European Human Rights Law Review
Case Analysis

Do sex workers have a right to have rights? Let the state decide and criminalise, says the European Court of Human Rights

M.A. and Others v. France (App. Nos. 63664/19 and others)
European Court of Human Rights (Fifth Section): Judgment of 25 July 2024

by **Mattia Pinto**

Background

Since the 1970s, sex workers worldwide have framed their struggle for civil and labour rights, as well as against marginalisation and stigmatisation, as a human rights issue.[1] The slogan "sex workers' rights are human rights" is not just a claim that the human rights framework applies to sex workers, but also an affirmation of their humanity and a rejection of their dehumanisation as "deviant others".[2] A key aspect of this struggle is the push for decriminalising the sex industry, which is seen as a precondition for the protection and recognition of the human rights of sex workers.[3] As early as 1985, the *World Charter for Prostitutes' Rights* demanded, as its first claim, to "[d]ecriminalize all aspects of adult prostitution resulting from individual decision".[4] This call recognised that "the right to make economic decisions in a climate free from criminalization and social control of sexuality" was central to securing sex workers' right to have rights.[5] However, some governments, along with some radical feminists, Christian evangelicals, and other anti-prostitution groups, present criminalisation as the primary tool not only to combat abuses allegedly inherent in the sex industry but also to ultimately abolish prostitution altogether. This opposition to prostitution also relies on human rights arguments. Abolitionists claim that sex work inherently violates gender equality and human dignity, asserting that no woman can truly consent to it. In essence, while sex workers argue that criminalisation, by driving the industry underground, fosters coercion, abuse, and exploitation, thereby violating human rights, prostitution abolitionists believe that criminalisation is the means to protect human rights.

[1] In this case analysis, I use the term sex work because many sex workers prefer it, as it emphasises that sex work is a form of labour and carries less stigma than the term prostitution. The term prostitution is used when discussing policy approaches that do not recognise sex work as legitimate labour, as well as when it is the term used in the judgment or legislation.

[2] C.A. Mgbako, "The Mainstreaming of Sex Workers' Rights as Human Rights" (2020) 43 Harvard Journal of Law & Gender 91, 99.

[3] M. Wijers, "Sex Workers Rights Are Human Rights: Or Not? The Art of Stealing Back Human Rights" in T. Sanders, K. McGarry and P. Ryan, *Sex Work, Labour and Relations. New Directions and Relations* (Palgrave MacMillan 2022).

[4] In G. Pheterson (eds), *A Vindication of the Rights of Whores* (Seal Press 1989) 40.

[5] Ibid 33-34. On the concept of the "right to have rights", see H. Arendt, *The Origins of Totalitarianism* (Harcourt Brace Jovanovich 1973).

There are various models of regulating sex work that rely on criminalisation. The one most commonly advocated by prostitution abolitionists is the 'End Demand' or 'Nordic Model', which allows the sale of sexual services but criminalises their purchase. Supporters of this model view it as a feminist policy because it targets (mostly male) buyers and third parties, rather than (mostly female) sellers of sexual services, thereby shifting criminal liability to the demand side.[6] By ostensibly eliminating all demand for sexual services, this policy is also seen as a means to combat human trafficking and the exploitation of minors in prostitution.[7] This model remains a minority approach in Europe and globally. Out of the 46 Council of Europe member states, only five and Northern Ireland (one of the legal jurisdictions in the United Kingdom) have implemented it. Since the model was first introduced in Sweden in 1999, sex workers have consistently and vehemently opposed it, presenting evidence that criminalisation—even when it targets buyers—makes sex sellers, particularly migrant workers, more vulnerable to violence and exploitation.[8]

In this context, the French Parliament introduced the End Demand model in 2016 through Law No. 2016-444, which criminalises, without exception, the purchase of sex and organisational aspects of sex work. The asserted aim is "to strengthen the fight against the prostitution system and assist prostituted individuals".[9] A group of sex workers, along with a sex workers' trade union and various human rights organisations, challenged the law in French courts, arguing that it was unconstitutional. However, their claims were rejected in 2019.

