

Purchase of a Sexual Service – A Lawful Private Delight or an Offence? A Study of Criminal Legislation in the Nordic Countries

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1 Introduction

This article deals with some of the questions which are connected to the prostitution as a social phenomenon. Prostitution is in this case defined as a behaviour, which implies that a man or a woman for money allows another man or woman the use his or her body for sexual intercourse or the like.¹

There are three categories of persons involved in prostitution: the persons who offer sexual service for money, the persons who purchase the sexual service, and the persons who take advantage out of the prostitute.² This article deals mainly with the criminalization of purchase of sex, which is an act of buying a sexual service of another person. Furthermore, the focus of the article is on the purchase of sex from an adult.

The article has – to a certain degree – a comparative perspective. It deals with the criminalization of purchase of sex in Sweden, Finland and Norway as well as the present legislation in Denmark. There are only a few remarks on the legislation in Iceland.

There are mainly two basic issues, which will be discussed: The first issue concerns the legislative intervention in general with the aim to control prostitution; shall the State on the whole use legal means of control in respect to prostitution, and if so, shall also some acts be criminalized? Focus is accordingly on the question of what can be attained by legal regulation of prostitution: can it be expected that legal means, and in particular the criminal law, has an effect?

The second issue is closely linked to the first one: Is it desirable that the State regulates the prostitution, and which are the consequences particularly of a regulation using criminal law? Which acts involved in prostitution shall be criminalized and on the basis of which arguments? The main problems concerned here have to do with the ideology behind a possible legal regulation of some acts connected to prostitution.

In addition some facts concerning the situation in the Nordic countries are given.

Also the three existing Nordic provisions concerning purchase of sexual services of adult persons are described, i.e. the Swedish, the Finnish and the Norwegian provision.

2 Ideologies behind the Legal Regulation of Prostitution and some Information about the Reality

There are three main ideologies governing the decision making with respect to the legal control of prostitution. In addition there are, in particularly when the question of criminalizing of some of the acts involved in prostitution activities is concerned, considerations with respect to the international solidarity in the fight against the exploitation of women. The three ideologies can be labelled as

1 Bragadottir (2005) p. 42.

2 Greve (2005) p. 1.

“sexual moralism”, “sexual liberalism” and “feminism” in combination with a “victim perspective”. The three ideologies are studied in the following and at the same time some empirical facts are given.

2.1 *Sexual Moralism*

In a historical perspective prostitution has been regarded as a phenomenon, which endangers the sexual morality.³ In religion, fornication, lechery and moral looseness has always been considered as a sin and so also as a violation of social morality. This point of view has particularly been dominant in respect to the sexual behaviour of women. What is blamed is that women benefits not only in the form of economic compensation, but also in the form of pleasures, restaurant visits, consumption of luxury goods, travels and stimulants such as alcohol and drugs as a payment for sexual services. This critical view is still sometimes expressed in the public debate, when moralizing on a pretty big group of youngsters, who in public surveys declare that they have or that they are willing to offer sex as replacement also for less valuable services in return, as for instance articles of clothing, cigarettes, alcohol or hash.⁴

The criticism of the licentious behaviour of men has not at all been equally severe. Male sexuality has often been described as a law of nature. Male sexuality is considered to be an instinct, which he in one way or another must be able to satisfy or release. Thus prostitution fulfils an important social function, as not all men, for one or another reason, can find, get or want to have a permanent partner. As a result of this approach, prostitution has an important or even necessary social function.⁵ The approach also implies that the two involved parties, the seller and the purchaser, do not have the same or equal responsibility for the acts connected to prostitution. It was for a long time considered quite definitely that it was the seller, the woman, who was to be blamed.

2.2 *Sexual Liberalism*

The sexual liberal understanding accentuates that sexuality basically is a private matter, and that it not – as long as all the sexual actions are voluntary and not infringe other person’s rights – shall be controlled by the use of legislation. Which sexual activities a person has with another person, and according to which conditions this is carried out, is and shall remain a private matter.⁶ One can claim, that article 8 of the European Convention on Human rights basically is founded on such a sexual liberal understanding.

On the basis of the understanding of sexuality as a private matter, one can also justly assert that prostitution shall not be legally regulated. It is contrary to this understanding that the acts committed by the sex seller or by the sex purchaser should be criminalized. What can be criminalized is the exploitation of the prostitute by a third party as well as prostitution jeopardizing public order.

