

‘Love is in the Air’

Exploring recruitment into prostitution by abuse of a position of vulnerability as human trafficking

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1. Introduction

The first criminalisation in 2002 of human trafficking in the Swedish Criminal Code was narrowly formulated to only encompass sexual exploitation. The legislation was revised already in 2004 to cover additional forms of exploitation beyond sexual exploitation, as well as trafficking that is entirely domestic (where both victim and perpetrator are nationals), thus lacking any international connection.¹ Several countries have successfully prosecuted domestic trafficking, such as Canada,² Finland,³ the Unit-

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¹ Prop. (2003/04:111) *Ett utvidgat straffansvar för människohandel*, p. 48.

² R v Byron, 2013 ONSC 6427; R v Urizar, 2013 OCCA 46; R v AA, 2015 ONCA 558. of Canadian human trafficking cases between 2005-2019, 559 of 581 cases were domestic cases. See: <http://web.archive.org/web/20190901021522/http://www.rcmp-rcmp-grc.ca/ht-tp/index-eng.htm>. All internet resources accessed on the 12 April 2021.

³ Finnish National Rapporteur on Trafficking in Human Beings. Report (2014) Helsinki: Minoritetsombudsmannen (2014) pp. 74-75.

ed Kingdom⁴ and the Netherlands.⁵ Several of those cases illustrate one of the well-known ways in which persons are recruited into both international and national trafficking for sexual exploitation: By first establishing a romantic bond with the victim.⁶ Statistics from several European countries show that a large number of human trafficking victims are nationals.⁷ One third of the identified victims in Dutch convictions for human trafficking between 2009-2012 were nationals.⁸ Sweden, however, has only seen three prosecutions since 2004 for national trafficking, all of which concerned trafficking for sexual exploitation.⁹ The defendants in the two prostitution cases were convicted of procuring, not human trafficking.¹⁰

Why have there been no convictions for entirely national human trafficking in Sweden despite the legislative change of 2004 making this possible and despite the common existence of such convictions in other countries? One explanation could be that national trafficking is very rare in Sweden. Available cases, however, do not support that conclusion. An alternative explanation could be that Swedish courts do not find

⁴ R v Connors 2013 EWCA Crim 324.

⁵ National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (Dutch NR), *Trafficking in Human Beings. Case law on trafficking on human beings 2009-2012. An analysis*. The Hague (2012) p. 130.

⁶ The perpetrators are sometimes referred to as 'loverboys'. Dutch NR (2012), *Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis*. The Hague (2012) pp. 89-90. See also the Dutch report to GRETA: Comprehensive Action Plan on the Issue of 'Loverboys', Action Plan 2011-2014, Government of the Netherlands. 2011. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063219d>. See references to Canadian cases (ftn 2). Summaries of additional Canadian trafficking cases involving loverboy techniques, for example R v C R Hutchinson (2013-12-03) and R v Burton (2014-05-22), can be accessed on UNODC's case-law database: <https://sherloc.unodc.org/cld/v3/sherloc/>. See also UNODC's Global Report on Trafficking in Persons 2020, p. 44. https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

⁷ National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (Dutch NR). *Victims of Human Trafficking: Periodical Report 2012-2016*. The Hague: 2018. Summary, 5-7; England & Wales: National Crime Agency (2019). National Referral Mechanism Statistics 2018. <https://nationalcrimeagency.gov.uk/who-we-are/publications/282-national-referral-mechanism-statistics-end-of-year-summary-2018/file>. According to UNODC's Global Report on Trafficking in Persons 2018, 23 per cent human trafficking victims in Western and Southern Europe in 2016 were nationals see https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf. Accessed on 3 October 2019.

⁸ Dutch NR (2012), *Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis*. The Hague (2012) p. 130.

⁹ Svea Court of Appeal, judgment in case no. B 5886-08 (2008-10-29); Skåne and Blekinge Court of Appeal, judgment in case no. B 2917-10 (2011-02-18); Svea Court of Appeal, judgment in case no. B8989-19 (2019-10-16).

¹⁰ The 2019 case concerned a child who was transported to a remote place to be sexually exploited. The defendant accused of human trafficking was convicted of accessory (*medhjälp*) to rape of a child.

that one of the most common recruitment methods into sexual exploitation, which is the one commonly used also in the national context, fulfils the ‘means’ element of the crime of human trafficking. Perhaps more generally recognising this method of recruitment as common and fulfilling one of the crime’s elements would lead to more convictions in Sweden not only for international human trafficking, but also for domestic trafficking.

This article examines one of the ‘means’ element of the crime of human trafficking, with respect to the Swedish and international definition of the crime: ‘abuse of a position of vulnerability’, which exists in both the Swedish and international definitions. Within this context, the ‘loverboy’ and similar methods of recruitment for the purpose of sexual exploitation are reviewed to determine whether such methods could or should qualify as ‘abuse of a position of vulnerability’ for the purpose of human trafficking.

Prosecutions for human trafficking and for procurement are studied to identify cases where Swedish courts have examined the ‘loverboy’ methods. This article reviews human trafficking cases between 2002-2017 where there was an abuse of an emotional bond to recruit into, or harbour someone, in prostitution. This article also examines procuring and gross procuring cases tried by appellate courts (courts of appeal), in a shorter time frame of 2010- 2016,¹¹ to see whether there are cases where the defendant and the crime victim had an emotional bond in the form of a ‘romantic’ relationship. A few additional cases where the emotional bond was not romantic have also been included.

2. The crime of human trafficking and the element of ‘means’

The modern global definition of human trafficking was agreed upon in the 2000 United Nations Office on Drugs and Crime (UNODC) Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime (The Palermo Protocol).¹² The crime as defined in Article 3 consists of three main elements: (1) an

¹¹ The cases that constitute the primary materials for the study are limited to cases up until 2017, in accordance with the ethical permit granted for the research, which formed part of the research project *Människohandelns många ansikten: Ett brottsofferperspektiv på människohandelns variationer* (2015-2017) funded by the Swedish Crime Victim Compensation and Support Authority (Brottsoffermyndigheten). Some materials, though not the primary materials, have been updated to respond to the publishing delay.

¹² The United Nations Office on Drugs and Crime (UNODC) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (The Palermo Protocol), 2237 *United Nations Treaty Series (UNTS)* 319. The Treaty has 178 parties and entered into force for Sweden on 1 July, 2004.

