



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

## SECTION FIVE DECISION

Application <sup>no.</sup> 63664/19  
M. A. and others v France and 4  
other applications  
(see attached list)

The European Court of Human Rights (Fifth Section), sitting on 27 June 2023 in a Chamber composed of :

Georges Ravarani, *Chairman*,  
Lado Chanturia,  
Mārtiņš Mits,  
Stéphanie Mourou-Vikström,  
María Elósegui,  
Kateřina Šimáčková, *judges*,  
Catherine Brouard-Gallet, *judge ad hoc*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to the above applications lodged on 6 December 2019,

Having regard to the decision granting anonymity to the applicants (Rule 33 of the Rules of Court),

Having regard to the decision to bring the complaint under Articles 2 and 3 of the Convention and the complaint under Article 8 of the Convention to the attention of the French Government ("the Government"),

Having regard to the observations submitted by the Government and those presented in response by the applicants,

Having regard to the comments received from the Governments of Sweden and Norway, the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the non-governmental organisation ("NGO") Osez le féminisme and eight other NGOs, together, the NGOs Mouvement du nid and Amicale du nid and the fédération nationale des centres d'information sur les droits des femmes et des familles, together, the NGO *Coalition for the Abolition Prostitution International*, the NGO *Amnesty International*, the NGO Médecins du monde and twenty-six other NGOs, together, *Sekswerk Expertise* (twenty-five NGOs together), and the *Sex Work Research Hub* and *Irish Sex Work*

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*Research Network*, which have been authorised to act as third parties,

Noting that the Albanian, Belgian, British, Bulgarian, Spanish and Romanian Governments did not wish to avail themselves of their right to take part in the proceedings (Article 36 § 1 of the Convention),

Noting that Mr Guyomar, the judge elected in respect of France, withdrew for consideration of these cases (Rule 28 of the Rules of Court), and that the President of the Chamber decided to designate <sup>Ms</sup> C. Brouard-Gallet to sit as an *ad hoc* judge (Rule 29 § 1 (b)),

Having considered the matter, decides as follows:

## INTRODUCTION

1. The applications concern the criminalisation in French criminal law of the purchase of sexual relations. Invoking Articles 2, 3 and 8 of the Convention, the applicants maintain that this puts the physical and mental integrity and the health of people like themselves who engage in prostitution at serious risk, and that it radically infringes their right to respect for their private life and that of their clients, insofar as it includes the right to personal autonomy and sexual freedom.

## IN FACT

2. The applicants are two hundred and sixty-one men and women of various nationalities: Albanian, Algerian, Argentinean, Belgian, Brazilian, British, Bulgarian, Cameroonian, Canadian, Chinese, Colombian, Dominican, Equatoguinean, Ecuadorian, Spanish, French, Nigerian, Peruvian, Romanian and Venezuelan. They are represented by P. Spinosi, lawyer at the Conseil d'État and the Cour de cassation.

3. The Government is represented by its agent, Mr D. Colas, Director of Legal Affairs at the Ministry of Europe and Foreign Affairs.

4. The facts of the case, as set out by the parties, can be summarised as follows.

5. The applicants state that they "habitually engage in prostitution lawfully under the provisions of French law". They denounce the criminalisation of the purchase of sexual relations, even between consenting adults, introduced by Law <sup>no.</sup> 2016-444 of 13 April 2016.

"This is codified in articles 611-1 and 225-12-1 of the Criminal Code (paragraph 14 below).

## I. THE TESTIMONIES OF SOME OF THE APPLICANTS

6. The applicants produced testimonies from sixteen sex workers, who described the deterioration in their situation since the criminalisation of the purchase of prostitution. The following nine testimonies were given by persons who were applicants before the Court (plus a tenth, not transcribed, whose author stated that he was an applicant but did not identify himself):

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

"(...) Before [the law of 13 April 2016], working via the Internet, and having several regular messages requesting meetings from potential clients, I could easily impose my working conditions.

However, since this law was passed in 2016, which penalises my customers, I've noticed that their numbers have dwindled, leading to great insecurity and unpayable debts.

What's more, I've lost the ability to protect myself effectively. With fewer customers, my choice has been reduced. And since this law came into force, I have had to accept practices (and prices) that I could have refused before.

So I started accepting meetings at knock-down prices, which made my job even more precarious.

I also find it very difficult (if not impossible) to impose the use of condoms. My sexual health has been profoundly affected by this, and since the law was passed I've regularly had sexually transmitted infections, and I'm now HIV positive.

This law is therefore dangerous: it gives more power to my most dangerous customers, by allowing them to impose their conditions on me when it should be up to me to impose mine.

(...) Stigmatising the fact of being a customer doesn't help me as someone who engages in economic-sexual exchanges (...).

It also has an impact on my mental health, amplifying my desire to disappear from this world (...).

This law not only puts me at risk financially and in terms of health, it also cuts us off from any possibility of creating a society where economic and sexual exchanges can take place in a healthy way (...)".

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

"(...) To protect my customers who no longer want to be surprised by the police, I am forced to agree to receive them in my home even if I don't want to, and take the risk that a false customer, an assailant posing as a customer, will know where I live and decide to harass me, threaten me or report me to my neighbours.

(...) since customers have been penalised, pass prices have fallen. Before the law, we could afford to refuse customers with whom we did not agree on the conditions of the service provided. During my first fifteen years as a sex worker, I managed to systematically enforce the use of condoms, and I never had a single problem.

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sexually transmitted infection in the context of sex work. After the 2016 law, everyone lost bargaining power, because clients became afraid, including those who were not directly targeted by the police, not knowing where and how the law applies. Today, we can no longer afford to refuse a customer as we used to. The law has considerably strengthened the power of customers while claiming the opposite.

Since 2016, I have gradually had to accept sex without a condom, something I would never have imagined doing before (...). Since 2016, I've had to be treated for gonorrhoea and syphilis. I also find it very difficult to take [the] Pre-Exposure Prophylaxis correctly because it makes me vomit. So I'm very afraid of becoming HIV-positive, as has happened to colleagues I know.

(...) Because of the law, many of us have to be more mobile, travelling further to work, which means missing hospital appointments, having poorer medical care and sometimes interrupting our treatment. (...) Since the law came into force, we've had to adapt to the demands of our clients, which means accepting appointments even late at night when there's no metro and only escorts are willing to travel. Many male sex workers have to agree to 'chemsex', which means taking drugs during sex, or even having to bring the drugs themselves. In the past, it was up to the clients to provide the drugs, and they didn't negotiate on this point.

