that the regulation of unforced prostitution, engaged in freely between consenting adults, admittedly “raise[d] sensitive moral or ethical issues” and there was clearly no “consensus” in Europe on the matter. In their view, however,

finding that the decision to criminalise the purchase of sexual acts fell entirely within the margin of appreciation afforded to the States would amount to negating any possibility of sex workers engaging in their activity freely and autonomously. The applicants asserted that the ability of each individual to engage in prostitution freely between consenting adults affected elements that went to the very heart of private life and, moreover, the intimate sphere of sex and for that reason warranted an additional level of protection (referring to *K.A. and A.D. v. Belgium*, nos. 42758/98 and 45558/99, § 85, 17 February 2005, and *Pretty v. the United Kingdom*, no. 2346/02, § 71, ECHR 2002-III). The State's margin of appreciation therefore had to be narrower where the issue at stake was personal autonomy, an important principle underlying the interpretation of the guarantees of the right to respect for private life (the applicants referred in this connection to *Pretty*, cited above, §§ 62 and 66, and *Lambert and Others v. France* [GC], no. 46043/14, § 142 and 148, ECHR 2015 (extracts)).

82. The applicants lastly submitted that, in any event, the Government's position was inconsistent, because there was a mismatch between its condemnation of the very principle of prostitution – described as inherently violent and an infringement of human dignity – and the reality of the rules and practices of the French legal system. In that regard, the activity they engaged in was, under French law, a recognised economic and commercial activity for a self-employed person and was accordingly subject to income tax and the various social-security contributions. The criminalisation in issue was not, therefore, as urgent and necessary as the Government stated, since prostitution was recognised in terms of administration, tax and social security within the French legal system.

2. The Government

83. The Government submitted that France had taken an abolitionist approach to the phenomenon of prostitution, in accordance with its international commitments. The impugned legislation was part of a broader policy push against prostitution, initiated with the enactment of Law no. 46-685 of 13 April 1946 prohibiting brothels (known as the Marthe Richard Act). The legislation in question had aligned the law with the French view of prostitution – namely, that prostituted individuals were victims of violence – particularly by abolishing the offence of soliciting, the existence of which had marginalised and isolated prostituted individuals by presenting them as criminals, and replacing it with a prohibition on the purchase of sexual acts. The legislation in question had been enacted on the basis of two important considerations: first, that prostitution was inherently violent and the human body was not a product to be bought and sold in disregard of “human dignity”, a constitutional principle that was reiterated in the Civil Code; and second, that the vast majority of prostituted individuals were

victims of demand-driven human trafficking, so the only way to combat the phenomenon was to stem that demand.

84. The Government pointed out that the link between prostitution and trafficking in human beings had been highlighted by several international and European instruments and bodies (see paragraphs 46 and 62 above), which recommended in consequence the enactment of legislation to discourage demand, as with the Swedish model, which had proved its effectiveness (see paragraphs 47, 57, 48, 64, 65, 50 and 66). Furthermore, the criminalisation of the use of prostitution was imposed on the State by its positive obligations under Articles 2, 3 and 4 of the Convention. In that connection, they referred to the judgment in *V.T. v. France* (no. 37194/02, § 25, 11 September 2007), in which the Court had stressed that prostitution was incompatible with the rights and dignity of a person if it was coerced. They also referred to the judgment in *S.M. v. Croatia* (cited above, §§ 296 and 306), in which the Court had found that forced prostitution fell within the scope of Article 4 of the Convention, thus imposing on the State (i) the duty to put in place a legislative and administrative framework to prohibit and punish trafficking; (ii) the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking; and (iii) a procedural obligation to investigate situations of potential trafficking.

85. For those reasons, the Government considered that any infringement of the right to respect for private life stemming from the criminalisation of the purchase of sexual acts was necessary in a democratic society, in order to meet such pressing social needs as public safety, the prevention of crime and procuring, the fight against human trafficking and sexual exploitation and the protection of the rights and freedoms of others. The purpose of the Law of 13 April 2016 was to deprive procuring of sources of profit, thereby to combat that activity and trafficking in human beings for the purpose of sexual exploitation and, lastly, to safeguard human dignity and maintain public order which, for the purposes of Article 8 § 2 of the Convention, were linked to the prevention of disorder or crime, the protection of health, and the protection of the rights and freedoms of others.

86. In addition, the legislative scheme put in place was balanced, since it pursued the legitimate aims listed in the previous paragraph, and it further ensured the protection of individuals engaging in prostitution. It also sought to change perceptions and behaviours by reaffirming the principle that the human body was not property, to combat inequality and violence against women, to enable prostituted individuals to report violence or health risks imposed by clients, and to build accountability in clients by helping to make them aware that they were taking part in a form of exploitation of the vulnerability of others. Referring to the reports examined during the parliamentary proceedings, the Government stated that nearly three-quarters (72%) of all victims in the European Union and 92% of victims of trafficking in human beings for the purpose of sexual exploitation were women and girls.

In France between 85% and 90% of identified prostituted individuals were victims of procuring rings and human-trafficking networks.

87. Furthermore, the Government disputed the argument that criminalising “clients” had made the situation of prostituted individuals worse. In that connection, the applicants had adduced no *prima facie* evidence that they personally had actually been subjected to violence in the context of their activity or that any such violence had a causal link with the criminalisation of their clients. Neither the Inspectorates, as part of their joint assignment (see paragraph 40 above), nor the police force and justice system, at a meeting of the supervisory committee for the legislation on 15 February 2021, had observed any increase in specific risks, in terms of health or violence, that might stem directly from the criminalisation of clients. Moreover, the report on the Médecins du Monde study showed that social workers were cautious about making a connection between the legislation and the increase in violence towards prostituted individuals (see paragraph 44 above).

88. Unlike the applicants, the Government saw the law as a protective measure for people who continued to engage in prostitution, since it reversed the power dynamics with the client by giving sex workers the ability to report them for violence or for any risky health practices they might impose. Statistics showed that nearly 5,000 “clients” had been fined since the legislation had come into force, with 50% of police interventions occurring in Paris. Anyone who was apprehended by the police also benefited from an awareness-raising course designed to be preventive. In addition, the law was an important tool for investigators, enabling them to gather substantiated witness evidence and to round out the investigative materials in order to thwart the heads of procuring networks. The Government referred in that connection to statistics from the Ministry of the Interior and the Ministry of Justice, according to which the number of investigations into procuring in France had risen by 54% in four years, and the number of networks dismantled had virtually doubled since the law had come into effect. Police seizures were up too, and the number of people prosecuted for procuring or trafficking in human beings had also jumped by 66% since 2015. The Government concluded that the legislation in question was an important measure in the fight against human trafficking and prostitution networks, which were estimated to account for 90% of the prostitution market. The Government were further aware of the leap in online prostitution and presented complementary measures taken in that area, including an increase in resources allocated to the PHAROS reporting platform. However, they disputed the existence of a connection between that rise and the legislation in issue, observing that the growth in cybercrime was a global phenomenon affecting all countries, regardless of their policy towards prostitution.