‘action’ is taken, (2) by use of a ‘means’, (3) for the ‘purpose of exploitation.’¹³ The Article reads:

- (a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat 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, for the purpose of exploitation. Exploitation 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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;’

European standards have followed the definition closely, but have added supplementary requirements, such as stronger victim protection.¹⁴ The Swedish offence also follows the Palermo Protocol closely, with some differences.¹⁵

The element of ‘means’ in the international definition of human trafficking is closely connected to the issue of the victim’s freedom. Various ‘means’, such as force and decep

¹³ The special rule regarding children in Article 3c is not dealt with here.

¹⁴ The Council of Europe Convention on Action against Trafficking in Human Beings (2005) *CETS* 197; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (EU’s Human Trafficking Directive).

¹⁵ The following is the most recent formulation of the human trafficking crime in Sweden’s Criminal Code, ch. 4:1a, section 1 (sections 2-3 are not included below):

A person who, in cases other than those referred to in Section 1, by:

1. unlawful coercion;
 2. deception;
 3. abuse of another person’s vulnerable position that severely restricts that person’s alternatives;
- or

4. other such improper means that severely restrict that person’s alternatives, recruits, transports, transfers, harbours or receives a person with the purpose that that person be exploited for sexual purposes, the removal of organs, military service, forced labour or some other activity in a situation that involves distress for that person is guilty of trafficking human beings and is sentenced to imprisonment for at least two and at most ten years. (Author’s revision of a translation available at <https://www.government.se/4a8349/contentassets/7a2dcae0787e465e9a2431554b5eab03/the-swedish-criminal-code.pdf> 2021-02-25).

tion, constitute different forms of coercion.¹⁶ Where a ‘means’ has been used against a victim, and where it was this ‘means’ that allowed the perpetrator to take the action for the purpose of exploitation,¹⁷ it follows that the victim did not freely consent, either to the action taken or to the intended exploitation.¹⁸ When a ‘means’ has been used to effect an action, any possible ‘consent’ on the victim’s part is invalid. Thus, it has no legal or exculpatory effect and cannot be used as a defense. The ‘means’ are connected to the very nature of the crime of human trafficking as a violation of the freedom and dignity of the victim.

All global and regional obligations that specifically regulate human trafficking refer to similar types of ‘means’ in their respective definitions of human trafficking: ‘means’ involving force, deception, or abuse of a position of vulnerability. The Palermo Protocol lists the following ‘means’:

‘[T]he threat or use of force or other forms of coercion, [...] abduction, [...] fraud, [...] deception, [...] the abuse of power or of a position of vulnerability or [...] the giving or receiving of payments or benefits to achieve the consent of a person having control over another person [...]’.¹⁹

The exact same wording of the Palermo Protocol identifies the ‘means’ in the European standards: the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (COE Human Trafficking Convention),²⁰ and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (EU’s Human Trafficking Directive).

The three texts require State Parties to criminalise the ‘abuse of a position of vulnerability’ as one of the ‘means’ of human trafficking. The EU’s Human Trafficking Directive is, however, the only standard that defines this ‘means’ explicitly in the text: ‘A

¹⁶ UNODC, Issue Paper: Abuse of a position of vulnerability and other means within the definition of trafficking in persons 2012, fn 25 p 17. https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf.

¹⁷ Whereby a person is recruited, transported, transferred, received, or harbored for the purpose that they be exploited.

¹⁸ See UNODC, Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Part 2, para 37. https://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf.

¹⁹ The Palermo Protocol, Art 3(a).

²⁰ The Council of Europe Convention on Action against Trafficking in Human Beings (2005) *CETS* 197, Art. 4(a).

position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.²¹

The qualification in the Directive is taken directly from the Palermo Protocol's preparatory works.²² It is also included in the 'Explanatory Report on the European Trafficking Convention' to the 2005 COE Human Trafficking Convention.²³ This report develops most fully the 'means' of 'abuse of a position of vulnerability':

83. 'By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.

84. A wide range of means, therefore has to be contemplated: abduction of women for sexual exploitation, enticement of children for use in paedophile or prostitution rings, violence by pimps to keep prostitutes under their thumb, taking advantage of an adolescent's or adult's vulnerability, whether or not resulting from sexual assault, or abusing the economic insecurity or poverty of an adult hoping to better their own and their family's lot. However, these various cases reflect differences of degree rather than any difference in the nature of the phenomenon, which in each case can be classed as trafficking and is based on use of such methods.'

The United Nations Office of Drugs and Crime (UNODC) published a paper on the 'means' element of human trafficking in 2012.²⁴ It noted that the 'means' of 'abuse of a position of vulnerability' was meant to capture all the subtle means through which per-

²¹ The EU's Human Trafficking Directive, Art 2(1).

²² See the interpretative notes for the official records, A/55/383/Add.1, para 63: 'the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.'

²³ Explanatory Report on the European Trafficking Convention, *Council of Europe Treaty Series (CETS)* 197, para 83.

²⁴ UNODC, Issue Paper: *Abuse of a position of vulnerability and other means within the definition of trafficking in persons* (ftn 16).

sons are recruited, transported or harboured for the purpose of exploitation.²⁵ The concept's ambiguity and open-ended nature made possible the emergence of general agreement on the trafficking definition in the negotiations leading up to the Palermo Protocol. It allowed a range of exploitative practices to be included as 'means'; even those practices that all parties might not agree were clearly coercive.²⁶ Thus states could continue to follow their own approaches to prostitution without conceding ground to opposing positions.

The author of the UNODC paper, Professor Anne Gallagher, concluded that it was not clear how the 'means' of 'abuse of a position of vulnerability' should be applied, but that it should be used with caution in human trafficking prosecutions:

"Trafficking is an extremely serious crime carrying severe penalties: it is appropriate that proving a charge of trafficking is not made easy. In addition, trafficking convictions should be strictly for trafficking crimes: the definition should not lend support to prosecutions for conduct that falls short of what is generally agreed to constitute "trafficking". To do so runs the risk of denaturing and reducing the seriousness of this offence."²⁷

Whose general agreement should be carefully considered, or what aspect of trafficking is intended, is unclear. One interpretation is that what is 'generally agreed' would be something other than the express elements contained in the crime of human trafficking. Otherwise, it would be enough to simply stress that all elements of the crime as defined in the Palermo Protocol should be applied. How this 'generally agreed' understanding should be approached in national practice is also unclear. National courts must apply the formulated elements of each crime and not apply a standard that diverges from the criminal legislation itself – neither a higher nor a lower standard. Gallagher's position is perhaps best understood as a call for a generally restrictive interpretation and application of the Palermo definition of human trafficking.²⁸ This leaves open the question of whether this call for caution undermines the drafters' aim to encompass common subtle means of exploitation.

