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1 Introduction

1.1 Assignment

The provision in the Finnish Criminal Code that renders punishable the sexual exploitation of a victim of human trafficking and procuring (hereinafter ‘abuse of a victim of prostitution’ or ‘sex purchase ban’) has been in effect for more than six years, as of 1 October 2006. There has been periodical public debate on this provision, which is a strong opinion divider. However, there has been little information available on how the provision is being applied. Three years after the provision entered into force, the Legal Affairs Committee of Parliament required the Ministry of Justice to submit a report on the application practices of the provision. (LaVM 10/2006.) The Ministry of Justice conducted an evaluation of the application of the provision in 2009, at which time very little data had been accumulated on application practices.

The Government Programme of the Government of Prime Minister Jyrki Katainen (2012) did not touch on the implementation of the sex purchase ban, but it did include several goals related to the regulation of purchasing sex and prostitution. Specifically, the Government Programme made a commitment to reduce violence against women and to enhance the fight against organised crime (pp. 28 and 67). Legislation will be developed in order to prevent trafficking in human beings in all its forms, to protect the victims of human trafficking and to improve legal protection (p. 26). Also, in work against violence priority will be given to better recognition of violence against vulnerable groups, including immigrant women (p. 27).

In accordance with the Government Programme, the Government adopted the Action Plan for Gender Equality (2012), which included more detailed commitments to the implementation of gender equality. The Action Plan for Gender Equality includes a commitment to conduct a comprehensive evaluation of the legislation concerning the purchasing of sex and to outline measures required. In this evaluation, particular attention was to be paid to the review of national legislation in this area published in Sweden in 2010 (Action Plan for Gender Equality, p. 33).

The previous Government adopted an Action Plan to Reduce Violence against Women in 2010. That Action Plan recommended that training should be provided for the authorities (police, prosecutors, public legal aid attorneys, judges) on infringements occurring in connection with prostitution, procuring and human trafficking.

Officials and NGOs have had a particular focus on human trafficking and its prevention in the late 2000s. The Government adopted the Revised National Plan of Action against Trafficking in Human Beings in 2008, the Minority Ombudsman was appointed the
National Rapporteur on Trafficking in Human Beings in 2009, and an Annual Report has been published by the Rapporteur since 2010. These Reports include proposals for several measures to enhance action against human trafficking, and Parliament has concurred with these proposals. However, the Reports have not addressed the criminal offence of abuse of a victim of prostitution and its significance for combating human trafficking.

In January 2013, the Ministry of Justice commissioned Professor Johanna Niemi of the Faculty of Law at the University of Helsinki to conduct a study on the effectiveness of the sex purchase ban. The study report was prepared by project planner Jussi Aaltonen LL.M. (15 Jan – 27 Jun 2013) and Professor Niemi.

In accordance with the assignment given by the Ministry of Justice, the study focused on the situation in Finland and the effectiveness of the sex purchase ban. The commissioning agreement also involved reviewing the situation in Sweden and the UK. Sweden criminalised the purchasing of sex in 1999. In the UK, the purchasing of sex from victims of human trafficking and procuring was criminalised in 2009. Unlike in Finland, under British legislation such purchasing is an offence regardless of whether the buyer was aware of the human trafficking or procuring.

### 1.2 Legislation to be reviewed

The provision in the Finnish Criminal Code concerning abuse of a victim of prostitution (Criminal Code, chapter 20 section 8) was enacted in 2006 and entered into force on 1 October 2006. Under this provision, a person who, by promising or giving remuneration involving direct economic benefit induces a person who is a victim of human trafficking or procuring to engage in sexual intercourse or in a comparable sexual act shall be sentenced for abuse of a victim of prostitution. An attempt is punishable. Under this provision, the sanction may be a fine or imprisonment for at most six months. Such actions shall be punishable regardless of where the abuse takes place.

A provision prohibiting the purchase of sexual services from a young person had been added to the Criminal Code earlier, in the reform on provisions on sexual offences in 1999 (chapter 20 section 8a). Under the title ‘purchase of sexual services from a young person’, a person who by promising or giving remuneration induces a person younger than 18 years of age to engage in sexual intercourse or to perform another sexual act shall be sentenced to a punishment. The scope of application of this provision is thus broader than that of ‘abuse of a victim of prostitution’, as it applies to a wider range of sexual acts. The definition of a sexual act for this purpose is given in chapter 20 section

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1. The Minority Ombudsman, in the capacity of the National Rapporteur on Trafficking in Human Beings, submits an annual report to the Government on the human trafficking situation in Finland and a report to Parliament every four years on human trafficking and related phenomena.
10 of the Criminal Code. Chapter 20 section 8a applies both to persons who are at least 16 years old but not yet 18 and to persons under the age of 16, although in the case of persons under the age of 16 the provision on sexual abuse of a child (chapter 20 section 6) usually also applies.

Under section 7 of the Public Order Act, enacted in 2003, it is prohibited to purchase sexual services or offer sexual services against payment in a public place. For the purposes of this provision, ‘sexual services’ mean sexual intercourse and equivalent sexual acts as defined in chapter 20 section 10(1) of the Criminal Code (as in the case of ‘abuse of a victim of prostitution’). The prohibition in the Public Order Act applies to all purchasing and selling of sex in a public place, irrespective of the status of the seller. Its application is only limited to public places. Although the sexual act itself generally takes place in a more or less private place, it is sufficient for the action to constitute an offence that the act of purchasing or offering for purchase to occur in a public place. If such a purchase conducted in a public place involves a victim of procuring or human trafficking, the provision in the Criminal Code shall take precedence, as the offence is a more serious one.

The present report focuses principally on the effectiveness of the prohibition on ‘abuse of a victim of prostitution’ in the Criminal Code. However, it emerged in the course of the study that this provision and section 7 of the Public Order Act are linked to such an extent that they must be assessed together. Firstly, as we shall show below, the various forms of prostitution are intertwined to such an extent that both provisions affect the behaviour of the same individuals and the assessment of their actions. Secondly, the provisions taken together constitute the general message that the legislation is intended to convey to the general public concerning sexual abuse in prostitution.

Purchasing sexual services from a young person is also integrally related, and points related to this provision also emerged in the course of the study.

1.3 Terminology

The terminology used in the legislation is not consistent, partly because the provisions have been enacted at different times. The first provision to be entered in the Criminal Code addressing the purchasing of sex concerned ‘purchase of sexual services from a young person’ (1999). The term ‘sexual services’ also occurs in section 7 of the Public Order Act. In the present report, however, we decided not to use the term ‘sexual services’. It is our considered opinion that this term is misleading, as it might be construed to refer to services such as sexual therapy, a point that has subsequently been acknowledged in law-drafting. Moreover, we feel that the term stems from an outdated gender-based approach where sexuality is construed as a ‘service’ offered by one gender to another.

We also do not use the term ‘sex worker’. Nowhere in this study did we encounter cases where persons practicing prostitution were in an employment relationship compliant
with employment legislation or working as self-employed persons or entrepreneurs and fulfilling all the legal obligations thereof.

The term ‘abuse of a victim of prostitution’ is quite descriptive, even though using ‘prostitution’ here might be misleading. In chapter 20 section 8 of the Criminal Code, it is used to refer to procuring and human trafficking, even though in everyday language it is used to refer simply to the transaction between a prostitute and a client. A more literal translation of the Finnish term used in the provision (seksikauppa) would be ‘sex trade’, but this is even broader, as it might be construed to include the trade in sex accessories and literature. The term ‘abuse of a victim of prostitution’ is rather long to be used in a report where it is referred to constantly. ‘Sexual abuse’ as a shorthand term is not entirely unproblematic in this context, because it associates with sexual abuse as defined in chapter 20 section 5 of the Criminal Code and with sexual abuse of a child as defined in chapter 20 sections 6 and 7. Despite this, in the present report we use the term ‘sexual abuse’ in the sole and specific legal sense intended in chapter 20 section 8 of the Criminal Code.

Because of the terminological problems referred to above, we will be using the terms ‘purchasing of sex’ and ‘selling of sex’ to cover the actions referred to in both chapter 20 section 8 of the Criminal Code and section 7 of the Public Order Act. These terms shall not cover the actions of persons guilty of procuring or human trafficking, only the actions of prostitutes and their clients. The terms ‘prostitute’ and ‘seller’ (of sex) shall be synonymous herein.

Admittedly our choice of terminology could be criticised for adopting the terminology of a normal commercial transaction, thereby obscuring the abuse aspect of the actions. In Sweden, for instance, the terms ‘victims of abuse’ and ‘sex buyers’ are often used in discussing prostitution. In the UK, several terms are used for sex buyers, including the colloquial ‘punter’, which is being increasingly used even in official contexts.

1.4 Conducting the study

The starting point for the present study was that the provisions on ‘abuse of a victim of prostitution’ in the Criminal Code and on the purchasing of sex in the Public Order Act are inseparable. Although the present report focuses principally on the application of the sex purchase ban enacted in the Criminal Code, data were also collected on the application of the Public Order Act.

Quantitative data on the application of these provisions were collected from public statistics released by Statistics Finland, from various units of the police, from public prosecutors and from courts. Figures illustrating the application of the provisions studied were obtained by combining data from these various sources.

Data on legal practice were also collected for the study: various courts were requested to submit decisions where defendants were convicted of abuse of a victim of prostitution,
human trafficking or procuring. The latter were considered specifically from the perspective of how sex buyers were considered. Data on the application of the Public Order Act in 2011–2012 were obtained from the police.

We interviewed 24 experts for the present study, including experts from various units of the police, the prosecution service, the Border Guard, the social services and NGOs. In addition to the interviews, we circulated an online survey among NGOs and authorities to explore more broadly how these various parties may have come into contact with issues of prostitution and the purchasing of sex. The online survey was sent to 20 recipients, of whom seven responded.

With regard to Sweden, the present report discusses the study evaluating the sex purchase ban, conducted between 2008 and 2010. (SOU 2010:49.) This study has been criticised, and we also reviewed the key criticisms voiced against it. Data on the application of the legislation banning the purchasing of sex may also be found in the Annual Reports of the Swedish National Rapporteur on Trafficking in Human Beings, which we have reviewed beginning from 2000.

A sex purchase ban was enacted in the UK in 2009. It is essentially similar to that found in Finnish legislation. Because no study has yet been conducted on the effectiveness of this legislation, a fact-finding visit was organised on 11–13 June 2013 (Aaltonen). The visit involved interviewing experts from the police, the Home Office and NGOs to supplement the written material available.
2 Legal context of the sex purchase ban

2.1 Principal points in the regulation of prostitution

Two main approaches may be identified in the regulation of prostitution: one is reducing and possibly completely eliminating prostitution (abolitionism), and the other is minimising the adverse impacts of prostitution. The underlying reasoning in the minimisation approach is that prostitution will occur anyway and that society should therefore focus on measures that make prostitution cause as little harm as possible. Various reasons and arguments may be presented for both approaches. The public debate on prostitution often focuses on morality, but other aspects cited include public health, prostitution-related crime, gender equality, the disadvantaged social status of prostitutes, sexual rights and other similar matters.

Policies aimed at reducing prostitution may incorporate a variety of means to this end, including supporting prostitutes who wish to leave that occupation. However, bans and prohibitions have always been an essential component in these policies. What is particularly common is to enact means of preventing any third parties from profiting from prostitution. The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) includes just such a ban, as does Finland’s national legislation (procuring). The Convention has been ratified by 82 countries around the world, including the Nordic countries (except for Iceland) and a large number of third-world countries.

The purpose of making it illegal to profit from prostitution is to reduce prostitution and thereby also its adverse impacts. Policies aimed at reducing prostitution may differ in their approach to banning prostitution. In the Nordic countries, for instance, reduction of prostitution has been the general aim for a long time, and profiting from prostitution (procuring) is illegal; but it has been estimated that making it illegal to be a prostitute would do more harm than good, and no such provision has therefore been enacted. By comparison, social policy is considered to be of substantial importance in reducing prostitution. Many other countries have enacted an outright ban on prostitution: it is a punishable offence in former Soviet republics, in certain states in the USA and Australia, in the UK, and so on. Some of these countries have also prohibited the purchasing of sex or the frequenting of a certain area with the intent of purchasing sex. These provisions are often construed as upholding public order rather than addressing prostitution itself. In practice, however, the punishments are principally aimed at the prostitutes.

Attempting to reduce prostitution by influencing demand is a relatively recent phenomenon. The sex purchase ban enacted in Sweden in 1999 was an outlier in this respect, and the relevant Act has acquired symbolic significance. Norway and Iceland
enacted a similar act ten years later, in 2009. What is essential to note here is that in these countries no criminal sanctions are aimed at the seller.

The Finnish legislation introduced in 2006 was also a major innovation. What makes it even more important is that the UK enacted a similar provision in 2009 and the EU adopted a Directive along the same lines in 2011.

The other approach, minimising adverse effects, is in some countries implemented as various degrees of regulation of prostitution. In the course of history, there has been limited legalised prostitution in Finland too. Regulation may mean licensed brothels with a system of permits, health checkups, designated operating areas, and so on. Such regulation includes a ban on practicing prostitution outside the designated operating areas. This regulatory approach was in decline for quite some time but found new strength in the 2000s. Some degree of regulation has traditionally been implemented in Europe by the Netherlands, Germany, Austria and Greece.

Regulation was reinforced in Germany and the Netherlands in the early 2000s particularly because of the influence of parties lobbying for the rights of sex workers. Both countries now have a system of licensed brothels. The system has actually increased prostitution in these countries. Although human trafficking and unlicensed prostitution are illegal, they seem to have increased rather than decreased. (Der Spiegel, 30 May 2013.)

Recently there has been public debate on whether the legalisation of prostitution increases prostitution, and specifically whether it also increases unlicensed prostitution. Anecdotal evidence suggests that regulation of prostitution and/or brothels would seem to increase the overall volume of prostitution rather than decrease it. Recent research findings also point in this direction. (Cho, Dreher & Neumayer 2012.)

2.2 Regulation of human trafficking

At the international level, regulation has focused in the past few decades on the banning of human trafficking, which is a factor that links all countries regardless of their approach to prostitution otherwise. All governments are broadly in agreement that human trafficking is condemnable and must be legislated against.

Agreement on the definition of human trafficking has also been attained at the international level. In 2000, the UN adopted the Convention against Transnational Organized Crime and the attached Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also known as the Palermo Protocol). In 2005, the member states of the Council of Europe concluded the Convention on Action against Trafficking in Human Beings, to which the majority of the member states have acceded. Finland ratified the Convention in 2012. In 2002, the European Union adopted Council Framework Decision 2002/629/JHA on combating trafficking in human beings;
this was subsequently replaced with Directive 2011/36/EU on preventing and combating trafficking in human beings.

These international documents all define human trafficking in almost exactly the same way. There are three critical components that go into the definition of human trafficking: the act, the (unlawful) means and the purpose (of exploitation).

* * *

Article 3 of the Palermo Protocol defines human trafficking as follows: ‘Trafficking in persons’ shall mean

- the recruitment, transportation, transfer, harbouring or receipt of persons [=act],
- by means of the treat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person [=means],
- for the purpose of exploitation [=purpose], which shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

* * *

To fulfil international obligations, Finland enacted legislation criminalising ‘trafficking in human beings’ and ‘aggravated trafficking in human beings’ in 2004 (Criminal Code, chapter 25 sections 3–3a). The provisions on human trafficking in the Finnish Criminal Code differ in structure and wording from the provisions given in international conventions but have essentially the same meaning. Finland also appointed a National Rapporteur on Trafficking in Human Beings in 2009.

Provisions on human trafficking have had a significant impact on the public debate on the regulation of prostitution. Firstly, human trafficking has attracted considerably more attention in national public debate than prostitution or the purchasing of sex, especially since the Government’s appointment of a National Rapporteur. Secondly, the purchasing of sex came to be regarded specifically as related to human trafficking when the sex purchase ban was enacted, which is partly why the ban was formulated in the way it was. Thirdly, the human-trafficking definition of prostitution has been much criticised, both for being too broad and for being too narrow. It has been said to reflect an abolitionist approach to prostitution, but it has also been estimated to be ineffective in curbing human trafficking.

The present report, however, is not about human trafficking but about the sex purchase ban. Nevertheless, the sex purchase ban has been associated with human trafficking ever since the Council of Europe Convention of 2005, where parties were encouraged to consider criminalising of the purchasing of sex in cases where the buyer knows that the seller is a victim of trafficking in human beings (Article 19). A similar exhortation may be found in the related EU Directive 2011/36/EU (Article 18.4). Finland has been a
leader in enacting legislation making it a punishable offence to purchase sex from victims of human trafficking and procuring.

### 2.3 Enactment of the sex purchase ban

The prostitution situation in Europe changed radically at the turn of the 1990s. In many European countries, prostitution had decreased (though not disappeared) by the 1980s due to rising standards of living and increasing economic equality, trends that had continued for decades. A metaphorical way of putting this was that ‘Reeperbahn had gone quiet’. International human trafficking was not seen as a particular problem, partly because many countries required a visa for entry. A visa and/or entry into the country was denied if there was reason to believe that the person entering the country was intending to engage in prostitution or related activities. Also, in many countries of origin travelling to Europe was unfeasibly difficult either because the travel costs were so high or because leaving the country was so difficult.

When citizens of the former Soviet bloc countries acquired freedom of travel to the West in the 1990s, the substantial gap in the standard of living between eastern and western Europe attracted persons from eastern Europe to take up prostitution. Not many countries were prepared for this sudden surge in prostitution. Prostitution proliferated in form, and in Finland not only prostitution but other forms of the sex trade – from strip clubs to topless car washes – became quite a high-visibility industry for some time.

The highly visible sex trade naturally fostered lively public debate. The clustering of the sex trade on certain streets in large cities and in certain restaurants elsewhere in the country became a nuisance to residents of these areas. (Koskela 2000; Keeler & Jyrkinen 1999.) Citizens’ demands for a crackdown on the blatant sex trade initially led to large cities amending their ordinances to ban the offering, selling or purchasing of sex in a public place. These measures went a long way towards removing the sex trade from public view.

Cities were in the process of reforming their ordinances anyway, notwithstanding the prostitution debate. City ordinances traditionally included the imposition of fines, which was considered to belong to the domain of legislation. Accordingly, a provision was added to the Public Order Act that was in preparation at the time (612/2003) to prohibit the purchase of sexual services and the offering of sexual services against payment in a public place (Public Order Act, section 7(1)).

The public debate on criminalising the purchasing of sex was fuelled by the example set by Sweden. In Sweden, the Act criminalising the purchasing of sex entered into force in 1999. There was a lively discussion on the matter in the Finnish Parliament when government proposal HE 34/2004 was debated. The purpose of this proposal was to prepare for the ratification of Convention Against Transnational Organized Crime and to enact legislation having to do with the implementation of certain items of EU legislation, including Council Framework Decision 2002/629/JHA on combating
trafficking in human beings. The government proposal described the regulation of prostitution, international conventions and obligations related thereto and relevant legislation in several European countries, besides giving a wide range of arguments both for and against banning the purchasing of sex. The proposal concluded that there is a strong case to be made for a sex purchase ban, but it did not propose such a ban; instead, it was considered necessary to wait for detailed data on the effectiveness of the bans enacted in the Public Order Act.

The next Government submitted a new government proposal concerning human trafficking to Parliament (HE 221/2005), its key content being the ratification of the Convention against Transnational Organized Crime and the enactment of the required provisions, which had been the essential content of the previous government proposal (HE 34/2004). This time, however, the Government proposed the criminalisation of all sex purchases, as had been done in Sweden.

Violently differing views on the subject were voiced in the debate on the proposal in Parliament. Estimations of the situation in Sweden also differed wildly. The Legal Affairs Committee settled on a compromise based on the minority opinion of the working group drafting the legislation (OM 2003:5) to limit the sex purchase ban to the purchasing of sex from victims of human trafficking and procuring. This was the form in which the ban was eventually enacted.

* * *

**Criminal Code, chapter 20 section 8 (743/2006): Abuse of a victim of prostitution**

A person who, by promising or giving remuneration involving direct economic benefit induces a person referred to as a victim in section 9 or 9a or in chapter 25, section 3 or 3a to engage in sexual intercourse or in a comparable sexual act shall be sentenced, unless the act is punishable pursuant to section 8a, for abuse of a victim of prostitution to a fine or imprisonment for at most six months.

Also a person who takes advantage of the remuneration referred to in subsection 1 promised or given by a third person, by engaging in sexual intercourse or a comparable sexual act with the victim referred to in said subsection, shall be sentenced for abuse of a victim of prostitution.

* * *

In the preambles to both government proposals, the argument for the ban was based on the reduction of the adverse impacts of prostitution, the empowerment of persons engaged in prostitution, and the increasing of gender equality and social equality. Both proposals also noted that the ban could have a curbing effect on human trafficking. In the provision as formulated by the Legal Affairs Committee and in the report of the Committee, the principal justification for the ban is its association with human trafficking and procuring and the desired impact of the provision in curbing such activities.
2.4 Procuring and human trafficking in Finnish legislation

Procuring has been a criminal offence in Finland for quite some time. The present provision on procuring was enacted in the late 1990s when the chapter on sexual offences in the Criminal Code was revised. The provision replaced an earlier section on procuring that was essentially the same in content but archaic in its wording. A subsequent amendment was made in 2004 to add a section on aggravated procuring.

By comparison, human trafficking entered chapter 25 of the Criminal Code as a completely new criminal offence in 2004. This provision was enacted in response to pressure from the international community and because of international obligations.

There has been much discussion about how to draw the line between procuring and human trafficking (Roth 2010; National Rapporteur on Trafficking in Human Beings 2010–2012; Report of the Employment and Equality Committee 13/2010; Ministry of Justice working group report 63/2012). This distinction is irrelevant for the purposes of the present report, however. What is relevant is that to be guilty of ‘abuse of a victim of prostitution’ one must be aware that the person from whom sex is being purchased is a victim of procuring or human trafficking.

* * *


A person who, in order to seek financial benefit for himself or herself or for another person,

1. provides a room or other facilities where sexual intercourse or a comparable sexual act or a manifestly sexually obscene act performed by a child younger than 18 years of age are offered for remuneration,

2. as an established part of his or her business harbours a person engaging in such an act and thereby substantially promotes such an act,

3. provides contact information of or otherwise markets another person engaging in such an act knowing that his or her actions substantially promote the performance of such an act,

4. otherwise takes advantage of the fact that another person engages in such an act, or

5. tempts or coerces another person to engage in such an act,

shall be sentenced for procuring to a fine or imprisonment for at most three years. (650/2004)

An attempt is punishable.
Criminal Code, chapter 20 section 9a (650/2004): Aggravated procuring

If, in procuring,

1. considerable financial benefit is sought,
2. the offence is committed in a particularly methodical manner,
3. grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is inflicted intentionally or through gross negligence on another person, or
4. the object is a child younger than 18 years of age
5. and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated procuring to imprisonment for at least four months and at most six years.

An attempt is punishable.

***
3 The sex purchase ban in Sweden

3.1 Introduction

Sweden is a useful point of comparison for many Finnish legislative projects. Finnish and Swedish societies are similar in many respects, including the area of sexual behaviour and regulation of sexuality. However, from the perspective of the present report there is one significant difference: in Sweden, gender inequality and its elimination as a political goal have been a high-profile policy issue throughout the 1990s and 2000s.

The Swedish argument for the sex purchase ban was made on grounds of gender equality, and other countries in particular tend to associate this ban with Sweden’s perceived state feminism or the conception that all prostitution constitutes violence against women. It has been explained that the basic assumption is that prostitution enables and normalises the exploitation of women’s bodies. (Skilbrei & Holmström 2011, 498.) What has been considered less is that the drafting of the legislation also gave a great deal of attention to the disadvantaged social status of prostitutes and the physical and mental damage caused to persons engaging in prostitution. The background to this that in larger Swedish cities in particular, the known and partly public prostitution scene (known ‘girl streets’) had been monitored closely, and attempts to address the situation through social work had been made. Prostitution is considered first and foremost a social problem in Sweden, so it is only natural that as far as addressing the phenomenon goes, the buck stops with the central government.

Studies on sex buyers have also been conducted in the Nordic countries, particularly Sweden, since the 1980s. (Månsson et al.)

Women’s Peace (Kvinnofrid) was an extensive project for studying measures to combat violence against women, undertaken in Sweden in the 1990s. As part of the Women’s Peace project, it was proposed that the perspective and focus in the regulation of prostitution be shifted from the prostitutes to the clients. (SOU:1995:60.) This stemmed from observations of gender equality at the individual level and the structural level. Prostitution was considered to prevent social equality, gender equality and human rights from being attained. The phenomenon was found to be a strongly gender-biased one, as prostitutes are generally women and sex buyers are generally men. The adverse impacts of prostitution were seen to be affecting young women and girls in particular. Prostitution was seen to complicate the potential for an individual to have a life of dignity, while at the systemic level it was seen as a hindrance to striving for social equality.

In the international context and historically, there is nothing new in criminalising the purchasing of sex. Such bans have existed in various countries in various eras around the world. However, such bans have always also included the criminalisation of the
selling of sex. Indeed, in the early 1990s it was suggested in Sweden too that both the selling and the purchasing of sex should be criminalised.

What was new and exceptional about the sex purchase ban that entered into force in Sweden in 1999 was that it only concerned sex buyers. Traditionally, regulation of prostitution has constituted bans or restrictions on the sale of sex, whether across the board or with regard to certain forms of prostitution. Against this background, the shift of focus to the purchasing of and demand for sex was a significant change.

The key aim in criminalising the purchasing of sex is to create a normative change that affects attitudes and behaviour, thereby reducing the market for prostitution. Criminalising purchases was intended to demonstrate that prostitution is not an acceptable practice in society. It is considered to cause harmful impacts to both individuals and society at large. The purpose in reducing demand is to reduce the number of persons engaged in prostitution. The sex purchase ban is also intended to prevent foreign organised crime from gaining a foothold in Sweden.

The normative objective was not simply a national one; Sweden also wished to set an example for other countries to amend their legislation on the basis of this concept. Indeed, the ‘Swedish model’ has fostered a great deal of discussion and interest even beyond the Nordic countries.

The prostitution market in Sweden was not considered especially large before 1999, but the main point of the legislation was to shift attitudes towards a more gender-equal approach as regards sexuality and prostitution. In the other Nordic countries, the public debate on criminalising the purchasing of sex is instead considered to have more to do with the change in the prostitution market, with globalisation and with class differences. (Skilbrei & Holmström 2011, 481.)

According to the report evaluating the effectiveness criminalising the purchasing of sex in Sweden (SOU 2010:49; hereinafter the ‘Swedish Report’), this ban is more effective in combating the phenomenon and its adverse effects than earlier regulatory measures. Although there are many reasons why persons end up working as prostitutes, demand is seen as the principal factor in maintaining the sex trade. Sex buyers are seen as the stronger party, usually men with families, whereas prostitutes are seen to be at a disadvantage with regard to their clients. Prostitutes live on the margins of society, where problems often accumulate, and they are often exploited by virtue of their being young, foreign or otherwise vulnerable.

In the 2010 report, it is noted that some European countries view prostitution as acceptable and necessary, or at least inevitable. The distinction between voluntary and coerced prostitution is seen as belonging to this approach. Turning the focus to demand, equality and human rights renders such a distinction irrelevant, according to the report.

The sex purchase ban in Sweden has been criticised particularly by parties who consider prostitution to be a legitimate part of the commercialisation of sex and who have defended prostitution as being just a job like any other. The Act has been criticised for
being based on indeterminate assumptions about prostitution and its power relations. (Skilbrei & Holmström 2011, 490–491.)

Although reducing demand is seen as a key means and tool for regulating prostitution, the 2010 report and the Action Plan against Prostitution and Human Trafficking (2008) emphasise the primacy of social measures in addressing prostitution. As early as in 1977, the city of Malmö launched a social work project to help prostitutes who wished to quit their occupation. This model has later been taken up in other cities too. Critics say that social interventions aimed at prostitutes cast the prostitutes as victims, without considering whether they are in their occupation voluntarily or not, as the critics would like. This criticism notes that criminalising the purchasing of sex and the social work interventions aimed at prostitutes can be seen as two sides of the same coin. Minimisation of adverse affects is generally seen as an alternative social work approach, not so much to support quitting prostitution but for instance to reduce the adverse health impacts experienced by prostitutes. (Skilbrei & Holmström 2011, 494.)

3.2 Legislation

The sex purchase ban (prohibiting köp av sexuella tjänster, literally ‘purchase of sexual services’) was originally enacted as a separate Act in Sweden in 1999. Specifically, the Act made it a criminal offence to pay remuneration for entering into a temporary sexual relationship. The new Act was defined as secondary and complementary to the Penal Code. However, at the time when the ban entered into force, a wholesale reform of the legislation on sexual offences was already in the pipeline, and the Council on Legislation (Lagrådet) indicated that the separate Act was a temporary measure. In a committee report on the overall reform of the legislation on sexual offences (SOU 2001:14), it was proposed that the sex purchase ban should be incorporated in chapter 6 of the Penal Code along with other provisions safeguarding sexual self-determination. In the reform, provisions on purchasing sex, purchasing sex from minors and procuring were placed in this chapter. The overall reform of the chapter on sexual offences entered into force on 1 April 2005.