Following this, 261 sex workers—men and women of various nationalities—resorted to the European Court of Human Rights (the Court), alleging that the French law violated arts 2 (right to life), 3 (freedom from torture and other ill-treatment), and 8 (right to privacy and family life) of the European Convention on Human Rights (the Convention). The applicants, all of whom were lawfully and voluntarily engaged in sex work, submitted that the law contributed to driving them into clandestine and isolated working conditions.[10] They explained that the law had led to a decrease in clients, forcing them to accept clients and engage in sex practices they would otherwise reject. This increased their exposure to violence and health risks and diminished their personal autonomy and sexual freedom.[11] The Court was thus asked to determine whether sex workers have the "right to make economic decisions in a climate free from criminalization", and whether the European human rights framework is on their side. Commentators described the case as "a litmus test" for sex workers' human rights.[12] However, in a unanimous judgment,

[6] S. Månsson, "The History and Rationale of Swedish Prostitution Policies" (2017) 2(4) Dignity: A Journal of Analysis of Exploitation and Violence 1.
[7] C. Holmström, "The Swedish Sex Purchase Act: Where Does it Stand?" (2017) 4(2) Oslo Law review 82.
[8] N. Vuolajärvi, "Criminalising the Sex Buyer: Experiences from the Nordic Region" (2022) Centre for Women, Peace and Security, Policy Brief 06/2022; Cambell and others, "Not collateral damage: Trends in violence and hate crimes experienced by sex workers in the Republic of Ireland" (2020) 28(3) Irish Journal of Sociology 280.
[9] All translations from French were made by the author.
[10] *M.A. and Others v. France* (App. Nos. 63664/19 and others), judgment of 25 July 2025, para. 136.
[11] Ibid, paras. 5-6.

the Court dashed the hopes of sex workers and their allies by finding no violations of the Convention.

Held

(1) The Court preliminarily decided to examine the complaints exclusively under art.8 ECHR. It justified this choice by citing the principle that it is not bound by the applicants' legal framing of the case, and by asserting that the issue at hand was most appropriately addressed through the lens of the right to private life, rather than also considering the right to life and the prohibition of torture and other ill-treatment.[13]

(2) The Court considered that the criminalisation of the purchase of sex amounted to an interference with the applicants' right to private life under art.8(1), particularly their right to personal autonomy and sexual freedom. At the justification stage under art.8(2), the Court noted that both parties agreed that the interference had a legal basis in arts 611-1 and 225-12-1 of the French Criminal Code, introduced by Law No. 2016-444.[14] It also 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 under art.8 of the Convention.[15] Therefore, the Court identified the central issue as the proportionality of the measure.[16]

(3) In assessing the applicable margin of appreciation, the Court referred to its case law, highlighting that prostitution raises sensitive moral and ethical questions, often leading to conflicting views—particularly regarding whether it can be consensual or if it inherently constitutes exploitation.[17] It also observed the lack of consensus at European and international levels on whether criminalising the purchase of sex achieves its intended goal of combating human trafficking.[18] While acknowledging that the End Demand model represents a minority position in Europe, the Court pointed out that it remains under discussion in other member states, some of which still criminalise the prostituted individuals themselves.[19] This absence of a common European approach led the Court to grant France a wide margin of appreciation in regulating sex work.[20]

(4) In evaluating the necessity of the interference, the Court acknowledged the difficulties and risks that the applicants faced due to their involvement in sex work.[21] However, it held that these issues existed before the new law's adoption and stressed the absence of

