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Thematic article

Does the Broad Criminalization of Procuring in France Pose a Problem? A Study of Enforcement by Police and Magistrates

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Abstract

In French criminal law, the definition of procuring is all-encompassing and makes no distinction between supportive and coercive behaviour. The presence of coercion or abuse or a lack of consent on the part of the sex worker is not required to establish the offence of procuring. The result is a broad criminalization of procuring, and the scope of the offence is the subject of debate. While police investigators and magistrates readily point out that the definition facilitates their work, critics deplore that it criminalizes virtually all the relationships that sex workers maintain in their personal lives and in their work. Indeed, the wording of the procuring offence may therefore contribute to the isolation, marginalization, and even endangerment of people who sell sexual services, for example, by making it more difficult to find and stay in accommodation, making it impossible to work together despite the advantages in terms of security, or discouraging them from contacting the police for fear of implicating family or friends. There is therefore a tension between the benefits of a broad definition of procuring and the possible negative effects on the people that its criminalization aims to protect. As prostitution is considered contrary to human dignity, the objective of procuring offences is to prevent prostitution irrespective of the conditions in which it takes place. Hence, despite policies which encourage the protection of sex workers such protection is limited to provisions designed to end their involvement in prostitution. As such, some behaviours that could reduce sex workers' exposure to certain forms of violence, or restrict the risks of coercion and exploitation, in fact constitute an offence. How, then, do judges and specialized investigators navigate the paradoxes and inconsistencies of procuring under French law, and determine who are the perpetrators and who are the victims?

Keywords: procuring, sex work, prostitution, France, criminal law.

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1. Introduction

In French criminal law, the definition of procuring is all-encompassing and makes no distinction between supportive and coercive behaviour. In taking an abolitionist stance[1] towards prostitution, France has opted for a criminal policy[2] based on a "discourse of victimization", under which people in prostitution are considered victims on the grounds that prostitution is contrary to certain values protected by positive law (Casado 2015, 81; Ouvrard 1999). Consequently, the presence of coercion or abuse or a lack of consent on the part of the sex worker is not required to establish the offence of procuring.

The result is a broad criminalization of procuring, and the scope of the offence is the subject of debate. While police investigators and magistrates readily point out that the definition facilitates their work, critics deplore that it criminalizes virtually all the relationships that sex workers maintain in their personal lives and in their work. The wording of the procuring offence may therefore contribute to the isolation, marginalization, and even endangerment of people who sell sexual services, for example, by making it more difficult to find and stay in accommodation, making it impossible to work together despite the advantages in terms of security, or discouraging them from contacting the police for fear of implicating family or friends. There is therefore a tension between the benefits of a broad definition of procuring and the possible negative effects on the people that its criminalization aims to protect[3].

Some behaviours that could reduce sex workers' exposure to certain forms of violence, or restrict the risks of coercion and exploitation, in fact constitute an offence. Indeed, help, assistance or protection (Art.225-5, 1° CP) can constitute an offence without being habitual or venal, and the situations concerned are not limited to the *ratio legis* of the exploitation of the prostitution of others. Convictions have been handed down, for instance, for a sex worker letting another person use their van, albeit free of charge (Cass. Crim., 12 octobre 1994, 93-85.340), the owner of a hair salon sheltering sex workers looking to hide from the police (Cass. Crim., 20 octobre 1971, 71-90.379), and a landlord being aware that his tenants were engaging in prostitution in the apartment, but making no additional profit from it, and taking no further

[1] France has taken an abolitionist stance on prostitution since ratifying the *United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* of December 2, 1949. This has been reaffirmed on several occasions, notably with RESOLUTION no. 782 of December 6, 2011 and LAW no. 2016–444 of April 13, 2016 to reinforce the fight against the prostitution system and support people in prostitution.

[2] "Criminal policy refers to all the means implemented to address a situation that is identified as a social scourge, deviance or delinquency. [...] Accordingly, states adopt a legal and social strategy regarding prostitution [...] based on ideological choices [...] to address the problems posed [...] by a criminal phenomenon understood in a broad sense (the prostitution phenomenon)". Ouvrard 2000, 31.

[3] Here, "protection" is to be understood in terms of the measures intended "to prevent prostitution" and "to ensure the rehabilitation and redeployment of victims". (Ouvrard 2000, 2017).

action (Cass. Crim., 25 novembre 1971, Bull. crim. n° 32). Consequently, through the diversity of criminalized behaviours, procuring may hinder the personal and "professional" relationships of sex workers, making it all the more tricky to delimit the "threshold between what is punishable and what is not" (Mayaud 1983, 599).

It is important to specify that our research does not ignore situations of exploitation that exist in prostitution and that warrant legal action to combat violence. Rather, we aim to demonstrate the ambivalence of the legal framework surrounding procuring and its implementation, which can produce contradictory results. Indeed, by using a broad definition of situations deemed to be exploitative, this framework is liable to weaken the situation of people in prostitution and limit their agency, contrary to its purpose. This highlights the pitfalls of systematically victimizing people in prostitution. In addition, the tensions between the victim approach and the complex reality of perpetrator-victim relationships raise questions about the effects of intersectional discrimination on victims.

How, then, do judges and specialized investigators navigate the paradoxes and inconsistencies of procuring under French law, and determine who are the perpetrators and who are the victims? To answer this question, we begin by presenting our theoretical framework and methodology (2). We then review the wording of procuring offences and their *ratio legis* (3) before looking at the categorization of acts of procuring that occurs alongside the letter of the law (4). Finally, we show that the uncertainties surrounding the *ratio legis* of the procuring offence compel legal professionals to make a constant effort to justify prosecutions (5).

2. Theoretical framework and methodology

2.1. Theoretical framework

Taking an interdisciplinary approach in law and political sociology, this paper builds on two bodies of research: studies on the victimization of people involved in prostitution and the construction of the discourse and its consequences; and studies on intersectional discrimination in the legal sphere.

