

## HOW TO ENHANCE THE RIGHTS OF RETURNEES – IDENTIFICATION AND CONSIDERATION OF VULNERABILITY IN RETURN OPERATIONS

# How to enhance the rights of returnees – identification and consideration of vulnerability in return operations

Non-Discrimination Ombudsman

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# 1. Introduction

## 1.1. Background and goals of the project

One of the duties of the Non-Discrimination Ombudsman as an external and independent authority is to monitor the removal from the country of foreigners being deported or refused entry. According to the Return Directive of the European Parliament and of the Council (2008/115/EC), Member States shall provide for an effective forced-return monitoring system. In Finland the obligation concerning the Directive was assigned as the duty of the Non-Discrimination Ombudsman's predecessor, the Ombudsman for Minorities, with an addition to the Aliens Act (section 152b) in 2014. Monitoring has been developed as part of official duties and also with support of project funding received from Funds of the European Union. This report has been written as a part of a project financed by the Asylum, Migration and Integration Fund (AMIF) of the EU Home Affairs Funds: "Identification and consideration of vulnerability in the preparation and enforcement of removal from the country".

The Government proposal on the monitoring of removals (HE 134/2013) states that the situations of vulnerable persons and aspects related to the humane implementation of returns should be taken into account in monitoring. Due to the operational focus set by the legislator, international regulations and the needs for development that emerged in previous projects, the Non-Discrimination Ombudsman deemed it important to determine how vulnerable returnees can be identified and how their special needs are taken into account in the preparation of returns and in the actual return operations. Another goal of the project was to improve cooperation between authorities.

The material of this report consists of observations made in the monitoring of removal from the country during the project period, from the 1st of August 2020 to the 31st of October 2021, and a summary of responses to an official survey sent to police departments and reception centres, including the assistance system for victims of human trafficking and detention units. The aim of the survey was to establish how the authorities identify circumstances related to vulnerability and how they are taken into consideration in the planning and execution of returns. The survey also helped determine the roles of various authorities and views of how the procedures could be improved.

The final report on the Non-Discrimination Ombudsman's previous project "Palautusten valvontan vaikuttavuus" (Effectiveness of returns monitoring) drew attention to variation in the identification of the situations of vulnerable returnees and their special needs. In some cases of return, the special needs of vulnerable returnees were taken into account in an excellent manner, whereas monitors observed clear shortcomings in some operating models. One key conclusion of this report is that the authorities do not have clear structures or guidelines for preparing returns of vulnerable persons.

This project gave the Non-Discrimination Ombudsman ample information about the situation of vulnerable returnees, the operation of the police, and other authorities' roles in the enforcement of returns. The key observations are associated with the identification of vulnerability, the preparation of returns of vulnerable persons, and cooperation and exchange of information between authorities. The

conclusions and the Non-Discrimination Ombudsman's recommendations for correcting the shortcomings observed are presented at the end of this project report.

The project application was filed in January 2020. At that time, there was no knowledge about the impending pandemic, so its effects on travel and enforcement of returns could not be evaluated. Still, vulnerable persons were returned during the project period. Since somewhat fewer monitoring operations were performed than planned, special attention could be paid to the preparation of returns. Monitoring observations are based on seven returns that were fully monitored and 13 return preparations; in some of these, a removal from the country was not implemented for one reason or another. Although there were few monitored returns, 36 persons were returned, 20 of whom were children, and they covered groups in line with the theme of vulnerable returnees in a diversified way. From these, one cannot yet make direct conclusions of actions taken in all returns, but the observations provide indications of operating models and development targets for the operation.

This report is a survey aimed at enhancing the position of vulnerable returnees and at developing official operations, not an academic study.

## 1.2. Structure of the report

The first section of the report deals with the key fundamental and human rights to which special attention must be paid when persons are removed from the country. The next section establishes how a vulnerable position is defined in legislation and guidelines. The chapter on official surveys reviews, for instance, access to information about both vulnerability and of when a reception centre and the returnee are informed of the date of a return. The report also discusses how vulnerability is taken into consideration in the preparation of returns, in particular. Specific questions reviewed include consideration of the best interests of a child and return of victims of human trafficking. Good practices, challenges and proposals for improvement are covered towards the end of the report. The fifth chapter describes monitoring observations from the project period, and the last section presents conclusions made of the project and provides the Non-Discrimination Ombudsman's recommendations for developing returns of vulnerable persons.

## **2. Fundamental rights in removal from the country**

## 2.1. Key fundamental and human rights in removal operations

The central task of the monitoring by the Non-Discrimination Ombudsman involves assessing the enforcement of forced returns from the point of view of fundamental and human rights. This chapter deals with the key fundamental and human rights to which special attention must be paid when persons are removed from the country. Fundamental rights specify the minimum level which ensures that every person is treated with respect for their human dignity.

Fundamental and human rights are universal rights shared equally by all people. Fundamental rights are enshrined in the Constitution of Finland<sup>1</sup> and in the Charter of Fundamental Rights of the European Union<sup>2</sup>. Human rights, on the other hand, are defined in international human rights conventions. In terms of contents, these involve largely the same rights. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stated that enforcement of removal from the country is an especially risky situation for violations of fundamental and human rights<sup>3</sup>. Vulnerable returnees face an even greater risk of violation of fundamental rights than other returnees. Situations where vulnerability has not been identified involve a particularly high risk.

According to section 22 of the Constitution of Finland, the public authorities shall guarantee the observance of basic rights and liberties and human rights. The principle of interpretation of the law that is favourable to fundamental and human rights under section 22 of the Constitution of Finland must affect activities of the authorities, so that they always select the operating model that best contributes to the realisation of fundamental and human rights. Furthermore, section 5 of the Aliens Act<sup>4</sup> provides for the rights of an alien as follows: “In the application of this Act aliens’ rights may not be restricted any more than necessary.”

Section 2 of the Police Act<sup>5</sup> requires the police to respect fundamental and human rights. In exercising their powers, the police shall choose from all reasonable options the course of action that best asserts these rights. Several sections of the Regulation concerning the operations of the European Border and Coast Guard Agency Frontex<sup>6</sup> refer to consideration of fundamental rights in the Agency's operations. In Article 80 of the Regulation, the European Border and Coast Guard shall guarantee the protection of fundamental rights, in particular the Charter, the 1951 Convention relating to the Status of Refugees<sup>7</sup>, and the Convention on the Rights of the Child<sup>8</sup>. Article 62 of the Regulation provides that staff participating in return operations must have adequate training on fundamental rights, and the ability to

<sup>1</sup> Constitution of Finland, 731/1999

<sup>2</sup> Charter of Fundamental Rights of the European Union (2012/C 326/02)

<sup>3</sup> Deportation of foreign nationals by air, Extract from the 13th General Report of the CPT, published in 2003

<sup>4</sup> Aliens Act, 301/2004

<sup>5</sup> Police Act, 872/2011

<sup>6</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council

<sup>7</sup> Convention relating to the Status of Refugees, 77/1968

<sup>8</sup> UN Convention on the Rights of the Child, 59 and 60/1991

address the special needs of children, victims of trafficking in human beings, and other particularly vulnerable persons.

Article 5 of the Return Directive<sup>9</sup> obligates Member States implementing this Directive to take due account of the best interests of the child, family life, the state of health of the third-country national concerned and respect the principle of non-refoulement.

This chapter does not include an exhaustive list of all the fundamental and human rights that must be taken into consideration in enforcement of removal from the country. Other rights that often emerge during a return include protection of property (Constitution of Finland, section 15) and protection of personal data (Charter of Fundamental Rights of the European Union, Article 8).

## 2.2. Right to life and prohibition of torture and inhumane treatment

Section 7 of the Constitution of Finland states that everyone has the right to life, personal liberty, integrity and security. Liberty is traditionally one of the key objects of legal protection in a state subject to the rule of law. The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. Any precautionary measures prior to removal from the country and the grounds for them are listed in the Aliens Act.

The provision also states that no one shall be tortured or otherwise treated in a manner violating human dignity. The right to life and prohibition of torture and inhumane treatment are emphasised in situations involving the use of force. Returnees have been killed during removal from the country because of the incorrect use of force in some European countries<sup>10</sup>.

Use of force must be based on the law, be used as a last resort, and be proportionate to the resistance<sup>11</sup>. Techniques that hinder normal breathing are prohibited. Any restraints must be opened when resistance has ceased, and restraints may not be used as a precautionary measure. The Constitutional Law Committee has stressed that only trained personnel have the right to use force and the limits placed on the use of force by fundamental and human rights must be addressed in training<sup>12</sup>. Individuals strongly opposed to being returned must be treated civilly and with respect for their human dignity even in difficult situations. Inhumane treatment can take other forms besides the excessive use of force, such as neglecting certain basic needs like the need for food and drink or setting out on a journey in winter wearing inadequate clothing. Inhumane treatment can also comprise neglect of special needs of vulnerable returnees.

<sup>9</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals

<sup>10</sup> <https://irr.org.uk/article/analysis-deaths-during-forced-deportation/>

<sup>11</sup> The Return Directive (Article 8, paragraph 4) states that where Member States use — as a last resort — coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.

