

Sex Workers in Strassburg

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In 2016, France shifted its approach to regulating sex work, adopting an abolitionist stance. The [Law No. 2016-444](#) aimed “to strengthen the fight against the prostitution system and to support prostituted persons” criminalizes every purchase of sexual relations. The law follows the so called “Swedish Modell” which explicitly criminalizes the clients. However, since its inception, sex workers and advocacy organizations have raised their concerns about its severe detrimental effects on individuals who legally engage in sex work. In [M.A. and Others v. France](#) the European Court on Human Rights (ECtHR) declared the application of sex workers, who claimed to be victims of the sex buying ban, admissible. The Court did not rule on the merits at this stage – this will follow in a subsequent judgement. Nevertheless, this admissibility decision marks a milestone as, for the first time, the Court will examine whether a sex purchase ban violates the rights of sex workers as guaranteed in the European Convention on Human Rights. The ruling appears eagerly anticipated due to its legal precedent within Member States that have passed similar legislation.

The Road to Court

In December 2019, 261 sex workers lodged a complaint with the ECtHR claiming that the French ban violated their rights under [Article 2 \(Right to life\)](#), [Article 3 \(Prohibition of torture\)](#), and [Article 8 \(Right to privacy and family life\)](#) of the European Convention on Human Rights (ECHR). The applicants who “habitually engaged in prostitution, in a lawful manner under the provisions of French law” (para 4) stated that Law 2016-44 endangered the physical and psychological integrity as well as the health of sex workers.¹⁾ It also impaired sex workers and clients’ right to respect for private life, including personal autonomy and sexual freedom (para 1). The applicants had submitted several witness statements to the ECtHR, describing how their situation had deteriorated since the sex buying ban was enforced in France. They explained that the ban had led to a decrease in the number of clients, which in turn forced them to accept clients they would have otherwise rejected. This made it difficult for them to insist on safer sex practices, putting their health in jeopardy. Moreover, the ban had increased their isolation and exposition to assault and stigmatization (para 19), and thus, made them more vulnerable.

The Admissibility of the Application

The French ban only criminalizes the buyers, not the sellers. Thus, the first challenge in this case was to determine whether the applicants could claim to be victims of a human rights violation according to Article 34 ECHR. During the proceedings, the French Government opposed the victim status of the applicants. The government claimed that the ban only targets clients, not the sex workers themselves who could therefore not be considered “victims”. The ban was enacted under the assumption

that most people engaged in prostitution in France are victims of pimping and human trafficking. Therefore, the criminalization of the purchasing of sexual acts was deemed a necessary measure to preserve the dignity of sex workers (paras 23-24). On the other hand, the applicants argued that individuals could also be victims within the meaning of Article 34 and claim a violation of their human rights if – without individual acts of enforcement – they ran the risk of suffering directly from the effects of a legal provision. Since the sex purchase ban deprives the applicants of the possibility to exercise their professional activity freely and safely it affects their rights to life, physical integrity, personal autonomy, as well as to sexual freedom (para 27).

In its admissibility decision, the ECtHR first stressed that it was not its task to examine legal acts in abstract. Instead, the Court rules whether legal acts are applied in a way that violates the human rights of the applicants. Therefore, the applicants must prove that they are personally and directly victims of a violation of the Convention, and that they have suffered a significant disadvantage. Nevertheless, the ECtHR recognized that the sex buying ban negatively impacts sex workers, as it increases the risks, they are exposed to due to “the clandestinity and isolation induced by this criminalization” (para 28). Although the law in question does not regulate the conduct of the applicants themselves, the Court ruled that the applicants were entitled to claim to be “victims” within the meaning of Article 34, as they are directly exposed to the effects of the sex purchase ban while exercising their rights enshrined in the ECHR. Therefore, the majority of judges declared the application admissible.

The sex purchase ban – a success story?

In its judgement, the ECtHR will consider for the first time whether a ban on purchasing sexual services violates the human rights of persons involved in sex work. This judgement will not only affect the French legal system – France is neither the first, nor the only State which has criminalized the purchase of sexual relations. The so called “Swedish Model” has been adopted by many States since Sweden introduced the first sex buying ban law in Europe in 1999. This model considers sex work as a form of violence against women, frequently linked to human trafficking. The driving force behind sex work is seen in the demand for venal sex. As demand fades away, so should prostitution – and this shall be achieved by making the purchase of sexual relations illegal. However, the effectiveness of the Swedish model, which follows this approach, is contentious and subject to heated debates. A [study](#) conducted in Northern Ireland where the Swedish model was introduced in 2015, concludes that criminalizing the purchase of sexual relations did not lead to a significant reduction in prostitution and human trafficking. Both the *Commission National Consultative des Droits de l’Homme* and the *Défenseur des droits* had advised against adopting the Swedish model in France due to the lack of sufficient evidence demonstrating the positive effects on those engaged in sex work.

A matter of dignity

French lawmakers introduced the sex purchase ban, arguing that prostitution was a violent act that violated human dignity. However, this argument only holds true if prostitution is inherently linked with coercion and exploitation. In *M.A. and Others v. France*, the ECtHR will especially have to deal with this generalized assumption. The assumption is challenged by the complaint of over 250 applicants who – according to their own statement – pursue sex work voluntarily and by their own free will. If the Court does not want to label their claim of voluntary engagement in sex work as “false consciousness” from the outset, it will have to tackle the question of whether criminalizing the purchase of sexual services can be justified by the legitimate concern of combating exploitation and human trafficking, even it leads to the drastic deterioration of sex workers’ living conditions.

Most of the applicants are immigrants and/or gender minorities. This emphasizes not only their vulnerability but also the diverse nature of sex work, which goes beyond the stereotypical notion of the (oppressed) female sex worker and male client. Generalized approaches that ignore the perspective of sex workers fail to address this diversity. The testimony of the applicants shows that their dignity is not so much affected by the mere nature of their work, but the conditions under which they have to pursue their chosen (and lawful) profession. Thus, it is essential to determine the specific working conditions through a particular prostitution policy implemented by law. It may therefore be the other way round, namely that it is indeed the prohibition of purchasing sexual services, rather than the purchase of sexual relations itself, that violates the human dignity of sex workers.

In any case: A landmark decision

The Court’s decision on the admissibility of the application does not prejudice the merits of the case. The ECtHR will rule on the merits in a subsequent judgment. Nonetheless, already the admissibility decision has been celebrated as a [landmark decision](#) both for sex workers and their supporters. For the first time, a human rights court will consider whether a sex purchase ban violates sex workers’ rights from their perspective. In its admissibility decision, the ECtHR acknowledged the possibility of such a violation – at least. In a field where decisions are often made about and rarely with the affected, this is of particular importance. Regardless of what the Court’s final judgement may be, the fact that the claim has been deemed admissible is a landmark for access to justice. As migrants and/or members of gender minorities, the 261 applicants in the French case are not only especially vulnerable (see [here](#) for the particular vulnerability of migrant persons in sex work with regard to the ECHR), their voices are usually not heard. It is now up to the ECtHR to carefully listen to them.

References

- The admissibility decision is only available in French. All translations have been made by the author.

