

Summary

The Inquiry's remit and work (Chapter 1)

On 1 January 1999, Sweden became the first country in the world to introduce legislation criminalising the purchase, but not the sale, of sexual services. The penal provision – the prohibition of the purchase of sexual services – is currently found in Chapter 6, Section 11 of the Penal Code.

The ban on the purchase of sexual services was introduced since it was deemed that fighting prostitution was of pressing social interest. Unlike previous measures and initiatives, criminalisation targeted the demand for sexual services, i.e. purchasers of sex and prospective purchasers of sex. The ban was intended to help fight prostitution and its harmful consequences in a more effective manner than was possible using the previous measures against prostitution. The legislative proposal stated that it is shameful and unacceptable that, in a gender equal society, men obtain casual sexual relations with women in return for payment and that Sweden, by introducing a ban on purchasing sexual services, also sent an important signal to other countries highlighting our outlook on purchasing sexual services and prostitution. It pointed out that prostitution entails serious harm to both individuals and to society. It was expected that criminalisation would have a deterrent effect on prospective purchasers of sex and serve to reduce the interest of various groups or individuals abroad in establishing more extensive organised prostitution activities in Sweden, which would have an inhibitory effect on the prevalence of prostitution here.

The ban on the purchase of sexual services has now been in force for over ten years. Different views have been presented on what consequences criminalisation has had. The issue of an evaluation of the ban has been raised in the Riksdag on several

occasions. The legislation prohibiting the purchase of sexual services has also received international attention, and there is great interest in learning what effect the ban has had. For example, the growing problem with trafficking in human beings for sexual purposes and prostitution has meant that many countries have found reason to consider new methods of fighting the purchase of sexual services and trafficking.

Our remit has been to evaluate the application of the ban on the purchase of sexual services and the effects that prohibition has had. We have investigated how the provision has worked in practice and what effects the ban has had on the prevalence of prostitution and human trafficking for sexual purposes in Sweden. One starting point of our work has been that the purchase of sexual services is to remain criminalised.

Some general starting points (Chapter 2)

The proposal to criminalise the purchase of sexual services was part of Government Bill Violence against Women (Kvinnofrid, 1997/98:55). The Bill proposed a large number of different measures in different social sectors to combat violence against women, prostitution and sexual harassment in working life. According to the Bill, one issue that was closely related to that of violence against women and a lack of gender equality was the issue of men who purchase sexual services, usually from women; i.e. the issue of prostitution.

The most important insight regarding the issue of prostitution, presented through the Bill, was that attention must be directed to the purchasers. It was a matter of a shift in perspective, which can be summarised by stating the obvious: if there was no demand there would be no prostitution.

On 10 July 2008 the Government presented Government Communication 2007/08:167, which was an action plan against prostitution and human trafficking for sexual purposes. Through the action plan, the Government once again emphasised that prostitution and human trafficking are not acceptable in our society and that far-reaching measures are needed to combat them. The action plan notes that the underlying reasons for people to be involved in prostitution vary, but the primary factor that perpetuates both human trafficking and prostitution is demand, i.e.

that people, mainly men, purchase sex. Human trafficking for sexual purposes mainly affects young women and girls. The exact scale of human trafficking around the world is not known since many cases are unreported, but it is generally accepted that human trafficking represents one of the most profitable forms of international organised crime.

There is thus a clear link between the existence of prostitution and human trafficking for sexual purposes.

Since it was introduced, the ban on the purchase of sexual services has caused debate in Sweden and internationally. Despite the official position, there is still a debate in Sweden regarding attitudes to prostitution. Those who defend prostitution argue that it is possible to differentiate between voluntary and non-voluntary prostitution, that adults should have the right to freely sell and freely purchase sex, and that the ban on the purchase of sexual services represents an outdated position, based on sexual moralism. However, based on a gender equality and human rights perspective, and shifting focus away from what is being offered, i.e. those who are exploited in prostitution, to demand, i.e. traffickers, procurers and sex purchasers, the distinction between voluntary and non-voluntary prostitution is not relevant.

Background and current law, etc. (Chapter 3)

The issue of criminalising prostitution was raised in Sweden in the 1970s. This was linked to social changes and an altered view of sexuality.