<sup>12</sup> PeVL28/2001, PeVL54/2001

Efficient, friendly and respectful interaction is a part of respecting the human dignity of returnees. It is important for the returnees to become understood, be able to communicate one's own needs and obtain information about what is happening with the return and how the journey proceeds. Appropriate interpretation has an important role in activities of authorities that are favourable towards fundamental rights.

A vulnerable position and the needs of returnees must be identified and taken into consideration in the planning of a return and during its progress. For example, the necessary aids and medicines must be provided, and the person returned must be fit for travel. The CPT<sup>13</sup> recommends using a Fit-to-Travel certificate in the case of all returnees. Joint return flights by Frontex must always include a doctor on board. Securing the rights of vulnerable persons removed from the country often requires special measures from the police and neglecting these can be regarded as inhumane treatment in some situations.

### 2.2.1. Non-refoulement

Absolute non-refoulement must always be taken into account when making a decision on removal from the country. Pursuant to section 9(4) of the Constitution of Finland, a foreigner shall not be deported, extradited or returned to another country, if in consequence they are in danger of a death sentence, torture or other treatment violating human dignity. Non-refoulement covers all situations in which Finnish authorities transport a foreigner to another state. It is also prohibited to transport a person from Finland to a country from where the person could be further extradited to a third country and, as a consequence, subjected to a death sentence or torture, for instance.

Occasionally it may take a long time from the enforceability of a decision on removal from the country to concrete implementation of the decision. During that time, significant changes may take place in the returnee's circumstances or in the security situation of the destination country. A person's removal from the country may not be enforced if there is reason to suspect that he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity.<sup>14</sup> The enforcing authority is ultimately responsible for ensuring that non-refoulement is not violated; if the situation so requires, the return shall be waived.

Returns made inside Europe may also involve a violation of non-refoulement. In a judgment issued in 2011, the European Court of Human Rights deemed that Belgium committed a violation of non-refoulement by returning an asylum seeker to Greece (*M.S.S. v. Belgium and Greece*). The judgment states that there are serious shortcomings in the reception conditions and asylum system of Greece, due to which a returnee can be subjected to inhuman treatment referred to in Article 3 of the European Convention on Human Rights.

The Supreme Administrative Court states in its ruling on Case No 2016:53 that persons in an especially vulnerable position could not be returned to Hungary, because the information available about Hungary's reception conditions and asylum procedure placed the returnee in danger. Also, a healthy

<sup>13</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

<sup>14</sup> Aliens Act, 301/2004, sections 147 and 202

adult male could not be returned because he risked becoming returned further and then to his home country, without having his asylum application investigated in any state.

Situations change in European countries also, and evaluating factors related to non-refoulement can be challenging, particularly if a reaction by the judicial system on the matter is delayed.

In the case of vulnerable persons, a violation of non-refoulement can occur in a situation where vulnerability has not been identified or appropriately taken into account, for one reason or another. The possibility of non-refoulement should be considered, for instance, in situations where a single parent is being returned with underage children to conditions that can jeopardise the survival of the family and thereby the children's growth and development. Returning a victim of trafficking in human beings to a country where the person again becomes a victim of human trafficking could be assessed as a breach of non-refoulement. During the enforcement of removal from the country, such as in the preparatory phase, the police may learn circumstances that the decision-maker has not evaluated, or the assessment has been made with incomplete information.

## 2.3. Rights of the child

Fundamental and human rights belong also to children. Children have different needs than adults. Children also have the right to special protection due to their vulnerability. Small children, in particular, are dependent on adults. Children who are asylum seekers are always in a vulnerable position.

The best interests of the child are secured in several regulations that are binding on Finland, especially in article 3(1) of the UN Convention on the Rights of the Child<sup>15</sup>, but also in section 6(1) of the Aliens Act<sup>16</sup>. The rights of the child are also recorded in Article 24 of the Charter of Fundamental Rights of the European Union, which states that children shall have the right to such protection and care as is necessary for their well-being, they may express their views freely, and such views shall be taken into consideration on matters which concern them in accordance with their age and maturity<sup>17</sup>. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law<sup>18</sup>.

The UN Convention on the Rights of the Child is in force in Finland at the level of the law. The Conventions and its obligations on protection fully apply to all children, including children who are being removed from the country.

Under Article 9 of the Convention on the Rights of the Child, State Parties must ensure that a child is not separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary

<sup>15</sup> UN Convention on the Rights of the Child, 59 and 60/1991

<sup>16</sup> Aliens Act, 301/2004

<sup>17</sup> Charter of Fundamental Rights of the European Union, UN Convention on the Rights of the Child, 59 and 60/1991, article 12.

<sup>18</sup> UN Convention on the Rights of the Child, 59 and 60/1991, article 12

for the best interests of the child. Article 24 of the Charter of Fundamental Rights of the European Union<sup>19</sup> protects the priority of the best interests of the child in actions taken by public authorities and the child's right to maintain a personal relationship and direct contact with both their parents, unless that is contrary to their interests.

Assessing and determining the best interests of the child is necessary in situations in which the child may be separated from their parents. Preventing the separation of the family and maintaining the unity of the family are key elements of the child welfare system. Since being separated from their parents has a far-reaching impact on children, separating them from their parents should only be a last recourse when the child is at risk of immediate harm, or the measure is otherwise unavoidable. Unity of the family is also protected by Article 8 of the European Convention on Human Rights<sup>20</sup>. During enforcement of removal from the country, it must be ensured that a child is not separated from their parents contrary to the child's best interests or without evaluating the best interests of the child, such as due to decisions on precautionary measures. Also, return trips must be so organised that a family can travel together and as close to each other as possible in the means of transport, unless this is exceptionally contrary to the child's interests and the family's wishes.

Pursuant to section 6(1) of the Aliens Act, in a matter that concerns a minor the best interest of the child must always be taken into account. According to the Government proposal on the Aliens Act<sup>21</sup>, the best interest of the child is always individual and linked to the child's prevailing life situation. The child's interests must be considered on the whole, taking account of the child's individual needs, wishes and opinions. In judicial and administrative decisions, it is crucial that the authority establish which decision/operating models is in the best interests of the child in that particular case. The Government proposal also emphasises the position of social workers in determining the best interests of the child.

According to the UN Convention on the Rights of the Child, the best interests of the child must be a primary consideration in all actions concerning children undertaken by the authorities. Children must be treated in accordance with their age, and their special needs must be taken into account. In its guideline on removals from the country<sup>22</sup>, the National Police Board refers to the opinion of the Committee on the Rights of the Child to the absolute nature of evaluation of the best interests of the child. According to the Committee, article 3(1) of the Convention on the Rights of the Child does not leave Member States discretion in the matter. All administrative authorities, such as the police, must primarily assess the best interests of the child in each decision, and their decisions and enforcement measures alike must be guided by the best interests of the child.

The best interests and rights of the child must also be taken into consideration when planning a return<sup>23</sup>. Children have several rights that may emerge during the enforcement of a return of a child.

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<sup>19</sup> Charter of Fundamental Rights of the European Union, UN Convention on the Rights of the Child, 59 and 60/1991

<sup>20</sup> European Convention on Human Rights, 63/1999

<sup>21</sup> HE 28/2003

<sup>22</sup> Enforcement of a decision concerning denial of entry and deportation, POL-2021-67956

<sup>23</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 10 Return and removal of unaccompanied minors 1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child. 2. Before removing an unaccompanied minor from the

During the preparation of a return, it may emerge that other authorities or private individuals have become concerned about the child's security or growth and development. A child welfare report can have been filed on the child after the child has received the decision, or determination of matters concerning the child may be in progress. An appropriate evaluation of the best interests of the child requires that concerns relating to children are resolved appropriately before the return is enforced.

Once the child's situation has been determined, it must be ensured that the child has received adequate assistance and support before the journey. Schoolchildren should not be returned in the middle of a school year. Children must be provided the opportunity to say goodbye to persons who are important to them. Games or other activities can be provided to entertain children during the trip. Children must be provided with adequate and appropriate nourishment and the possibility for changing nappies, for instance. If it is necessary to use force against the children's parents or other returnees, the children must be moved to another room so that they will not have to witness it.

Children have the right to information on procedures related to returns, and their views must be ascertained whenever measures concerning children are taken. Children are not responsible for processing of matters concerning adults, and children should not be placed in a situation where they resolve matters between their parents and the authorities. According to the National Police Board's guideline on removals from the country<sup>24</sup>, when the police process matters concerning a family, they may not use the family's child as an interpreter at any stage of removal from the country.

## 2.4. Good governance and protection under the law

Principles of good governance must be taken into account in all activities of the authorities. Section 21 of the Constitution of Finland provides for protection under the law and guarantees of good governance. Everyone has the right to their case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to their rights or obligations reviewed by a court of law or other independent organ for the administration of justice. The publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal are key guarantees of a fair trial and good governance that shall be laid down in detail by an Act.