3 Niemi-Kiesiläinen (2005) p. 23.

4 Greve (2005) p. 15.

5 Niemi-Kiesiläinen (2005) p. 23.

6 Ibidem, p. 23.

2.2 *"Feminism" and the "Victim Perspective"*

Prostitutes are often – and mostly quite correctly – labelled as socially weak and psychically vulnerable persons, who frequently are destroyed by abuse of alcohol and/or drugs. Since long and in particular in the social welfare sector, initiatives has been taken aiming at assisting the prostitutes to escape from prostitution by the use of care and treatment or other forms of supporting measures. Current information indicates that a substantial part of the prostitutes are drug addicts, who finance their use of drugs by selling their sexual services. In the Nordic countries, this is especially the case for “native” prostitutes, who sell their services in the street. However, recently these “native” prostitutes have increasingly been driven away by foreign women, who have invaded the market with the only purpose to gain as much economic profit as possible by selling sexual services.⁷

By describing the prostitutes as “weak persons” it becomes possible to label them also as victims. Furthermore, it makes the basis for arguing that the counterpart, the purchaser, the person who abuses or only profits by the weakness of others by purchasing a sexual service, is guilty of a morally wrongful and therefore blameworthy action. This has been one of the main arguments in favour of criminalizing the purchase of sexual services in all the Nordic countries. In the Swedish preparatory works regarding the law of criminalization of purchase of sexual services, purchase of a sexual service of women is even ranked as “violence in general” against women.

A victim perspective is closely linked to a feminist ideology. According to an understanding, which is often presented in feministic literature, a prostitute is always a victim. The decision of a woman to involve in prostitution is never based on an individual choice, which could be labelled as a free choice. It is always a result of unfair conditions. Women do not choose to be prostitutes if there are other alternatives. And even if a woman finally decides to sell sexual services she has, generally speaking, been put in that situation through a successive process, where structural factors and decisive individual choices are interlinked. We have to do with a social process, where structural circumstances and personal decisions unhappily intertwine. It is only possible to influence such processes by regulating the situations which have an impact on the prostitution market. Criminalization of purchase of sexual services is seen to affect the undesired social process in a positive way.⁸

It must be noticed that the feministic view on prostitution is not uniform, not even in the Nordic countries. Other views emphasizing that the main task must be to promote the rights of the prostitutes also exist. In this case prostitution is placed on equal terms with work in general and thus it is seen as necessary to work for the improvement of the working conditions for all sex workers.⁹ In the public debate it has also been claimed, that the physical and psychological wear of the work as a prostitute does not need to be more burdened than the damage

7 Stridbeck (2005) pp. 54-55.

8 Niemi-Kiesiläinen (2005) pp. 24-25.

9 Ibidem, p. 24.

caused by factory work.¹⁰ In particular, criminalization of purchase of sex is according to this viewpoint a measure which goes in the wrong direction. It does not improve, but rather obstruct the working conditions of the prostitutes. Criminalization runs the risk of increasing pimping, increasing violence and increasing incidents where prostitutes are menaced. Furthermore, criminalization of purchase of sex might also prevent the prostitutes to contact public authorities in order to obtain protection, even in situations where they have been victims of a crime.¹¹

3 International Solidarity as an Argument in Favour of Combating Trafficking in Women and Prostitution

For a long time several of the international conventions on criminal matters have concerned prostitution and trafficking in women for sexual purposes (“white slave traffic”). In 1950, the core regulations in several previous conventions were gathered in the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitutions of Others. This convention does not require that prostitution as such is criminalized, but only that measure are taken in order to decrease prostitution and that acts, which consists of the exploitation of prostitution, are criminalized. Not even the International Convention on the Elimination of all Forms of Discrimination against Women (1979) requires that purchase of sex is criminalized, but that appropriate measures in order to combat all forms of trafficking in women are taken as well as actions against the exploitation of female prostitution.

In addition to these two international conventions several universal conventions exist containing provisions of relevance for the control of prostitution. It applies to for instance the UN Convention on the Rights of the Child (1989), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000), and, above all, the UN Convention against Transnational Organized Crime (2000) with the additional protocol, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000). Of the decisions taken in the framework of the EU especially the frame work decision (19.7.2002) on trafficking of women can be mentioned. The Nordic States, and also Norway even if Norway is not so far a Member State of EU but a Member State of EEA, have generally entered these international conventions in a quite early stage. This in fact has had great impact on the Nordic legislation with respect to the criminalization of acts linked to international trafficking in women. However, the Nordic legislation in general concerning the combat of trafficking in women is not analyzed more in detail in this article. The focus will be on the question of how important it is to criminalize the purchase of sex

¹⁰ Greve (2005) p. 15.