The Prostitution Inquiry of 1977 produced the most extensive survey of prostitution available to date. To highlight the fact that prostitution is not a women's issue but rather a human problem, the Inquiry chose to try to expand the concept and defined prostitution in the following manner. Prostitution occurs when at least two parties purchase and sell sexual services in return for (usually) financial compensation, which represents a condition for the sexual service. The Inquiry considered that prostitution was incompatible with the ideas on freedom of the individual and gender equality which have long been prevalent in Sweden. In its report *Prostitution in Sweden, background and measures* (SOU 1981:71), the Inquiry proposed that prostitution should remain exempt from

punishment, but highlighted other social and legal solutions to reduce prostitution.

The Prostitution Inquiry of 1993 used the term 'sex trade' to describe an activity in which at least two parties purchase or sell sexual services and which is intended to satisfy the purchaser's sexual drive. In its report *Sex Trade* (SOU 1995:15) the Inquiry proposed that prostitution should be criminalised by introducing a ban on both purchasing and selling sexual services. The Inquiry considered that criminalisation of prostitution was a necessary step to make it completely clear that prostitution as a phenomenon is not accepted by society. The Inquiry's proposal, particularly the idea of also criminalising the person exploited by prostitution, was met by extensive criticism and was not implemented.

The proposal that eventually led to the introduction of the Act prohibiting the Purchase of Sexual Services (1998:408) formed part of the Government Bill *Violence Against Women*, as described above. The proposal was based on the report of the Prostitution Inquiry from 1993 and on the final report of the Commission on Violence against Women, *Violence against Women* (SOU 1995:60).

A person who obtains a casual sexual relation in return for payment commits the crime of purchase of sexual service, which is currently found in Chapter 6, Section 11 of the Penal Code. Purchasing a sexual service on one single occasion is sufficient for criminal liability. Compensation can be in the form of money, but payment can also be made through such means as alcohol or drugs. Promising compensation so that payment is a condition for the service is sufficient to establish liability. A crime is committed even if someone other than the person who avails him or herself of the sexual service has provided or promised the compensation. An attempted offence is also punishable. The scale of penalties for the purchase of sexual services is a fine or imprisonment for at most six months.

As is the case with the crime of human trafficking, the ban on the purchase of sexual services is an important instrument to prevent and combat trafficking in human beings and to protect those people who are, or who risk becoming, involved in prostitution and other forms of sexual exploitation. Since human trafficking is a cross-border crime, combating it requires international cooperation. There are a number of international conventions in the area. Several instruments dealing with prostitution

and human trafficking have been adopted by the United Nations, the Council of Europe and the EU.

Work to combat prostitution has long been oriented around social initiatives, and both of the previous prostitution inquiries have emphasised the value of such initiatives. Unlike in many other countries where efforts focus on harm reduction, the initiatives targeting prostitution in Sweden are mainly aimed at fighting prostitution by helping people out of prostitution or to stop purchasing sex.

Extensive work is being carried out in Stockholm, Gothenburg and Malmö aimed directly at people who are exploited in prostitution. People with experience of prostitution have complex help needs, and special knowledge and skills are required when implementing initiatives targeting these people. Work in the prostitution groups involves a number of different components. It includes outreach activities, motivational interviews, different forms of therapy and psychosocial support. Less is known about the extent to which people in prostitution and victims of human trafficking are detected and helped in other areas. Knowledge about the most effective methods of helping those affected is also limited.

In its action plan against prostitution and human trafficking for sexual purposes, the Government emphasises that initiatives to combat demand for sexual services are crucial for dealing with the problem. For ten or so years, social services in Stockholm, Gothenburg and Malmö have been operating what are known as KAST groups (purchasers of sexual services) to motivate potential and active sex purchasers to change their behaviour.

Different preventive measures are needed to help prevent people from ending up in prostitution. Of particular importance are initiatives aimed at those who are particularly affected, i.e. children and young people. Professional groups that have contact with young people at risk of falling into prostitution must develop the ability to see signals and improve their skills to be able to work with these issues in the best possible manner.

