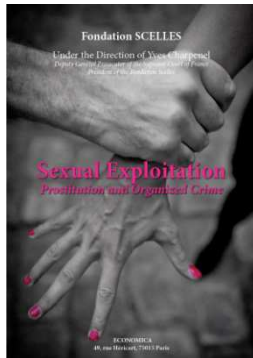




Fondation Scelles

Connaître, Comprendre, Combattre
l'Exploitation Sexuelle

Organized crime and money generated by prostitution



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Context elements extracted from a study carried out by the European Commissionⁱ:

Human trafficking can take several forms and evolves with social and economic changes. This phenomenon affects women, men, girls, or boys in vulnerable situations. According to the latest estimations established by the International Labor Organization in June 2012 and covering the period from 2002-2011, the number of victims of forced work, including forced sexual exploitation, reached 20.9 million on a global scaleⁱⁱ, of whom 5.5 million are children. Furthermore, those are cautious estimations.

Human trafficking constitutes a lucratively profitable form of criminality, whose leaders make tens of billion Euros each yearⁱⁱⁱ.

According to the 2010 United Nations Office on Drugs and Crime (UNODC) report, 79% of identified victims from human trafficking are subjected to some kind of sexual exploitation, 18% are victims of forced labor while 3% are victims of other forms of exploitation. Among those victims, 66% are women, 13% are girls, 12% are men, and 9% are boys^{iv}.

As in previous years, organized crime remains at the heart of prostitution and human trafficking activities. Legislation, police activities, and judicial sentences on the governments have been based for a long time on the prohibition of these activities and on the enforcement of penal sanctions such as

imprisonment sentences, and/or fines imposed on procurers and criminals. Nonetheless, modern states, particularly France, have gradually become aware of the importance of more efficiently confiscating the financial assets generated by such activities. They have progressively equipped themselves with necessary legislative tools and institutions to

seize and confiscate the profits generated by illegal activities.

For a long time, criminal groups benefited from the complexity or non-existence of procedures allowing the seizure and confiscation of crime products.

The first international convention foreseeing stipulations to allow the establishment of the "crime does not pay" motto, was the **Convention of Vienna on drugs**, adopted in 1988⁵. It came into force on November 11th, 1990. Limited to the assets generated by drug trafficking, this Convention was implemented in France by a 1990 law⁶, which referred to the civil enforcement procedures. Although drug trafficking is handled by the penal action of each state, the mechanisms allowing the seizure and the confiscation of profits generated by that activity were civilian mechanisms and therefore unfamiliar to penal specialists, expensive, and unadapted.

Two years later, in 1990, in Strasbourg, the Council of Europe adopted the Convention regarding the laundering, detection, seizure, and confiscation of crime products. It came into force on September 1st, 1993 and its application extends to all infractions and the seizure and confiscation of profits generated by pimping and human trafficking activities. The Convention was signed, enacted by France and enforced by a 1996 law⁷ that preserved the same mechanism of referral to the civil enforcement procedures. Nonetheless, the scope of this Convention remained limited.

Organized crime has experienced an evolution similar to that of other economic sectors. Globalization, now allows investment of criminal profits in activities located in other countries. Additionally, this globalization was facilitated by the opening of borders (Schengen Agreement enforced on June 19th, 1990) and by the opening and simplification of financial transfer mechanisms necessitated by global economy.

A global awareness of the necessity of fighting against dirty money

Gradually, the international community (UN), Europe (Council of Europe and European Union), and individual governments became aware of the advantages and the importance of fighting against dirty money, particularly the necessity of confiscating products generated by procuring and human trafficking activities. As emphasized by the previous world report on sexual exploitation, corruption and money laundering were at the heart of prostitution and human trafficking activities. These topics were highlighted in the conclusions of new international conventions.

Therefore, on a global scale, the UN has promoted many international conventions during the last decade, in particular the *Convention of the United Nations against transnational organized criminality* adopted in Palermo on December 12th, 2000. Ten years later, the French minister of Justice would make the following statement during the UN session devoted to the outcome of the convention⁸: "As of today, 157 countries are a part of this convention. This significantly large adhesion is an unquestionable sign of the appropriateness of this tool and of the international community's willingness to fight in a determined manner against all forms of transnational organized criminality."

The Convention of the United Nations against corruption, adopted in Merida on October 31st, 2003, established the international basis of the fight against corruption. The United Nations Protocol regarding the Human Trafficking, called the Palermo Protocol⁹ completed the Convention of the United Nations against organized transnational criminality.

At a European level, the Council of Europe and the European Union adopted several tools as well:

- the Convention on the fight against human trafficking from the Council of Europe, adopted in Warsaw in 2005¹⁰.
- the Council's framework decision 2002/629/JAI on July 19th, 2002 regarding the fight against human trafficking.
- the recent 2011/36/UE Directive from the European Parliament and the Council on April 5th, 2011 regarding the prevention of human trafficking, the fight against this scourge, and the protection of the victims.