¹¹ Niemi-Kiesiläinen p. 24.

services as a mean of combating international trafficking in women and forced prostitution.

Prostitution in the Nordic countries can roughly be divided into three categories: street prostitution, prostitution carried out in clinics, studios and clubs, and prostitution, where contact between the seller and the purchaser is established by use of individual advertisements in the daily newspapers or on the Internet and where the arrangement between the two parties is agreed to take place in a hotel or in the home of the seller. The distribution of the three categories probably varies between the Nordic countries. In that respect, as well as in respect to many other important figures concerning the prostitution, the available empirical knowledge is insufficient.

The data on prostitution in the Nordic countries depends to a high degree on the sources used. On the EU-level, trafficking in women for the purpose of prostitution and the sex industry has been the predominant form of trafficking in human beings during the last decades. The International Organization for Migration (IOM) has estimated that 250,000 women and children have been victims of trafficking to Europe for sexual purposes. The International Labour Organization (ILO) has assessed that 70-75% of trafficking in human beings to the Member States of EU consists of trafficking in women and children for sexual purposes. It is obvious that a very considerable part of the prostitutes in EU originates from Central and Eastern European countries, such as the Baltic countries, Estonia, Latvia and Lithuania, from Poland, the Czech Republic, Bulgaria and Rumania. It has been estimated that at present there are more than 700,000 – 800,000 prostitutes in Europe, and more than the half of them comes from Central and Eastern Europe and from Asia (particularly Thailand), Africa (particularly Kenya) and South-America.¹²

It is obvious that the number of foreign prostitutes has increased much in the Nordic countries. The number of prostitutes in Denmark is assessed to be about 8,000 and almost half of them are of foreign origin.¹³ In some previous surveys in Norway, the number of prostitutes is estimated to be about 2,500 and more than the half of them is assumed to have a foreign origin. According to an estimation made in 2007 the number of prostitutes in Norway is 2,600 and of them about 1,160 offer their services in the streets.

Information concerning the situation in Finland is even more uncertain. All available information is based on different types of estimates and the figures given vary a lot. No comprehensive estimations on the number of persons involved in prostitution is available, neither is research on the structure of prostitution in Finland. Earlier, prostitution was a rather unknown phenomenon in Finland, but in the beginning of the 1990ies an economic recession and increasing unemployment as well as the reconstruction of the economy in the former Soviet Union caused an increase in prostitution in Finland.

The number of prostitutes in Finland has been estimated to be as low as 1,000 to 2,000 or as high as 8,000. According to an assessment given in the

¹² Tråskman (2005) p. 74.

¹³ Greve (2005) p. 17.

preparatory works for the law criminalizing purchase of sexual services in 2005, about 500 foreign prostitutes coming from abroad were assumed to work in the capital area of Helsinki, and in addition to that an unknown number of prostitutes are supposed to work in other parts of Finland.¹⁴ According to another estimation presented on the same occasion, the total number of prostitutes in Finland is around 8,000, of which about half are of Finnish origin or live permanently in Finland. According to the police, 8,000-15,000 foreign women yearly visit Finland with the only purpose of selling sexual services. The main part of them are between 18 and 29 years of age and their state of origin is in general Russia, the Baltic States (particularly Estonia), Belarus and Ukraine.¹⁵

Information regarding the situation in Iceland is very limited. Prostitution is supposed to have changed considerably during recent years and has during a few years become more visible and more organized. It is estimated that the number of prostitutes coming from abroad is relatively big, and that a considerable part of the purchase of sexual services is carried out in connection with so called strip clubs.¹⁶

In the preparatory works for the law criminalizing purchase of sexual services of adults in 1999, the situation of prostitution in Sweden is described as, *inter alia*, follows:

[...] the extent of the prostitution is in Sweden in comparison with other European countries small. The share of Swedish men, who purchases sexual services, is also small in an international comparison. [...] According to an investigation there are approximately 2,500 women, who sell sexual services in Sweden. The number of women involved in street prostitution has been estimated to be about 650. Every woman is estimated to have 50 customers. This implies, that approximately 125,000 men purchase sexual services every year. The women, who are not involved in the street prostitution, can be found in the more invisible indoor prostitution, working in massage parlours, in the prostitution activities or activities linked to call-girl activities. [...] The number of women engaged in street prostitution has decreased, while the indoor prostitution is estimated to have a greater extent than earlier [...] Around half of the women abuses drugs or alcohol.¹⁷ (81).