From a legal perspective, we describe in the next section how French scholars have dissected inconsistencies in the discourse of victimization that motivates the law on prostitution. The issue has also been discussed by social sciences scholars from various disciplines, who have underlined that sex work and prostitution cannot be reduced to the description of victims of human trafficking or "modern slavery", that it is necessary to avoid terminology that oversimplifies our

understanding of the complex relationship between agency and criminalization (Hoyle, Bosworth & Dempsey 2011), and that the debate should not be trapped in a debate on consent (Doezema 2002). Many empirical studies demonstrate the decision process and agency of a majority of people in the prostitution industry, in spite of experiences of violence and a lack of access to resources and fundamental rights (Kempadoo 2004; Aoyama 2009; Parreñas 2011; Le Bail 2015; Liu 2017; O'Connell Davidson & Sanchez Taylor 2022; Lainez 2022). Researchers have also described how migrants often do not fit the official discourse of the innocent victim of trafficking: migrant women in the sex industry are commonly viewed by legal professionals and police forces as morally bad or as both exploited and exploiter (Oso 2010, Crowhurst, 2012, Jakšić 2016, Lieber & Le Bail 2021). Finally, the research has unpacked the morality politics behind the discourse of victimization, and looked at the motivations underpinning the convergence between humanitarian and repressive policies (Bernstein 2010; Mai 2018). The dominance of the discourse of victimization in France today is central to understanding how police and legal professionals navigate the paradoxes and inconsistencies of procuring in French law.

With regard to intersectional discrimination in the legal sphere, previous research on the legal treatment of sex work has shown a gendered perception of prostitution practices in the work of police investigators, leading to a "differential management of illegalisms" based on a gendered model (Mainsant 2014, 9–10). Similarly, political scientist Mathilde Darley has highlighted the influence of the cultural categorizations used by legal professionals, through which magistrates "routinely interpret the various forms of sexual exploitation encountered in terms of the actual or purported origin of the individuals concerned and their 'associated' culture(s)" (Darley 2022, 261). These accounts suggest that gender and race affect the treatment not only of defendants, but also of victims within the judicial process. Therefore, in line with critical criminological studies on sentencing, existing sociology and political science research reveals that extralegal factors such as race and gender can weigh on decision-making in and the outcome of the judicial process (Bontrager, Barrick, et Stupi 2013, 353). Theoretical discussions on the impact of these extralegal factors diverge. Indeed, either more favourable treatment or more severe treatment can occur depending on the perception of the defendant as less threatening, unfit for prison or, on the contrary, as having broken both laws and gender roles, which could result in a harsher treatment (Bontrager, Barrick, et Stupi 2013, 353–355). This analysis echoes Jakšić's work on the figure of the "victim-perpetrator", which reveals how victims are transformed into perpetrators in the course of proceedings (Jakšić 2016).

Moreover, from an intersectional perspective, empirical studies on litigation show that legal professionals resort to stereotypes influenced by both gender and race while implementing offences and procedures (Best et al. 2011, 911). Various concepts derived from Kimberlé

Crenshaw's work on intersectional discrimination[4] highlight the difficulty of characterizing intersectional discrimination in the context of legal action (claims intersectionality), and criticize the explicit and implicit intersectional discrimination in the enforcement of the law by criminal justice practitioners (demographic intersectionality). The latter form of intersectionality focuses on the effects of the intersectional stereotypes of judges, police officers, lawyers and other professionals on the broad characterization of offences and the use of procedure. On this issue, criminological accounts of sentencing highlight that the combined effects of race and gender can result in disparate treatment on various grounds and the disparate impact of apparently neutral law and practices, and can structure criminal law and justice system practices (Daly et Tonry 1997, 236–237). Concurring with these theories, our interviews and the judicial decisions themselves reveal that criminal justice practitioners rely on certain intersectional stereotypical judgments in assessing the relationships between people in prostitution and those perceived as exploiting, helping or supporting them—who are sometimes sex workers themselves—in terms of their origins[5]. During legal proceedings, sex workers are often cast as "passive victims of the system", which can make them unwilling to share their stories and untangle the complexities of their trajectories in the face of institutional discourse on procuring.

However, unlike the invisibility of black Americans in discrimination litigation in the United States, this study begins to demonstrate that the desire to "rehabilitate" victims makes them visible in the field of prevention, but discourages them from speaking out in the key context of trials which reveals the outlines of procuring. This shift in focus to the risks of exploitation of individuals maintains a view of people in prostitution as vulnerable, suffering from multiple disadvantages, and can in turn have a judicial impact on the choice of legal proceedings, possibly increasing the social and economic precarity of people in prostitution. The prism of demographic intersectionality will inform our critical observations of the way the actors enforce procuring and its effects on proceedings.

2.2. Methodology of the study

In order to observe the enforcement of the procuring offence, we adopted an interdisciplinary approach combining law and political sociology. This methodology allowed us to gain an in-depth

[4] M. Mercat-Bruns, La discrimination intersectionnelle et sa critique : quel intérêt ? RDT n°5 2022, p. 281; Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", University of Chicago Legal Forum: Vol. 1989: Iss. 1, Article 8. Some scholars in the Critical Race Theory movement also raise the issue of ignoring the sexualization of race: Darren L. Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 Buff. L. Rev. 1 (1999).

[5] See a similar socio-legal approach in Berrey, Nelson and Nielson (2017).

understanding of the legal resources and functioning of the judicial system whilst taking into account legal professionals' influence and various perspectives on its functioning.

In a preliminary stage, we conducted five exploratory focus groups with 11 key actors in the field (civil society organizations, police and law professionals, governmental institutions) to better frame their positioning on implementation of the procuring offence. These discussions helped us define points of divergence and convergence between different parties about the offence's effectiveness, objectives and implementation. The collected data was used to frame our research questions and methodology[6].

We then carried out two complementary studies aiming to take into account experiences of the implementation of procuring as well as judicial data of its enforcement. We conducted 25 semi-structured interviews with magistrates, associations, lawyers, police units[7], and government representatives between January 2023 and January 2024; and collected all court decisions on procuring rendered in a jurisdiction outside of the Paris region between 2021 and 2023 – amounting to 28 decisions in total.

The collected data was then compiled into thematic sets relating to various aspects of the implementation of the offence (complaint; investigation; identification of perpetrators/victims; prosecution; sentencing). This process resulted in a cross analysis combining law and political sociology in which data from interviews and court decisions were compared and combined to address different stages in and perspectives on implementation of the offence.