The punishment originally enacted for purchasing sex was a fine or imprisonment for a maximum of six months. In 2011, the maximum punishment for purchasing sex was increased to imprisonment for one year.

Penal Code, chapter 6. On sexual crimes

11. Whoever in a case other than those described above in this chapter acquires a temporary sexual relationship against remuneration shall be sentenced for purchase of a sexual service to a fine or to a maximum of one year’s imprisonment. The provision of

2 The Council on Legislation comprises representatives of the Supreme Court and the Supreme Administrative Court. Its purpose is to oversee the technical aspects and consistency of legislation.
subsection 1 shall apply even if the remuneration was promised or paid by another

In the reform, the title of the offence was changed from plural to singular, to read köp av
sexuell tjänst (‘purchase of a sexual service’, as opposed to ‘purchase of sexual
services’). This was more accurately in keeping with the content of the provision, since
even a single transaction is punishable.

It had not been entirely clear in the first years of the Act how the essential elements of
the purchasing of sex should be interpreted.3 Would it be a punishable offence if a third
party not participating in the sexual event paid for it? And how would the concept of
‘temporary’ apply to a regular client of a prostitute?

It was in connection with the overall reform of the provisions on sexual offences that
the second subsection was added, specifically stating that the action was punishable also
in a case where remuneration is paid by a person other than the one actually carrying out
the sexual act.4 Similarly, it was specified in the preliminary work (prop. 2004/05:45)
that every transaction where sex is purchased shall be considered an individual action
that is temporary in the sense meant in the provision, even if the buyer were a regular
client of the prostitute. According to the drafters of the legislation, this definition of
‘temporary’ excludes permanent relationships such as marriage and other intimate
relationships from the ban.

The provision refers to sexuell förbindelse (‘sexual relation’), i.e. sexual intercourse or
similar interaction. Other actions that are sexual by nature, such as intimate touching,
are not considered to be covered by the ban.

The ‘remuneration’ may be money, but any other compensation with financial value
may also be considered to be covered by this term. In practice, remuneration may take
the form of alcohol or drugs, etc. Promise of payment is sufficient to render the action a
criminal offence even if the actual payment were never made.

The provision further rules that an attempt is punishable. It is not specifically stated in
the preliminary work for the provision what constitutes an attempt and at what point the
transaction should be considered completed instead of remaining an attempt. When the
legislation was enacted, it was considered that proving an attempt to purchase may turn
out to be challenging in practice.

In order for an action to be a punishable offence, all of the essential elements of the
offence must be intentionally fulfilled by the offender. The prostitute does not become a
party to the offence of purchasing sex even if actively contributing to the commitment
of the offence. The point of criminalising the purchasing of sex in Sweden was to
demonstrate that prostitution is considered a socially unacceptable phenomenon without
necessarily heaping criminal liability on the prostitute. The reasoning behind this is that

3 For instance, regarding prosecutor experiences see BRÅ report 2000:4.
4 A third party paying for the sex may be sentenced as an accessory to the offence. (Penal Code, chapter
23 sections 4 & 5.)
prostitutes are often in a far weaker position than their clients and that the prostitution market is upheld by the demand from sex buyers. However, any persons assisting or contributing to the purchasing of sex may be punished as accessories (assuming procuring is not involved).

### 3.3 Application practices

According to the 2010 report, the Swedish police issued no instructions concerning the uncovering of purchases and the conducting of investigations when the sex purchase ban entered into force; instead, practices emerged gradually in the course of the intelligence, surveillance and investigation activities of the police.

With regard to the purchasing of sex, the Swedish police has focused on street prostitution and the uncovering of sex purchases in connection with pre-trial investigations of procuring and human trafficking. The Swedish police consider street prostitution to be a particularly visible and high-profile segment of the sex trade and as such a ‘shop window’ for prostitution in general. The Swedish police see addressing street prostitution as sending a broader symbolic message that society is serious about curbing prostitution. Regular and highly visible interventions can be seen to have a direct preventive impact on the purchasing of sex. The Action Plan against Prostitution and Trafficking in Human Beings (2008) states that the police have taken a zero-tolerance approach to street prostitution. Another goal is to make Sweden an undesirable market for organised crime, which is often found in close connection with prostitution.

The police have made use of undercover police officers and unmarked police cars in uncovering sex purchases in public places. On the other hand, the police has also maintained a visible presence to deter purchases. Whenever the police show up, prostitutes and clients alike leave the scene. The police may also pull over a car whose driver is obviously cruising with intent to purchase sex, before any purchase has in fact taken place.

The police have informed both prostitutes and clients of their actions. This approach, according to the Swedish Report, has led to the police actually starting to receive reports from prostitutes who have been victims of a crime or who have become aware of an underage person selling sex.

Before the Act entered into force, it was feared that criminalisation of sex purchases would be unenforceable because of how the elements of the offence were defined and how difficult it might be to prove it. However, according to the Swedish Report the sex purchase ban has been an efficient tool for the police, offering better potential than before to address the phenomenon of prostitution. The Swedish Report notes that this would mostly seem to be an issue of police prioritisation and resourcing.
The Swedish National Rapporteur on Trafficking in Human Beings has stated in several reports that the ban has made it more difficult to begin working as a prostitute, both for foreigners and for Swedish citizens, especially in street prostitution. It has also made life harder for procurers and other third parties seeking to profit from prostitution, as they are obliged to undertake additional precautions at additional cost to secure their operations. Procurers must have several apartments available, for instance, and it is not safe to continue operating at one location for any extended period of time. According to the police, the social welfare authorities and prostitutes, clients have become more careful after the Act entered into force, fearful of being caught.

Street prostitution

In Sweden, street prostitution mainly occurs in the large cities of Stockholm, Malmö and Gothenburg, and even there it is clustered in areas comprising a few streets. The 2010 report notes that street prostitution has decreased by an estimated 50% during the time the ban has been in effect. The reports of the National Rapporteur on Trafficking in Human Beings show that there was a significant decrease in street prostitution immediately following the entry of the ban into force in 1999 and 2000.

Sex buyers are often caught red-handed. The police monitor car traffic in public places where street prostitution occurs. When a client picks up a prostitute, the police follow the car. When the car stops, the police wait for a few minutes before intervening. This ensures that the police will have evidence of purchasing sex so that the offender can be convicted. Most buyers actually confess. The confession and statement of an offender caught red-handed are sufficient evidence to close the case. In such cases, the police need conduct no further pre-trial investigation and can transfer the case directly to the prosecutor for summary judgement. If the case proceeds to court, observations made by the police will be entered in evidence in addition to the statement of the accused. Prostitutes rarely appear as witnesses in cases involving the purchasing of sex. In cases where a prostitute has been called as a witness, the charges are usually for prostitution-related offences other than purchasing sex.

Indoor prostitution

Another focus area in sex purchase investigations alongside street prostitution is the sex purchase offences that emerge in connection with procuring and human trafficking offences. Up until 2009, such cases mainly emerged in large cities, particularly Stockholm. According to the 2010 report, the Stockholm police carries out a raid on street and/or hotel prostitution at least once a month. The procuring offences that are discovered usually involve an apartment or a hotel room, and they are often advertised on websites that habitually post ads for prostitutes. Large numbers of sex buyers have been uncovered in cases involving procuring.

Uncovering indoor prostitution is not as straightforward for the police as with street prostitution. Staking out an apartment or a hotel room may take months, and in extensive cases the clients may not be interviewed until a year after the fact. Purchases
are not addressed immediately, because uncovering the principal offence (e.g. procuring) would be compromised. In smaller cases, the police interview all sex buyers. In more extensive cases, only those identified buyers against whom a sufficiently good case can be made are interviewed.

According to the Stockholm police (Human Trafficking Report 13), sex buyers have in recent years begun to favour the procedure where the seller comes to the buyer. Clients consider the risk of getting caught lower in such a scenario than if the client were to go to the prostitute in an apartment or hotel room.

**Online prostitution**

The Internet substantially changed the manifestations and communication channels of prostitution in Sweden, as elsewhere, in the early 2000s. Previously, prostitution ads had been placed in newspapers and also for instance on lampposts and traffic signs, being cryptic announcements with a phone number.

The Swedish Report explains that the Internet is today a particularly important channel for selling sex, particularly for young people. It is more than likely that the Internet has become an alternate channel of solicitation for many working in street prostitution.

The Swedish National Bureau of Investigation (*Rikskriminalpolisen*, hereinafter the SNBI) is responsible for national surveys and intelligence with regard to prostitution-related crime. The police have focused their attention in online surveillance on prostitution ads that imply underlying organised crime, procuring or human trafficking. According to the 2010 report, there have been only a few isolated cases involving prostitution ads posted by independent operators.

The National Rapporteur on Trafficking in Human Beings has noted that organised operations may be detected for instance by several ads having an identical design, prices being low, the prostitutes being of foreign origin, and the Swedish/English language used being of poor or non-existent quality. However, the police have noted that efforts are routinely made to conceal the notion of procuring or human trafficking by designing the ads so that they look like ads posted by independent prostitutes.

The SNBI assists other police authorities in investigations of online prostitution. The Stockholm police have officers specialising in monitoring websites. They survey the status of prostitution crime by reviewing online ads. Internet surveillance generates new information all the time, and criminal investigations are launched on the basis of such information.

Websites specialising in prostitution ads are a lifeline for prostitution as it exists today. There are numerous online ads concerning Sweden’s large cities in particular at any given time. According to the National Rapporteur on Trafficking in Human Beings, there are several websites hosting ads for prostitution in Sweden; all these websites are based outside Sweden, because in Sweden the website administrators could be arrested for procuring. One of the key ad websites is one that was launched in Finland; it
operates under a different name in Sweden. The Swedish authorities report that this website is physically located on a server in the Netherlands.

The Swedish National Rapporteur on Trafficking in Human Beings noted in the 2005 report that a new booking system had emerged in online prostitution. Websites specialising in prostitution allow buyers to contact a booking centre abroad. By calling the booking centre, the buyer may book a prostitute anywhere in Sweden. The booking centre sends details about time and place to the prostitute and the client either through the Internet or in text messages. The client generally pays the booking centre half in advance and pays the prostitute the remainder in cash. This seems to have become established practice in Sweden, as it has been mentioned in every report of the National Rapporteur since 2005.

There are also Swedish chatrooms online where sex buyers exchange information and experiences on prostitutes and purchases. Buyers may give user feedback on the ‘service attitude’ of the prostitutes, among other things. The National Rapporteur notes that buyers consider it highly important to know whether the woman who turns up is the same one who was promised in the ad. Buyers also discuss how to avoid being caught and which procedures to use when purchasing.

There are indications in the three large cities that sex is being sold at strip clubs. The police also suspect that there is prostitution going on in restaurants and casinos and on board ships. However, according to the 2010 report the police are not undertaking regular surveillance of these.

### 3.4 Offences reported to the police

Between 1999 and 2011, there were 4,231 reports of a crime filed in Sweden that involved sex purchases. Of these, 1,855 (44%) were from Stockholm County, followed by Skåne County with 673 cases (16%) and Västra Götaland County with 653 (15%). The number of cases reported in Västra Götaland (the Gothenburg region) increased substantially in 2010–2011. In 2011 alone, more sex purchase offences were reported in Västra Götaland (268) than had been reported in the region for the years 1999 to 2009 combined (232).

Figure 1. Sex purchases reported to the police in Sweden (N = 4,231).
The percentage of cases reported in Stockholm has slightly decreased over the past five years, in spite of the fact that the number of reported sex purchase offences has increased substantially, also in Stockholm. Whereas in 2006 and 2007 there were about 100 sex purchase offences reported per year, there were 391 in 2010 and 354 in 2011. In 2008, the police were given significant additional resources for investigating human trafficking for the purpose of sexual abuse. The Stockholm police have stepped up their actions against street prostitution in particular. The police have also been provided training and given resources for investigating prostitution offences. Thus, the police departments that did not have extensive experience and routine in investigating prostitution offences now have better capabilities for uncovering such crime.

During the first ten years, only a few dozen cases were reported outside the major cities. Between 1999 and 2008, 89% of all sex purchase crimes were reported in Stockholm, Skåne or Västra Götaland, but in the years 2009–2011 the major cities only accounted for 65%.

In Jämtland County, for instance, 450 sex purchase offences were uncovered in 2010. The vast majority of these (427) came to the attention of the police with the exposure of an extensive procuring ring. In this case, a Swedish man who had been procuring five women was convicted for aggravated procuring. Three of the women were from Uganda or Rwanda but were married to Swedish men. One of the women was from Thailand, and the fifth one was a Swedish native who had fallen into financial difficulties. In Västmanland County in central Sweden, 101 sex buyers were discovered in three procuring cases in 2010.

Between 1999 and 2011 45% of all reports of sex purchase offences were solved (1,912 cases), meaning that a prosecutor charged a suspect, confirmed a summary fine or decided to waive charges. The Swedish Report notes that the clear-up rate for sex purchase offences is high in relative terms, since out of all crimes reported to the police, the offender is only discovered in 17% of the cases. The clear-up rate for all sexual offences reported to the police was 22%.
Most of the uncovered sex purchase crimes continue to be found in the three major cities. According to the National Rapporteur on Trafficking in Human Beings (2008–2011), buyers include both Swedish and foreign men, and purchases involve both female and male prostitutes. The majority of purchases are directed at women aged 18 to 25 who are in a challenging life situation.

While the number of convictions for sex purchases increased in 2010 and 2011, the number of convictions for procuring and human trafficking decreased. The National Rapporteur ascribes this to difficulties in proving the cases and to the fact that courts are not sufficiently competent at identifying psychological mechanisms of subjugation. The victim may change the story given in the pre-trial investigation, and the authorities must be able to prove that the accused had intent to sexually abuse the victim in order to get a conviction for human trafficking. Offenders have changed their procedures so that intimidation and threats are often hardly noticeable. This has made the offences more difficult to prove, and indeed the ‘improved conditions’ are seen to increase the loyalty of the victims of human trafficking towards the offenders.

**Clients**

All of the sex buyers uncovered in Sweden have been men. The youngest charged with sex purchasing was 17 years old, while the oldest was 90. The average age of sex buyers was 43 years. According to the Swedish Report, nearly 60% of those guilty of sex purchases were also guilty of some other offence. However, there is no detailed information available on what these other offences might be. According to BRÅ (the Swedish National Council for Crime Prevention), during the first year that the new provision was in force, 6 out of 10 sex buyers had previous convictions, such as drunk driving or driving without a driver’s licence, but up to and including assault.

**Purchasing sex from an underage child**

In all of the cases where the victims of alleged human trafficking for the purpose of sexual abuse have been underage, they have been girls, all except one of them aged 16 or 17.

In the reform of the legislation on sexual offences in 2005, the sex purchase ban from underage persons was also further specified and broadened. (Penal Code, chapter 6 section 9.) The purpose of this was to extend the ban to cover situations where the offender exploits the immaturity of a child in committing sexual abuse against payment. Purchasing sex from an underage person is defined as a criminal offence even when payment is made by a third person on behalf of the offender. The maximum punishment for the offence is two years’ imprisonment.

9. Whoever in a case other than those described above in this chapter causes a child under the age of 18 years to engage in or submit to sexual behaviour against remuneration shall be sentenced for sexual abuse of a child to a fine or to a maximum
of two years’ imprisonment. The provision of subsection 1 shall apply even if the remuneration was promised or paid by another person. Swedish legislation (2005:90).

According to the National Rapporteur on Trafficking in Human Beings, a sex purchase offence where the victim is a child is often difficult to investigate and to prove. A considerable amount of time may have elapsed from the act before it comes to the attention of the authorities. The offender generally seeks to win the trust of the child, but equally the offender may use an act already committed as a means of blackmail. The child may blame herself for what happened or does not believe that she will be heard or believed if she tried to tell anyone about what happened. The majority of the cases that are reported involve victims in their early teens (yngre tonåren).

The offender often pleads ignorance as to the actual age of the child. There have been numerous cases where the prosecutor has not been able to present evidence of intention on the part of the offender. According to the National Rapporteur, in such cases the offender is charged with the alternative charge of purchasing sex.

The Stockholm police made a special study of the online sex trade involving underage children in 2011. The investigation uncovered a person who had been procuring young persons, and also sex ads where there was cause to suspect that the seller was underage. The police cooperated with the Stockholm social welfare authorities, who offered help and support to the young people found through the police investigation.

### 3.5 Investigating sex purchases

There are conflicting conceptions about the difficulty of investigating and proving sex purchase offences. As a rule, sex buyers who get caught confess to their offence. Confessing is equally common whether the purchase involves street prostitution or indoor prostitution. If the offender confesses, the sex purchase offence can be processed by summary judgement, avoiding a public trial.

When the sex purchase ban entered into force in 1999, there was a fear that it would be impossible to find evidence of offences committed. According to the prosecutors interviewed for the Swedish Report, a normal sex purchase case is easy to investigate and uncomplicated to process. Even more generally, the prosecutors could not find any difficulties in applying the provision. If the suspect denies purchasing sex, the police must find evidence to the contrary. In indoor prostitution, the suspect may in some cases deny having purchased sex and allege instead that what was involved was a strip tease performance or posing nude. The prosecutors, however, considered that the professional skills of the police are sufficient to disprove such allegations in an interview.

There are also challenges involved in finding and presenting evidence for a sex purchase offence. It used to be the case before police procedures in this area had developed sufficiently that the identity of a buyer might remain unknown, or the evidence collected might prove insufficient.
According to the Swedish Report, the majority of the sex purchase cases involving problems with proof had to do with major cases of procuring or human trafficking. In such cases, the police may have collected evidence on organised crime for instance by surveillance of an apartment or hotel room and by technical surveillance (camera surveillance and phone tapping). Such surveillance may have continued for months, and during that time it would not have been possible to address individual buyers without compromising the investigation of the principal offence. Once the principal investigation was concluded, buyers would have been identified on the basis of photos taken and car registration numbers recorded during the surveillance. In order to prioritise the investigation of the principal offence, the police may have had to waive investigating purchases for which it would have been unfeasibly laborious to obtain evidence. Phone tapping, electronic surveillance and camera surveillance can generally not legally be used for investigating or proving the purchasing of sex, because the offences are not serious enough. It may therefore be difficult to prove certain individual cases of sex purchase after the principal investigation has been resolved.

In street prostitution, there have been problems with proof in cases where the offender has denied criminal activity and the prostitute has been completely unwilling to cooperate with the authorities. The problem with proof in such a case is that there is no way of finding out whether the sex was paid for or free, or if the event involved something else altogether, such as a strip tease performance. In some cases, the elements of the offence may have been completely wrong (e.g. the case may have involved purchasing of sex services from an underage person).

In the early days of the provision, there were legal disputes as to when exactly the threshold for an attempted offence was crossed. In some cases it was found that the event was not consistent with the essential elements of the offence, or that this could not be proven.

### 3.6 Punishment practices

A precedent issued by the Swedish Supreme Court in 2001 established the default punishment for a single sex purchase offence at 50 day-fines. Since that precedent, 85% of the sentences for sex purchase offences have been fines to that amount. The sentence for two sex purchase offences has generally been 70 day-fines. In cases involving multiple counts of sex purchasing, there has been more diversity in sentencing; for instance, offenders convicted of eight counts of sex purchase have variously been sentenced to 80 and 150 day-fines. Sex purchase cases are usually handled in summary judgement, and no alleviating or aggravating circumstances are generally considered.
According to the Swedish Report, the average amount of one day-fine in sex purchase offence cases was SEK 168.5

The Swedish police report that the social disapproval associated with being caught in a sex purchase offence is a far greater deterrent than the criminal sanctions. The greatest fear of a sex purchase offender who is caught is that his actions will become known to his family and friends. The police have been discreet in their inquiries; for instance, a request to be interviewed by the police in a pre-trial investigation may have been sent to the suspect’s workplace instead of his home. Previously, suspects in cases involving sex purchase or indeed any offence with a low maximum punishment could pick up their summonses from the relevant authority themselves. Under present regulations, this is no longer possible.

**Aggravating circumstances in sex purchase cases**

In some cases, aggravating circumstances in sex purchases have led to a conditional prison sentence in addition to day-fines. According to the 2010 report, there were 5 such cases between 1999 and 2008. Three of these only involved one sex purchase each.

In 2005, the Court of Appeal for Western Sweden heard a case in which a 17-year-old girl originally from Kosovo had been coerced into selling sex. In this case, one man was sentenced for an attempted sex purchase to 80 day-fines and conditional imprisonment. The Court of Appeals considered that the buyer had been aware of the fact that the girl was a victim of human trafficking, yet despite this he had taken her to his apartment and attempted to purchase sex. Because of the buyer’s awareness, the Court considered that a fine would not be sufficient. All other sex buyers in the case were sentenced to 80 day-fines by the District Court, since the girl involved had been in their use for a long period of time. The Court of Appeal increased this to 200 day-fines.

In 2007, the Court of Appeal for Western Sweden heard a case of procuring involving a Russian woman that had occurred in Gothenburg. The District Court sentenced 16 men for sex purchases and one for assistance; three buyers were acquitted. The Court of Appeal increased the sentences of four of the buyers to conditional imprisonment and day-fines. For two of the defendants, the Court of Appeal noted that they were guilty of more than one purchase and that organised prostitution was involved. The fact that the women were foreigners and had only been in Sweden for a short time was also considered an aggravating circumstance. The Court of Appeal considered that two men had taken advantage of the compulsion under which the woman was and coerced her to have sex even though that had not originally been agreed. The justifications given by the Court of Appeal include the facts that the woman had only been in Sweden for a short time, she did not understand the language, she was in a strange place with strange people, and the buyers were considerably older than her.

5Since 1 October 2006, the legal lower and upper limits for one day-fine have been SEK 50 and SEK 1,000, respectively.
Purchasing sex from a person with mental disabilities (funktionshinder) has also been considered aggravating circumstances in legal practice. In a case like this, a District Court sentenced the buyers to 100 day-fines. In recent years, according to the National Rapporteur on Trafficking in Human Beings, Swedish courts have increasingly imposed conditional imprisonment sentences for sex purchases. In one such case, the woman procured had been in institutional care for mental health reasons, and the buyers of sex went to her at the secure institution. A buyer who had abused the woman more than once was sentenced to conditional imprisonment and a fine. The Court considered that the offender had to have been aware of the difficult circumstances in which the woman was.

Recently, criticism has been levelled at the punishment practice because of the imprisonment option available not being used at all. (Dagens Nyheter, 27 May 2013.) The police officer interviewed for the newspaper said:

“For a first offender, a fine is a reasonable punishment, and many learn their lesson. But if someone repeats the offence two, three, four times, I would like to see them get more than just a fine.”

### 3.7 Programmes to combat sexual abuse

**Action Plan**

In September 2008, the Swedish Government assigned the National Police Board and the prosecution service the task of enhancing interventions in prostitution and in human trafficking for the purpose of sexual abuse. The enhanced measures included intervening in sex purchases. Reducing demand is considered a key measure in the Action Plan against Prostitution and Human Trafficking. With added resourcing, the police have stepped up training and instructions. According to the National Rapporteur on Trafficking in Human Beings, this has led to more crimes being reported to the authorities and thereby more efficiently solved.

For instance, between 2008 and 2010 an enhanced operation against street prostitution was undertaken, entitled Öppna Gatuprostitutionen (Open street prostitution). Between January and November 2010 alone, the Stockholm police recorded 300 suspected sex purchase offences, of which about 280 led to the conviction of a buyer to a fine by summary judgement. The enhanced targeting of purchases in the project also led the police to uncover ten procuring offences, on which pre-trial investigations were launched.

The National Rapporteur notes that enhanced police patrolling had several consequences. Organised foreign prostitution in the area decreased, and the visible police presence reduced the threat of violence against prostitutes. Enhanced patrolling also reduced drug-related crime in the area.
In 2011, the National Police Board stated in its inspection plan that the patrolling undertaken by the police should comply more closely with the 2008 Action Plan. Police competence must continue to be enhanced, because there are great regional differences in investigations and in the uncovering of cases despite the current enhanced resources.

**Resourcing**

A recurring opinion in the reports of the Swedish authorities is that addressing the demand for prostitution is closely connected to broader efforts against prostitution-related crime. Targeting sex purchases is seen to be clearly linked to the prevention of human trafficking, and this is why investigation of sex purchases is being given resources and prioritised.

When the sex purchase ban entered into force in 1999, the police were granted additional funding of SEK 7 million to establish new positions for investigation prostitution-related crime. The funding was mainly allocated to the Stockholm, Skåne and Västra Götaland Counties. Moreover, the SNBI began to explore how trafficking in women could be combated and prevented.

Additional resources of SEK 30 million for action against human trafficking were granted to the Swedish police for the period 2004 to 2006. These resources were allocated to police operations for combating serious and organised crime, being mainly distributed among law enforcement units in the three major cities, and most of it in Stockholm. In 2004, the Stockholm police launched Projekt Europa, a project for combating prostitution-related crime; a few years later, this evolved into the Commission against Human Trafficking (*Kommissionen mot människohandel*). Preventive work was also boosted. The SNBI trained police and border guard personnel in matters concerning prostitution-related crime.

With the 2008 Action Plan, the Swedish police and prosecution service were ordered to step up their operational efforts to investigate prostitution-related offences and to improve the competence and expertise of their employees. One of the goals of the Action Plan is for the police to be able to exercise zero tolerance to sex purchases in the street. In recent years, the National Police Board has also improved police officers’ abilities to find evidence of prostitution-related offences online. A resource of SEK 40 million was allocated to measures, of which SEK 30 million was intended to boost operations and SEK 10 million was for police training.

The prosecutors interviewed for the 2010 report considered the investigation of prostitution-related crime to be laborious for the police, the prosecutors and the courts alike. However, the prosecutors were unable to itemise how much work simple sex purchase offences cause. According to the Swedish Report, no specific resources have been allocated to the prosecution service in connection with the criminalisation of sex purchases.

Of the sex purchase offences that ended up in court or were dealt with by summary judgement between 1999 and 2008, 40% were somehow connected to the investigation
of a procuring or human trafficking offence. This correlation was particularly strong in 2005 and 2006. Whereas in 2004 20 sex purchases related to an investigation of procuring or human trafficking offences led to a summons being issued or further action, this number more than tripled in 2005, to 67. In 2006, the number of sex purchase offences related to procuring or human trafficking investigations was still high at 69, but this dropped to fewer than 40 in 2007 and only 20 in 2008. Changes in the number of sex purchase offences uncovered in connection with procuring and human trafficking investigations closely mirror changes in the resources available for pre-trial investigations, with a slight delay. Since the police were allocated additional resources between 2004 and 2006, there was an upsurge in the number of cases prosecuted and tried between 2005 and 2007.

According to the police officers interviewed in the Swedish Report, the number of sex purchases uncovered would multiply if their investigation were prioritised higher than it is now. Prosecutors also consider that this is an issue of prioritisation, guidelines and resources.

The Action Plan against Prostitution and Human Trafficking emphasises the primacy of social measures in addressing the phenomenon of prostitution. Particular attention should be given to the most vulnerable groups (e.g. children and adolescents). The social welfare authorities, however, have not been allocated extra resources since the sex purchase ban entered into force, unlike the police. (Kuosmanen 2011.) There have been efforts to improve the professional competence of social welfare and health care authorities through training and with manuals published in 2011, for instance.6

Police officers in major cities collaborate with multi-professional social services teams specialising in prostitution. Specially trained social welfare personnel are available for talking to and provide information for instance on how to contact the police. Discovered buyers are encouraged to join KAST groups, where potential and actual sex buyers are motivated to take responsibility for their behaviour.

### 3.8 About the impact of the sex purchase ban

#### Impact of the sex purchase ban on public attitudes

The key goal with the sex purchase ban in Sweden was to influence attitudes and behaviours regarding prostitution. Public support for the sex purchase ban has been polled through surveys in Sweden in 1996, 1999, 2002 and 2008. Although these studies are not fully comparable in terms of their samples and implementation, they may

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be considered indicative at the very least. The question in each survey, with minor variations, was whether the interviewee is in favour of the criminalisation of the purchasing of sex.

Figure 2. Public attitudes to the criminalisation of the purchasing of sex in Sweden, 1996–2008.

Three years before the provision was enacted, two thirds of respondents were not in favour of the criminalisation of the purchasing of sex (1996: 67%). In the survey conducted in the year when the provision entered into force (1999), the ‘no’ responses were down to 15%. In the 2002 and 2008 surveys, the ‘no’ responses remained below 20%. Over the same period, support for the provision seems to have increased significantly. Whereas in 1996 about one third of respondents were in favour of criminalisation of the purchasing of sex, figure was 76% in 1999, 76% in 2002 and 71% in 2008. Support for the provision is strongest among persons under 30 years of age, according to the surveys; for instance, in the 2008 survey 78% of respondents aged 18 to 28 were in favour.