(...) Before the 2016 law, I could charge 200 euros for an hour and now I can only charge a maximum of 100 euros. I know escorts who accept sex for €50. Street prices have dropped to as little as €10 for a blow job in the woods. If I refuse to do bareback sex, I hardly get any customers. For me, it's obvious that penalisation has had a negative impact on prices in the sex industry and the normalisation of unprotected sex, because there's a domino effect that spreads from one sector of the sex industry to another.

In any case, that was the aim of the advocates of the law, who always said that sex work had to earn less money so that we'd have to do something else. But by doing this, I feel that they are putting my health and safety at risk, and dictating to me what sexual conduct I should have, even though I'm not harming anyone. I'm registered with URSSAF as a sex worker, and I pay my taxes, but I'm not a citizen like the others, as if my life had no value, that I could die tomorrow and nobody would care. On the contrary, it'll be one less whore and they'll be able to say it's a success in their moral crusade against evil (...).

**S.T., 16 November 2021 (application <sup>no.</sup>  
63664/19)**

"(...) From an unconventional but autonomous, independent and secure workplace with a great deal of mutual support, respectful customers and a choice of practices and clientele, we saw our working conditions gradually slide and worsen until the law was passed. And it's been getting worse ever since.

Since 2015, I've been suffering from depression, as have many of my colleagues. Some have committed suicide.

Before this law, I could sort and choose the customer. Now that it's scarce, I'm taking risks.

Some of our colleagues have been assaulted and robbed, something that never used to happen in our optimal security conditions and with respect for the people who used to seek our services before the law.

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The law has done nothing to get me or my colleagues out of the precarious position into which it has plunged us.

The law does nothing to protect us from stigmatisation and violence.

The law has taken away my autonomy, my ability to plan my life and my pride as a mother who can give her child a good education.

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

For me, the worst violation of people's rights in this provision prohibiting the purchase of sexual acts, but also in all the provisions of the 2016 law in general (...) is that the law considers the person who prostitutes himself to be mentally and morally incapacitated.

Under this law, the State becomes the de facto guardian, my guardian, and what an unworthy guardian it is, with an infamous exit route at 400 euros a month, conditional, below the poverty line, equivalent to the average French person's monthly budget for their pets, with low-level training courses, people who work or stop working are placed in an extremely precarious position, and are exposed to the worst violence caused by being stigmatised as a victim and as a "person in a situation of", the guardian of all these people deciding for them because he or she is legally incapacitated.

(...) These provisions are incompatible with respect for the rights of individuals to self-determination and cannot be proven to be scientifically, morally or socially true.

The state reproduces what is most detrimental to people's emancipation: deciding for themselves. The legislature, embodied in this case by state feminism, is taking over from patriarchy and maintaining the continuum of domination over the bodies and self-determination of the people concerned, without providing any viable solution for the people concerned, and worse, without any of the measures in the 2016 law having any effect on the issues at stake: eradicating violence and exploitation, and improving emancipation, whether they are sex workers or not".

**H.D., 16 November 2021 (application n<sup>o</sup>.  
63664/19)**

"(...) since clients have been penalised, I've had to change the way I work. I no longer look for clients on the street but via ads on the Internet, because clients no longer come on the street because of the fear of being penalised. To be able to work, I have to work as a mobile sex worker all over France via ads on the Internet and have to use intermediaries to write my ads, find work flats and answer customers' calls, as my level of French is not good enough.

For me, this means a loss of autonomy and a loss of income, and I find myself in a more precarious situation than before. Working via the Internet in the provinces is particularly dangerous, because I'm always alone in the flat and don't know anyone in the city. When I have customers who are violent or come to rob me, I have less support from my friends and fewer resources to defend myself".

**M.L., 16 November 2021 (application n<sup>o</sup>.  
63664/19)**

"[I] hereby attest to having suffered violence since the law of April 2016 which penalises clients of prostitution. Indeed, in December 2017 I accepted a client

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that I wouldn't have accepted before, he hit me badly and stole money from me. In July 2020, a customer pulled out a knife and asked me for money. I had taken the risk of accepting him because the number of customers has fallen since the 2016 law penalising customers and my financial situation is more precarious.

What's more, since the law penalising clients, between April 2016 and the end of 2020 there has always been a group of assailants who stay in the building, stealing from and threatening my clients on a very regular basis. This has worsened my financial situation.

To be able to work, I've had to change the way I work and now I do sex work on the move all over France via ads on the Internet. This means I have to use intermediaries to write my ads and find flats to work in, as my level of French is not good enough. I also suffer more violence in the provinces because I'm in a more isolated situation. On 23 April 2021 in Lyon, I was the victim of two assailants who had made an appointment as customers, but as soon as they arrived in the flat, they hit me and demanded money. They came back twice in the same day. Then, on 25 August 2021 in Bordeaux, a client raped and strangled me. He stopped when my flatmate came home and then hit me and robbed me. Since the law penalising customers, I find myself in a more precarious situation and in danger than before, with a loss of autonomy as well as a loss of income."

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

"I hereby certify that I have been subjected to violence since the criminalisation of johns.

In 2016 I was the victim of aggravated robbery with violence by three individuals on three occasions. I was also the victim of rape in 2016. I accepted a client that I wouldn't have accepted before, but I took the risk of accepting him because I'd had very little work and very little income for several days, as the number of clients has dropped since the law penalising clients in 2016.

I should point out that I still work via ads on the Internet and that I still receive clients, but I've had to adapt my working methods (working hours, duration, etc.) and reduce my criteria for choosing clients (or even stop choosing at all when I don't have many clients) in order to be able to work.

Indeed, since the 2016 customer penalties, there are more and more customers who negotiate prices and practices, and I sometimes have to accept prices set by customers. What's more, former good customers can become aggressive. On two occasions, in 2018 and 2020, two former customers, with whom things had previously gone well, threatened me and demanded money after the 'pass'.

As a result, I'm at great risk of violence and losing a lot of income, and I'm in a much more precarious situation than before.

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

"[I] hereby attest to having suffered violence and loss of autonomy since the April 2016 law penalising clients of prostitution.