The Administrative Procedure Act and the principles of good governance must be taken into account in the application of the Aliens Act, including in the enforcement of removal from the country. The Administrative Procedure Act promotes good administration and protection under the law in administrative matters. Key rights regarding protection under the law and good governance include the right to receive legal assistance and the right to choose a counsel and negotiate in confidence with the counsel.

The National Police Board's guideline on removals from the country<sup>25</sup> states that the role of an attorney, counsels and especially different support persons as part of the processing of alien affairs has repeatedly

territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

<sup>24</sup>46 Enforcement of a decision concerning denial of entry and deportation, POL-2021-67956

<sup>25</sup> Enforcement of a decision concerning denial of entry and deportation, POL-2021-67956

caused ambiguities, so the matter is clarified in the guidelines. The guidelines clarify the concept and eligibility of counsel and state that the concept of support person is not defined in legislation. With regard to a support person, the guidelines say that the police must in their activities aim for an interpretation of the law that is favourable to fundamental and human rights and promote the realisation of good governance and protection under the law in administrative matters. In order to implement these principles, a support person – regardless of the term used of them in each context – should be considered comparable with a counsel. A support person has the right to be present in the processing of an administrative matter, such as an asylum process, unless this is specifically prohibited on the basis of section 12(2) of the Administrative Procedure Act.

The impartiality of official activities and the service principle are part of good administration. An authority shall exercise its competence only for purposes that are acceptable under the law, and the acts shall be proportionate to the objectives sought and shall protect expectations that are legitimate under the legal order. Under section 8 of the Administrative Procedure Act, an authority shall, within its competence, provide its customers, as necessary, with advice on dealing with administrative matters and respond to questions and enquiries concerning the use of its services. Use of language that is clear, easy to understand and to the point is also part of good administration.

According to section 1 of the Aliens Act, the objective of the Act is to promote good governance and protection under the law in migration affairs. A further objective is to promote managed migration and provision of international protection with respect for fundamental and human rights and in consideration of international treaties binding in Finland.

For persons in a vulnerable position, the realisation of good governance and protection under the law means, among other things, that their vulnerability has been identified and was known to the decision-maker and was evaluated when the decision on removal from the country was made. It also means that such vulnerability is identified, and the special needs of the vulnerable person are taken into consideration in the preparation and enforcement of removal from the country.

## 2.5. Equality

Section 6 of the Constitution of Finland contains the principle of equality: “Everyone is equal before the law”. This principle also includes a prohibition of discrimination, which means that returnees must be treated equally in all situations and that in return operations no one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability, sexual orientation or other reason that concerns personal characteristics. This provision does not prevent positive special treatment necessary for safeguarding equality. Vulnerable persons often require special measures so their equality can be implemented.

### **3. Vulnerable position in legislation and guidelines**

A vulnerable position of a person is referred to in several acts and directives concerning the rights and obligations of foreigners. The definition of a vulnerable position varies in different situations. In some parts of legislation, the specification of a vulnerable position is so scant that its interpretation is left to the party applying the law. In legislation and in practice, a person's vulnerable position may be associated with grounds for a residence permit<sup>26</sup>, any special needs in asylum seekers' reception services<sup>27</sup> or asylum procedure<sup>28</sup>, and in the context of removing persons from the country<sup>29</sup>. Thus identifying a person as one who is in a vulnerable position is legally significant for a variety of reasons.

Definitions of vulnerable persons are not exhaustive, nor are they fully similar mutually. Similarities can be found in various regulations regarding many groups that are in a vulnerable position. The Directive on the reception of asylum seekers<sup>30</sup> and the Return Directive<sup>31</sup> find that vulnerable persons include single parents with minor children, and persons who have been subjected to torture, rape or other serious/aggravated forms of mental, physical or sexual violence.

The Reception Directive mentions that persons with serious illnesses or mental disorders are also in a vulnerable position. With regard to them, the Return Directive does not directly refer to a vulnerable position, but another section of the Directive<sup>32</sup> states that when implementing the Return Directive, due account shall be taken of the state of health.

The Reception Directive mentions that women and victims of human trafficking are also in a vulnerable position, whereas the Return Directive specifies that vulnerable persons also mean minors, disabled people, elderly people and pregnant women.

In the monitoring of enforcement of removals from the country, it is deemed that all of the above can be in a vulnerable position, depending on the situation and context.

Vulnerability is manifested in different ways, on a person-specific basis and through individual situations. People can also be in a vulnerable position at different times and in different situations. In the monitoring of enforcement of removals from the country, vulnerability often comes up in a returnee's documents, and occasionally information about vulnerability is obtained from social or health care services at a reception centre, for instance. There are also situations where the police, which enforced removal from the country, is not aware of the returnee's vulnerability, or it has not been identified.

<sup>26</sup> Aliens Act, 301/2004, sections 52 and 52a

<sup>27</sup> Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings, 746/2011, section 6

<sup>28</sup> Aliens Act, 301/2004, section 96a

<sup>29</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (issued on 16 December 2008), Article 3

<sup>30</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 21

<sup>31</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (issued on 16 December 2008), Article 3

<sup>32</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (issued on 16 December 2008), Article 5

Guidelines of the National Police Board or the Finnish Immigration Service on removal from the country do not mention a vulnerable position or specify which people are in a vulnerable position.

The Finnish Immigration Service's guideline<sup>33</sup>, which mostly deals with decision-making concerning removal from the country, contains a few mentions related to the enforcement of a decision on removal from the country. The guideline covers consideration of a returnee's state of health both in decision-making and in the enforcement of a decision on removal from the country. The guideline refers to a decision issued by the Supreme Administrative Court<sup>34</sup>, according to which enforcing the removal from the country of a person undergoing involuntary treatment requires that the involuntary treatment given in Finland is discontinued.

The Finnish Immigration Service's guideline brings up a decision issued by the Court of Justice of the European Union<sup>35</sup>, which takes a stand on the transfer of an asylum seeker with an especially serious physical or mental illness. The Court found that such a transfer violates the prohibition of inhuman or degrading treatment if the transfer causes a real and noted risk of a significant and irreparable deterioration of the person's state of health. If appropriate and adequate protection measures by the authorities concerning the transferee's state of health are not sufficient to ensure that the person's state of health does not deteriorate in a significant and irreparable way, enforcement of the transfer must be postponed according to the Court until the person's state of health allows it.<sup>36</sup>

The National Police Board's guideline on removals from the country<sup>37</sup> does not contain specific instructions on removal of vulnerable persons from the country, nor does it specify in detail the situations in which a returnee may be in a vulnerable position. With regard to children, the guideline states that removal from the country must be implemented with respect for the family's unity and the best interests of the child. The guideline was updated during the project, on the 1<sup>st</sup> of September 2021. The updated guideline has clarifications relating to removal of children from the country. A reminder that the Committee on the Rights of the Child has in several contexts emphasised the absolute nature of evaluation of the best interests of the child was added to the beginning of the guideline. The guideline notes that the Convention on the Rights of the Child does not leave discretion in the matter and that all administrative authorities, such as the police, must in their decisions assess the best interests of the child, which must guide both decisions and enforcement measures. In the same context, it is stated similarly to the earlier guideline that circumstances which may postpone or prevent enforcement must be taken into consideration, but that enforcement must still be undertaken without undue delay, using appropriate means.<sup>38</sup> A new addition to the guideline states the police may not use a family's child as an interpreter at any stage of removal from the country when processing matters concerning the family<sup>39</sup>.

In the National Police Board's guideline, a returnee's state of health is referred to in the section on interviews on removal from the country and escorted returns. According to the guideline, the purpose of

<sup>33</sup> Finnish Immigration Service, 28 May 2019: Guideline on removal from the country, MIG-2019-833

<sup>34</sup> Supreme Administrative Court, 13 June 2017/2863

<sup>35</sup> CJEU: C-578/16 PPU, 16 February 2017

<sup>36</sup> MIG-2019-833, p. 111

<sup>37</sup> National Police Board, 26 August 2021: Enforcement of a decision concerning denial of entry and deportation, POL-2021-67956

<sup>38</sup> POL-2021-67956, p. 3

<sup>39</sup> POL-2021-67956, p. 7

an interview on removal from the country is to determine how a person will leave the country, and that the assessment is affected by any mental health problems the person may have, among other circumstances<sup>40</sup>. The guideline also notes that a returnee's state of health can require a doctor or nurse to take part in an escorted removal from the country, or that the returnee must be taken to a doctor before the escorted trip. The guideline states that a doctor decides on circumstances related to a returnee's state of health and on medication, and in such situations the police must request the doctor's evaluation if the person is fit to fly and/or a Fit-to-Travel assessment.<sup>41</sup>

The National Police Board's guideline contains a subchapter on cooperation with the assistance system for victims of human trafficking relating to removal of such victims from the country<sup>42</sup>. The guideline refers to the Supreme Administrative Court's ruling<sup>43</sup>, which requires action from the police so assistance and protection provided to a victim of human trafficking would continue in the country of return, if the victim gives their consent to this. The guideline notes that arrangements for returning a victim of human trafficking must be started in good time and in cooperation with the assistance system for victims of human trafficking, so the assistance system's staff can notify providers of assistance in the destination country of the removal from the country. The guideline also states that if the returned victim does not give their consent to contacting the destination country on the continuation of assistance measures, the police must take the necessary action so the victim can obtain information about the assistance system in the destination country, if obtaining the information is possible. The guideline also refers to the National Police Board's guideline on intervention in human trafficking and similar crimes and on assisting victims of human trafficking<sup>44</sup>.