²⁵ *Ibid.* pp. 18, 25.

²⁶ *Ibid.*

²⁷ *Ibid.* p. 6.

²⁸ For a general call involving a restrictive approach, see Chung, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 *American Journal of International Law* 4 (2014) pp. 609-649.

3. The requirement of lack of choice and submitting to the ‘Abuse of the Vulnerable Position’

Under the global and regional standards, for the ‘means’ of ‘abuse of a position of vulnerability’ to be fulfilled before a national court, the victim of the abuse should have been vulnerable to one of the actions taken against them (e.g. recruitment, transport, harbouring). Causality is thus required. In other words, the ‘action’ must only have been possible to take by use of the ‘means’. The victim’s vulnerability can pre-exist or can be created by the perpetrator and then abused.

The common qualifier of ‘abuse of a position of vulnerability’ is that the victim lacks a ‘real’ and/or ‘acceptable alternative’ to submitting to the abuse of their vulnerability.²⁹ Though the ‘means’ of ‘abuse of a position of vulnerability’ was intended to encompass the lowest and most subtle levels of coercion, it must still be shown that the victim did not willingly accept the actions intended to make the victim’s exploitation possible. There is, however, no further explanation as to what a ‘real’ and/or ‘acceptable alternative’ involves. Discussions have focused on whether there should be an objective or subjective determination of the real or acceptable choice.³⁰ For the purpose of prosecution, a prosecutor would have to show that the perpetrator was aware of the vulnerability, and abused it, to be able to either recruit, transport or harbour the victim.

The term used is ‘abuse’, and not ‘exploitation’ of the position of vulnerability. The lack of a clear and/or acceptable alternative for the victim refers to the victim’s options in relation to the ‘action’ taken to place the victim in a situation of intended exploitation – recruitment, transport or harbouring. It does not refer to a lack of alternative to the exploitation itself.³¹ This is the only possible interpretation, as proving that there was actual exploitation is not required for the crime to be fulfilled; only that the three elements of human trafficking are met. Therefore, requiring that the victim lack an

²⁹ Interpretative notes for the official records (The Palermo Protocol), A/55/383/Add.1, para. 63 use ‘and’; ‘Explanatory Report on the European Trafficking Convention’, *Council of Europe Treaty Series (CETS) 197*, para. 83 uses ‘and’; the EU’s Human Trafficking Directive, art. 2(1) uses ‘or’.

³⁰ UNODC, Issue Paper (ftn 16), pp. 20-24.

³¹ The Swedish translation of the EU’s Human Trafficking Directive mistakenly interchanged the terms and states that the person should lack a real or acceptable alternative to the exploitation itself. The Directive: ‘abuse of a position of vulnerability’ (*missbruk av en persons utsatta situation*). Section 2: ‘A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the *abuse* involved’ is instead translated in the following: ‘Med en utsatt situation avses en situation där den berörda personen inte har något verkligt eller godtagbart alternativ till att underkasta sig *utnyttjandet*.’ This is the term used for exploitation in the English version. The ‘Explanatory Report on the European Trafficking Convention’, *CETS 197*, para 83, makes a similar conflation: ‘In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited.’

alternative not only to the ‘action’ element, but also the exploitation itself, would be problematic.³²

4. The ‘Means’ in Swedish legislation and preparatory works

The Swedish crime of human trafficking was first introduced in 2002 and built on the key elements of the Palermo Protocol definition.³³ It required the victim to cross an international border, but it only covered sexual exploitation. In 2004 the crime was revised and expanded to include additional forms of exploitation, beyond sexual exploitation. Simultaneously, the element of crossing an international border was removed, allowing for entirely national trafficking to also be criminalised.³⁴ Now the door was open to prosecuting domestic trafficking.

This 2004 revision also introduced ‘abuse of a position of vulnerability’ as one of the ‘means’ in the national definition of human trafficking, in line with the Palermo Protocol. Until then, reference had only been made to a general ‘means’ called ‘other such unlawful means’,³⁵ distinct from the use of force and deception. This general ‘means’ had nevertheless been understood to encompass ‘abuse of a position of vulnerability’ and other means.³⁶ How was ‘abuse of a position of vulnerability’ understood? Examples given in the 2001 Swedish preparatory works to the first criminalisation of trafficking of a ‘vulnerable position’ included: persons in a debt or employment relationship with the perpetrator; persons living under economically difficult circumstances; refugees; and persons suffering from an intellectual disability or a disease.³⁷ The preparatory works also stated that a lack of real or acceptable choice regarding the abuse of vulnerability was always required for criminal responsibility.³⁸ After the 2004 revision, the crime of human trafficking was revised two additional times – in 2010 and 2018 –³⁹ but ‘abuse of a position of vulnerability’ has remained one of the ‘means’ elements of human trafficking.

³² If authorities are able to stop an intended exploitation after the three elements have been fulfilled, but before the exploitation has been commenced, the suspect should be prosecuted for human trafficking, not for attempt.

³³ Swedish collection of laws (SFS) 2002:436. For a description of the first three revisions of the crime, see Johansson, *Människohandelsbrottets decennielånga metamorfos: En studie i oklarheter och motsägelser*, 4 *Juridisk tidskrift* (2013-14) pp. 829-863.

³⁴ SFS 2004:406.

³⁵ SFS 2002:436.

³⁶ Prop. (2003/04:111) *Ett utvidgat straffansvar för människohandel*, pp. 58-59.

³⁷ Prop. (2001/02:124) *Straffansvaret för människohandel*, pp. 24-25.

³⁸ *Ibid.* This element was codified in the crime itself with the revision of 2018.

³⁹ SFS 2010:371 and 2018:601.