2.3. Terminology

The terminology used to describe sex work/prostitution and the people involved in the activity is a matter of much debate. In this article, we have chosen wherever possible to use the terminology employed by our interviewees. We also use the terms "victim" or "perpetrator" as they are used in criminal proceedings for the assignment of roles, even though, in a political sociology approach, these concepts are subject to debate.

[6] The research protocol and interview grids are available on the academic open data catalogue of Sciences Po Paris: https://data.sciencespo.fr/dataverse/liepp-penalisation-proxenetisme (in progress at the time of writing).

[7] Police Units consulted for the research project are specialized in the investigation of procuring: Brigade de Répression du Proxénétisme (Unit for the suppression of procuring); Office central de lutte contre la traite des êtres humains (Central unit for the fight against human trafficking).

3. Penalizing procurement: inconsistencies in the rationale for the offence

As mentioned in the introduction, the objective of protecting people in prostitution through criminal policy coupled with the all-encompassing nature of the procuring offence leads to a paradox. Arguably, the contradiction originates in the *ratio legis* of these offences. Indeed, if the *ratio legis* is the "'why' of the legal norm" (Mayaud 1983, 597), we shall see that in the case of the procuring offence, this "why" is a matter of debate (3.1), before returning to the content and scope of the definition (3.2).

3.1. The elusive ratio legis *of procuring offences*

To understand the paradox in the broad definition of procuring and its effects, we need to look at the underlying rationale of criminal law and the offences it establishes. From a legal perspective, offences are defined as "acts provided for and punished by criminal law because they disturb the social order" (Bouloc 2021, 5). The violation of the social order or of a value protected by it is the basis for criminal law, and, the *ratio legis* serves to "establish the ultimate boundaries of punishment, and thus the dividing line between what is punishable and what is not" (Mayaud 1983, 599). In the case of procuring, however, the *ratio legis* of the offences is open to debate and this uncertainty blurs the boundaries of punishment.

To justify the wording of procuring offences, the abolitionist position highlights several values protected by law. According to Resolution no. 3522 reaffirming the abolitionist position of France on prostitution, adopted by the National Assembly on December 6, 2011: the reality of prostitution "directly contradicts our most fundamental principles: the *non-patrimonialité* [non-commodification] and integrity of the human body, gender equality, and the fight against gender-based violence"[8]. These three principles define the *ratio legis* of the criminal policy. However, drawing on the research of legal scholar Arnaud Casado, we suggest that the use of these *ratio legis* may be unfounded.

As regards the inalienability of the human body (a principle derived from that of *non-patrimonialité*[9]), Casado points out that the provision of sexual services involves an obligation to do, not to give. The assertion that prostitution involves the sale of the prostitute's body is

[8] National Assembly, Resolution no. 3522 reaffirming the abolitionist position of France on prostitution.

[9] The *non-patrimonialité* of the human body stems from Article 16-1 of the French Civil Code, which states that the human body cannot be the subject of property rights. Based on this principle, the Court of Cassation established another principle: the inalienability of the human body, under which the human body cannot be the subject of a contract or legal agreement. With regard to prostitution, the question is whether the transaction between the sex worker and the client entails an obligation to do (with one's body), which is not covered by the principle of inalienability of the human body, or an obligation to give (one's body), which is covered by the principle of inalienability of the human body.

therefore unfounded, making the principle of the inalienability of the human body ineffective (Casado 2015, 97).

As regards prostitution being contrary to the principle of gender equality, Casado argues that this is a misapplication of the constitutional principle of equality. Indeed, this principle entails the equal treatment of people in the same circumstances. When applied to prostitution, then, it should amount to ascertaining the equality of people in prostitution in relation to their peers and not to their clients or third parties (Casado 2015, 106; see also El Cheickh 2020, 57).

As regards violence, Casado maintains that this rationale is incoherent, as it rests on an inaccurate generalization about acts of prostitution (Casado 2015, 83). Indeed, unless sexuality is considered intrinsically violent, payment for the act of prostitution does not cancel out the sex worker's consent.

Finally, the abolitionist policy considers prostitution to be contrary to human dignity. Here too, Casado points to an inconsistency in the discourse of victimization. In a subjective conception of dignity, people in prostitution should be able to give or refuse consent to third parties. Consequently, only coercive procuring should be criminalized, not supportive procuring. Conversely, in an objective conception of human dignity, such as that apparently used by the discourse of victimization, the sex worker should also be liable to prosecution for violating human dignity (Casado 2015, 91). The provisions relating to procuring in their current form do not, therefore, make it possible to precisely determine the *ratio legis* justifying the criminalization of the behaviours they describe. Casado therefore maintains that all the protected social values cited in the abolitionist position must be excluded from the rationale for criminalization.

However, even as he highlights the exceptional uncertainty surrounding the constitutionality of procuring offences, Casado concludes that there is little chance of an appeal to the Constitutional Council succeeding, considering that "the matter is undoubtedly too controversial for the judges of the [Court of Cassation] and the [Constitutional Council] to accept being guided solely by legal rigor" (Casado 2015, 263).

Nonetheless, Casado reflects on what *ratio legis* could replace those put forward by the abolitionist position. He suggests the refusal of the exploitation of the prostitution of others as another possible rationale for the criminalization of procuring (Casado 2015, 229). The use of this *ratio legis* would require criminal law to be rewritten in order to bring offences regarding prostitution into line with their rationale. This would include rewriting procuring offences, as their current wording goes beyond the punishment of behaviours that exploit the prostitution of others.

3.2. Content and scope of the definition of procuring offences in French law

Procuring is defined under Articles 225-5 et seq. of the French Penal Code, which detail the situations classified as misdemeanours or felonies, their aggravating circumstances and the penalties incurred. The result is a broad criminalization of procuring, for which the French legal framework is considered the most comprehensive and severe in Europe (El Cheikh 2020, 165–169; Wagenaar Hendrik and Jahnsen Synnøve Økland 2018, 93).

