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OPINION ON PREVENTING AND COMBATTING PROSTITUTION, TRAFFICKING FOR SEXUAL EXPLOITATION OF CHILDREN

15 APRIL 2021



**The opinion on preventing and combatting prostitution,
trafficking for sexual exploitation of children**

was adopted at the plenary session of 15 April 2021.

(Adopted unanimously except for 1 vote)

SUMMARY

In this opinion, the CNCDH aims not to limit the subject to solely French minors. It stresses the absolute necessity of adopting a clear criminal policy against the sexual exploitation of minors and recommends improving the identification of minors who are victims by taking better account of the diversity and causes of the phenomenon. Among the avenues proposed are the promotion of research, data collection and the training of officers, the development of cyber patrols, outreach initiatives and cooperation with Internet platforms. Building a relationship of trust with minors involved in prostitution aims to facilitate their long-term and comprehensive care. The CNCDH therefore calls for the unconditional protection of minors who are victims of sexual exploitation, in particular through immediate shelter, the appointment of a legal representative and the use, as a priority, of the most protective criminal classifications. Finally, the CNCDH recommends that prevention be strengthened, in particular through a national communication campaign.

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1. At the end of September 2020, the Secretary of State for Child Protection, Adrien Taquet, announced the formation of a working group for combatting child prostitution. In his statement, he indicated that the priority objective of this group would be to propose “*a shared public policy to severely punish the perpetrators of this sexual exploitation, help the victims, and support distressed parents*”¹; thus giving, by the chosen word order, a predominant place to the punitive aspect. The Commission nationale consultative des droits de l’homme² (CNCDDH) [National Advisory Commission on Human Rights] therefore wished to intervene prior to the publication of the results of Adrien Taquet’s working group, as it felt it was essential to point out that, on the subject of child prostitution or the trafficking of children for sexual exploitation³, it is imperative to “*reverse the perspective*”⁴. Indeed, the Commission considers that the protection of victims must be both the start point and central part of a public policy aimed at combatting the phenomena of child prostitution and sexual exploitation, regardless of their situation or origin. This prioritisation in no way weakens the penal response, which must be very firm towards all those involved in this exploitation. On the contrary, by “*promoting the establishment of a relationship of trust, protecting the victim and giving him or her time to rebuild, we also encourage, in the medium term, the filing of a complaint or, in general, cooperation with the criminal investigation, and therefore the prosecution of the perpetrators*”⁵.

2. Furthermore, the CNCDDH notes that child prostitution and trafficking for

1. Statement by Adrien Taquet, Secretary of State for Child Protection, on the fight against child prostitution with the launch of the Task Force working group, Paris, 30 September 2020, available here: <https://www.vie-publique.fr/discours/276936-adrien-taquet-30092020-groupe-de-travail-taskforce>

2. In 2014, the CNCDDH issued an opinion on the proposed law strengthening the fight against the prostitution system [*Avis sur la proposition de loi renforçant la lutte contre le système prostitutionnel*] (opinion of 22 May 2014, JORF no. 0136 of 14 June 2014, Text no. 70) before being appointed as an independent national rapporteur on human trafficking. It is in this capacity, in particular, that the Commission adopted, in November 2019, an opinion on the 2nd national action plan against human trafficking (2019-2021) [*Avis sur le 2nd plan d’action national contre la traite des êtres humains*] and, in April 2020, an opinion on the creation of a “National Referral Mechanism for the identification, prevention and referral of victims” [*Avis sur la création d’un Mécanisme National de Référence pour l’identification, la prévention et l’orientation des victimes*] in France, for the effective exercise of the rights of victims of human trafficking (see: CNCDDH, Opinion on the 2nd national action plan against human trafficking (2019-2021), 19 September 2019, JORF no. 0279 of 1 December 2019, Text no. 55; available here: https://www.cncddh.fr/sites/default/files/191119_avis_2e_plan_contre_la_teh.pdf;

CNCDDH, *Opinion on the creation of a “National Referral Mechanism” in France, for the effective exercise of the rights of victims of human trafficking*, A – 2020 – 5, JORF no. 0108 of 3 May 2020, Text no. 48 available here <https://www.cncddh.fr/fr/publications/avis-creation-dun-mecanisme-national-de-reference-concernant-la-traite-des-etres>).

3. In the context of this opinion, the CNCDDH is focusing on trafficking for sexual exploitation but is aware that the issue of sexual violence against minors is much broader.

4. CNCDDH, *Opinion on the creation of a ‘National Referral Mechanism’ in France, for the effective exercise of the rights of victims of human trafficking*, 28 April 2020, p. 16; *op.cit.*

5. *Ibid.*

sexual exploitation⁶, known to child protection services, are still poorly quantified in France and often poorly understood by those working with minors⁷. Since 2002, child prostitution has been prohibited throughout the Republic. Any minor who engages in prostitution, even occasionally, is deemed to be in danger and falls under the protection of the Children's judge under the educational assistance procedure⁸.

3. This phenomenon may concern any minors, of all social categories, girls and boys, whether or not of French nationality. A minor in a situation of prostitution is a vulnerable person, a victim of sexual assault, whose situation promotes the power of one or more third parties. A minor cannot be bound by the notion of consent. The hearings conducted by the CNCNDH revealed numerous overlaps between criminal classifications (human trafficking for sexual exploitation, procuring minors, corruption of minors, sexual offences against minors, child prostitution, sexual proposition to a minor over the Internet, etc.), and their varied and not always consistent use by the police and judiciary, which makes the applicable criminal framework unclear, a source of ineffectiveness. Although the offence of human trafficking for sexual exploitation has been criminalised since 2013 in the French Criminal Code⁹, this classification is often misunderstood by the judiciary and the police and wrongly perceived as being the exclusive responsibility of transnational networks. Moreover, preventing and combatting the risks of child prostitution, procuring and trafficking for sexual exploitation requires the political will accompanied by a dedicated budget and human resources.

4. The CNCNDH notes that a public policy focused on the protection of minors in prostitution, victims of procuring or trafficking must pursue three main objectives: improve the identification of victims, ensure the unconditional support of alleged and actual victims, and reinforce the prevention of risky situations and behaviour.