One of the reasons given for the Swedish Law Council's suggestion in 2003 to specify 'abuse of a vulnerable position' as a separate 'means' in the crime itself, a change that was implemented in the 2004 revision, was that 'abuse of a vulnerable position' was a common 'means' of trafficking in persons.⁴⁰ Despite the inclusion of the 'means' and several legislation re-drafts, Sweden still has seen very few prosecutions of and convictions in general for human trafficking.⁴¹ And as already mentioned, there has never been any conviction at all for purely national trafficking. There could be several possible reasons for this. Many discussions have focused on the additional, unregulated standard of 'mastery' of a victim required by the courts – a nod to Gallagher's 'generally agreed understanding of human trafficking.'⁴² The following section instead examines whether a lack of understanding of the abuse of emotional bonds as a form of 'abuse of a position of vulnerability' plays a role. If this is one of the main ways in which trafficking is committed in entirely national contexts – through 'recruitment' by 'abuse of a vulnerable position' for the 'purpose of sexual exploitation' – and if the main recruitment method is not understood by Swedish courts as fulfilling the means element of the crime of human trafficking – then it is understandable why there would be few prosecutions and no convictions for domestic human trafficking.

5. Recruitment by use of emotional means for the purpose of sexual exploitation

The inclusion of the 'means' of 'abuse of a position of vulnerability' in the Palermo Protocol and other instruments was intended to encompass subtler forms of coercion for the purposes of individual responsibility and to allow states to handle prostitution in line with their own policies. There is therefore scope to consider whether the abuse of emotional bonds to recruit a person into prostitution and maintain them in it could qualify as an 'abuse of a position of vulnerability'.

There is support for the position that abuse of emotional vulnerabilities qualifies as 'abuse of a vulnerable position'. The 'Explanatory Report on the European Trafficking Convention' to the 2005 COE Human Trafficking Convention refers to physical, psychological, emotional, family-related, social and economic vulnerabilities. It also gives examples of abuses of vulnerabilities, such as 'violence by pimps to keep prostitutes

⁴⁰ Prop. (2003/04:111) p. 59.

⁴¹ Johansson, På spaning efter det offer som ej flytt: Bemästrande av människohandelsoffer och viljans inverkan på lagföringen, 104 *Nordisk tidskrift for Kriminalvidenskap* 1 (2017) pp. 1-27.

⁴² See the inquiry report SOU (2016:70) *Ett starkt straffrättsligt skydd mot människohandel och annat utnyttjande av utsatta personer*. Stockholm: 2016. <https://www.regeringen.se/4aa976/contentassets/2d1bc398fdf44b769b1d0c5b30d4a436/ett-starkt-straffrattsligt-skydd-mot-manniskohandel-och-annat-utnyttjande-av-utsatta-personer-sou-2016-70.pdf> and Johansson 2013-14.

under their thumb, [or] taking advantage of an adolescent's or adult's vulnerability, whether or not resulting from sexual assault'.⁴³ The UNODC Model Law refers to 'psychological pressure' as another example of 'abuse of a vulnerable position'.⁴⁴

6. Swedish cases on international and national trafficking

A number of Swedish cases include evidence of abuse of a position of vulnerability to recruit persons into prostitution. Some cases have international connections, while others only involve nationals. Most cases involve abuse of emotional vulnerabilities; some involve abuse of other vulnerabilities, such as intellectual or economic vulnerabilities, or abuse of multiple vulnerabilities. A few defendants have been prosecuted for human trafficking, but most have not. The absolute majority of the prosecutions for human trafficking that concern recruitment by abuse of a vulnerable position into prostitution are cases that have international components. In contrast, the national cases are more often prosecuted for and convicted of procuring prostitution. Most cases – both the international and national – evidence recruitment methods by which the victims are, first, drawn in by a longing for intimacy, and then the process whereby manipulation and, sometimes, violence, erode these individuals' resistance and earlier protection mechanisms. Should this kind of process qualify as 'abuse of a position of vulnerability'?

6.1. Prosecutions for human trafficking

In an early human trafficking case from 2005 (Case A), a district court (first instance court) examined the activities of a prostitution ring, in which one of the defendants – its leader – had brought several girls of a vulnerable minority to Sweden.⁴⁵ These included a former girl friend and current girlfriend of the leader. The current girlfriend, who had not turned 18 when the trafficking took place, recounted how the much older defendant started a relationship with her when she was between 12 and 13 years old. He was initially kind, but began beating her after a few months. Her family lived in difficult circumstances. While she was afraid of the defendant, he sought her out regularly over a three-year-period in which he travelled back and forth between her home country and Sweden. The case differs slightly from ordinary 'loverboy' cases where the victim is an adult: Here, for example, the victim recounted that her mother had agreed that the defendant could do what he wished with her on the condition that

⁴³ Explanatory Report on the European Trafficking Convention, *Council of Europe Treaty Series (CETS)* 197, para. 83-84.

⁴⁴ UNODC, *Model Law against Trafficking in Persons* (UN publication, Sales No. E.09.V.11), 11. https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf.

⁴⁵ Helsingborg District Court (court of first instance), judgment in case no. B 1230-05 (2005-09-22).

he bought the mother a house. The defendant sent the victim money for a passport and told her to come to Sweden to work and pay off the money he had given her. She said that she felt very alone, tired and sad.⁴⁶ The court found that the difference in age between the victim and the defendant, their intimate relationship, her circumstances in the home country and lack of money meant she depended on the defendant.⁴⁷ The defendant was convicted of human trafficking, which was upheld by the court of appeal.⁴⁸

Another case (Case B) was brought for human trafficking in 2007. An 18-year-old woman who had just arrived in Sweden as an au-pair recounted that she had felt lonely and started an online relationship with a compatriot. They met and started a relationship. Shortly after, the man suggested that she could make money through sexual services. The victim explained to the court that she did not want to, as she already had work and money, but that the defendant convinced her that this was the only way he would continue to meet her. She accepted as she had 'strong feelings' for him and 'so very much wanted to be together with' him.⁴⁹ The court did not find credible her account that she began selling sex because she was in love with the defendant.⁵⁰ It is nevertheless clear that the defendant had recruited her for sexual exploitation, even though the court was not convinced that her vulnerability had been abused to make this possible. The defendant was convicted of procuring.