Since customers were penalised in 2016, I've had to change the way I work. I no longer look for customers in the street because the number of customers has dropped and I have less and less work. So I was forced to change the way I work, by looking for clients on the Internet. But since I've been receiving

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the customers via the adverts, I find myself more exposed to violence because I can't choose the customers in advance and can't refuse some of them like before, when I used to look for customers in the street.

What's more, I have to use intermediaries to write my adverts and find work flats, because my level of French is not good enough. I'm dependent on them, I'm no longer independent in my work and I find myself in a more precarious situation than before".

**J.W., 18 November 2021 (application n<sup>o</sup>.  
63664/19)**

"[I] hereby attest to having suffered violence since the April 2016 law penalising clients of prostitution.

Since 2016, the number of customers on the street has dropped significantly and my financial situation has become more precarious. Sometimes I have no customers and no work for several days. This forces me to accept customers that I wouldn't have accepted before.

The 2016 law penalises clients but in the end I find myself penalised and today I'm in a more precarious situation and in danger."

**M.S., 20 November 2021 (application n<sup>o</sup>.  
63664/19)**

"(...) Between 2012 and 2016, the number of calls I received every day was more than enough to enable me to make a strict selection of the people I agreed to meet. If I had the slightest doubt, I would refuse the appointment.

(...) When the so-called "customer penalisation" law was passed in April 2016, the number of calls I received dropped drastically. Some days I don't get any calls at all.

I'm now having to work longer shifts and I can't allow myself any more days off because there aren't enough customers.

In fact, since then I can no longer afford to be so selective about my clientele and I sometimes accept people I don't trust. I can no longer impose the use of condoms during oral sex, as this would cost me the few remaining customers.

More and more often I get inappropriate requests (unprotected sex, things I don't do) and I have to accept some disrespectful people who I would never have accepted before.

During the summer of 2018, my financial situation was at an all-time low and I could no longer afford to pay my rent. On 21 August 2018 I was forced to accept an appointment with someone who made me feel very uncomfortable. But I had no other choice if I wanted to be able to pay my rent.

This person arrived at the appointment, but in fact it was an assailant who had come with the sole intention of robbing me.

As I had no money at all, he raped and beat me, resulting in 21 days' total incapacity for work and 30 days' temporary psychological incapacity (case heard by the Paris court on 14 April 2021).

Following this attack, I was unable to work for more than 6 months. Since then I've lived in terror that it would happen again.

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(...) To be on the safe side, I went to work in a 'massage parlour', which meant giving a large part of my earnings to a third party. (...) Today I continue to work on my own, but I no longer earn enough to live on properly. I was forced to move out of my home because I couldn't afford the rent.

## II. PROCEEDINGS BEFORE THE COUNCIL OF STATE

7. On <sup>1</sup> June 2018, the sex work union and the NGOs Médecins du monde, Parapluie rouge, Les amis du bus des femmes, Cabiria, Griselidis, 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; M.C., application no. 64450/19) submitted a request to the Prime Minister for the repeal of Decree no. 2016-1709 of 12 December 2016 relating, in particular, to the awareness-raising course to combat the purchase of sexual acts, an additional penalty introduced by the Law of 13 April 2016 (codified in Articles 131-16 <sup>90</sup> bis and 225-20 I <sup>90</sup> of the Criminal Code).

8. On 5 September 2018, they applied to the Conseil d'État to have the Prime Minister's implied decision to reject their application annulled on the grounds of ultra vires. In particular, they argued that the decree lacked a legal basis because it had been issued to implement legislative provisions that were contrary to the Constitution and Article 8 of the Convention.

9. The plaintiffs asked the Conseil d'État to refer to the Conseil constitutionnel the question of whether Articles 611-1, 225-12, 131-16 <sup>90</sup> bis and 225-20 I <sup>90</sup> of the Criminal Code, as amended by the Law of 13 April 2016, were consistent with the rights and freedoms guaranteed by the Constitution.

10. The Council of State referred this question to the Constitutional Council in a decision dated 12 November 2018.

### A. The Constitutional Council's decision of <sup>1</sup> February 2019

11. On <sup>1</sup> February 2019, the Constitutional Council handed down the following decision (no. 2018-761 QPC):

"5 [Articles 611-1, 225-12-1, 131-16 <sup>90</sup> bis and 225-20 I <sup>90</sup>] are criticised for criminalising any purchase of sexual acts, including when these acts are performed freely between consenting adults in a private space. This general and absolute prohibition would infringe the freedom of prostitutes and their clients in a way that could not be justified by the need to safeguard public order, combat pimping and trafficking in human beings or protect prostitutes. This would result in a breach of the right to respect for private life, as well as of the right to personal autonomy and sexual freedom that would flow from it. Secondly, there would be an infringement of the freedom of enterprise and the freedom of contract. Lastly, it is argued that criminalising all recourse to prostitution would contravene the principles of necessity and proportionality of penalties.



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6. Consequently, the priority constitutionality question relates to the first paragraph of Article 225-12-1 and Article 611-1 of the Criminal Code.

7. In addition, certain intervening parties maintain that the contested provisions would have the effect of increasing the isolation and secrecy of prostitutes, exposing them to increased risks of violence from their clients and forcing them, in order to continue to exercise their trade, to accept hygiene conditions that infringe their right to health protection.

The complaint alleging infringement of personal freedom :

(...) 9. It is for the legislature to ensure reconciliation between, on the one hand, the constitutional objective of safeguarding public order and preventing offences and, on the other hand, the exercise of constitutionally guaranteed freedoms, including the personal freedom protected by Articles 2 and 4 of the Declaration [of the Rights of Man and of the Citizen] of 1789.

(...) 11. On the one hand, it is clear from the preparatory work that, by choosing to penalise purchasers of sexual services in the contested provisions, the legislature intended, by depriving procurers of sources of profit, to combat that activity and trafficking in human beings for the purpose of sexual exploitation, criminal activities based on coercion and the enslavement of human beings. In so doing, it sought to safeguard the dignity of the human person against these forms of enslavement and to pursue the constitutional objective of safeguarding public order and preventing crime.

12. On the other hand, Article 61-1 of the Constitution does not confer on the Constitutional Council a general power of assessment and decision of the same nature as that of Parliament, but only empowers it to rule on the conformity with the Constitution of the laws referred to it for consideration. While the legislature has punished any recourse to prostitution, including when the sexual acts are performed freely between consenting adults in a private space, it has considered that the vast majority of people who engage in prostitution are victims of pimping and trafficking and that these offences are made possible by the existence of a demand for paid sexual relations. By prohibiting such demand through the impugned offence, the legislature has chosen a means that is not manifestly inappropriate to the public policy objective pursued.