Recommendation No. 1: The CNCNDH recommends the adoption of a clear criminal policy against the exploitation of minors based on the clarification of criminal legislation applied and on its better articulation. This step is a prerequisite for the formulation of criteria for identifying alleged victims and for the use of appropriate criminal

6. Human trafficking is established by a complex material element (the perpetrator must have recruited, transported, transferred or harboured another person, the act must have been carried out under duress and with the aim of exploiting the victim). However, for victims who are minors, it is not necessary for the offence to have been committed under one of the circumstances provided for in this article in order for it to be established. Thus, the offence could be established for a minor without there having been coercion. Finally, the second element of trafficking, the non-material element, is the intention of the offence.

7. See the study by Amandine Sourd and Abigail Vacher, "La traite des êtres humains en France : Profil des victimes suivies par les associations en 2019" [Human trafficking in France: Profile of victims monitored by associations in 2019], ONDRP, MIPROF, 2020 ; available here: http://www.contrelatraite.org/sites/default/files/inline-files/statistiques%20traite_etres_humains_france_2019_0.pdf.

8. According to Law no. 2002-305 of 4 March 2002 on parental authority.

9. Art. 225-4-1 of the French Criminal Code: act of transporting, transferring, accommodating or harbouring a minor and placing this minor at one's own disposal or that of a third party for sexual exploitation.

classifications within the judicial framework.

I. IMPROVING THE IDENTIFICATION OF MINORS IN PROSTITUTION OR OF MINORS WHO ARE SEXUALLY EXPLOITED

I.1. Taking into account the diversity of situations and causes

5. The identification of minors in prostitution or of minors who are sexually exploited is a condition for their access to assistance and protection. To date, this has hit a series of obstacles, particularly linked to the growing invisibility of their activity. Indeed, the difficulty in counting the number of victims, and in identifying them, is partly explained by the protean nature of the sexual exploitation of minors. The diversity of situations and causes that can lead a minor into prostitution (exploitation by a third party, so-called survival prostitution, the desire to have access to certain consumer goods, access to money perceived as «easy» and fast) is often disregarded by professionals and underestimated by public policies.

6. The CNCDH considers that a better understanding of the phenomenon is a prerequisite for effective care adapted to the needs of all minors in situations of prostitution or sexual exploitation. Creating the conditions for identification therefore involves drawing up a complete status report of the phenomenon and also establishing identification criteria that take into account the diversity of profiles and situations.

7. The majority of situations of child prostitution are not well known or do not lead to a complaint, in particular because of the increasing use of social networks and Internet contacts. It is therefore necessary to reach out to victims by increasing outreach initiatives, both on the street and on the Internet. In this respect, «maraudes-mixtes» [joint teams on the streets to identify people]¹⁰ should be developed bringing together the child welfare service (ASE) and local associations in places where prostitution is known to occur: shanty towns, squats, woods, railway stations, as well as social networks. During these actions, the support of associations on the ground is essential, as their expertise encourages contact and follow-up with the young people they meet.

8. In view of the increased use of digital tools, increased surveillance of social networks and classified ad sites must be implemented, in particular through cyber patrols carried out by police or gendarmerie officers specifically trained and authorised to search for and record offences committed on the Internet. These digital patrols

10. An outreach system involving government services and associations together on the ground whose expertise and knowledge encourage contact and the set-up of support systems.

aimed at detecting offences must be carried out in conjunction with the ASE so that appropriate care can be taken of minors who may have been spotted.

9. In addition, the CNCDH hearings highlighted the need to develop a legal framework to enable better cooperation between platforms (dating sites, accommodation, etc.)¹¹ and the police during their investigations, in accordance with users' fundamental rights. Technical and human resources should be dedicated to investigating the offences of procuring and trafficking on the Internet.

Recommendation No. 2: The CNCDH recommends encouraging research through public funding, for example the Law and Justice mission on child prostitution, in order to identify the various causes of this phenomenon and to develop tools to remedy it at all levels (prevention and protection). It also recommends that a complete presentation of institutions and associations' statistics be provided in order to better quantify and qualify the phenomenon of child prostitution.

Recommendation No. 3: The CNCDH recommends that public authorities establish criteria for identifying these different situations, as provided for in the second national plan to combat human trafficking 2019-2021, and quickly initiate the Mechanism for identifying and referring victims of trafficking.

Recommendation No. 4: The CNCDH recommends the reinforcement of cyber patrols carried out by dedicated police or gendarmerie officers, specially trained and equipped to enable better detection of offences committed on the Internet.

Recommendation No. 5: The CNCDH recommends that a legislative framework be put in place to encourage Internet platforms, which may have a link with the offences concerning the sexual exploitation of minors, to cooperate with the police.

1.2. Building trust with minors involved in prostitution

10. The CNCDH's hearings established that many young people in prostitution are at odds with their families, with the institutions supposed to protect them and, more generally, with adults. Therefore, institutional partners often find it difficult to support these minors: their mandate represents everything that the young people want to escape. In order to remedy these situations, building a relationship of trust with minors

11. CNCDH, *Opinion on the proposed law strengthening the fight against the prostitution system*, 22 May 2014, p.3 *op.cit.*; CNCDH, *Opinion on the draft law reinforcing respect for the principles of the Republic* [Avis sur le projet de loi confortant le respect des principes de la République], 28 January 2021, JORF no. 0039 of 14 February 2021, Text no. 51, p. 2; available here: <https://www.cncdh.fr/sites/default/files/a - 2021 - 1 - pjl principes de la republique janv 2021.pdf> and CNCDH, *Second opinion on the draft law reinforcing respect for the principles of the Republic*, 25 March 2021, JORF no. 0081 of 4 April 2021, Text no. 53, p. 14; available here: <https://www.cncdh.fr/sites/default/files/a - 2021 - 4 - 2nd avis sur le pjl principes de la republique mars 2021.pdf>.

in situations of prostitution or exploitation seems to be an absolute necessity in order to allow for the establishment of sustainable support.