Prostitution in Sweden 1999–2008 and a comparison with the situation in some other countries (Chapters 4 and 5)

Evaluating the effects of the ban on the purchase of sexual services has proven to be a difficult task. Prostitution and human trafficking for sexual purposes are complex and multifaceted social phenomena which partly occur in secret. Increased internationalisation and the Internet as a new arena for prostitution also make it difficult to assess its prevalence. Even though there are many reports, articles and essays that address these phenomena, knowledge on the scale of prostitution and human trafficking for sexual purposes is consequently limited. This particularly applies to knowledge of people who are active as prostitutes in arenas other than street settings and on the Internet, and knowledge of the prevalence of prostitution outside metropolitan areas.

On the whole, ‘prostitution’ has traditionally referred to heterosexual prostitution, with women providing the sexual service and men purchasing it. The measures that are implemented and the knowledge available are also largely based on this customary view. Accordingly, we do not know very much about men who provide sexual services and about young people who are exploited in prostitution. Purchasers of sexual services are still fairly invisible despite the political will expressed to shift the focus.

The empirical surveys that have been carried out have, in some cases, had limited scope, and different working procedures, methods and purposes have been used. In light of these and other factors, there can at times be reason to interpret the results with caution.

However, despite these reservations, we still consider that it is possible to draw conclusions based on the material to which we had access, and the results we are presenting based on this data give, in our view, as clear a picture as is currently possible to produce.

Street prostitution halved

It is considered that the data available on the scale and prevalence of street prostitution describes the actual conditions. Since the introduction of the ban on the purchase of sexual services, street prostitution in Sweden has been halved. This reduction may be

considered to be a direct result of the criminalisation of sex purchases.

In a comparison, we have noted that the prevalence of street prostitution was about the same in the three capital cities of Norway, Denmark and Sweden before the ban on the purchase of sexual services was introduced here, but the number of women in street prostitution in both Norway and Denmark subsequently increased dramatically. In 2008, the number of people in street prostitution in both Norway and Denmark was estimated to be three times higher than in Sweden. In light of the great similarities that in many respects exist between these three countries, economically and socially, it is reasonable to assume that the reduction in street prostitution in Sweden is a direct result of criminalisation. This assumption is supported by the fact that, according to a study by Bergen Municipality, an immediate, dramatic reduction of street prostitution occurred there when, on 1 January 2009, Norway became the second country after Sweden to introduce a general prohibition of the purchase of sexual services.

The number of foreign women in street prostitution has increased in all the Nordic countries, including Sweden. However, by comparison it can be noted that the dramatic increase in the number of foreign women in street prostitution reported from both Denmark and Norway has no parallel in Sweden.

Internet – a new arena

Prostitution where the initial contact is made over the Internet is an important and growing arena for prostitution that has received increasing attention in recent years. Compared to street prostitution, the scale of Internet prostitution is more difficult to verify and assess, but knowledge of this form of prostitution is gradually growing.

In the last five years, Internet prostitution has increased in Sweden, Denmark and Norway. However, the scale of this form of prostitution is more extensive in our neighbouring countries, and there is nothing to indicate that a greater increase in prostitution over the Internet has occurred in Sweden than in these comparable countries. This indicates that the ban has not led to street prostitution in Sweden shifting arenas to the Internet. In light of this it should be possible to conclude that the halving of street

prostitution that took place in Sweden represents a real reduction in prostitution here, and that this reduction is also mainly a result of the criminalisation of sex purchases.

The Internet plays an important role particularly with regard to young people in prostitution. The National Board for Youth Affairs concludes that most young people who are exploited sexually in return for payment came into contact with the purchaser via the Internet. The results of other questionnaire surveys that examined young people's experiences of selling sexual services support this conclusion. The ban on the purchase of sexual services has not had an effect on the exposure of young people on the Internet. However, the risks of sexual exploitation and abuse that this exposure entails increase the need to protect young people from falling into prostitution.

No overall increase in prostitution in Sweden

There is nothing to indicate that the prevalence of indoor prostitution that is not marketed through advertisements in magazines and on the Internet, e.g. prostitution in massage parlours, sex clubs and hotels, and in restaurant and nightclub settings, has increased in recent years. Nor is there any information that suggests that prostitutes formerly exploited on the streets are now involved in indoor prostitution.