13. It follows from all the foregoing that the legislature has ensured a reconciliation that is not manifestly unbalanced between, on the one hand, the objective of constitutional value of safeguarding public order and preventing offences and safeguarding the dignity of the human person and, on the other hand, personal freedom. The complaint alleging infringement of that freedom must therefore be dismissed.

Other objections :

(...) 16. Secondly, under the terms of the eleventh paragraph of the Preamble to the 1946 Constitution, the Nation "guarantees to all, in particular to children, mothers and elderly workers, the protection of health ...". It is not for the Constitutional Council to substitute its assessment for that of the legislature on the health consequences for prostitutes of the contested provisions, insofar as that assessment is not, in the current state of knowledge, manifestly inadequate. The complaint alleging infringement of the right to health protection must therefore be dismissed.

17. Lastly, the legislature is free to restrict the freedom of enterprise and the freedom of contract, which derive from Article 4 of the Declaration of 1789, on the basis of constitutional requirements or justified by the public interest, in the following ways

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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 infringement of entrepreneurial freedom and freedom of 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 infringe the right to respect for private life or any other right or freedom guaranteed by the Constitution, must be declared to be consistent with the Constitution. (...) "

## **B. Council of State ruling of 7 June 2019**

12. The Conseil d'État rejected the application in a ruling issued on 7 June 2019. Referring to the Constitutional Council's decision of <sup>1</sup> February 2019, it dismissed the plea relating to the alleged unconstitutionality of Articles 225-12-1 and 611-1 of the Criminal Code. It then dismissed the plea under Article 8 of the Convention on the following grounds:

" (...) 5. It emerges (...) from the parliamentary work prior to the adoption of the Law of 13 April 2016 that the legislator, having noted that the vast majority of people who engage in prostitution are victims of pimping and trafficking in human beings made possible by the existence of a demand for paid sexual relations, intended, by instituting a criminal offence punishing the fact of soliciting, by making it a criminal offence to solicit, accept or obtain sexual relations from a person who engages in prostitution in exchange for remuneration, a promise of remuneration, the provision of a benefit in kind or the promise of such a benefit, to deprive procuring of sources of profit, to combat this activity and trafficking in human beings for the purpose of sexual exploitation, and to safeguard human dignity and public order.

6. Where prostitution is forced, it is incompatible with human rights and dignity. The decision to prohibit the demand for paid sexual relations by the offence introduced by the contested provisions of the Law of 13 April 2016 is based on the finding, as stated in paragraph 5, that the vast majority of persons who engage in prostitution are victims of pimping and trafficking in human beings, which are made possible by the existence of such a demand. In those circumstances, even though they are likely to be aimed at sexual acts purporting to be performed freely between consenting adults in a private space, the provisions at issue cannot, having regard to the public interest objectives which they pursue, be regarded as constituting an excessive interference with the exercise of the right to respect for private life protected by Article 8 of the Convention (...). It follows that the plea alleging that the Decree of 12 December 2016 was adopted in order to implement legislative provisions incompatible with those stipulations must be rejected (...)"

## **THE RELEVANT INTERNAL LEGAL FRAMEWORK AND PRACTICE**

13. In the *V.T. v. France* judgment (no. 37194/02, §§ 24-25, 11 September 2007), the Court found that, like other member States of the Council of Europe, the

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In Europe, France has opted for a so-called "abolitionist" approach to prostitution, in line with 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 (ratified by France on 19 November 1960): prostitution is deemed incompatible with human dignity; however, it is neither prohibited - unlike procuring, which is punished - nor controlled.

14. French law has evolved since the *V.T. v. France* judgment. The Government states that "the French legislature has chosen to make the purchase of any sexual act punishable on the grounds that: 1) prostitution is violence in itself and the body is not a commodity that can be bought with contempt for the "dignity of the human person", a principle that has constitutional value and is recalled in the Civil Code (Chapter 2 "Respect for the human body"); 2) the vast majority of people who engage in prostitution are victims of trafficking in human beings for the purpose of sexual exploitation (...) ". Law no. 2016-444 of 13 April 2016 "aimed at stepping up the fight against the prostitution system and supporting prostitutes", the first five chapters of which concern the strengthening of the means of combating pimping and trafficking in human beings for the purposes of sexual exploitation, the protection of victims of prostitution and the creation of a pathway out of prostitution and into social and professional integration, prevention and support for prostitutes in seeking care, prevention of prostitution and recourse to prostitution, and prohibition of the purchase of a sexual act. In particular, it repealed the offence of public soliciting (which was provided for in the former article 225-10-1 of the Criminal Code) and made the purchase of sexual relations a criminal offence. In particular, it inserted the following articles into the Criminal Code:

**Article 611-1**

"Soliciting, accepting or obtaining sexual relations from a person engaged in prostitution, even on an occasional basis, in exchange for remuneration, a promise of remuneration, the provision of a benefit in kind or the promise of such a benefit is punishable by a fine of up to €1,500 for a 5th class offence.

Natural persons guilty of the offence referred to in this 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**

"When committed as a repeat offence under the conditions set out in the second paragraph of article 132-11, soliciting, accepting or obtaining sexual relations from a person who engages in prostitution, including on an occasional basis, in exchange for remuneration, a promise of remuneration, the provision of a service or the use of a prostitute's services, is punishable by a fine of up to one million euros.

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A fine of €3,750 will be imposed on anyone who offers or promises a benefit in kind.

Soliciting, accepting or obtaining, in exchange for remuneration, a promise of remuneration, the provision of a benefit in kind or the promise of such a benefit, is punishable by three years' imprisonment and a fine of 45,000 euros, sexual relations from a person who engages in prostitution, even on an occasional basis, when that person is a minor or is particularly vulnerable, whether apparent or known to the perpetrator, due to illness, infirmity, disability or pregnancy. " (This provision was amended by Law <sup>no.</sup> 2021-478 of 21 April 2021 aimed at protecting minors from sexual offences and incest: the penalty is now five years' imprisonment and a fine of €75,000).