[12] M. Wijers, "Sex Workers Rights Are Human Rights: Or Not? The Art of Stealing Back Human Rights" in T. Sanders, K. McGarry and P. Ryan, *Sex Work, Labour and Relations. New Directions and Relations* (Palgrave MacMillan 2022) 64.
[13] *M.A. and Others v. France*, paras. 74-75.
[14] Ibid, para. 139.
[15] Ibid, para. 144.
[16] Ibid, para. 145.
[17] Ibid, para. 149, citing *S.M. v. Croatia* (2019) 68 E.H.R.R. 7, para. 298 and *V.T. v. France* (App. No. 37194/02), judgment of 11 September 2007, paras. 24-25.
[18] Ibid, para. 152.
[19] Ibid, para. 150.
[20] Ibid, para. 153.
[21] Ibid, para. 154.

consensus on whether the End Demand model had exacerbated them.[22] The Court found it appropriate to defer to the French legislature, which, in its view, had carefully considered the model's implications and consulted with a range of stakeholders before enacting the law. Two special committees were established to examine the matter, conducting numerous hearings and studies before producing reports on the concerns.[23] Given this legislative process, the Court found no reason to interfere with the democratic decision-making behind the policy.[24] Consequently, the Court concluded that the French authorities had struck a fair balance between the competing interests within their margin of appreciation and found no violation of art.8.[25]

(5) Finally, the Court stressed that national authorities have a duty to continuously review the policy and consider evolving standards in this area at both European and international levels.[26]

Analysis

(a) An unsurprising decision

One relatively new strategy that sex workers use to resist laws criminalising the sex industry—thereby impacting their human rights—is litigation.[27] Through their application to Strasbourg, the applicants hoped to provoke a paradigmatic shift, using human rights to challenge the criminalisation of the purchase of sex between consenting adults, similar to how *Dudgeon v. United Kingdom* in 1976 challenged the criminalisation of homosexuality.[28] However, a closer look at the Court's case law prior to *M.A. and Others v. France* suggests that it was unlikely that the Strasbourg judges would question France's authority to develop its criminal policies, especially in a sensitive area such as sex work. When it comes to scrutinising the state's decision to resort to penal measures,[29] the Court generally exercises great caution and deference towards national authorities.[30] It is true that the Court has contributed to the decriminalisation of homosexuality in Europe and has found some criminal sanctions to violate freedom of thought, conscience, religion, or expression.[31] However, if we look at the instances where the Court has challenged the state's use of criminalisation, it is hard not to notice the limited number of cases and the

[22] Ibid, para. 155.
[23] Ibid, para. 158.
[24] Ibid, paras. 159, 165.
[25] Ibid, para. 166.
[26] Ibid, para. 167.
[27] M. Wijers, "Sex Workers Rights Are Human Rights: Or Not? The Art of Stealing Back Human Rights" in T. Sanders, K. McGarry and P. Ryan, *Sex Work, Labour and Relations. New Directions and Relations* (Palgrave MacMillan 2022).
[28] Dudgeon v United Kingdom (1983) 5 E.H.R.R. 573. Cf. C. Cayo Ascencio, *Silenced Voices: Sex Workers' Human Rights in Europe Copyright* (EIZ Publishing 2024) 36.
[29] The reference is here to substantive criminal law. For criminal procedure and penitentiary law, the situation is arguably different.
[30] M. Pinto, "Coercive Human Rights and the Forgotten History of the Council of Europe's Report on Decriminalisation" (2023) 86(5) Modern Law Review 1108.
[31] See, e.g., *Dudgeon v United Kingdom* (1983) 5 E.H.R.R. 573; *Norris v Ireland* (1991) 13 E.H.R.R. 186; *Bayatyan v Armenia* (2012) 54 E.H.R.R. 15; *Altuğ Taner Akçam v Turkey* (2016) 62 E.H.R.R. 12.

extremely cautious approach followed by the judges. This is why the decision in *M.A. and Others* may be disappointing, but it is not surprising.