11. In order to rebuild this relationship of trust, it is essential to adopt a harm-reduction approach at the time of outreach initiatives, as it enables non-stigmatising contact to be made which gives the minor confidence in the person with whom he or she is dealing, while at the same time protecting his or her health in a pragmatic manner. Indeed, these minors are particularly vulnerable to certain health risks due to their behaviour (HIV, STIs, etc.) and are often unaware of the protection mechanisms available to them. The first step is to protect them by informing them of their rights (verbally, through the distribution of leaflets or through messages on social networks) and by providing them, if necessary, with harm-reduction materials. Finally, minors in situations of prostitution and exploitation should be considered as a whole, taking into account all their experiences and backgrounds. This approach must make it possible to better listen to minors in order to encourage their collaboration in the set-up of sustainable protection mechanisms.

12. Finally, the CNCDH notes that it is a legal obligation to report minors in situations of prostitution or exploitation. Nevertheless, many hearings have highlighted the negative impact that such reporting could sometimes have on building a relationship of trust with minors and, ultimately, on the ability of those working in the field to provide long-term support. Some associations have indicated that, when they report a minor in prostitution to the ASE or the police, they lose track of him or her completely. To address the difficulties in these areas, some associations on the ground reported having established a partnership with the ASE of their department and the competent public prosecutor's office for minors. This concerted approach with the young person helps him or her to understand the process and to be supported by the various actors.

13. The hearings showed that the outreach approach should be prioritised by associations' employees or volunteers and child protection workers in partnership with peer mediators¹². Indeed, sharing common experiences with these "peers", empathy and use of the same language are all elements that facilitate identifying victims, making contact and building a relationship of trust¹³. Although partnerships of this type have already been set up locally, they currently lack the institutional recognition needed to extend their mobilisation across the entire country. The CNCDH therefore calls for institutional recognition of the work of peer mediators, particularly in terms of detecting, identifying and supporting minors in prostitution, as well as for the clarification and security of their status.

Recommendation No. 6: The CNCDH recommends the development of outreach

12. Peer mediators are people who have, or have had, a similar life experience to the people they are working with.

13. see below.

initiatives involving the ASE, associations on the ground, and mediators on the street, in places of prostitution and on the Internet.

Recommendation No. 7: The CNCDH recommends that building a relationship of trust with minors should be encouraged, taking into account their entire situation and using harm-reduction strategies in order to put in place sustainable solutions for their protection, particularly their health. It recommends the development of collaboration with peer mediators to encourage the identification and support of minors in prostitution.

Recommendation No. 8: The CNCDH recommends the development of partnerships between associations on the ground, the ASE and the competent public prosecutor's office for minors in order to encourage collaboration around the young person when any report is made and to prevent this reporting from hindering support.

1.3. Training professionals in the detection and identification of victims

14. Professionals in contact with minors, both girls and boys, often have little or no training in the phenomena of prostitution and trafficking for sexual exploitation¹⁴ and may feel helpless in the face of these phenomena and their consequences on their handling. This lack of training can lead to distrusting these minors and thus become an obstacle in detecting and identifying victims. They should therefore be informed and equipped to enable better identification of victims and, ultimately, better care.

15. For example, the hearings revealed numerous refusals by gendarmes or police officers to receive complaints, who refer victims to other teams¹⁵ without ensuring that these units actually take charge of the cases, to the detriment of establishing actual access to rights for these minors. It therefore seems necessary to train officers in these issues and in particular encourage them to dissociate the recognition of the status of a victim of human trafficking from the judicial cooperation of victims at the formal identification stage¹⁶.

16. All these professionals should also be trained in taking statements from children in order to avoid worsening the trauma experienced by the victims and to allow them

14. This includes professionals as varied as the police, the gendarmerie, teachers, health professionals, managers of shelters, children's homes (ASE), extended day care workers, judges, and lawyers, etc.

15. E.g. La brigade de protection des mineurs (BPM) [Unit for the protection of minors], l'Office français de protection des réfugiés et des apatrides (OFPRA) [French Office for the Protection of Refugees and Stateless Persons] and l'Office central pour la répression de la traite des êtres humains (OCRTEH) [Central Office for the Prevention of Human Trafficking].

16. CNCDH, Opinion on the creation of a 'National Referral Mechanism' in France, for the effective exercise of the rights of victims of human trafficking, 28 April 2020, p. 8. Op.cit

to speak freely.

Recommendation No. 9: The CNCDH recommends that the issue of the prostitution, trafficking and sexual exploitation of minors be included in the initial and ongoing training of professionals in contact with minors.

Recommendation No. 10: The CNCDH recommends the organisation, as far as possible, of training courses involving staff from different institutions at both local and regional level (education, health, police, gendarmerie, the judiciary, etc.). It also recommends establishing a resource centre at regional or even local level to increase the number of training courses on offer.

II. ENSURING UNCONDITIONAL PROTECTION FOR MINORS WHO ARE VICTIMS OF SEXUAL EXPLOITATION

II.1. Ensuring immediate “shelter”

17. For minors who are victims of sexual exploitation, extremely short response times are needed to provide for immediate shelter. It is up to the institutions to adapt to the reality of the victims and not the other way around. Thus, this sheltering must be a priority, dissociated from the legal proceedings and the alleged victim’s level of cooperation, in accordance with France’s international commitments¹⁷. Moreover, it is necessary and a priority to establish a national referral mechanism for the identification, prevention and referral of victims, as provided for by the second national action plan¹⁸. Therefore, emergency accommodation appropriate for the needs of a minor should be offered prior to any formal identification.

18. Immediate accommodation solutions can take various forms (foster families, dedicated and secure centres, child welfare or other associations, etc.). It is essential to offer flexible emergency accommodation, designed as places at which they are listened to and receive initial medical and psychological support. These emergency solutions must, however, lead to sustainable support throughout the country, including in the overseas territories. The CNCDH notes the current saturation of the ASE’s reception facilities and therefore calls for an increase in its reception capacity. While the Commission notes the plan to create a shelter specialised in receiving minors and

17. France must implement Article 12.6 of the Council of Europe Convention on Action against Trafficking in Human Beings, known as the Warsaw Convention, (which it has ratified), which states that “each party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness”.