THE OPINIONS OF THE NATIONAL CONSULTATIVE  
COMMISSION FOR HUMAN RIGHTS AND THE  
DEFENDER OF RIGHTS ON THE BILL TO STRENGTHEN  
THE FIGHT AGAINST THE PROSTITUTION SYSTEM

15. On 22 May 2014, the National Consultative Commission on Human Rights ("CNCDH") issued the following opinion:

" (...) 19. Articles 16 and 17 of the proposed law aim to prohibit and punish the purchase of a sexual act, and the CNCDH considers that they are problematic in more ways than one. The need to make the clients of prostitution accountable and the expressive and educational functions of criminal law are arguments that can be put forward in favour of prohibiting the purchase of a sexual act and penalising the clients of prostitutes. However, penalising the client will necessarily have repercussions for the prostitute, since the prohibited act requires a partner who is involved in prostitution. Thus, even if it is the client who is penalised and not the prostitute, these provisions indirectly tend to consider prostitution as an illegal activity.

20. The CNCDH also questions the legislature's decision to base its fight against prostitution on the infringement of the principle of dignity, without taking the precautions that this would require, especially as the hearings it has held show how divisive the issue is. In this respect, she points out that the various works of the Constitutional Council, the Council of State and the Committee tasked in 2009 with considering the rewriting of the Preamble to the 1958 Constitution emphasise, beyond the eminent nature of this principle, its ambivalence (...).

21. The draft law also approaches the issue of prostitution through the prism of equality between women and men: because it is a sexual act imposed by money and financial constraint, prostitution is in itself violence against women and an obstacle to equality. Firstly, the CNCDH notes that the diversity of prostitution situations (female, male and transgender) makes it difficult to invoke the principle of equality. Secondly, it notes that legislation on trafficking and exploitation, the repression of the use of prostitution of minors or particularly vulnerable people, legislation on rape, etc. are all legal means that already make it possible to punish forms of forced prostitution and the violence that occurs.

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22. Moreover, the relevance of the provision to penalise the client seems questionable, as it is likely to be counterproductive. Penalising customers would in fact relegate prostitutes to more remote and therefore more dangerous locations. The power to "negotiate" with customers and the customer's choice would be reduced, and it would be more difficult for medical and social workers to gain access to prostitutes. There would also be a risk of greater distrust of the police and therefore less inclination to turn to them in the event of violence, which would in fact be a step backwards for the law. This paradoxical benevolence would lead to circumvention strategies that would have a serious impact on the health and rights of prostitutes.

23. In truth, rather than introducing a new repressive instrument, it would be better to look at the rarity of prosecutions and convictions in cases where a minor resorts to prostitution. (...) The CNCDH believes that prosecuting the clients of minors should be a top priority of criminal policy.

24. Penalising customers, which is difficult to implement, is likely to have an impact only on visible prostitution, street prostitution, and not on other forms of exploitation of prostitution. It will undoubtedly contribute to accentuating the development of other forms of prostitution, known as "indoor" prostitution. However, this "invisible" prostitution is more mobile, even elusive. As the victims of these forms of exploitation are less accessible to associations and public authorities, the problem arises of how to provide them with care and support. What's more, in a Europe with heterogeneous legislation, penalising customers risks pushing them back to the borders (see what is happening on the Franco-Spanish border, at La Junquera, or what is happening in Danish territorial waters, between Sweden and Denmark).

25. If the aim is to include prostitution within the scope of violence and offences against human dignity, why is the new offence of recourse to prostitution considered to be no more than a minor disturbance of the peace, punishable by a 5th class fine? What, moreover, is to become of the symbolism of the criminal law if, in addition to the uncertainty surrounding the effectiveness of its implementation, the ban is discredited by the weakness of the accompanying fine? Finally, effective repression will require the introduction of surveillance systems, the generalisation of which will obviously contradict the requirements of a free society.

(...) Recommendation <sup>no.</sup> 8: the CNCDH considers that prohibiting the purchase of a sexual act and penalising clients of prostitution is not an appropriate measure for combating trafficking and the exploitation of prostitution (...).

16. On 16 December 2015, the Defender of Rights issued the following opinion (<sup>No.</sup> 15-28):

"(...) The Defender points out that banning the purchase of a sexual act, based on the Swedish model, is not the most effective measure for "reducing prostitution and dissuading trafficking and pimping networks from establishing themselves in the territories" and even less "the most protective solution for people who remain in prostitution" as announced in the bill.

Apart from the fact that, in France as in Sweden, we have no reliable figures and it is therefore difficult to quantify the effects of the law on the prostitution system, the Swedish model cited as a reference is now highly controversial.

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Thus, the impact of such a provision on prostitution in France is likely to be limited or non-existent. On the other hand, the effects on people's health, safety and access to fundamental rights have been well documented by international (WHO, UNAIDS, UNDP) and French (CNS, IGAS, INVS) institutions. Like the effects of criminalising soliciting in France, criminalising customers will increase the precariousness of prostitutes by forcing them further underground. Such a measure will move street prostitution to ever more remote and/or isolated areas, worsening the already difficult conditions in which it is practised.

This increased secrecy will make it more difficult for the police to combat trafficking and procuring. How can we fight the networks when the victims are no longer visible or accessible?

This provision will also have the effect of exposing prostitutes even more to the violence of certain clients and to contamination by HIV and/or viral hepatitis. The WHO, UNAIDS and the CNS all agree that criminalising prostitution is detrimental to the health of those who practise it. Whether or not they are forced into prostitution, people offering paid sexual services will find their negotiating skills reduced, forcing them to accept certain practices or unprotected sex.

What's more, their access to prevention and care will be even more problematic, as they will be cut off from the support networks of existing voluntary and medical organisations, and prevention workers will find their work more complex. How can we apply a genuine harm reduction policy, even though it is enshrined in law, when prostitutes work in places that are not well known or inaccessible to associations?  
?

Finally, by confusing sex work with delinquency, the criminalisation of prostitution increases the legal vulnerability of prostitutes, who are sometimes victims of police harassment, abusive police custody and humiliation. As a result, the associations are observing greater distrust of the police and less recourse in the event of violence. Instead of being a source of protection, punishing clients for engaging in prostitution hinders prostitutes' access to their rights (...)".