The Court is hesitant to interfere with states' criminalisation decisions, as its default approach towards national criminal policies tends to be one of permissibility.[32] Under its case law, criminalisation is presumed to be *prima facie* compliant with human rights, and it is up to the applicants to demonstrate not only it affects their Convention rights, but also that this impact cannot be justified.[33] The Court's assessment is generally abstract, rather than focusing on the concrete effects of criminalisation on the social, economic, and health interests of the applicants and society at large. This broad permissiveness is closely tied to the margin of appreciation doctrine.[34] As the Court held in *M.A. and Others*, in the absence of a uniform European approach, domestic legislators are seen as being better positioned than Strasbourg judges to determine whether certain conduct should be criminalised.[35] Accordingly, in this case—as in many others—the Court was prepared to defer to the government's claim that criminalisation was necessary to achieve its stated aims, without conducting an independent analysis of whether those aims were being met, or at what cost to marginalised groups affected by the policy. In *M.A. and others*, the judges accepted the French government's argument that the new law was necessary for combatting human trafficking and took a neutral stance on its consequences. The Court did note that evidence on whether the End Demand model effectively combats trafficking was inconclusive,[36] as was the extent to which the model's adoption increased the stigma and risks faced by the applicants.[37] Yet, this uncertainty led the Court to err on the Government's side rather than that of the applicants. By granting France broad discretion, the Court completely avoided examining how the criminalisation of sex work—both before and after the 2016 legislative change—affects sex workers' human rights and what obligations France has to prevent that its laws and policies do not expose this marginalised group to further harm.

Furthermore, the way the Court chose to address the issues at hand landed itself in its decision of non-violation. By examining the case solely under art.8, the analysis was automatically framed as a balance between the applicants' sexual freedom and personal autonomy on one side and the state's legitimate interests in public order and safety on the other.[38] Conversely, by not examining the case under arts 2 and 3, the Court relieved itself from the more complex but crucial question of whether the criminalisation of the purchase of sex without exception increases the risk of harm to the applicants' lives and physical and mental integrity. This framing led to a focus on the abstract reasonableness of the French law, evaluated through an assessment of its necessity and proportionality.[39] This assessment did not consider the concrete operation of the law, but whether the state

[32] M. Pinto, "Coercive Human Rights and the Forgotten History of the Council of Europe's Report on Decriminalisation" (2023) 86(5) Modern Law Review 1108, 1112.
[33] S. Malby, *Criminal Theory and International Human Rights Law* (Routledge, 2019) 169.
[34] Ibid, 186.
[35] *M.A. and Others v. France*, para. 147.
[36] Ibid, para. 152.
[37] Ibid, para. 155.
[38] Ibid, paras. 75, 138.
[39] Ibid, paras. 143, 145.

had struck a fair balance between the competing rights and interests during the legislative process. The Court moved from the premise that the applicants' rights—being qualified—could be restricted, and that it was sufficient for the government to show that these rights had been considered when passing the law. The framing of the case also allowed the Court to shift the discussion from the actual harms experienced by the applicants after the introduction of the End Demand model in France, to a more abstract debate about the moral legitimacy and regulation of prostitution in general.[40] As Dimitrios Kagiaros and Inga Thiemann observe, when determining the presence or absence of European consensus, the Court focused primarily on "the ethical and moral implications of sex work and its regulation *in general*", rather than on "the *more specific* question of whether there is consensus on the criminalisation of the purchase and selling of sex".[41] By doing so, the Court was able to emphasise the lack of consensus and thereby grant the state a wider margin of appreciation, since it is true that there is no consensus on the regulation of sex work in Europe. The Court could also overlook that, according to its own analysis,[42] there is, in fact, a consensus against the criminalisation of the purchase of sex, as the End Demand model remains a minority position in Europe.

The final paragraph of *M.A. and Others*, where the Strasbourg judges urge the relevant authorities to keep the End Demand model under constant review,[43] reinforces the idea that the Court viewed the issue as one of balancing competing interests—something that should be monitored by domestic authorities rather than addressed definitively by the Court. The criteria for this ongoing review are not clearly defined by the Court but instead are tied to the vague notion of "developments in European societies and international standards in this area".[44] In other words, the right of sex workers "to make economic decisions in a climate free from criminalization"—which many sex workers consider a precondition for the enjoyment of their other human rights—is left to depend on shifting societal attitudes and domestic authorities' assessments. By deciding not to decide whether criminalisation harms sex workers, the Court somehow suggests that sex workers' human rights have yet to fully come into existence.