The surveys also show that support for the provision is higher among women, although it is also high among men. Criminalisation of the purchasing of sex was supported by a minority of Swedes before the provision was enacted (1996): 44% of women and 20% of men. In the three surveys conducted while the provision has been in force, about 80% of women were in favour of the sex purchase ban. The figure for men was about 70% in the 1999 and 2002 surveys, but this dropped to 60% in the 2008 survey.

The 1996 study (Sex i Sverige – om sexuallivet i Sverige) had 2,810 respondents; later studies had 1,000 – 1,100 respondents. The 1999 and 2002 studies were conducted by phone interviews by the Swedish Institute for Opinion Surveys (SIFO), and the 2008 study (Kuosmanen, Prostitution i Norden) was conducted by sending out a questionnaire by mail.

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7 The 1996 study (Sex i Sverige – om sexuallivet i Sverige) had 2,810 respondents; later studies had 1,000 – 1,100 respondents. The 1999 and 2002 studies were conducted by phone interviews by the Swedish Institute for Opinion Surveys (SIFO), and the 2008 study (Kuosmanen, Prostitution i Norden) was conducted by sending out a questionnaire by mail.
The 1996 and 2008 surveys also explored how common purchasing sex is in Sweden. Whereas in 1996 13.6% of Swedish men reported that they had purchased sex, the figure in the 2008 survey was only 8%. Some of the men responding to the 2008 survey reported that after criminalisation they had stopped purchasing sex or were not doing it as often (21% of the men who reported that they had at some time purchased sex). Fewer than half of the men who had purchased sex reported that they had purchased sex after the ban entered into force. According to the 1996 survey, purchasing sex was the most common among men aged 45 to 59, although the most recent contacts with prostitutes were reported among men aged 25 to 34. Both surveys indicated that the majority of sex purchases occurred abroad (78% in 1996; 71% in 2008).

The Swedish Report (SOU 2010:49) notes that the police and social welfare authorities report that buyers have become more careful and that demand seems to have decreased. Prostitutes also report that clients are now more concerned than before about being caught.

According to the 2008 survey, only one fifth of the respondents believed that purchasing sex had become less common after the ban entered into force. Even fewer believed that prostitution had decreased. One possible explanation for this according to Kuosmanen (2011) is that for the majority of the population prostitution is an alien phenomenon that they only encounter in the news. This easily creates a pessimistic image of the phenomenon being an unchanging entity that cannot be influenced.

In actual fact, the Swedish Report indicates that the provision would seem to have had a considerable normative effect. The attitude shift noted in the surveys coincides with the enactment of the sex purchase ban. The strong support for the ban among young people and young adults indicates that the normative objective of the ban has been attained.

The Swedish Report has been criticised for presenting conclusions with questionable empirical validity and for using variables not comparable for the situations before and after the entry of the ban into force. (Skilbrei & Holmström 2011.) Also, the attitude shift is seen as too slight to be significant, and the authorities’ estimate of the ban functioning as a deterrent to human trafficking is considered not proven. Critics have also considered that reducing the volume of street prostitution by half has simply meant that the business has moved elsewhere, to less visible contexts. (Skilbrei & Holmström 2011, 503.) Skilbrei and Holmström make an interesting point in noting that prostitution is such a minor phenomenon in Sweden that it is difficult to draw firm conclusions for or against the effectiveness of the sex purchase ban on the basis of numbers alone.

**Impact of the sex purchase ban on the volume of prostitution**

The Swedish Report notes that it is difficult to obtain a clear picture of any change in the volume of prostitution. It is estimated that prostitution is primarily, but not exclusively, a major-city phenomenon. Street prostitution, however, would seem to be confined to Stockholm, Malmö and Gothenburg. Since the enactment of the sex purchase ban, the volume of street prostitution in Sweden has dropped by half. Even the critics of the ban admit that the volume of prostitution has decreased (Dodillet &
Östergren 2011), but they argue that the problem in this is that prostitutes have less scope for selecting their clients.

In her report *Prostitution i Norden* (Prostitution in the Nordic countries, 2008), Charlotta Holmström estimates that there are 650 prostitutes in Sweden: some 300 on the streets and 300 online. Holmström estimates that there are 50 male prostitutes, who mainly operate online. In 2009, the SNBI estimated that there were some 90 Thai massage establishments in and around Stockholm. Around New Year 2012, the number of Thai massage establishments was estimated at 250 in Stockholm and 450 nationwide. Suspicions of sex being sold at Thai massage establishments are common in Sweden. In the *Könshandel* report (Sex trade, SOU 1995:15), the number of prostitutes operating in Sweden was estimated at 2,500. On the other hand, Skilbrei and Holmström (2011) note that a reduction in the number of prostitutes does not necessarily mean a reduction in the volume of prostitution. Although the prostitution market is largely segmented, it is entirely possible that there is some overlap between the segments. For instance, a person working as a street prostitute who advertises her services online would count as two separate operators in the statistics.

The Swedish police regularly monitor online ads. The Swedish Report indicates that it is difficult to deduce the true volume of prostitution from the number of online ads found. A single ad and a single phone number may be used by several prostitutes. However, it is considered far more common for a single prostitute to have several ads or several phone numbers posted online.

In 2007, the National Board of Health and Welfare found 301 persons offering sex for sale online, most of them operating in the Stockholm area. In 2008, the SNBI recorded 417 ads in which sex was offered for sale by 376 women, 31 men and 10 transsexuals. There are variations by region and by time period in the number of ads found. For instance, the number of online ads in the Malmö area doubled between 2008 and 2009 according to the centre of expertise in prostitution in Malmö (*Kompetenscenter Prostitution i Malmö*).

A comparison cited in the Swedish Report shows that the increase in online prostitution is similar to that noted in Norway and Denmark. It would seem that the emerging online presence of prostitution is no greater in Sweden than in neighbouring countries.

In the early 2000s, the SNBI estimated the annual number of victims of human trafficking for the purpose of sexual abuse to be 200 to 500. In 2004, this estimate was revised upward to 400 to 600 women and girls per year. From 2005, the police have no longer given numeric estimates of the volume of human trafficking. The annual reports of the National Rapporteur on Trafficking in Human Beings repeatedly note that police intelligence data are more indicative of the resources allocated, the current level of expertise and current priorities than of the actual volume of the phenomenon.

The Swedish Report claims that the sex purchase ban has had a preventive impact on human trafficking in Sweden. The National Rapporteur too has noted that in raids in Sweden only a few prostitutes are found at any given time, whereas in other countries dozens of prostitutes may be uncovered in a raid. Moreover, police phone tapping has
revealed that procurers do not consider there to be sufficient demand in Sweden and that operations are not as profitable as they would have liked.

The *Prostitution i Norden* (Prostitution in the Nordic countries) report also concludes that Sweden differs from the other Nordic countries in that there are no established groups of foreign women on the visible prostitution market.

The National Rapporteur on Trafficking in Human Beings notes that there may be more than one ad on several websites and more than one phone number in use for any individual prostitute to ensure a sustainable income. It is known that organised criminals book several clients for a single prostitute for the same time, because not all buyers who make a booking are expected to turn up. Criminal groups have also experimented with periodical price reductions to attract clients.

It is easier to estimate the volume of prostitution in public places than that of indoor prostitution. It is also more difficult for buyers to find information about indoor prostitution. Yet although there is very little information available on forms of prostitution other than street prostitution and online prostitution, the Swedish Report notes that there is nothing to indicate an increase in indoor prostitution or soliciting in bars. Social welfare and health care professionals working with prostitutes have not noted an increase in any form of prostitution. The Swedish police have noted that it is almost impossible for prostitution to be completely invisible, since there have to be ways for prostitutes to find clients and vice versa.

### 3.9 Human trafficking and procuring offences

The Swedish National Rapporteur on Trafficking in Human Beings notes that human trafficking offences are a challenge to investigate and convict. What makes things complicated is that criminals would seem to have adopted more subtle ways of operating in recent years. Whereas human trafficking used to involve violence and threats of violence as a matter of course, traffickers have now begun to offer ‘better conditions’ not just compared with the country of origin but also compared to earlier practices. The victims of human trafficking are now given more freedom to operate and are allowed to keep a larger percentage of the money earned by selling sex. This serves to keep the victim loyal to yet also dependent on the recruiters, and in such a situation it is more difficult to get the victim to testify against the recruiters. It may be considerably more difficult for the authorities and courts to identify the true nature of a situation if a victim of human trafficking is being exploited through a psychological dependence rather than with brutal violence or other poor physical treatment.

As a rule, procurers and human traffickers have a link to the country of origin of the victim. They are often of the same nationality or ethnicity as the victims, although they generally have a much better knowledge of circumstances in Sweden than their victims do. Because the offender is familiar with the living circumstances of the victim in the country of origin, he can use this information in enticing, recruiting and controlling the
victim. Contacts to the country of origin enable threats and blackmail: for instance, the offender may threaten to harm the woman’s family members physically or to announce to the family or community that the woman is working as a prostitute.

According to the National Rapporteur on Trafficking in Human Beings, the most victims of human trafficking for the purpose of sexual abuse uncovered in Sweden are foreign women or girls who are members of a minority group in their home country who have no access to the labour market or who are subject to discrimination in the form of sexual abuse, violence or social exclusion. Many of the victims had no idea of how Swedish society works or that they could turn to the authorities for help and how this could be done.

Although the backgrounds to individual cases of prostitution vary, the National Rapporteur points to certain common factors in the circumstances found in the victims’ countries of origin. In many cases, there has been a social upheaval in the country or region of origin resulting in generally poor living conditions (revolution, civil war, natural disaster). Women are in a weak position in society and on the labour market and may not have opportunities for education or training, or else the labour market may simply not be open to women or to the ethnic group in question. The country of origin generally does not have a functioning social welfare system. Also, women’s rights are practically non-existent or only very marginal.

The National Rapporteur on Trafficking in Human Beings estimates that the volumes of procuring and human trafficking rings targeting Sweden are rather low but that they are suspected of being linked to a broader network of organised crime in their respective countries of origin. Many of the female recruiters are former prostitutes who have been ‘promoted’ to human trafficking recruiters. Some female offenders may be working as both prostitutes and recruiters, which makes the structure of the system less clear.

The National Rapporteur states that the majority of foreign victims of human trafficking knew that the purpose of the operation was prostitution. Where they were misled were in their ‘terms of agreement’. The circumstances, financial arrangements and restrictions on freedom involved may come as a surprise to victims. Some women are caused to become deeply indebted. All of the ‘help’ offered by the recruiters and middlemen comes with a price tag, and new fees can be imposed at any time. Indebtedness will indenture a prostitute for several years, and the offenders can retain a substantial percentage of the money earned by the victim on the pretext of debt repayment. For instance, Nigerian prostitutes encountered in Sweden have in some cases had debts amounting to SEK 400,000–800,000.

Procurers and human traffickers aim to operate as inconspicuously as possible and as remotely as possible. When a woman arrives in Sweden, she will independently find her way to an agreed address. Procurers and human traffickers rarely visit the actual apartments where the prostitution is carried out and will only exceptionally be seen in public with their victims. Online ads are designed so as to eliminate any suggestion of organised activities. The women are often instructed to report that they are independent operators if questioned. With the aid of the Internet and mobile technology, it is easy to run an organised operation even from another country.
Public attitudes to human trafficking

Sweden has had a National Rapporteur on Trafficking in Human Beings since 1997; Finland appointed one in 2009. Provisions specifically criminalising human trafficking entered into force in Sweden in 2002 and in Finland in 2004. In Sweden, the essential elements of human trafficking were specified and augmented to better comply with the international obligations to which Sweden has committed. (Human trafficking within Sweden was included in the elements of the offence in 2004, and further amendments were made in 2010.) The Swedish National Rapporteur took office five years before the provisions specifically criminalising human trafficking were enacted. In Finland, the opposite was the case: the National Rapporteur began work five years after the provisions specifically criminalising human trafficking were enacted.

This may be taken as a broader indicator of the difference between Sweden and Finland in understanding human trafficking as a component of prostitution-related crime. The Swedish National Rapporteur was initially assigned to report specifically on human trafficking for the purpose of sexual abuse. It is only during the past five years that trafficking for forced labour has found a significant presence in the annual reports on human trafficking. In Sweden, prostitution-related crime (including the sex purchase ban) has always been seen as being closely connected with the combating of human trafficking crime. Clearing up offences with low maximum punishments has been seen as an important effort in combating human trafficking.
4 Partial sex purchase ban in the UK

4.1 Background

Legislation in the UK in this area is interesting because it closely resembles that of Finland with regard to banning the purchasing of sex. A partial sex purchase ban has been in effect in England, Wales and Northern Ireland since 1 April 2010, criminalising the purchasing of sex from a person who is the victim of exploitative conduct. (Policing and Crime Act 2009.) As in Finland, there is a separate public-order provision in the UK that prohibits street soliciting.

However, the legal system of the UK is substantially different from that of Finland and Sweden. It was thus not easy to establish how the system actually works in the UK or to draw conclusions. Because the UK has a common law system driven by precedents and rulings handed down by higher courts, the effectiveness of legislation will not become known until legal practice has emerged. Acts of Parliament do little else than augment legal practice, and there is rather little experience of the application of the sex purchase ban enacted in 2009.

In terms of its legal system, the UK consists of four separate states that may have varying practices and legislation in any given matter. The following discussion of the situation in the UK should be understood principally as a discussion of England, and specifically of the Greater London area. Scotland, which has partial autonomy, is completely excluded from this review, because the legislation discussed here does not apply in Scotland. There has been a lively public debate recently in Scotland about banning the purchasing of sex as part of policies aimed at curbing violence against women.8

Reducing violence against women has been a policy focus area in the UK since 2000. In 2008–2009, strong lobbying efforts were exerted to achieve a more comprehensive strategy to address violence against women in the UK. Violence against women working as prostitutes has prompted much discussion in the UK and was a contributing factor to the Act enacted in 2009. A particularly strong impulse for public debate was gained from serial murders of prostitutes uncovered in the 2000s: five prostitutes murdered in Ipswich in 2006 and three street prostitutes murdered in Bradford in 2009–2010.

Our interviewees noted that the various forms of commercial sex were becoming increasingly visible on the street and in the media in the 2000s. Criticism was levelled at

8 In autumn 2012, the Scottish Parliament began debating a motion by Rhonda Grant MSP on a comprehensive sex purchase ban following the Swedish model. A proposal for enacting a partial sex purchase ban as in the rest of the UK has been made in Northern Ireland.
the fact that striptease and lapdancing had become completely ordinary pastimes for male groups. A study published in 2005 (Ward H et al. 2005. Who pays for sex?) indicated that British men seemed to be purchasing sex considerably more frequently than before. The number of men who had purchased heterosexual sex doubled between 1990 and 2000.

The Policing and Crime Act of 2009 included not only a sex purchase ban but also new provisions whereby the authorities may shut down establishments operating as brothels. Permit procedures and opening hours for lapdancing clubs were also made more restrictive. The reform involved providing for the new option of assisting apprehended sex workers in quitting the prostitution business instead of punishing them. Imposing a fine on a prostitute was seen as sending mixed signals if the ultimate aim was to promote the elimination of prostitution; after all, in order to pay the fine the prostitute would have to return to selling sex.

The following is a discussion initially of the relevant British legislation and then of the current prostitution situation and application of the Act. Information on practical application was gained from written documents and through interviews conducted on 11–13 June 2013. The fact-finding visit included a visit to the London Borough of Lambeth, where application of the legislation discussed has been given particular attention.

4.2 Current legislation

The sex purchase ban from a victim of procuring or other exploitation was enacted in 2009, and the ban on street soliciting was revised at the same time. The legislation on sexual offences had already previously been substantially overhauled with the Sexual Offences Act of 2003 (which entered into force in 2004). New offences included were ‘Paying for sexual services of a child’ (section 47) and ‘Trafficking [...] for sexual exploitation’ (sections 57–59). The definition of rape as an offence was broadened to include absence of consent as a vital essential element.

Paying for sexual services of a prostitute subjected to force etc.

The Policing and Crime Act of 2009 provided for a sex purchase ban, which was criminalised in a new provision inserted in the Sexual Offences Act of 2003 as a new section 53A. The key purpose of the sex purchase ban is to prevent human trafficking for sexual exploitation and in part to comply with the requirements of international conventions regarding limitation of demand. The Crown Prosecution Service (CPS) guidelines indicate that the purpose of the partial sex purchase ban (section 53A) is to

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9 The comparable provision in Northern Ireland is section 64A of the Sexual Offences (Northern-Ireland) Order 2008.
make the purchasing of sex visible and to reduce demand for all kinds of commercial sexual exploitation.

Under the new section 53A, a person commits an offence if that person makes or promises payment for the sexual services of a prostitute and a third person has engaged in exploitative conduct of a kind likely to induce or encourage the prostitute to provide the sexual services for which the person has made or promised payment. The ‘third person’ is in practice usually a procurer or ‘pimp’, but Home Office instructions note that it may also be the prostitute’s ‘partner’ or a ‘friend’ who is also working as a prostitute. (Home Office circular 006/2010.)

For the purposes of criminal liability, it is irrelevant whether the offender (the buyer) was aware that the prostitute was being exploited by a third person. The provision also applies to commercial sex abroad if the payment has been made or promised while the buyer was still in the UK. According to the essential elements of the offence described in the provision, it is irrelevant whether the sexual act for which the buyer made or promised payment was actually committed. It is also irrelevant for the purposes of criminal liability whether the person committing the sexual act paid for it himself or whether it was paid for by another person.

Following section 4(4) of the Sexual Offences Act of 2003, commercial sex is considered to mean vaginal, anal or oral penetration against payment. Vaginal or anal penetration includes penetration by a body part other than the penis or by an object.

The maximum punishment for purchasing sex is a fine of GBP 1,000. Cases are handled by summary conviction.

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53A Paying for sexual services of a prostitute subjected to force etc.

1. A person (A) commits an offence if—
   a. A makes or promises payment for the sexual services of a prostitute (B),
   b. a third person (C) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and
   c. C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).

2. The following are irrelevant—
   a. where in the world the sexual services are to be provided and whether those services are provided,

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10 As per section 54(2) of the Sexual Offences Act of 2003, a prostitute is a person who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment.
b whether A is, or ought to be, aware that C has engaged in exploitative conduct.

3. C engages in exploitative conduct if—
   a C uses force, threats (whether or not relating to violence) or any other form of coercion, or
   b C practises any form of deception.

4. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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Definition of exploitative conduct

According to the essential elements of the partial sex purchase ban, a prostitute may be subject to exploitative conduct if any of the following is involved: 1. force, 2. threats, 3. coercion or 4. deception. This list is the same as the list of essential elements of procuring in the previously enacted section 53. (‘Controlling prostitution for gain’, Sexual Offences Act 2003.) In 2010, when the partial sex purchase ban entered into force, the Home Office explained the content of this list as follows. In this explanation, as in section 53A itself, ‘A’ is the buyer, ‘B’ is the prostitute and ‘C’ is the exploiting person:

1. Force should be given its ordinary meaning as applied in other legislation and clearly includes physical violence towards B.

2. The ‘use of threats’ is not restricted to threats of physical violence. For example, it could also include scenarios where C uses ‘psychological’ threats against B. Scenarios which could be covered by this include circumstances in which C makes threats to:
   a report B to the immigration authorities or police;
   b withdraw B’s accommodation, financial support or supply of drugs and/or alcohol;
   c restrict B’s access to B’s children, family and friends;
   d end the relationship; withdraw love/affection;
   e threaten to commit suicide;
   f restrict B’s movement or some other personal freedom;
   g tell family, friends or community about B’s involvement in prostitution, which would damage B’s reputation or otherwise embarrass him or her;
   h harm B’s family or someone else close to B.
3. ‘Any other form of coercion’ is intended to include situations that involve dominating or unequal relationships where C uses his or her influence over B, or purposely exploits B’s vulnerabilities to incite or encourage B to provide sexual services. These vulnerabilities could relate to B’s:
   a young age;
   b physical or mental incapacity, illness or disability;
   c drug and/or alcohol dependency;
   d history of experiencing violence or abuse;
   e economic disadvantage, social status or social exclusion; and/or
   f immigration status.

4. Deception relates to situations where B is deceived into providing the sexual services. It could include deceiving B in relation to the identity of the person receiving the sexual services or as to the terms on which the sexual services would be provided.

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The application of the partial sex purchase ban is not limited to indoor prostitution or brothels; it is equally applicable to street prostitution, nightclub prostitution or online prostitution. For the purposes of applying the provision, it is irrelevant whether the establishment is a formally legal one, e.g. a massage establishment. Under the CPS guidelines, the partial sex purchase ban is considered principally applicable to indoor prostitution. Therefore if the police raid a brothel, for instance, any buyers therein discovered may be investigated.

That the authorities consider indoor prostitution the principal area of application of the partial sex purchase ban can also be seen by the CPS entering statistics on sex purchase offences under section 53A together with brothel-keeping offences.

**Ban on soliciting**

Section 51A of the Sexual Offences Act of 2003 criminalises the sale and purchase of sex on the street. This prohibition had been in effect for quite some time. The offence was referred to as ‘persistent loitering’ and ‘kerb crawling’ in the Sexual Offences Act of 1985 but was renamed ‘soliciting’ in the 2010 reform (sections 16 and 19 of the Policing and Crime Act 2009). Pursuant to section 19 of the Policing and Crime Act of 2009, a new section 51A was added to the Sexual Offences Act of 2003 replacing the earlier ban on purchasing sex while in a vehicle (kerb crawling) and the ban on persistent soliciting.

The Policing and Crime Act of 2009 also revised provisions on street prostitution found in other Acts. The term ‘common prostitute’ was removed from the Street Offences Act of 1959, as the term was considered offensive and outdated. (Home Office 2010.)

The term ‘kerb crawling’ refers to a person driving a car slowly around an area known for street prostitution with the intent of purchasing sex. For the purposes of section 51A,
it is irrelevant whether a purchase actually takes place; a person may be convicted if it is obvious from his conduct that he is in the area for the purpose of purchasing sex. Under the earlier provision, a person had to actually be in a vehicle to be guilty of kerb crawling, but this distinction was removed in the 2010 reform. This made it possible to charge pedestrians similarly roaming around with the intent of purchasing sex. For instance, in the London Borough of Lambeth the authorities noted that a significant percentage of the buyers apprehended in the surveillance of street prostitution live very near the street prostitution area, either in Lambeth itself or in a neighbouring borough. Many of the buyers arrive on foot or by bike. According to the official in charge of the prostitution strategy in Lambeth, street prostitution is most active at night, with occasional occurrences at any time of day.

The ban on soliciting applies to both sellers and buyers. Because it is no longer necessary to demonstrate repeated or habitual activities, both sellers and buyers of sex can be charged when they are first apprehended. Also, since the reform, disorderly conduct or causing a public disturbance has no longer been a requirement for the purchase or attempted purchase of sex on the street to be a chargeable offence. The maximum punishment for soliciting sex under section 51A is a fine of GBP 1,000.

Alternatively, the authorities may at their discretion issue a conditional caution or require the prostitute to attend a three-session course on life management and how to quit prostitution. (Engagement and Support Orders.) Use of the conditional caution is limited by the fact that the recipient of a caution is expected to commit to discontinue street prostitution activities in the area. Not all offenders are willing to do this.

Local authorities have developed intervention models similar to the Engagement and Support Orders as an alternative to criminal sanctions. The London Borough of Lambeth, for instance, has developed a Court Diversion Scheme under which prostitutes can avoid an entry in their police or criminal record. The scheme involves two guided meetings with the purpose of establishing the prostitute’s need for support and drawing up a personal plan. This will help establish whether the person needs life management support or has mental health or substance abuse problems, and whether the person could be supported in quitting prostitution.

The CPS notes in its official Code for Crown Prosecutors that criminal proceedings should be focused on those who recruit, procure or otherwise seek to gain from the prostitution of others but also on those who maintain demand, especially in street prostitution.

**Procuring (Prostitution for gain)**

Sections 52 and 53 of the Sexual Offences Act of 2003 address ‘Causing or inciting prostitution for gain’ and ‘Controlling prostitution for gain’, respectively. These provisions specifically state that they also apply beyond the borders of the UK (“in any part of the world”).

- under section 52, a person commits an offence if he intentionally and in the expectation of gain causes or incites another person to become a prostitute.
under section 53, a person commits an offence if he intentionally and in the expectation of gain controls any of the activities of another person relating to that person’s prostitution.

In section 54, ‘gain’ is defined as financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount. The gain from prostitution may accrue to the offender himself or to a third party. The maximum punishment for prostitution for gain is imprisonment for 7 years. According to the Sentencing Guidelines Council, the sentence should be between 2 and 5 years of imprisonment if there is evidence of physical or mental coercion. If there is no such evidence but the actions of the offender are closely connected to the prostitution of another person, the sentence should be between 6 months and 2 years of imprisonment. If the sentence expected is no more than 6 months of imprisonment, the case may be handled on summary conviction.

Provisions against human trafficking were enacted in 2003. Sections 57 to 59 of the Sexual Offences Act of 2003 apply to human trafficking for the purpose of sexual exploitation. The provisions cover both adults and minors. The maximum sentence for trafficking is imprisonment for 14 years.

**Paying for sexual services of a child**

Section 47 of the Sexual Offences Act of 2003 prohibits paying for sexual services of a child. The essential elements make a distinction between offences against children under 13 and over 13 years of age. The maximum sentence is graded according to the age of the victim (under 13, 13 to 15, 16 to 17).

1. Purchasing sex from a child under the age of 13 is a strict liability offence, and the offender cannot successfully plead ignorance of the child’s actual age. The maximum sentence for purchasing sex from a child under the age of 13 is imprisonment for life.

2. If the victim was a child aged 13 or over, the offender may be convicted if it is considered that the offender could not reasonably believe that the victim was 18 or over.12

3. The maximum sentence if the victim is aged 13 to 15 is imprisonment for 14 years. The maximum sentence if the victim is aged 16 to 17 is imprisonment for 7 years.

According to the CPS Code, children must be treated as victims of abuse in cases of paying for sexual services of a child. Whether the underage victim consented to selling sex is irrelevant in determining criminal liability. However, in a situation where a minor is engaged in persistent selling of sex and returns to the selling of sex voluntarily in a

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11 57: Trafficking into the UK for sexual exploitation; 58: Trafficking within the UK for sexual exploitation; 59: Trafficking out of the UK for sexual exploitation.

12 “B is under 18, and A does not reasonably believe that B is 18 or over, [...].”
situation where he or she had a real opportunity to choose otherwise, criminal charges against that minor may be considered.

Other offences against children provided for in the Sexual Offences Act of 2003 are ‘Causing or inciting child prostitution or pornography’ (section 48), ‘Controlling a child prostitute or a child involved in pornography’ (section 49) and ‘Arranging or facilitating child prostitution or pornography’ (section 50).

4.3 Application of legislation

General

The sex purchase ban has been in force in the UK for over three years (as of 1 April 2010). No official evaluation of its effectiveness has yet been conducted. According to Home Office experts, no such report is planned. The experts we interviewed had varying opinions on the effectiveness of the ban. The Home Office has, however, conducted an evaluation on action against prostitution (Effective practice in responding to prostitution, 2011) and issued guidelines for local authorities.

In the UK, enforcement of legislation may devolve to the local level to quite a substantial extent. This has traditionally been the case in the regulation of prostitution. The current Coalition Government of the Conservatives and Liberal Democrats has sought to reduce the role of central government and to devolve power and discretion to local authorities. The sex purchase ban entered into force one month before the end of the Labour Party’s 13-year tenure in government. The implementation of the ban was thus left to the local government level to a very great extent. At the same time, the recession has caused cuts to be made in the resources available to authorities, although areas in which funding for strategies addressing violence against women have been prioritised were able to safeguard their appropriations.

Local actors are also allowed to focus on various aspects of legislation at their discretion. For instance, Liverpool allows certain ‘red light districts’, whereas Ipswich has a strict zero-tolerance policy towards prostitution. The 33 boroughs that make up Greater London can also decide, by virtue of their autonomy, how to pursue a prostitution policy.

“While legislation applies nationally, precisely how it is applied is a matter of local policing policy determined by local priorities and circumstances.” (Home Office: A Review of Effective Practice in Responding to Prostitution, 2011)

In practice, a number of local councils make a distinction between street prostitution and indoor prostitution in prostitution policy. There may be considerable leeway given to indoor prostitution and brothels despite crackdowns on street prostitution. In some areas, according to the CPS, the police have allowed indoor prostitution to continue as long as the operators do not engage for instance in the illegal sale of alcohol and there
are no drugs or minors on the premises. Such a policy has proved problematic in cases brought to court. Charges against procurers are difficult to prove if they can demonstrate that the local police have been permissive of brothel operations.

No extra resources were allocated to the enforcement of the sex purchase ban or to the training of officials at the national level. Local authorities have been able to provide training independently for their own personnel. In Lambeth, the official in charge of the prostitution strategy reported that over the past nine months they had provided 600 officials with training in gender-based violence, including intervention in sex purchases. The interviewee said that it has been noted in the training that prostitution prompts an emotional response in officials too, and that the trainees do not necessarily have knowledge of the phenomenon. Another thing noted in the training is that it is possible to intervene in sex purchases and that sceptical attitudes have dissolved.