18. CNCDH, *Opinion on the creation of a ‘National Referral Mechanism’ in France for the effective exercise of the rights of victims of human trafficking*, 28 April 2020, op.cit.

young adults who are victims of human trafficking¹⁹, it warns against a potential pitfall of such a system: the stigmatisation of victims. The accommodation offered, as well as the supervisory teams, must certainly be adapted to the groups received without, however, these groups maintaining a special status which may be stigmatising.

19. The CNCDH would like to draw attention to the fact that it is also important to ensure reception and accommodation for adult victims of trafficking accompanied by a child.

Recommendation No. 11: The CNCDH notes the need for immediate shelter for minors, which must be unconditional and dissociated from the recognition of victim status or judicial cooperation.

Recommendation No. 12: The CNCDH recommends increasing a wide range of emergency reception and accommodation facilities adapted to the needs of minors throughout the country and that they be staffed with trained personnel to provide lasting support.

Recommendation No. 13: The CNCDH recommends prohibiting the use of hotel accommodation, which is an unsafe and dangerous form of placement for minors who are victims of sexual exploitation.

Recommendation No. 14: The CNCDH recommends that a network be set up to enable the actual transition from emergency accommodation to permanent accommodation. This change in accommodation should be based on educational choices and not just on the management of available places. Constantly updated mapping is necessary in order to be able to quickly find a solution for a minor in an emergency situation.

II.2. Ensuring legal representation (administrateur ad hoc and then a guardian) and the support of a lawyer for each minor

20. In terms of legal representation for minors, the law provides for two scenarios, emergency situations and more permanent situations. In emergencies, the legal representation of a minor who is a victim of sexual exploitation or trafficking, is the responsibility of those with parental authority or an administrateur ad hoc [representative of a minor for specific proceedings], appointed by a judge, in the event of the parents' failure to act or in their absence²⁰. Thereafter, a legal guardian is appointed according to the general regime for "minors lacking capacity".

19. Call for projects launched by the Direction de la Protection judiciaire de la jeunesse [Directorate of Judicial Youth Protection] in 2020 for the establishment of the centre in 2021.

20. In cases where the parents are unknown or not on French territory or are unable to exercise parental authority, for example. See Articles 706-47 6° and 706-50 of the French Code of Criminal Procedure.

21. However, the CNCDH notes that the appointment of an administrateur ad hoc is neither systematic nor immediate for either French minors²¹ or unaccompanied foreign minors²². Yet this administrator guarantees the effective exercise of the child's rights, since he or she is responsible for representing, assisting and informing the child throughout the legal proceedings. The administrator may still have to inform the child about these proceedings after the child has come of age. At present, an administrateur ad hoc is often required to assist the minor in his or her daily life²³. Officially expanding the scope of the administrateur ad hoc's action would help minors to access ordinary law.

22. The legal guardian should take over as soon as the child's situation stabilises in the long term. The appointment of this guardian by the judge must take into account the place of care of the minor, after checking that there is no risk of exploitation.

Recommendation No. 15: The CNCDH recommends the immediate appointment of an administrateur ad hoc for minors who have been sexually exploited, regardless of the proceedings initiated (if the family is absent or does not bring a civil action for damages).

Recommendation No. 16: The CNCDH recommends that the role of the administrateur ad hoc be clarified and that it be officially expanded to meet the needs of minors. After clarification of their status, a national plan for the recruitment and training of administrateurs ad hoc must be set up and implemented throughout the country.

Recommendation No. 17: The CNCDH recommends that a legal guardian be appointed as soon as the young person's situation has stabilised. This appointment should not take place too quickly and should be subject to prior checks. Training for guardians should also be developed.

II.3. Prioritising the most protective criminal classifications for the minor

23. The CNCDH is concerned about criminal acts being reduced to lesser offences in order to speed up legal proceedings²⁴. Yet cases involving the sexual exploitation of minors require lengthy and complex investigations and may also involve several offences, including crimes. Similarly, the criminal classification of the facts may remain complex for judges to establish. The CNCDH therefore urges that the time needed to

21. E.g. when the family does not file a civil action for damages in criminal proceedings.

22. They should be appointed a legal representative as soon as they are on French soil.

23. It is noted that young people do not always have access to them and that an officer is not systematically appointed.

24. CNCDH, *Opinion on the proposed law strengthening the fight against the prostitution system*, 22 May 2014, p. 5. *Op.cit.*

establish offences should not be overlooked.

24. Some hearings suggested that the offence of human trafficking, unlike the offence of procuring, could give rise to more protective measures for minors, including immediate shelter at the preliminary investigation stage following formal identification. The CNCDH therefore considers that the classification of trafficking should be preferred once its constituent elements are met²⁵. It notes that trafficking does not imply a foreign element²⁶ and that it applies to French minors. Moreover, using the classification of human trafficking leaves open the possibility of taking into account the fact that a minor may be forced to commit offences. Even as a perpetrator, since the minor is forced, he or she remains a victim²⁷. When the classification of trafficking is not possible, due to the lack of essential elements, it is important to extend this protective measure to all prostitution-related offences.

25. The hearings revealed that, despite significant progress, the classification of human trafficking is often abandoned by prosecutors in favour of classifications that are simpler to establish, such as the offence of procuring with the aggravating circumstance of the victim being a minor²⁸. The latter classification allows for the immediate appearance of the perpetrators. However, it is not so much the adequacy of legal classifications that is at issue as the policy of numbers and the repeated lack of budgetary resources that push the public prosecutor's office to favour an immediate appearance. Faced with the need for efficiency, the judicial system must not lose sight of the need for the long-term protection and rehabilitation of minors.

26. The hearings also revealed that the clients of minors involved in prostitution are rarely pursued, despite the offence provided for in Article 225-12-1 of the French Criminal Code punishing the use of minors in prostitution. It would be preferable to prosecute once it can be established that the client had knowledge of the victim being a minor.