Other specific tools were adopted in order to fight against child sexual abuse and child pornography (framework decision 2004/68/JAI from the European Union in 2004, the Convention of the Council of Europe on the protection of children against exploitation and sexual abuse enforced on July 1st, 2010 and the 2011/93/UE Directive of the European Parliament and the Council from December 13th, 2011 regarding the fight against sexual abuse, child sexual exploitation, and child pornography).

All these tools require the nation members of these conventions, or other nation members of the European Union, to introduce legislation allowing for the seizure and confiscation of crime products.

Additionally, other more general tools recommend the development of services for the identification of criminal assets or imposition of a harmonization of the measures of seizure and confiscation of criminal products and the mutual international recognition of decisions regarding "freezing assets" and confiscations.

Traditionally, we make the difference between seizure and freezing measures (those two terms being equivalent) from decisions of confiscation.

Seizure or freezing measures are transitory measures, ordered within a non-contradictory context (the person, suspected of having committed a crime or an offense, is not previously warned of these measures in order to avoid disappearance of the goods which are set to be seized or frozen). Those measures are conservatory decisions (their only purpose is to avoid the hiding of the goods) and are generally ordered by the Judge of freedoms and detention or by the Judge of instruction. The suspect remains the juridical owner of those goods (except when the goods are likely to lose their value) which are kept by the government while awaiting for a decision of confiscation or restitution.

The decision of confiscation is a sanction which entails a transfer of property, usually to the government that executes the confiscation decision. This decision is dictated by an impartial jurisdiction (independent from the lawsuits). It is refutable (the person can be interrogated on the origin of the goods and deny the accusation that they are products of an infraction) and always susceptible of appeal. In an international context, the confiscated good is generally sold and shared between the government of condemnation (the one that ordered the confiscation) and the government of execution (the one that executed the confiscation decision).

At a national level, French Parliament adopted a very important law (2010-768 dated July 9th, 2010) to simplify the seizure and the confiscation in penal terms. This law deeply changed seizure and confiscation mechanisms. In the first place, the law suppressed the use of civilian procedures of confiscation only applicable for 20 years which were imposed to put in place complex conservatory measures, well-known by civil law specialists, but

seldom used in penal matters. Hence, it was necessary to proceed to the use of mortgages in order to "seize" real estate, and periodically renew those mortgages.

Otherwise, criminals and outlaws used to swiftly hide the goods before it was even possible to proceed to their confiscation. The same kinds of procedures were used for bank accounts that needed to go through conservatory measures. The 2010 law introduced a new procedure. The penal seizure permits hindering every act of disposal coming from the owner's side such as the sale or exchange of real estate, to freeze the amounts available in bank accounts in a very short time through a quick and specific penal procedure. Secondly, this law transposed the framework decision regarding the mutual recognition within the European Union. This mechanism allows French authorities to ensure the execution, in the other member countries of the European Union, of all confiscation decisions pronounced by the French jurisdictions and, conversely, to ensure the execution in France of a confiscation ordered by other jurisdictions within the European Union.

This law from July 9th, 2010 also codified, in the Code of penal procedure, the 1990 and 1996 laws (adopted with the purpose of implementing the Conventions of Vienna and Strasbourg alone) by granting them a very general scope, applicable to all conventions considering seizure or confiscation of goods. Hence, it is possible to confiscate real estate, bank accounts, and more generally "all the personal and real estate properties, whatever their nature, divided or undivided, that were used to commit the infraction or that were meant to commit the infraction, and of which the convicted is the owner or of which he has free disposition, subject to the rights of the bona fides owner", wherever the assets are, in France or abroad. This law also replaced the referral to civil enforcement procedures by the new procedure of penal seizure.

Since July 2010, the confiscation of goods in an international context may lean on one of the four main international conventions already mentioned (Vienna, Strasbourg, Palermo, or Merida) and on their Protocol, on the bilateral conventions signed and enacted by France, and even, in the absence of an international convention, on the simple principle of reciprocity. Therefore, it is possible to confiscate all money generated by procuring or human trafficking (or by any kind of infraction) even if the product of these infractions was transferred to another country.

Finally, this law created an institution in charge of the management of the seized and/or frozen goods and of the confiscated goods, the Collection Agency of Seized and Confiscated Assets (AGRASC)¹¹ whose role is to fight against all forms of delinquency generating profits.

A coherent and complete plan of action to seize and confiscate the money generated by prostitution and human trafficking

At the end of a decade of legislative evolution and newly implemented institutions, France had at its disposal a coherent and complete plan of action to identify, seize, and confiscate the money generated by prostitution and human trafficking and manage the assets seized and confiscated. Created in September 2005 within the Central Office for the Suppression of Large Financial Crime (OCRGDF), the Central Directorate of the Judicial Police (DCPJ), and the Directorate of the National Police (DGPN), the Platform for the Identification of Criminal Assets (PIAC) is an investigation service depending on the judicial police, on a national scale. This platform works in collaboration with all the police and gendarmerie services in order to systematize the secured assets. If required by the judicial authority requires so, this platform can carry out investigations or bring advice and assistance to the investigators. 700 interventions of operational or telephone

assistance were carried out in 2011. It centralizes and integrates information regarding criminal assets. It also ensures training.