According to Home Office guidelines (2010), the police may at their discretion direct a prostitute to non-criminal justice interventions. The CPS stresses that the focus should be on helping prostitutes to quit their business rather than punishing them. At the same time, the CPS notes that not intervening in street prostitution can easily lead to an area becoming marginalised, which will increase drug trading and sexual harassment of women.

**Paying for sexual services of a prostitute subjected to force etc.**

The statistics of the Crown Prosecution Service show that the partial sex purchase ban provided for in section 53A was cited in 40 cases in the first year but only seven times in the following year. Cases are registered as decisions to prosecute by the CPS even if the case actually only involved the police issuing a conditional caution. This practice changed as of April 2013; these cases no longer require confirmation by a prosecutor, as the police can decide on them independently.

The new sex purchase ban is principally applied to indoor prostitution, although interviewees noted that in some cases section 53A has also been applied to sex purchases in the street. However, it is seen as easier to intervene in sex purchases in street prostitution (*soliciting*, formerly *kerb crawling*) under section 51A, because then the police do not need to demonstrate that the prostitute was a victim of exploitative conduct.

According to information received from the prostitution expert at the Mayor’s Office for Policing and Crime in London (MOPAC), the sex purchase ban pursuant to section 53A has not been applied in the Greater London area. Interventions in sex purchases were limited to kerb crawling in street prostitution (section 51A).

Lambeth has drawn up annual goals for reducing demand, and attainment of these goals is being monitored. In 2012, it was specified as a goal that the local police should carry out 18 monitoring raids targeted at sex purchases. The actual number of raids conducted was 22. The goal for 2013 is 24.
Strict liability

A buyer of sex can be convicted for a sex purchase pursuant to section 53A regardless of whether he was or should have been aware that the prostitute was a victim of exploitative conduct.

The officials interviewed noted that the inclusion of strict liability in the sex purchase ban prompted a lively debate during the legislative process. Home Office experts consider that the inclusion of strict liability in the sex purchase ban is highly unusual. Generally, strict liability is involved in minor and uncomplicated offences such as speeding. On the other hand, paying a child under the age of 13 for sexual services is also a punishable offence whether or not the offender was or should have been aware of the victim’s age.

The interviewees noted that the sentence for a sex purchase offence could have been more severe if strict liability had not been included in the essential elements of the offence. (At the moment, the maximum sentence is a fine of GBP 1,000.) The Government justified the determination of the maximum sentence at the drafting stage by equating sex purchase offences with kerb crawling. (House of Lords, Committee stage, 1 July 2009.) It was also proposed during the legislative process that such a low sentence prescribed for sex purchase offences would decrease the liability of those who consciously purchase sex from victims of human trafficking. The Liberty NGO, for instance, asserted in its statement that such cases are tantamount to rape and should be investigated as such. (Liberty’s Report Stage Briefing and Amendments on the Policing and Crime Bill in the House of Lords, 2009.)

Application of the soliciting ban

The soliciting ban has been applied more frequently than the new sex purchase ban. There are several hundred cases per year. For instance, in the statistical year 2011–2012, the new section 51A prohibiting soliciting was applied in 305 cases. The statistics show that the 1985 provisions continue to be applied in some areas.

Kerb crawling offences, CPS statistics

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<tbody>
<tr>
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</tr>
<tr>
<td>Total</td>
<td>534</td>
<td>365</td>
<td>419</td>
<td>327</td>
<td>314</td>
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</table>

Source: Crown Prosecution Service.

Essentially, two methods are used for discovering sex purchases on the street. The police employ fake prostitutes, i.e. women police officers posing as prostitutes on the
street. Attempts to purchase sex are recorded, yielding indisputable evidence of the buyer’s actions. Stakeouts and automatic camera surveillance are also used, and buyers’ identities are established on the basis of information gathered (e.g. car registration numbers).

In 2007, Ipswich adopted a zero-tolerance strategy towards sex purchases on the street. The aim is to eliminate street prostitution in the town. According to the strategy, prostitutes should principally be offered help and support measures instead of criminal sanctions. To hinder kerb crawling, the local authorities in Ipswich installed CCTV cameras and automatic registration number identification devices in known street prostitution areas. Lighting fixtures have also been improved, gates installed to prevent cruising around the block, and enhanced cleaning practices instituted to clear the area of used condoms and drug syringes. The Home Office reports that after 18 months of this policy, sex sales and purchases on the street have practically disappeared, and there are no indications of other forms of prostitution growing at their expense.

The CPS reports that the Humberside police and prosecutors in the North of England have collaborated closely to reduce sex purchases on the street in the town centre of Hull. In most cases, cautions were issued, and buyers were instructed to leave the area. In some cases, charges have been brought.

In some zero-tolerance areas, prosecutors always seek to take the cases to court and add to the deterrent effect by publicising convictions in the local media. The common system employed is a three-tier system in which the first kerb crawling offence results in a letter sent to the offender’s home; a person found in the relevant area for a second time is requested to come to the police station for an interview; and for a third offence, the person is sentenced to a fine and possibly an Anti-Social Behaviour Order (ASBO), which restricts the person’s right to enter the street prostitution area. ASBOs have been issued not only to buyers but also to prostitutes caught soliciting on the street.

Some towns and boroughs have ‘Change course’ programmes in place for buyers, mainly aimed at buyers caught in kerb crawling raids (e.g. in the London Borough of Tower Hamlets). The programme involves giving buyers a choice: whether to take a course that costs GBP 200 or to have their case tried on summary conviction at a Magistrates Court where a fine to the same amount would be imposed. The purpose of this programme is to make buyers of sex think about the consequences of their actions and to stop buying sex. Some buyers opt for the course, others just pay the fine. In a raid in June and July in 2008, for instance, 12 out of the 26 buyers caught opted for the course. (BBC 5 July 2008.)

Not all local councils focusing on decreasing demand are convinced of the effectiveness of programmes targeting buyers. In Lambeth, for instance, such courses were not introduced, because studies and information gained on buyers of sex in the area indicate that a large percentage of the men who would take the course would take the opportunity to mock the former prostitutes giving talks on those courses. For the same reasons, the campaign against sex purchases in Lambeth does not seek to gain the empathy of the men buying sex by describing the adverse impact of street prostitution
on the women selling the sex; instead, the campaign focuses on consequences potentially harmful to the men themselves.

Some councils have organised cooperation between the authorities and NGOs, with the police intervening in sex purchases and the NGOs offering help to the prostitutes. The NGOs’ work is conducted on the streets at times different from the police raids so that any distrust of the police will not taint the actions of the NGOs.

### 4.4 Prostitution situation

The English legislation on sexual offences prohibits not only procuring but also brothel-keeping. (Sexual Offences Act 1956, sections 33–36.) The principal provision concerning brothel-keeping is section 33A, inserted in the Act in 2003. Under this section, the maximum sentence is imprisonment for 7 years.

33A: Keeping a brothel used for prostitution. It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices).

An apartment where one independent prostitute sells sex and there are no outside organisers or middlemen involved is not considered a brothel. If the same apartment is used by two or more prostitutes (whether concurrently or at different times), it is a brothel and as such prohibited by law.

The Eaves NGO has surveyed the number of brothels active in London on two occasions and has concluded that there are nearly 2,000 brothels in Greater London. According to the CPS Code, it is in the public interest to prosecute brothel keeping if sufficient evidence of criminal activity is obtained. Nevertheless, only 50 to 100 charges have been brought annually.

Brothel keeping offences (including sex purchase offences under section 53A), CPS statistics.

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<td><strong>91</strong></td>
<td><strong>44</strong></td>
<td><strong>91</strong></td>
<td><strong>48</strong></td>
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Source: Crown Prosecution Service.

A brothel often has a coordinator, generally a woman (known as the ‘maid’), whose job is to take calls from clients, guide them to the apartment, keep the premises clean and
make sure that condoms and lubricants are available. According to police intelligence, the ‘maid’ is a key person in the business especially when the brothel is connected to human trafficking or underage prostitutes are recruited. The CPS notes that the ‘maid’ may also be a procurer or a human trafficker.

The other sections concerning brothel keeping in the Sexual Offences Act of 1956 are summary in nature; offenders may be sentenced to a fine and/or a maximum of imprisonment of 6 months. Section 34 applies to a landlord letting premises for use as a brothel, and sections 35 and 36 apply to a tenant permitting premises to be used as a brothel or for prostitution. Some 100 cases per year involving other procuring crimes are prosecuted and cleared up per year.

Controlling prostitution offences, CPS statistics

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<td>11</td>
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<td>110</td>
<td>98</td>
<td>111</td>
<td>80</td>
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</table>

Source: Crown Prosecution Service.

Advertising channels for prostitution

In Britain too, the Internet has become a major marketing channel for prostitution. The most important online forum for sex purchases would seem to be PunterNet, which has been up for years. On this website, sex buyers comment on prostitutes, and there are also instructions on how to begin buying sex and what to do when buying sex, in Britain and abroad.

Phone boxes were an important and visible forum for prostitution ads in the UK before the advent of the Internet. Prostitutes or procurers would put up calling cards or postcards in phone boxes, indicating sexual services for sale. Our interviewees reported that public phone boxes used to be papered with such ads. Today, such ads are mainly only found in central London (e.g. Westminster), and even then only a handful to a few dozen of them per phone box. In some London boroughs, residents’ associations actively patrol phone boxes and remove such ads.

It says something about how widespread this practice was that in 2001 the posting of ads for prostitutes in public phone boxes was specifically outlawed. (Criminal Justice and Police Act 2001.) Under section 46(3) of the Act, any advertisement which a reasonable person would consider to be an advertisement relating to prostitution shall be presumed to be such an advertisement unless it is shown not to be. This prohibition does not apply to public places to which persons under 16 years of age are not admitted. This offence is punishable by a fine and/or a maximum of imprisonment for 6 months.

Cases of advertising prostitution in phone boxes, CPS statistics

|----------------------------------|-----------|-----------|-----------|-----------|-----------|
One of the British officials we interviewed explained that the ads are usually formulated in such a way that they seem to have been posted by independent prostitutes. However, in spot inspections of the phone numbers given, the calls have usually reached a switchboard, indicating an organised operation obviously involving procuring or a brothel.

**Prostitution ads in newspapers**

It is basically not illegal to publish ads for prostitution in newspapers, although some towns and boroughs have imposed an ordinance of their own banning such newspaper ads (e.g. the London Borough of Southwark). In some areas, the police have adopted a policy whereby the publishing of brothel ads, even if coded as ads for massage establishments or saunas, may be considered to be associated with money-laundering crime. The Newspaper Society has also recommended that newspapers at least refrain from publishing ads for brothels and other clearly illegal forms of prostitution.

According to a report published by the Government Equalities Office (*Women not for sale: a report on advertising women in small ads in local newspapers*, 2008), 75% of all British newspapers were publishing prostitution ads.

The officials interviewed for the report noted that newspaper ads for prostitution remain common. Many newspapers reserve a separate ‘Adults’ section for sex ads. Prostitution ads are usually not forthright; they employ well-known euphemisms, and in ads aimed at adults the establishments often bill themselves as massage establishments or saunas.

**Drug addiction and prostitution**

The CPS reports that drug use (particularly crack) is common in street prostitution. The police may drug-test a prostitute if there is reason to believe that the prostitute is in the business to finance a habit of using illegal drugs classified as hard drugs. In such a case, the person caught in street prostitution may be referred to a detoxification programme. (Drug Interventions Programme, DIP.)

Substance addiction may lead to prostitution, or substance abuse may begin or grow worse while being a prostitute. In such a case, the substance abuse may be a survival mechanism. In a study by Bindel et al. (2012), 114 prostitutes were interviewed. Two thirds of them worked on the street and one third indoors. Seven of them were victims of human trafficking. Drug or alcohol abuse was reported by 95 (83%) of the interviewees, and 34 of them had begun selling sex before they began to use drugs. For the rest, their drug use had grown worse while they were working as prostitutes.
4.5 Prostitutes as victims of crime

The Crown Prosecution Service defines prostitution as a form of violence against women due to the gender-biased nature of the phenomenon. (CPS Violence against women strategy.) According to the CPS Code, prostitution is often linked to intimate couple violence, for instance in situations where the abusive spouse is also the woman’s procurer, or the procurer aims to engage in an intimate relationship with the prostitute in order to maintain her loyalty.

The Home Office notes in its report on prostitution (2011) that people involved in prostitution are particularly vulnerable to violent and sexual crime. At least 137 prostitutes have been murdered in the UK since 1990, and women in street prostitution are 12 times more likely to be murdered than the rate for all women in the same age group in the UK.

According to the CPS Code, victims of human trafficking tend to end up in indoor prostitution, although there is evidence now that trafficked women are also working on the street. A representative of the Eaves NGO noted that the line between street and brothel prostitution is more blurred now than it used to be. The CPS states that there tend to be higher levels of violence committed against street sex workers. Although street prostitutes are considered to be the most vulnerable, indoor prostitutes report experiences of the same kind (violence, exploitation, threats/blackmail and substance abuse problems).

The CPS notes that a multi-agency approach is needed to enable women involved in prostitution to develop routes out of prostitution and to provide the most appropriate support. The Home Office also underlines that the principal aim should be to help prostitutes rather than to institute criminal proceedings.

The CPS Code states that in circumstances where a prostitute or sex worker has reported a criminal offence and decided to support a prosecution, they should be considered as vulnerable or intimidated, and accordingly an application should be made to the court requesting the use of special measures to enable them to give their best evidence.

Prostitutes’ trust of the police

Prostitutes in the UK seem to have great reservations about the police. Our interviewees said that it was noted after the serial murders in Ipswich and Bradford that police officers need to be better trained to identify and recognise violence against prostitutes. The Home Office stresses that the police must take reports of violence against prostitutes seriously and investigate them. This would serve to boost prostitutes’ trust of the police. In Liverpool, Merseyside Police identified safety as their priority in policing prostitution: all offences reported against those involved in prostitution are treated as hate crimes. Prostitutes in the area are now entitled to the counselling of an Independent Sexual Violence Advisor (ISVA). According to the Home Office report of 2011, there
was a 400% increase in the proportion of prostitute victims of violence giving consent to share full details with the police.

The Home Office has in recent years been funding a national pilot programme named Ugly Mugs, coordinated by the UK Network of Sex Work Projects (UKNSWP). By joining the Ugly Mugs service, a sex worker will receive alerts by e-mail or text message if a sex buyer known to be violent is active in her area. She can also report violence through Ugly Mugs and choose whether the report should be forwarded only to other sex workers registered in the service or also to the police. Permanent funding for the Ugly Mugs pilot is currently being sought.

4.6 Effects of the legislation: campaigns and public awareness

Our interviewees consider that the general public has rather a low awareness of the sex purchase ban. More generally, the general public is estimated to be poorly informed about prostitution legislation because of its complexity. Home Office experts consider that many citizens think that prostitution is illegal in any and all forms. Others are thought to know no more than that human trafficking is illegal and that children must not be sexually abused.

After the entry into force of the sex purchase ban, the Home Office and Crimestoppers UK ran a brief publicity campaign where buyers were cautioned that purchasing sex is illegal in certain cases. Some of our interviewees criticised the fact that very little resourcing was allocated to publicity campaigns for the sex purchase ban. By comparison, when legislation banning smoking in public places entered into force, it was given a massive publicity campaign to make sure that everyone was aware of the new restrictions. With the sex purchase ban, this sort of coverage was simply not possible.

There is only limited information available on campaigns conducted by local councils, but we may mention as an example that in the London Borough of Lambeth, which has sought to crack down on street prostitution, a poster campaign has also been conducted to address the potential culpability of a sex buyer without referring specifically to street prostitution (Buy sex, pay the price and Looking for ‘business’, you’ll become police ‘business’).

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13 The original campaign slogan Walk in a punter, walk out a rapist was revised to Walk in a punter, walk out a criminal. Equating a sex buyer with a rapist prompted protests, especially since the campaign as originally designed did not specify that only the purchasing of sex from a prostitute subject to exploitation was being banned.
5 Prostitution in Finland

5.1 Forms of prostitution in Finland

In this chapter, we discuss the forms of prostitution that occur in Finland, mainly through expert interviews. Further information was obtained from court cases concerning procuring and human trafficking. The legal practice is discussed in more detail in section 6.5.

Prostitution is a heavily gender-biased phenomenon: the vast majority of sellers are women, and the vast majority of buyers are men. Very little is known of gay and transsexual prostitution in Finland, and scarcely any research findings are available. Of these two, our interviewees were better aware of transsexual than of gay prostitution. The police, for instance, report that they come across transsexuals working as prostitutes occasionally, though rarely. Gay prostitution was a completely unknown area for most of our interviewees. Transsexual prostitution is more common in countries where sex reassignment therapy is not available through public health care. According to the SETA Transgender Support Centre, prostitution by transsexual women in Finland seems to have decreased as the health care system has improved and public attitudes towards transsexuals have become less negative.

Foreign prostitutes have accounted for a significant percentage of prostitution in Finland ever since the early 1990s. In the other Nordic countries (especially Norway and Denmark), the surge in the number of foreign prostitutes occurred later, in the early 2000s. Today, the countries of origin for prostitutes and for human trafficking seem to be largely the same regardless of what the country of destination in Europe is. The women mostly come from the former Socialist countries of eastern Europe, from Africa (often from Nigeria) or from Asia (often from Thailand).\(^\text{14}\)

**Street prostitution**

Known street prostitution has in practice been exclusive to Helsinki in the past decades. When Helsinki enacted an ordinance prohibiting the selling and buying of sex in public places in 1999, some of Helsinki’s street prostitution relocated to Vantaa for a short time. Vantaa also enacted an ordinance prohibiting the selling and buying of sex in 2000.

\(^\text{14}\) In Thailand, an estimated 15% to 20% of women aged 15 to 30 work as prostitutes. (Sirkkilä 2005.) Prostitution and sex tourism in Thailand emerged in the 1960s when American soldiers began to take leave in Thailand during the Vietnam war. At the same time, a large number of women had been excluded from the labour force in Thailand due to a structural change in rural livelihoods.
In the 2000s, the epicentre of street prostitution in Helsinki has migrated towards the very centre of the city. The police know of a handful of streets where prostitution maintains a continuous presence. These locations include the vicinities of well-known erotic restaurants and bars. Street prostitution is at its most prominent between midnight and 05.00 on weekends. It is far more common in summer but not unknown in winter.

A police officer noted that Finland does not have a well-established street prostitution culture and that public, visible prostitution is not as widespread as in certain large cities abroad. The police note that prostitution in a public place is very easy to spot. After all, prostitutes need to be conspicuous for their clients to find them.

The police further note that prostitutes apprehended on the street tend to be foreign, estimating that in recent years there have been 15 to 20 foreign girls on the streets of Helsinki at any given time and that they are regularly replaced.

The representative of the National Police Board whom we interviewed estimated that street and restaurant prostitution accounts for no more than 30% of the overall volume of prostitution in Finland.

**Restaurant prostitution**

Our interviewees noted that there are only a handful of restaurants in Finland that are specifically known for commercial sex, although it is suspected that occasional and less obvious prostitution occurs in some other restaurants too. According to the police, basically all prostitutes working in restaurants are foreign women.

Various sources point to specific restaurants in the city centre of Helsinki that are known for being places where sex is bought and sold, with the restaurants profiting from these actions. The doorman charges the prostitutes a fee to admit them into the restaurant, and they also pay a fee to the doorman when they leave with a client. The restaurant may also be considered to profit indirectly from the increased sale of alcoholic drinks, often at very steep prices. According to studies by Pro Centre Finland (Jakobson 2008) and Penttinen, at erotic and striptease bars it is the job of the women to entice the clients to drink, and for some striptease dancers the job description includes drinking alcoholic drinks with clients. Penttinen’s study highlights the fact that intoxication may lower the threshold for purchasing sex. This pattern does not seem to have substantially changed since the early 2000s. (Penttinen 2004/2007.)

One court decision revealed that foreign procurers had appropriated certain restaurants as their territory, requiring prostitutes to pay a daily or weekly fee to the procurer or human trafficker for being allowed to sell sex in those restaurants.

The police have conducted raids on these restaurants, and attempts have also been made to curb their operations through administrative means, in cooperation with the Regional State Administrative Agency of Southern Finland. The restaurants in question had their licensing hours extensions revoked in 2011. The restaurateurs appealed to the Helsinki Administrative Court, which reinstated the licensing hours extensions. The
Administrative Court noted in its decision that the report received by the Regional State Administrative Agency from the police was not sufficient to demonstrate ongoing prostitution at the restaurant.

**Indoor prostitution**

The police estimate that a substantial percentage of prostitution in Finland is indoor prostitution that is advertised online. In the material that we collected, we noted no independent prostitutes operating from an apartment or studio. We have no reason to doubt the existence of such practices (see Kontula 2008; Dodillet 2009; Östergren 2006), but the authorities and NGO experts generally remain unaware of it.

Indoor prostitution with an actual or suspected link to procuring or human trafficking offences does occur. Our interviews and the legal practice described below (sections 6.3–6.5) show that the level of organisation in these activities may manifest itself as high rents, rapid turnover of tenants, professional online advertising (e.g. on behalf of a person who is illiterate or has no Finnish language skills), or links to restaurant prostitution. Verified cases have emerged in criminal investigations, and some have been brought to trial. Foreign prostitutes may relocate or return to their home country if in danger of being exposed. In the more wide-ranging cases, there is a Finnish middleman or middle management level, whether native or otherwise resident in Finland, while the actual organising is done from abroad and the profits of the criminal activities are likewise transferred abroad.

**Thai massage establishments**

The police report that there are several hundred Thai massage establishments in Finland that may be suspected of selling sex. In a report on Thai massage establishments published by the Ministry of the Interior, it was noted that in 2007 there were some 200 Thai massage establishments in Finland and that the number was growing. Commercial sex at Thai massage establishments has at times been prominently featured in the media. The aforementioned Ministry of the Interior document notes that most police departments had had cause to take action with regard to Thai massage establishments after their emergence in city centres between 2002 and 2007. These inspections were based on measures related to the control of aliens, such as inspection of residence permits and work permits and other requirements for residence. In such inspections, most persons were found to have a permanent or long-term residence permit. Such persons might, however, relocate frequently within the country. After the publication of the Ministry of the Interior report, the police looked into the selling of sex at Thai massage establishments, and related cases of procuring have been brought to trial at various locations in Finland, including small towns.

**Sex shops and private shows**
Most of our interviewees were not aware of prostitution being practiced at sex shops, which may be found in various places around Finland. However, we have observed that certain sex shops quite openly advertise activities implying prostitution, e.g. “New girl this week”. Sex shops have also been taken to court on charges of procuring. In these procuring cases, it has emerged that the women involved move from town to town and perform for brief periods of time in the back rooms of sex shops. ‘Intimate massage’ is also offered, and there are indications that striptease alone would not be profitable without the accompanying selling of sex. The mobility and the commercial sex aspect indicate that there may be procuring involved, and one expert noted that in this form of prostitution the procurers are usually Finnish.

The Internet as a channel for prostitution

The majority of the sex trade in Finland is conducted over the Internet. According to one expert, 80% to 90% of all prostitution has an online component, including foreigners. There are well-established websites for prostitution ads, monitored both by clients and by the authorities. The police note that the Internet facilitates procuring while based abroad, in numerous variations. The procurer or the server receiving the requests for contact may be physically located in another country. Photos of the prostitute and an ad are posted online. The prostitute arrives in Finland and goes to the agreed address or hotel. If the operation were to be uncovered, only the prostitute would be caught, because the procurers and phone operators are abroad. This makes it difficult to solve crimes, and clients may believe that the prostitutes are operating independently. Such servers were removed from Finland in the early 2000s, apparently mainly because advertising prostitution has been specifically prohibited as one of the essential elements of ‘procuring’ in the Criminal Code since 2004. According to the police, operations are now based in Spain. The Swedish National Rapporteur on Trafficking in Human Beings, on the other hand, notes that one particular website was hosted on a Dutch server at least at some time in the past.

Newspaper ads as a channel for prostitution

Before online ads became common around the turn of the 2000s, daily newspapers routinely published ads advertising prostitution under the euphemism of ‘company for daytime coffee’. There might be numerous such ads in a single issue, and publishing such ads was normal newspaper practice. The Helsingin Sanomat newspaper stopped carrying prostitution ads in the early 2000s as a result of strong criticism from the public, and many other newspapers followed suit. Our interviewees all agreed that prostitution ads disappeared from newspapers in the early 2000s. However, we have since discovered that at least one provincial newspaper regularly publishes Thai massage ads where underlying prostitution may be suspected. In these cases, Thai massage is advertised with slogans such as “Thai massage, Asia, new girl”, “New masseuse and sauna, come and relax!” or “New, young, beautiful
masseuse!” Thai massage establishments also advertise oil massages and ‘strong’ massages, which – combined with the knowledge that many Thai massage establishments do engage in prostitution – very strongly imply that the services are sexual in nature. One may well ask whether the appearance, young age or novelty of a masseuse is a selling point if the establishment is actually offering massage and not sex – would not the training and professional competence of the masseuse be more relevant?

**Sexual exploitation of drug addicts, homeless persons, etc.**

The NGO representatives we interviewed pointed out that young people and adults are sexually exploited in return for drugs, alcohol, accommodation or money from time to time in Finland. Most of the social welfare officials whom we interviewed in person and by e-mail identified this type of exploitation. Although it may be targeted at vulnerable adults, young people are particularly vulnerable. Most but not all of the victims are girls. Such exploitation generally does not involve a third party, but there have been cases where the victim’s ‘boyfriend’ or other person profited from the selling of sex or even acted as an agent.

**Connections between various forms of prostitution**

Our interviewees generally saw the various forms of prostitution as being interlinked. Online prostitution ads are associated with indoor, street and restaurant prostitution alike. One apartment may house several foreign women, all of whom have an ad online. It is possible that such women go looking for clients in restaurants in addition to posting ads online and then go out into the street when the restaurants close. In such a case, the same person would be involved in street, restaurant, online and indoor prostitution. However, all interviewees stressed that online advertising is the principal means for getting business. Prostitutes only go to a restaurant or out on the street if their online ads do not bring in clients.

**Mobility of prostitution.**

Travelling from one country to another within Europe became considerably easier in the 2000s. While the Schengen accord eliminated border controls between most EU Member States, budget airlines made air travel available to an increasing number of people. Travel within Europe became much easier, cheaper and quicker than ever before. In the same time period, long-haul flights also became cheaper than before in relative terms, and air travel became more common. Freedom of mobility is exploited by prostitutes and in related crime.

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15 Free mobility technically only applies to people who are legally in the zone, but in practice illegal immigrants benefit from it too, because no border controls are carried out within the Schengen zone.
Mobility within Finland

Prostitution is a mobile business within the borders of Finland too. For instance, prostitutes may travel to various communities along a railway line and stay in each of them for a few days or weeks to sell sex. Short-term prostitution tends to focus on hotels and hostels with minimal control of guests.

Our interviewees noted that there are greater variations in demand in small communities than in Helsinki. Court decisions also reveal that a Thai massage establishment may have only a single customer in a particular day, the monetary compensation for an intimate massage being no more than EUR 20. Prostitutes have a grapevine passing information about where the demand is sufficient at any given time. Thai massage establishments and sex shops seek to sustain demand by advertising actively when a ‘new girl’ arrives.

Survey of prostitutes

According to a survey conducted by Pro Centre Finland in 2000, one third of their clients (prostitutes) were drug users, and 30% used psychotropic medication; many had been in institutional care at some point in their lives. Most of them were unemployed, and many had dropped out of school or training. One in four had begun to sell sex while still underage. The survey is an old one, but Pro Centre Finland notes that the situation remains essentially the same today.

5.2 Who is buying?

According to the 2012 Gender Equality Barometer, more men than women condone the purchasing of sex: two thirds of men condone the purchasing of sex, compared to one third of women. What is noteworthy is that purchasing sex seems to have become somewhat more acceptable among men compared with earlier Barometers. Whereas in 2004 and 2008 60% of men considered it acceptable for a man to pay a prostitute for sex, in 2012 the figure was 66%. (Gender Equality Barometer 2012.)

According to the Finsex survey conducted in 2007, 17% of Finnish men have paid for sex at some point in their lives. (Kontula O 2008.) According to the 1999 survey, 15% of Finnish men had purchased sex. (Haavio-Mannila et al. 2001.) Earlier studies returned similar percentages. (Keeler & Jyrkinen 1999.)\(^\text{16}\) According to the 2007 Finsex survey, the purchasing of sex had slightly decreased among young men and dropped by as much as half among middle-aged men since 1999. By contrast, it had become more

\(^{16}\) At the time of the present report (2013), Monika – Multicultural Women’s Association is participating in a European research project to explore how common sex purchases are in Finland, Bulgaria, Ireland and Cyprus.
common among older men. In a significant number of cases, the sex purchases reported dated back many years. Sex purchases became more common in the 1990s in particular, according to the Finsex surveys, the percentage of men who had paid for sex increasing from 10% in 1992 to 15% in 1999. According to the 2007 survey, 3% of Finnish men reported having purchased sex during the previous 12 months, whereas the figure in 1999 was 4%.