The National Police Board's guideline on intervention in human trafficking and similar crimes and assisting victims of human trafficking states the same circumstances on enforcement of decisions on removal from the country as the aforementioned National Police Board's guideline on removals from the country. The guideline also deals with a situation where becoming a victim of human trafficking is not brought up until after a decision on removal from the country or during the enforcement phase of removal from the country. The guideline notes that, in principle, a claim of being victimized must always be determined before enforcement of a removal decision, unless it has earlier become manifestly clear that the claim cannot be accurate during the asylum investigation or otherwise. Without commenting on the vulnerable position of victims of human trafficking, the guideline states that the statutory definition of human trafficking can involve manipulating the victim or taking control of and pressuring the victim, which can raise the victim's threshold to describe their experiences. Consequently, last-minute notifications of becoming a victim of human trafficking should, as a rule, be reacted to and enforcement of denial of entry should be refrained from until the identification process has been completed.<sup>45</sup>

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<sup>40</sup> POL-2021-67956, p. 21

<sup>41</sup> POL-2021-67956, p. 24

<sup>42</sup> POL-2021-67956, pp. 30-31

<sup>43</sup> Supreme Administrative Court, Case No 2017:42

<sup>44</sup> National Police Board: Intervention in human trafficking and similar crimes and assisting victims of human trafficking, POL-2015-8964, updated on 17 September 2020, POL-2020-38265

<sup>45</sup> POL-2020-38265, pp. 16-18

## 4. Survey to the authorities

This project included a survey that was submitted to the authorities. The survey was sent to 12 police departments, 12 reception centres, two detention units and the assistance system for victims of human trafficking. A total of 19 responses were received.<sup>46</sup>

This official survey produced plenty of information about the experiences and views of the police and other authorities of work done with vulnerable returnees. The responses received for the survey are compiled in this chapter.

### 4.1. How are the police informed of the vulnerable position of a returnee?

In this survey, the police were asked how they determine or obtain information about the vulnerable position of a returnee. The responses brought up four key methods: 1. through documents or information in registers, 2. investigations made by the police and contact with other authorities, 3. through contacts by other parties, and 4. reported by the returnee.

Primary document sources included decisions made by the Finnish Immigration Service and administrative courts, applications for enforcement prohibition, further information provided by counsels, and medical reports. The key register sources mentioned were the case processing system of aliens' affairs (UMA) and information systems of the police.

In almost all the responses, a significant source of information was an investigation by the police and contact with other authorities or actors. Official sources mentioned specifically included employees at reception centres or detention units, and the assistance system for victims of human trafficking.

Returnees are not always able to provide all the necessary information about themselves or their own life situation, so cooperation between authorities and an active role by the police are highly relevant for identification and consideration of vulnerability.

The responses indicated that the police obtain information about vulnerability through contact made by other parties also. Legal counsels, among others, may inform the police about the situation of returnees or factors related to their state of health after being notified about the return of their client.

Information about vulnerability received from returnees was mentioned as a key source of information in numerous responses. Police officers meet returnees during service of decisions and interviews on removal from the country, for example. Client relationships between the Police and returnees are often long due to the duration of asylum processes. Thus, the police often obtain information about returnees'

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<sup>46</sup> In order to maintain anonymity, the responses below are processed so that responses submitted by the reception centres, detention units and the assistance system for victims of human trafficking have been combined and they all are referred to with the term "reception centre".

life situation, state of health and vulnerabilities that can be used when the police plan for enforcement of removal from the country.

#### 4.2. How do the police take vulnerability into account?

The survey sent to the police aimed to establish how the police identify and take into account the vulnerable position of returnees.

The following operating models emerged from the responses by the police:

- individual and careful advance planning of the enforcement of removal from the country
  - efficient cooperation between authorities
  - evaluation of ability to travel made by a health care professional
  - special consideration of people with symptoms of mental health issues
  - evaluation and consideration of suicidal tendencies among returnees
  - securing adequate access to information for returnees, and
  - determining the circumstances in the destination country.

In general, the responses stated that the return of every vulnerable person is individual and requires careful advance planning, resources and special competence by the personnel. Travel arrangements and a survey of a returnee's special needs are started as early as possible. Escort officers are selected carefully, paying special attention to their gender and work experience, for instance.

The responses emphasised the significance of efficient cooperation between authorities in the preparation of the return of a vulnerable person. Before the return, the police are in contact with many different parties, such as the assistance system for victims of human trafficking, health care professionals, child welfare, and the Non-Discrimination Ombudsman. Due to vulnerabilities, the leader of the escort patrol carries out much preparatory work that other returns do not involve. For example, practices of airlines concerning children, people with physical disabilities and pregnant women are determined beforehand. Responses to the survey brought up informing the destination country as a special feature related to returns of vulnerable persons.

When the police return persons with a physical or mental illness, a health care professional can be brought along to the flight. The professional can also be consulted before the trip. If the case involves a “Dublin returnee”, the Finnish Immigration Service contacts authorities in the receiving country beforehand. In some cases, Finnish health care authorities have contacted the destination country’s health authorities within the limits of their powers, aiming to ensure that treatment there will continue.

Most special needs for health care during returns are related to medication. The police are tasked with ensuring that the returnee's medicine is brought along and taken during the escorted trip also.

According to all responses provided by the police, an evaluation of whether a person is fit to fly is requested from a doctor when the returnee's state of health requires a statement from a health care professional. Airlines require an assessment of whether a person is fit to fly for accepting a returnee late in her pregnancy, for example, on the flight. The police decide on continuation or postponement of the removal from the country based on the medical report. The police do not issue instructions to the doctor

about the contents of an evaluation of whether a person is fit to fly. In some cases, the police recommend bringing a doctor, nursing staff or health care profession along on the escorted trip.

Some responses referred to the National Police Board's guideline on removals from the country, which states that "The police must request the doctor's evaluation of the whether a returnee is fit to fly and present a request for a Fit-to-Travel entry in the medical report or use of a specific Fit-to-Travel form in these situations".

A few responses by the police stressed the importance of communication and interpretation. During meetings, returnees are informed of everything that will happen before and during the return. The progress and practices of the escorted trip are reviewed particularly carefully with a vulnerable person even before the trip, and any need for medication and aids is discussed.

In the case of persons with mental symptoms, individual responses emphasised the significance of interaction. In situations like this, the goal is that the returnee can deal with the same police officer throughout the removal process in order to establish trust. Contacts and arrangements are started as early as possible. Meetings can be attended by a support person or an employee at a reception centre's social or health care services.

Many responses highlighted suicidal tendencies among returnees, which are often manifested during the removal interview. The police have a duty to evaluate a returnee's mental state, determine any special needs arising from suicidal tendencies and take these into account when planning a removal from the country. The police can be informed of suicidal tendencies by another authority or a counsel. At this stage, the returnee can be referred to an evaluation by a health care professional.

The responses indicated that suicidal clients are not always told the precise schedule of the return.

The police say that in the case of suicidal returnees, they cooperate primarily with employees at a reception centre's social or health care services. Should the situation so require, a first response unit can be called in to assess the need for treatment. If necessary, the returnee is taken to a doctor for an evaluation of the state of health.

According to one response, circumstances related to suicidal tendencies along with other grounds for detention may constitute grounds to detain a returnee. This, in turn, enables the detention unit to arrange medical assistance and assessment.

The responses indicated that in some cases the police have evaluated a return prohibition at their own initiative when the returnee had a mental illness.

In one case, a person with a severe mental illness was not returned until family members living in the returnee's home country had arranged a place for further treatment in that country. In Finland, a specialist at a psychiatric hospital did not end a client's treatment relationship until these confirmations had been presented, and removal from the country had to be performed immediately, on the same day, without delays.

For returnees of advanced age and with disabilities, responses by the police brought up determination of circumstances after a return as to whether the home country has a support network for situations where a returnee is incapable of an independent daily life.

Usually, it remains unclear for the police how authorities in the destination country have acted regarding a returnee, even when they have been informed of the person's special needs.

#### 4.3. Reception centres' views in consideration of vulnerability

Reception centres were asked how returnees' vulnerabilities are taken into account in the preparation of returns. Usually, the police report the date of a removal from the country to the reception centre, so its employees can prepare for the client's impending return. Based on responses to the survey, two different situations could be distinguished from operating models used by reception centres: 1. when the reception centre received advance notice of a return and 2. when no advance notice is received.

## A reception centre receives advance notice of a return

The responses indicate that in situations where a reception centre receives advance notice of a return, vulnerabilities are taken into account as measures in social and health care services, because vulnerable clients often need special support. Staff at reception centres aim to ensure that returnees' state of health and functional capacity are noted during the enforcement of removal from the country. For instance, a reception centre may ensure that the returnee obtains the aids they need on the flight. Needs for support must always be surveyed and taken into account individually, because there are many kinds of vulnerabilities, and they may be overlapping. Especially families with small children and mothers who are single parents have needed additional support.