Because of the wide range of behaviours concerned, it is impossible to give a single definition of procuring (Ouvrard 2000, 23). Without going into an exhaustive list of the 11 situations that constitute procuring offences, these include helping, assisting, and protecting the prostitution of others (Art. 225-5, 1° CP); making a profit out of, sharing the proceeds of, or receiving income from the prostitution of others (Art. 225-5, 2° CP); hiring, training, or corrupting a person with a view to prostitution (Art. 225-5, 3° CP); being unable to account for an income compatible with one's lifestyle while living with a person habitually engaged in prostitution or while entertaining a habitual relationship with one or more persons engaging in prostitution (Art. 225-6, 3° CP); holding, managing, exploiting, directing, operating, financing or contributing to financing a place of prostitution (Art. 225-10, 1° CP); and selling or making available premises, places, or vehicles to one or more persons in the knowledge that they will there engage in prostitution (Art. 225-10, 3°- 4° CP). In addition to the multitude of situations covered, the offences are supplemented by a list of ten aggravating circumstances that raise the maximum prison sentence from seven to 10 years and the fine from €500,000 to €1,500,000 (Art. 225-7 CP). These include the existence of multiple victims or multiple perpetrators, a particularly vulnerable victim, the use of threats or coercion, and the use of an electronic communications network to distribute messages to an unspecified audience. In practice, almost all procuring offences are aggravated. The diversity of aggravating circumstances combined with the broad scope of the offence definition means that it is often possible to identify multiple perpetrators, or to establish the use of an electronic communications network due to the use of the Internet to post advertisements. In addition, three circumstances make procuring a felony rather than a misdemeanour: when it is committed against a minor under the age of 15, in an organized gang, or using acts of torture and barbarism.

Scrutiny of these offences also reveals that procuring is established with reference to another act, prostitution, without prostitution being criminalized or even defined. Procuring offences therefore have the particularity of being defined in relation to a legal and undefined main act (Amourette 2003, 26). As such, not only are the persons responsible for the main act—prostitution—not liable for prosecution, they are considered to be the victims of the people who helped them carry out the act. In the absence of a definition of prostitution in the Penal Code, developments in case law concerning the definition of acts of prostitution could increase or

reduce the scope of application of the definition of procuring[10]. Lastly, procuring offences are involved in establishing another offence: human trafficking (Art. 225-4-1 CP). Indeed, procuring is considered one of the purposes of human trafficking, which criminalizes acts considered preparatory to the commission of certain offences, one of which is procuring. Yet a close reading of the human trafficking offence shows that, first, it is founded on the fight against exploitation and, second, that its scope of application is limited compared to the procuring offence. While grounds for charges of procuring are easily met, the offence of human trafficking requires, in addition to the characterization of procuring, evidence of an action (recruiting, housing, transporting, etc.) and a means (use of threats, coercion, abuse of a situation of vulnerability, etc.). As such, unlike procuring offences, the offence of human trafficking is more precisely circumscribed to situations that involve exploitation.

Because the wording of the procuring offence is so all-encompassing, it compounds uncertainties over the validity of punishing the acts it covers. Indeed, by widely penalizing the behaviour of third parties in connection with prostitution, the criminalization of procuring far exceeds the bounds of the fight against exploitation. And yet, the other rationales put forward in support of this offence do not seem sufficient to reconcile the *ratio legis* of the offence with its wording. This results in uncertainty as to the "why" of the legal norm and the boundaries of punishment, leaving it up to magistrates and police forces to set the limits of criminal proceedings. As such, beyond a textual analysis of the scope of the procuring offence, it is important to examine its enforcement by legal professionals and ask how, in their day-to-day practice, magistrates and police officers deal with this offence and give it shape.

4. Alongside the legal definition: Categories and hierarchies of acts of procuring

By placing situations involving aid and assistance on the same level as acts of exploitation, the wording of procuring offences tends to standardize behaviours that fall under procuring. Indeed, apart from the aggravating circumstances—which are so broad as to apply to most acts—no hierarchy is established between the behaviours concerned. Thus, aid, assistance and protection (Art. 225-5, 1° CP) are considered equivalent to pressuring a person to practice prostitution or to continue doing so. (Art. 225-5, 3° CP). How, then, alongside the letter of the law, do legal

[10] This hypothesis should be qualified in the light of the Court of Cassation's decision of December 15, 2021 (C. Cass. Crim. du 15 décembre 2021, n° 21-81.864) which excludes the practice of "camming" from acts constituting prostitution and leaves it to lawmakers to amend the definition of prostitution established in a decision of March 27, 1996 (C. Cass. Crim. 27 mars 1996, n° 95-82.016).

professionals make sense of the acts that are brought to their attention? How do stereotypical representations of procuring influence the application of the law? We shall see that beyond the criminal law definition of procuring offences, magistrates and police officers use stereotyped categories (4.1) and hierarchies (4.2) to guide their understanding and treatment of procuring offences.

4.1. Beyond the criminal law definition: Stereotyped categories of procuring acts based on origin

Racial profiling consists in forms of direct discrimination in which individuals are targeted for suspicion of crime in certain public spaces based on origin. The possible categorization of acts of procuring, circumscribed by a definition worded in neutral terms but associated with certain origins or certain communities, is more subtle and recalls the phenomenon of indirect discrimination, which applies to "a provision, criterion or practice which is apparently neutral but which may be of particular disadvantage to a person compared to other people, particularly on the basis of origin or sex"[11]. Of course, in criminal law, all discrimination presupposes an element of intent, so the notion of indirect discrimination, which implies an unintentional practice, is outside the scope of criminal law. Yet in our search for paradoxes or inconsistencies in the mobilization of the law, the concept of indirect discrimination offers us a fertile theoretical framework to show how the attachment to the neutrality of the law can mask various manifestations of the intersectional stereotypes held by judges and police officers in the characterization and handling of procuring offences.

In her research, sociologist Gwénaëlle Mainsant has brought to light the existence of a "differential management of illegalisms" based on a gendered model in the work of police investigators on procuring (Mainsant 2014, 9–10). Likewise, M. Darley has shown the influence of the ethno-cultural categorizations used by legal professionals during proceedings (Darley 2022, 261). Thus, despite the "neutral" wording of procuring offences, which include no criteria related to origin or gender and none that would establish a hierarchy between different situations (other than the aggravating circumstances), we noted a systematic categorization of procuring among our interviewees.

Like Darley, we noted that the magistrates and police officers interviewed spontaneously used categories that "typify the crime in terms of the alleged origin of court users" (Darley, 2022, p.

[11]See article 1, Law no. 2008-496 of May 27, 2008 laying down various provisions for adapting to EU law in matters of discrimination (*Loi n°2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*).