The 2007 Finsex survey showed that the domain of Finnish buyers of sex is diverse. Educational attainment, having children or experiencing difficulty in finding a life partner did not correlate with the purchasing of sex. By comparison, factors indicating a higher probability of men purchasing sex were a high income, weekly intoxication-oriented consumption of alcohol and infidelity in the current relationship.

Interview material on sex tourism to Finland’s neighbouring areas showed that the domain of sex buyers (25 men) were a diverse group. (Marttila 2003.) The average buyer was 38 years old and had paid for sex for the first time at the age of 26. Some of the men were married or in a steady relationship. Half of the interviewees had children. Marttila reported that the men described their purchasing of sex as normal consumer behaviour. Some said that they bought sex because it made them feel like “real men” making a young “real woman” serve their sexual needs. Some specifically admitted that they enjoyed the sense of power that buying sex brought.

Purchasing sex may be a way of avoiding relationships on an equal footing where men face expectations and have to take responsibility. By purchasing sex, men may retain control, power and selfishness. Månsson (2004) proposes that prostitution should be considered an issue belonging to the domain of men’s affairs, as it is ultimately about men’s sexuality, not women’s. What men look for in commercial sex has to do with the cultural and historical role of male sexuality.

While a common stereotype of clients of prostitutes is that they are lonely men who are not getting enough sex, there is also a group of men who have unusually many sexual partners even beyond their frequenting of prostitutes. (Månsson 2004.) The findings of the Finlex survey also indicate this. Moreover, two out of three clients reported that they were currently in a relationship.

Sex buyers may attempt to disguise their purchasing of sex through euphemisms, as is the case in online chats between Finnish men engaging in sex tourism. (Jussila 2011.) For instance, these men refer to sex workers in Thailand as ‘girls’, ‘brides’, ‘regulars’ and ‘lays’. The term ‘prostitute’ was only ever mentioned when claiming that there are no prostitutes in Thailand. Massage establishments and bars were transformed into ‘pick-up places’ and ‘game rooms’ in the sex tourists’ chats. The men referred to themselves as ‘real men’, ‘studs’ and ‘players’. The act of purchasing sex was referred to as ‘snaring’, ‘trapping’, ‘picking up’ and ‘hunting’. (Jussila 2011.)

Jussila notes that the men belittled the commercial nature of the transactions, emphasised the women’s willingness to serve and described the sale and purchase as an equal transaction, as if convincing themselves that something other than prostitution
was involved. They also denied that prostitution in Thailand had anything to do with organised crime.

Although the men in these online chats were aware of the widespread poverty in the country and how few opportunities the local women have to earn a living, Jussila noted, this seemed to have no impact on their behaviour. In their detailed reports on brothels and massage establishments, the men never once discussed the backgrounds of the women selling sex or their circumstances. They were more likely to describe a visit to a brothel as a fine and exciting experience and to recommend it to others.

According to the British interview study *Men who buy sex* (2009), clients tend to buy sex for the first time abroad, in a country where prostitution is legal. Experiences of buying sex at a legal brothel or in a legal red light district may have lowered the threshold for these men to buy sex back home too.

For Finns, on the other hand, it would seem that Finnish men are more likely to buy sex for the first time in Finland than abroad. In a survey of Finnish living habits and customs conducted in 1995, 11% of Finnish men reported that they had purchased sex at least once in their lives: 10% had purchased sex abroad and 3% in Finland. (Lammi-Taskula 1999.) According to the 2007 Finsex survey, half of all sex purchases by Finns occurred in Finland. This would mean that the percentage of Finnish men who had purchased sex in Finland had increased substantially in a dozen years, from 3% in 1995 to 8.5% in 2007.

There are indications that men who purchase sex seek to justify their actions by stressing how ordinary or how common it is. In the aforementioned British survey, *Men who buy sex* (2009), 65% of the 103 clients interviewed were of the opinion that the majority of men purchase sex. Yet in a survey gauging how common the purchasing of sex is, only 7% of British men reported having purchased sex. (Månsson 2004; Wellings et al. 1993.)

The buyers also have strong ethnic stereotypes about Russian or Thai women in connection with prostitution. Similar conceptions may be found in court documents. In a procuring trial, sex buyers summoned as witnesses could not identify a prostitute, because they felt that all Thai women look alike. Similar attitudes may be detected in studies on sex tourism (e.g. Jussila 2011).

Of the men who had purchased sex interviewed for the *Men who buy sex* survey, 71% reported that they had mixed feelings about purchasing sex. Many reported feeling shame and guilt yet might nevertheless continue purchasing sex.

According to Månsson (2004), sex buyers can be divided into two groups: occasional buyers and persistent buyers. Occasional buyers constitute the larger group. Their behaviour is easier to influence through legislative amendments and by increasing the risk of being caught. The group of persistent buyers is far smaller than that of occasional buyers, although they do purchase sex quite often. Månsson describes these men as having a sexually heightened and often problematic relationship to women. Sex addiction linked to prostitution and pornography may also lead to financial trouble and
to problems in relationships, intimate or otherwise. Månsson notes that persistent buyers are not sensitive to regulation of sex purchases.

In Finland, the Sexpo Foundation is contacted several times a year by men who feel they have a problem with purchasing sex. Their original reason for seeking counselling might have been something different, such as relationship problems, mental health problems, problems in connecting with other people or problems with their own sexuality.

The data and observations on Finnish sex buyers are very similar to the data discovered in studies in other countries. There is no particular variable that would set sex buyers apart from the rest of the male population. It has been noted in some studies that sex buyers have an attitude to women different from that of other men (e.g. Farley et al. 2009; 2011). They often have an objectifying attitude; they consider it their right to require a woman to provide them with services.

Our interviewees generally agree that the partial sex purchase ban enacted in Finland has had no obvious normative effect on behaviour or attitudes. The provision in the Criminal Code as it now stands is seen as difficult to understand and not an effective deterrent. However, many interviewees consider that public awareness of prostitution-related crime has clearly increased since the enactment of the ban, which is largely considered to be due to the public debate on the topic. Sex buyers today seem to be well aware of the sex purchase ban as it stands in the Criminal Code.

5.3 Estimating the volume of prostitution

It has proved very difficult to estimate how much prostitution there is. This is partly because a major percentage of these activities is carried out in secret, although expert interviews indicate that prostitution is also practiced relatively openly. What complicates estimates significantly is that much of the prostitution practiced in Finland is highly mobile: prostitutes arrive in Finland from neighbouring areas and other European countries for a short while and then return home or move on to a third country. They may return to Finland later or not. Thus, there is considerable variation between estimates of the volume of prostitution depending on factors such as whether the estimate applies to the number of prostitutes in the country at any given time or the number of prostitutes visiting the country in the course of one year.

Prostitutes operating at Thai massage establishments are generally permanently resident in the country. It has been estimated that there are about 200 of these establishments. Some prostitutes work independently from their own apartment or studio (Kontula 2008), although no information on them emerged in the expert interviews we conducted. What did emerge in the interviews was that sexual exploitation of socially disadvantaged persons, young people and drug addicts against monetary or other remuneration does occur. However, it is almost impossible to estimate how widespread this is; many cases may be occasional instances of abuse.
The Finnish National Bureau of Investigation (hereinafter FNBI) has estimated that on any given day there are anywhere between 500 and 1,000 prostitutes operating in Finland. Depending on the time period, 200 to 400 online ads concerning prostitution in Finland may be found at any given time; these include ads for both prostitutes permanently resident in Finland and prostitutes arriving in Finland for a short stay. It may thus be estimated that the number of prostitutes permanently resident in the country is not very large, possibly only 200 to 300, and most probably fewer than 500.

Mobile prostitution occurs at restaurants, at Thai massage establishments, in the back rooms of sex shops, and in apartments and hotels through online ads. There is a handful of restaurants that are generally known to condone or favour commercial sex; the FNBI estimates that some 100 prostitutes solicit at these. At the same time, there are strong indications that the various forms of prostitution are interlinked, at least through online ads. A conservative estimate would be that there are 100 to 200 prostitutes on short-term stays in Finland at any given time. Estimates on the volume of mobile prostitution may be made for example on the basis of the arrival of an estimated about 100 prostitutes per week, making the annual total of prostitutes arriving in Finland a few thousand.
6 Offences reported to the authorities

6.1 Abuse of a victim of prostitution

The number of cases involving suspected abuse of a victim of prostitution reported to the police is 379, most of them reported in 2008 and 2013. By comparison, in 2010 and 2011 each only one case involving abuse of a victim of prostitution was reported.

A significant percentage of the cases involving suspected unlawful sex purchases reported to the police were uncovered in Helsinki in 2008. The uncovered sex purchases were mostly related to a case of human trafficking tried at the Helsinki District Court in 2008–2009, in connection with which the police interviewed 113 persons suspected of sex purchases. The police also conducted an enhanced inspection operation on Thai massage establishments, in which a number of sex buyers were uncovered especially in 2008. However, the buyers’ cases never proceeded to trial; instead, the men were used for obtaining evidence for procuring offences. The sex buyers were called as witnesses in trials. The sex purchases uncovered in 2009 were related to procuring in the back rooms of sex shops investigated by the FNBI (see the Pohjois-Savo District Court case below).

In 2012–2013, a number of cases involving multiple procuring offences and drug offences were investigated, most of them in eastern Finland. The FNBI, the local police, the Border Guard and the Customs cooperated on these investigations, in which some 150 suspected cases of sex purchases emerged. Most of these cases have been forwarded to the prosecutor, and with others the pre-trial investigation is still incomplete. Some cases have been discussed extensively in the regional media.

No detailed information was available for several of the reported cases involving suspected sex purchases at the time when the present survey was conducted. Details on such minor offences are deleted from the PATJA database of the police within a specified time and can no longer be retrieved using the title of the offence.

Figure 3. Offences reported to the police: sex purchases, Criminal Code, chapter 20 section 8.
6.2 Sex purchases violating the Public Order Act

Between 2003 and 2012, 106 cases involving the purchase of sexual services or the offering of sexual services against payment in violation of the Public Order Act were reported to the police, 97 of them in Helsinki. The statistics make no distinction between buying and selling, but according to the police the majority of these cases have involved imposing a fine on sellers. In some cases, fines have been imposed on buyers.

The prohibition on the purchase of sexual services or offering of sexual services against payment in a public place provided for in section 7(1) of the Public Order Act entered into force in 2003. Until 2006, 10 to 20 public order offences involving the selling or buying of sex were reported to the police annually, but between 2006 and 2010 there were only one or two cases per year. During the enhanced surveillance initiated by the Helsinki police department in 2011, fines for buying or selling sexual services in a public place have been imposed in between 50 and 60 cases. According to the police, the majority of the fines were imposed on sellers, but some were imposed on buyers.

Figure 4. Sex purchase offences reported to the police, 2003–2012.
We obtained the details on public order offences involving the buying or selling of sexual services in a public place reported to the Helsinki police between 2011 and 2013 (beginning of the year only for 2013). Access to cases older than two years was not possible, as they had been deleted from the police database as outdated. The material obtained (55 cases) comprises half of all cases in Finland between 2003 and 2013 involving public order offences under section 7(1) of the Public Order Act (purchasing sexual services or offering sexual services against payment in a public place). They also constitute a comprehensive cross-section of the enhanced surveillance by the uniformed police in Helsinki on street prostitution and restaurant prostitution between the beginning of 2011 and the beginning of 2013. Statistics show that during the past two years section 7(1) of the Public Order Act has been cited in only two cases outside Helsinki.

In the majority of the cases where section 7(1) of the Public Order Act was cited, the purchasing or selling of sexual services in a public place was uncovered in the vicinity of restaurants in the city centre of Helsinki that are known for harbouring prostitution on their premises. The events mainly took place on the street or in a restaurant. In some cases, section 7(1) of the Public Order Act has been applied to commercial sex in a hotel.

Most of these cases resulted in imposing a fine on the prostitute (46), with a minority resulting in imposing a fine on the buyer (9). In other words, buyers were fined in one sixth of the cases (16%).

All of the prostitutes involved were women, and all except one were foreigners or of foreign origin. The three most represented nationalities were Russian (21), Nigerian (10) and Estonian (8). There was one each from Lithuania, the Czech Republic, Zambia, Israel and Colombia. Some of those originally from countries outside the EU had Italian citizenship. The birth dates of the prostitutes were distributed as follows: 9 were born in the 1950s, 13 in the 1960s, 16 in the 1970s, 5 in the 1980s and 3 in the early 1990s. The oldest was born in 1954 and the youngest in 1991.
With a handful of exceptions, the purchasing and sale of sexual services in a public place occurred at night and on weekends. The material indicates that some of the prostitutes were fined for selling sex in a public place more than once. For instance, a Nigerian woman who protested against being fined for selling sex in a public place in 2011 was apprehended again in 2013. In some cases involving Nigerian women, removal from the country is mentioned. In only one case do the case notes state that the prostitute resisted with violence. In that case, a Nigerian woman had attempted to sell sex to a plainclothes police officer, and when uniformed police had shown up, she had violently resisted being searched.

In some cases, sex buyers were only called as witnesses for the sale of sex. In these cases, the men reported to the police that the woman had offered them sex for payment but they said they had refused. In some cases, the men who refused the offer of sex had actually reported the woman to the police. Some case notes indicate that more than one man reported the same prostitute to the police. In several cases, the prostitutes were caught when offering sex for sale to a plainclothes police officer. In some cases, sexual accessories found in the women’s handbags were used as further proof of working as a prostitute. This applied in cases where the woman had left a restaurant in the centre of Helsinki known for its association with prostitution and had gone with a man to an ATM where the man had withdrawn money, and they had both then proceeded towards a hotel.

In one case, the staff at a hotel reported to the police that they suspected a Czech woman of selling sex in her hotel room. The police interviewed the sex buyer emerging from the hotel room, but there is no sign of the man being investigated. It is also mentioned in the case notes that while that buyer was being interviewed, the woman invited the next buyer waiting in the hotel foyer to her room. This man is also not mentioned in the investigation. The Czech woman was fined for selling sex.

Between 2011 and 2013, all the persons caught purchasing sex in a public place were men (9): five were Finnish citizens, three were foreigners (from Estonia and Australia), and citizenship information is lacking for one, although his name indicates a foreign origin. The oldest was born in 1939 and the youngest in 1985. Of the events reported, seven dated from 2011 and two from 2012. Buyers were generally apprehended after they had gone to an ATM or after a taxi ride immediately following. In most cases, the men admitted to intending to buy sex and were fined in summary judgement by a prosecutor. One man initially admitted intending to buy sex but changed his statement at the police station and claimed that the burden of proof rested with the police. In his case, the police conducted a full-scale pre-trial investigation, and the case was referred to the prosecutor in the normal procedure.

The default fine for public order offences for both sellers and buyers of sex seems to have become established as 10 day-fines or a flat-rate fine of EUR 50. In cases where a prostitute was fined for a second time, 12 to 14 day-fines were imposed. Three prostitutes protested against the fine, two of them Nigerians and one an immigrant resident in Finland. Of the buyers, two Finnish men protested against the fine, and a full pre-trial investigation was conducted. In one case, the investigation involved not only
selling and purchasing sex but also theft and two counts of assault. In this case, the sex buyer claimed that the prostitute had stolen his money and assaulted him. The prostitute’s statement was that the buyer began to behave violently after having sex and tried to strangle her.

6.3 Procuring and human trafficking offences reported to the police

Procuring has been illegal for a long time, but significant changes have happened in the procuring offences reported to the police in the 2000s. At the very beginning of the 2000s, more than 50 procuring offences were reported to the police every year. In 2003 and 2004, the number fell to fewer than 10.

The number of procuring offences reported to the police is influenced both by the general crime situation and by the resources available for the police to invest in investigating these offences. The police note that the prostitution-related crime situation in Finland is not as alarming as it was at the turn of the millennium, when Estonian and Russian criminal organisations had partitioned Finland into territories. In Finland, procuring offences are considered to be largely connected with foreign prostitutes. The police estimate that 70% to 80% of all procuring activities have to do with persons coming from Estonia or Russia. The remainder consists of persons coming from Romania or the Czech Republic, and of Africans arriving in Finland on a temporary EU residence permit. Finnish prostitutes generally operate without a procurer, advertising online, according to the police.

The prosecution service notes that changes were detected in the prostitution-related offences reported to the authorities in the 2000s. Whereas earlier there were individual cases here and there, in recent years more extensive procuring operations have been uncovered for instance in eastern Finland. The prosecutor considers that this is due not so much to an increase in crime as to the focus of police investigations and to the fact that public debate on human trafficking has changed attitudes and increased public awareness. The prosecution service also considers that investigations of procuring offences are not as Helsinki-centred as they used to be.

Figure 5. Procuring offences reported to the police.
The offence of ‘trafficking in human beings’ was added to the Criminal Code in 2004. The number of human trafficking offences reported to the police was initially low, only a few cases per year, but there was an upturn in 2010. It is possible, however, that the appointment of the National Rapporteur on Trafficking in Human Beings in 2009 and the related public attention to human trafficking offences prioritised them and caused the number of cases investigated to jump upward.

According to the National Rapporteur on Trafficking in Human Beings, 11 pre-trial investigations involving a human trafficking offence were conducted in 2010; three of these involved human trafficking for the purpose of sexual abuse. (National Rapporteur on Trafficking in Human Beings 2011.) The number of pre-trial investigations involving human trafficking for the purpose of prostitution before the appointment of the National Rapporteur is difficult to estimate, as a distinction is rarely made in the statistics between human trafficking for the purpose of forced labour on the one hand and for the purpose of sexual abuse on the other.

Figure 6. Human trafficking offences reported to the police.
Overall, the annual number of pre-trial investigations of all prostitution-related crime, both procuring and human trafficking, has increased in the very recent past. This may be due to an actual increase in the volume of crime, but a more likely explanation is that the police have allocated more resources to investigating these offences. Public debate and the activities of the National Rapporteur are probably also contributing factors.

The National Rapporteur has addressed the question of where to draw the line between human trafficking and procuring. This may be difficult because of the nature of the operations. Violent coercion is apparent only in some cases. Both practical expert statements and court decisions often underline that the women involved had known or must have known that they were coming to Finland specifically to sell sex.

The court decisions examined indicate that the level of organisation in procuring varies. A network may involve anything from two to a dozen women and two or three apartments. The prostitutes operate with considerable independence, probably because of the fear of being caught on the part of the organisers. The prostitutes may travel with a minder or independently; online ads are designed to look like the women are independent operators; and all contacts with the women are handled through intermediaries after the initial recruiting. Arrangements are made for the women to stay at an apartment in Finland for a few weeks, or in rare cases for a few months. The organisation of these operations has been described for instance in the report by Viuhko et al. (2009), which is fairly consistent with the situation on the ground today. Foreign prostitutes need a procurer for the simple reason that they do not know how to operate in Finland, where to rent an apartment, where to go to solicit clients and how to post ads.

There was a decrease in the number of procuring offences reported to the police coinciding with the entry into force of the Public Order Act. A cause-and-effect relationship is difficult to verify, although the decrease did occur clearly before the entry into force of the sex purchase ban in the Criminal Code in 2006.
The annual number of procuring offences did not show an upturn until 2010, four years after the entry into force of the ‘abuse of a victim of prostitution’ provision. It would therefore seem that the ban has had little effect on the number of procuring and human trafficking offences or their discovery.

6.4 Investigation of prostitution-related offences

Procuring and human trafficking offences are typical examples of what is known as surveillance crime: their detection depends crucially on the resources available to the police for the purposes of conducting surveillance. Many of our interviewees noted that it is impossible for the police to address all crime; offences have to be prioritised. Secondly, the operating profiles of the various units of the police affect how they run their operations. Thirdly, investigating and proving procuring offences is difficult and ties up a lot of resources. Matters that emerge in contexts such as the present report or normal journalism describe things at a general level but would not be enough to secure a conviction in a court case.

As noted in the chapter on legal practice, cases investigated in recent years have involved procuring offences at massage establishments and the back rooms of shops on the one hand and cases with features of human trafficking on the other, such as international networks, transnational movement of women, coercion or restrictions on freedom. Nearly all of these cases have involved the exploitation of socially disadvantaged persons.

Considering the duties of the various units of the police in relation to legislation, procuring and human trafficking offences and the related abuse of a victim of prostitution mainly emerge in the investigation of organised and serious crime, while buying and selling sex in violation of the Public Order Act is generally handled by the uniformed police.

Police detectives seek to uncover and solve cases involving serious organised crime. This is a long-term operation requiring the use of various methods for acquiring information. The police aim to anticipate potential offences, enabling them to intervene at short notice if necessary. Alongside other information sources, prostitutes may provide the police with information either at their own initiative or through inquiries made by police investigators. According to the police and to an NGO representing prostitutes, relations between the criminal police and persons engaged in restaurant prostitution are good. It is not seen as the duty of a police detective to intervene in the acts, to impose fines or to remove persons from the premises, as the uniformed police would. Instead, both the criminal investigators and representatives of the NGO representing prostitutes report that information on violent assaults and tips about violent clients or underage prostitutes are passed on by both parties.

The purpose of the ban on purchasing and selling sex enacted in the Public Order Act is to safeguard order and safety in public places. In the mid-2000s, the uniformed police
did not actively intervene in the sex trade. By contrast, in 2011 the Helsinki uniformed police launched a crackdown on the sex trade in public places, mainly on streets. In the majority of cases, fines were imposed on the prostitutes. One of the police officers we interviewed explained this by saying that in a public place the operating environment favours the buyer. The seller must, in practice, make the first move in order to be noticed. The buyer may keep his distance or withdraw from the encounter. The police report that cases where more time is spent in acquiring evidence are ones where buyers are more likely to be caught too. In situations where there was clear evidence of sex having been both offered and purchased, fines were imposed on both parties. ‘Clear evidence’ may constitute something like the prostitute and the buyer going to an ATM together. In some cases, buyers have confessed to intending to purchase sex. The police officer interviewed stated that none of the sellers or buyers apprehended in such a situation were excluded from any investigation.

A police representative considers that the police maintaining a visible presence on the street is the greatest deterrent. In addressing a disturbance of public order, the main thing is not to impose fines but to issue advice and cautions. On the other hand, it was also reported that those on whom fines are imposed generally pay up, as a person defaulting on a fine cannot be issued a visa.

The police representative considers that a clear change has happened in that before the crackdown on street prostitution in 2011, prostitutes did not react to the arrival of a police patrol in any way, because the police did not use to intervene. Systematic interventions have had an effect: today, prostitutes immediately leave the scene when a police car arrives. The police representative does not feel that the tighter surveillance has affected communications between the police and the prostitutes. The connection is described as a normal one, with no fear or hatred of the police detectable.

The police note that active surveillance has reduced street prostitution in Helsinki. The police representative considered that compliance with the law is a question of balancing the risk of being caught, which in turn depends on the level of surveillance maintained by the police. This is similar to attitudes in traffic: speeding becomes more common if motorists know that there is no risk of being caught due to a lack of traffic surveillance.

An interviewee from the third sector, on the other hand, emphasised that women who sell sex do not trust the uniformed police. The uniformed police are felt to discriminate against women of foreign origin. This was considered to undermine trust in the police; prostitutes no longer dare turn to the police when encountering violence or observing something suspicious.

The Aliens Act allows the removal from the country of persons from outside the EU on grounds of a suspicion of prostitution. Accurate figures on removals from the country on the grounds of prostitution were only available to us from 2011. There were 77 such removals from the country in 2011, 36 in 2012 and 18 in the early part of 2013 (until 11 April 2013). The Border Guard reports that the annual number of removals from the country on grounds of a suspicion of prostitution decreased when the Baltic states joined the EU. Since 2006, there have been a handful of such cases handled by the Border Guard annually (0 to 4), although there were 17 in 2007 and 11 in 2011.
The labour-intensive nature of investigating procuring and sex purchase offences was remarked on by several of our police interviewees. Such an investigation requires long-term surveillance that can tie up police resources in stakeouts, coercive measures for acquiring information and international cooperation. It is a long way from general observations to associating offences with specific suspects and then acquiring sufficient evidence to prove the allegations. Even then, the evidence acquired will not necessarily be enough to prosecute, let alone convict. If no charges are brought, or if the case is not proven in court, or if the sentence is considered negligible compared to the investigation resources expended, the police may become frustrated, and this in turn will affect future decisions on prioritisation and resource allocation.

6.5 Procuring and human trafficking offences in the courts

The annual number of cases involving procuring and human trafficking offences investigated by the police began to increase in the 2010s, and numerous cases have also been brought to trial. Some cases have involved up to hundreds of buyers, and the total number of buyers involved is in the thousands.

The court decisions indicate that there are some common features in these cases. Firstly, most of the women subject to procuring are foreign and temporarily resident in Finland. The second largest group comprises Thai women permanently resident in Finland. The women are mainly aged between 20 and 35, but some minors and some older women have also been found.

The procurers include both men and women. According to the judicial system statistics published by Statistics Finland, 87 persons were convicted for procuring and aggravated procuring, 37 of them (43%) women. The women procurers were in many cases prostitutes themselves.

The procurer is in most cases of the same nationality or ethnicity as the prostitute being procured. The procurer may have been living in Finland for a while and can benefit from knowing the country of origin and from the prostitute not knowing Finland. There may be local middlemen or lower-level Finnish operatives involved, with more detailed local knowledge than the ringleader has. A procurer may be a ‘friend’, someone who has ‘rescued’ a young woman who has run away or otherwise got into trouble, or it may be her boyfriend. One of our interviewees noted that it is impossible to deduce from the external appearance of procurers that they are criminals, as they can seem as innocuous

17 An example would be a case where Finnish men had sub-let their rented apartments for prostitution purposes. No financial benefit could be proven in the case. The police considered that the defendants were principally a front. (Helsinki District Court decision, 2010.)
as “the nice young man next door”. In many cases, the persons involved in procure
ing constitute a loose, well-concealed network linked by the aim of profiting from crime. Stereotypes concerning mafia-like organised crime do not seem consistent with the actual situation in Finland.

**Human trafficking**

Charges have been brought for human trafficking, aggravated human trafficking, procuring and aggravated procuring. To our knowledge, six sentences have been passed for human trafficking for the purpose of sexual abuse and aggravated human trafficking. There are other cases where the prosecutor has brought charges of human trafficking but sentence was passed on procuring or aggravated procuring.

The convictions for human trafficking were made in cases where the victims were particularly vulnerable or underage. In all cases, the victims were rather young, either underage or aged about 20. Human trafficking caused serious problems for the victims, such as severe phobias, mental breakdowns, insomnia and self-loathing. Some have cut themselves or attempted suicide. Some suffered from physical ailments as a result of sexual abuse.

In two cases of human trafficking, the victim was a young Estonian woman who because of her specific characteristics was particularly vulnerable. In one case, an underage Romanian girl was being procured.

In two cases, a young Finnish woman had been the victim of violence and human trafficking on the part of Finnish offenders. In one case, there were several Finnish women as victims and several offenders. In these cases, sentence was passed not only for human trafficking but also for violent and sexual offences.

**Procuring offences**

The annual number of cases where sentence was passed on procuring or aggravated procuring has varied between 4 and 30. The trend has been upward, albeit with a dip in 2011. Some of the recent convictions have resulted from investigations concerning Thai massage establishments. Some convictions were related to international procuring cases uncovered mainly in the Helsinki metropolitan area. In most cases, charges were brought for procuring or aggravated procuring. In some cases, suspects were charged with human trafficking but convicted of procuring or aggravated procuring.

Between 2005 and 2010, a total of 82 persons were convicted for procuring and aggravated procuring, of whom 16 (17%) of aggravated procuring. Considerable numbers of buyers emerged in procuring investigations, but counts of ‘abuse of a victim of prostitution’ were included only rarely.

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18 Human trafficking offences were entered in the Criminal Code in 2004.
For some procuring cases tried at district courts between 2009 and 2012, the processing times were very long. In 8 cases, the procuring had taken place before the provision on ‘abuse of a victim of prostitution’ entered into force (2006), and in some cases even before the entry of the relevant provision in the Public Order Act into force (2003). It would seem that the police and the judicial system process such cases much more quickly today. A police officer called as a witness in a number of procuring trials reported that the police may have been aware of a particular case of indoor prostitution for a long time, sometimes for several years, but were unable to begin an investigation earlier for resourcing reasons.

Figure 7. Procuring offences tried at district courts, 2005–2011.

![Procuring offences tried at district courts, 2005–2011.](source: Statistics Finland)

Figure 8. Charges brought for aggravated procuring at district courts.

![Charges brought for aggravated procuring at district courts.](source: Statistics Finland)
Thai massage establishments

In 2007, the police launched a systematic surveillance operation against Thai massage establishments, leading to procuring trials around Finland. The court documentation describes the established practice at Thai massage establishments, whereby the owner of the establishment receives the full payment for the massage, while the masseur only receives the payment for the intimate massage or other sexual services. In some cases, though, the masseuse was apparently paid EUR 5 or 10 out of the official massage fee in addition to the income from selling sex.