Social counsellors and workers at reception centres do a varying amount of client work with returnees. Sometimes a returnee is met with regularly, but some returnees do not need social counselling or work according to the responses. Returns can also be supported so that employees who are familiar from the client relationship and who have built a relationship of trust with the client are present at the moment of departure.

Staff at reception centres can help clients prepare for a return by providing assistance with comprehending and accepting the situation and with becoming oriented in the situation. Returnees are provided with psychosocial support to the extent possible and as needed. Returnees may need contact details of assisting parties in the destination country, so they can be helped with creating contacts. A reception centre can also help returnees arrange their affairs relating to the return.

According to the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings, health care staff at reception centres see to returnees' health care until the return. Nurses' work is facilitated if information about a return comes at an early stage. This helps nurses prepare matters relating to the return. If the client knows the date of the return, the nurse can provide counselling and prepare the client for the return.

Responses from almost all reception centres stated that they take care of medication and pack the medicines, so they suffice for a reasonable time after the return. If necessary, a nurse can write an English summary of the client's health-related matters, medical treatment and need for further treatment. A medical examination is arranged for a returnee when necessary.

For clients with a serious risk of suicide, the concern emerged that the client would harm themselves. In such cases, with the client's consent, the police can be informed in advance and the situation can be made as safe as possible.

## **A reception centre is not aware of the date of a return**

Several responses by reception centres indicated that the police do not always report the date of a return to the reception centre, instead the police collect the client as a surprise. This means that the reception centre cannot prepare the returnee for the departure or see to the returnee's medicines. One response stated that quick and unforeseen departures cause anxiety and fear for the returnee and also for other clients at the reception centre.

Based on the responses, reception centres are not always informed of the return date of clients in private accommodation, regardless of whether the person is in a vulnerable position or not. Consequently, the reception centre is unable to notice the vulnerable returnee's need for support, so medicines cannot necessarily be taken along for the trip.

## **Exchange of information on vulnerabilities between reception centres and the police**

The responses indicate that strict secrecy regulations in health care may cause challenges in return situations. Returnees often tell the police of their illness, treatment and medication. Clients often inform the police of their situation in matters related to social welfare also. Generally speaking, the responses stated that health records can be provided to the police with the client's consent. Usually, clients give permission for reporting information about their health.

Reception centres and detention units were also asked of any circumstances in health care and social welfare systems that limit the transfer of information concerning vulnerability and emergence of vulnerability. Most respondents deemed that factors at the system or structure level further exacerbate the emergence of vulnerability and reporting of information related to vulnerability to other authorities.

The key factor limiting the flow of information is the secrecy of health records. Only health care professionals have access to patient information systems. Providing information relating health to other authorities requires either the returnee's consent or grounds for disclosure of information in legislation. Secrecy also limits the provision of information (indicating vulnerability) obtained in social work to other authorities. The question may involve circumstances in evaluating a child's situation and best interests, which may be relevant in the organisation of a return. The police who organise returns do not have any automatic access to such information, nor is information transferred between health care and social work. An employee at a reception centre's social services is often the party that cooperates with the police in the organisation of a return. The employee is not necessarily aware of factors relating to a returnee's state of health and has no right to disclose this information to the police, even if it could be relevant for the returnee's travel or organisation of the return.

Another system-level challenge that emerged in the survey is related to patient information systems. Returnees can have been health care clients at several health care offices, such as in municipal health care, at a reception centre or at a private health clinic, for example. Each of these operators has its own information systems that do not transfer data between one another. The location of data in many

different systems diminishes the flow of information. This makes it difficult to obtain an overall picture of factors related to returnees' state of health.

Based on the responses, it appears that forming an overall picture of returnees' potentially vulnerable position can be a challenge. A returnee's consent to disclosure of their information plays a key role here. Many details can remain unavailable if a returnee does not give their consent and cannot actively express their challenges relating to their state of health or other factors indicating vulnerability.

#### 4.4. Critical factors identified by reception centres in returns of vulnerable persons

In their responses, reception centres pointed out the importance of obtaining information about the return date from the police well in advance. Reception centre employees must have enough time to prepare clients (including those in private accommodation) for departure and to take their special needs into account. Children also need support when the return approaches, and they must be able to say goodbye to schoolmates and other friends. Evaluating children's best interests and arranging their affairs can take a lot of time.

Responses from reception centres stressed good and peaceful interaction, professional compassion, proactive work, and providing information of what to expect in the home country. All these factors help to calm down their clients. Systematic and patient communication with returnees, before and during the trip, about what would happen was deemed important.

From reception centres' perspective, constructive cooperation between various authorities in the enforcement of returns is important. The responses found that the enforcing party of a return should consider the impact of vulnerability on travel, children, state of health and the returnee's resources. Reception centres also expressed the wish that the police would more readily notify the Non-Discrimination Ombudsman if they know a returnee is in a vulnerable position. They also suggested that when a person is returned to an unfamiliar town, it should be possible to help the returnee in some way, such as by means of financial support, move to the hometown that may have members of the person's support network.

Responses by reception centres also noted that during the trip the police should pay attention to times when to take medicine and to necessary meals (for diabetics, for example).

#### 4.5. Special questions related to returns of vulnerable persons

Reception centres, detention units, the assistance system for victims of human trafficking, and the police were asked who is responsible for ensuring that 1. returnees have the necessary medicine with them, 2. children's best interests are taken into account and evaluated in the enforcement of returns, and 3. last-minute changes in a returnee's situation are reported to counsel and authorities deciding on the enforcement of removal from the country.

## **Ensuring that medicines are brought along**

The majority of all respondents stated that bringing along a returnee's medicines is the responsibility of employees at the respondent's own organisation. Reception centres prepare beforehand by providing returnees with the medicines and prescriptions they need. On the other hand, the police are responsible for bringing medicines along, and instructions on them are provided to the police if they are needed during the trip. The police stated in their responses that a nurse or doctor at a reception centre or detention unit is consulted on the matter if necessary.

A few responses by the police also said that returnees are responsible for their medicines. The police talk to returnees about medicines and remind them to bring along medicines and prescriptions.

## **Taking children's best interests into account**

According to reception centres, the police have primary responsibility for ensuring that children's best interests are realised during removal from the country. The responses pointed out that when evaluating children's best interests, the police can ask social workers at reception centres or child welfare about the family's situation or the parents' ability to look after their children. Individual responses mentioned that parties ensuring children's interests include a social worker, monitoring of the enforcement of removal from the country by the Non-Discrimination Ombudsman, a representative, a counsel, and a reception centre or detention unit regarding the moment of departure. The responses also mentioned that child welfare can have a bigger role than today in evaluating children's best interests in the context of returns.

One response stated as a challenge assessing a child's best interest, especially with a return to a country where the child lived earlier in unsatisfactory circumstances. The response referred to a situation where authorities in the destination country are not contacted about the return of vulnerable persons, so they would be cared for after the return.

In most responses by police departments, it was deemed that evaluating the best interests of children is the responsibility of the police. According to these responses, children's interests are ensured by paying attention to their wellbeing and safety. Examples of taking account of children's interests mentioned most often were the selection of escort officers, the family's unity, and age-appropriate treatment of children. Other mentions included minimising situations and actions that traumatize children, evaluation of a child's interests and circumstances before the return, and consideration of special needs by bringing along toys, appropriate meals as well as childcare and hygiene supplies.

According to a few responses, a child's custodian and in one response the counsel is responsible for assessing the child's best interest. Some responses also brought up the possibility of consulting child welfare and the fact that all authorities evaluate the best interests of children. Two responses made reference to how children's best interests are evaluated in decisions concerning them.

## **Reporting of changes in a returnee's situation**

In the survey, authorities were also asked who should report changes in a returnee's situation to counsel and authorities deciding on the enforcement of removal from the country. Such details include changes in a returnee's state of health or new information relating to an impending asylum or residence permit matter. Reception centres answered that such responsibility belongs to employees of social services at

reception centres or other centre employees. According to the responses, information about changes is reported to counsel but, on certain conditions, to the police and child welfare also. Changes in a person's state of health to counsel are reported by a nurse who can also try to obtain a medical report.

Responses by police departments found that the police are responsible for reporting changes in matters related to health or the asylum process, for example. Police departments pointed out that the police contact counsel as necessary. The responses also deemed that the police can report new circumstances to an authority or a court of law, or file a child welfare report if necessary. Several responses also stated that the police advise returnees to contact their counsel who can notify the decision-maker of new circumstances.

Many of the respondents deemed that returnees are responsible for reporting changes or new information to their counsel or the decision-maker. Individual responses mentioned that such responsibility belongs to a reception centre, detention unit and counsel. A few responses noted that the police take account of any circumstances that may prevent or suspend enforcement, including a returnee's state of health.

During visits and monitoring work in the project, it was observed that changes or new information in returnees' circumstances were forwarded to a varying extent. Cases emerged where a returnee's admission to a hospital or child welfare's concern over children's situation was not reported to the counsel or decision-maker.