Another prosecution for human trafficking was brought two years later (Case C). The case reads like a 'loverboy' instruction manual: a district court examined the responsibility for human trafficking of a young Romanian woman who had been recruited into prostitution by a man she considered her boyfriend.⁵¹ The woman recounted how the defendant had charmed her and offered her love and affection at a time when she was emotionally vulnerable. After a trip together to Sweden, he challenged her to show that she was a 'strong' person by trying out the escort business that he said he ran as a hobby. She was directed to read some ads to customers who called in, for which she was later given €10 000. When she returned to Romania, the defendant asked for €9 000 as a loan due to a supposed burglary. She never received the money back. The defendant offered her to return to Sweden with him on the condition that she 'obeyed him blindly' as he did not want to be 'embarrassed'. After many discussions, she finally agreed to prostitute herself. Upon arrival in Sweden the defendant's behaviour changed. The victim and the other women he prostituted were strictly controlled; only given pocket money despite the vast sums of money coming in from the prostitution;

⁴⁶ *Ibid.* p. 49.

⁴⁷ *Ibid.* p. 62.

⁴⁸ *Ibid.* See also Skåne and Blekinge Court of Appeal, judgment in case no. B 2429-05 (2006-01-11).

⁴⁹ Göteborg District Court, judgment in case no. B 123-08-06 (2007-06-21) pp. 57, 59.

⁵⁰ *Ibid.* p. 88.

⁵¹ Södertörns District Court, judgment in case no B 6181-08 (2009-02-09); Svea Court of Appeal (appellate court) judgment in case no. B 1789-09 (2009-04-28).

and given a script in the event that police would question them. The victim held her own identity papers but did not have enough money to leave. She added that she felt under the defendant's 'power', lacked her own will, was depressed and often considered acting upon the defendant's instructions to kill herself if she did not understand and accept that he only wanted what was best for her and that he loved her.

Courts at both instances found that the young woman had entered into prostitution as a result of the defendant's 'manipulative emotional influence and mental pressure', and that this was probably also the case for the other young women he prostituted. The courts concluded that the prostitution therefore was not voluntary, and that the women had been subjected to a 'relatively strong level of control'. However, they reasoned that as the women were not forced, nor their vulnerable situation 'callously'⁵² abused, the crime of human trafficking had not occurred. This misapplied the law: that it was not enough to be recruited for the purpose of exploitation by abuse of a position of vulnerability, as the level of control of a victim had to be absolute.⁵³ The courts' findings should be partly understood in light of the Swedish legislation of 2004-2010 which not only required that a 'means' be proven, but also that the victim be 'controlled' by the perpetrator.⁵⁴

In a rare case where a prosecution was brought for entirely national trafficking (Case D), a 44-year-old man was prosecuted in 2008 for human trafficking of a 15-year-old girl with a mild intellectual disability.⁵⁵ He had begun a relationship with her when she was 12 years old, and they had become engaged when she was 14.⁵⁶ Both the district court and the court of appeal accepted that he had convinced her to prostitute herself a few months after she had moved into his apartment. She had no prior experience of prostitution and all the proceeds were given to the defendant who also controlled her bank card. Both courts accepted that the defendant was aware of the victim's intellectual disability and that she had been recruited into sexual exploitation. They found that the victim was completely dependent on the defendant, emotionally, socially and economically and thus in a vulnerable position,⁵⁷ which the defendant must have been aware

⁵² *Hänsynslöst.*

⁵³ This is an example of courts placing a self-constructed threshold of what is sufficient evidence of the kind of 'control' that the law (between 2004-2010) required in order for trafficking to have occurred.

⁵⁴ This element of the crime was removed in 2010. For an overview of the Swedish legislation and practice, see Johansson 2013-14.

⁵⁵ Attunda District Court, judgment in case no. B 886-07 (2008-07-11); Svea Court of Appeal, judgment in case no B 5886-08 (2008-10-29).

⁵⁶ The respondent was also prosecuted for rape of a child, but neither court found that the evidence was sufficient for a conviction on this count.

⁵⁷ Unfortunately, both courts seem unaware that the requirement of a means (such as abuse of a vulnerable position) did not apply in cases of children (individuals under 18 years of age). All that needed to be proven was that an action, such as recruitment, was taken for the purpose of exploitation. See Article 3(c) of the Palermo Protocol and the Swedish Criminal Code ch. 4:1a.

of.⁵⁸ The district court referred to examples from the legislative preparative works of a vulnerable position: Persons in a debt or employment relationship with the perpetrator or who suffer from an intellectual disability or sickness.⁵⁹ Thus the court found that her vulnerable position had been abused. This could have been the first conviction for human trafficking in an entirely national context, and the court accepted that the victim's vulnerability was abused, though the abuse was not only emotional. Nevertheless, in the end the defendant was convicted of gross procurement due to the court's application of the element of 'action', thus unrelated to the issue of 'abuse of a vulnerable position'.⁶⁰

The next international case of human trafficking involving abuse of an emotional bond was brought in 2016.⁶¹ The case concerned organised prostitution; one of the prosecution charges concerned human trafficking. Courts at both instances accepted that the young woman believed that the man who had recruited her was her boyfriend, and that he abused her emotional bond to him. With regard to the victim being harboured in Sweden, the court of appeal noted that the defendant's pressure on her increased over time, becoming more and more abusive.⁶² The court concluded, however, that it was not satisfied that the victim had no other option but to accept the exploitation.⁶³ It added that this conclusion was supported by the fact that she was not subject to any physical restrictions. Both courts accepted that the defendant abused the victim's belief that the money she earned and handed over to the defendant would be used for their future together. The courts, however, observed that when the victim at one time returned to Sweden, on the defendant's request, to prostitute herself, she had not done so because she felt forced to return, but because the defendant was in need of money after spending it all. She said that she felt sorry for him.⁶⁴ She explained that the defendant was very manipulative. The courts nevertheless concluded that her statement that she did not feel forced meant that no 'means' had been used against her

⁵⁸ Attunda District Court, judgment in case no. B 886-07 (2008-07-11), p. 56; Svea Court of Appeal, judgment in case no. B 5886-08 (2008-10-29) pp. 17-18.

⁵⁹ Prop. (2001/02:124) pp. 34-35.