In many cases, the persons sentenced for procuring and subject to procuring were women of Thai origin who had married a Finnish man and settled in Finland. The procurer may also be the husband, or a Finnish-Thai couple working together. Interviews show that underlying the operation is often a violent or otherwise unhappy marriage to a Finnish man. Loans may have been taken out in the woman’s name, and the enterprise may be registered in the woman’s name. An abusive spouse might use the woman’s sex business as a means of blackmail if the woman did not have a permanent residence permit, as selling sex is grounds for deportation under the Aliens Act.

The district courts reached differing conclusions as to whether the distribution of income at Thai massage establishments as described above was tantamount to procuring. The Vantaa District Court, for example, considered in a case of alleged aggravated procuring in 2007–2009 that it had not been proven that any money gained from the selling of sex had ended up with the persons charged with procuring, in whole or in part. (Vantaa District Court R 10/1221.) In most decisions issued by district courts, however, the interpretation was that the defendant had benefited financially from the selling of sexual services in business premises controlled by him/her in the form of massage fees paid by clients and was therefore guilty of procuring. (Kainuu District Court R 11/960 & R 11/959.) This interpretation was upheld by decision no. 261 of the Helsinki Court of Appeal, issued on 31 January 2012.

Procuring in private shows and striptease clubs

The material indicates that procuring and prostitution are practiced in the back rooms of sex shops, in striptease and private show venues. Sex buyers have also been uncovered in investigations of such activities in Seinäjoki, Vaasa, Kuopio, Lahti and Oulu. According to a prostitute called as a witness, giving intimate massages is relatively common at sex shops and striptease clubs, with the same sort of procedure at all venues. The procedure is similar to that of Thai massage establishments: a cashier is paid an official ‘entry fee’, after which negotiations for the purchasing of sex can begin. However, according to some witnesses, it used to be the case that the fee paid to the cashier already included sex. (Vaasa District Court R 09/246.) In a case involving procuring at striptease and oil massage shops in Vaasa and Seinäjoki, the Vaasa District Court considered it obvious that “the entire business idea is based on the notion of first exciting the client and then offering intimate massage to ‘cool him down’.” Because the women only received EUR 5 out of the basic fee (besides paying the shop owner a daily rent of EUR 20), the court considered it clear that it was impossible to make a living by
legal performances alone. The court accordingly ruled that the defendants were guilty of procuring.

**Indoor procuring**

In Finland, procuring traditionally involves obtaining a room for the purpose of selling sex. For a landlord to be convicted of procuring requires intent, i.e. the landlord must be aware that the apartment is being used for prostitution. The Supreme Court ruled in its precedent KKO 2005:17 (known as the case of the ‘Red House of Kotka’) that the criminal liability of the landlord does not depend on what the formal purpose is for which the premises were rented. What is crucial is whether the landlord was aware of what the premises were actually used for. A landlord may be convicted of procuring if he knew or should have realised that the premises were being used for prostitution more often than occasionally and that the money for paying the rent came mainly from prostitution.

How harmful and how dangerous a landlord’s actions are must be determined on the basis of how grossly the landlord thereby exploits the prostitution of another person. For instance, an Estonian procurer who held seven apartments in which 13 Estonian prostitutes operated charged the women a flat-rate weekly rent of EUR 1,200 and charged a further EUR 100 for online advertising. The prostitutes generally stayed in Finland for one week at a time. The operation continued for 15 months, and the man was eventually convicted of aggravated procuring. (Helsinki District Court 09/2603.) There have been other procuring cases where the weekly rent has been EUR 1,000.

According to an NGO interviewee, the homeless status of a foreign woman may be used as a vehicle for extortion. A woman without domicile cannot conduct transactions with the authorities, as she has no official address. In such a case, a middleman may charge hundreds of euros per month simply for providing a postal address, without giving the woman a key or access to the apartment. The extortionate rent may be accompanied by a requirement to sell sex.

In some case, indoor procuring involves exploiting the vulnerable status of a young person, sometimes even an underage one: “A ran away from a children’s home and was homeless and had no money. A went to the defendant’s home, where at the defendant’s initiative they agreed that A would provide sexual services against payment in an apartment provided by the defendant to A for that purpose [...]”

Indoor procuring would seem to be a mobile business, whether between cities or within a city. This may be due to the fear of being caught. Procurers may also switch apartments from one part of a city to another if demand is not sufficient. (Helsinki District Court R 10/520.)

The police note that prostitutes generally bring clients to their apartment, as it is safer. Only in exceptional cases will a prostitute go to a client. According to a police officer testifying at a district court, is not at all unusual for two or three women to be selling sex simultaneously in a small bedsit flat. The aforementioned Estonian procurer, for
example, had a 51 sq.m. two-room flat that had five beds in it. (Helsinki District Court R 09/4306.) It emerged from the documentation of several procuring trials in the 2000s that rooms used for prostitution may be furnished with sheets suspended on lines to provide screens between beds.

**Procuring with features of human trafficking**

Features of human trafficking may be found in procuring cases tried in courts in the Helsinki metropolitan area. In these cases, the women exploited for prostitution had been brought to Finland in an organised manner.

These cases show that various fees were charged from the women. A Romanian procuring organisation required Romanian prostitutes to pay a EUR 1,000 fee up front to be allowed to begin soliciting at a sex bar in the city centre of Helsinki. They were also required to pay a weekly fee of EUR 250–300 to the procurer. The procurer in Finland was accountable to a boss in Spain. This operation went on for 1.5 years before arrests were made. According to a police officer heard as a witness in court, the prostitutes operating at sex bars in Helsinki are mainly Russian and Estonian; the procuring of the Romanian prostitutes involved violence, which was exceptional and disturbed the scene for the Russians and Estonians. The Romanians also charged lower prices. (Helsinki District Court R 11/4178.)

Prostitutes subject to Russian ‘phone operator’ procuring had to pay the procurer in St Petersburg a daily allowance of EUR 325 regardless of whether they had clients or not. Procuring cases involving Russians feature procedures where the procurer prepares the visas and gives money for travel but also selects where the woman is to go in Finland. When the woman arrives in Finland, she is informed how much money she owes for this ‘help’.

Numerous Nigerian prostitutes arrived in Finland in spring 2009. (Helsinki District Court R 10/2743.) In this case, 24 Nigerian prostitutes were uncovered, many of them illiterate. The woman organising the operation in Finland claimed that she was just a prostitute who helps and advises other prostitutes. The police note that if a woman is a procurer, she is usually also a prostitute herself. A police officer heard in court noted: “In the prostitution business, all help comes with a price tag. Prostitutes are not in the habit of helping other prostitutes for free, and there is much professional jealousy. People who are in prostitution are in it for the money and nothing else.” The ringleader of the Nigerian group, who was convicted of aggravated procuring at the Helsinki District Court (Helsinki District Court R 10/2743), was charging a EUR 2,000 threshold fee from the prostitutes. Beyond this, the Nigerian women were required to pay a weekly fee of EUR 200 for online advertising plus a commission on client payments. The police understood that the operation was being managed from Italy and Spain.

Both police and Border Guard experts note that the comprehensive sex purchase ban that entered into force in Norway in early 2009 quickly had an impact on the prostitution scene in Helsinki. Specifically, the Nigerian women who had previously
operated in Oslo now migrated to Copenhagen and Helsinki. An increase in the number of Nigerian prostitutes was also observed in Gothenburg in 2009.

‘Phone operator’ procuring

In highly organised procuring operations, ‘phone operators’ are used to answer clients’ calls and to agree on meetings. The operator then informs the prostitute of the time and place. Generally, one operator is only responsible for the bookings of one prostitute. Judging by the court cases, phone operator operations are generally managed from abroad (Russia or Estonia). Extensive cases have involved multiple phone operators, and despite cross-sectoral cooperation between the police and the Border Guard only a few of these were uncovered. The police estimate one particularly large phone operator procuring case to have involved a total of 140 Russian prostitutes.

Other prostitution-related offences

In many cases, persons guilty of procuring are convicted of other offences too. Procurers have been convicted of other sexual offences (e.g. rape or sexual abuse), violence, firearm offences, drug offences, bookkeeping offences, theft and fraud. Some cases featured multiple defendants. (E.g. Helsinki District Court R 08/9469; Salo District Court R 07/141.)

Buyers uncovered in procuring cases

It emerged in procuring cases that there had been numerous buyers, sometimes several hundred. However, the offence of ‘abuse of a victim of prostitution’ was cited rarely. In some cases, by comparison, some clients were called as witnesses.

In the Nigerian women’s procuring case, the police logged 10,000 to 15,000 phone calls through wiretapping, of which 600 were selected as material for the pre-trial investigation. The police noted that half of these were calls from clients. The clients, however, were not investigated.

Sometimes it was difficult to establish what had happened in cases where ‘abuse of a victim of prostitution’ had been cited. A decision by the Vaasa District Court presents precise estimates of the number of clients of two shops suspected of procuring. Shop A had 172 customers per month on average, and the operation continued for 23 months. Shop B had 30 customers per week on average, and the operation continued for 31 weeks. In the court records, it is mentioned that the prosecutor decided to waive charges for the four sex buyers called as witnesses. The prosecutor, however, claims that no

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19 ‘Phone operators’ were found in procuring cases uncovered as early as in 2001. (Helsinki District Court R 12/757.)
20 In earlier cases, the phone operators were located in Finland, but recently there have been cases where the phone operators were in central Europe.
such decision was made with regard to these persons. For this case, PolStat statistics show 20 cases of suspected sex purchases reported to the police, but apparently the cases have been removed from the database due to the expiry of the statute of limitations.

Sex buyers were uncovered in the surveillance operation against Thai massage establishments. Documents may reveal detailed information on transactions and bank card payments.

In some cases (Vantaa and Kainuu), the court considered that sex had been offered for payment only occasionally, and this was used as grounds for determining that the activities did not constitute procuring. In court cases against Thai massage establishments, the Kainuu District Court called clients as witnesses (three men in one case, four in another). One of these clients admitted to buying sex, but the prosecutor decided to waive charges on the grounds that the client could not have realised from the circumstances that procuring was going on. Other clients reported that they had been offered sex for payment at a massage establishment.

Even in the extensive procuring case tried in Lahti in 2011, where the procurer held 13 business premises (Thai massage establishments and striptease clubs) and two apartments used for prostitution and where the circumstances indicated a highly organised procuring operation, no investigation was made of ‘abuse of a victim of prostitution’. Three sex buyers were called as witnesses in court; they reported several of their visits in detail.

### 6.6 Visibility and invisibility of the sex trade

Numerous buyers of sex have been uncovered in procuring and human trafficking cases investigated by the police and brought to trial. Fewer than 400 cases have been tried as sex purchase offences. Several cases of procuring or human trafficking made no mention of investigating sex purchase offences.

The field of prostitution may be illustrated with a circular diagram, as here. The small circle in the middle stands for human trafficking and procuring reported to the police that is so obvious that any sex purchases related to it constitute ‘abuse of a victim of prostitution’. Some such sex purchases have been investigated and the offenders convicted. However, it is relatively difficult to prove that a sex buyer was aware of procuring or human trafficking at the time. It is our considered opinion that in some of the cases in our study material, sex purchases could have been proven by allocating investigation resources differently.

The middle circle in the diagram is a ‘grey area’ where procuring and human trafficking are involved. As a rule, attempts are made to disguise procuring and human trafficking so as to make the prostitution seem voluntary. In situations in the middle circle, this deception is successful. In this area, it is difficult even for the police to prove that
procuring and human trafficking have occurred; but this too depends to a great extent on how much resources are allocated to the investigation.

In order for a buyer to be criminally liable for ‘abuse of a victim of prostitution’, he must be aware that there is procuring or human trafficking underlying the prostitution. This makes pre-trial investigations challenging. In practice, sex purchases are hurried transactions and often take place in premises such as a hotel room where no conclusions of any kind can be drawn from the circumstances. It is almost never in the interests of either the buyer or the seller to reveal any information about themselves to the other. A recurring feature in procuring and human trafficking cases is that the pretence of the prostitute operating voluntarily and independently is maintained at all cost, also with clients. It is obvious from the case reports that a lot of effort goes into keeping up appearances. In reality, the prostitute may be experiencing indebtedness, violence, threats or multiple disadvantages. Victims of human trafficking do not try to find help until their lives are in danger. It is known that procurers have instructed prostitutes to state that they are operating out of their own free will if they encounter police officers.

Experiences in Finland and information received from Sweden and the UK indicate that maintaining the appearance of voluntary operations in prostitution is important in the business. Finland’s current legislation acts as an incentive for this, because charges of ‘abuse of a victim of prostitution’ cannot be upheld if the authorities cannot demonstrate after the fact that the buyer should have been aware that the prostitute was a victim of human trafficking.

The outermost circle in the figure depicts prostitution not involving procuring or human trafficking. The sizes of the circles aim to illustrate the proportions of the various areas of prostitution.

Figure 9. Illustration of degrees of concealment in prostitution.
Abuse of a victim of prostitution:
Application of legislation

7.1 Sex purchase cases handled by the prosecutor

During the time when the provision on ‘abuse of a victim of prostitution’ has been in force, prosecutors have decided on cases involving 198 persons faced with this charge. Out of these, 73 were charged by a prosecutor (as at 30 June 2013).

Some cases referred to the prosecution service have resulted in decisions to waive charges or to limit the pre-trial investigation. Each year, charges are waived in one or two cases. In the extensive sex purchase case investigated in 2008–2009, the Helsinki prosecutor made a total of 15 decisions to waive charges. The most decisions concerning these cases are about limiting the pre-trial investigation, meaning that the prosecutor decides not to bring charges against a specific suspect while the rest of the case progresses as normal. In the aforementioned extensive case in Helsinki, for instance, the prosecutor decided to exclude 63 suspects from the pre-trial investigation.

In 2010, there were 18 cases referred to prosecutors. These are connected to the case handled in Kuopio; three decisions to waive charges and 15 other decisions were made.

The 83 sex purchase offences related to the Lappeenranta procuring case uncovered in autumn 2012 came up for consideration of charges in June 2013. By the end of June, the prosecutor had made 23 decisions to bring charges and 15 decisions to waive charges. This was a case where the procurer had placed an ad for companionship on a contact-seeking website. Persons responding to the ad were informed that they were being offered commercial sex. They were given a price list and advised to make further contact by text message. When the client made contact, agreement was made of the price and time, and he was given the address of the apartment. The procurer informed the prostitute of the client, and the prostitute phoned the procurer when the client had left. The procurers handled contacts with the clients.

Consideration of charges for sex buyers uncovered in the surveillance operation against Thai massage establishments in eastern Finland in spring 2013 had not been completed by the time the present report went into print.

Overall, prosecutors have waived charges for nearly two thirds of the counts of sex purchase referred to prosecutors and brought charges in one third.

Figure 10. Prosecutor’s decisions in cases of ‘abuse of a victim of prostitution’, 2006–2011.
Source: Statistics Finland and the Prosecutor’s Office of Helsinki. Data from the Prosecutor’s Office of Helsinki concerning 63 counts excluded from pre-trial investigation (R 09/4928) were added to the figure from Statistics Finland. Statistics Finland reported no cases involving limitation of pre-trial investigation in 2009.

7.2 Sex purchase offences brought to trial

District courts tried 50 counts of sex purchase or attempted sex purchase between 2006 and 2012. A conviction was made on 42 counts, and for 8 the charges were dismissed.

In the same period, courts of appeal heard appeals by eight defendants on counts of sex purchase. For six of these appellants, the courts of appeal (Helsinki and Eastern Finland) dismissed the charges. The Supreme Court accepted two appeals from defendants on counts of sex purchase. One of the appellants died before the case could be heard, and the Supreme Court overturned the decision of the Court of Appeal. The Supreme Court dismissed the charges for the other appellant as well.

Figure 11. Application of ‘abuse of a victim of prostitution’ (Criminal Code, chapter 20 section 8) at district courts, 2006–2011.
In most cases, district courts have sentenced defendants to 20 day-fines for a single sex purchase and to 10 day-fines for an attempted sex purchase. At the first trial in the extensive sex purchase case in Helsinki, one defendant was sentenced to 30 day-fines for a single sex purchase, but in subsequent sessions the default punishment was established at 20 day-fines for a single sex purchase.

In the case of defendants with multiple counts of sex purchase, there was greater variation. The sentence for two sex purchase offences has been either 30 or 50 day-fines. For more than two sex purchase offences, the sentence has been up to 50 day-fines. In one case, two defendants admitted to buying an intimate massage 10–20 times and 40 times, respectively. Both were sentenced to 50 day-fines.

The actual amount of the fine varied considerably, because day-fines are determined on the basis of the defendant’s net monthly income. The minimum day-fine is EUR 6. A total of 13 defendants were sentenced to day-fines at the minimum limit. This means in practice that a single sex purchase offence carries a minimum fine of EUR 120. For defendants with substantially higher incomes, 20 day-fines translated into a fine between EUR 1,120 and EUR 2,580 in several of the cases in the material. In two cases, 50 day-fines translated into fines of EUR 1,850 and EUR 2,100. One defendant convicted of a single sex purchase offence was sentenced to 10 day-fines to a total of EUR 3,180.

Summary judgement was only used in one sex purchase case. (Statistics Finland.)
Counts of ‘abuse of a victim of prostitution’ have to date been brought to trial in three cases. The first was in the Motel Syvälampi procuring case in 2007, where a charge of attempted sex purchase was brought against one defendant at the Salo District Court. Several sex buyers were interviewed in one case in Helsinki in 2008–2009 and one in Pohjois-Savo in 2010.

**Motel Syvälampi**

Motel Syvälampi in Salo had been suspected of being a base for procuring for many years (2002–2007). The police executed a raid on the motel, in connection with which the person subsequently charged with attempted sex purchase was found hidden under a prostitute’s motel bed. The defendant admitted in the main hearing that he had accepted an offer of sex against payment, but he later revised his statement in this respect. The District Court dismissed the charge, considering that the defendant would not have been able to evaluate whether the activities at the motel constituted procuring or merely prostitution.

**The Helsinki case**

In 2008 and 2009, charges of ‘abuse of a victim of prostitution’ were brought in several different cases but involving the same injured party. With regard to the principal offence in the case, the District Court convicted two men of procuring an Estonian woman. The conviction was converted to one of human trafficking in the Court of Appeal.

The court ruled that the offenders in the principal offence had deceived and enticed a young woman who had no language skills and no money and was childlike both physically and mentally to accompany them from Estonia to Helsinki. The offenders were ruled to have exploited the injured party’s dependence on them and her vulnerability to exert control over her, accommodating her in hotel rooms and rented apartments for the purpose of sexual abuse and sex for payment. The injured party had protested against engaging in prostitution at first but submitted under coercion and because she had no alternative. The offenders had drawn up the ads, set the price and also sexually abused the injured party themselves.

Clients contacted the prostitute on the basis of an online ad. In practice, clients had to call or text at least twice, first to agree on the time, place and price and then when they had arrived at the agreed location, e.g. at a hotel. Phone records were used to identify 113 sex buyers, who were interviewed and photographed in the pre-trial investigation. For those whom the injured party identified as sex buyers, the case was referred to the prosecutor. Charges were brought for 35 counts of sex purchase and 8 counts of attempted sex purchase.
Sex purchases in this case were tried at four different hearings. In these, the District Court eventually convicted 32 sex buyers of a sex purchase offence and five sex buyers of an attempted sex purchase offence, sentencing them to a fine. The District Court dismissed charges for four defendants, and the prosecutor waived charges for two. Seven of the convicted defendants appealed to the Court of Appeal, and for two of them the case progressed to the Supreme Court. The charges against all appellants were dismissed in higher courts: five in a court of appeal and (one of the defendants having died) one in the Supreme Court (KKO:2012:66).

**The case heard by the Pohjois-Savo District Court**

In autumn 2010, the Pohjois-Savo District Court in Kuopio tried a case of aggravated procuring, including counts of ‘abuse of a victim of prostitution’ in charges brought against six defendants. The defendants for the aggravated procuring charges were a couple who owned erotic shops in Kuopio, Oulu and Lahti. It emerged in connection with the investigation into the couple’s activities that sex (mainly intimate massage, but also intercourse) was being offered for sale in the private rooms of the shops, which officially were intended for striptease performances and nude massages. In order to be able to buy sex, a client first had to buy another service at the shop’s cashier desk. The owners advertised their performers, mainly foreigners, in newspapers and online. The person at the cash desk was usually not the person who was performing in the private room. Sales of the shops’ regular services had increased because of the intimate massages, and the District Court considered that the owners of the business had profited from the performers selling sex. (Pohjois-Savo District Court R 10/930.)

Five defendants were sentenced to a fine for ‘abuse of a victim of prostitution’. For one defendant, the charge was dismissed because the statute of limitations had expired. One defendant sentenced to a fine appealed. The Court of Appeal of Eastern Finland dismissed the charge.

**7.4 Notes about the practice of prosecutors and courts**

In this section, we discuss court decisions and prosecutor’s decisions to waive charges.

Only a few defendants charged with a sex purchase offence have admitted to culpability pursuant to the essential elements of the offence. Defendants have denied various essential elements of the offence: whether sex ever took place, whether payment was made for sex, the nature of the sexual act, or even being present at the venue in the first place. Generally, defendants admit to purchasing sex but deny being aware of procuring or human trafficking.

**Denial of sex purchase or action not proven**
In both the Helsinki and Lappeenranta cases, remote surveillance data were of crucial importance in proving sex purchases, as these were evidence of communication between the buyer and the prostitute and/or procurer. The communication in itself was, however, not considered proof of an offence or attempted offence.

If the defendant denied purchasing sex, the prosecutor was obliged to present further evidence beyond the remote surveillance data that the client and prostitute actually met. One source for this is evidence given by the prostitute. Reaching the prostitute may be difficult. If she came from outside the EU, she might have been deported. Our interviewees also note that prostitutes do not necessarily want to identify their clients. If clients are interviewed later than the prostitute in the investigation process, it may be impossible to verify the clients’ statements.

Some sex buyers denied ever meeting the prostitute even though it was proven that they had had contact. One defendant denied ever having made a call from his mobile phone to the prostitute and claimed no knowledge of who could have made those calls from his mobile phone. Even though the prostitute identified the defendant as a client, the court of appeal ruled that reasonable doubt existed as to the defendant’s guilt and dismissed the charge.

In some cases where charges were waived, the suspect reported that he had phoned a number given online and agreed on a meeting but that the prostitute never arrived. The suspects explained that their second phone call – typically the signal that the buyer had arrived at the agreed location – was an attempt to find out where the woman was and that they had discovered that the meeting had been cancelled.

In some cases where the defendant did admit to meeting the woman but denied having purchased sex, he was convicted of an attempted offence if the prostitute identified him as a client. The key question here was how credible the defendant’s version of events was.

**Admits sex purchase, denies awareness**

“I deny being guilty of any crime in this matter. It never even crossed my mind. I never imagined that the performers at the shop could be victims of trafficking or held there against their will. It’s a complete mystery to me, because the girls were at the shop by themselves and were free to come and go.”

A sex buyer testifying at a district court.

Some defendants admitted to purchasing sex but denied being aware that the prostitute was a victim of procuring or human trafficking. Some noted that they realised that the prostitute was a foreigner but that her actions in the encounter were quite normal and she seemed comfortable. One defendant attempted to defend himself by saying that he had assumed that the porn shop was engaged in a legitimate business because it was advertised in local newspapers and online and occupied normal business premises.

As a rule, courts rely on the Legal Affairs Committee report that lists examples of features typically associated with procuring or human trafficking. Although the courts
generally considered in their decisions that this list is not an exhaustive one, it was
given considerable weight in assessing what a sex buyer should be aware of in the
circumstances of the business.

“Features typical of procuring include the fact that the prostitute is contacted through a
middleman or that payment is made to a person other than the prostitute herself. It is
also typical of procuring that a person advertises her willingness for a sexual
relationship for payment in a way consistent with an organised and planned broader
network of such activities. This may be the case if the same website carries several very
similar ads for different persons. Features typical of human trafficking include that the
prostitute’s freedom of movement is considerably restricted or that the prostitute is not

The defendant charged with attempted sex purchase in the Motel Syvälampi case first
confessed but then revised his statement. The District Court ruled that the statement was
rendered less credible by the fact that the defendant had hidden under the bed and that in
a motel where prostitution is openly practiced there can be little doubt that the purpose
for entering a room occupied by a prostitute is to purchase sex. The defendant stated
that he was aware that prostitutes operated at the motel. The premises were untidy, the
selection at the bar was poor, and the front door was kept locked. The police estimated
that the clientele of the bar consisted exclusively of prostitutes and their clients. The
District Court then compared the case to the list of examples provided by the Legal
Affairs Committee. None of the examples was directly applicable to the case. The
District Court thus ruled that the defendant could not have been expected to conclude
that the operation was an organised one judging by the circumstances alone. (Salo
District Court R 07/141.)

The Helsinki District Court ruled that any person using sexual services must be aware
of the potential criminal liability involved. The court considered it common knowledge
that prostitutes from Russia and the Baltic states do not usually work alone but are
procured. The sex buyers should have been able to deduce from the prostitute’s general
appearance, her poor command of Finnish or English and the communications engaged
in that the women were not operating independently. The defendants should therefore
have realised or suspected an underlying procuring operation even if the examples listed
by the Legal Affairs Committee did not directly apply.

For one sex buyer, the Helsinki Court of Appeal dismissed the charge on the basis of the
Legal Affairs Committee report. This defendant admitted to purchasing sex but denied
awareness of the true circumstances of the operation, citing language problems in
communication. The Court of Appeal considered the defendant’s story credible and
noted that none of the features listed as examples in the Legal Affairs Committee report
applied in the case.

The Pohjois-Savo District Court also referred to the Legal Affairs Committee report in
its decision, assessing the applicability of the list of examples to the cases at hand. The
court ruled that the sex buyer had contacted the prostitute through a middleman, because
clients were informed of the selling of sex through ads posted by the porn shop and
because clients had to pay a fee to the cash desk at the shop to gain access to the private
room. Moreover, the performers were mostly foreigners, and the District Court did not
consider it credible that such a person would be operating as an independent entrepreneur in business premises controlled by another party. The defendant could therefore be reasonably expected to have realised that the performer was subject to procuring. It was ruled that making payment to the owner of the business was the crucial evidence for criminal liability. One of the defendants convicted for sex purchase appealed to the Court of Appeal of Eastern Finland, which dismissed the charge because no proof could be presented that the defendant had in fact paid the business owner, even though the defendant was on record in the interview notes describing the procedure in detail, including paying by bank card.

In the Lappeenranta case (2013), one of the suspects for whom charges were waived was unable to recall which language he had used in agreeing on the purchase of sex or in communicating with the prostitute. In this case, the relevant ad for companionship was in Finnish and posted on a Finnish-language website that also had a separate category for ‘sexual companionship’. The procurers communicated with the clients in Finnish by e-mail and text messages; the prostitutes had no Finnish language skills.

In the Thai massage establishment case in Kainuu, the prosecutor decided to waive charges for a suspect who admitted to purchasing sex, on the grounds that: ‘It was not obvious from the external appearance of the person in question that she was subject to procuring.’ The prosecutor decided, however, to call the sex buyer in question as a witness in the trial for the principal offence, i.e. procuring at the Thai massage establishment.

Suspect denies payment

The elements of the ‘abuse of a victim of prostitution’ offence require that one party gives or promises immediate financial compensation and that the other party against that compensation undertakes to engage in sexual intercourse or to perform a comparable sexual act. Some suspects suspected of a sex purchase offence successfully denied having paid for sex, when interviewed in the pre-trial investigation.

One suspect admitted in the pre-trial investigation that he had visited the private room of a porn shop about once a month over the past two years but denied having purchased sex. He did say that he had had sex with a performer in the private room but denied having paid for it. The performer named by the suspect denied having sold sex. The suspect had paid by bank card in the shop on 9 occasions, the purchases ranging from EUR 60 to EUR 100. (The defendant claimed that the purchases were for sex videos and striptease performances.) Another suspect also reported that he had received an intimate massage in connection with a private show without asking for it and without paying for it.

Some suspects denied that they had paid for sex, explaining that they had been on an ordinary date with the prostitutes, with no money changing hands. The prosecutor considered that no sufficient evidence for purchases or attempted purchases existed even though the evidence otherwise showed, as described in the decision of the District Court, that the Russian women in the premises were engaged in prostitution.
Defining actions comparable to sexual intercourse

According to the preliminary work for the provision in question, actions comparable to sexual intercourse at least include intense contact with a person’s genitals. (HE 6/1997 and HE 221/2005.) In the consideration of charges in these cases, there was some deliberation as to what actions should also be considered actions comparable to sexual intercourse. Touching the breasts and buttocks of a striptease performer in connection with a performance, for instance, was not considered such an action. Whether a nude massage given in a private room should be considered tantamount to sexual intercourse was not considered; in such cases, charges were waived.