89. The Government submitted that the Law of 13 April 2016 could only improve the situation of prostituted individuals because it provided full

recognition of their victim status, giving them access to enhanced protection and broader rights. With regard to the greater support offered to such individuals, the French legislation had added victims of prostitution, procuring and human trafficking to the list of people eligible for accommodation in a shelter, and had expanded eligibility for the temporary housing allowance (400 euros per person accommodated per month). As to the exit programmes, they fell under the jurisdiction of *département*-level anti-prostitution committees chaired by the relevant prefect. Since 2017 the number of exit programmes and financial assistance for social and labour-market integration had risen significantly. Although it was true that the vast majority of people engaging in prostitution were women of foreign origin, with more than 80% estimated to be from sub-Saharan Africa, Eastern Europe, China and Latin America, and that the exit programme opened eligibility for provisional leave to reside in France, anyone could gain access provided that two cumulative conditions were met. These were (1) that the individual was or had been prostituted, whether under the control of a network or not, and (2) that he or she committed to ceasing to engage in prostitution, in which case a written declaration was sufficient justification. The domestic courts monitored strict compliance with those two conditions. According to a recent ruling by the *Conseil d'État* (19 Novembre 2021, no. 440802), for example, the fact that, among other things, an individual had not yet stopped engaging in prostitution did not justify a refusal.

90. The Government completed this description by pointing out that the legislation had further introduced the possibility of victims of procuring obtaining State compensation where their procurers were insolvent. According to data cited by the Government, the amount of such compensation had increased sevenfold in three years. Each year grants were awarded to associations so that they could support individuals engaging in prostitution, increase outreach and patrols in the street and online, and open support centres. For example, two approved associations, Amicale du Nid and Mouvement du Nid, had met 9,000 people during patrols and had made real-world contact with nearly 500 people as part of virtual patrols in 2020 alone.

91. Lastly, the Government disputed the argument that criminalising the purchase of sexual acts was not justified by the aim of maintaining public order or combating trafficking in human beings where it applied to services between consenting adults in private. The Government acknowledged that the sphere of private and intimate life encompassed the right to engage in sexual activity, which itself stemmed from the fundamental right to self-determination, an integral part of the notion of personal autonomy (referring to *K.A. and A.D. v. Belgium*, cited above). Prostitution, however, was based on a paid service available to the public and reflected the existence of a contractual relationship between two individuals with different interests. In this specific regard, the Government pointed out that there was no consensus at European level on the approach to take to prostitution, as the Court had

previously observed (referring to *S.M. v. Croatia*, cited above, § 298, and *V.T. v. France*, cited above, § 24). They concluded that the enactment of the impugned legislation fell within the margin of appreciation enjoyed by the member States in that area.

92. In any event, the Government stated that the activity of selling sexual services – what the applicants provided to third parties – was not punishable in itself, precisely because the offence of soliciting had been repealed by the Law of 13 April 2016. France’s abolitionist approach sought to eradicate the practice of prostitution without, however, prohibiting it. According to the Government, the aim was above all to prevent people from entering prostitution and to help any prostituted individuals who so wished to reintegrate into society. Prostitution remained legal and tolerated within France’s abolitionist framework.

93. Drawing on the findings of the Constitutional Council and the *Conseil d’État* (see paragraphs 11 and 12 above), the Government further considered that, even if criminalising the purchase of sexual acts were to have consequences on situations presented as “consensual”, that interference could not be regarded as being disproportionate to the legitimate aims pursued, for the purposes of Article 8 § 2 of the Convention as interpreted by the Court (referring to *K.A. and A.D. v. Belgium*, cited above, and *Pretty*, cited above, § 74).

B. Third-party submissions

1. The Swedish Government

94. While stating that they were not in a position to evaluate all the facts in this area in France, the Swedish Government indicated that similar legislation came into force in Sweden in 1999, making it the first country in the world to criminalise the purchase, but not the sale, of sexual services. They referred to Chapter 6, section 11 of the Swedish Criminal Code, under which obtaining casual sexual relations in return for payment was punishable by a fine or imprisonment for at most one year. The purpose of the legislation was to reduce demand and to prevent trafficking in human beings, while offering protection for the vulnerable party and facilitating access to support and care services. The measure could only be a complement to the other efforts to combat sexual exploitation through various support and care services aimed at people in prostitution. The original idea behind the legislation was to mitigate the agency of the buyer, equalise the power balance and lessen the exploitation of the individuals – mostly women – while still disrupting the market and reducing the demand for sexual services. It was not reasonable to prosecute the party who in most cases was in a weaker position and was often subjected to various forms of exploitation. The legislation was also meant to encourage individuals involved in prostitution

as sellers to seek help to leave prostitution, safe in the knowledge that there would be no criminal consequences for them.

95. The Swedish Government explained that the Swedish legislative approach had been supplemented with options of social services, both for people in prostitution, with examples including exit strategies, and for buyers of sexual services. In this connection, the Swedish Social Services Act provided that the municipality was ultimately responsible for making sure people received the support and help they needed. Specialist municipal centres operated in the three largest cities in Sweden, and also conducted outreach work to inform such people of their rights and of the assistance they could receive. Buyers of sexual services were provided with specialist counselling if they wanted support to stop purchasing sex. Regional coordinators against prostitution and trafficking in human beings functioned as a link between social services and other professionals within the national referral mechanism for such matters.

96. The Swedish Government pointed out that the legislation in question had been in force in Sweden for over 20 years. They then referred to an official evaluation of the legislation and its effects conducted in 2010. The main findings could be summarised as follows. (1) Street prostitution had decreased. (2) The legislation had had a deterrent effect on prospective buyers. (3) It had also deterred human-trafficking networks, as they had not sought to establish themselves so readily in Sweden. (4) The number of foreign women in prostitution had increased, but not to the extent seen in neighbouring countries. And (5) online prostitution had increased in line with the general development of online services since 1999, but not to the extent that it could be said that street prostitution had simply migrated. The evaluation had further found that fears of worse living conditions for prostituted individuals and of threats to their physical and psychological integrity, in particular as a result of increased isolation, had not been realised. Furthermore, according to the evaluation, individuals who had left prostitution were positive about the legislation. Lastly, the legislation had had an important impact on society as a whole. In this regard, a report on “Prostitution in Sweden 2014” had found that 72% of people surveyed had a positive opinion about the legislation.

97. According to the Swedish Government, the Swedish and French legislation fulfilled the criteria for being necessary in a democratic society as it was, for example, in the interests of public safety, the economic well-being of the country, the prevention of crime, the protection of health or morals and the protection of the rights and freedoms of others. The legislation struck a fair balance between the individual interests of personal autonomy and sexual freedom, on the one hand, and the above-mentioned public interests, on the other.

98. Lastly, the Swedish Government considered that the scheme was in alignment with various international instruments, in particular Article 6 of the

United Nations Convention on the Elimination of All Forms of Discrimination against Women and Article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings, and was an important tool in ensuring essential human rights for vulnerable individuals. Legalisation and decriminalisation frameworks, on the other hand, had proved not only to multiply and increase prostitution, but also to normalise the activity.