267). Although origin is not the only criterion, a person's "community" is a determining factor in the description of procuring acts and their *modus operandi*.

> *"There's no such thing as a typical profile, but then again, as I said, the cases are largely rooted in the way communities function. So, for example, in such and such a community, it will tend to be such and such a profile, such and such an age, migratory background, geographic location and so on; it will be completely different in a marital setting, it'll be a Loverboy; in another case it will be in the family setting."* (Public prosecutor, interview 5)

In the interviews, legal professionals referred to certain categories which Darley had established, such as "Roma" or "Romanian" procuring, "Chinese" procuring and "Nigerian" procuring (Darley 2022, 261–262), but also to "South American" and "social housing" procuring (*proxénétisme de cité*). The descriptions given of these types of procuring suggest that these categories are widespread among magistrates and police officers. "Romanian" procuring is referred to as a sub-category of "Eastern-European" procuring[12], as is "Bulgarian" procuring. The interviewees describe this type as having a "particularly clannish" and "family" aspect that makes it harder for investigators to access information and contributes to an "opaque" way of operating.

"Chinese" procuring—sometimes called "Asian" when the case of Thai women is mentioned—is distinguished by the importance of massage parlours where "finishing touches are an integral part of the concept" and by a slightly less "tragic" side despite the signs of "slightly broken lives" (Specialized Police, interview 10). Here too, the investigators point to difficulties in accessing information, this time due to the use of Chinese-language social networks such as the application "WeChat" and the website "Huarenjie".

"Nigerian" procuring differs from the other categories in its use of "Juju" (a voodoo rite to secure the cooperation of victims). It is described as particularly exploitative compared to other forms of procuring: "here, we're really dealing with human trafficking for sexual exploitation" (Specialized Police, interview 17). The interviews tended to create two sub-categories: the case of female pimps, often "senior girls" who reproduce the system of which they are victims, and the case of male pimps, operating either in couples or in brotherhoods (Lavaud-Legendre 2013; de Montvalon 2018, 375).

[12]An analysis of the archives of La Mondaine, the forerunner of the Brigade de Répression du Proxénétisme or Procuring Squad, reveals that this category has been used since the 1990s, after the fall of the Iron Curtain (Willemin 2009, 245).

"South American" procuring encompasses victims of various Latin American nationalities. While our respondents speak of a "skyrocketing" phenomenon, in fact it involves an immigration pattern that dates back to the 1990s, with different timeframes depending on the country of origin (Gonzalez 2018; Willemin 2009, 245). This category of procuring is presented as an example of the "senior girls" situation, that is, "a prostitute who was herself controlled or coerced [...] and who goes on to help her prostitute friends" (Specialized Police, interview 10). These ties of acquaintance, information-sharing and exchanges of services contribute to making this category of procuring "a kind of loose cluster" with little hierarchy or structure (Specialized Police, interview 10), fuelling the uncertainty surrounding the enforcement of the procuring offence. Finally, South American procuring stands out for the profile of its victims. Of all the categories of procuring mentioned in our interviews, only South American procuring is described as consisting of cisgender, transgender and transvestite women. This diversity of gender identities concerns both victims and perpetrators, including the figure of the "senior girl".

A final category of procuring is mentioned almost systematically during our interviews: "housing estate procuring". Described as a form of French procuring, housing estate procuring is characterized by the profile of its perpetrators as men—often young men and sometimes minors—formerly involved in drug dealing. Their involvement in procuring is described as a kind of career change motivated by the easy money, with less difficulty and lower risk of arrest than drug dealing. The victims, for their part, are portrayed as young girls (sometimes minors) whose "control" is facilitated by their vulnerability due to economic and social precarity and an abusive background. As the name suggests, housing estate procuring is characterized by the social origins of its perpetrators: inhabitants of the "*cités*", or large underprivileged social housing estates. Housing estate procuring is the most recently constructed category, and has now come to the fore in the discourse of legal professionals.

While this category seems to stand out from the others in that it does not relate directly to a nationality or geographic area, reference to the fact that perpetrators and victims belong to marginalized urban areas and a certain social category contributes to the construction of a "cultural otherness", as highlighted by Mathilde Darley with regard to Roma, Chinese and Nigerian procuring. (Darley, 2022). Assignment to these categories enables the assignment of immutable traits to the people who supposedly make up these groups, based not (only) on place of origin, but on social background.

OCRTEH's (Office Central de Répression de la Traite des Êtres Humains, public institution specialized in the prosecution of human trafficking for sexual exploitation) 2021 and 2022 annual

reports describing the "state of the threat" highlight the "changing face"[13] of procuring situations. These reports help to formalize typologies and disseminate the constructed categories.

Despite legal professionals' almost systematic use of these categories, magistrates nonetheless show signs of being uneasy about employing them. A paradox therefore emerges from the use of these categories which, while unanimous, seems to be the subject of self-criticism. This suggests that magistrates have some critical perspective on the construction of essentializing "types" and their impact on the handling of the cases entrusted to them.

In short, the use of stereotyped categories based on the origin of the perpetrators or victims of procuring is common practice among legal professionals, despite their having some critical perspective on the essentialization process it provokes. However, alongside these categories, magistrates seem to use other criteria to establish a hierarchy between procuring offences so they can be dealt with.

4.2. Despite a standardizing definition, the complexity of procuring is highlighted by the ranking of acts

In parallel to the categories of procuring and their production of essentializing "types", other categories emerge from the discourse of police officers and magistrates. Indeed, alongside the legal definition of procuring, we observed the addition of informal criteria that enable procuring acts to be ranked hierarchically. This hierarchy of procuring acts introduces considerations of seriousness and the responsibility of defendants, and reveals the existence of criteria with which magistrates gain a more complex perception of procuring. The handling of procuring is therefore not determined solely by its offences or stereotypes, but also by criteria set by legal professionals to meet the practical needs of their work.