## 4.6. Special questions related to returns of victims of human trafficking

### **Rulings of the Supreme Administrative Court on Cases No 2017:42 and 2017:43**

A key aspect relating to returns of victims of human trafficking is considering that the victim would have access to assistance and support in the country of return. The Supreme Administrative Court has also taken a stand on the matter in two precedents it has issued. The rulings of the Supreme Administrative Court pertained to evaluation of the need for international protection by Nigerian women who were asylum seekers and victims of human trafficking. The primary aspect of evaluation in these cases was whether the victims were able to obtain efficient, permanent and adequate protection from authorities in their home country. In addition to this question, the Supreme Administrative Court took a stand on a human trafficking victim's actual access to protection upon return to the home country. In the latter question, the Supreme Administrative Court directed obligations at authorities responsible for the enforcement of removal from the country (the police) upon return of human trafficking victims to the destination country.

The Supreme Administrative Court found that when returning a victim of human trafficking, the enforcement authority must cooperate on the reception, protection and assistance of victims with competent authorities in the victim's home country. The Supreme Administrative Court emphasised that when a human trafficking victim is returned, it is necessary to appropriately ensure that the victim, if she so desires, is immediately admitted to an assistance system in Nigeria that takes her special needs and vulnerable position into account.

The Supreme Administrative Court imposed two obligations on the Finnish enforcement authority by which the victim is admitted to the assistance system. If the victim gives her consent to disclosure of her information, the enforcement authority must beforehand inform the party specialising in assisting victims, the NAPTI in Nigeria, of the human trafficking victim being returned. If the victim does not give her consent to disclosure of her information, the Supreme Administrative Court obligated authorities responsible for the enforcement of removal from the country to implement the necessary measures by which victims are provided with contact details of systems that assist them in the destination country.

The Supreme Administrative Court did not specify in detail what it meant by the necessary measures mentioned in its ruling. In practice, this obligation is implemented so that, before a return, the police department contacts the assistance system for victims of human trafficking, which prepares a list of parties it knows to assist human trafficking victims in the destination country. This list is provided to the returnee upon enforcement.

## **Continuation of services for victims of human trafficking in the destination country**

Responses to the official survey received by the Non-Discrimination Ombudsman pointed out circumstances, due to which referring victims of human trafficking to support in the destination country was deemed very difficult in practice. In responses provided by authorities, the Supreme Administrative Court's decision was found problematic due to practical circumstances and problems associated with questions of powers, and because the obligation does not actually guarantee victims a possibility for access to assistance in the destination country. The section below describes problems related to the application of the Supreme Administrative Court's decision, mentioned in the responses.

Some responses brought up missing structures for reporting returns of victims of human trafficking. In returns according to the responsibility determination regulation of the European Parliament and of the Council, the “Dublin Regulation”, notification is possible through the Dublin system, but in other returns structures of notification are missing.

Respondents also saw the difficulty of finding up-to-date information on parties providing assistance in various countries as a challenge in referring human trafficking victims to further assistance. Assistance systems work in different ways in different countries, and there is variation in the parties maintaining them also. Responses found that Finnish authorities do not have actual knowledge of different countries' systems or the capacity of such systems.

Access to assistance in the destination country involved practical challenges, such as the inability of an organisation in the destination country which maintains an assistance system to meet returnees in official areas at airports. Furthermore, the lack of jurisdiction of Finnish authorities in destination countries prevents ensuring of access to assistance, and a person in the Finnish assistance system for victims of human trafficking is not necessarily deemed to receive assistance measures on the same criteria in the destination country.

In the survey associated with the project, the Non-Discrimination Ombudsman charted the application practice of the Supreme Administrative Court's rulings discussed above. The Ombudsman asked the police and the assistance system whether victims give their consent to the disclosure of information to authorities in the destination country. The survey also determined the respondents' views of why victims

do not wish to give their consent to the disclosure of their information. The responses received broadly covered the consent question, and the feasibility of the Supreme Administrative Court's rulings from a Finnish authority's perspective.

Nine police departments responded to the question. The police departments had varying experiences and views of consent given by victims. One police department did not have any experiences of returns of human trafficking victims. Responses also described that in some individual cases, returnees themselves asked the police to ensure their access to assistance in the receiving end.

Many police departments said their response that the police are not aware of the reasons for the victims' refusal. Some responses presented estimates of the returnees' behaviour. Possible reasons for it included unwillingness to provide personal information to Finnish authorities or mistrust of the destination country's authorities.

In the experience of the Assistance system, clients mostly decline help offered to them to contact parties providing assistance to human trafficking victims in the country of return.

The Assistance system says that asylum seekers, in particular, may have poor confidence in the home country's authorities to begin with. For instance, not a single client of the assistance system has yet wished to depend on assistance provided by Nigerian authorities (NAPTIP). Clients believe that authority is corrupt and would cause returnees more harm than provide assistance to them. The local police are also believed to be on the side of abusing parties.

#### 4.7. Good practices, challenges, and suggestions for improvement in preparations for returns of vulnerable persons

Reception centres, detention units, the assistance system for victims of human trafficking, and the police were asked which matters in the returns of vulnerable persons have gone especially well from their perspective, and what challenges they have observed in returns of vulnerable people. They were also asked how the identification and consideration of vulnerability, and cooperation between authorities could be improved in their opinion.

## Good practices

In their responses, reception centres, the assistance system for victims of human trafficking, and detention units, stated that cooperation with the police in returns of vulnerable persons is effective and has improved from what it was earlier. Police departments found in their responses that cooperation as well as contact and the flow of information between various authorities is effective. They deemed that the professional skills of the police and the human perspective in returns have improved.

Reception centres mentioned in their responses that effective practices included taking into account the needs of and maturity level of children in challenging situations, the methodical nature of returns, and the fact that returnees have adequate information about upcoming events. They also mentioned that the police recognise the significance of work done at reception and detention units, such as psychosocial support and preparation, better than before in terms of the efficiency of returns.

Several responses from police departments mentioned functioning cooperation with a reception centre, detention unit, the assistance system for victims of human trafficking, and health care providers. A few responses also stated that the police are well aware of the vulnerable position of returnees. One response also noted that matter go well once they have been planned carefully and there is enough time and resources.

## **Challenges and suggestions for improvement**

Reception centres found that the biggest challenges and areas of improvement relating to returns of vulnerable people are that the return date is not reported to the returnee or that the departure occurs at short notice. In the responses, they hoped that the police would notify them of returns in good time, so the reception centre can prepare clients for departure and take into account their special needs, such as medication, questions raised by the departure, and the best interests of a child.

Another challenge brought up in responses from reception centres was returning victims of human trafficking and special situations related to this, which were linked to return decisions made in different procedures, limited operational capabilities of the authorities, and different countries' definitions, assistance measures and systems concerning human trafficking victims. Another challenge mentioned was evaluating the best interests of a child, especially in a situation where a child return to unsatisfactory conditions, and the fact that there is no information about the reception of vulnerable persons in the country of return.

Other challenges included some returnees' poor ability to comprehend the situation, obtaining a client's permission to disclosure of information material for the return, the flow of information, and maintenance of systematic cooperation structures. One response suggested improving the situation of vulnerable persons so that staff at the reception centre is on stand-by and receives training on identifying and assisting people in a vulnerable position. Another response included a wish that the police would notify the Non-Discrimination Ombudsman if a returnee is known to be in a vulnerable position.

Hardly any challenges were brought up in responses provided by police departments. Individual responses mentioned as challenges the limited resources of the police and disclosure provisions, insofar as the police do not necessarily always obtain information relevant for returns.

Police departments' responses to how matters could be improved mentioned training, review, guidelines, and the inclusion of the police in a network opposing human trafficking. One response wished for feedback on the actions of the police from other authorities. According to another response, there is room for improvement in clarifying various actors' roles and responsibilities, specification of measures, definition of the rules, and flow of information. Careful examination of returnees' affairs and face-to-face meetings were also deemed to improve the identification of vulnerability and thus taking it into consideration.

## 5. Monitoring observations

### 5.1. Returns monitored in the project, and observations of the returns

As part of the project, the Non-Discrimination Ombudsman was supposed to monitor 15 returns of returnees in a vulnerable position. Due to the COVID-19 pandemic, the plan was not realised in line with the project plan. There were fewer return flights than normal because of coronavirus restrictions, and this made it difficult to allocate monitoring to vulnerable persons during the project. Also, some planned monitoring journeys did not take place as returns and flights were cancelled. Ultimately, seven returns were monitored from pickup of returnees to handover. These returns included families with children, mentally or physically ill persons, one elderly person and one victim of human trafficking. Although few returns were realised, they still covered groups according to the project theme in a diversified manner.

All the returns monitored in the project, with one exception, were charter return flights, making it possible to take account of the situation of vulnerable returnees better than on an ordinary scheduled return flight, regarding both the preparation and implementation of the return. All monitored returns made with charter flights had a health care professional on board, providing the ability to evaluate the returnees' state of health and secure medication during the flight.

