

## Reversal of the burden of proof, the perspective of the French magistrate

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human rights  
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Ladies and gentlemen, dear friends,

I first want to express my thanks to the organizers of this important forum and especially the Chair of the Committee against Trafficking, Rosi Orozco.

The traditional and warm Mexican hospitality allows us to address together, in the best conditions, all aspects of that major crime, trafficking in human beings.

You just heard an excellent presentation of the spirit and actions of the new French comprehensive law.

As a French magistrate who had, throughout his career of judge and prosecutor, to combat all aspects of a criminal phenomenon in constant expansion, I will present how the new law brings impacts the investigations, the prosecutions and the judgments of Human trafficking.

If the law was passed only 6 months ago, it was clear for everybody, supporters or opponents of this law, it was intended to profoundly change the angle at which prostitution would now be considered by law enforcement authorities.

Litigation of trafficking in human beings has been for a long time, particularly since the great abolitionist Act of 1947, well-known by law enforcement actors.

In France judicial investigators are under the control of investigating judges and prosecutors.

Each year the French courts made nearly a thousand convictions for pimping and soliciting.

The criminalization of trafficking in persons has arisen in our criminal code since a 2003 law

It drew the consequences of the existence, in our territory of well organized criminal networks.

But at the same time it increased the criminalization of prostitutes by broadening the scope of the offense of soliciting by criminalizing simply passive behaviors.

The judge's reasoning was simple, it was to ensure that these offenses were regularly established against suspects who were presented.



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He then adapted the amount of the penalty according to the gravity of the offense, usually prison for traffickers and fines for prostitutes.

The consequence of this purely repressive approach, where the client was absent until 2003, was in an often cruel and violent operating system, that the victim was, for the judge only an offender.

The 2003 legislature goal that the prostitute, threatened with prosecution for soliciting, spontaneously gives information about the network which operates, proved illusory.

fear of trafficker was clearly stronger than the hope of police or justice protection.

Another objective of the 2003 Act was a great innovation, incrimination of customer of minor or vulnerable prostitutes, has also proved disappointing.

Only a handful of convictions was pronounced fault for the judge to retain the element of intent with certainty, i.e knowledge by the customer of the minority or the vulnerability of the prostitute.

Another shocking result of this unbalanced legislation, was that the prostitute was never recognized as a victim of crime and therefore did not have the legal and social protection measures that French law provides for a victim of crime.

Since the offense was not about the fact of buying sex, but on the characteristics of the victim, the burden of proof was made very difficult, especially given the limited cooperation from the victims, always threatened by their traffickers.

The April 2016 law intended specifically to correct these problems.

It has indeed changed the parallax of the fight against trafficking:

Now the judge can focus more coherently, because its targets are those responsible for the supply and demand for sexual exploitation rather than their victims.

Three main beneficial effects are expected here:

The first one is that prostitution is now in criminal law and in the spirit of the judges considered as a criminal market where it is the buyers and the sellers that are subject to prosecution, and not those that are sold

The effectiveness of the fight is reinforced because the boundary between what is prohibited and what is not, is clearly marked.

The title of the law itself is significant “law against the prostitution system”: it tells to the judge that the fight is against a system , an organization , and against those who use prostitution as those who make a profit of it , which is , as the Pope Francis name clearly as a crime against humanity.

The second one is on the burden of proof which is doubly facilitated



first by using powerful special investigative measures as the circumstances of organized crime is easily established,

then because proof of purchase of sexual services is facilitated through the production of online contacts on the internet that usually precede the passage to the act.

The third one is that working with victims can be easier when they are no longer threatened with prosecution for soliciting.

To ensure that these hopes will be realized, the Government has undertaken to implement the relevant devices

One example is illustrated by a circular from the Minister of Justice:

A few days after the vote of the new law against the prostitution system the French minister of justice has released a circular to all 2000 French prosecutors.

It presents the main provisions of the Act of April 2016, and invites prosecutors to take immediately all the consequences of the repeal of the offense of soliciting

It specifies contours of the new offense purchase of sexual services and anticipates the implementation of an upcoming awareness course for clients of prostitution.

It recalls the creation of a public fund financed by the confiscation of criminal assets of the traffickers, to fund social support for prostitutes.

It points in criminal proceedings the new measures favoring plaintiff associations and compensation procedure, as protection of victims.

Several prosecutors have already started to pursue clients on usual places of prostitution

Police estimated that by the end of summer more than 150 customers have been arrested.

For example, the prosecutor of Fontainebleau has given the choice, provided for by law, to be summoned before a court for trial or to pay a fine and to follow an awareness course on the realities of prostitution.

The prosecutor of Narbonne, in the south west of France, has asked the police to go regularly in places where prostitution is usual and routinely interpellate customers.

Naturally this is only the beginning.

The collective of French abolitionists associations which are originally behind this law will follow the implementation of all provisions of the new law

to raise awareness of judges and prosecutors new circulars are planned in particular to define a criminal policy accurate to the legislative will.



It will probably takes, as in Sweden, more time to change the cultural mindset and the legal culture of judges, who, like many of our countrymen have barely begun to realize the real issues of the fight against trafficking.

Our common mission in France as in Mexico, as in any other country, should be to show the alarming state of prostitution, how lucrative the sex business is now, how violence is everywhere.

we must also highlight good practices, good systems and good laws that allow us to roll back market where man is a product

In this spirit, I appeal to all people and organizations who share our values and our hopes, to exercise an active vigilance on the effective implementation of the French law, which is, I believe, a great opportunity to reduce these cruel injustices against women, children and men.

To conclude I would like to quote the great writer Carlos Fuentes when he stated at the UNESCO:

“We must defend and grow the life and values that give it its price: the art and love, solidarity and culture. And it's not because we do not know if we will succeed, we must give up trying.”

Gracias por su atención



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