2. The Norwegian Government

99. The Norwegian Government stated at the outset that they were not in a position to assess all the facts concerning the impugned French legislation, nor the situation in France for persons selling sexual services. Norway was the second country to adopt the “Swedish model” in 2009. Article 316 of the Criminal Code set out a penalty of a fine or imprisonment for a term not exceeding six months for any person who obtained sexual services by providing payment. The penalty could be raised to imprisonment of one year or more in the event of aggravating circumstances. The preparatory works for the legislation emphasised that the ban on the purchase of sexual services had to be seen in conjunction with other measures aiming to combat human trafficking and to offer exit strategies to those who wanted to leave prostitution. In particular, the funds allocated to those measures rose from 10 million Norwegian kroner (NOK) in 2009 to NOK 33 million in 2021.

100. The Norwegian Government stated that an evaluation of the legislation had been conducted five years after it had come into force, similar to the survey of the prostitution market carried out before its enactment. Despite the concerns expressed by certain prostituted individuals relating to safety and a weaker bargaining position due to a smaller market, the 2014 report had not found any evidence of more violence against prostituted individuals after the ban had entered into force. On the other hand, the report had found a real impact from the ban on attitudes and on the reduction in prostitution networks in the country, making the legislation an important tool in the fight against human trafficking.

101. The Norwegian Government submitted that legislation inspired by the Swedish model did not violate Article 8 of the Convention, in that the resulting interference was in accordance with the law and pursued legitimate aims, such as public safety, the economic well-being of the country, the prevention of crime, the protection of health and morals and the protection of the rights and freedoms of others. The purpose of the legislation was to reduce the demand for commercial sexual services in order to combat forced prostitution and trafficking in human beings. In this regard, the Norwegian Government referred to the work of the Parliamentary Assembly of the Council of Europe, which had recognised a link between commercial prostitution and human trafficking. In support of that argument, they further referred to public hearings held in Norway prior to the introduction of the

legislation, which had shown that persons buying sexual services did not always manage to separate consenting sellers of sexual services from victims of human trafficking. In the Norwegian Government's view, legislation inspired by the Swedish model struck a fair balance between the interests of society as a whole – namely, to protect the vulnerable victims of human trafficking – and the individual interests of persons affected by a reduced market for their services and their personal autonomy. Lastly, the Norwegian Government pointed out that although Article 8 of the Convention could, under certain circumstances, apply to professional and commercial activities, no general right to choose a particular profession could be derived from that provision (referring to *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 130, 27 June 2017).

102. The Norwegian Government concluded by submitting that, as could be seen from a variety of sources, member States had very different approaches to prostitution and the role of commercial sex in the common effort to combat forced prostitution and human trafficking. Some countries had chosen to legalise prostitution, whereas others had chosen the so-called “Swedish model”, according to which the purchase of sexual services was criminalised and that ban was supplemented by other measures, such as social services to both the sellers and the buyers of such acts. In that context, the national parliaments of the member States should have the possibility of assessing what approach would best fulfil the common effort to combat human trafficking, giving due regard to the situation in their respective countries, to their values and traditions, and to human rights. In that regard, the prohibition of the purchase of sexual services was the subject of ongoing political debate in Norway, where views differed. That reflected both the variety of approaches taken in the member States and the legal and political complexity and sensitivity of the particular question.

3. *UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*

103. The Special Rapporteur pointed out that the purchase of sex was criminalised in 74 countries, of which 7 had introduced the model criminalising the buyers of such services (Canada, Israel, Ireland, France, Iceland, Norway and Sweden). Such laws were often justified as “necessary for the preservation of certain societal morals” or based on the belief that sex work was inherently victimising and constituted a form of violence for those selling sex, or on a conflation between sex work and trafficking in human beings. Such laws only served to “disempower sex workers and prevent them from taking reasonable steps to ensure their own safety”, such as reporting abuse by clients and authorities and seeking medical assistance where needed.

104. The Special Rapporteur submitted that the criminalisation of sex work and related activities could result in violations of a wide range of human rights, such as the right to privacy, the right to security of the person, the right

to be free from torture and other cruel, inhuman and degrading treatment or punishment, the principles of equality and non-discrimination, and the right to health. With particular regard to the right to privacy, she referred to the position of the Human Rights Committee, as expressed in the decisions (CCPR) in *Toonen v. Australia* (Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994)) and *Mellet v. Ireland* (Communication No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (2016)), according to which adult consensual sexual activity in private fell within the scope of the right to privacy. In this connection, she also referred to a 2012 position paper on adultery by the Working Group on the Issue of Discrimination against Women in Law and in Practice, which stated that where individuals engaged in conduct that was mutually consensual, their right to privacy encompassed the right to realise their sexual and reproductive decisions, without State scrutiny or control.

105. The Special Rapporteur submitted that there was little or no evidence that criminalisation was effective in protecting sex workers. On the contrary, research suggested that decriminalisation of sex work was “the most effective way to protect sex workers’ rights”. She referred to research that, in her view, showed the negative impacts of legislation criminalising sex work, in that it formed an obstacle to effective access by sex workers to health services, in particular concerning HIV/AIDS treatment, and spread stereotypes and stigmatised such individuals by fuelling all forms of discrimination against them, by giving rise to abuse from clients and the police and by increasing the risk of violence against them. In this regard, she cited many documents by various UN bodies and working groups, including the Committee on the Elimination of Discrimination against Women, in its concluding observations on Fiji, Togo, Kazakhstan, Moldova, Cambodia, Lithuania and Qatar; the Human Rights Committee, in its concluding observations on Honduras, Ghana, Namibia, Paraguay, El Salvador, South Africa and Russia; the Committee on Economic, Social and Cultural Rights, particularly in its General Comment 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights); and her predecessors in her post, in their various works. She submitted that there were several non-criminal options that could eliminate stigma and violence against sex workers and thus better protect their rights. These included social welfare policies, protection of socio-economic rights, support programmes and measures to ensure more effective access to justice where violence and exploitation occurred.

4. *Osez le Féminisme* and eight other NGOs, jointly

106. The third-party interveners referred to a number of medical, psychiatric and sociological studies conducted in several countries (particularly so-called “regulatory” countries) and to various pieces of investigative journalism and statements by people who had left prostitution,

which they called “survivors”. Several observations could be made on the basis of those data concerning the negative impact of prostitution on the mental and physical health of those engaging in such practice. In particular, unwanted sexual activity was always traumatic in itself, prompting dissociation in victims and thereby depriving them of their sexual autonomy. The interveners also criticised the biased approach of regulatory associations for failing entirely to mention the psychological support needed by individuals engaging in prostitution and the direct link between their mental health and access to treatment.

107. Referring to other philosophical and sociological publications, the third-party interveners highlighted the dangerous link between the normalisation of prostitution, particularly through decriminalisation and regulation, and the perpetuation of the patriarchal order based on a rejection of gender equality and the promotion of rape culture. In that regard, the argument that legislation such as that in issue pushed victims underground and into isolation served in fact to exploit their interests, since the only goal was to ensure the impunity of clients and procurers and to perpetuate a system that enslaved women. The ideology behind sex work was radically opposed to the right to sexual autonomy for all women and arbitrarily validated the idea that women’s sexuality was necessarily a “service” for men and should therefore be remunerated and incorporated into the labour market. Research conducted in Germany, Australia, southern France along the Spanish border and Nevada all showed a correlation between legalisation of prostitution and an increase in violence against women, and particularly in the occurrence of intimate-partner rape, outside the context of prostitution, by men who used prostitution services. Such normalisation or banalisation of prostitution also created a favourable environment for the recruitment of children, especially via social media.

