

Country profile: FRANCE (7 pages)

I The phenomenon

There are no official figures available for trafficked persons in France. However there is evidence from various NGOs working with trafficked persons, with migrant workers or on human rights issues that various forms of trafficking are occurring in France. Trafficking for the purpose of exploitation of prostitution is one of the most well known form of trafficking. However, there have been several cases of trafficking for the purpose of domestic or labour exploitation that have been identified, either formally by a court or by NGOs. There have also been cases of trafficking for the purpose of exploitation of begging and cases of trafficked persons exploited in stealing or passing drugs activities.

2 National anti-trafficking legislation and institutions

The offence of trafficking in human beings was first introduced in the French Penal Code (article 225-4-1 of the Penal Code) in March 2003¹. Trafficking is conceived in the French law as the preparation stage before exploitation, whether it is exploitation of the prostitution of other (pimping), labour or begging exploitation. The French definition also adds that trafficking can aim “to force this person to commit any felony or misdemeanour”. In this definition, the consent of the trafficked person is systematically considered as irrelevant, whether the person was deceived, abused, forced or threatened. However, if threats, force, coercion or abuse of vulnerability is used, this will be considered as aggravated forms of trafficking (articles 225-4-2 of the Penal Code).

Although trafficking, in most cases, is more severely punished than the other offenses to which it refers, it is very rarely used to convict traffickers who are most likely to be convicted under relative offences, such as

aggravated forms of pimping (article 225-7 et 225-7-1 of the Penal Code), unpaid work (article 225-13 of the Penal Code) or conditions of work incompatible with human dignity (article 225-14 of the Penal Code). In 2005, the European Court of Human Rights judged that France was in breach with Article 4 of the European Convention of Human Rights.² Although the definition of trafficking has been slightly changed since, there is still no offence of slavery or servitude in the French law.

National Action Plan, National coordination and National Rapporteur

There is no national coordinated anti-trafficking policy in France. However, the Home Ministry and the Ministry of Justice have taken a lead in setting up an interministerial working group on trafficking in human being. Several NGOs, among which ALC, CCEM, Amnesty International, Caritas and others, have been invited to join this working group which officially started its activities in December 2008. The objective of this group is to set up a national plan of action, a coordinating body and a national Rapporteur.

3 Identification, Referral mechanism and access to residence rights

In 2003 was also introduced the possibility for trafficked persons who file a complaint or a testimony against their trafficker or pimp to claim for a **short term residence permit** (article L316-1 of the Code on Entry and Residence of Foreigners and Asylum Law). When a case of trafficking for domestic or labour exploitation is not pursued under the offence of trafficking as it most often the case, the access for trafficked persons to residence rights and to all other social and economical rights that are dependent on that residence status, are greatly restricted.

Identification of trafficked persons remains a great issue in France. The rule is that only

¹ « loi n°2003-239 du 18 mars 2003 de sécurité intérieure

² Judgement Siliadin vs. France of the 26th July 2005, available on <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Siliadin%20%20France&sessionid=55518247&skin=hudoc-en>

trafficked persons who cooperate with police services will be officially identified and granted a residence permit.³ In 2009, the Ministry of Immigration provided for the first time figures of the number of residence permit delivered. They have recorded that 56 short-term residence permit were delivered (6month to 1-year), 43 were renewed and 5 were duplicated.

Practices vary greatly from one city to another. In general it appears that giving evidence is never sufficient. The information will need to be judged “useful” enough and in many cases it will also be required that trafficked persons bring the proof of her or his will to integrate in the French society.

There is **no referral mechanism** as such although there are legal document highlighting the role of police services in identifying trafficked persons and referring them to adequate NGOs and other administrative or social services. The only specific referral mechanism that exists is coordinated by the NGO ALC and is intended to provide trafficked persons who face a danger at local level with a secure housing through geographic relocation (“Dispositif Ac.Sé”)⁴.

The possibility for foreign trafficked person to benefit from a **reflection period of 30 days** was introduced in the French law in 2007. In theory there is no other criterion than having a positive evaluation from the police services, yet in practice, they ask for evidence that equals giving a full testimony or filing a complaint. To our knowledge, there has been two cases in 2009.

Within the Ac.Sé network, there is evidence that there are more and more trafficked persons who seek **asylum** on the grounds of them being trafficked for sexual exploitation.

There has been several cases reported to the Ac.Sé network in which trafficked persons, identified as such by NGOs, were not subjected to any identification procedure nor to any **risk assessment before being returned** to their country. However, there

has been a few cases where the trafficked persons were freed from retention centre on the basis of them being trafficked.

Assistance, protection and social inclusion

The Law of 2003 introduced the possibility for trafficked persons to be **accommodated in shelters** funded by the state, most of which are run by NGOs or by local communities (article L.345-1 in the Social Action and Family Code). In France there is no shelter for trafficked persons only yet all trafficked adults and children have access to shelters in the same conditions than others.

Accessing residence for trafficked persons can become difficult if they are undocumented migrants. More and more shelters are under dire pressure not to accept undocumented migrants. Access to residence permit being conditional for trafficked person, their access to accommodation and other rights such as financial help, as a result, is often conditional.