One suspect admitted in the pre-trial investigation that he had purchased a massage to follow a striptease performance but that the massage was not an intimate massage, because: “In the massage, the performer did not massage my genitals, although her hand did pass over my intimate parts.” The suspect said that he had not purchased an intimate massage because the price was high. He does admit, however, that he returned to the shop on the same day for another (non-intimate) massage, in which the performer had allowed him to touch her on the breasts and hips. In this case too, the prosecutor decided to waive charges.

In the extensive sex purchase case tried in Helsinki, one of the counts involved the prostitute performing a striptease, in connection with which the defendant had kissed and touched her. The defendant was convicted of a sex purchase. Another defendant was charged with attempted sex purchase, having tried to entice a woman to strip by offering money. The woman had refused. In court, the prosecutor announced that charges would be waived once the injured party had stated that she had refused to provide services to the defendant and had no claims against him.

When is it an attempt?

Nine charges of attempted sex purchase have been brought to date, eight of them in the aforementioned case in Helsinki. The decisions vary, and legal practice in this respect seems inconsistent. In some cases, an attempted offence was considered to have occurred when the defendants had gone to the prostitutes with the intent of paying for a sexual encounter previously agreed on.

However, charges of attempted sex purchase were also waived even for persons who had arrived at the meeting location and progressed quite far in their subsequent actions. If the buyer had voluntarily abandoned the action upon discovering that the prostitute was not operating of her own accord or that the situation otherwise caused concern, the courts did not consider the threshold of an attempted offence to have been crossed.

For two defendants, the district court ruled that the threshold of an attempted offence had been crossed where the defendant had paid for sex and the parties had removed
their clothes, after which the prostitute had indicated that she did not want to have sex. In these cases, the defendants were convicted of attempted sex purchase.

Naming and shaming

Court proceedings and documents of cases involving ‘abuse of a victim of prostitution’ are principally deemed confidential. Under section 9 of the Act on the Publicity of Court Proceedings in General Courts, a trial document shall be kept secret to the extent that it contains sensitive information regarding matters relating to the private life, health, disability or social welfare of a person. The identity and other sensitive details of a victim of prostitution may be withheld and the trial held behind closed doors in the interests of protecting the victim. The identity of a convicted person cannot by law be withheld, and the sentence shall also be public.

In several cases, trials have been held behind closed doors and the documentation, except for the sentence, declared to be kept secret for a period of 60 years.

In some cases, it is not clear whose interests are being protected by this secrecy. For instance, the documentation of the cases in which the sex buyers were found guilty by the Pohjois-Savo District Court have been declared secret for 60 years because of privacy issues. However, the secret portion of the decision does not necessarily allow any conclusions to be drawn about the prostitute’s identity, since any references to her are very vague and general, e.g. “he ordered an intimate massage from the performer”, or “she spoke Estonian”. Only the buyer and the business owners convicted of aggravated procuring are mentioned by name. Apparently the principal interest in declaring the documentation secret was to protect the defendant. The prosecutor in the case reported that it was specifically the persons accused of sex purchases who requested secrecy.

The decision of the Court of Appeal of Eastern Finland was declared secret in its entirety until 2070 except for the final outcome of the sentencing and the applicable points of law. The decision by the Helsinki Court of Appeal where charges were dismissed for five sex buyers was declared secret in its entirety until 2069. Because the Courts of Appeal referred to above dismissed the charges, it is easier to understand why their decisions should have been declared secret than with the decisions of the District Courts recording guilty verdicts. The decisions to waive charges and other limitations of pre-trial investigation concerning sex purchases in the Pohjois-Savo case were also declared secret.

According to a prosecutor we interviewed, persons accused of sex purchases are very keen to request that the case be tried behind closed doors. At the first hearing in the trial, where the principal offence of human trafficking was also handled, the trial was

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21 The only portions of the decision that remained public were the first paragraph of the description of events, the defendant’s response, a schedule of evidence, the second paragraph of the justification, the sentence and the applicable points of law.
declared secret insofar that the injured party was heard without the public present and that the injured party’s identity was declared to be kept secret for 20 years.

At the second hearing, where only the sex purchase offences were handled, the District Court decided to hear the case behind closed doors only while the injured party was being heard. The court declared the trial documentation secret for a period of 60 years. The two final hearings were held completely without admitting the public, and the court also declared the trial documents secret for a period of 60 years except for the sentence and the applicable points of law.

According to prosecutors we interviewed, it is common that offenders in ‘crimes of shame’ request that the trial be conducted behind closed doors and that the trial documentation be declared secret as far as possible. The periods of secrecy allowed by law nowadays are so long that the likelihood of anyone being interested in the case once the documentation becomes publicly available is negligible. According to the prosecutors, the sex buyers are principally afraid of their purchasing of sex becoming public knowledge and of the consequences of that. Some defendants pleaded that if their purchasing of sex were revealed, they would lose their marriages, their families and their jobs. The defendants were also afraid that their names and images would end up in the media or online, branded as prostitutes’ clients.

Avoidance of publicity is also apparent in requests presented to prosecutors that the defendant not be called as a witness in the trial. Some defendants seemed very keen to admit their purchasing of sex if that would avoid a trial.

Prosecutors note that sex buyers may contact a prosecutor at their own initiative to ask when a decision on the consideration of charges might be expected. Prosecutors describe this as highly unusual. Generally, the only cases in which suspects awaiting a decision whether or not to prosecute will contact the prosecutor are drunk driving cases, where the suspect wants to have his/her driver’s licence returned as fast as possible.

**Claim for compensation against sex buyers rejected**

In the trial of the Helsinki case (2008–2009), the prostitute demanded compensation from the clients for suffering and temporary disability caused by the offence. According to the preparatory work for the Tort Liability Act (HE 167/2003), a procuring offence may entitle the complainant to compensation for suffering if there has been a material and in the circumstances obvious breach of the right of sexual self-determination.

This claim was backed with a medical certificate referring to a diagnosed post-traumatic stress disorder. According to the physician, the reaction was caused by “experiences at birth and in childhood, the danger involved in working as a sex worker and the complainant’s fear that her family members may find out that she had been working as s prostitute”.

The District Court rejected the claim for compensation as unfounded and unproven. The court noted that there was not sufficient evidence to indicate that the actions of the
defendants had caused suffering or temporary disability such as to warrant compensation. The medical certificate does not state that the post-traumatic stress disorder was specifically caused by the actions referred to in the case being tried. The District Court also noted that several defendants considered the complainant to have been “a rather balanced person, considering the circumstances”, having agreed on their meetings herself and having presented her fee demand herself. The Court of Appeal converted the conviction from procuring to human trafficking for the principal offence but did not sentence the sex buyers to pay compensation for suffering.

Offender profile

In all of the cases involving alleged ‘abuse of a victim of prostitution’ reported to the police in Finland, the suspects have been men and the sellers have been women.

In cases where the prosecutor made a decision (to bring charges, to waive charges, to limit the pre-trial investigation or other decision including attempted sex purchases), the suspect was mostly aged between 35 and 39 at the time of the offence. The majority of persons suspected of sex purchase crimes were between 25 and 49 years old at the time of the offence.

Figure 12. Age distribution of persons suspected of ‘abuse of a victim of prostitution’.

It may be deduced from the final amounts of the fines imposed that only about one fourth of the persons convicted had low incomes and that there were some persons with a very substantial income. Some information on the occupations of the sex buyers were entered in the documents. These data lead to the conclusion that the sex buyers came from a wide range of social classes.

22 If a case included several purchases, the time of the last known purchase is defined as the time of the offence.
8 Issues of application

8.1 Abuse of a victim of prostitution and other sexual offences

In this chapter, we discuss certain issues related to the interpretation and application of the legislation, based on the situations and problems emerging earlier in the present report.

Provisions on other sexual offences were not changed with the enactment of the sex purchase ban, nor has their interpretation changed. In other words, the fact that money changes hands does not convert ‘sexual abuse of a child’ (Criminal Code, chapter 20 sections 6–7), ‘rape’ (Criminal Code, chapter 20 sections 1–3) or ‘sexual abuse’ (Criminal Code, chapter 20 section 5) into ‘abuse of a victim of prostitution’. Instead, a defendant may be convicted of ‘abuse of a victim of prostitution’ concurrently with another sexual offence.

A charge of ‘abuse of a victim of prostitution’ underlines the link between purchasing sex and the criminals exploiting prostitution. Human trafficking by definition involves coercion, but procuring also involves various forms of abuse and sometimes coercion. However, the elements of human trafficking and procuring do not generally apply to buyers of sex. If a buyer is guilty of coercion, he will be punished according to the relevant provisions (e.g. for rape) in addition to possibly being punished for a sex purchase offence.

Coercing another person into sexual intercourse by violence or threat of violence constitutes rape. The person doing the coercing may be convicted of rape even if it is a third person who actually has sexual intercourse with the victim. (KKO:2001:62.) Similarly, having sexual intercourse with another person while being aware that the other person has been coerced into the act can also constitute rape. Money changing hands does not convert rape into a sex purchase. (Liberty 2009; Archard 2008 p. 152; Niemi 2010.)

The essential elements of rape were amended in 2011 so that a person who takes advantage of another person being unconscious, sick, disabled, in a state of fear or otherwise helpless so that he/she is incapable of defending himself/herself or of formulating or expressing his/her opinion and has sexual intercourse with him/her shall be sentenced for rape. (495/2011.) Therefore it is possible to sentence for rape a person who has intercourse with another person known to be in a state where he/she cannot formulate or express his/her opinion.

It should further be noted that sexual abuse of an adult may fulfil the essential elements of chapter 20 section 5 of the Criminal Code if the person is in hospital or another
institution and if his/her ability to defend himself/herself is substantially diminished due to illness, disability or other weakness.

In the case of abuse of a victim of human trafficking, the new title ‘abuse of a victim of prostitution’ may cause focus to fall on this offence in particular. If the abuser was aware of the coercion, potential other sexual offences should not be overlooked in the investigation.

In addition to sexual offences, what should also be taken into account is chapter 15 section 10 of the Criminal Code, concerning ‘failure to report a serious offence’. Under this provision, a person who knows any of the crimes listed in the section to be “imminent” shall inform the authorities thereof. The requirement to report the offence shall persist if the committing of the offence persists. The maximum punishment under chapter 15 section 10 of the Criminal Code is imprisonment for six months.

8.2 Purchase of sexual services from a young person

It is often observed when discussing organised prostitution that underage victims of prostitution are rarely found in Finland. However, one of the most serious human trafficking cases brought to trial in Finland involved an underage Romanian girl. The victim being a minor or under the age of 20 clearly influences these cases being investigated as human trafficking offences (instead of procuring offences).

At the time of writing, there was widespread media coverage of a child abuser ring where several girls under 16 years of age had been approached and abused online and enticed to meetings where they had been sexually abused. According to media reports, money and other financial considerations had changed hands. (Helsingin Sanomat, 13 June 2013.) Representatives of the social services and social welfare NGOs whom we interviewed and who responded to our online survey identified this type of sexual abuse of young persons as a variant of the type where young people are enticed to have sex in an even more straightforward way by offering them money, alcohol or other such compensation with financial value. According to a representative of the Exit project, the people in the project occasionally come across online sex ads advertising underage persons.

If the child is under 16 years old, any buyer will most likely be guilty of both ‘sexual abuse of a child’, possibly in its aggravated form (Criminal Code, chapter 20 sections 6–7) and ‘purchase of sexual services from a young person’ (Criminal Code, chapter 20 section 8a). In practice, in the situations described above only charges of sexual abuse have been brought.

At this point, we should note that a person can be charged with ‘sexual abuse of a young person’ even if the young person is 16 or older but not yet 18. (Criminal Code, chapter 20 section 5 paragraphs 1 and 2.) Under chapter 20 section 5 of the Criminal Code, a person shall be sentenced for sexual abuse if he/she abuses his/her position and entices
one of the following into sexual intercourse, into another sexual act essentially violating his/her right of sexual self-determination, or into submission to such an act.

1. a person younger than 18 years of age, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender, or

2. a person younger than 18 years of age whose capacity of independent sexual self-determination, owing to his/her immaturity and the age difference of the persons involved, is essentially inferior to that of the offender, where the offender blatantly takes advantage of this immaturity.

The maximum punishment for sexual abuse is imprisonment for four years. Using money or other remuneration for the purpose of such enticement does not convert the offence into ‘purchase of sexual services from a young person’. (Criminal Code, chapter 20 section 8a.) In the case of certain remunerations, accepting them as payment for sex may in fact in itself be an indication of the person’s immaturity.

8.3 Scale of punishments and sentencing practice

The scale of punishments for ‘abuse of a victim of prostitution’ is a fine or imprisonment for at most 6 months. The default sentence has settled at about 20 day-fines. Judging by the scale of punishments and the sentencing practice, ‘abuse of a victim of prostitution’ is not considered a particularly serious offence.

In Sweden, the scale of punishments extends to imprisonment for one year, and in sentencing practice 50 day-fines has become established as the default for a single sex purchase.

In Finland, ‘abuse of a victim of prostitution’ only applies to situations where a person is a victim of procuring or human trafficking. In other words, the victim of this offence is also the victim of procuring, a more serious offence, or human trafficking, a far more serious offence. The scale of punishments for human trafficking is imprisonment from 4 months to 6 years, with a maximum of 10 years for aggravated human trafficking. (Criminal Code, chapter 25 section 3–3a.) The maximum punishment for procuring is imprisonment for 3 years, with a maximum of 6 years for aggravated procuring. (Criminal Code, chapter 20 section 9–9a.) For a person to be guilty of ‘abuse of a victim of prostitution’ he/she must be aware that the prostitute is a victim of one of the serious offences referred to above. It may therefore be asked with good reason whether the scale of punishments for ‘abuse of a victim of prostitution’ is sufficient.

By way of comparison, we may look at property crime. Chapter 32 of the Criminal Code provides for receiving offences, i.e. offences where persons exploit the fact that another person has acquired property through theft, embezzlement, robbery, blackmail, fraud, usury or means of payment fraud. Under chapter 32 section 1 of the Criminal
There would seem to be a discrepancy here as to how a person or property as the victim or object of an offence is viewed. Sweden differs from Finland in the respect that no procuring or human trafficking connection is required for sex purchase offences. Despite this, it was decided in Sweden that a maximum imprisonment of six months was not enough, and this was raised to one year.

Even if more effort than at present were put into finding out whether rape and sexual abuse are applicable offences in the case of victims of human trafficking, there still remains scope of application for ‘abuse of a victim of prostitution’ with regard to both procuring and human trafficking. It is therefore a valid question whether the scale of punishments is appropriate.

8.4 Mens rea

Under the general principles of criminal law, ‘abuse of a victim of prostitution’ is an offence requiring intent. An offence must be intentionally committed for criminal liability to arise if the law does not specifically provide that the act is also punishable if caused through negligence, and there is no such provision for ‘abuse of a victim of prostitution’. In practice, ‘negligence’ often translates to ‘carelessness’.

In the Supreme Court precedent KKO:2012:66, the first and hitherto only Supreme Court precedent concerning ‘abuse of a victim of prostitution’, the crucial point was whether the suspected buyer was aware that the prostitute was subject to procuring or human trafficking and thereby had intent to abuse her. It was undisputed in the case that the buyer had purchased sex and had sexual intercourse with the prostitute, but the buyer denied knowledge of the prostitute being subject to procuring or human trafficking. Judging by the material examined, this is a common justification for denial of charges by suspects and defendants in decisions to waive charges and in legal practice.

In the aforementioned case, suspicion of a sex purchase by X had come to the attention of the police in connection with the investigation of a human trafficking offence. The charge of human trafficking had been dismissed by the District Court, which had
sentenced the offenders for procuring instead, but the Court of Appeal convicted them of human trafficking with regard to A. In the conviction for human trafficking, the court ruled that A had been enticed to come to Finland with promises of work of a different kind and that she had been extremely vulnerable. She had been forced to accept numerous clients. The human trafficking had caused serious adverse impacts to her health. However, the only point addressed by the Supreme Court in case KKO:2012:66 was ‘abuse of a victim of prostitution’ on the part of X, not human trafficking or procuring.

The Supreme Court held an oral hearing in the case, which is rare. Both A and X were called as witnesses in the matter of the sex purchase that had occurred in 2008.

X had contacted A on the basis of an online ad. They had then exchanged text messages and agreed to meet in the foyer of a hotel, where A had picked up X. In the hotel room, X had asked how A was doing and how old she was. Then he had paid her and had sexual intercourse with her. The encounter had lasted about 20 minutes, no more than half an hour.

The statements made by X and A in the main hearing at the Supreme Court are described in considerable detail in the Supreme Court precedent. The Supreme Court also considered a medical certificate issued to A two and a half months after the event and the statements made by X and another sex buyer in the pre-trial investigation.

The following extract summarises the Supreme Court’s ruling on the evidence presented:

paragraph 32 ... Young age or foreign origin are not in and of themselves grounds for such a suspicion. The above description of the personality, appearance, language skills and background of A, whether the characteristics are taken separately or considered as a whole, and taking other circumstances into account, does not demonstrate that X must have considered it highly likely that A was a victim of procuring. (emphasis by the present authors)

The phrase “considered it highly likely” alludes to the current principles of criminal law regarding intent. The assessment of intent has for a long time been based on theories of intent developed by law scholars, on which the current provisions of intent are based.

With the reform of the general principles of criminal law in 2003, new definitions of intent were incorporated in the Criminal Code. Chapter 3 section 6 of the Criminal Code provides for intent, stating that a perpetrator has intentionally caused the consequence ... if the causing of the consequence was the perpetrator’s purpose or he/she had considered the consequence as a certain or quite probable result of his/her actions. This describes indirect intent (dolus eventualis), a legal concept that has recently found favour among scholars. In other words, even if the perpetrator had not specifically intended to cause a particular consequence, he/she is considered to have acted with intent if he/she recognised the consequence as a highly probable outcome of the action. He/she is thus considered to have been indifferent about the outcome of his/her action.
Intention involves awareness of all the essential elements of the offence, whereas chapter 3 section 6 of the Criminal Code applies to the consequences of the action. Chapter 4 section 1 of the Criminal Code provides for a ‘mistake as to the definitional elements of an offence’, explaining how intent applying to other essential elements of an offence should be interpreted. Despite the title of the section, this applies to the essential elements of the offence described in the relevant provision of the Criminal Code, not the content of the Criminal Code itself. Ignorance of or a mistake concerning the content of the Criminal Code can exempt a perpetrator from liability only in very specific cases (the ‘unlawfulness mistake’, chapter 4 section 2 of the Criminal Code).

Under chapter 4 section 1 of the Criminal Code, if at the time of the act that perpetrator was not aware of the existence of all those factors required for the completion of the statutory definition of the offence, or if he/she errs regarding such a factor, the act is not intentional.

The Supreme Court ruled that the case at hand was a case of mens rea, which according to earlier legal practice is subject to the same evaluation criteria of intent, i.e. the criteria for indirect intent (dolus eventualis). The phrase “highly likely” has historically been used to evaluate whether a certain element of an offence was fulfilled, e.g. whether the defendant was aware that a drug vial had been smuggled (KKO:2001:97), that there were drugs in a vehicle or in a backpack, and what kind (KKO:2001:13; 2006:64; 2001:117), or that conducting legal transactions in the name of another party was intended to circumvent execution proceedings (KKO:2009:87). In legal scholarship, Jussi Tapani has favoured the application of the same criteria of intention to both consequences and circumstances. (Tapani DL 2012, 615.)

In the Supreme Court decision, as in the decisions of lower courts described earlier, the assessment of intent was guided by the list of examples given by the Legal Affairs Committee whereby it may be concluded that a particular operation involves procuring or human trafficking:

“...the person is contacted through a middleman, or payment is made to someone other than the person. It is also typical of procuring that a person advertises her willingness for a sexual relationship for payment in a way consistent with an organised and planned broader network of such activities. This may be the case if the same website carries several very similar ads for different persons. Features typical of human trafficking include that the prostitute’s freedom of movement is considerably restricted or that the prostitute is not mentally fully functional.” (LaVM 10/2006 vp., p. 6.)” KKO:2012:66, paragraph 6.

The Supreme Court notes: “As the Court of Appeal noted in the justification of its decision, no such factors indicating procuring have emerged that are mentioned in the preliminary work for the provision referred to in paragraph 5.” (KKO:2012:66, paragraph 25.)

The Legal Affairs Committee sought to anchor the essential elements of the offence in circumstances that are relatively easy to detect on an objective basis. The Supreme Court precedent, on the other hand, gives great attention to the statement made by X of the observations he had made, three years after the fact. Based on the statement and
observations made of A at the court session, the Supreme Court concluded that X would not have been aware of any factors indicating procuring or human trafficking.

There has been discussion in legal literature about whether the assessment of intent should follow uniform principles or be specific to crime type. Tapani has analysed how intent assessment differs by crime type, based on the varying structures of the lists of essential elements of offences, and he has created an intent model. (Tapani DL 2012, 612.) Legal practice on mens rea has applied to financial crime and drug-related crime. In legal practice on drug-related offences, conclusions regarding mens rea have been made on the basis of external circumstances. (KKO:2001:13; KKO:2006:64.)

However, in both the drug-smuggling case and the libel case, it was considered that the potential subjective awareness of the defendant was not crucial for the assessment. What was crucial is that the defendant would have had the opportunity and indeed in some way the duty to find out the true state of affairs. This is probably how the case involving a person purchasing real property in the name of another person prior to execution proceedings might be interpreted. (KKO:2009:87.)

KKO:2006:64: ...The Supreme Court rules that it considers not credible for them not to have had the opportunity to establish or at least with high probability guess at the nature of the drug in their possession. However, it was in the nature of the assignment given to them that they should carry out their mission with no questions asked, regardless of what was in the backpack. They may also have understood that it was advantageous with regard to their liability that they knew as little as possible about the drugs in the backpack. Ignorance of what the drugs were could in these circumstances be regarded as intentional on their part. There are no grounds for interpreting the provision of chapter 4 section 1 of the Criminal Code on a mistake as to the definitional elements of an offence in such a way that such ignorance would negate intent with regard to the type of the drug. (paragraph 8.)

KKO:2010:88 paragraph 59. The Supreme Court rules that the intent required for a libel offence to have been committed shall not be eliminated simply by the fact that the person making the claim or allegation did not know whether what they were saying was false or not. In assessing intent, attention must also be paid to whether the person in question could, in making the claims or allegations, be confident that there were sufficient grounds for making them. In the preliminary work for chapter 24 section 9(1) of the Criminal Code, it was remarked that if the perpetrator had strong grounds for assuming that what he said or alleged was true, the act is not an offence as referred to in paragraph 1. (HE 184/1999 vp., p. 34.) In reforming the provisions on intent and ‘mistake as to the definitional elements of an offence’ in the Criminal Code, no points emerged indicating that these provisions were meant to change the aforementioned grounds for assessment.

60. A’s criminal liability would therefore not be eliminated simply because he had assumed, trusting his sources, that the claims and allegations he made were true. For A to have sufficient grounds to believe that the information he received from his sources was true, it may be required that he had appropriately considered the reliability of his sources with regard to the uncertainties associated with the truthfulness of the claims and allegations made.
These decisions are based on the ruling that the defendant’s subjective awareness is not what counts; in certain circumstances, the defendant would have been obliged to obtain information about the matter and could thus not plead ignorance.

Supreme Court precedent 2012:66 does not impose an obligation of obtaining information on the defendant on the basis of concrete details known to him. Had the Supreme Court been consistent with its earlier rulings concerning *mens rea*, it might have emerged in which circumstances or under what conditions a sex buyer is expected to explore the situation of the prostitute in more detail.

The cases cited above demonstrate that assessments like this are inevitably specific to particular types of crime, considering how different the factors are to which defendants are expected to pay attention. In the case of ‘abuse of a victim of prostitution’, the factors relevant for the offence type may be derived directly from legislation: the essential elements of procuring (chapter 20 sections 9 and 9a of the Criminal Code) and human trafficking (chapter 25 sections 3 and 3a of the Criminal Code). Both the Supreme Court and lower courts refer repeatedly to the Legal Affairs Committee report but not to the essential elements of procuring or human trafficking.

In legal practice, reference has been made to the fact that the details on the selling of sex were found on a website. Providing contact information is one of the alternative means cited in the essential elements of procuring. (Criminal Code, chapter 20 section 9 paragraph 3.) Even if the prostitute herself had posted the ad online, some other person somewhere is profiting from it. Even if posting the ad were free of charge (which it usually is not), the website generates a profit for someone. If the server and website were located in Finland, the party maintaining the website would probably have been charged with procuring. Nowhere in legal practice is it explained why the providing of contact information on a server situated abroad should not indicate to the user that procuring is involved.

Prostitution was practiced in a hotel room, and renting a room is traditionally a central element in Finnish provisions on procuring; indeed, this is addressed in two paragraphs in the relevant provision. (Criminal Code, chapter 20 section 9 paragraphs 1 and 2.) Using a hotel room does not in and of itself indicate that the operation involves the providing of a room as per paragraph 1 or harbouring a prostitute as part of a business as per paragraph 2. However, combined with the providing of contact details this is a strong point in favour of sex buyers being imposed some kind of obligation to discover whether the prostitute in question is subject to procuring.

Both the District Court and the Supreme Court (in paragraph 6) refer to the Legal Affairs Committee report and note that the ads should raise suspicion that there is an organisation or other system behind them. The essential elements of procuring, however, require no such thing.

What is interesting is that the client is said to have asked the prostitute how she was doing and what her age was, so it could be construed that he had in fact tried to find out more about the situation. However, the 20-minute duration of the encounter was not sufficient for making observations.
In an earlier case, the Supreme Court (KKO:2001:117) noted the young age (19) and somewhat naïve personality of the defendant. On these grounds, the Supreme Court ended up with the following ruling regarding the person, who had been in the same vehicle in which drugs had been smuggled:

Suspicions of an offence regarding the defendant remain unclear. For the defendant to be convicted of being an accessory to a drug-related offence, it would be necessary for the defendant to have considered it highly likely for A to be smuggling drugs into Finland. The Supreme Court rules that this has not been proven. Therefore the defendant cannot be deemed guilty of being an accessory to a drug-related offence.

Supreme Court precedent KKO:2012:66 makes no reference to the personal characteristics of the defendant. If this had been done, one might conclude that the case is of limited value as a precedent. (As noted below, the case also incorporated procedural aspects.) Because this was not done, this decision will govern legal practice. The significance of precedent KKO:2012:66 as a precedent may mean that the offence of ‘abuse of a victim of prostitution’ will lose much of its practical meaning.

In order to resolve the problem of intention, Tapani has proposed that ‘abuse of a victim of prostitution’ be deemed punishable also if committed through negligence. This is a recommendable option if a comprehensive sex purchase ban is not desirable. One technical option for achieving this would be to amend the provision to add a second subsection. The following proposal assumes that the scale of punishments would extend to one year, assuming that it would be raised to two years for an offence committed with intent.

Proposal: A second paragraph to be added to chapter 20 section 8 of the Criminal Code as section 8(2): A person who commits the action referred to in subsection 1 even though he has reason to suspect that the person is a victim of the offence referred to in that subsection shall be sentenced to a fine or to imprisonment for at most one year.

8.5 Attempted offence

Criminal liability for ‘abuse of a victim of prostitution’, as indeed basically for most other offences, arises already when an attempt is made to commit the offence. (Criminal Code, chapter 20 section 8(3).) Some of our interviewees who were from NGOs noted that this could lead to a defendant being punished in a situation where nothing reprehensible had actually happened. One interviewee suspected that a sex buyer who would otherwise report to the police any observations pointing to procuring or human trafficking would not report them for fear of being charged with attempted sex purchase.

There were some cases in the material studied where a person considering purchasing sex had begun to suspect that the prostitute might be subject to procuring or human trafficking and had helped the woman to a shelter or advised her to see a doctor. In these cases, these persons were not charged with ‘abuse of a victim of prostitution’ or an
attempt thereof, and there was nothing to indicate that bringing charges had ever even been considered. In these cases, the provision of chapter 5 section 2 of the Criminal Code regarding withdrawal from an attempt at an offence may be applied. Under chapter 6 section 6 of the Criminal Code, attempts of the perpetrator to prevent or remove the effects of the offence may constitute grounds for reducing the punishment. A report made to the police by a person who had been intending to purchase sex may thus be taken into account as a mitigating factor, leading to a reduced punishment or the waiving of charges.

In cases where counts of ‘abuse of a victim of prostitution’ were investigated, it has proved problematic to make the distinction between an offence committed and an offence attempted on the one hand, and between an offence attempted and no offence committed on the other.

The preliminary work on the amendment is somewhat contradictory. According to government proposal HE 221/2005, which involved a comprehensive sex purchase ban, an offence committed required that “the person begins to perform the sexual services referred to in the provision, against payment”. In other words, sexual intercourse must be initiated. In the justification for the present sex purchase ban, the Legal Affairs Committee refers to the exception given in the aforementioned government proposal and notes:

In accordance with the example given in the justification for the government proposal (p. 57/I), the essential elements of the offence as now proposed could be fulfilled if the offender visits the website of a person subject to procuring, agrees on sexual intercourse and causes by his actions the risk of an offence being committed. LaVM 10/2006.