Some penal dispositions allow for seizure and confiscation of money generated by procuring and human trafficking in an effective manner

European legislation provides for two mechanisms of confiscation: simple confiscation and extended confiscation. France has legislation in perfect harmony with European requirements allowing for the seizure and confiscation on an even larger scale, of money generated by those who commit criminal or offensive acts:

- simple confiscation: the Penal code stipulates that the tool or the direct/indirect product of every kind of infraction, punished by an imprisonment longer than one year, can be seized and confiscated

- the extended confiscation: the European Union tools require that seizure and confiscation may also expand to goods that are not the direct or indirect product of the infraction for which one person is sentenced. It is just necessary that those goods result from similar infractions or that the person committing these infractions is not able to justify the origin of those goods

- the confiscation of goods coming from a legal and justified origin: in certain determined infractions of a particularly serious manner, such as terrorism, procuring, or human trafficking, the Penal code allows for the possibility of a general confiscation of all assets, which is much larger than the confiscation of the tools and products of the infraction, or the product of other infractions. As a matter of fact, it authorizes "the confiscation of all or part of the goods belonging to the convicted." This is the case, in particular, for human trafficking and procuring

acts, and for other closely related infractions (art. 225-25 of the Penal code¹²).

The AGRASC, a public administrative institution, placed under the double supervision of the Ministries of Justice and Budget, facilitates seizure and confiscation in penal terms. This agency allows to better manage profits generated by delinquency and organized crime.

The seizure of criminal assets: a reality and an encouraging outcome

The AGRASC's first annual report, submitted on April 18th to the Minister of Justice, emphasized the fact that the sanctioning of assets became a crucial component of penal investigations and it continues to develop. Weakening criminal organizations and dismantling their structure constitutes its essential function. During the first years of its existence, the AGRASC centralized more than 13,000 seized or confiscated goods, representing 8,000 cases and estimated amount of €204 million euros in total.

Its sole account at the Caisse de dépôts et consignations (a French Fund deposit institution) registers a cash flow of more than €200,000 per day, corresponding to the seized amounts related to the penal procedures.

AGRASC also noted an unprecedented growth in the real estate seizures, considerably facilitated due to the new penal procedure in the law of July 9th, 2010: 202 real estate seizures were registered in just one year. Since the beginning of 2012, at least one real estate is seized every day by a judge on French soil.

A mutual acknowledgment of seizure and confiscation decisions on a global scale

France has modernized the disposition of the Penal procedure code. It recognizes and enforces sentence decisions pronounced by foreign authorities, even when those confiscations result from a judicial decision of

confiscation without condemnation (which exists in certain determined countries such as the United States, the United Kingdom, and Italy) despite the fact that such an option of confiscation without penal condemnation does not exist in France.

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ⁱ Final document COM(2012)286: Communication of the Commission to the European Parliament, to the Council, to the European economic and social regions Committee.

ⁱⁱ International Labor Organization, "ILO 2012, Forced work estimation around the world", June 2012. This report indicates that human trafficking can be considered as forced labor, and its estimations therefore take into account all the diverse forms of human trafficking with purposes of forced work and sexual exploitation (p. 13).

ⁱⁱⁱ The annual profits in a global scale from the exploitation of the human trafficking victims with the purpose of forced labor are estimated to \$31.6 billion (25.843 billion Euros). A share of this amount \$15.5 billion (€12.676 billion), corresponding to 49%, are generated in the industrialized economies (Belser, "Forced Labor and Human Trafficking: Estimating the profits", work document, Geneva, International Labor Office, 2005).

^{iv} "Globalization of the criminality: evaluation of the threat instigated by the transnational organized criminality", UNODC, 2010.

⁵ *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Vienne, December 20th, 1988.

⁶ *Law n.90-1010 (November 14th, 1990) portant adaptation de la législation française aux dispositions de l'article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Vienna, December 20th, 1988.

⁷ *Loi n°96-392 du 13 mai 1996 relative à la lutte contre le blanchiment et le trafic des stupéfiants et à la coopération internationale en matière de saisie et de confiscation des produits du crime.*

⁸ Statement made on October 18th, 2010 by Jean-Marie Bockel, French secretary of Justice.

⁹ *Additional Protocol to the Convention of the United Nations against the transnational organized criminality aiming at preventing, repressing, and punishing human trafficking, particularly the trafficking in women and children.*

¹⁰ *Additional Protocol to the Convention of the United Nations against the transnational organized criminality aiming at preventing, repressing, and punishing human trafficking, particularly the trafficking in women and children*, vol. 2237, p.319; *Convention of the Council of Europe for the fight against human trafficking (STCE 197)*, Warsaw, May 16th, 2005.

¹¹ On July 5th, 2012, the AGRASC was nominated to the Victoires 2012 organized by the *Acteurs publiques* magazine in order to encourage innovation within Administration.

¹² Article 225-25 of the Penal code: " the natural persons and corporations convicted under the infractions considered by the 1bis and 2 sections of the present chapter, with the exception of the one considered by the article 225-10-1, also incur the complementary sentence of confiscation of all or part of the goods belonging to them or of which they have a free disposition (subject to the rights of the bona fides owner), whatever the nature of these goods, personal or real state property, divided or undivided."