27. Contrary to current practice, damages awarded to child victims of sexual exploitation should be proportional to the harm suffered, in accordance with the principle of full compensation guaranteed in civil matters. The CNCDH also notes that

25. CNCDH, *Opinion on the proposed law strengthening the fight against the prostitution system*, 22 May 2014, p. 4, *op.cit.*

26. As specified in Article 224-4-1 of the French Criminal Code.

27. ECHR, *V.C.L and A.N. v. the United Kingdom*, 16 February 2021, Application No. 77587/12 and No. 74603/12. According to the European Court of Human Rights, child victims of trafficking should not be prosecuted. According to GRETA, which is responsible for monitoring the Council of Europe *Convention on Action against Trafficking in Human Beings*, prosecuting identified victims of human trafficking for offences they were forced to commit in the context of trafficking may constitute a breach of the 'principle of non-punishment' laid down in Article 26 of the Council of Europe *Convention against human trafficking*. France signed and ratified this Convention which entered into force on 1 February 2008. While building on existing international instruments, the Convention goes beyond the minimum standards they set and strengthens victim protection.

28. French Criminal Code, Article 225-7, 1°.

more human and financial resources should be employed so that more investigations lead to the dismantling of networks and the seizure of assets and property illegally acquired or used for the sexual exploitation of minors²⁹.

28. During the proceedings, minors may be accompanied by victims' defence associations, in accordance with Article 2 of the Law of 13 August 2013 establishing Article 2-22 of the French Code of Criminal Procedure, which allows associations to bring a civil action for damages in criminal proceedings. This civil action should not prevent, where possible, the person legally responsible from filing a civil action for the victim. The testimony of victims, for those who are older, and when possible, is important in the course of the trial.

Recommendation No. 18: The CNCDH recommends that public prosecutors prioritise the criminal classification of human trafficking in cases where it is established for minors who are victims of sexual exploitation.

Recommendation No. 19: The CNCDH recommends prosecuting clients of minors involved in prostitution.

Recommendation No. 20: The CNCDH recommends that the unconditional protection conferred by the classification of trafficking be extended to child victims of procuring or prostitution, insofar as their status as victims should be guaranteed as a priority.

II.4. Ensuring comprehensive and appropriate care for minors in order to jointly build a social and professional integration plan

29. Effective protection of child victims requires systems to be adapted to sexually exploited minors who are particularly vulnerable with particularly traumatic experiences. They are often perceived, within ASE homes, as «unmanageable» due to repeatedly running away, but also due to the recruitment of new victims, which clearly shows their difficulty in adhering to the arrangements proposed. These minors, lacking direction, have difficulty in making use of normed and restrictive systems. As a result, while they are in particular need of a bond, these young victims find themselves subject to a lot of broken relations³⁰. Comprehensive care must include psychological care adapted to the minor and any other pathologies (drug addiction, eating disorders, etc.)³¹. In addition, understanding the root causes leading to prostitution enables the

29. French Code of Criminal Procedure, Article 706-164.

30. Hearing of Arthur Melon, Secretary General of the association Agir contre la Prostitution des Enfants (ACPE) [Act against Child Prostitution], by the CNCDH.

31. Hearing of Nagham Hriech Wahabi, clinical psychologist and Director of the International Organisation against Modern Slavery (OICEM), by the CNCDH.

implementation of appropriate tools to facilitate the protection of each minor and prevent the risk of exploitation again³².

30. Paediatric reception units for children at risk (UAPED), opened in hospitals, provide support for minor victims there, as soon as the events are disclosed, who are interviewed by trained investigators and cared for by a multidisciplinary team (judicial, social, medical and psychological). These facilities should be used more in the context of child prostitution. This provides a safe and protective environment for child victims.

31. Getting a victim to buy into this holistic approach means offering them prospects for the future. However, the CNCDDH notes that the transition to adulthood regularly, or systematically, leads to a “break” in the care provided by the Child Welfare Service for this group of the population. When the victim reaches the age of majority, the connection with the services for the protection of victims of human trafficking is neither continuous, coherent nor effective, especially as the training and integration of young adults who are victims of sexual exploitation while underage are not provided for before they reach the age of majority. The young adult’s adherence to a personalised plan depends on his or her early integration into the decision-making process concerning choices on his or her direction, the pursuit of studies, etc. It is necessary to give the minor or young adult a promising future in which he or she is the actor.

32. Furthermore, the length of the procedures for both recognition of victim status and compensation may now lead to a risk of re-exploitation for a minor victim who, on coming of age, leaves the protection system with no training or money. A minor who has been a victim of trafficking and forced to take part in illegal activities should be exempt from criminal responsibility and his or her victim status should be taken into account in the decision on compensation. The CNCDDH wishes to point out that insecurity³³ exposes these minors and then young adults to a greater risk of being trafficked for sexual exploitation. Thus, the CNCDDH proposes to include alleged victims among the potential beneficiaries of a universal active income. Finally, by signing a *contrat jeune majeur* [contract providing for assistance such as accommodation, financial and psychological support in return for certain commitments, i.e. to professional training], these victims would be able to embark on a genuine social and professional integration programme.

Recommendation No. 21: The CNCDDH recommends rethinking care arrangements in such a way as to encourage the active participation of child victims in jointly developing a personalised life plan.

32. Psychological support and help are only some of the tools. There is also a need for a national platform, under the coordination of the Mission interministérielle pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains [Inter-ministerial mission for the protection of women against violence and to fight human trafficking] (MIPROF), for example, in order to disseminate the good practices identified locally.

33. The CNCDDH considers it useful to note that a foreign minor who is a victim of trafficking has the right to international protection.

Recommendation No. 22: The CNCDH recommends continuing to support young people beyond the age of majority, regardless of their nationality and age on arrival in France for foreigners, by offering mixed accommodation facilities for minors and young adults up to the age of 21. To do this, real political will is needed.

Recommendation No. 23: The CNCDH recommends the roll-out of *contrats jeunes majeurs*, irrespective of nationality, to allow these young victims to embark on a genuine social and professional project.

III. REINFORCING THE PREVENTION OF RISK SITUATIONS AND BEHAVIOUR

III.1. Ensuring the proper running of child protection services

33. The shortcomings of child protection services are detrimental to minors at risk. Indeed, children who are not provided care, or whose care is inadequate, are left to fend for themselves, most often, in the case of unaccompanied foreign minors, in situations of extreme poverty. This condition exposes them to short-term risks of prostitution and/or sexual exploitation. The hearings conducted at the CNCDH revealed a lack of resources and understaffing within the ASE in certain departments, in police stations and in care facilities, as well as problems with the coordination of the various competent services at departmental and local level.