Trafficked persons can access **health insurance** like any other national if they are French or like any other foreigner if they are citizen of another country. Any person in France, whether legal resident or not, can have access to free medical care, including counselling and mental health care under certain condition (resources, documents, ...). Regarding access to a lawyer, the law provides for **free access to a lawyer** on conditions of resources and on conditions of legal residence, with some exceptions.⁵

There are official numbers for **voluntary return** at national level, but as there is no identification procedure for trafficked persons, it is impossible to know how many of them were trafficked. The only reliable source of information we have regarding return of trafficked persons, is the Ac.Sé network. In 2008, amongst the 54 persons referred to the national network Ac.Sé for secure housing, 2 have decided to return voluntarily to their home country. In 2009,

³ Article L316-1 of the Code on residence of foreigners and asylum demand (CESEDA)

⁴ More information on www.acse-alc.org

⁵ Article 1, Law n°91-647 relative to free judicial counselling, 10th July 1991.

amongst the 66 trafficked persons referred to the national network Ac.Sé for secure housing, I has wished to return voluntarily to her home country. There is evidence that NGOs in different part of the country have assisted trafficked persons (identified by the NGO) to return to their home country if they wished so, but there is no official figures that can confirm that information.

4 Access to justice

The Decree of 13th of September 2007 mentioned above states that police services should informed all potential trafficked persons of their rights. In practice, the experience shows that very few police services are aware of this decree and are informed about the rights trafficked persons are granted. ALC has therefore, in collaboration with the Home Ministry created a DVD in which these rights are exposed in 10 different languages.

There is **no specific protection for trafficked persons during legal proceedings**, whether they are witnesses or not. It appears there are still recurrent cases of trafficked persons who have been denied the right to file a complaint, the Police services judging that the information is not relevant enough. In some cases, many partner NGOs have mentioned that no copy of the complaint was given, although the French law makes it an obligation for the police services to do so.⁶ There has been evidence that during judiciary investigation trafficked persons were not necessarily interviewed in a confidential setting, for ex. the interviews sometimes taking place in open offices. There is an evident lack of means for police services and tribunal to allow for such confidentiality to be respected. During criminal audience involving trafficking or exploitation, there has been little or no evidence of measures taken to guaranty the anonymity of the trafficked persons, such as video testimony, etc. In very few cases, were trafficked persons who took part to a criminal proceeding informed when their trafficker was set free.

Trafficked persons can access compensation from their trafficker during a criminal or a civil proceeding (article 706-3 of the Code of Criminal Procedure). The law foresees that any person who is recognised as victim of trafficking or victim of pimping can be granted full compensation, which excludes most cases of trafficking for labour exploitation who are not pursued under these offences. Trafficked persons can also access compensation through the Commission for Compensation of the victims of criminal offences (article L214-1 of the Code of Judiciary Organisation) although there are conditions of legal residency.

5 Prevention

There has been no national prevention scheme of trafficking so far in France, although there has been some local campaign led by NGOs such as Amnesty (most recent). The National Consultative Commission of Human Rights (CNCDH) has produced a very detailed opinion and report on all aspects of anti-trafficking measures and exploitation.⁷

Recommendation:

In order to effectively fight trafficking and protect trafficked persons, we recommend that France:

- harmonises its definition of exploitation in order to ensure that all forms of exploitation that result from trafficking are punished on similar grounds
- Adopts a national coordination mechanism as well as an independent national Rapporteur that would not only evaluate the scale of trafficking but also monitors the national policies adopted and provides guidelines to all actors involved in anti-trafficking actions.
- Adopts an identification procedure that is not dependent of the judicial investigation.

⁶ Article 15-3 of the Code of Penal Procedure

⁷ http://www.cncdh.fr/article.php3?id_article=723

- Ensures that access to rights is not conditional on the will of the trafficked persons to cooperate
- Ensures that trafficked persons who take part in a judicial proceeding can benefit from effective protection and that a risk assessment procedure is set up in case of voluntary return.

Law proposal.

In December 2011 the French Parliamentary Mission on prostitution presented a law proposal that aims at criminalizing clients of prostitution and reinforcing protection for trafficked persons.

First chapter of this proposal creates an offence of recourse to prostitution.

Two-month prison and fines of 3750 Euros are envisaged for clients of prostitutes. Training courses on awareness raising on prostitution and trafficking in human beings will be proposed as a complementary or alternative sentence. Prostitution is recognized as a form of violence against women and opposed to gender equality and human rights standards of dignity.

Second chapter aims at ameliorating protection for trafficked persons.

Facilitating residence permit should help access to social right for victims. All victims of trafficking and pimping should have right to temporary residence permit during penal procedures.

Article L316-1 of the Code on Entry and Residence of Foreigners and Asylum Seekers will be changed: a permanent resident permit “will” (and not may) be delivered to the victims if the defendant is successfully convicted in court (the necessity of definitive conviction is cancelled).

Under the terms of this article, access to rights will not be conditioned by the will of the trafficked persons to cooperate in a procedure; “reasonable motives to believe”

that a person is victim of trafficking or pimping would be sufficient for delivering a residence permit.

Members of the families of the victims will be able to benefit from protection and residence permits in France when they face dangers in origin country and they choose to cooperate with French law enforcement bodies.

All trafficked persons who file a complaint or a testimony against their trafficker and who benefit from a residence permit (article L316-1 of the Code on Entry and Residence of Foreigners and Asylum Seekers) will be also on social welfare’s supports, unlimited in time, especially the “RSA”, a special aid for unemployed people attending 460 Euros per month and per person. Identified victims who refuse to or cannot cooperate in a procedure will have the possibility to benefit from a temporary allowance (330 Euros per month and per person), which is now provided just to asylum seekers and trafficked persons who make a complaint against the traffickers.

Victims of pimping will have the right, like trafficked persons to access compensation from their pimp during a criminal or a civil proceeding.

Trafficked persons and victims of pimping who take part in a judicial proceeding can benefit from effective protection during the trials and ask closed-door.

Third chapter of the proposal contains the conditions for the application of the law

Six month public campaign will precede the criminalization of clients. The aim of the campaign is awareness rising on prostitution and the aim of the new law.

The evaluation of the law will be scheduled 18 month after the creation of the offence.