## THE SURVEY ON T H E IMPACT OF THE ACT OF 13 APRIL 2016

17. A survey was conducted between 2016 and 2018 under the supervision of two researchers in political science and sociology and in cooperation with associations to assess the impact of the law of 13 April 2016 on the living and working conditions of sex workers. Seventy individual interviews were conducted with prostitutes (thirty-eight others were consulted via focus groups and workshops), and twenty-four interviews and focus groups were organised with prostitutes' associations. At the same time, a quantitative survey was carried out, to which five hundred and eighty-three prostitutes responded.

18. Entitled "que pensent.se.s du sexe de la loi prostitution - enquête sur l'impact de la loi du 13 avril 2016 contre le système prostitutionnel" and published in April 2018, the survey report highlights the following in particular (excerpts from the executive summary):

"(...) despite the law's intention to protect people, the majority of sex workers interviewed felt that penalising clients was more detrimental to them than the previous measure penalising public soliciting. The vast majority of respondents felt that they had less control over their working conditions, despite the fact that the number of clients has fallen since the law was passed, and even during the period of debate, given the high level of media coverage. Sex workers' incomes have been hit hard. In these circumstances, almost all those surveyed were against penalising clients.

(...) Although sex workers have continued to work since clients were penalised, their working conditions have deteriorated significantly. Despite what the law announced, namely that penalising demand (clients) would also reduce supply, interviews with associations indicate that there has been no decline in the number of sex workers. The negative effects of the law are felt on their safety, health and living conditions in general. The law has had a negative impact on their autonomy at work, on the risks they are led to take, on their stigmatisation and on their economic situation. Almost all the sex workers and all the associations interviewed describe a loss of power in the relationship with the client: the latter more often imposes his conditions (unprotected sex, lower prices, attempts not to pay, etc.) because he is the one taking the risks. This situation leads to impoverishment, especially for those already in precarious situations, particularly migrant women working on the street.

62.9% of respondents to the quantitative survey said that their living conditions had deteriorated since April 2016, and 78.2% said that their income had fallen. This situation is leading them to take more risks at work, and the impact on their health is worrying. Indeed, the qualitative interviews reveal a worrying decline in condom use, as well as breaks in treatment for HIV-positive people. The stress caused by precarious living conditions is leading to a range of psychosomatic problems, some of which include alcohol, tobacco and other substance abuse, and even suicidal thoughts. The results of the qualitative survey show an increase in violence in many forms: street insults, physical violence, sexual violence, theft and hold-ups in flats. Poverty, risk-taking sexual practices and exposure to violence form a vicious circle.

(...) Two years after the law was passed, it is the repressive aspect that has had the greatest impact on sex workers, exacerbating situations of insecurity, violence and stigmatisation and exposing them to health risks (...)"

## GRIEVANCES

19. Invoking Articles 2 and 3 of the Convention, the applicants maintain that the French law, which makes the purchase of sexual relations a criminal offence, seriously endangers the physical and mental integrity and the health of persons who, like them, practise prostitution.

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prostitution. France is said to have driven prostitutes underground and into isolation. This would have made them more vulnerable to their clients, who would be in a better position to be violent towards them with impunity or to impose risky practices on them, would have exposed them more to theft, aggression, stigmatisation and risks of contamination, and would have restricted their access to prevention, care and integration services.

20. Relying on Article 8 of the Convention, the applicants contend that the criminal prosecution of the use, even between consenting adults and even in purely private spaces, of sexual services in return for payment radically undermines the right to respect for the private life of prostitutes and their clients insofar as it includes the right to personal autonomy and sexual freedom.

## IN LAW

### I. JOIN REQUESTS

21. Given the similarity of the applications, the Court considers it appropriate to examine them together in a single decision.

### II. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 8 OF THE CONVENTION

22. The applicants invoke Articles 2, 3 and 8 of the Convention, under which :

#### **Article 2**

" 1. Everyone's right to life shall be protected by law. Death shall not be inflicted on anyone intentionally, except in execution of a sentence of death pronounced by a court of law in cases where the offence is punishable by this penalty by law.

2. Death shall not be regarded as inflicted in contravention of this article where it results from the use of force rendered absolutely necessary:

- a) to defend everyone against unlawful violence;
- b) to effect a lawful arrest or to prevent the escape of a person lawfully detained ;
- c) to suppress a riot or insurrection in accordance with the law.

#### **Article 3**

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment.



**Article 8**

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

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 or public safety, for 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 applicants' status as victims**

*1. Submissions of the parties*

**a) The government**

23. The Government considered that the applicants could not claim to be victims within the meaning of Article 34 of the Convention.

24. First of all, it points out that the criminal provisions complained of do not target prostitutes, but their clients. He points out that the legislature wished to change the face of prostitution by creating an offence to be prosecuted by the client and abolishing the offence of soliciting by the prostitute, thereby showing that the offender was the client rather than the prostitute. It argues that the vast majority of prostitutes in France are subject to human trafficking and pimping networks (it refers in this respect to the travaux préparatoires), and that by prohibiting and punishing the purchase of sexual acts, the legislature intended to take the necessary measures to safeguard the dignity of individuals. This would appear to be the most appropriate way of effectively combating prostitution that is forced or practised under duress, which violates the dignity of the individual. The Government observed that the applicants, who were engaged in prostitution and were not covered by the provisions they complained of, could not be considered victims within the meaning of the case-law.

25. The Government added that the applicants did not allege any specific fact that had affected them individually and did not provide "plausible and convincing evidence of the likelihood of a violation occurring and having an impact on them", but merely produced the study published in 2018 that had been submitted to the Conseil d'État, based on seventy individual interviews, twenty-four group interviews and a questionnaire to which five hundred and eighty-three people responded, which acknowledges that the results it presents cannot be considered entirely representative of all sex workers in France. In the Government's view, the applicants' action amounted to a denunciation *in abstracto* of the French legislation, which had no other purpose than to protect them.

26. Lastly, the Government noted that only four of the applicants had submitted applications to the domestic administrative and constitutional courts.

**b) The applicants**

27. The applicants point out that an individual may claim that a law infringes his or her rights in the absence of individual acts of implementation, and thus of a declaration that the law has been infringed. They argue that a person is a "victim" within the meaning of Article 34 if he or she belongs to a category of persons at risk of suffering directly the effects of the legislation. They argued that the existence of a criminal offence which simply prohibits the unrestricted purchase of sexual practices deprives them of the possibility of exercising their professional activity freely and safely, thereby affecting their rights to life, physical integrity and personal autonomy and to sexual freedom as guaranteed by Articles 2, 3 and 8 of the Convention.