34. Preventing the risks of prostitution or sexual exploitation means that the services have the necessary means to fulfil their mission – in a tangible and lasting way – of providing immediate care for these children. However, in recent years, the departmental child welfare services have been faced with a significant increase in the number of minors at risk, mainly unaccompanied minors³⁴. In this context, the lack of resources leads to prioritising cheaper but dangerous solutions, such as accommodation in hotels rather than in facilities authorised by the ASE. Sometimes this even leads to minors at risk being denied access to accommodation, in breach of current law. In this respect, the CNCDH is very concerned about the reduction in government contributions for 2021 in support of departmental councils for the reception of unaccompanied minors³⁵; and, in particular, by the decision to make the government's lump-sum contribution conditional on the president of the departmental council signing an agreement with the prefect³⁶. The CNCDH notes that the financing of

34. Observatoire national de la protection de l'enfance [National Observatory for Child Protection] (ONPE), *Les connaissances pour agir en protection de l'enfance: de leur production à leur appropriation*, 14th report to the government and parliament, May 2020.

35. Source: budget documents - draft finance law for 2021.

36. Article R. 221-12 of the code de l'action sociale et des familles [French legislation on social action and families] amended by Decree No. 2020-768 of 23 June 2020.

child protection policy, and in particular support for unaccompanied minors, cannot be subject to the contingencies of the budgetary debate or dependent on the cooperation of departmental actors. On the contrary, it must be a continual and sufficient allocation to ensure the proper functioning of child welfare services.

35. The structural lack of human and financial resources cannot be presented as the only explanation for the saturation of services and as the cause of all the poor functioning of child welfare services. The great disparities in care for minors between regions are the result of the decision, in the early 1980s, to decentralise child protection policy to departmental level. The CNCDH has already had the opportunity, in its opinion of 26 May 2020³⁷, to express its concern about the diversity of practices involved in a decentralised child protection system. The care of minors at risk cannot be left to the political arbitration of 95 departmental councils alone.

36. The fight against child prostitution and sexual exploitation must be a nationally-driven policy³⁸: the government is obliged to guarantee the equal treatment of protected children throughout the country. Moreover, the CNCDH insists that the inter-ministerial mission for the protection of women against violence and to fight human trafficking (MIPROF) should have strong political support. MIPROF's current attachment to the Secretary of State for Equality between Women and Men and the Fight against Discrimination does not give it this political support. Furthermore, it emerged from the hearings that the resources allocated to this mission are currently insufficient to ensure the effective coordination of actors involved in combatting human trafficking and, in particular, sexual exploitation³⁹.

Recommendation No. 24: The CNCDH recommends increasing the amount of the government's contribution to the prevention of and fight against trafficking, in the short term in the draft finance law for 2022, and in the long term by making this contribution continuous without attaching conditions.

Recommendation No. 25: The CNCDH recommends entrusting MIPROF with the task of steering the prevention of and fight against the prostitution and sexual exploitation of minors in order to capitalise on and coordinate action effectively.

Recommendation No. 26: The CNCDH recommends that MIPROF's resources be reinforced so that it is able to steer all actors and establish a common protocol for

37. CNCDH, Opinion on respect for private and family life in child protection: a fundamental right that is difficult to guarantee in a system that is in trouble [Avis sur le respect de la vie privée et familiale en protection de l'enfance : un droit fondamental difficilement assuré dans un dispositif en souffrance], 26 May 2020, JORF no. 0132 of 31 May 2020, Text no. 99, p. 9.

38. Cf. Cour des Comptes [Court of Auditors], La politique de l'enfance, une politique inadaptée au temps de l'enfant, Rapport public thématique, November 2020.

39. It is a very small mission with two staff members provided by the Ministry of the Interior and the Directorate General for Social Cohesion.

detecting, identifying and caring for minors in prostitution or who are being sexually exploited.

III.2. Developing preventive actions for minors

37. Among the tools for preventing the risks of prostitution and sexual exploitation among minors, sex education and information are undoubtedly one of the avenues to be pursued, but only alongside others. In schools, sex education has been included in the French Education Code since 2001⁴⁰. Despite this legal framework, such education is generally insufficient and sometimes still neglected by schools⁴¹. Where it does exist, these lessons are largely limited to addressing sexuality from the perspective of reproduction and health issues.

38. As an extension of the recommendations of the Human Rights Defender, the CNCDDH believes that it is necessary to promote education that prioritises “*a comprehensive approach to sexuality, integrating its emotional, psychological and social aspects in the same way as its reproductive aspects*”⁴². The section of this training devoted to violence, particularly sexual violence⁴³, should facilitate the disclosure of violence suffered by children. This aspect requires support with a proposal for care. Moreover, the CNCDDH emphasises that prevention must start from the youngest age, from nursery school and throughout schooling; this means thinking about educational tools adapted to different ages.

39. In addition to sex education, it is important to carry out actions to raise awareness targeted at the most vulnerable minors. Indeed, the hearings highlighted certain systemic situations and discrimination that promote the appearance of certain forms of exploitation: LGBT phobias, the social exclusion of unaccompanied minors, the fragility of minors taken into the care of the ASE, who are sometimes placed in hotels, etc. These are all reasons and situations that are at the origin of vulnerabilities that promote the power of third parties involved in prostitution and sexual exploitation. In this respect, the CNCDDH considers it necessary to develop preventive actions in the places where these minors spend time or live, in particular in ASE homes.

40. The CNCDDH also draws attention to the need to develop actions to raise the awareness of minors on the Internet, and in particular on social networks, which are areas where a large proportion of relationships are formed and where minors confide

40. French Education Code, Art. L. 312-16.

41. cf. Haut conseil à l'égalité entre les femmes et les hommes [High Council for gender equality], Report on sex education, “ Répondre aux attentes des jeunes, construire une société d'égalité femmes-hommes » [Meeting young people's expectations, building a society with gender equality], report no. 2016-06-13-SAN-021, 13 June 2016.

42. Défenseur des droits [Human Rights Defender], Rapport sur les Droits de l'enfant [Report on the Rights of the Child] 2017, p. 90.