108. Lastly, the third-party interveners disputed the argument that there was a “right to prostitute oneself” or a “freedom to do as one liked with one’s body”, referring to the many medical studies carried out on individuals engaging in prostitution and highlighting a very high rate among the subjects of childhood sexual violence, and particularly incest. According to a 2008 Australian study, 75% of prostituted individuals had suffered sexual violence before the age of 16 years. In consequence, the interveners asked the Court to include these additional scientific data in its legal assessment of the concept of consent. They argued that in doing so, it could depart from its case-law as established in *K.A. and A.D. v. Belgium* (cited above) and *V.T. v. France* (cited above) and thus return to the fundamental meaning of freedom, according to which the right to liberty was too important in a “democratic society”, within the meaning of the Convention, for a person to lose the benefit of the protection of the Convention for the single reason that he or she gives himself or herself up to be taken into detention (referring to *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12).

5. *NGOs Mouvement du Nid, Amicale du Nid and Fédération Nationale des Centres d'Informations sur les Droits des Femmes et des Familles ("FNCIDFF"), jointly*

109. The third-party interveners submitted that the 2016 legislation was consistent with the abolitionist approach taken by France in line with its international commitments. The legislation in question repealed the offence of soliciting and in its place criminalised the purchase of sexual acts, on the basis of the observation that demand for such purchases had to be targeted if prostitution, procuring and human trafficking were to be combated effectively.

110. The impugned measure, namely the prohibition of the purchase of sexual acts, could not be examined without taking account of the comprehensive scheme put in place by the 2016 legislation, which was based on four, interconnected pillars forming a coherent whole. Proceeding on the assumption that prostitution was intrinsically violent, the legislation contributed to strengthening action against procuring, improving support for prostituted individuals, changing perceptions of prostitution, deconstructing stereotypes that fuelled procuring and human trafficking, and holding “clients” of prostitution accountable.

111. The legislation contained no provisions concerning individuals’ sexual orientation or sexual choices and in no way affected sexual freedom, since its sole subject was the purchase of sexual acts, that is to say, a “transaction” – an inherently one-sided one whose object could not be bought and sold.

112. A major contribution made by the legislation in question was that it had challenged the prevailing wisdom by recognising prostituted individuals not as criminals (through the repeal of the offence of soliciting) but as victims of a system of both gender-based and sexual violence. It had also shifted the ban to those who purchased sexual acts, thereby holding them accountable and weakening the prostitution system through the attrition of “demand”.

113. The third-party interveners disagreed that the legislation in issue had left prostituted individuals worse off, particularly from a health perspective. In that regard, they referred to a 2011 parliamentary information report emphasising that the offence of soliciting had already pushed prostituted individuals underground and into isolation. The applicants wrongly blamed the 2016 legislation for effects that had existed long before its enactment, while ignoring its prime objective, namely, to offer a gradual exit from prostitution by improving access to rights for prostituted individuals. Vulnerability, insecurity and poor health had always been an inherent part of prostitution.

114. In that regard, the interveners disputed the findings of a study by Médecins du Monde carried out two years after the entry into force of the impugned legislation, which attributed to it a deterioration in the working and living conditions of prostituted individuals. First, the study contained no

reliable data demonstrating an increase in poverty among prostituted individuals since the enactment of the legislation in issue. Their situation could only improve, in view of the support measures implemented to tackle their extreme vulnerability with the assistance of associations such as Amicale du Nid, Mouvement du Nid and the FNCIDFF. Similarly, the study established no link between the enactment of the legislation and the claim that it drove sex workers underground and into isolation, thereby exposing them to greater violence. On the contrary, that same study stated how cautious social workers had been about making such a connection, while pointing out that people had since become much more open about discussing such matters. The interveners made the same observation on the alleged reversal of bargaining power – particularly concerning condom use – between prostituted individuals and their clients since the latter had been criminalised, pointing out that it was the criminalisation of soliciting that had previously put clients in a stronger position. The patriarchy and the financial dependence of prostituted individuals that underpinned the prostitution system meant that the “client” was always in a position of power and not the prostituted individual. There was no quantitative data to confirm that the physical and mental health of people engaging in prostitution had deteriorated since the enactment of the legislation in question. All the phenomena described were widespread before that date and were the inherent consequences of prostitution.

115. The third-party interveners submitted that, on the contrary, marked improvements could be seen in the field as a result of the legislation. These included an increase in the number of people charged with purchasing sexual services compared with those prosecuted for soliciting. The interveners placed special emphasis on the awareness-raising courses on the fight against the purchase of sexual acts, which served as both a complement to and a corollary of criminalisation and which they had observed to be genuinely effective. The courses were an opportunity to confront buyers of sexual acts with testimonials by “survivors” of prostitution, thereby combating deeply rooted stereotypes. With regard to the exit programmes, the interveners referred to the work of the FNCIDFF and to the FACT-S report, which aggregated analyses and figures by Amicale du Nid and Mouvement du Nid on that measure. Lastly, the interveners emphasised the importance of awareness raising about prostitution, particularly in schools. Such efforts aimed at young people were a key focus of the work of associations in the field under the 2016 legislation, because youth prostitution was a worrying and growing phenomenon. Statements to the effect that prostitution was “freely chosen” or “work”, much less an expression of “sexual freedom”, could only serve to justify and exacerbate that trend. For those reasons, removing the ban on purchasing sexual acts would have the opposite effect to those efforts.

6. *NGO CAP International – Coalition pour l’Abolition de la Prostitution*

116. The third-party intervener pointed out that France had always taken an abolitionist approach and had consistently reaffirmed that stance, gradually rounding out its arsenal of measures to combat prostitution, which it considered a form of violence against women, an obstacle to gender equality and a violation of human dignity. The impugned legislation was therefore a continuation of those efforts, meeting two main objectives: to stem the flow of people entering prostitution, and to protect its victims effectively through concrete measures, in accordance with France’s international obligations.

117. The intervener then described the positive effects of the legislation, which included the abolition of the offence of soliciting, thereby putting an end to the criminalisation of prostituted individuals, and the implementation of a comprehensive support system for people engaging in prostitution. The legislation further provided for compensation for the damage suffered by the victims of procuring. Since its enactment, large sums of money confiscated from procurers had been reinvested in the protection and rehabilitation of victims of prostitution and human trafficking.

118. With regard to the criminalisation of the purchase of sexual acts, there had been a rise in the number of people apprehended, and those people had been helped by awareness-raising courses to understand the reality of prostitution and the violence it represented. Another important aspect of the legislation was the policy of dispensing information in schools about the dangers of commodifying the body and the importance of gender equality in relationships.

119. The disputed legislation had recast public prostitution policy, contributing to a significant change in attitudes. A 2019 Ipsos survey had found that 78% of people in France thought the legislation was “a good thing” and 71% were against repealing it. In addition, 66% of men and 81% of women considered prostitution to be a form of violence. The same change in attitudes had been observed in Sweden, the first country to have enacted similar legislation in 1999, where 70% of the population supported the measure despite the fact that up to 75% were against it at the time it had been passed.