There is no clear knowledge on how prostitution in Sweden has developed since the criminalization of purchase of a sexual service was introduced in 1999. The present state of affairs is disputed. No scientific research has been carried out on the effects of criminalizing purchase of sexual services. I will later in this article deal a little more in detail with this question.

It is not disputed that the prostitution in the Nordic States to a great extent is carried out as an organized (criminal) activity with foreign women involved. On the other hand, little agreement exists about how many of the prostitutes are victims of international trafficking in women. In Finland it has been observed,

14 Government Bill 221/2005 (Finland).

15 See also *Prostitution i Norden* (2008) pp. 17-18.

16 Bragadóttir (2005) p. 39.

17 Tråskman (2005) p. 81.

that especially the prostitutes coming from the immediate surroundings (Estonia and Russia) are independent and voluntary take the opportunity to gain an income, which in relative terms is much higher than the one they can usually earn, by selling sex during a short period of time.

A representative of the Finnish police has claimed, that the foreign prostitutes are fully aware of the nature of the labour they have to carry out and of the conditions linked to it. The prostitutes are, even if the promises of the pimps regarding the working conditions and the options for economic earnings described when engaging them in the business were false, fully aware of the fact that they visit Finland with the purpose to supply sexual services.

Similarly a representative of the Danish police has stated, that the main part of the known prostitutes coming from Eastern Europe work without a pimp or another backup person. “They have their passports in the hip pocket”, and they have really come to Denmark on their own free will and with the deliberate intention of earning fast money by selling sex. They often have a network of other women, who provide each other with mutual help and support. They are go-ahead entrepreneurs, who know what they want and what they do.¹⁸

But there are also other opinions and other understandings. In particular, criminalization of the purchase of sexual services in Finland in 2005 and in Norway in 2007 was justified with reference to the need of combating organized international compulsory prostitution.

4 The Criminalization of Purchase of Sexual Services of Adult Persons in Sweden, Finland and Norway – the Preparatory Works and the Debate

There is a great agreement on the necessity to combat prostitution and on the importance of support to the prostitutes, particularly by the use of social interventions and aid programs. However, there are no agreement on the question of which those acts, linked to the prostitution which shall be criminalized – with the exception of trafficking in persons for sexual purposes, procuring and the purchase of sexual services of a child under the age of 18. This means also that procuring and the purchase of a sexual service of a child are criminalized in one form or another in all the Nordic States. However, a further analysis of the provisions concerning these offences will not be carried out in this article. The focus is as mentioned on the criminalization of the purchase of sexual services of an adult.

4.1 Denmark

The Danish legislation is still grounded on a liberal view. The prostitution as such shall not be considered to be a criminal activity.¹⁹ The society shall respect that the prostitutes engage in prostitution – it is their choice and their lives. But

18 Greve (2005) p. 17.

19 Greve (2005) p. 9.

the prostitution is the outcome of and gives rise to social problems, which mainly can be solved through social political measures. What the society can – and shall do – is to give support to the possible endeavors of the prostitutes to set themselves free from prostitution. The same politics shall apply with respect to those who use the services of the prostitutes. Also this is permitted, but also these persons shall have support to find others solutions for their sexual needs and desires.

4.2 Sweden

The dominating view concerning the necessary amendments of the legislation for an effective combat of prostitution has already since long been different from that in Denmark. The purchase of sex was already dealt with in an official report presented in 1981 by a State committee (Prostitutionsutredningens betänkande, SOU 1981:87). The proposition in the report was to criminalize the occasional purchase of a sexual service of a person, who was addicted of narcotic drugs, but this proposal was never realized.

A new commission with a comprehensive assignment to examine the prostitution was established in 1993 and a new report was published in 1995 (1993-års prostitutionsutredning, SOU 1995:9 under the title “The Prostitution” (“Könshandeln”). The main proposal in this report was that both the purchase and the selling of sexual services, in other words both the acts committed of the customer and the provider (the prostitute), should be criminalized.