(b) But not an inevitable decision

However unsurprising the *M.A. and Others* decision may appear, it was not the unfolding of inevitable logic. The Court could have approached the issues at stake differently and reached a more favourable outcome for the protection of sex workers' human rights. Although it is true that, as a supranational judicial body, the Court's ability to influence policy on the decriminalisation of sex work is limited, there are at least four aspects of the case that the judges could have addressed differently.

[40] Ibid, paras. 149-150.

[41] D. Kagiaros and I. Thiemann, "M.A. and others v. France: The 'End Demand' model of Regulating Sex Work goes to Strasbourg" (*Strasbourg Observers*, 3 September 2024).

[42] *M.A. and Others v. France*, paras. 69-71.

[43] Ibid, para. 167.

[44] Ibid.

First, it is important to consider which voices the Court prioritised in its assessment of the case. Reading the decision, it is clear that the deference granted to the French government signals which perspectives the Court chose to weigh more. Much of the judgment in *M.A. and Others* is devoted to highlighting the controversial nature of prostitution and the lack of consensus at the European and international levels on how to regulate it. It is true that prostitution is a divisive moral issue and that its regulatory landscape is confusing. However, it is also true that sex workers—those most directly affected by prostitution policies—overwhelmingly agree that sex work is work, and that criminalising it, directly or indirectly, as the End Demand model does, restricts their civil and labour rights.[45] In this sense, had the judges given more weight to sex workers' voices, the core issue of *M.A. and Others* would not have appeared so contentious as the Court framed it. The judges even declined to take a position on "the question of whether prostitution can be freely consented to or always arises from coercion",[46] despite having 261 applicants before them who stated they voluntarily engaged in sex work. By not taking a position here, the Court left open the possibility that the applicants' claims of voluntary participation were a form of "false consciousness",[47] effectively disregarding their voices. Furthermore, by endorsing the French legislative process that led to the adoption of the End Demand model, the Court refused to look into how in this process, according to a comprehensive study by Charlène Calderaro and Calogero Giametta, sex workers had very limited opportunities to challenge the new law.[48] When they did speak up, they were often dismissed as naïve victims of traffickers or pimps and delegitimised for their "alleged inability to speak for themselves".[49] As Dimitrios Kagiaros and Inga Thiemann argue, "[t]he fact that the applicants belong to a group that has traditionally been excluded from political processes to represent their interests should have invited the Court to conduct a more searching review of the legislative process and to consider the political climate under which it was conducted".[50] Sex workers have long called for inclusion in debates about them, using the slogan "nothing about us, without us".[51] The Strasbourg judges had a unique opportunity: 261 sex workers ready to explain how a policy intended to protect them had made their lives worse. By deferring to the Government—the same

[45] See, e.g., N. Vuolajärvi, "Criminalising the Sex Buyer: Experiences from the Nordic Region" (2022) Centre for Women, Peace and Security, Policy Brief 06/2022 (showing that 96% per cent of the sex workers surveyed believe that the End Demand model had made them more unsafe and vulnerable to exploitation).

[46] *M.A. and Others v. France*, para. 156.

[47] See, e.g., R.L. West, "The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory" (1987) 3 Wisconsin Women's Law Journal 81, 117 (suggesting that anti-prostitution feminists like MacKinnon and Dworkin argue that sex workers who believe they have entered the profession voluntarily are, in fact, acting against their own self-interest, as they have internalised male norms and standards as part of their consciousness).

[48] C. Calderaro and C. Giametta, "'The Problem of Prostitution': Repressive policies in the name of migration control, public order, and women's rights in France" (2019) 12 Anti-Trafficking Review 155.

[49] Ibid, 168.

