



Criminalisation of the purchase of sexual acts (Law no. 2016-444): no violation of Article 8 of the Convention

In today's **Chamber** judgment¹ in the case of [M.A. and Others v. France](#) (applications nos. 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned the creation, under French criminal law, of the offence of purchasing sexual relations, which, in the applicants' allegation, seriously endangered the physical and mental integrity and health of individuals engaged in prostitution, and radically infringed on their right to respect for private life, in so far as this included the right to personal autonomy and sexual freedom.

The Court noted that the problems linked to prostitution raised very sensitive moral and ethical questions, giving rise to different, often conflicting, views, and that there was still no general consensus among the member States of the Council of Europe, or even within the various international organisations examining the issue, on how best to approach prostitution.

It then noted that recourse to the general and absolute criminalisation of the purchase of sexual acts as a means of combatting human trafficking was currently the subject of heated debate, giving rise to wide differences of opinion at both European and international level, without a clear position emerging.

The Court concluded that the French authorities had not overstepped their discretion ("margin of appreciation") in enacting the contested prohibition, in so far as it resulted from a balance struck by means of a democratic process within the society in question and formed part of a comprehensive approach – provided for by Law no. 2016-444 of 13 April 2016 – in which account had been taken of the various concerns raised by the applicants in the present case.

Nonetheless, the Court emphasised that the national authorities had a duty to keep the approach adopted by them under constant review, especially when it was based on a general and absolute prohibition of the purchase of sexual acts, so as to be able to amend it as European societies and international standards in this field evolved, and to adapt to the tangible effects of implementation of this legislation.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants are 261 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. They stated that they "habitually engage in prostitution, in a lawful manner as provided for under

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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. Before the Court, they described how their situation had deteriorated 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, and also five individuals, including four of the applicants in the present case, applied to the Prime Minister, requesting that Decree no. 2016-1709 of 12 December 2016 be repealed, with regard, in particular, to the awareness training on combating the purchase of sexual services.

On 5 September 2018 they applied to the *Conseil d'État*, seeking to have the Prime Minister's implied rejection set aside for abuse of power. They requested that the *Conseil d'État* refer a preliminary question of constitutionality (QPC) to the Constitutional Council as to the compatibility 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, with the rights and freedoms guaranteed by the Constitution.

On 1 February 2019 the Constitutional Council issued its decision (no. 2018-761 QPC), concluding that "... the first paragraph of Article 225-12-1 and Article 611-1 of the Criminal Code, which do not infringe the right to respect for private life, nor any other right or freedom guaranteed by the Constitution, must be declared compatible with the Constitution..."

Referring to this decision by the Constitutional Council, the *Conseil d'État* rejected the application in a decision of 7 June 2019.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life) of the European Convention on Human Rights, the applicants alleged that the French legislation criminalising the purchase of sexual relations, even between consenting adults in a private location, seriously endangered the physical and mental integrity and health of individuals who, like them, engaged in prostitution, and that it radically infringed on the right to respect for private life, in so far as this included the right to personal autonomy and sexual freedom.

The applications were lodged with the European Court of Human Rights on 6 December 2019.

By a decision of 27 June 2007, the Court declared the applications admissible and decided to join them.

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

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

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

Having regard to the wording of the applicants' complaints and to the nature of the measure in question, the consequences of which they contested, the Court considered that it was more appropriate to examine these complaints under Article 8 of the Convention.

Article 8

The Court noted that it was not disputed between the parties that the interference had a legal basis, specifically Articles 611-1 and 225-12-1 of the Criminal Code, introduced by Law no. 2016-444 of 13 April 2016 "to strengthen the fight against the prostitution system and provide support to prostituted individuals".

On the issue of legitimate aims, the Government submitted, in particular, that the contested measure was aimed at combatting prostitution rings and human-trafficking networks and emphasised that its adoption was recommended, for that reason, by several international bodies and was required by France's international commitments.

The Court had already had occasion to note that France had opted for a so-called "abolitionist" approach in terms of the legal framework governing prostitution, and that it was among the 25 member States which had 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 stated that prostitution was "incompatible with the dignity and worth of the human person". The Court then noted that Law no. 2016-444 of 13 April 2016, criminalising the purchase of sexual acts, formed part of this approach, and had been inspired by the "Nordic model", the primary objective of which was to fight prostitution by curbing the demand that fed prostitution rings and human-trafficking networks.