However, this proposal gave rise to severe criticism with respect to the criminalization of the behavior of the prostitute. It was stated that prostitution in the public debate is labeled as an offence explicitly directed against women (the victim aspect), and that it therefore was important that prostitution officially was labeled as an “act of violence against women”. The absolute main part of the prostitutes is women and therefore a criminalization of their act, the offering of sexual services, was contrary to the ideology on which the criminalization of purchase of sex shall be based. The criminalization should merely be seen as a social intervention with the aim to protect the weak part, the woman, against male oppression.²⁰

A criminalization of the purchase of sexual services of adults was realized through a law, which came into force in 1999. This criminalization was a part of a comprehensive “law package” with the united title “woman-peace” (“Kvinnofrid”). Other parts of the package were a revision of some of the provisions in the Penal Code on violations of the protection of individual peace, and a revision of the provision concerning rape, a revision of the provision concerning the crime of circumcision of women, with the new denomination of the crime, “female mutilation”, and finally provisions containing a very explicit prohibition of acts consisting of sexual insult in the working life.²¹

Thus the ideological basis for the criminalization of the purchase of sex in Sweden was very explicitly the reference to the victim perspective in combination with a feministic ideology. The criminalization shall prohibit

20 Träskman (2005) p. 75.

21 Träskman (2005) pp. 75-76.

women from being victims of male oppression in the form of purchase of sex; it shall contribute to a changed view on the relations between men and women, both in general and in relation to the sexual behavior, and thus also contribute to an increased equality between the two sexes. The criminalization shall give protection to the individual prostitute and at the same time contribute to a better public order. The environment, where prostitution takes place, was described as provoking criminality, due to the promiscuity of the involved persons and the misuse of alcohol and narcotic drugs, which often are connected to the purchase of sex.

There has been considerable attempts from the Swedish authorities to disseminate the Swedish opinion of the necessity to criminalize the purchase of sexual services by the use of a general criminalization to other States, and then especially to the other Nordic States. The Swedish efforts in that respect have also to a certain degree been successful.

4.3 Finland

In Finland a working group appointed by the Ministry of Justice presented 2003 a report with considerations about the criminalization of prostitution. The proposition in the report was that also purchase of a sexual service of an adult should be criminalized. It should in other words be a criminal act to get somebody to provide a sexual service with the use of a promise to compensate with money or other economical benefits. Also attempt to buy sex should be criminalized. The reasons given for the proposal referred to a large extent to the legislation in force in Sweden, and the reasons given in the Swedish preparatory works for the general criminalization of purchase of sex in the Swedish law. But the proposal of the working group was not unanimous: the proposal in a dissenting opinion was that the criminalization should be limited only to purchase of sexual services of a prostitute, who is the victim of procurement or of trafficking in women.

In a proposition (221/2005) given to the parliament in 2005 it was proposed, that purchase of sexual services should be criminalized. The proposal was largely identical with the Swedish criminalization. But the proposal was not approved in this general form by the parliament. The law which was passed was grounded on the opinion of the minority in the working group, which had presented its report two years earlier. The new criminalization (The Finnish Penal Code Chapter 20 article 8) comprehended only the case, when a person through the promise of or by making payment induces a person, who is subject of procurement or trafficking in persons to sexual intercourse or to another sexual act comparable to sexual intercourse. The new offence was given the denomination "abuse of a person who is subject of sex trade".

The decisive reasons behind the limited criminalization of purchase of sexual services in Finland were thus different from the general Swedish criminalization. It was indeed also in the Finnish preparatory works accented, that the aim of the criminalization was to achieve positive effects on a more general social level. It was stressed, that purchase of sexual services is blameworthy due to the many harmful effects connected to prostitution (reference to the requirement of public order and, to the perception, that prostitution has a crime generating effect). It

was also claimed, that the new criminalization will have influence on the sexual behavior in general and on the values and the attitudes. The criminalization will contribute to a decrease of the prostitution and it will promote the right of sexual self-determination, the social equality and the gender equality. But the criminalization will in addition impair the conditions for trafficking and procurement crimes. The Finnish criminalization of purchase of sex, and particularly the limitation of the criminalization to comprehend only cases where the prostitute is a victim of procurement or trafficking in persons, demonstrates clearly that the criminalization was understood as a remedy to combat organized crime. It shall be noticed, that this limitation of the criminalization has also been criticized in the general debate, mainly by representatives of the police. It has been claimed, that the limitation implies that the law is an empty gesture.