43. French Education Code, Art. 312-17-1.

without any filter.

41. Among the most vulnerable minors are unaccompanied foreign minors who face additional problems due to their administrative insecurity. Indeed, when an unaccompanied minor arrives in France, he or she is particularly exposed to the influence of third parties or to poverty. It is necessary to inform them immediately of their rights to schooling and access to child welfare, but also of their right to seek asylum in France. Indeed, even if, as the law on foreigners stands, a minor does not need to apply for a residence permit, he or she may nevertheless, as a minor, file an application for asylum with the prefecture. This application will be processed by specialist services of the Office français de protection des réfugiés et apatrides [French Office for the Protection of Refugees and Stateless Persons] (OFPRA). Refugee status is important in the pathway out of prostitution for unaccompanied minors. In most cases, however, the minors concerned do not know that they can apply for it. Moreover, ASE staff are also often unaware of this. The CNCDH considers that part of the prevention process involves better information for unaccompanied foreign minors on their rights in terms of schooling and access to the ASE, as well as the right to seek asylum. Moreover, some prefectures even refuse to deal with asylum applications from unaccompanied minors, preferring to wait until they are of age to process the cases.

Recommendation No. 27: The CNCDH recommends a comprehensive approach to sex education in schools that focuses on gender equality, sexual orientation and practices and gender identities, as well as on the fight against gender stereotypes, discrimination and sexual violence.

Recommendation No. 28: The CNCDH recommends developing initiatives to prevent violence, particularly sexual violence, from nursery school onwards and throughout the school system, in order to facilitate the disclosure of violence suffered by children.

Recommendation No. 29: The CNCDH recommends that the national education system takes up the issue of the sexual exploitation of minors by putting in place detection channels and dedicated staff to support the pupils concerned and their parents.

Recommendation No. 30: The CNCDH recommends that the prevention of all forms of sexual violence in children's homes be developed in order to encourage children to speak up and enable young victims to seek help.

Recommendation No. 31: The CNCDH recommends supporting the initiatives of bodies or associations that work directly on prevention with young people over the Internet.

Recommendation No. 32: The CNCDH recommends that unaccompanied foreign minors be better informed of their rights in terms of schooling and access to child protection (ASE) and, above all, the right to asylum.

Recommendation No. 33: The CNCDH recommends that a circular be issued reminding the prefecture of its obligation to accept asylum applications from minors.

III.3. Developing a large-scale plan to raise awareness

42. The CNCDH notes that the prostitution and sexual exploitation of minors is largely ignored by most of our fellow citizens. This lack of knowledge of the phenomenon hampers awareness of the urgency of preventing and effectively combatting prostitution and the sexual exploitation of minors. Although there are currently a number of information and awareness-raising initiatives in France, they are unfortunately too few in number, dispersed and carried out without coordination between the various actors concerned.

Recommendation No. 34: The CNCDH recommends drawing up and implementing a communications plan and major national campaign using various media such as television, posters, social networks and newspapers.

APPENDIX 1: LIST OF PEOPLE HEARD

Ms Irène Aboudaram, Head of the support and public policy department of Médecins du Monde

Ms Elvire Arrighi, Commissioner, Head of the Office central pour la répression de la traite des êtres humains [Central Office for the Prevention of Human Trafficking] (OCRTEH)

Ms Isabelle Aubin, Commissioner, assistant to the head of department, Brigade de Protection des Mineurs [Unit for the protection of minors] (BPM)

Mr Simon Benard-Courbon, Deputy Procureur de la République [Public Prosecutor] in the Family and Youth Division (DIFAJE) of the Bobigny Tribunal judiciaire [ordinary court]

Ms Martine Brousse, President of La Voix De l'Enfant

Ms Coralie Capdeboscq, Head of the Vulnerability Mission within the Legal, European and International Affairs Division of the Office français de protection des réfugiés et des apatrides [French Office for the Protection of Refugees and Stateless Persons] (OFPRA)

Ms Charlotte Caubel, Director of Judicial Youth Protection (DPJJ) of the Ministry of Justice

Mr June Charlot, Health Mediator of the association Grisélidis

Maîtres Catherine Delanoë-Daoud and Véronique Boulay, lawyers at the Paris Bar, members of the Antenne des mineurs [Minors' branch] and co-heads of the foreign minors' unit of the Paris Bar

Mr Vincent Dubaele, Director of the association Itinéraires Entr'actes

Ms Marie-Hélène Franjou and Ms Delphine Jarrou, President and Delegate-General of Amicale du Nid

Ms Aurélie de Gorostarzu, Director of the association Hors La Rue

Ms Nagham Hriech Wahabi, clinical psychologist, Director of the International Organisation against Modern Slavery (OICEM)

Ms Violaine Husson, Head of Gender and Protection at the Rights and Protection Unit of La Cimade

Ms Bénédicte Lavaud-Legendre, lawyer and researcher at CNRS

Mr Arthur Melon, Secretary General of Agir contre la Prostitution des Enfants [Act against Child Prostitution] (ACPE), member of COFRADE

Mr Louis Merlin, Head of the Cellule de recueil des informations préoccupantes [Unit for the collection of disturbing information] for department 75 (CRIP 75)

Ms Elisabeth Moiron-Braud, Secretary General of the Mission interministérielle pour la protection des femmes victimes de violences et la lutte contre la traite des êtres humains [Inter-ministerial mission for the protection of women against violence and the fight against human trafficking] (MIPROF)

Mr Christophe Molmy, Divisional Commissioner, Head of the Brigade de Protection des Mineurs [Unit for the protection of minors] (BPM)

Ms Françoise Pétreault and Mr Benoît Rogeon, Deputy Director of Educational Action at the Direction générale de l'enseignement scolaire [General Directorate of School Education] (DGESCO) of the Ministry of National Education, Youth and Sport and Head

of the Social Action Office

Mr Olivier Peyroux, sociologist and President of the association Koutcha

Ms Claire Quidet and Mr Benoît Kermorgan, President and Île de France Coordinator of Mouvement du Nid

Mr Valiant Richey, former prosecutor, special representative and coordinator for combatting human trafficking at the Organization for Security and Cooperation in Europe (OSCE) and Mr. Oleksandr Kyrylenko, Programme Officer leading the child protection (OSCE)

Mr Thierry Schaffauser, coordinator of the Syndicat du travail sexuel [sex workers' union] (STRASS)

Ms Vanessa Simoni, Director, Ms Aurélie Jeannerod, M Osariemen Uhunmwangho and Ms Flora Fournat, Mission d'intervention et de sensibilisation contre la traite des êtres humains [Mission for intervention and raising awareness against human trafficking] (MIST)

APPENDIX 2 : RECOMMENDATIONS

Recommendation No. 1: The CNCDH recommends the adoption of a clear criminal policy against the exploitation of minors based on the clarification of criminal legislation applied and on its better articulation. This step is a prerequisite for the formulation of criteria for identifying alleged victims and for the use of appropriate criminal classifications within the judicial framework.