120. The third-party intervener criticised the regulatory model often presented as more respectful of human rights. It cited the examples of Germany and the Netherlands, which had legalised the purchase of sexual acts in 2002 and 2000 respectively, and where various studies had found that the legalisation of prostitution had acted like a magnet for human-trafficking networks. The intervener concluded that the model in question only made the situation worse for prostituted individuals and encouraged trafficking. In comparison, there had been a 54% rise in proceedings against procurers in France since the disputed law had been enacted, and Sweden had become a

“dead market” for prostitution and human trafficking since the 1999 enactment of similar legislation. The regulatory model was therefore ineffective and detrimental to the rights of women and girls, in that it failed to prevent the violence inherent in the prostitution system and to protect people engaging in prostitution. Moreover, that model had dangerous ramifications because it conferred a transactional value on sexual acts, thereby assimilating any solicitation of a sexual act in the workplace with a mere contractual proposal in exchange for a promotion, a bonus or continued employment.

121. In the view of the third-party intervener, the disputed law did not call into question the sexual freedom protected under Article 8 of the Convention, since it was the purchase of sexual acts that had been criminalised, not shared sexual activity with no consideration. The French legislation sought to abolish the self-proclaimed right of buyers of sexual acts to make use of the body of others for a fee, and thus to take sexuality off the market. Similarly, the intervener submitted that the legislation in issue was not incompatible with Articles 2 and 3 of the Convention, citing statistics that showed a fall in violence against prostituted individuals since its enactment. No one engaging in prostitution had been killed in Sweden since similar legislation had been passed.

122. In conclusion, the third-party intervener submitted that the French legislation, by taking a holistic approach to all the above-mentioned aspects of the fight against prostitution, promoted a social model in line with France’s culture, values and European and international commitments, and offered one of the most successful examples of what could be achieved in that field.

7. *NGO Amnesty International*

123. Amnesty International referred to research it had conducted in several countries, including Norway, Ireland, the Dominican Republic, Argentina, Hong Kong and Papua New Guinea. The findings of that research were that even in countries where the selling of sex was not criminalised, laws criminalising operational activities related to sex work had a negative impact on sex workers in that it increased their risks of experiencing violence and other violations and abuses. Sex work remained highly stigmatised under the “Nordic Model”, contributing to discrimination and marginalisation of sex workers. In that regard, the intervener cited the examples of two countries in which that model applied, namely Norway and Ireland, where sex workers had faced greater exposure to risks and violence on account of the criminalisation of those purchasing sex and the resulting decrease in demand. Interviews in the field had shown that sex workers were still reluctant to report crimes to the police owing to the many risks involved, for example forced eviction if they engaged in prostitution in their homes, or deportation for irregular migrants.

124. The third-party intervener submitted that the use of criminal law to prohibit sex work did not address or challenge the socio-economic forces and systemic discrimination that could lead people to do sex work, particularly individuals from marginalised groups. It did not offer alternative employment options or improved rates of pay. Rather, criminalisation compounded the marginalisation of people in sex work, forcing them to sell sex in clandestine and dangerous conditions while limiting their access to justice.

125. The intervener referred to various international instruments and the Court's case-law, particularly with regard to domestic violence, according to which States had to ensure their laws and public policies respected sex workers' rights. Decriminalising sex work was thus the only way to ensure the protection of sex workers from discrimination, violence and coercion.

8. Médecins du Monde and 26 other NGOs, jointly

126. Drawing on their experience in the field and a number of studies conducted among sex workers since the entry into force of the impugned legislation, the third-party interveners submitted that the legislative developments in question had not made it possible to provide more effective protection to the individuals concerned. On the contrary, it had left them more vulnerable, had pushed them further underground, had reduced their bargaining power, leading them to take more health risks, and had resulted in a dramatic increase in violence against them. Draining the market had led to a marked drop in sex workers' income, obliging them to travel further and to use intermediaries and thus making it more difficult to access health care and associations supporting the vulnerable. The risks run by clients on account of their criminalisation had reduced sex workers' bargaining power, forcing them to agree to dangerous practices to which they otherwise would not have consented, such as unprotected sex. In that regard, the interveners referred to statistics showing that only 6% of sex workers said that negotiating condom use had been easier since the enactment of the legislation, whereas 38% said they had more difficulty imposing such practice because clients would threaten to go elsewhere. The interveners made a link between that situation and the increase in HIV-positive patients observed by Acceptess-T and other associations.

127. While the third-party interveners welcomed the abolition of the offence of soliciting, they submitted that sex workers nevertheless remained the target of the criminalisation measure, particularly on account of the broad conception of procuring adopted by French law, which included any service provided to sex workers as part of their activity, such as renting accommodation to them and helping them to create a website. Since 2016 there had also been a surge in identity checks and intimidation attempts by the police, targeting migrant women in particular, with the aim of making them report their clients. The disputed legislation had not significantly changed police attitudes towards sex workers, as illustrated by the many

difficulties they faced when trying to report a crime, for example. Violence against them, on the other hand, had risen sharply. The reporting platform put in place as part of Médecins du Monde’s “Jasmine” programme, for example, had received 967 reports between November 2019 and November 2020, that is, nearly 2.6 per day. During the lockdown between March and May 2020, 119 acts of violence had been reported, 49 of which had concerned rape, armed robbery and harassment. In addition, STRASS had recorded eight murders of sex workers in 2019.

128. Lastly, the third-party interveners criticised the trend towards pursuing repressive migration policies rather than implementing protective measures. In particular, protection was not always afforded even in proven cases of human trafficking. Only 4% of identified trafficking victims had been issued residence permits on the basis of the right to asylum in 2018, rising to 9% in 2019. The same migration-orientated considerations were undermining the effective application of the “exit programme” scheme, as the administrative authorities were automatically refusing anyone who had been the subject of an administrative decision, a Dublin procedure or an obligation to leave France or anyone who had applied for asylum. The third-party interveners further criticised the length of the procedures provided for under that scheme, the insufficient financial assistance and the absence of a guaranteed right to accommodation.

9. Sekswerk Expertise and 25 other NGOs, jointly

129. In their submissions, the third-party interveners provided detailed information about current legislation and practice in the Netherlands, where sex work had been decriminalised. The measure had had positive effects on the situation of sex workers in terms of their autonomy, their safety, their working conditions, and their access to health and other services, including an exit programme. Unfortunately, however, not all aspects of that support were available to migrant sex workers, since under immigration legislation sex work did not open access to a residence permit. While such individuals still had access to other services available to sex workers, they were in a more vulnerable situation and thus exposed to greater risks, especially that of exploitation.

130. The interveners then summarised anti-trafficking policies, in particular a provision passed in January 2022 criminalising buyers of sexual services who knew or had serious reason to suspect that the sex worker was a victim of trafficking in human beings. That legislation might dissuade buyers of such services from reporting situations of abuse to the police for fear of being prosecuted themselves.

131. It was unfortunate that sex work and human trafficking were often conflated in the political sphere. Such an approach made it difficult to combat the stigmatisation of sex workers effectively. In particular, a study commissioned by parliament on the effects on human trafficking of various

prostitution policies in the Netherlands, Belgium, the United Kingdom, Germany, Sweden, Norway, Finland and Denmark had been inconclusive on account of a lack of reliable data.