4.4 Norway

The debate in Norway concerning purchase of sex has had two distinctive phases. The first one begun in 2003, when a working group was appointed, with the commission to investigate the advantages and disadvantages of a criminalization of purchase of sexual services. The working group had explicitly the task to look on the experiences of the control of prostitution in the Netherlands, respectively in Sweden.

The working group presented its report, "Purchasing Sexual Services. Regulation and Experiences" in 2004. The main conclusion concerning the Swedish experiences of a criminalization of purchase of sexual services was the following: The working conditions for the prostitutes have due to the criminalization become poorer, and it has also become difficult to get sex buyers to report crimes of procurement and of crimes consisting of trafficking in persons, or to give testimony in cases concerning these crimes. The criminalization has all together had the effect, that it has been more difficult to investigate crimes consisting of suspected procurement or trafficking in persons. The inquiries and the investigations, which are carried out with respect to suspected cases of purchase of sexual services have not contributed to an increased rate of revealed or cleared up cases of trafficking in women and children. The criminalization of purchase of sex obstructs in addition the international legal cooperation.

It can, on the other hand, be assumed that the criminalization of purchase of sex deters some of the persons involved in the international trade with women; Sweden is not assessed as a good market. And the criminalization has also had a symbolic effect. It may be so that the criminalization has influenced on the attitudes to prostitution. Public surveys indicates, that about 80 % of the Swedish population gives its support to the criminalization. But as a means for an effective solution of a social problem has the criminalization not had any noticeable effect. It is doubtful whether the criminalization has contributed to an increase of prostitution. It is more likely, that the criminalization has influenced on the prostitution market in that respect, that the prostitution has changed form; the Swedish prostitution has become more hidden.²²

22 Tråskman (2005) pp. 69-70.

The result of the report was that the Norwegian government in 2004 decided that purchase of sexual services not should be criminalized. The Minister of Justice stated that the challenges of the prostitution must be solved by the use of social political means and not by the use of crime legislation. He emphasized that it seems to be so the Swedish criminalization of sex purchase of sex has affected the most weak prostitutes most roughly, and that can not have been the purpose of the new law.

The second phase embraces the period from 2007-2008. The question of a criminalization of sexual services was resumed by a new government. The three political parties in the government had before that (in 2007) made a political agreement with the content, that purchase of sexual services “should be criminalized”. The judgment was that no new investigation concerning the prostitution in Norway was needed. The government just elaborated a proposal for a complementary addition to the Norwegian Penal Code (section 202 a) concerning the purchase of sexual intercourse or another sexual act of a person aged 18 years or more. (The purchase of a sexual service of a child under the age of 18 was already criminalized.)

The reasons now expressed for the criminalization also of purchase of sexual services of adult persons was, that it was a necessary measure in order to combat the international trafficking in women. It was in the preparatory works stressed, that it is necessary to have a general criminalization in order to prohibit purchase of sex of victims of trafficking in persons. It was also stated, that a general prohibition will contribute to a decrease of the recruitment of new prostitution customers, and this will in turn prevent the constant growth of the prostitution market.

It was during the preparatory works also considered to limit the criminalization in the same way as in Finland to comprehend only the purchase of sex of a victim of trafficking in persons. This solution was rejected with the argument that such a criminalization would be almost completely impossible to handle in practice. It was stated that the individual sex buyer has no chance what so ever to distinguish between women who sell sex voluntarily and women who are victims of compulsive prostitution.

Thus the main argument in Norway for the criminalization of purchase of sex is explicitly, that it is a means for the combat of the international trafficking in women. This fact is strengthened by the observation, that the Norwegian criminalization, contrary to the Swedish and Finnish criminalization, also shall be applied on cases when a Norwegian citizen or a person with domicile in Norway purchases a sexual service abroad. The reason for this extensive jurisdiction is, that it is important that the provision also can be used in cases where a sex tourist benefits abroad of the possibility to buy sex of vulnerable women and children in “Non-Western” countries. The intent with the extensive jurisdiction is also to give a sharp warning reminding that the opinion of the Norwegian authorities is, that the purchase of sex is unacceptable totally irrespective of where it is done.

It shall be noticed, that the punishment of purchase of sexual services committed abroad, does not require that the act is punishable also according to the law where the offence was committed. There is no requirement of double

criminality. It is according to my opinion doubtful if the Norwegian legislation in this respect is in conformity with the substantive international law and its prohibition of interference in internal matters.