People working in the field do not consider that there has been an increase in prostitution since the ban was introduced. Since those involved in prostitution activities typically need to promote themselves in order to come into contact with clients, it is unlikely that prostitution could exist on any great scale and remain entirely unknown.

The overall picture we have obtained is that, while there has been an increase in prostitution in our neighbouring Nordic countries in the last decade, as far as we can see, prostitution has at least not increased in Sweden. There may be several explanations for this but, given the major similarities in all other respects between the Nordic countries, it is reasonable to assume that prostitution would also have increased in Sweden if we had not had a ban on the purchase of sexual services. Criminalisation has therefore helped to combat prostitution.

Ban on the purchase of sexual services has counteracted the establishment of organised crime

Trafficking in human beings for sexual purposes is a growing form of serious economic crime in large parts of the world. Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime is considered to be substantially smaller in scale than in other comparable countries. According to the National Criminal Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers considering establishing themselves in Sweden.

Increased public support for the ban

The ban on the purchase of sexual services was intended as a statement of society's view that prostitution is an undesirable phenomenon. To gauge Swedish public opinion concerning sex purchases, surveys were conducted before and after criminalisation was introduced. Judging by the results of four population-based opinion polls, there has been a change of attitude with regard to the purchase of sexual services that coincides with the criminalisation of the purchase of such services. The marked shift in attitude that has occurred here – without an equivalent shift in Norway and Denmark – must be interpreted as meaning that the ban itself has had a significant normative effect which, given that support for criminalisation is greatest among young people, can be expected to last. In all three surveys conducted since the ban was introduced, more than 70 per cent of those asked took a positive view of the ban.

How the ban has affected those involved in prostitution

When the ban on the purchase of sexual services was introduced, various misgivings were voiced. These included fears that criminalisation would risk driving prostitution underground, making it harder to reach out to the vulnerable people involved through social measures, and that the ban would bring an increased risk of physical abuse and generally worsen living conditions for prostitutes. As far as we can judge from the written material and

the contacts we have had with public officials and people involved in prostitution, these fears have not been realised.

Police officers and social workers report that purchasers of sexual services have become more cautious and that the ban has led to a decrease in demand, at least for street prostitution, as a result of criminalisation. According to the police, purchasers are afraid to be caught, but are more concerned about the offence of which they are suspected becoming known to family and acquaintances than about the penalties they risk. The impression that purchasers have become more cautious is shared by some of the current and former prostitutes who responded to the Inquiry's questions, while others have reported that criminalisation has not affected purchasers because so few are caught and the penalties are so lenient.

According to surveys conducted in Sweden in the period following criminalisation, the proportion of men reporting that they have, on some occasion, purchased sexual services has decreased, and it would seem that fewer men purchase sexual services in Sweden than in the other Nordic countries. In a survey conducted in 2008, a number of those asked also reported that the ban had affected their actions to the extent that they no longer purchased sexual services. All in all, the above must be interpreted as meaning that the ban has a deterrent effect on prospective purchasers of sexual services.

It is clear, and it seems logical, that those who have extricated themselves from prostitution take a positive view of criminalisation, while those who are still exploited in prostitution are critical of the ban. This pattern is reflected in many different reports and is also confirmed by the contacts that the inquiry has had with women with experience of prostitution.

Application of the ban 1999–2008 (Chapter 6)

Since the ban was introduced, the police have directed special operations against prostitution on many occasions. The majority of the investigations and operations against prostitution-related crime have been, and continue to be, carried out by the various special groups that have been established during this period in Stockholm, Gothenburg and Malmö, and in the National Criminal Police. Operations have mainly targeted street prostitution and more organised forms of prostitution that are linked to procuring or

human trafficking. The police have not ordinarily prioritised, or had the resources for, interventions against the purchase of sexual services via other forms of prostitution.

