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

Press Release
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ECHR 238 (2023)
31.08.2023

Court declares admissible applications from individuals lawfully engaged in prostitution and claiming to be victims of law criminalising purchase of prostitution services

In its decision in the case of M. A. and Others v. France (application no. 63664/19) the European Court of Human Rights has, by a majority, declared the applications admissible. The decision is final.

The applications concern the creation, under French criminal law, of the offence of purchasing sexual relations.

According to the applicants, who engage lawfully in prostitution, the possibility of criminal proceedings being brought against clients pushes those engaged in prostitution into operating in a clandestine manner and in isolation, exposes them to greater risks for their physical integrity and lives, and affects their freedom to define how they live their private lives. They argue that, in consequence, it breaches their rights under Articles 2, 3 and 8 of the Convention.

Without ruling on the merits at this stage, the Court declared the application admissible after acknowledging that the applicants were entitled to claim to be victims, within the meaning of Article 34 of the Convention, of the alleged violation of their rights under Articles 2, 3 and 8. The decision does not prejudge the merits of the application, on which the Court will rule in a subsequent judgment.

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What is the difference between a decision and a judgment?

A decision is usually given by a single judge, a Committee or a Chamber of the Court. It concerns only admissibility and not the merits of the case. Normally, a Chamber examines the admissibility and merits of an application at the same time; it will then deliver a judgment.

See The ECHR in 50 Questions

Principal facts

The applicants are two hundred and sixty-one men and women of various nationalities: Albanian, Algerian, Argentinian, Belgian, Brazilian, British, Bulgarian, Cameroonian, Canadian, Chinese, Columbian, Dominican, Equatorial Guinean, Ecuadorian, Spanish, French, Nigerian, Peruvian, Romanian and Venezuelan, who state that they "are habitually engaged in prostitution, in a lawful manner 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 "to strengthen the fight against the prostitution system and provide support to prostituted individuals", and codified in Articles 611-1 and 225-12-1 of the Criminal Code.

The applicants submitted witness statements to the Court, describing how their situation had deteriorated in the period since the purchase of prostitution services had been criminalised.

On 1 June 2018 the Syndicat du travail sexuel (a trade union for sex workers) and the NGOs Médecins du monde, Parapluie rouge, Les amis du bus des femmes, Cabiria, Griselidis, Paloma, AIDES and Acceptess-T, as well as five individuals, including four of the applicants in the present case (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, requesting that Decree no. 2016-1709 of 12 December 2016 be revoked with regard, in particular, to the awareness-raising course on

combating the purchase of sexual services, an additional penalty introduced by the Law of 13 April 2016 codified in Articles 131-16 9o bis and 225-20 I 9o of the Criminal Code.

On 5 September 2018 they applied to the *Conseil d'État* seeking to have set aside, for abuse of power, the Prime Minister's implied rejection. They asked that the *Conseil d'État* refer a question to the Constitutional Council concerning the compatibility with the rights and freedoms guaranteed by the Constitution of Articles 611-1, 225-12, 131-16 9o bis and 225-20 I 9o of the Criminal Code, as amended by the Law of 13 April 2016. The *Conseil d'État* transmitted this question to the Constitutional Council, which issued its decision (no. 2018-761 QPC) on 1 February 2019.

In a judgment of 7 June 2019, the *Conseil d'État* dismissed the application. Referring to the Constitutional Council's decision of 1 February 2019, it rejected the argument concerning the alleged unconstitutionality of Articles 225 12-1 and 611-1 of the Criminal Code. It then dismissed the argument based on Article 8 of the Convention, with the following reasoning:

" … where it is imposed, prostitution is incompatible with human rights and dignity. The decision to outlaw demand for paid sexual relations, through the creation of the criminal offence introduced by the impugned provisions of the Law of 13 April 2016, is based on the finding … that, in the vast majority of cases, persons who engage in prostitution are victims of procuring and human trafficking, which are made possible by the existence of this demand. In those circumstances, although the impugned provisions are capable of including sexual acts presented as having taken place freely between consenting adults in a private location, they cannot, having regard to the general-interest aims that they pursue, be regarded as amounting to excessive interference with the right to respect for private life, protected by Article 8 of the Convention ..."

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 December 2019.

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention of Human Rights, the applicants alleged that the French legislation criminalising the purchase of sexual relations seriously endangered the physical and mental integrity and health of individuals who, like them, engaged in prostitution.

Relying on Article 8 (right to respect to private life), the applicants argued that the fact of making it a criminal offence to obtain sexual services in exchange for payment, even where this occurred between consenting adults and even in purely private places, radically encroached on the right to respect for the private life of individuals engaged in prostitution and of their clients, in so far as this included the right to personal autonomy and sexual freedom.

The decision was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Catherine **Brouard-Gallet** (France), ad hoc *Judge*,

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Without ruling on the merits at this stage, the Court declared the application admissible after acknowledging that the applicants were entitled to claim to be victims, within the meaning of Article 34 of the Convention, of the alleged violation of their rights under Articles 2, 3 and 8. The decision does not prejudge the merits of the application, on which the Court will rule in a subsequent judgment.

The decision is available only in French.

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