In particular, the use of coercion by defendants is not only used by judges as an aggravating circumstance, but also as a matter to hierarchize cases and by police officers to prioritize prosecution. Indeed, the existence of insults, death threats and violence, the withholding of money earned and the theft of money, while not necessarily sufficient to constitute offences in their own right, are said to "tint" or "describe the climate of the case" (Examining magistrate, interview 1). Thus, aside from coercion, other criteria serve a more subjective interpretation of the seriousness of the acts. The perception of an "almost factory-style" accumulation of victims (Specialized Police, interview 17), the complexity of the modus operandi reflecting a form of professionalization (Judge, interview 7) and the "discrediting of the victims' statements" (Judge,

[13] "*Physionomie evolutive*": expression used by the Office Central de Répression de la Traite des Êtres Humains (OCRTEH) in its 2021 and 2022 State of the Threat (annual report).

interview 7) may play an aggravating role in the assessment of the sentence attributed to each defendant.

The lenght or amount of sentences are decided based on the level of involvement, responsibility and seriousness of the case. Here, we observe that in the absence of violence or constraints, defendants with a peripheral role are likely to get their sentence fully suspended considering the slim chances of acquittal left by the broad definition of the offence. Moreover, despite political discourse calling for a severe enforcement of the offence, interviews with judges show that they rarely go beyond five years without remission which they reserved for particularly serious offences, that is, acts of procuring involving repeat offences, committed upon the victim's arrival in France, or under particularly violent and degrading conditions.

In this respect, an analysis of the decisions in procuring cases shows that out of 71 defendants in 28 cases, 62 were sentenced to imprisonment and 9 were acquitted of procuring offences due to insufficient establishment of the offence. Of those convicted, 24 received prison sentences without remission, 22 a suspended prison sentence (16 of which were fully suspended), and 16 a suspended prison sentence with probation. Examination of the decisions therefore confirms the hierarchy of sentences based on the criteria of seriousness and responsibility mentioned in the interviews, although it is impossible to establish a precise scale of sentences in relation to the acts due to individualized sentencing and variations in the formation of the court and the judges sitting on these cases.

Thus, in addition to the stereotyped categorization of procuring offences, which entails the potential for indirect intersectional discrimination, we also observe the existence of hierarchies between acts that complicate procuring offences. By ranking procuring offences according to criteria of seriousness and responsibility, judges restore the complexity of procuring offences and push back against the standardizing approach inherent in the wording of the offences. As a result, we see in their practice a two-way dynamic of standardization of procuring acts through the use of intersectional stereotyped categorizations, but also of complexification in the handling of procuring acts. How, then, do stereotypical representations of procuring stand up in practice, in the face of more open-ended situations? Amid stereotypes on one hand and recognition of the complex reality on the other, how do legal professionals enforce these offences?

5. At the heart of prosecutions: A constant effort to define and justify the boundaries of punishment

If, alongside legal proceedings, magistrates and police officers use categories that depart from the definition of procuring offences, how do these categories hold up when faced with the acts, once proceedings have begun? Prosecution requires the acts to be characterized, that is, an offence must be associated with the acts being prosecuted, and a penalty justified based on the rationale (*ratio legis*) of the offence. However, as there is no certainty as to the rationale of the offence given its broad definition, it is up to judges to delimit what is punishable. We note that, faced with these inconsistencies, magistrates undertake a process of defining (5.1) and justifying the boundaries of punishment (5.2).

5.1. Identifying victims and perpetrators: When representations of procuring come up against complex prostitution situations

> *"The thing is that there isn't always the ease of having a violent villain, driven by greed, who objectifies women. And there aren't always evil, abusive madams either." (Examining magistrate, interview 1).*

During prosecutions, first police officers and then magistrates have the task of characterizing the offences, which requires them to identify the victims and perpetrators as well as the acts to be penalized. The categories mentioned above might suggest that these roles are easy to assign. Yet when faced with the reality of the acts, they come up against the complexity and fluidity of procuring situations, making it tricky to identify the victims to be protected and the pimps to be punished. Indeed, although prostitution is presented as a form of violence in itself, justifying the impossibility for sex workers to consent (the victimization discourse), the acts brought to the attention of police officers and magistrates brought to light a range of situations in which the relation to coercion and agency is ambiguous. Some of the situations that magistrates and police officers have to deal with challenge the dichotomy of victim-perpetrator or exploited-exploiter.

Among the situations that call this dichotomy into question, one particularly stands out in our interviews: that of victim-perpetrators, or people who have taken on organizational roles in the prostitution of others while engaging in prostitution themselves. In procuring trials, the absence of victims as witnesses or *parties civiles* (private parties associating in a court action with the public prosecutor) is remarkable, and raises questions about the broad definition of the offence

of procuring. The core of sociologist Milena Jakšić's book discusses the figure of the "victim-perpetrator" and the paradox between the widespread mobilization on behalf of victims of trafficking (and, by correlation, of prostitution) and the way in which these victims are transformed into perpetrators in the course of proceedings (Jakšić 2016). Similarly, our study of magistrates highlights the challenge of dealing with victims who refuse to accept victim status, or even denounce the legal proceedings, and the permeability between the status of victim and perpetrator that causes confusion (Lilian and Favarel-Garrigues, 2022). Indeed, the interviews highlight an overlap between the roles of "victim" and "pimp", due to the backgrounds and trajectories of people in prostitution and the all-encompassing nature of the definition of procuring.

The complexity of procuring cases inevitably impacts the work of judges, who will then have to decide on the sentence, but also give meaning to their actions and to the penalty.

> *"There's also the question of prosecuting and punishing sex workers who, at some point, will move up the hierarchy of a network. See, they're going to organize the prostitution business and make a profit out of it so that afterwards, they can either plan a different life or invest to expand the prostitution business. That's the thing. And that's complicated because, as I see it, these are not the kind of cases that justify the same type of penal response as for individuals who organize prostitution for profit" (Examining magistrate, interview 1).*

The inconsistencies resulting from the situation of victim-perpetrators contradict the stereotypical discourse on procuring and thereby complicate magistrates' decision-making. Indeed, given the broad definition of procuring, many of the actions of people in prostitution may in turn be prosecuted, creating ambivalence about the place of victims in proceedings.

In our corpus of decisions, we note several situations that illustrate this ambivalence. For instance, a Nigerian woman who had reported acts of procuring and human trafficking to the police was in turn charged with "aiding and abetting the prostitution of others" for having put another Nigerian woman who wanted to come to Europe "in touch" with one of the defendants in the case. Despite her complaint and that of the woman implicating her, neither victim became "*partie civile*", that is, associated with the public prosecutor in the proceedings: the first was one of the defendants and the second was present only through her testimony. Consequently, neither of the women who filed complaints asked for damages or access to victim support services. At the end of deliberations, the first plaintiff was convicted of aggravated procuring and received a fully suspended sentence (decision 2021.09).