Street prostitution is seen by police to have great symbolic value in the eyes of the public, and the street setting is also used to market other forms of prostitution. The police officers with whom the Inquiry has had contact consider that operations against street prostitution have an immediate effect in terms of deterring prospective purchasers of sexual services, but also believe that such operations have a more long-term effect in terms of deterring and limiting the numbers of other promoters and organisers of prostitution.

The majority of prosecutions for infringements of the ban are cases where the purchaser of sexual services made the initial contact in a street setting. A new penal provision, trafficking in human beings for sexual purposes, came into force on 1 July 2002, and from 2003 onwards there has been a dramatic increase in the number of prosecutions for infringements of the ban on the purchase of sexual services that originate from procuring and human trafficking cases. The prevalence of these cases varies widely from year to year, depending on the resources invested and the priorities that the police, in particular, have set.

It is clear that monitoring compliance with the ban depends largely on the priorities set by the police and the resources they have available. According to both police officers and prosecutors with whom the Inquiry has spoken, considerably larger numbers of purchasers of sexual services could be prosecuted if priority had been given to this type of crime in day-to-day activities. One reason why priority is not given to sexual purchase offences is the low penal value of this type of offence.

Eight out of ten cases in which purchasers of sexual services are prosecuted involve situations in which the offence has been admitted to. This applies to both street prostitution and other forms of prostitution. When suspects admit to an offence, the prosecutor does not generally bring legal proceedings; instead a summary fine is imposed on the suspected purchaser of sexual services. The majority of the offences that have been prosecuted were committed in the three metropolitan areas. All of those prosecuted between 1999 and 2008 were men, with a median age of 43. They most commonly paid for sexual services in cash.

Our review of the judgments and summary fines imposed during the period studied shows a great deal of uniformity in terms of assessment of penal value and choice of penalty. Since the Supreme Court examined the question of culpability in a case of the purchase of sexual services in 2001 (NJA 2001, p. 527), more than 85 per cent of all prosecutions for individual instances of such purchases have resulted in a penalty of 50 'day fines'. The offence is generally reported rather summarily, and judgments seldom refer to any extenuating or aggravating circumstances associated with the offence.

When the ban was introduced, some feared that it would be difficult to monitor compliance with the ban and to define and prove the criminal act. However, our investigation of the application of the ban shows that, following an initial period of some uncertainty, police officers and prosecutors now consider that in general the provision works well. The prosecutors with whom the Inquiry has spoken have stated that they do not currently see any application problems directly linked to the penal provision. Sexual purchase offences are usually considered to be easy to investigate and relatively uncomplicated to process. There can be evidentiary problems, but almost half of the offences reported have been linked to an individual, meaning that a decision has been taken either to bring charges, impose a summary fine or grant a waiver of prosecution. This is double the number compared to other reported sexual offences.

The uncertainties that remain when it comes to applying the provision concern whether those who have been exploited should be considered witnesses or injured parties in court proceedings, and the point in time at which an attempted offence has been committed. It is considered difficult to prove attempted crimes, with the result that, in connection with street prostitution, the police deliberately wait until the sexual act has begun before intervening, and the offence has thus been committed in full.

Deliberations and proposals (Chapter 7)

Our assessment shows that the ban on the purchase of sexual services has had the intended effect and is an important instrument in preventing and combating prostitution.

Continued and sustained social work is necessary

Criminalisation can never be anything other than a supplement to other efforts to combat prostitution. It is therefore necessary to ensure continued and sustained social work to prevent and combat prostitution and trafficking in human beings for sexual purposes. It is important to increase the measures directed at purchasers of sexual services. Further research is needed here on who purchases sexual services, and suitable treatment methods. It is also important to give support to children and young people at risk of ending up in prostitution and to continue information initiatives to influence public opinion in this area. The professional groups working with these issues must be assured access to greater knowledge in order to be able to offer vulnerable people adequate help and support. The Inquiry does not present any specific proposals in this area, but it does call attention to – and particularly emphasises – the value and necessity of continued and sustained social measures.

A national centre against prostitution and human trafficking for sexual purposes should be set up

In the course of our work, we have established that there is an almost improbably large quantity of information available in the form of reports, articles and essays produced by both government agencies and researchers and containing facts and discussions linked to prostitution and human trafficking. One important conclusion we have drawn is that, despite the great interest in this issue, there is a lack of both continuous follow-up and systematic knowledge of these phenomena. The knowledge available is difficult to grasp and, in part, difficult to assess, and is shaped by the operational focus and perspective of the agencies and organisations concerned.