⁶⁰ The conviction for gross procurement instead of human trafficking was due to a misunderstanding of the crime itself: that the element of 'action' can only occur in a certain order. Both levels of the court required that the 'recruitment' into prostitution *precede* the 'harbouring'. Since the courts were not convinced that the defendant had the direct intention to sexually exploit her already when she moved into the apartment, their conclusion was that the criteria of human trafficking were not met. The conclusion was incorrect, as it is enough that one action is taken, such as recruitment, whether this is preceded or followed by another action, such as harbouring. It would have been reasonable to find that her housing situation created a stronger vulnerability, as she depended on the defendant for housing, which facilitated the girl's recruitment into prostitution.

⁶¹ Stockholm District Court, judgment in case no B 2804-16 (2016-11-11) p. 37; Svea Court of Appeal, judgment in case no B 10573-16 (2017-03-14).

⁶² Svea Court of Appeal, judgment in case no B 10573-16 (2017-03-14) p. 10.

⁶³ *Ibid.*

⁶⁴ Stockholm District Court, judgment in case no B 2804-16 (2016-11-11) p. 37; Svea Court of Appeal, judgment in case no B 10573-16 (2017-03-14) p. 10.

to get her to return and prostitute herself. Both courts concluded that the victim had not been under sufficient control to constitute human trafficking, although she had been recruited, transported and harboured, as well as deceived and her vulnerability abused. The defendant was nevertheless found responsible for gross procurement on the basis that his actions were ‘human trafficking-like’ in his abuse of her emotions and confidence in him.⁶⁵

The courts have thus been hesitant to find that recruitment into prostitution through abuse of emotional bonds constitutes ‘abuse of a position of vulnerability’. There are two recent Swedish cases – both with international character – in which the courts convicted the defendants for human trafficking by recruitment into prostitution through use of a romantic relationship.⁶⁶ In the first case, however, though the courts found that the victim had been recruited by being led to believe that she was in a romantic relationship with the defendant,⁶⁷ it was one of many components of the trafficking. The defendants were convicted of having used force, deception and abuse of a position of vulnerability to recruit, transport and house her, and the court did not specify which means the romantic relationship related to.⁶⁸ In the second case, the court’s finding was that because of the victim’s vulnerability, she was deceived about the relationship, and thus that the ‘means’ fulfilled was ‘deception’ rather than ‘abuse of a position of vulnerability’.⁶⁹ Thus it was not clear in either case that abusing emotional bonds constitutes ‘abuse of a position of vulnerability’.

6.2. Prosecutions for procurement

Several national cases where the charges were procurement exhibit very similar circumstances to trafficking cases. As shown below, a number of cases involve both abuse of emotional and intellectual vulnerability.

In a domestic case from 2008 (Case E), an 18-year-old girl with an intellectual disability recounted that she had only had one sexual relationship prior to meeting a 30-year old man through a friend. She liked him very much, and they began a relationship during which she often stayed at his place. Shortly after the relationship began, the

⁶⁵ Svea Court of Appeal, judgment in case no B 10573-16 (2017-03-14) p. 12.

⁶⁶ Uppsala District Court, judgment in case no. B 4530-18 (2019-04-26) pp. 57-60; upheld on appeal. Svea Court of Appeal, judgment in case no. B 4045-20 (2020-06-08) pp. 9-11.

⁶⁷ ‘... the district court has no doubt that [the defendants] had a common criminal plan that aimed to have [one of the defendants] convince [the victim] that they had a romantic relationship in order to be able to recruit her with the purpose of sexually exploiting her in Sweden.’ Uppsala District Court, judgment in case no. B 4530-18 (2019-04-26) p. 57.

⁶⁸ Uppsala District Court, judgment in case no. B 4530-18 (2019-04-26) pp. 57-60; Svea Court of Appeal, judgment in case B 5624-19 (2019-07-15).

⁶⁹ Svea Court of Appeal, judgment in case no. B 4045-20 (2020-06-08) pp. 9-11.

defendant showed her how to search for sex contacts online, he posted pictures online of their sexual organs and set up meetings with other men during which she had sex with them. The defendant kept the proceeds, but sometimes took her out to dinner and topped up her phone card. She explained that she did not really want to have sex with these men, but did it to make the defendant happy.⁷⁰ The defendant was convicted of procurement at both instances. The district court found that the defendant was aware of the girl's intellectual disability. It also found that the added age difference and her emotional bond meant that she had very little chance of protecting herself against his pressure to prostitute herself.⁷¹ The court of appeal agreed that the defendant had exploited both her intellectual disability and her emotional bond to him.⁷² It is not clear why the charge of human trafficking was not considered, as the elements of the crime were established in court: An 'action' was taken (recruitment), through the use of a 'means' (abuse of a vulnerable position), for the 'purpose of exploitation' (sexual exploitation).

In another domestic case, from 2010 (Case F), a 17-year-old girl convinced a 14-year-old girl with intellectual disability that she could make money by providing sexual services.⁷³ The court did not examine the 'means' element as a 'means' does not need to be proven in cases concerning child victims.⁷⁴ The case is, however, useful to illustrate the inclination to prosecute for procurement rather than human trafficking. This tendency does exist in international trafficking cases, but even more so in national trafficking cases. The older girl set up meetings with customers and kept all the proceeds. When the younger girl became pregnant and had an abortion, the older girl beat her and warned her not to tell anyone about what they were doing. The young girl recounted that she did not dare to tell the older girl that she no longer wanted to sell sex.⁷⁵ Though a child had been recruited for sexual exploitation, the prosecution and conviction were for procurement.

In a case from 2010 (Case G), courts at both instances found that a 28-year-old man had recruited a 15-year-old girl into prostitution by exerting 'strong influence' over her.⁷⁶ The sexual encounters had been filmed and posted, with her face clearly visible, online. The defendant was prosecuted for, and convicted of, procurement.⁷⁷ The court of appeal only found the defendant responsible for two occasions of pimping but stated that he should nevertheless be convicted of procurement because of his strong

⁷⁰ Norrköping District Court, judgment in case no. B 2500-07 (2008-04-01) pp. 11-13.

⁷¹ *Ibid.* p. 26.

⁷² Göta Court of Appeal, judgment in case no. B 1282-08 (2008-10-28) p. 4.

⁷³ Malmö District Court, judgment in case no. B 1145-09 (2010-01-04).