28. The applicants pointed out that the Government had not substantiated the assertion that the vast majority of prostitutes were subjected to trafficking networks or situations of great vulnerability, but had merely referred to the positions taken by the rapporteur of the draft law. Referring to a survey carried out in 2015 by N. Mai, Professor of Sociology and Migration Studies at London Metropolitan University, they claim that 7% of sex workers are victims of trafficking in France (11% in the case of foreigners alone), which is comparable to other neighbouring countries such as the United Kingdom, Denmark and the Netherlands. In their view, the fact that professional prostitution can sometimes lead to situations of exploitation and coercion should not disqualify the very possibility of free practice.

29. The applicants state that criminalising the purchase of sexual acts encourages sex workers to become isolated and clandestine, thereby fuelling crime, violence and the risk of contamination, and restricting access to prevention, care and rehabilitation services. They refer to the survey mentioned by the Government ("*Que pensent.se.s du sexe de la loi prostitution - enquête sur l'impact de la loi du 13 avril 2016 contre le système prostitutionnel*"), carried out under the supervision of two researchers in political science and sociology and in cooperation with NGOs such as Médecins du monde. The report on this study states that, according to the prostitutes interviewed, the consequences of the 2016 law have been an increase in their marginalisation and the precariousness of their situation, as well as their exposure to risks of aggression and practices that are dangerous to their integrity or health, and their distance from care and support structures.

30. The applicants also refer to the above-mentioned testimonies (paragraph 6 above) of sixteen male and female sex workers, who describe how their situation has worsened since the criminalisation of the purchase of prostitution.

2. *Comments from third parties*

31. The Norwegian Government stated that they were not in a position to assess whether the applicants were victims within the meaning of Article 34 of the Convention. The other third-party interveners did not raise this question.

3. *The Court's assessment*

32. The Convention does not recognise *actio popularis* and it is not normally the Court's task to examine the relevant legislation and practice in the abstract, but to consider whether the manner in which they were applied to or affected the applicant gave rise to a breach of the Convention (see, for example, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, and the references cited therein).

33. It follows that in order to lodge an application under Article 34 of the Convention, a person must in principle be able to show that he or she has "directly suffered the effects" of the measure complained of. This condition is necessary for the protection mechanism provided by the Convention to be triggered, although this criterion must not be applied in a rigid, mechanical and inflexible manner throughout the proceedings (*ibid.*).

34. An individual may, however, claim that a law violates his or her rights in the absence of individual acts of enforcement, and thus claim to be a (potential) "victim" within the meaning of Article 34, if he or she is obliged to change his or her conduct on pain of prosecution or if he or she is in a category of persons liable to suffer directly the effects of the legislation (see, in particular, *Burden v. United Kingdom* [GC], no. 13378/05, §§ 33-34, ECHR 2008, *Michaud v. France*, no. 12323/11, ECHR 2012, §§ 51-52, and *S.A.S.*

*c. France* [GC], no. 43835/11, § 54, ECHR 2014 (extracts)).

35. The Court also accepts that a relative of a direct victim of a violation of the Convention may claim to be an (indirect) victim of that violation. This concerns above all cases where the direct victim has died or disappeared in circumstances alleged to engage the State's responsibility (see *Legal Resource Centre on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 98-100, ECHR 2014, and the references therein). The Court indicated more broadly in *Vallianatos and Others v. Greece* [GC] (nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)) that Article 34 of the Convention covers not only the direct victim or victims of the alleged violation, but also any indirect victim to whom the violation would cause harm or who would have a valid personal interest in obtaining an end to it.

36. In the present case the Court notes, firstly, that the applicants are not complaining of an individual measure which, if taken against them, would have directly affected their rights under the Convention.

37. Secondly, it notes that the applicants, who do not maintain that individuals like themselves who engage in prostitution derive their status as victims from that of others, do not claim to be indirect victims of the violations of the Convention which they complain of, within the meaning of the case-law referred to in paragraph 35 above.

38. Thirdly, the Court notes that the Law of 13 April 2016 abolished the offence of public soliciting, thereby decriminalising the activity of prostitutes (see paragraph 14 above), and that only clients of prostitution are liable to be prosecuted on the basis of Article 611-1 of the Criminal Code. It is therefore clear that people such as the applicants who engage in prostitution are not obliged to change their behaviour.

"In addition, it is certainly credible that the criminalisation of the purchase of prostitutional services discourages potential clients of prostitution. Moreover, it is certainly credible, to say the least, that the criminalisation of the purchase of prostitutional services discourages potential clients of prostitution - that is, moreover, the effect sought by the legislature - and therefore affects the activity of persons engaged in prostitution, and the applicants produce evidence tending to show that the clandestinity and isolation induced by that criminalisation increase the risks to which they are exposed. However, while it is clear that prostitutes suffer the effects of this law, they do not, at first sight, suffer them directly, since Article 611-1 of the Criminal Code concerns a category of persons other than that to which they belong, since it does not target the behaviour of prostitutes but that of their customers.

39. On the latter point, however, the Court emphasises that, as illustrated by *Open Door and Dublin Well Woman v. Ireland* (29 October 1992, Series A no. 246-A) and *Vallianatos and Others* (cited above), the "direct" nature of the effects of the legislation at issue on the situation of the category of persons to which an applicant belongs must be assessed with a degree of flexibility. It reiterates the need for a flexible application of the criteria for determining victim status (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 54, ECHR 2012). An excessively formalistic approach to this concept could render ineffective and illusory the protection of the rights guaranteed by the Convention (see, for example, *mutatis mutandis*, *Ziętal v. Poland*, no. 64972/01, § 59, 12 May 2009).

40. In *Open Door and Dublin Well Woman*, two women of childbearing age (among others) complained under Article 10 of the Convention that non-governmental organisations and their employees or agents were permanently prohibited by court order from "assisting pregnant women (... to travel abroad for the purpose of having an abortion, by informing them of a clinic, by arranging for their travel or by informing them of the name of a particular clinic or clinics, their address and how to contact them, or in any other way". After pointing out that "Article [34 of the Convention] entitles individuals to argue that a law violates their rights per se, by

In the absence of an individual act of enforcement, if they are likely to suffer directly from its effects", the Court found that, although it was not contended that the two applicants were pregnant, "they were undoubtedly among the women of child-bearing age who could suffer from the restrictions complained of". The Court added that, "since the measure complained of was likely to affect them directly, they did not attempt to discuss in the abstract the compatibility of Irish law with the Convention". It concluded that they could claim to be victims.