In legal practice, a conviction for ‘abuse of a victim of prostitution’ (an actual offence, not an attempted offence) has required sexual intercourse to have been consummated. This has been difficult to prove if the defendant denies it.

According to the government proposal, visiting a website and taking contact by phone does not by default constitute an attempted offence, but if the parties reach agreement through such an encounter, it could be interpreted as an attempted sex purchase. It has been consistently ruled in legal practice that visits to a website and communication by phone and text message, however frequent, do not in themselves constitute a punishable attempted offence.

The opinion of the Legal Affairs Committee quoted above has thus remained a dead letter.

Legal practice regarding whether an attempted offence has occurred if the parties met in a hotel room or similar premises but no sexual intercourse took place is quite inconsistent. Such cases have resulted in decisions to waive charges, dismissals of charges and convictions.

There is nothing in section 7 of the Public Order Act to determine that an attempt of the offences therein described would be punishable. The essential question therefore is under what conditions the punishable action of purchasing or offering sexual services in
a public place is considered to have been committed. It has been regarded as self-evident that if the parties agree on sex against payment, then an offence has been committed. According to the government proposal, ‘purchasing’ in this provision shall apply to making an offer to purchase. (HE 20/2002.) The provision itself, however, mentions the offering of sexual services but not offering to purchase. The experts we interviewed felt that it is easier to prove an offer to sell than an offer to purchase. It would thus seem that it is easier for a seller to commit an offence under this provision of the Public Order Act than a buyer.

8.6 Procedural status

The procedural status of a sex buyer seems to be given varying interpretations in legal practice. Several of our interviewees contemplated the procedural status of the sex buyer at trial and in a pre-trial investigation. Some interviewees considered it regrettable that sex buyers cannot be called as witnesses in the investigating of procuring and human trafficking offences. Others thought that buyers are not very relevant in the proving of such offences and that their status (suspect or witness) is of little relevance. One interviewee said that the buyers never know anything, so they do not have anything meaningful to say if giving evidence.

The problem of the procedural status of the sex buyer is understandable considering the legislation. The buyer may be a suspect pursuant to the Public Order Act (sex purchase in a public place) and/or the Criminal Code (sex purchase or attempt thereof from a victim of procuring or human trafficking), or a witness in an investigation of a procuring or human trafficking offence if there is no evidence that he was aware of the latter activity.

If the buyer is considered a suspect, he has a wholly different obligation of veracity than if he is considered a witness. A suspect is not required to say anything in interviews or at the trial, nor for that matter to be truthful. A witness, on the other hand, is obliged by law to respond to questions truthfully and to attend interviews and the trial when invited. Moreover, a witness may be brought to an interview or to court if he refuses to comply with his obligations and even sentenced to imprisonment. On the other hand, a witness is entitled to refuse to give evidence that would incriminate himself.

Considering that for most sex buyers the greatest punishment is to end up in court in the first place, the status of a suspect is not automatically worse than that of a witness. A suspect may, in principle, simply admit his guilt and be issued a fine by summary judgement or through written proceedings, thereby avoiding a court appearance. As a witness in a procuring or human trafficking trial he will have to be present. In Sweden, this point has led to fines being issued by summary judgement in cases of sex purchase offences as a matter of course. Sex buyers generally admit to the offence to avoid a trial. This is also the reason why the clear-up rate for sex purchase offences in Sweden is relatively high.
8.7 Connections between investigating a procuring offence and abuse of a victim of prostitution

In Finland, scarcely any cases of ‘abuse of a victim of prostitution’ have been resolved by summary judgement. In practice, counts of ‘abuse of a victim of prostitution’ have emerged in connection with an investigation of procuring or human trafficking and have been handled in the same trial as the principal offence or immediately after it. This seems reasonable, because if the charge of procuring or human trafficking is dismissed, it is generally not possible to charge and convict a defendant for ‘abuse of a victim of prostitution’. (Although it is of course possible in exceptional cases to dismiss a procuring charge on grounds that are irrelevant for the charge of abuse.)

In Supreme Court precedent KKO:2012:66, this practice was severely criticised. In this case too, the lower courts had first handled the counts of human trafficking and procuring. After that, the sex buyers – remarkably many of them – had been tried at three separate trials. The district court had received most of the evidence in the human trafficking and procuring trial. The evidence against the sex buyers had been handled as an independent entity, and evidence presented in the human trafficking and procuring trial had not been presented again in the trial for charges of ‘abuse of a victim of prostitution’.

The Supreme Court remarked that the immediacy of a trial requires that the defendant has the opportunity to question witnesses and to respond to all evidence presented. Therefore evidence heard in one trial cannot be used as a basis for sentencing in another trial. This is procedurally entirely correct.

What this means in practice is that the aforementioned practice of trying the sex buyers at a separate later trial is no longer sustainable. In precedent KKO:2012:66, it led to the Supreme Court being able to overlook observations of the prostitute’s mental condition made by other persons around the time of the event (and the medical certificate supporting those observations) and replace them with the court’s own observations made three years later. On the other hand, the Supreme Court did note that observations made of a victim of human trafficking three years after the fact say nothing of that person’s situation at the time of the event (the person was still in a poor condition). Therefore the acquittal was based on the statement made by the sex buyer three years after the fact.

It seems clear that links between ‘abuse of a victim of prosecution’ and a procuring or human trafficking trial make it very difficult to prove the charges.

This problem may be addressed in two ways. In principle, all sex buyers should be tried at the procuring or human trafficking trial, allowing them to respond to all evidence presented in the case. In practice, this is not always possible. Since any given case may involve hundreds of buyers, simply issuing summonses to those defendants to appear at
a trial consumes time and resources. If the defendants suspected of procuring or human trafficking are in custody, the trial usually cannot wait. Prostitutes may have already left the country.

Another possibility is to offer sex buyers summary judgement or a written hearing if they plead guilty to the offence. The trial would then only be for the charges brought against those buyers who deny the offence.

8.8 Coercive measures

Police interviews indicate that it has been seen as a problem in criminal investigations that it is not possible to use telecommunications surveillance in the investigation of ‘abuse of a victim of prostitution’.

In organised procuring and human trafficking, the aim is to conceal the existence of a middleman by having the agreement on purchasing sex concluded between the prostitute and the sex buyer by text message or phone call or other means of communication. In the court cases we examined, it was common for the parties to agree on a sex purchase by text message. Phone calls were also used. To an outside observer, it seemed in many cases that the phone might have been used by a procurer as well as by a prostitute.

Telecommunications surveillance is available for the investigating of human trafficking and of particularly aggravated procuring. In addition, telemonitoring may be used for investigating procuring, and from the beginning of 2014 also ‘abuse of a victim of prostitution’. The contact details of a suspected sex buyer may thus be used for criminal investigation purposes in the future.

A revision of the provision concerning the use of ‘extra information’, i.e. information collected while using secret coercive measures that applies to an offence other than the one for which the use of secret coercive measures was authorised, will enter into force at the beginning of 2014. Under the provision already adopted by Parliament, extra information may only be used when it applies to an offence for the investigation of which the coercive measures in question could have been authorised. There is a new government proposal before Parliament (HE 14/2013) according to which extra information could be used for investigating any offence for which the statutory maximum punishment is at least two years’ imprisonment. Even under this proposed amendment, extra information gathered in wiretapping could not be used for investigating ‘abuse of a victim of prostitution’ (maximum punishment: imprisonment for 6 months).

Undercover purchases to uncover sex buyers, used in the UK and in some states in the USA (i.e. having a police officer impersonate either a prostitute or a sex buyer), are not possible under Finnish law. Under the new Coercive Measures Act entering into force in 2014, undercover purchases may only be used in the investigation of offences for
which the statutory maximum punishment is at least two years’ imprisonment. (New Coercive Measures Act, chapter 10 section 34.)

Most coercive measures are not available for the investigation of the purchasing and selling of sex in a public place under the Public Order Act, because the offence is considered so minor that it is only punishable by a fine.
9 Summary and conclusions

9.1 Objectives of legislation

A number of objectives may be identified behind the dual sex purchase ban. The offence ‘abuse of a victim of prostitution’ was enacted on submission from the Legal Affairs Committee in 2006. The relevant government proposal proposed a total sex purchase ban, following the example of Sweden. The grounds given for this were improving social equality and gender equality, preventing the emergence of a distorted image of sexuality, emphasising the right of sexual self-determination, influencing the level of procuring and human trafficking offences by reducing demand, and protecting disadvantaged prostitutes. In the Legal Affairs Committee report, the prevention of procuring and human trafficking offences emerged as the principal goal. According to the Committee, the purpose of the provision is to protect victims of prostitution. The current provision on ‘abuse of a victim of prostitution’ in chapter 20 section 8 of the Criminal Code was formulated by the Legal Affairs Committee.

The purpose of the Public Order Act (2003) is to safeguard public safety and order, yet the sex purchase ban it provides for applies to all sex purchasing and selling in public places, not just such activities that cause an actual public disturbance. In practice, the police aims to intervene in street prostitution that does cause a disturbance.

The present report indicates that the concern voiced for the status of victims of human trafficking and procuring as voiced in the government proposal and by the Legal Affairs Committee is justified. The investigation conducted for the present report indicates that human trafficking and procuring in Finland constitute a highly gender-biased phenomenon: the victims are mainly women, and mainly young women at that. They are socially disadvantaged. A notable percentage of them are foreigners or immigrants who have been living in Finland for a long time. Often they were already disadvantaged in their countries of origin. Sex buyers are men, and they come from all classes of society. All of them have money, some of them being quite wealthy. Both men and women are found as procurers and human traffickers; the women are often current or former prostitutes themselves.

If the stated objective of legislation is to protect victims of human trafficking and procuring, we may well ask whether the legislation as it now stands has succeeded in attaining this objective.

9.2 Summary of the findings of the report
Volume of prostitution

Sex purchases are criminalised in two Acts: chapter 20 section 8 of the Criminal Code prohibits the purchasing of sex from a victim of human trafficking or procuring, and section 7 of the Public Order Act prohibits sex purchases in a public place. The latter provision also prohibits the offering and selling of sex in a public place.

It would seem that the enacting of these amendments to the Public Order Act and the Criminal Code in 2003 and 2006, respectively, had an impact on the visibility of prostitution. Street prostitution in particular seems to have decreased, and on those streets of Helsinki where it is regularly practiced it is mostly limited to the early hours of the morning. The decrease in street prostitution appears to be a direct consequence of the sex purchase ban in the Public Order Act and the city ordinances to the same effect that preceded it. Restaurant prostitution has probably also decreased because of the aforementioned provisions but continues prominently in a number of restaurants in Helsinki.

It is very difficult to conclude with any certainty what the impact of the sex purchase ban provisions on the overall volume of prostitution may have been. All estimates of the volume of prostitution, both before and after the provisions entered into force, are highly uncertain. It would appear at least that the volume of prostitution in Finland has not increased. The importance of the Internet as a channel for mediating prostitution has increased in all countries while the aforementioned provisions have been in force. It seems likely that without the sex purchase ban prostitution in Finland would have increased. In Norway and Iceland, visible street prostitution increased sharply in the late 2000s, as a result of which both countries enacted a comprehensive sex purchase ban after the Swedish model in 2009. It must say something of the impact of the sex purchase bans enacted in Finland that no similar conspicuous surge in prostitution was found in Finland as in Norway and Iceland.

The number of procuring offences reported to the police dropped to a few cases per year immediately after the enactment of the amendment to the Public Order Act, whereas earlier there had been several dozen cases every year. The present report could not uncover a clear reason for this. The police have in several contexts remarked on how difficult it is to investigate these offences and that the statistics on how many procuring offences are investigated are governed more by the resources available to the police than by any actual changes in crime levels. However, we cannot rule out the possibility that procuring offences actually did decrease when the aforementioned provision in the Public Order Act entered into force. Since 2011, an increasing number of procuring and human trafficking offences per year have been reported to the police, and several pre-trial investigations were concluded in 2012 and 2013. Investigation processes have also become faster. These observations indicate that variations in the number of procuring and human trafficking offences reported to the police per year have more to do with the allocation of police resources than with variations in the actual level of crime.

Experts we interviewed noted that the general public has become aware of the sex purchase ban. Based on what we noted in legal practice, what suspects know about the exact content of the sex purchase ban provisions varies wildly. Some had a clearly
incorrect conception of the provisions, while others who denied ‘abuse of a victim of prostitution’ were very well informed of their content.

Application of the sex purchase ban provisions

Between 2006 and 2013, a total of 379 cases of ‘abuse of a victim of prostitution’ were reported to the police. These mainly had to do with the procuring offences investigated in 2007 and 2008. In 2013, further cases of ‘abuse of a victim of prostitution’ have come under investigation in connection with procuring offences.

By 30 June 2013, a prosecutor had made a decision in 198 of the cases investigated pursuant to chapter 20 section 8 of the Criminal Code; charges were brought in 73 cases. The prosecutor made numerous decisions to waive charges or to limit pre-trial investigation for sex buyers.

Courts tried 50 charges of ‘abuse of a victim of prostitution’, with 49 separate defendants. Of these, 42 were convicted by a district court of ‘abuse of a victim of prostitution’ or an attempt thereof. Six of the convicted defendants appealed. All appeals were sustained in a court of appeal or in the Supreme Court, leaving 36 sentences that acquired legal force.

The default fine has been established at 20 day-fines in the legal practice. This is considerably lower than in Sweden, where the default fine has been established at 50 day-fines.

Fines for purchasing and selling sex, pursuant to the Public Order Act, were imposed in 106 cases between 2003 and 2011. There were a few cases per year in every year except for 2011 when the Helsinki uniformed police carried out a surveillance operation against street prostitution and 55 persons were fined. These fines were mainly imposed on sellers, although in some cases a fine was imposed on both the seller and the buyer.

Persons violating the Public Order Act are routinely sentenced to a fine by summary judgement. Persons violating the Criminal Code, on the other hand, are routinely charged and brought to trial.

Problems with application

For the present report, we reviewed court decisions on cases of human trafficking and procuring offences tried during the time period when the aforementioned provisions have been in force. There were six convictions for ‘human trafficking for the purpose of sexual abuse’, and 61 persons had been convicted of procuring or aggravated procuring between 2007 and 2011. The procuring offences could be divided into two groups: cases involving Thai massage establishments and back rooms of porn shops on the one

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23 Statistics for 2013 only until June.
hand, and cases that could be described as including features of human trafficking on the other. The case documents indicate that in each case there were dozens or hundreds of sex buyers involved, although a sex purchase offence could only be investigated for a small part of them. Interviews with both police officers and prosecutors reveal that investigation of sex purchase offences has been neither prioritised nor provided with resources.

The court documents indicate that the human trafficking and procuring features of the cases are such that detecting them should not be especially difficult. The courts have tried several cases involving Thai massage establishments and back rooms of porn shops, where there is no doubt that a room has been provided for the purpose of prostitution, as required in the essential elements of procuring. In other cases, the fact that contact details were conveyed through online sex websites is also compatible with the essential elements of procuring. In many cases, the sex buyer had to pay various fees to third parties.

The major problem in the application of the legislation would seem to be that there have been very few cases involving counts of ‘abuse of a victim of prostitution’.

There are several reasons for why there have been so few investigations. In extensive cases of human trafficking or procuring, priority is given to investigating the serious principal offence, and the purchasing of sex cannot be addressed quickly or provided more resources. Similar experiences have been recorded in Sweden, but Finland’s ‘abuse of a victim of prostitution’ is a considerably more demanding offence to investigate than Sweden’s sex purchase ban.

Even in many cases where sex buyers have been investigated, the buyers have managed to avoid charges with a number of different types of denial, resulting in charges being dismissed. Clients’ denials include claims that the encounter never progressed to a sexual act and was therefore not comparable to sexual intercourse. The most popular claim is that the sex buyer had no way of knowing that the prostitute was a victim of procuring or human trafficking. In Supreme Court precedent KKO:2012:66, the buyer’s subjective awareness of features indicating this was considered the key criterion for evaluation. It was concluded in this precedent that the defendant, judging simply by the prostitute’s lack of language skills and young age and the ad he had found online, could not have concluded that the prostitute was subject to procuring.

Experiences in the UK and Sweden

The UK has had provisions similar to those of Finland in force since 2009. ‘Paying for sexual services of a prostitute subjected to force etc.’ is prohibited. Unlike in Finland, criminal liability arises irrespective of whether the sex buyer is aware of the prostitute being a victim of abuse. Purchasing and selling sex on the street was already prohibited before the 2009 reform, although there were huge differences in the enforcement of this ban from region to region. The present report contains a detailed description of British legislation and experiences. Unfortunately, there are not yet enough experiences accumulated of the present situation to allow any conclusions to be drawn.
The street soliciting ban has been applied more frequently than ‘paying for sexual services of a prostitute subjected to force etc.’; fines have been imposed for the latter in only 47 cases. There is great local variation in the application of the legislation. Individual local action plans have yielded positive experiences demonstrating that curbing sexual abuse requires not only provisions in criminal law but also systematic cooperation between various authorities and NGOs.

According to the sex buyers who responded to the *Men who buy sex* survey in Britain, the most effective deterrent would be if convicted sex buyers were entered in the sex offender register.

Sweden criminalised the purchasing of sex in 1999. The maximum punishment is imprisonment for one year. So far, 4,231 suspected sex purchase offences have been reported to the police in Sweden. All sex buyers involved in these cases have been men. The clear-up rate for these cases is 45%. The default punishment for a single sex purchase has become established at 50 day-fines. In persistent or otherwise serious cases, some conditional punishments have been imposed. No major problems with regard to applying the ban have been found after the initial teething troubles. Most of the fines issued have been for purchasing sex in the street. Investigating sex purchases emerging in the context of procuring and human trafficking offences has been more of a challenge, because the principal offence has to be prioritised in the investigation. On the other hand, the sex purchase ban is considered to help the investigation of these offences.

Swedes are broadly in favour of the sex purchase ban: 85% of all Swedes are either in favour of the ban or do not oppose it. Sex purchases have decreased while the ban has been in force. No increased stigmatisation of sex buyers has been noted in Sweden since the criminalisation of sex purchases, but the elevated risk of being caught seems to have curbed sex purchasing somewhat.

### 9.3 Conclusions

Nowadays, prostitution and the sex trade are increasingly associated with international human trafficking and exploitation. Finnish legislation is a pioneer in its field worldwide, being the first to ban sex purchases specifically from victims of human trafficking and procuring. Both the sex purchase ban in the UK and the EU recommendation have followed the Finnish model.

Unfortunately, as shown in the present report, the Finnish model cannot be considered particularly exemplary.

The sex purchase ban, comprising chapter 20 section 8 of the Criminal Code and section 7 of the Public Order Act, is an indivisible whole in which neither element can be examined individually.
Selling sex in a public place

It emerged in the present report that so far section 7 of the Public Order Act has mainly been applied to prostitutes. This is not unusual in the international or historical context: while the ban applies to both sex buyers and sellers, control is primarily aimed at sellers. The present report shows that prostitutes are, as a rule, socially disadvantaged in many ways. There are victims of human trafficking among prostitutes, and many procuring offences incorporate features of human trafficking. Punishing the victim a crime runs contrary to the principle of rule of law. On the other hand, delimiting the criminal liability of the seller so as to exempt victims of human trafficking (which is the correct interpretation of the current legislation) is not feasible, because in a situation where a fine is imposed, it is difficult to ascertain whether the prostitute is in fact a victim of human trafficking. For these reasons, we propose that the ban on the offering of sex in a public place be eliminated from the Public Order Act.

It is understandable that such an amendment may prompt emotional responses among the general public, together with concern for public order. However, it is our considered opinion that a sex purchase ban alone will achieve a better result. Representatives of prostitutes have opposed expanding the sex purchase ban on the grounds that this may increase the power of the procurers or that the prostitutes’ fear of reporting offences to the police will increase. Such fears can more effectively be allayed by de-criminalising the selling of sex in a public place.

- We recommend that the prohibition on the selling of sex in a public place in the Public Order Act should be removed.

Sex purchase ban and demand

The present report indicates that the current sex purchase bans have had some effect on the demand for prostitution. Removing the sex purchase bans would mean a return to the 1990s, when prostitution was abundant and visible. For this reason, removing the sex purchase bans is not recommended.

Sex purchase ban and other sexual offences

Considering how harmful human trafficking is to its victims, we consider that a person buying sex from a prostitute while fully aware that the prostitute is a victim of human trafficking should be considered tantamount to rape and sexual abuse.

- The provision for ‘abuse of a victim of prostitution’ as a separate offence should not lead criminal investigations to ignore the more serious sexual offences that may be involved in the operation.
Procuring

According to the present report, there is prostitution in Finland with obvious features of procuring, some of it very visible. The essential elements of a procuring offence include profiting from the prostitution of another person. There would seem to be some uncertainty in practice about what this involves. Evaluating the essential elements of a procuring offence was not part of the assignment for the present report, but we feel that in the light of the material we studied it should be considered whether those essential elements are in fact clear enough for practical application.

- The essential elements of a procuring offence would seem to need clarification.
- Sufficient attention should be paid to the integration of persons arriving in Finland, including women immigrating on the basis of marriage.

Procuring and human trafficking

As a rule, attempts are made to disguise procuring and human trafficking so as to make the prostitution seem voluntary. This is indicated by experiences gained in Finland and information received from Sweden and the UK. The requirement of mens rea in the partial criminalisation of sex purchases is problematic, as it would seem to be protecting sex buyers. Charges of ‘abuse of a victim of prostitution’ cannot be upheld if the authorities cannot demonstrate after the fact that the buyer should have been aware that the prostitute was a victim of human trafficking. In practice, sex purchases are hurried transactions and often take place in premises such as a hotel room where no conclusions of any kind can be drawn from the circumstances. It is almost never in the interests of either the buyer or the seller to reveal any information about themselves to the other. Certain sex buyers seem to consciously avoid gaining any knowledge of the prostitute’s circumstances.

The pretence of the prostitute operating voluntarily and independently is maintained at all cost, also with clients. Underlying such a situation there may be debts, threats or multiple disadvantages. Victims of human trafficking do not try to find help until their lives are in danger. It is known that procurers have instructed prostitutes to state that they are operating out of their own free will if they encounter police officers.

The current partial criminalisation offers no hindrance to the pursuit of ‘voluntary’ prostitution. Thus it also provides an incentive for criminals to disguise prostitution operations to resemble operations by independent operators. If a comprehensive sex purchase ban were enacted, no benefit could be gained from pretending that a prostitute operates independently. Legislation notwithstanding, the authorities have allocated their limited resources to the investigation of procuring and human trafficking offences in particular also in Sweden and the UK. We must therefore assume that amending legislation to introduce a comprehensive sex purchase ban would not necessarily shift the focus of investigations from aggravated human trafficking and procuring. The amendment would probably also not increase the number of interventions in the operations of independent prostitutes, who often enjoy the greatest advantages among
prostitutes. The operations of independent prostitutes might be indirectly compromised, as clients might become more careful and the more law-abiding among them might stop purchasing sex altogether. However, the ban would not limit the demand for other wellbeing services, and thus it would only have a slightly limiting effect on the industry.

The information emerging in the present report on the nature of human trafficking and procuring and the circumstances in which prostitutes live and operate are so serious as to warrant more effective action to reduce prostitution. A comprehensive reduction of demand is needed.

The present report shows that application of the sex purchase ban as it now stands is complicated. After Supreme Court precedent KKO:2012:66 in particular, it is difficult to understand in what circumstances a sex buyer should be expected to realise that a prostitute is a victim of human trafficking or procuring. The situation favours sex buyers who avoid gaining any knowledge of the prostitute’s circumstances but are intimately familiar with the letter of the law.

A comprehensive ban would be clear, which is an argument in its favour. A comprehensive ban sends the message that prostitution is highly harmful for persons engaged in it and that a considerable percentage of prostitution is connected to human trafficking or procuring or otherwise exploiting persons who are socially disadvantaged or in poor health. Another argument in favour of a comprehensive sex purchase ban is that it would be unambiguous: there would be no more issues of how to distinguish between suspect and witness, and intent would not need to be proven.

Several arguments have been presented against a comprehensive sex purchase ban; on the basis of the present report, however, they do not seem to be weighty enough to prevent enactment of such a ban. It has been suggested that a comprehensive ban would simply drive prostitution and human trafficking underground and strengthen the position of the procurers. However, it would not be possible for prostitution to disappear from sight altogether, because prostitutes must find clients and in so doing cannot conceal themselves from the police. What would seem to be far more effective for improving the status of persons exploited in prostitution is removing the ban on selling sex, improving efforts towards the integration of immigrant women, and development of social services for prostitutes.

- The best way to improve the status of persons exploited sexually for financial gain would be to prohibit the purchasing of sex.

**Procedural points**

The present report indicates that investigations of counts of ‘abuse of a victim of prostitution’ were mostly referred to a prosecutor, who either decided to waive charges or brought charges in a district court. Summary judgement was hardly ever used in these cases. Violations of the Public Order Act are handled by the police and prosecutors through summary fines. There does not seem to be any reason why summary judgement could not be applied in cases of ‘abuse of a victim of prostitution’. The statements made
by suspects seem to have been of little significance in the investigation of procuring offences.

- It should be possible to use summary judgement in sex purchase offences as and when feasible.

**Improving the current partial sex purchase ban**

If no political will for enacting a comprehensive sex purchase ban can be found, the current ban should be improved.

Human trafficking causes highly serious consequences for its victims. The court cases examined for the present report indicate that procuring too is generally very harmful for its victims. The maximum punishment, imprisonment for six months, is in no proportion to the seriousness of the abuse of a victim of prostitution and how harmful it is.

Supreme Court precedent KKO:2012:66 demonstrated that detecting the essential elements of human trafficking and procuring is not easy. We should note, though, that sex buyers are not expected to know the details of the provision; instead, they are required to recognise the actual facts that are relevant to the ban as imposed in the provision. In other words, a sex buyer should focus on determining whether there is anything in the circumstances to indicate that a third person is profiting from the prostitution, for instance in the prostitution ad or in the renting or providing of an apartment for the purpose. Assessment of such observation of circumstances after the fact is more feasible if the essential elements of the offence may also be fulfilled through negligence instead of intention being required as in the current provisions.

- If the sex purchase ban entered in the Criminal Code is retained in its current form, its maximum punishment should be increased.

- The provision should be amended to include violation of the partial sex purchase ban through negligence.

- Training in matters concerning human trafficking, procuring and sex purchasing should be increased for the law enforcement authorities – police, prosecutors and courts. The National Rapporteur on Trafficking in Human Beings should be a key actor in providing this training.
APPENDIX 1: MATERIAL

Documentation from courts, prosecutors and the police

Court documents on cases involving charges of ‘abuse of a victim of prostitution’. (6 from district courts, 3 from courts of appeal and one from the Supreme Court.) (50 charges.) All cases were handled after the provisions entered into force.

Prosecutor’s decisions in cases involving counts of ‘abuse of a victim of prostitution’ (198 cases). All cases were handled after the provisions entered into force.

Convictions for procuring offences and human trafficking offences with the purpose of sexual abuse. (31 cases but a remarkably higher number of defendants.) The aim was to include all cases where the offence had been committed after 1 October 2006, based on prosecutors’ register entries.

Information on application of the Public Order Act (pre-trial investigation document, investigation notification or investigation conclusion) from 2011–2012. (55 cases.)

Interviews

Finland

Five police officers in different positions and from different parts of the country, including senior investigating officers and a representative of the National Bureau of Investigation and the National Police Board.

Four prosecutors in different positions and from different parts of the country, including a representative of the Office of the Prosecutor General.

Representatives of the Border Guard, the social welfare authorities and the Minorities Ombudsman.

Six representatives of NGOs.

UK

Six interviewees (Home Office, the Mayor’s Office for Policing and Crime (MOPAC), Lambeth Borough, one researcher, one NGO).

Online survey for Finnish NGOs and social welfare authorities. The survey was sent to 20 institutions; seven NGOs responded.

The interviews had a common core, but their focus varied depending on the background organisation and area of expertise of the interviewee. Prosecutors, for instance, were asked more legal questions, while people in the third sector were asked more about the help system.
The purpose of the interviews was to explore three areas: Firstly, how the phenomenon of prostitution in Finland manifests itself in the operations of the party in question and what kind of changes they have seen occurring in the purchasing and selling of sex in the past few years. Secondly, the operations, operating practices and guidelines of the interviewee’s organisation were surveyed. At this point, questions were also asked about cooperation among actors and perspectives on the support system. The last section included questions concerning the criminalisation of the purchasing of sex. Among other things, interviewees were asked whether the current legislation is effective, efficient and possibly normative. The interviewees were also asked to give a broader response evaluating the regulation of prostitution-related offences.


Consultation by Rhonda Grant MSP (2012). Criminalisation of the purchase of sex (Scotland) bill (2) – A proposal for a bill to make it an offence to purchase sex.


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