5 The Penal Provisions on Purchase of Sexual Services – Similarities and Differences

The most obvious difference between the three Nordic provisions on purchase of sexual services of adult persons is, that the Swedish and the Norwegian provisions are general, and the Finnish provision is limited to cases, where the prostitute is a victim of procurement or illicit trafficking in persons. An other difference is, that the Swedish and the Finnish provisions are territorially limited, and therefore applies only to offences committed in Sweden, respectively in Finland. The Norwegian provision is on the contrary universal and aimed for a universal jurisdiction. The offence, purchase of sexual services, is consequently in Sweden and in Finland considered to be an offence, where the protected interest is the public order. In Norway is purchase of sexual services an offence classed in the same category as other crimes, which have the aim to combat the international trade with women.

There are also other differences, but they are not so important. One difference concerns the definition of “a sexual service”, and then particularly the question of what the meaning of “sexual intercourse” or “other sexual act” is. In Sweden and in Finland the forbidden sexual service does not include acts even if they have a sexual character, when there is no physical (corporal) contact between the seller and the customer. It is not, for instance, a criminal act according to the Swedish or Finnish law, when a person by paying another person get the permission to masturbate, or to caress his or her body otherwise, in the presence of and under the observation of the seller, not either when the sex buyer get the prostitute to masturbate. The Norwegian provision is in this respect interpreted in a different way. A person, who by giving economic compensation for that, induces a prostitute to masturbate, or to commit an equal sexual act by the use of his or her own body in the presence of the buyer, commits an act, which is punishable according to the Norwegian provision.

The provisions on purchase of sex in Sweden, Finland and Norway are all gender equal. They apply to cases, when a man buys a sex of a woman, when a woman buys sex of a man, when a man buys sex of another man, as well as when a woman buys sex of another woman. But there is no doubt about the main purpose of the provisions: it is to punish cases, where the purchaser is a man and the seller a woman. However, it can be noticed, that there have been some cases in Sweden when a man has been convicted for the purchase of a homosexual service of another man.

Also attempt to buy sex is criminalized in all three States. The penalty scales for the offence is the same in all three countries, fines or at most six months imprisonment. The penalties used in practice are fines, in general between 30 and 60 day fines.

6 Evaluation

Which has the impact of the new criminalization of purchase of sexual services of adult persons been? It is possible to evaluate them from a perspective, which accentuates goal-rationality or from a value-rational perspective.

The criminalization of purchase of sexual services is obviously as a means for the solution of the social problems, which results from the prostitution, quite ineffective. In Sweden, where the criminalization now have been in force during 10 years, there is so far no certain information about the impact of the criminalization on the prostitution situation. There is no current information available concerning the prostitution market, the number of yearly incidents involving purchase of sex or the number of active prostitutes. It is still estimated, that there are about 2 500 prostitutes in Sweden, and that a great part of them are foreigners coming to Sweden for prostitution. However, it is probable, that the street prostitution has decreased and that the hidden prostitution has increased. Thus, the prostitution has changed in its forms and it has been more organized. The number of persons convicted for purchase of sex during the 10 years period the criminalization has been in force is not overwhelmingly big, all together about 1 000 persons. The punishments are, as earlier mentioned, in general fines.

But the Swedish criminalization of purchase of sex has been important, due to the ideological considerations, which the new legislation gives rise to. The criminalization is a clear expression of the importance of the victim perspective and the feministic ideology also for the criminal law. The criminalization has from a value-rational perspective been very important: the criminalization has as a legislation with the aim to function mainly as a symbol and in combination with attitude campaigns had positive effects.

The experiences from Finland and Norway are still limited. But the criminalization of purchase of sex has also in Finland been used in practice; some men, who had purchased sexual services of persons which they understood to be victims of sex trade were recently punished. This case demonstrates that the critic of the limited criminalization and the impossibility to use the criminalization in practice was exaggerated.²³

It is important to notice, that the condemning attitudes concerning prostitution have increased among the population in general in all the Nordic countries. This is also true in the case of Denmark, even if there is no general criminalization of purchase of sex so far in Denmark. However, it is astonishing that according to public surveys the number of men both in Denmark and in Sweden, who inform that the sometimes have purchased sex is 14 %. This despite of the fact, that this kind of behavior in the Swedish debate is labeled as much more reprehensible than in the Danish public debate.

²³ See also Niemi (2009) pp. 56-58.

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