41. In *Vallianatos and Others*, persons living in same-sex couples claimed to be the victims of a breach of Article 14 in conjunction with Article 8 as a result of a 2008 law that allowed only heterosexual couples to enter into a "cohabitation pact". Noting that the law excluded homosexual couples from its scope, who were therefore unable to conclude a cohabitation pact and organise their relationship as a couple in accordance with the legal regime prescribed by the law, the Court held that they were "directly concerned by the situation and [had] a legitimate personal interest in seeing it brought to an end", and that they were therefore to be regarded as "victims" of the alleged violation within the meaning of Article 34 of the Convention.

42. The Court thus considers that persons who allege that their own rights under the Convention are affected by a law may in certain circumstances claim to be victims of a breach of those rights even though the law in question does not directly govern their conduct, provided that the law creates a situation whose effects they directly suffer in the enjoyment of those rights.

43. This is the case here. Article 611-1 of the Criminal Code admittedly does not directly govern the conduct of persons who, like the applicants, engage in prostitution. It does, however, create a situation from which they directly suffer the effects. Firstly, because it is part of a legislative reform of the legal regime governing the prostitution in which they engage, and because the offence of purchasing sexual relations which it punishes presupposes the involvement of prostitutes. Secondly, and more specifically, because, according to the applicants, the criminalisation of the clients of prostitution that it introduces drives prostitutes underground and into isolation, exposing them to greater risks to their physical integrity and their lives, and affecting their freedom to determine the terms of their private lives, thereby infringing their rights under Articles 2, 3 and 8 of the Convention.

44. It follows that the applicants can claim to be victims, within the meaning of Article 34 of the Convention, of the violation of their rights under Articles 2, 3 and 8 of the Convention complained of, and that the Government's preliminary objection in this regard must be dismissed.

## **B. Exhaustion of domestic remedies**

### *1. Submissions of the parties*

45. The Government submitted, firstly, that only the four applicants who had lodged applications nos. 64450/19, 24387/20, 24391/20 and 24393/20 had appealed to the Conseil d'État on grounds of ultra vires. He rejected the argument that it would have been futile for the other two hundred and fifty-seven applicants (application no. 63664/19) to avail themselves of that remedy on the ground that the legislative provisions at issue had been declared to be in conformity with the Constitution and that the plea alleging breach of Article 8 of the Convention had been expressly rejected by the Conseil d'État. He invited the Court to note in that regard that, although this reduced the prospects of success of the domestic remedies available to them, and although the complaints alleging breach of Articles 2 and 3 of the Convention had been raised in substance before the Constitutional Council, they had not been raised before the Conseil d'État. It further concluded that the four applicants who had lodged applications nos. 64450/19, 24387/20, 24391/20 and 24393/20 had exhausted domestic remedies only in respect of the complaint under Article 8.

46. The applicants pointed out in their applications that they were required to exhaust only effective domestic remedies capable of redressing their complaints and offering reasonable prospects of success. Since the breaches of the Convention complained of were structurally caused by shortcomings in the legislation, only an action against the law itself could satisfy that condition; the question of whether the criminal provisions at issue were consistent with the right to respect for private life and the right to protection of health and integrity had been referred to the Constitutional Council, and its decision of <sup>1</sup> February 2019 finding them to be consistent with the Constitution was binding on the courts. They added that not only the complaint under Article 8 of the Convention but also, in substance, those under Articles 2 and 3 had been raised in vain before the Conseil d'État. They cite an extract from the application-memorial lodged with that court on 5 September 2018, in which it is argued that criminalising the purchase of sexual acts is contrary to the imperative of protecting prostitutes, in particular their physical integrity and health, in that the punishment of that offence encourages their isolation and clandestinity by fuelling crime, violence and the risk of contamination and by restricting access to prevention, care and reintegration assistance services. In view of the decisions of the Constitutional Council of <sup>1</sup> February 2019 and of the Council of State of 7 June 2019, those of them who were not parties to the proceedings cannot be criticised for not having initiated a domestic remedy before applying to the Court.

2. *The Court's assessment*

47. In the Court's view, the question of exhaustion of domestic remedies was irrelevant in the context of the French legal system, since it had concluded that the applicants could claim to be victims in the absence of an individual measure. On this point it referred to the *S.A.S.* judgment.

*c. France* (cited above, § 61).

48. It is therefore only superfluous (*ibid.*) that the Court notes, firstly, that in the proceedings brought by NGOs and five individuals, including four of the applicants, for annulment of the Decree of 12 December 2016, the Constitutional Council examined the contested provisions of the Criminal Code in the light of the right to respect for private life, the right to personal autonomy and sexual freedom and the right to protection of health, and declared them to be consistent with the Constitution (see paragraph 11 above). On the other hand, in its subsequent decision of 7 June 2019, the Conseil d'État dismissed these same complaints by referring to the decision of the Conseil constitutionnel, as well as the complaint based on Article 8 of the Convention, on the grounds that "even though they are likely to target sexual acts purporting to be performed freely between consenting adults in a private space, the provisions at issue cannot, having regard to the public-interest purposes which they pursue, be regarded as constituting excessive interference with the exercise of the right to respect for private life protected by [that provision]" (see paragraph 12 above). It thus appears that, to a certain extent at least, the domestic court has ruled on the issues before the Court in the present applications.

49. The Government's preliminary objection concerning the exhaustion of domestic remedies should therefore be dismissed.

**C. Conclusion on admissibility**

50. Finding that the applications were not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they did not raise any other ground of inadmissibility, the Court declared them admissible.

For these reasons, the Court,

Resolves unanimously to join the applications;

*Declares* by a majority that the applications are admissible, all substantive grounds reserved.

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Done in French and communicated in writing on 31 August 2023.

Victor Soloveytchik  
Registrar

Georges Ravarani  
President



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APPENDIX

List of requests (anonymity has been granted)

No	Request No	Case name
1.	63664/19	Mr A. and 256 others v. France
2.	64450/19	Mr C. v. France
3.	24387/20	T. S. v. France
4.	24391/20	C. D. v. France
5.	24393/20	Mr S. v. France