[50] D. Kagiaros and I. Thiemann, "M.A. and others v. France: The 'End Demand' model of Regulating Sex Work goes to Strasbourg" (*Strasbourg Observers*, 3 September 2024).

[51] ICRSE, *Nothing About Us Without Us! Ten Years of Sex Workers' Rights Activism and Advocacy in Europe* (International Committee on the Rights of Sex Workers in Europe 2015).

entity the applicants were seeking to hold accountable—the Court effectively sidelined sex workers' voices once again.

Second, while the applicants brought a very concrete case involving the impact of a criminalisation policy on their lives, the judges chose to reframe much of the issue as an abstract debate on the moral implications of prostitution. This reframing significantly simplified the Court's assessment and likely helped it navigate concerns over its democratic deficit. However, this was not an inevitable choice. A different approach would have given greater weight to the lived experience of the applicants, which the judges had ample opportunity to consider, as reflected in the applicants' statements at the start of the judgment.[52] These statements clearly detailed that their situations had worsened since France enforced the prohibition on the purchase of sex services. This alternative approach would have also compelled the Court to address the sweeping generalisations made by the Government, such as the assertions that "prostitution [always] constitutes violence" and that "the vast majority of prostitutes are victims of human trafficking fuelled by demand".[53] Faced with 261 sex workers—most of them migrants and/or gender minorities—who, despite their precarious circumstances, united to bring their case to Strasbourg, the judges could have recognised the diversity of sex work, which goes beyond the stereotypical narrative of the oppressed female sex worker and male client. The Court could have also acknowledged that sex workers are capable of agency and speaking for themselves. However, by failing to challenge the Government's generalised claims, the Court overlooked the concrete situation in front of it, namely that the dignity of the applicants was not primarily affected by the nature of their work but by the conditions under which they were forced to pursue their chosen, lawful profession.

Third, and relatedly, the Court could have conducted a more structural analysis by addressing the applicants' most serious claims under arts 2 and 3. Despite the Court's claim that an analysis under art.8 would allow it to consider all potential consequences of the law, including those impacting arts 2 and 3, in practice, the analysis conducted under these rights would have been significantly different. As argued above, the Court's assessment primarily centred around the balancing of competing interests in the legislative process that led to the adoption of the law. Conversely, arts 2 and 3 would have required the Court to directly evaluate whether the criminalisation of sex work—whether through the End Demand model or otherwise—heightened the risk of harm to the applicants' lives and their physical and mental integrity. As sex workers and their allies have long argued,[54] and as the applicants' statements vividly illustrate,[55] when sex work is criminalised (even if only partially, as in the case of criminalising clients), sex workers are forced to work alone, away from public view, and with reduced bargaining power, as clients fear being caught and demand declines. This situation pushes sex workers to accept potentially dangerous clients and work in less secure settings, exposing them to abuse, violence (e.g., rape and physical assault), and significant threats to their sexual and

[52] *M.A. and Others v. France*, para. 6.
[53] Ibid, para. 83.
[54] See, e.g., Amnesty International, *The human cost of "crushing" the market: decriminalization of sex work in Norway* (2016).
[55] *M.A. and Others v. France*, para. 6.

mental health. The credible risk of harm, which the Court acknowledged in its decision,[56] could have prompted the judges to impose both negative and positive obligations on domestic authorities. The Court could have recognised that the state has a negative obligation to avoid enacting laws and policies that create a potential risk of endangering life or physical and mental integrity, particularly for marginalised groups. Additionally, the state would have a positive obligation to amend or repeal such laws if these risks manifest after their adoption. Given that art.3 is an absolute right and art.2 is subject to only very specific limitations, the pursuit of other legitimate aims cannot justify a failure to mitigate or remove these risks. In this context, the Court could have found that, by adopting the End Demand model, France had contributed to trapping sex workers in increasingly dangerous and exploitative working conditions and had failed to rectify this situation when warned by sex workers themselves and other organisations.