This makes it impossible to draw entirely reliable assessments and comparisons using the available knowledge. This hampers efforts to establish the training, methods development and support initiatives needed in order to combat prostitution and human trafficking for sexual purposes as effectively as possible. It is necessary to create better conditions for coordination, follow-up and knowledge production for the future, in order to both utilise

existing knowledge and also make new knowledge available to everyone who works in some capacity with these issues.

We therefore propose the establishment of a national centre against prostitution a human trafficking for sexual purposes.

Maximum penalty for the purchase of sexual services should be raised

In our view, variations between different sexual purchase offences are far too seldom taken into account when deciding on a penalty. From the review of current practice undertaken by the Inquiry, it is clear that in some cases there is reason to take a more serious view of the offence than has been the case in practice. Examples of such cases include exploitation of a person with a psychiatric disability, contact being made through a third party or an ordering service, exploitation of one person for several hours by several sex purchasers or exploitation of a young person or a person under the influence of drugs. In our view, the current level of penalties for certain sexual purchase offences is not proportionate to the seriousness of the crime. There is a need to be able to make a more nuanced assessment in more serious cases of the purchase of sexual services than is possible within the current penalty scale for the offence. We therefore propose that the maximum penalty for the purchase of sexual services be raised from imprisonment for six months to imprisonment for one year.

The person exploited in prostitution may normally be considered the injured party

Neither legislation nor legal doctrine offer a clear answer to the question of who is to be considered an injured party. In our assessment, there is nothing to prevent a person who has been exploited in prostitution from having the status of injured party in proceedings concerning the purchase of sexual services. An examination should be undertaken in each case to determine whether the person providing the sexual service is so directly affected by the offence that she or he should be entrusted with exercising the public function implied by a penal claim.

The question of where to draw the line in attempted crimes should be resolved through the application of the law

The question of the point in time at which the offence of the purchase of sexual services begins has been discussed, and it engenders certain problems with regard to its application in practice. In our view, the problems described by police officers and prosecutors with regard to the application of the offence of the purchase of sexual services do not fundamentally differ from those encountered with other types of offence. It would hardly have been possible, let alone appropriate, to attempt to pin down in legislation the point at which an attempted offence has been committed. The problems encountered should therefore be viewed as an matter for interpretation and application, not for legislation. Nor are the evidentiary problems such as to warrant any proposed legislative amendments or other measures.

There is a need to expand the scope of application of the ban with regard to offences committed abroad, but without deviating from the dual criminality requirement

We consider that there is a need to expand the possibilities to prosecute in Sweden sexual purchase offences committed abroad, particularly with a view to the fact that it should be possible to apply the Swedish ban in cases where a person representing Swedish public interests purchases sexual services abroad. The question of the ban's applicability for offences committed abroad was not referred to in any detail in the preparatory work on which the ban was based. Now that the offence is contained in Section 6 of the Swedish Penal Code, it is reasonable to regard it as universally applicable and not limited to offences committed in Sweden. Since the ban on the purchase of sexual services is universally applicable, there are no national or territorial limits on its applicability. However, this conclusion does not mean that the Swedish courts have the competence to pass judgment on the offence. The competence to pass judgment on offences committed outside Sweden is normally conditional on dual criminality.

The majority of countries do not have a ban on the purchase of sexual services equivalent to that in force in Sweden, nor is there international consensus on what methods should be used to

combat prostitution. Allowing the purchase of sexual services to be an exception to the dual criminality requirement for Swedish penal jurisdiction would therefore involve a clear deviation from the principles behind the introduction of a general requirement for dual criminality to prosecute a crime committed in another country. An exception of this kind could not be based on international consensus on the nature of the crime or a general perception of the crime as particularly serious. Nor could it be justified on the grounds of protecting any private or public Swedish interest. In light of this, we have deemed it impossible to propose that the dual criminality requirement be removed with regard to the crime of the purchase of sexual services.