I. Improving the identification of minors in prostitution or of minors who are sexually exploited

1.1. Taking into account the diversity of situations and causes

Recommendation No. 2: The CNCDH recommends encouraging research through public funding, for example the Law and Justice mission on child prostitution, in order to identify the various causes of this phenomenon and to develop tools to remedy it at all levels (prevention and protection). It also recommends that a complete presentation of institutions and associations' statistics be provided in order to better quantify and qualify the phenomenon of child prostitution.

Recommendation No. 3: The CNCDH recommends that public authorities establish criteria for identifying these different situations, as provided for in the second national plan to combat human trafficking 2019-2021, and quickly initiate the Mechanism for identifying and referring victims of trafficking.

Recommendation No. 4: The CNCDH recommends the reinforcement of cyber patrols carried out by dedicated police or gendarmerie officers, specially trained and equipped to enable better detection of offences committed on the Internet.

Recommendation No. 5: The CNCDH recommends that a legislative framework be put in place to encourage Internet platforms, which may have a link with the offences concerning the sexual exploitation of minors, to cooperate with the police.

1.2. Building trust with children involved in prostitution

Recommendation No. 6: The CNCDH recommends the development of outreach initiatives involving the ASE, associations on the ground, and mediators on the street, in places of prostitution and on the Internet.

Recommendation No. 7: The CNCDH recommends that building a relationship of trust

with minors should be encouraged, taking into account their entire situation and using harm-reduction strategies in order to put in place sustainable solutions for their protection, particularly their health. It recommends the development of collaboration with peer mediators to encourage the identification and support of minors in prostitution.

Recommendation No. 8: The CNCDH recommends the development of partnerships between associations on the ground, the ASE and the competent public prosecutor's office for minors in order to encourage collaboration around the young person when any report is made and to prevent this reporting from hindering support.

1.3. Training professionals in the detection and identification of victims

Recommendation No. 9: The CNCDH recommends that the issue of the prostitution, trafficking and sexual exploitation of minors be included in the initial and ongoing training of professionals in contact with minors.

Recommendation No. 10: The CNCDH recommends the organisation, as far as possible, of training courses involving staff from different institutions at both local and regional level (education, health, police, gendarmerie, the judiciary, etc.). It also recommends establishing a resource centre at regional or even local level to increase the number of training courses on offer.

II. Ensuring unconditional protection for child victims

II.1. Ensuring immediate «shelter»

Recommendation No. 11: The CNCDH notes the need for immediate shelter for minors, which must be unconditional and dissociated from the recognition of victim status or judicial cooperation.

Recommendation No. 12: The CNCDH recommends increasing a wide range of emergency reception and accommodation facilities adapted to the needs of minors throughout the country and that they be staffed with trained personnel to provide lasting support.

Recommendation No. 13: The CNCDH recommends prohibiting the use of hotel accommodation, which is an unsafe and dangerous form of placement for minors who are victims of sexual exploitation.

Recommendation No. 14: The CNCDH recommends that a network be set up to enable the actual transition from emergency accommodation to permanent accommodation.

This change in accommodation should be based on educational choices and not just on the management of available places. Constantly updated mapping is necessary in order to be able to quickly find a solution for a minor in an emergency situation.

II.2. Ensuring legal representation (administrateur ad hoc and then a guardian) and the support of a lawyer for each minor

Recommendation No. 15: The CNCDH recommends the immediate appointment of an administrateur ad hoc for minors who have been sexually exploited, regardless of the proceedings initiated (if the family is absent or does not bring a civil action for damages).

Recommendation No. 16: The CNCDH recommends that the role of the administrateur ad hoc be clarified and that it be officially expanded to meet the needs of minors. After clarification of their status, a national plan for the recruitment and training of administrateurs ad hoc must be set up and implemented throughout the country.

Recommendation No. 17: The CNCDH recommends that a legal guardian be appointed as soon as the young person's situation has stabilised. This appointment should not take place too quickly and should be subject to prior checks. Training for guardians should also be developed.

II.3. Prioritising the most protective legal classifications for the minor

Recommendation No. 18: The CNCDH recommends that public prosecutors prioritise the criminal classification of human trafficking in cases where it is established for minors who are victims of sexual exploitation.

Recommendation No. 19: The CNCDH recommends prosecuting clients of minors involved in prostitution.

Recommendation No. 20: The CNCDH recommends that the unconditional protection conferred by the classification of trafficking be extended to child victims of procuring or prostitution, insofar as their status as victims should be guaranteed as a priority.

II.4. Ensuring comprehensive and appropriate care for minors in order to jointly build a social and professional integration plan

Recommendation No. 21: The CNCDH recommends rethinking care arrangements in such a way as to encourage the active participation of child victims in jointly developing a personalised life plan.

Recommendation No. 22: The CNCDH recommends continuing to support young people beyond the age of majority, regardless of their nationality and age on arrival in France for foreigners, by offering mixed accommodation facilities for minors and young adults up to the age of 21. To do this, real political will is needed.

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III. Reinforcing the prevention of risk situations and behaviour

III.1. Ensuring the proper running of child protection services

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COMMISSION NATIONALE
CONSULTATIVE
DES DROITS DE L'HOMME

RÉPUBLIQUE FRANÇAISE

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- monitoring the effectiveness in France of rights protected by international human rights conventions;
- overseeing France's implementation of recommendations made by international committees.

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