10. NGOs UK Sex Work Research Hub and Irish Sex Work Research Network, jointly

132. The third-party interveners, representing networks of academics and researchers across a range of disciplines researching human trafficking and sex work, presented the results of their work into the impact of the introduction of legislation prohibiting the purchase of sexual acts. They drew on research conducted, in particular, by means of interviews with sex workers and other actors in the field in countries including Sweden, Norway, France, Ireland and Northern Ireland.

133. According to the interveners, the evidence gathered in the context of that research, which was conducted after the enactment of legislation criminalising the purchase of sexual services, showed that these measures had ended up achieving the opposite of their intended aims, that is, they had increased stigma towards sex workers and had exacerbated their vulnerability and precariousness. Such legislation had embedded the idea that prostitution was an illegal activity and had aggravated police harassment. It merely functioned as a smokescreen for repressive police practices targeting sex workers, especially those who migrated, and led to deportations, forced evictions, increased stigma and exclusion from services. In France, in particular, the decriminalisation of soliciting had coincided with a significant increase in municipal orders aiming to move sex workers from central to more peripheral – that is, more dangerous and less visible – areas.

134. There was no reliable data in Sweden or Norway demonstrating the effectiveness of such legislation, because statistics pointing to a fall in street prostitution had to be analysed in the context of the exponential rise in internet escort advertisements. Similarly, the number of human-trafficking cases investigated could not credibly indicate the effectiveness of the legislation in question, since those figures depended on many other factors, such as police resources, the legal arsenal used to define offences in that sphere and the specific ways national policies were actually enforced.

135. In the view of the third-party interveners, only the decriminalisation of sex work would make it possible to ensure the rights of sex workers. They cited the examples of New Zealand and Australia, where such a measure had increased sex workers' confidence, enabling them to engage with the justice system more easily, control their working conditions better – particularly regarding client screening and protected sex – and have better access to health provisions.

C. The Court's assessment

1. *Whether there was an interference*

136. The applicants submitted that the criminalisation of the purchase of sexual acts, as formulated in general and absolute terms, had created a situation that had pushed them underground and into isolation. According to the applicants, that had exposed them to greater violence and health risks, had affected their freedom to decide how they lived their private life and had thus infringed their personal autonomy and sexual freedom.

137. The Court notes that the Constitutional Council examined the disputed provisions of the Criminal Code in the light of the right to respect for private life, the right to personal autonomy and the right to sexual freedom (see paragraph 11 above). The *Conseil d'État* dismissed these same complaints, after examining them under Article 8 of the Convention, on the grounds that the provisions in issue could not, having regard to the public-interest purposes which they pursued, be regarded as constituting an excessive interference with the exercise of the right to respect for the private life of the applicants (see paragraph 12 above).

138. The Court, for its part, has already held that the measure in issue created a situation directly affecting the applicants (see *M.A. and Others v. France* (dec.), nos. 63664/19 and 4 others, § 43, 27 June 2023). It accordingly considers that the criminalisation of the purchase of sexual acts amounted to an interference with the applicants' right to respect for their private life and with their personal autonomy and sexual freedom.

2. *Whether the interference was lawful*

139. The Court notes that it is not in dispute between the parties that the interference had a legal basis, namely Articles 611-1 and 225-12-1 of the Criminal Code, introduced by Law no. 2016-444 of 13 April 2016 on strengthening action against the prostitution system and supporting prostituted individuals.

3. *Whether the aims pursued were legitimate*

140. On the issue of legitimate aims, for the purposes of Article 8 § 2 of the Convention, the Government explained that the criminalisation of the purchase of sexual acts pursued several of the aims listed in that provision, namely the prevention of disorder or crime, public safety, the protection of health, and the protection of the rights and freedoms of others (see paragraphs 83-85 above). In particular, they submitted that the purpose of the disputed measure was to combat trafficking in human beings, and pointed out that its enactment was recommended to that end by several international bodies and required under France's international commitments (see paragraph 84 above). They added that the measure in question further sought

to change perceptions and behaviours by reaffirming the principle that the human body was not property, and to combat inequality and violence against women (see paragraph 86 above).

141. Previously, in *V.T. v. France* (cited above, § 24), the Court had the opportunity to observe that France had opted for a so-called “abolitionist” approach to the legal framework governing prostitution. It was also among the 25 member States to have ratified the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949, the preamble to which states, in particular, that prostitution is “incompatible with the dignity and worth of the human person”. The Court further notes that Law no. 2016-444 of 13 April 2016 criminalising the purchase of sexual acts formed part of this long-standing French policy and was inspired by the “Swedish” model – now referred to as the “Nordic” model –, the primary goal of which is to combat prostitution by curbing the demand that fuels prostitution rings and human-trafficking networks. It is thus apparent from the applicable legislative provisions, and from the decision of the Constitutional Council endorsed by the *Conseil d’État*, that, in choosing to criminalise buyers of sexual acts, the legislature sought to deprive procurers of sources of profit and to combat that activity and trafficking in human beings for the purpose of sexual exploitation – criminal activities based on coercion and human enslavement. In doing so, its intention was to ensure the protection of human dignity against these forms of enslavement and to preserve the constitutional objective of maintaining public order and preventing crime.

142. The Court has previously found that prostitution is incompatible with the rights and dignity of a person if it is coerced (see *V.T. v. France*, cited above, § 25). It has also repeatedly emphasised the importance of combating prostitution rings and human-trafficking networks, and the obligation of States Parties to the Convention to protect victims (see, in particular, *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 283-88, ECHR 2010 (extracts), and *S.M. v. Croatia*, cited above, § 306).

143. The applicants themselves did not dispute the importance of combating prostitution rings and human-trafficking networks (see paragraph 77 above). They argued, however, that the criminalisation of any purchase of sexual acts was not justified by the aim of maintaining public order or combating human trafficking, where it applied to consensual services, including in private. The Court takes note of the applicants’ objections, while considering that they fall within the scope of the necessity and the proportionality of the interference in issue.

144. In such circumstances, the Court accepts that the aims pursued by the impugned measure, as presented by the Government – namely the prevention of disorder or crime, public safety, the protection of health, and the protection of the rights and freedoms of others (see paragraph 140

above) – constitute legitimate aims for the purposes of Article 8 § 2 of the Convention.

145. It therefore remains to be determined whether there was a reasonable relationship of proportionality between the above-mentioned legitimate aims and the means employed by the French authorities.

4. Whether the interference was necessary in a democratic society

146. The Court first observes that the parties are in agreement as to the importance of combating prostitution rings and human-trafficking networks. There is further no dispute between them as to the fact that consensual sex is covered by the notions of private life and personal autonomy provided for in Article 8 of the Convention. Accordingly, the main issue between the parties concerns the margin of appreciation afforded to the State in the sphere in question and the adverse, disproportionate consequences the impugned measure allegedly had on the applicants. The Court will therefore perform its examination on this basis.