This chapter discusses how vulnerability was taken into account in returns monitored during the project. The material covers written feedback submitted on these monitoring operations to the police, and consideration of vulnerability is discussed on a theme-specific basis. Since the number of monitored returns remained low due to the COVID-19 pandemic, it is impossible to draw conclusions of how the circumstances assessed are generally managed from observations made during monitoring tasks. Still, the material collected from monitoring operations provides valuable information about returns of vulnerable persons and the possibility to evaluate areas of development in the organisation and implementation of returns.

## Returns of families with children

Returns of five families with children were monitored during the project. These returns included a total of 20 children, 10 below the school age, seven in lower comprehensive school age and three in upper comprehensive school age. Three families had a mother who was a single parent and two had both parents. Some of these families' parents had other factors indicating vulnerability, such as symptoms of depression or chronic illnesses.

According to observations made during monitoring, returns of families with children emphasise the significance of preparing for the return journey. In particular, early information about the return date helps a family being returned prepare for the trip. Other important aspects include active contact and interaction by the police, and information about return procedures provided as early as possible. Each family member should be informed about a return and procedures for the return in accordance with their age level. In one return monitored during the project, a social worker from a reception centre who

worked a family on a return met with each family member separately before the return to discuss the family member's situation and thoughts on the return. In the monitor's view, this gave family members the possibility to deal with this difficult matter and a better opportunity to prepare for the return trip.

In the return of one family with several children, the monitor paid attention to changes that had occurred in the family's situation after the decision on refusal of stay had been made. A child welfare report had been filed on the family's children in a similar situation earlier. The monitor noted how the situation and interests of the family with multiple children had not been re-evaluated by any authority after the changes occurred, they were not heard on the matter and their views were not ascertained either.

With another family being returned, documents indicated that the family had violence against different family members and threat against their life and health. Authorities had become concerned about the children's wellbeing, and a child welfare report was filed on the children. A conversation between the Non-Discrimination Ombudsman and the police revealed that police departments participating in preparations of returns did not identify the vulnerable position of the returnees.

The Non-Discrimination Ombudsman provided the police with feedback that contained recommendations mostly on the preparation of returns. The Ombudsman paid special attention to assessment of children's best interests, which also includes their physical and mental safety. In the Non-Discrimination Ombudsman's view, the enforcement of the family's return should not have been undertaken in the situation where child welfare was still in the process of determining the children's matter and the family continued to have a threat of violence.

In the returns monitored, the families were not willing to return to the destination country, with one exception. Some returns also included challenges whose resolution emphasised the significance of interaction, good communication between returnees and the police, and information about police procedures, the situation at hand and the anticipated phases of the return. Constructing an escort schedule that was loose enough gave time for processing the challenging matters. Including an escort officer who spoke the returnees' native language in the return contributed to the establishment of a relationship of trust between families being returned and the police. It made interaction and the provision of information smoother and supported the successful implementation of the return.

The monitor's observations during return flights emphasised consideration of children's needs and parents' resources. The monitor deemed it good that family members were placed to sit on the plane with one another or as close to each other as possible. The monitor also found it good that children were unable to see other returnees. This prevented children from being able to see any situations with use of force. The monitor also gave positive feedback on specific meals reserved for children (such as finger food for small children), and entertainment reserved for children during the flight, such as toys, games, drawing instruments or tablet computers.

Children were almost always well looked after during the implementation of monitored removals from the country. Escort officers saw to the children's needs and hygiene and helped the children cope. The escort officers' interaction with the children was humane, friendly and respectful. One return had a rushed departure, so children were unable to have breakfast before the trip and no snacks or drink had been reserved for them. The Non-Discrimination Ombudsman found this to be inappropriate in the feedback provided to the police.

The monitor followed all returns of families with children included in the project up to handover in the destination country, with one exception. The monitor is unable to evaluate the conditions that the returnees actually end up in after handover. The Non-Discrimination Ombudsman has no jurisdiction or right of access to information in a foreign country's territory, nor the possibility to observe the returnees' situation after handover.

## Interpreting

In two monitored returns, the Ombudsman paid attention to interpretation during the return. In one return, the mother of a family being returned spoke a very rare dialect, and there is only one interpreter in Finland who speaks that dialect. During the escort journey, the leader of the escort patrol and the escorts discussed practical matters with the family's 17-year-old son who spoke Finnish. The boy interpreted the conversations to the family's mother. After the return, the Ombudsman stated that despite challenges related to interpretation, children should not end up in a situation where they explain circumstances related to the return to their parents with authorities.

In another monitored return, a family's children in lower comprehensive school age interpreted a conversation when the mother wanted to talk to the police. The monitor observed that the children were forced to interpret matters associated with the family's difficult situation and the mother's fear of the future. The Ombudsman stated in the feedback that using children as interpreters is not an acceptable practice, nor is in the best interests of the children.

None of the monitored returns included an interpreter. The Non-Discrimination Ombudsman finds it is of paramount importance that escort officers and returnees understand each other. The interpreter is particularly crucial in acute situations, like ones related to health, as well as in situations in which the returnee wishes to ask or needs to be explained something concerning their legal status. The Non-Discrimination Ombudsman has often paid attention to the lack of interpretation, because use of an interpreter is an essential part of the humane treatment of returnees.

## Return of a victim of human trafficking

In one return monitored during the project, the person was a victim of human trafficking identified in Finland. The returnee had been admitted to the assistance system for victims of human trafficking and had received assistance and support for becoming a victim. The returnee was unwilling to return to the destination country.

Before the return, the returnee was offered the opportunity to contact parties assisting human trafficking victims to enable access to assistance. However, the returnee refused to give their consent to the disclosure of her contact details to authorities in the destination country. For this reason, the police gave the returnee a list of the contact details of potential assisting parties in the destination country, and a certificate stating that the returnee had been provided support in Finland and could need assistance. The monitor found that in this return, the obligations imposed by the Supreme Administrative Court in its rulings on obligations related to returns of human trafficking victims were fulfilled.<sup>47</sup> This ruling by the

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<sup>47</sup> Supreme Administrative Court Cases No 2017:42 and 2017:43.

Supreme Administrative Court and its application practice are discussed in detail in chapter 4.6 of this report.

During the project, the Non-Discrimination Ombudsman has paid attention to how victims of human trafficking often do not give their consent to the disclosure of information to the receiving country's authorities. This may mean that human trafficking victims do not receive the assistance they need at the receiving end.

### **Returnees with different illnesses**

Returns of three physically and four mentally ill persons were monitored during the project. The physically ill persons had chronic illnesses requiring medical treatment. Two of the persons with mental symptoms had undergone an observation period at a hospital before the return. From the monitoring perspective, the key aspect for these returnees were bringing along the medication needed for treating the illness, evaluation of whether they are fit to fly, and taking into account their physical and mental health during the implementation of the return. Especially important for persons with mental illnesses or symptoms are the need for support and information, and the ability to prepare for the return in peace.

In returns monitored during the project, the police asked the attending physician to evaluate whether two returnees were fit to fly. In another case a doctor filled in a (Frontex) Fit-to-Travel form, which specifies circumstances on which the doctor should comment for evaluating whether a returnee is fit to fly. For another returnee, the doctor wrote a free-format assessment stating that the returnee was fit to fly. The monitor deemed it important that an evaluation of whether the returnees were fit to fly was made in those returns.

### **Seeing to medicines taken by returnees**

According to the monitor's observations, both the police and a health care professional on board return flights had a significant role in securing the medication taken by returnees. In the preparation phase of an operation, police departments contributed to ensuring that returnees were able bring along medicines for their illnesses requiring regular medication. The monitor noted that the police must raise questions relating to health and any medication in the first interview concerning removal from the country. A returnee should be told that the police do not automatically obtain information about the returnee's health or need for medication, so this is often dependent on the returnee's personal account.

In returns monitored during the project, medicines brought along by returnees were acquired by either the reception centre or municipal health care. Medicines were provided for a period of 2–6 months. Thus, the returnees had time to seek treatment in the destination country. However, this required the police to notify the party responsible for acquiring medicines of the return well in advance, so there was enough time to acquire the medication.

The monitor also paid attention to the significant role of a health care profession in securing medication. On one return flight, several returnees needed medicines during the flight. The monitor found that the health care professional on board had a crucial role in evaluating the situation related to the provision of medication; what medicine had to be taken at what time, how it was dosed and in which part of the body it was injected.

In returns monitored during the project, a health care professional also had a significant role in securing the health and wellbeing of returnees with mental symptoms. The professional evaluated the physical and mental health of returnees during implementation. This evaluation was relevant especially in situations where the returnees were psychologically stressed. In such situations, escort officers tried to verbally calm down the returnees and encouraged them to function or move independently. In the monitor's observation, an adequately loose schedule enabled returnees to progress at their own pace, which probably reduced the need for use of force. In the feedback given, the monitor also paid attention to the selection of escort officers. When a returnee was escorted by a police officer who knew the person from long before, the relationship of trust between the returnee and the officer facilitated the processing and resolution of challenging situations.