The Court had already stated that it considered prostitution to be incompatible with the rights and dignity of the human person where this activity was forced. It had also repeatedly emphasised the importance of combatting prostitution and human-trafficking networks, and the obligation on States parties to the Convention to protect victims.

The Court accepted that the aims pursued by the measure in question as presented by the Government, namely to ensure public safety, prevent crime and protect the health, rights and freedoms of others, constituted legitimate aims within the meaning of Article 8 of the Convention.

The Court had already had occasion to note that the problems linked to prostitution raised some very sensitive moral and ethical questions, giving rise to different, often conflicting, views, particularly as to whether prostitution as such could ever be consensual or if, on the contrary, it was always a coercive form of exploitation. The Court noted that there was still no general consensus among either the member States of the Council of Europe, or even within the various international organisations examining the issue, on how best to approach prostitution.

The Court observed that recourse to the general and absolute criminalisation of the purchase of sexual acts as a means of combatting human trafficking was currently the subject of heated debate, giving rise to wide differences of opinion at both European and international level, with no clear position emerging from these discussions. It therefore considered that the respondent State was to be granted wide discretion ("margin of appreciation") in this field.

The Court reiterated that the criminalisation of the purchase of sexual relations was part of a comprehensive approach to combat prostitution, pursued through Law no. 2016-444 of 13 April 2016. It noted that this text had been enacted at the end of a long and complex legislative process, which had been initiated following previous parliamentary debates on the subject and which formed part of more general discussions on the different methods to be used in combatting violence against women.

The Court was thus required to show caution in its review of Convention compliance, where such review led it to assess a balance that had been struck by means of a democratic process within the society in question. It reiterated that in matters of general policy the role of the national decision-maker was to be given special weight. This was especially important when, as in the present case, a social issue was at stake. The Court also pointed out that its task was not to substitute itself for the competent national authorities in determining the most appropriate policy for regulating prostitution. Rather, its task was to ascertain whether, in striking the particular balance that they did, the French authorities had remained within the wide discretion that they enjoyed in this area.

The Court noted that the concerns raised by the applicants in the present case, in particular with regard to health and safety risks, had largely been taken into account during the parliamentary debates and had resulted in several improvements to the text initially proposed. It noted that the contested measure – the criminalisation of sexual acts – had formed part of a comprehensive approach hinging on four main axes, namely, the repeal of any legal provision which might encourage prostitution, but without actually prohibiting it; the introduction of measures to protect prostituted people, particularly by punishing suppressing the sexual exploitation of others; steps to prevent individuals from becoming prostitutes; and supporting the rehabilitation of prostituted people who wished to cease this activity.

Furthermore, the Court noted that, despite the wide differences in opinion between them, the parties and third parties were unanimous in acknowledging the positive effect of repealing the offence of soliciting, punishable under former Article 225-10-1 of the Criminal Code, and the resulting decriminalisation of prostituted people. This measure had been intended to combat the social stigmatisation attached to prostitution, and to strengthen access to rights and to all available protective measures for prostituted people.

The Court did not overlook the applicants' arguments regarding the lack of resources allocated to the various public administrative authorities tasked with applying the policy measures set out in Law no. 2016-444 of 13 April 2016, and the alleged lack of consistency in implementing these measures throughout the national territory. It held, however, that these considerations, the significance and weight of which were not minimised in its review of the proportionality of the measure, were not sufficient to call into question the legislature's choice at the close of a democratic process and having regard to the legitimate aims pursued, particularly when that choice was intended to bring about far-reaching societal changes, the effects of which would only be fully revealed over time.

Having regard to all of the above considerations, the Court held that the French authorities had struck a fair balance between the competing interests involved, and that the respondent State had not overstepped its discretion.

It followed that there had been no violation of Article 8 of the Convention.

Nonetheless, the national authorities had a duty to keep under constant review the approach adopted by them – especially when it was based on a general and absolute prohibition of the purchase of sexual acts –, so as to be able to amend it as European societies and international standards in this field evolved, and to adapt to the tangible effects of implementation of this legislation.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.