Finally, rather than treating criminal law as a neutral tool for regulating social phenomena, including sex work, the Court could have more closely examined the implications that criminalisation has for human rights. It is widely acknowledged that we live in an "overcriminalised" society, where penal legislation has penetrated many spheres of private morality and social welfare, with deleterious consequences for human rights protection. The concern is not just that there are too many criminal laws or that some are disproportionate or arbitrarily enforced; rather, it is that the criminal justice system itself operates in a highly discriminatory manner.[57] It is selective in relation to the provision of state security, which is largely accorded to the socially advantaged groups in society; and it is biased in the processes of criminalisation and imprisonment, which mostly affect racial minorities and poorer social classes.[58] This pattern of discriminatory criminalisation raises serious concerns regarding core human rights values, particularly human dignity and equality. Marginalised groups, including sex workers, who are supposed to be protected by human rights law, are often the ones caught in the net of criminalisation. Even when criminalisation does not result in over-enforcement—as in the case of France's End Demand model—it still stigmatises sex workers as deviant.[59] In this context, the Court could have seized the opportunity presented by the applicants to engage in more thorough scrutiny of the consequences of criminalisation for effective human rights protection. Instead of maintaining a position of general permissibility regarding state criminal policies, it could have regarded criminalisation, especially when it affects marginalised groups like sex workers, as *prima facie* undermining the enjoyment of human rights.[60] It is true that the Court is a judicial body and has no mandate to formulate policy proposals. However, nothing in the Court's case law prevented the Strasbourg judges from being less deferential to national authorities and more appreciative of the applicants' demand to be able to operate in a climate free from criminalisation. By adopting a more critical stance on the use of criminal legislation, the

[56] Ibid, para. 154.

[57] For a discussion on the unequal distribution of penality, corroborated by ethnographic research in France and the US, see D. Fassin, *The Will to Punish* (OUP 2018) 91-119.

[58] Ibid.

[59] S. Cohen, *Visions of Social Control: Crime, Punishment, and Classification* (Polity 1985).

[60] M. Pinto, "Coercive Human Rights and the Forgotten History of the Council of Europe's Report on Decriminalisation" (2023) 86(5) Modern Law Review 1108, 1130.

Court could have contributed to more robust protection of sex workers' human rights, even within the confines of its mandate to adjudicate justiciable questions.

Conclusion

In recent years, evidence from academic, medical, intersectional feminist, and international organisations has supported the argument that full decriminalisation is the best way to ensure sex workers' safety, health, and human rights.[61] Sex workers themselves view decriminalisation as a prerequisite for enjoying their civil and labour rights and, thus, as their right to have rights. The Strasbourg Court was called to give authority and recognition to this claim. However, in a unanimous judgment, the Court chose to defer to national authorities. The decision is not surprising: the Court is generally deferential to the state in (de)criminalisation cases, and its framing of the issues as a matter of balancing competing interests landed itself in a non-violation outcome. Yet, this result was far from inevitable. Human rights, including those outlined in the European Convention on Human Rights, possess the potential to be progressive and transformative tools for protecting marginalised groups, such as sex workers, from laws that trap them in abusive and insecure conditions. To achieve this, the Strasbourg judges would need to reconsider whose voices they prioritise, reject sweeping generalisations, confront the concrete realities before them, engage with complex questions without shortcuts, and reevaluate the role of criminalisation in the protection of human rights. The struggle for the recognition of the rights of sex workers and other overcriminalised groups as human rights is long and challenging, but it is also urgent and entirely possible. The judgment in *M.A. and Others* should not be viewed as a setback but rather as an impetus to continue advocating for these rights more vigorously.

Mattia Pinto

[61] E.g., UNAIDS, "Guidance Note on HIV and Sex Work" (2012); Global Commission on HIV and the Law, "HIV and the Law: Risks, Rights & Health" (UNDP, 2012); Amnesty International, "Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers" (2016); M.R. Decker and Others, "Human Rights Violations against Sex Workers: Burden and Effect on HIV" (2015) 385 Lancet 186.