⁷⁴ The Palermo Protocol, Art 3(c); the COE Human Trafficking Convention, Art. 4(c); the EU's Human Trafficking Directive, Art 2(5).

⁷⁵ Malmö District Court, judgment in case no. B 1145-09 (2010-01-04) p. 25.

⁷⁶ Svea Court of Appeal, judgment in case no B 7361-10 (2010-11-18) p. 11.

⁷⁷ The appellate court also found that the defendant should pay the girl 125 000 SEK in damages.

influence over the young girl leading to her having intercourse for economic gain with two men she did not know and who were much older.⁷⁸ The girl explained that the defendant had taken her 'by storm' when she was 14 years old: They had an relationship where she talked about her life and problems. She had not had earlier sexual relationships. They started filming their encounters shortly after they began a sexual relationship. An idea was born that the girl would enter the pornography business, but she later said she did not want to carry out the plan. The girl explained before the district court that she was told to either continue with the plan or take her own life.⁷⁹ Again, it is not clear why the prosecution was not made out for human trafficking, as the court accepted that the child had been recruited for the purpose of sexual exploitation.

In 2012, a man was prosecuted for having recruited an 18-year-old into prostitution (Case H). She had no earlier experience of selling sex, nor had she expressed a wish to do so.⁸⁰ The court found that the defendant had 'shown considerable ruthlessness towards the plaintiff and abused the circumstance that the plaintiff was in love with him, [thus] a form of dependence.'⁸¹ Again, it could be argued that the crime of human trafficking was committed here as her vulnerability was abused to recruit her into prostitution.⁸² Instead of receiving a charge for that crime, however, the district court and the court of appeal again only examined a claim of procurement, for which the defendant was convicted at both instances. The appellate court found the defendant guilty as he had 'promoted' the girl's prostitution by 'inducing' her to enter into it.⁸³ The process by which he had done this, through emotional abuse, was only considered as an aggravating factor in the sentencing.⁸⁴ He was given a conditional sentence with community service. In a change from the district court's decision, the court of appeal denied the victim compensation for the violation of her dignity,⁸⁵ as the crime of procuring is a crime against the state, not the individual person.

⁷⁸ Svea Court of Appeal, judgment in case no B 7361-10 (2010-11-18) p. 11.

⁷⁹ Södertörn District Court, judgment in case B 2364-10 (2010-08-31) p. 36.

⁸⁰ Värmland's District Court, judgment in case no. B 793-12 (2012-03-20). Appeal examined by the Court of Appeal for Western Sweden, judgment in case no. B 2384-12 (2012-12-18).

⁸¹ Värmland's District Court, judgment in case no. B 793-12 (2012-03-20) p. 14 (the author's own translation). The Court of Appeal agreed with the findings of the district court on the point of responsibility: Court of Appeal for Western Sweden, judgment in case no. B 2384-12 (2012-12-18).

⁸² Swedish Criminal Code chapter 4, section 1a. The elements in the case were: A direct purpose (sexual exploitation), an unlawful means (abuse of a position of vulnerability) and an action (recruitment). Causality is also required between the means and the action, so that the action was only possible because the means was used.

⁸³ Court of Appeal for Western Sweden, judgment in case no. B 2384-12 (2012-12-18) p. 4.

⁸⁴ Värmland's District Court, judgment in case no. B 793-12 (2012-03-20) p. 14.

⁸⁵ *Kränkningersättning*.

In a case from 2010 (Case I) a defendant was prosecuted for gross procuring.⁸⁶ The district court accepted the account of the women who had participated in the business that they faced economic hardship and had felt that they had no other choice than to provide sexual services to provide for their families. The court, however, found that they could not be awarded any compensation as they had not been ‘forced’ to provide the services.⁸⁷ The court noted that one of the women, who was married to the defendant, and another woman, who had a relationship with him in the hope of building a future together, were both dependent on him for continued residency in Sweden.⁸⁸ The prosecutor, nevertheless, did not bring a claim for human trafficking on the basis of recruitment for the purpose of sexual exploitation by abuse of a vulnerable position. No damages were awarded to the woman who had made claims, as the violations of her dignity were not considered sufficiently grave.⁸⁹

7. Reflections and recent developments

It is important to discuss whether the more appropriate charge for having recruiting a person into sexual exploitation is the crime of human trafficking or procurement. There are several arguments in favour of prosecutions for human trafficking in these cases as opposed to charges of procurement. First, the elements of the crime of human trafficking are intended, both in international and national law, to encompass such recruitment. Second, there is a general principle that if there is a choice between two crimes, the prosecution should pursue the more serious crime.⁹⁰ This is buttressed by the practice of the European Court of Human Rights under Article 4 of the European Convention on human rights and fundamental freedoms, which requires that states prosecute for the appropriate crime and that it carries with it an appropriate sentence.⁹¹ In a recent case, *S.M. v Croatia* (2020),⁹² the European Court found a violation of Article 4 in relation to an identified victim of human trafficking, *inter alia* because the authorities had not sufficiently investigated the allegations of economic dependence and other forms of coercion that the defendant had used against the

⁸⁶ Östersund District Court, judgment in case no. B 1102-10 TR (2010-07-15) p. 20. The Court of Appeal for Lower Norrland, judgment in case no. B 875-10 (2010-09-28).

⁸⁷ Östersund District Court, judgment in case no. B 1102-10 TR (2010-07-15) p. 20.

⁸⁸ *Ibid.* pp. 7-8.

⁸⁹ The Court of Appeal for Lower Norrland, judgment in case no. B 875-10 (2010-09-28) p. 9.

⁹⁰ It should be noted that the Swedish crime of human trafficking and the crime of procurement protect different interests (the individual's freedom and peace versus the state, or, in the case of gross procurement, sexual integrity), so it is theoretically possible to prosecute both.

⁹¹ See e.g. *Siliadin v. France*, ECHR judgment of 26 July 2005 (para 148), *C.N. and V. v. France*, ECHR judgment of 11 Oct. 2012 (para 108), and *C.N. v. the United Kingdom*, ECHR judgment of 13 Nov. 2012 (para 76).