(a) The respondent State's margin of appreciation

147. The Court reiterates that a number of factors must be taken into account when determining the breadth of the margin of appreciation to be enjoyed by the State when deciding any case under Article 8 of the Convention. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will normally be restricted (see *Pretty*, cited above, § 71, and *K.A. and A.D. v. Belgium*, cited above, § 84). Where, however, there is no consensus within the member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider (see *S.H. and Others v. Austria* [GC], no. 57813/00, § 94, ECHR 2011, and the cases cited therein). By reason of their direct and continuous contact with the vital forces of their countries, the State authorities are, in principle, in a better position than the international judge to give an opinion, not only on the exact content of the requirements of morals in their country, but also on the necessity of a restriction intended to meet them. Lastly, the Court reiterates that the respondent State's margin of appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights (see, for example, *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I, and, more recently, *Vavříčka and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 275, 8 April 2021).

148. The applicants, supported by some of the third-party interveners, disputed the effectiveness of the measure criminalising the purchase of sexual acts as a means of combating human trafficking. They recommended a different approach to the issue, which in their view would be better able to

mitigate the risks inherent in their activity and to safeguard their rights as a whole (see paragraphs 78, 123 and 134-135 above).

149. The Court has previously had occasion to note that issues relating to prostitution raise some very sensitive moral and ethical questions, which give rise to different, often conflicting views, in particular as to whether prostitution as such can ever be consensual or is always a coercive form of exploitation (see *S.M. v. Croatia*, cited above, § 298). In this connection, it has observed that France, like some other member States, has opted for a so-called “abolitionist” approach to prostitution. Under this system, prostitution is regarded as incompatible with human dignity but is not prohibited or regulated, unlike procuring, which is criminalised. In other member States, the legal framework governing prostitution may lend itself either to “prohibition” (all aspects of prostitution are forbidden, and prostitutes – and any clients – are punished) or to “regulation” (prostitution – including the exploitation of adult prostitution – is tolerated and regulated). The Court thus concludes that there are substantial differences in legal systems concerning the approach to prostitution (see *V.T. v. France*, cited above, §§ 24-25).

150. In the instant case, the Court notes that the situation has remained practically unchanged since the above-mentioned judgments were delivered, as there is still little common ground as to how best to approach prostitution, be it among the member States of the Council of Europe (see paragraphs 68-71 above) or within the various international organisations that have examined the issue (see paragraphs 48 and 55 above). Admittedly, from a strictly regulatory standpoint, France is very much in a minority position in Europe: except for Sweden, Norway, Ireland, Iceland and part of the United Kingdom (Northern Ireland), no other member State of the Council of Europe has, to date, opted for the “Nordic” model of criminalising the purchase of sexual acts. The Court does not, however, lose sight of the fact that these reforms are relatively recent and the issue is being discussed in other member States (see, for a similar situation, *S.A.S. v. France* [GC], no. 43835/11, § 156, ECHR 2014 (extracts)). Some such States are still at the stage of criminalising prostituted individuals themselves.

151. The applicants further challenged the link between prostitution and trafficking in human beings, submitting that there were no reliable data that could establish a correlation to the extent claimed by the Government.

152. The Court observes that the use of a general and absolute criminalisation of the purchase of sexual acts as an instrument to combat trafficking in human beings is currently the topic of heated debate, giving rise to widely differing opinions both at European level (see paragraphs 61 and 63-67 above) and internationally (see paragraphs 49, 50-54, 56 and 105 above), with no clear trend emerging (compare and contrast *S.H. and Others v. Austria*, cited above, § 96, and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 91, ECHR 2013 (extracts)).

153. Accordingly, the Court considers that the respondent State should be afforded a wide margin of appreciation in this field. That being said, this margin of appreciation is not unlimited and it is the Court's task to examine the arguments to which the legislature has had regard in reaching the solutions it has retained and to determine whether a fair balance has been struck between the interests of the State and those of the individuals directly affected by the solutions in question (see *Parrillo*, cited above, § 183, with further references, and *Baret and Caballero v. France*, nos. 22296/20 and 37138/20, § 80, 14 September 2023, and the cases cited therein).

(b) Proportionality of the interference

154. The Court would emphasise at the outset that it is fully aware of the – undeniable – difficulties and risks to which prostituted individuals are exposed in the course of their activity. Some applicants, supported by several third-party interveners, gave a detail description of that situation in their statements. They asserted, for example, that since the introduction of the general and absolute criminalisation of the purchase of sexual acts, they had been pushed further underground and into isolation, exposing them to greater safety risks and complicating access to their rights. They also described a deterioration in their working conditions and increased vulnerability, because weaker demand had reduced their incomes, forcing them, in particular, to agree to dangerous practices such as unprotected sex. This had exacerbated the health risks to which they were already exposed. Lastly, according to the statements by some applicants, the criminalisation of their activity implied by the measure in question had reinforced the stigma and stereotypes to which they were subjected, further contributing to their marginalisation (see paragraphs 6 and 123-126 above).

155. Nevertheless, the Court is mindful that these phenomena were already present and observed before the enactment of Law no. 2016-444 of 13 April 2016. The same negative effects were previously attributed to the introduction of the offence of soliciting in French law, as certain third-party interveners pointed out (see paragraphs 32, 87 and 113-114 above). The Court further notes that although the application of the aforementioned legislation is subject to continuous review by the various institutions and associations working in the field (see paragraphs 40 and 42-44 above), there is no unanimous position as to whether the adverse effects described by the applicants are (a) directly caused by the criminalisation of the purchase of sexual acts – or their sale, for that matter, (b) an inherent, intrinsic part of prostitution as such, or (c) the result of a set of social factors and behavioural practices (see also the mixed evaluations of the application of similar legislation in Sweden and Norway, cited in paragraphs 96, 100, 120, 123 and 132-134 above).

156. As the Court has stated above, France is among those States that have opted for an “abolitionist” approach to prostitution (see paragraph 149

above), according to which all prostituted individuals are to be considered victims, including those who claim to engage freely in that activity. In *V.T. v. France* (cited above, § 26), the Court noted that there was some controversy as to whether prostitution could ever be consensual or always involved coercion – even if only that resulting from socio-economic circumstances. It therefore decided not to enter into this debate, given that the outcome was not decisive for its assessment in that case. There is no reason to depart from that approach in the present case.

157. The applicants further argued that the ability of each individual to engage in prostitution freely between consenting adults affected elements that went to the very heart of private life and warranted an additional level of protection, which would be such as to reduce the State's margin of appreciation in this matter. The Court does not overlook the fact that the principle of personal autonomy encompasses the right to choose freely how one expresses one's sexuality and concerns an essential aspect of the identity of individuals (see *K.A. and A.D. v. Belgium*, cited above, § 85). Nonetheless, it is not persuaded by this argument in the present case, since the applicants essentially complained that the adoption of the impugned measure had made it impossible for them to engage in prostitution as a profession and referred in that regard to examples of countries that regulated prostitution in the same way as any other economic activity.