In another decision, a sex worker was accused of helping her husband to force an underage woman into prostitution, before helping her to escape. The decision mentions numerous acts of physical and sexual violence alleged by the defendant and partially established in the proceedings. The defendant explained her behaviour by the hold her husband had over her; he had first forced her to work for him before asking her to help him organize the prostitution of the underage victim. These allegations were partly confirmed by the facts gathered in the investigation and by the hearing of the minor victim, who confirmed that the defendant then helped her to escape. However, the decision found that the evidence was insufficient to prove that the defendant had acted under coercion. She therefore received a prison sentence, fully suspended with two-years' probation (decision 2023.03).

As we can see, the complexity of the situations which magistrates have to deal with complicates their task of identifying victims, and highlights grey areas in the enforcement of the procuring offence. In the first two decisions, although the sex workers involved in the proceedings were convicted, the magistrates granted them a degree of clemency by giving them suspended sentences only, unlike the defendants in the same cases, who did not prostitute themselves but used coercion.

Besides victim-perpetrators, other situations complicate the identification of perpetrators by clouding the reprehensible nature of their behaviour. This is the case for the family members of sex workers, especially their spouses.

> *"It depends. If the spouse who has nothing to do with the matter has their own income and a lifestyle that corresponds to their own income, it's hard to prosecute them. Simply knowing what one's spouse does isn't enough." (Specialized police, interview 17)*

While these grey situations in which sex workers' relatives risk prosecution are often dismissed by magistrates and police officers as marginal, they are a central concern for sex workers' associations. Similarly, certain decisions in our corpus appear to substantiate sex workers' fears of seeing their partners or relatives convicted. In a 2021 decision, a sex worker's husband was convicted of aggravated procuring after going to live with her in a hotel room at her request because "she didn't like being on her own". Although the husband did not have any part in her prostitution, he was found guilty of profiting from the prostitution of his spouse, which "paid for the hotel and food, even if he did not think he was living off the money from prostitution" (decision 2021.02). Similarly, in a 2022 decision, a husband was convicted of aggravated procuring for having "profited from the proceeds of [his wife's] prostitution", despite her claiming to work voluntarily and to "enjoy providing her services". The court nonetheless

considered that the sums debited from the sex worker's account for the couple's shared expenses were sufficient to establish the offence. In short, even if the risk of prosecution for relatives of sex workers is only marginal and unlikely to be pursued, as legal scholar Eloi Clément (2015, 822) has noted, as the law stands there is nothing to prevent such prosecution.

Other situations encountered by magistrates and police officers call into question the exploiter-exploited relationship presumed to exist between pimps and victims. Some situations are recognized as being more difficult (such as street or van prostitution), or less difficult (such as massage parlours) in view of the working conditions and the degree of agency of those involved. However, this recognition does not necessarily translate into limited enforcement of the offence, as police officers keep to a strict application of procuring offences. Sex workers' consent to prostitution or their voluntary recourse to third parties is neither liable to deter prosecution, even in the absence of coercion. For instance, people called upon by Chinese sex workers to help them organize their prostitution business (renting accommodation, answering phones, writing advertisements, etc.) have been convicted despite the consent of all the 13 "victims", who stated that they were "under no pressure" and had used defendants' services because of their "difficulties in expressing themselves in French" (decision 2022.05).

The complexity of the situations that magistrates and police officers encounter calls into question representations of prostitution that exclude all agency and present sex workers as victims. As a result, situations in which the all-encompassing nature of the procuring offence penalizes behaviour beyond exploitation are likely to cause unease among magistrates who, despite being bound by an offence that allows them to convict, question the legitimacy of the punishment. In response, magistrates make an effort to justify prosecutions by highlighting exploitative situations.

5.2. Justifying criminal proceedings by highlighting exploitative situations

Despite a definition of procuring that allows for widespread prosecution, magistrates' behaviour indicates an effort to justify prosecutions by demonstrating the existence of a situation of exploitation, over and above simply satisfying the criteria for establishing offences. Indeed, faced with such a broad definition of procuring, magistrates express a need to make legal action meaningful: "the objective is to give meaning, to restore meaning, set limits" (Examining Magistrate, interview 1).

This effort at justification first appears in the emphasis placed on the opportunity principle as a means of regulating the criminalization of acts that fall under procuring offences. Indeed, this principle allows public prosecutors to decide to press charges or not depending on the situation presented to them. The interviews with police, government representatives and magistrates bring

to light a consensus that the "catch all" definition of procuring is a valuable tool for facilitating investigation and prosecution, but that it sometimes raises ethical considerations. Magistrates recognize that the definition of the offence is "theoretically open to criticism because it enables to prosecute a lot of situations amongst which some are not appropriate to punish" , but defensible in that it enables them to defend principled positions and to play an educational role (Prosecutor, interview 5). Other magistrates are more explicit about their desire to define "fair" limits in resistance to a political project that aims to do more than just combat exploitation. A magistrate with experience both on the bench and as an examining magistrate speaks of a clash between a blanket offence and a sense of justice. She criticizes the looseness and lack of precision of the criminal law, and the presence among the *parties civiles* of associations that want to push a political agenda—a ready-made discourse—that makes it harder to set the limits and gets in the way of more subtle work (Examining magistrate, interview 1). Despite varying positions on abolitionist policy, the opportunity principle is usually presented as a means to make a selection among the wide range of situations that can be prosecuted. Those who mention this principle as a means of regulating prosecutions give illustrations of borderline situations in which initiating prosecutions is deemed inappropriate and, implicitly, unjustified. For example, the case of a sex worker's brother in higher education who is supported by a regular transfer of money earned through prostitution is used to mark out the limit of opportunity to prosecute situations of profit (Prosecutor, interview 5). Thus, despite the arbitrary nature of the choice left to prosecutors, the opportunity principle is presented as a guarantee of the validity of criminal proceedings.