⁹² *S.M. v Croatia* (appl. no. 60561/14), judgment (Grand Chamber) of 25 June 2020.

victim.⁹³ The defendant had not been convicted of any crime at all by the national courts as they did not find that the victim had been ‘forced’ into prostitution.⁹⁴ There are several take-aways from the Strasbourg case. The first is that the forms of coercion that qualify as a ‘means’ should not be more restrictively determined by national courts than the global and regional trafficking definitions lay down. The European Court referred to EU Commission reports that noted that human trafficking crimes are often prosecuted as crimes of lesser degree, such as procuring, resulting in minor convictions.⁹⁵ The Court also referred to the Commission’s observation that internal trafficking is increasing.⁹⁶ In its third-party intervention, the Council of Europe Group of Experts in Actions Against Trafficking in Human Beings (GRETA) noted the tendency of bringing charges for procuring instead of human trafficking, as well as a deficient application of ‘abuse of a position of vulnerability’.⁹⁷ Thus Sweden is not alone in its lack of domestic trafficking prosecutions and convictions.

An argument against prosecuting for human trafficking is that procurement could be seen as the more specialised crime. However, this argument is undermined by the fact that procurement focuses on exploitation that has begun, not the recruitment itself. Whichever position is taken as to which crime recruitment for the purpose of sexual exploitation should be prosecuted for, recruitment into prostitution through abuse of an emotional relationship clearly fulfils the ‘means’ element of the human trafficking crime. It is also clear that the choice of crime has consequences for the victims, who may not have a right to compensation if the conviction is for procurement. Unless the procuring is considered gross, the sentence is generally much lower than for human trafficking.⁹⁸

The question of ‘abuse of a position of vulnerability’ in relation to sexual exploitation raises one of the key disputes within human trafficking discourse: the prostitution versus sex work debate. Is sex work inherently exploitative, or is it only forced prostitution that should qualify as ‘sexual exploitation’ for the purpose of human trafficking? The Palermo Protocol leaves it up to states to determine what constitutes sexual exploitation and how they choose to address prostitution.⁹⁹ Sweden views as exploitative each and every

⁹³ *Ibid.* (para 77-80). The victim alleged that force, deception and abuse of a vulnerable position were used to recruit her into prostitution (para 9 ff.).

⁹⁴ *Ibid.* (para 18).

⁹⁵ *Ibid.* (para 206).

⁹⁶ *Ibid.* (para 207).

⁹⁷ *Ibid.* (para 263, 265).

⁹⁸ The sentence for human trafficking is prison between 2-10 years. For procurement: prison up to 4 years, which in practice means that a conditional non-custodial sentence is possible. For gross procurement: prison between 2-10 years.

⁹⁹ See the interpretative notes for the official records, A/55/383/Add.1, para. 64. The same approach is taken in the 2005 COE Human Trafficking Convention. See ‘Explanatory Report on the European Trafficking Convention’, *Council of Europe Treaty Series (CETS)* 197, para. 88.

purchase of sexual acts,¹⁰⁰ and those who profit from such activities are liable to be prosecuted for procurement.¹⁰¹ The criminalisation of human trafficking in Sweden assumes that all such activities for profit qualify as sexual exploitation. No distinction is made between free or forced sex work/prostitution.¹⁰² Thus, if a human trafficking 'action' is taken (such as recruitment, transport or harbouring) by use of a 'means' (such as force, deception or abuse of a position of vulnerability) with the 'purpose of exploitation' (such as in prostitution/sex work), this fulfils the three elements of human trafficking. Whether the sex work/prostitution in the specific case involved exploitative elements or not does not need to be examined by the Swedish courts.

In light of this background, it is unexpected that there have not been any Swedish convictions for human trafficking cases that are purely national, without a cross-border element, given that the 2004 legislative changes intended to make such convictions possible. It is surprising, as international legal sources and Swedish case law on international human trafficking cases support that one of the most common ways of recruiting persons for the purpose of exploitation, through abuse of emotional bonds, fulfils the 'means' element as 'abuse of a position of vulnerability'. Though there are no Swedish convictions for domestic human trafficking, a number of Swedish prosecutions for procurement in an entirely national context seem to fulfil the three elements of human trafficking. This indicates that cases in which persons have been nationally recruited into prostitution are common, but are assumed not to qualify as human trafficking. Two recent cases, one of which was referred to above,¹⁰³ provide support for the conclusion. The first case involved a Swedish woman with mental disabilities who was recruited into prostitution by use of a romantic relationship that later also became violent.¹⁰⁴ The charge and conviction were for gross procuring, even though the court accepted the evidence that she had been recruited into prostitution through the romantic relationship.¹⁰⁵ In contrast, in the second case, which also concerned recruitment into prostitution through use of a romantic relationship, the court convicted the defendant of human trafficking.¹⁰⁶ Both victim and defendant in that case were non-nationals. One possible explanation is the tendency, as expressed by Gallagher, not to interpret the crime of human trafficking as encompassing more than 'what is generally agreed' to constitute human trafficking. The assumption is perhaps still that trafficking is an international phenomenon – that victims are not nationals.

¹⁰⁰ For a background to the criminalisation of purchasing sexual services in ch. 6 para. 11 of the Swedish Criminal Code, see prop. (1997/98:55) *Kvinnofrid*, pp. 100-107.

¹⁰¹ Ch. 6 para. 12 of the Swedish Criminal Code.

¹⁰² See prop. (2001/02:124) p. 27.

¹⁰³ Uppsala District Court, judgment in case no. B 4530-18 (2019-04-26).

¹⁰⁴ Helsingborg District Court, judgment in case no. B 4301-19 (2019-12-09). The conviction for procurement was not appealed.

¹⁰⁵ *Ibid.* pp. 52-54.

¹⁰⁶ Uppsala District Court, judgment in case no. B 4530-18 (2019-04-26) pp. 57-59. See also Svea Court of Appeal, judgment in case no. B 4045-20 (2020-06-08) pp. 9-11.

The cases referred to in this article show a general hesitancy both to view the use of romantic relationships as abuse of a position of vulnerability, and to view recruitment within the Swedish domestic context as human trafficking. The tendencies, however, reveal an unawareness of the power of emotional abuse and run counter to the intention of the Palermo Protocol' drafters to capture all the subtle means by which persons are recruited, transported or harboured for the purpose of exploitation which is necessary to provide adequate protection to victims of human trafficking.