158. The Court would point out that the criminalisation of the purchase of sexual acts is part of a comprehensive scheme to combat prostitution, provided for in Law no. 2016-444 of 13 April 2016. That legislation was passed upon the completion of a long, complex legislative process, which had begun following prior parliamentary proceedings on the matter and which was part of more general discussions on how to combat violence against women (see paragraph 27 above). After the bill was introduced, the two special committees formed to examine it conducted many interviews and studies in order to obtain a detailed overview of the situation, both in France and abroad. The reports presented as a result of those proceedings testify to the differences in points of view and opinions that exist in the sphere, especially as regards the issue of the criminalisation of the purchase of sexual acts. In particular, they show that prostitution is a complex, multifaceted and changing phenomenon and that no public policy implemented in other States has to date been immune to controversy (see paragraphs 28-37 above). The French legislature was aware of these difficulties and differences and for that reason made a choice representing the culmination of a careful examination, by Parliament, of all cultural, social, political and legal aspects of the scheme put in place to regulate a highly complex phenomenon raising very sensitive moral and ethical issues (compare *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 108 and 114, ECHR 2013 (extracts)).

159. The Court has a duty to exercise a degree of caution in its review of Convention compliance, since such review will lead it to assess a balance that has been struck by means of a democratic process within the society in question. It reiterates that in matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see *S.A.S. v. France*, cited above, §§ 129 and 154). This is particularly true where, as in the present case, the question constitutes a choice of society (see, for example, *Y v. France*, no. 76888/17, § 74, 31 January 2023, and *Baret and Caballero*, cited above, § 84). The Court also reiterates that its task is not to substitute itself for the competent national authorities in determining the most appropriate policy for regulating prostitution. Rather, the issue to be determined is whether, in striking the particular balance that they did between the competing interests, the French authorities remained within their wide margin of appreciation in this area (see *S.H. and Others v. Austria*, cited above, § 106, and *Vavříčka and Others*, cited above, § 310).

160. The Court further observes that the concerns raised by the applicants in the present case, in particular in relation to health and safety risks, were largely taken into account during the parliamentary debates and gave rise to several improvements to the wording of the initial bill, especially during the examination by the Senate (see paragraph 35 above). In addition, the social and health situation of prostituted individuals had already been the subject of an examination by the public authorities before the bill for the impugned legislation was introduced (see paragraph 32 above). The disputed measure criminalising the purchase of sexual acts therefore clearly formed part of a comprehensive scheme with four main focuses: (i) repealing any legal provision that might encourage prostitution, but not actually prohibiting it; (ii) providing protection to prostituted individuals, particularly by punishing the sexual exploitation of others; (iii) preventing people from entering prostitution; and (iv) helping people wishing to exit prostitution reintegrate into society (see paragraphs 25, 34, 36, 89 and 157 above).

161. Furthermore, the Court notes that despite their significantly different stances, the parties and the third-party interveners all agreed on the positive effect had by the repeal of the offence of soliciting, which had been punishable under the former Article 225-10-1 of the Criminal Code, and of the resulting decriminalisation of prostituted individuals. The aim of that measure was to combat the social stigma attached to prostitution and to improve access to rights and to the full range of protective measures for prostituted individuals. Combined with the criminalisation of the purchase of sexual acts, the decriminalisation of soliciting also helped to reverse the power dynamics between clients and prostituted individuals – as asserted by the Government and as emphasised during the parliamentary debates (see paragraph 36 above). It positioned prostituted individuals as victims and enabled them to report clients in the event of violence, since henceforth it was

the client who would face prosecution. In this connection, the Court notes that the legislation in question also added individuals engaging in prostitution – including on an occasional basis – to the list of vulnerable people, which entails heavier penalties for acts of violence, sexual assault or rape committed against them. As a general comment, the Court observes that combating the stigma and stereotypes faced by prostituted individuals, including from the police, was an important consideration during the drafting of the legislation, and was regarded as a prerequisite for improving their access to protection, particularly if they had suffered violence (see paragraph 35 above).

162. Moreover, in addition to the measures associated with the exit programme (see paragraphs 19 and 89 above), the legislation in question sought to strengthen public policies on health-risk mitigation, for the benefit of all prostituted individuals, through the introduction of special measures. To this end, it provided for the use of various outreach mechanisms in the field, online and on social media, as well as in dedicated venues; the involvement of specialist administrative authorities and associations; and the allocation of resources to improve access to rights and to general health care for those who continued to engage in prostitution, ensuring that they were not left to fend for themselves (see paragraphs 21 and 90 above).

163. With regard to the general and absolute nature of the criminalisation of the purchase of sexual acts, the Court observes that that measure was also envisaged as a means of combating child prostitution, a worrying and growing phenomenon. As mentioned in the information report prepared on behalf of the Delegation on the Rights of Women and Equal Opportunities, the work of law-enforcement agencies in that area was often hampered by the difficulty in proving that the client had known that the prostituted individual was a minor (see paragraph 33 above). It is apparent from the parliamentary proceedings that this was an objective to which the authorities attached significant weight. Indeed, the legislation in question was not limited to the measure seeking to combat human trafficking by tackling demand for sexual services. It also provided for a series of parallel measures, such as awareness-raising campaigns in schools and elsewhere, in order to prevent new people from entering into prostitution.

164. Lastly, the Court observes that the abolitionist approach taken by France aims to eradicate prostitution gradually by providing prostituted individuals with alternatives (see paragraphs 19-21 above), without, however, prohibiting that activity. As stated by the Government, prostitution is not prohibited in France and thus remains legal and tolerated. In these circumstances, the Court is not persuaded by the applicants' argument that maintaining the "self-employed" status of people who continued to engage in prostitution – a matter on which the Court has already had occasion to rule (see *V.T. v. France*, cited above) – undermined the coherency of the comprehensive scheme introduced by Law no. 2016-444 of 13 April 2016.

165. The Court does not overlook the applicants' arguments as to the insufficiency of resources allocated to the various administrative authorities tasked with applying the measures provided for in Law no. 2016-444 of 13 April 2016, or as to the inconsistent implementation of those measures throughout the country (see paragraphs 40, 80 and 128 above). However, those considerations – the significance and weight of which the Court is far from minimising in its review of the proportionality of the measure – are not sufficient to call into question the choice made by the legislature following a democratic process, in the light of the legitimate aims pursued (compare *Vavříčka and Others*, cited above, §§ 306-08). This is particularly true given that that choice was intended to bring about far-reaching societal changes, the effects of which will be fully felt only with time. In this connection, the Court observes that the authorities are aware of these shortcomings which, if allowed to continue, could compromise the scheme put in place as a whole.

166. In view of all the foregoing considerations, the Court finds, having regard to the current state of developments in how domestic law takes account of the issues raised by prostitution, that the French authorities struck a fair balance between the competing interests at stake, and that the respondent State did not overstep its margin of appreciation. It follows that there has been no violation of Article 8 of the Convention.

167. Nonetheless, the national authorities have a duty to keep the adopted approach under constant review, especially as it is based on a general and absolute prohibition of the purchase of sexual acts. This will enable them to adjust that approach in line with developments in European societies and international standards in the sphere, and with any effects the application of the legislation may have in a given situation (see *Baret and Caballero*, cited above, § 88).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Holds that there has been no violation of Article 8 of the Convention.

Done in French, and notified in writing on 25 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Lado Chanturia
President

APPENDIX

List of applications:

1. 63664/19 M.A. and Others v. France
2. 64450/19 M.C. v. France
3. 24387/20 T.S. v. France
4. 24391/20 C.D. v. France
5. 24393/20 M.S. v. France