We also observed other mechanisms in our sample of decisions that seem to play a part in justifying criminal proceedings. In these decisions, the wording of the indictment (which details the charges against the defendant) seems to favour a combination of situations that can be characterized as procuring. This combination appears at two levels: either as multiple charges for the same acts, or as a combination of procuring criteria within a single charge. In the first case, for the same procuring situation, help and profit are prosecuted under two separate charges, one for help and the other for profit. In the second case, different criteria to characterize procuring are grouped together in a single charge, even though only one of them would be sufficient to establish an offence. For example, in a single charge, one perpetrator was charged with having "helped, assisted, protected, hired, trained, corrupted, pressured, profited from, shared the proceeds of, and received income from a person habitually engaging in prostitution" (decision 2023.05). In this way, almost all of the charges of procuring brought against defendants contain not one single criterion for characterizing the offence, such as helping, profiting or providing accommodation, but a combination of several criteria. There is a clear effort at detail in the

wording of the charges and in the combination of the offending behaviours, whereas acts of procuring could be characterized simply.

In addition to the combination of charges or criteria in a charge, there is also a cumulative effect in the use of aggravating circumstances. Of the 66 defendants prosecuted for procuring in our sample of decisions, only two were prosecuted for simple procuring; all the others were prosecuted for aggravated procuring. The most frequent aggravating circumstances include multiple victims, multiple perpetrators, and the use of a telecommunications network. Moreover, certain aggravating circumstances are sometimes combined within the same charge ("having made a profit from prostitution, upon the victim(s) arrival on French territory, on multiple victims, with the use of coercion or fraudulent behaviour, by multiple perpetrators" – decision 2021.09) or spread across several procuring charges (two separate charges of "helping, assisting, protecting", each with an aggravating circumstance: "multiple victims" on the one hand, and "use of a telecommunications network" on the other - decision 2023.10).

Thus, in the wording of the indictments, there is a clear effort to prove the existence of a situation of exploitation by the combination of charges on the one hand, and aggravating circumstances on the other, serving to justify the validity of the criminal proceedings but also to suggest two distinct roles of "victim" and "pimp" despite the complexity of the acts.

> *"With our frame of reference, we still need this idea of two clear-cut roles with a clear-cut, hierarchical organization. We like to assign very clear-cut, precise roles, which help us construct a narrative that's easier for us, so that we can then arrive at a fair judgment". (Examining magistrate, interview 1)*

This combination contrasts with the light sentences handed down to convicted offenders. Indeed, despite the charges laid, the sentences handed down in our sample of decisions do not exceed seven years' imprisonment, whereas 10 years is allowed for aggravated procuring.

In this sample, the minimum sentence was four months and the maximum 84 months (seven years). With a median sentence of 18 months and three-quarters of the sentences not exceeding 36 months, the sentences handed down for procuring appear light considering the maximum sentence set out in the Criminal Code and "the intrinsic seriousness of the offence of procuring, with which lawmakers have chosen to associate a substantial maximum sentence" (Judge, interview 7). We suggest that the light sentences handed down for procuring may reflect magistrates' discomfort in judging situations which, contrary to stereotypes, are far removed from situations of exploitation. Indeed, the broad definition of procuring makes it easy to characterize, and it is sometimes not possible to acquit defendants who have been prosecuted despite a complex situation or one that deviates from the exploiter-exploited stereotype. The

recourse to fully suspended sentences or short prison terms, besides the traditional approach of individualized sentencing for each defendant, may therefore reflect magistrates' discomfort in judging situations where the existence of exploitation is questionable, or where the boundaries between "victim" and "pimp" are blurred.

6. Conclusions

The implementation of the offence of procuring by magistrates and police officers runs up against the inconsistencies between its definition and its purpose. If political discourses seem to state the rationale of the offence and its purposes clearly –fight against prostitution through the criminalization of any kind of involvement in it, regardless of the assistance, support or protection of sex workers–, a legal review of its *ratio legis* reveals uncertainties. Hence, paradoxically, the broad definition of the offence facilitates both investigations and proceedings led by magistrates and police officers, but the lack of clarity on the rationale of the offence complicates their work, especially with regards to the justification of proceedings and the identification of defendants and victims.

Consequently, debates on the rationale of the offence and the limits of its criminalization are found both at the theoretical level and during its implementation. Thus, in order to navigate the paradox and inconsistencies generated by the legal definition of procuring, magistrates and police officers engage in a constant effort to define and justify the boundaries of punishment, especially by reintroducing criterions of exploitation or profit in their decisions. However, this space of choice left to magistrates might translate into a risk of arbitrary as well as a risk of geographic disparities in the implementation of the offence of procuring, all together leading to legal insecurities.

Moreover, the determination of behaviors related to profit or exploitation often appears excessive in the eye of the defendant of course, but also of the victims. We highlighted, like other researchers before us, how much the absence and the refusal of victims to participate in the proceedings raises questions amongst magistrates and police officers. Regardless of the profile of people in prostitution, even in cases of Nigerian women victims of human trafficking, all victims seem to question the prosecution of defendants who aided them. As mentioned in the introduction, we do not set aside the reality of exploitation existing in prostitution, but our research underlines how the legal framework on procuring produces contradictory results.

Thus, considering that the legal framework does not allow to differentiate the diversity of situations covered by the offence of procuring, our observations show a risk of discrimination in

its implementation. Despite attempts of magistrates and police officers to take into account the complexity and fluidity of the relations between sex workers and third parties by creating categories and hierarchies that allow them to make sense of the cases brought to them, two types of discrimination seem to occur in this treatment. First, regarding the use of some categories grounded on intersectional stereotypical judgments producing an exaggerated grid of analysis of the cases and discouraging victims to make use of legal proceedings that they do not approve of, steering them away from legal institutions.

Second, the implementation of an offence neutral in appearance (with regards to gender and origins), perpetuates an increased risk to ignore the specific disadvantages of some 'victims' (who do not master the French language, without a residence permit or who are stigmatized by their gender identity) for whom the use of third parties might have a positive effect. How can we judge aid and protection practices as negative while recognizing that sex workers are privileged targets of various forms of violence? In this context, the grid of analysis of intersectionality helps to shed light on the paradox and inconsistencies in the notion and implementation of the criminalization of procuring when it comes to thinking about what best contributes to protecting people in prostitution or to making the activity less risky in situations that do not fall within the scope of exploitation.

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