In previous monitoring operations, attention has been paid to many returnees who experience a return as psychologically stressful, regardless of the returnee's state of health. Returns monitored during the project specifically revealed that one person had told a social worker of being afraid of the return, was tearful and had slept poorly. In the feedback given, the monitor found it good that after being informed of the returnee's concerns, an officer specifically met with this person twice before the return and informed the person of the progress of the return and police procedures. This gave the returnee an opportunity to describe their concerns and ask about matters that were unclear. The monitor was able to observe that this increased the returnee's sense of security and facilitated preparations for the return.

## **Return of an elderly person**

The return of one elderly person was monitored during the project. The return was planned to be implemented on a scheduled flight. However, this return was moved to another charter return flight that departed at the same time.

In this return, the police were in active contact with the returnee before departure and reported the return date and procedures related to the return in good time. The police also explained practical matters related to the return with the returnee's family member who lived in Finland, after receiving permission to do so. The monitor attended one interview and was able to observe that the family member's attendance helped add to the returnee's sense of security regarding the return. The police also determined any challenges related to the returnee's physical condition, which should be taken into account during a return. When planning the return, efforts were made to ensure that the returnee could move safely from the destination country's airport to the home region.

The monitor deemed that challenges caused by the returnee's age were well taken into account in the return. Moving the return from a scheduled flight to a charter return flight reduced the amount of stress caused by the return to the returnee. The returnee was assisted with various actions, and the pace of progress was in line with the returnee's resources. The monitor also found it good that the diet related to the returnee's religious conviction was taken into consideration during the return in question.

## 5.2. Observations of the preparatory phase before the return date

Any vulnerability of a person seeking international protection should be identified during the asylum process. If no vulnerability has been identified, identifying it can be more challenging during the removal phase also, because there is not enough information about this in the decision or documents.

Within the project concerning returns of vulnerable persons, the monitoring focused more closely than before on the preparatory phase of removal from the country. In the monitoring, attention was paid to how circumstances related to a vulnerable position have been identified and taken into account before the return date. Examination of documents in monitoring brought up several cases involving returnees who were in a vulnerable position in different ways. Monitoring before a return paid attention to the situation of families with children and victims of human trafficking and, in a few cases, circumstances related to the procedures and return date concerning a vulnerable person.

Of the returnees reported by the police to the Non-Discrimination Ombudsman, a total of 13 cases were selected as targets of specific review for monitoring of the preparatory phase, with a total of 23 persons being returned. Of these, eight were female, six were male and nine were children.

The returnees had different circumstances associated with vulnerability. The review covered five families with children, and in two of these cases an adult in the family had been a victim of human trafficking. There were also four other human trafficking victims in this group. Of the cases reviewed, two other individuals were members of a sexual minority. The families with children, victims of human trafficking and persons in a sexual minority could also have different health-related vulnerabilities that two other returnees also had.

### Families with children and the best interests of the children

More than one-third of the persons returned were children. The families with children had a single parent who was the mother, and the return decision was made to another country in the European Union.

Families with children were being returned to Italy and Greece where the families, or the parent in the family, had been granted international protection. Accounts by families with children of the conditions in Greece, in particular, repeated how the families had previously been at a reception centre or a refugee camp, which they had to leave after obtaining international protection. The families also said that they were homeless after this, and some also stated that they had not received social or health care, and the children were unable to go to school. In its decisions, the Finnish Immigration Service did not question the returnees' accounts of the conditions in Greece but found that they were able to obtain the services they needed in Greece.

A few families with children being returned with one custodian had the children's father or relatives in Finland. Two parents from families with one custodian had been victims of human trafficking before arriving in Finland. The families also had different health problems and traumatized mothers and children.

In the monitoring operations, attention was paid to the primary evaluation of the best interests of children, which must be made in all measures concerning children, by social welfare, courts of law and administrative authorities alike<sup>48</sup>.

During the project's monitoring operations, on the 4<sup>th</sup> of February 2021, Finland was issued the first condemnatory ruling by the UN's Committee on the Rights of the Child (CRD), which pertained to an asylum matter. The Committee found that Finland had violated articles in the Convention of the Rights of the Child on the priority of evaluating the best interests of the child<sup>49</sup>, protecting a child from violence<sup>50</sup>, and the right of a child who is a refugee and an asylum seeker to protection and humanitarian assistance<sup>51</sup>. Earlier, in December 2020, the Committee asked Finland to refrain from returning a family with children to Greece due to an appeal filed with the Committee that is pending at the moment. The Committee also asked Finland to refrain from returning another family with children to Greece in September 2021.

Based on information available on the situation in Greece and the opinions of the UN's Committee on the Rights of the Child, in April 2021 the Non-Discrimination Ombudsman expressed her concern of returns of families with children to Greece to Helsinki Police Department which coordinates the enforcement of returns. The Ombudsman brought up the aforementioned ruling by the CRC and the request in December 2020 to refrain from sending people to Greece, and the fact that in its ruling of the 4<sup>th</sup> of February 2021 the CRC found Finland obligated to take all necessary action to prevent similar violations from occurring in the future, especially by ensuring that the interests of the child are taken effectively and systematically into account in the context of asylum procedures. The police have continued to return families with children to Greece on the basis of decisions made by the Finnish Immigration Service.

## **Victims of human trafficking**

The 13 monitored cases involved six adults admitted to the assistance system for victims of human trafficking in Finland, two of whom had a child. In most cases the individuals became victims of human trafficking in a European country to where they were being returned to from Finland. The returns were directed at five different countries where the persons had been granted international protection or which were, based on the responsibility determination regulation of the European Parliament and of the Council (the “Dublin Regulation”), deemed to be responsible for investigating the asylum application. For human trafficking victims, the monitoring was focused on taking into account the best interests of children and other vulnerabilities, and also especially on the continuity of access to assistance and advance contact with the systems or authorities in the country of return.

In cases concerning victims of human trafficking, the monitor asked the police responsible for the return what kinds of measures the police had taken so the victim would continue to receive assistance in the country of return. In two cases the police stated that the returnee had not given their consent to contact with the authorities or parties providing assistance in their matter. The police said that if the victims had not given their consent to contact with the country of return, they gave or asked the assistance system to

<sup>48</sup> UN Convention on the Rights of the Child, Article 3

<sup>49</sup> UN Convention on the Rights of the Child, Article 3

<sup>50</sup> UN Convention on the Rights of the Child, Article 19

<sup>51</sup> UN Convention on the Rights of the Child, Article 22

give the victim contact details of parties providing assistance in the country of return. Also, the returnee could take with them a certificate of a client relationship with the assistance system if they so wished.

In the cases of two human trafficking victims, enforcement of removal from the country was not undertaken on the reported date due to enforcement prohibition by an appellate court and circumstances that otherwise emerged in the process. In one of the cases, the police answered the monitor that if a return takes place, they will inform the country of return of the person's client relationship with the assistance system if the returnee so desires.

Two victims of human trafficking gave their consent to informing the country of return. For one person, the country of return was notified through the Finnish Immigration Service's Dublin system. In the other person's case, the police sent an email to authorities in the country of return. The message indicated arrival in the destination country, stating that the person had been identified in Finland as a victim of human trafficking and was therefore in need of assistance. The receiving country responded by saying that the return should not be made until they were able to ascertain the reception of the returnees. In this case, no return has been made yet.

## **Observations related to procedures and return dates**

For a few returnees, attention in monitoring of the preparatory phase was paid to the process pending in Finland and the selection of the return date by the police.

In one case the monitor observed lack of protection under the law related to the processing of an asylum matter. The applicant had an appeal case pending at an administrative court but had not been granted legal aid, so the applicant did not have a legal counsel for this reason. The applicant had been helped by a support person who managed to have the appeal instituted appropriately. The Non-Discrimination Ombudsman referred this lack of protection under the law observed to the attention of the police who were responsible for removal from the country and to the administrative court. After this, the administrative court prohibited the enforcement of the decision until the appeal matter was investigated.

The monitor also paid attention to three cases in which families with children and a single custodian were being returned to another European country, in a situation where it was known that the children's father was in Finland. In two cases the country of return was Greece. In one of the cases, the family's mother had relatives in Finland. In that case, the father of the family had originally been an asylum seeker in Finland and had received a refugee status from Finland a few months before the mother and children were due to be returned to Greece. The administrative court where the denial of stay matter concerning the mother and children was pending did not prohibit the enforcement of the denial of stay as it was hearing the appeal. However, no return to Greece took place because the administrative court, by its decision, overturned the sending of the mother and children to Greece less than two weeks before the return date. In the other case where the children's father was in Finland, the mother and children disappeared before the date of return to Greece.

In a third case the police said that they would send a single mother and her baby who was born in Finland to another European country. When the police reported the date, the monitor studied the situation of the returnees. It emerged that the children's father was living in Finland with a permanent residence permit,

the determination of the child's nationality was in progress, and there was no decision on denial of stay concerning the child. The child had been born after the decision received by the mother and the appeal process, and the best interests of the child had not been evaluated at any point. The situation also involved other circumstances related to vulnerability, and the monitor enquired the police about these also. Based on the monitor's observations, the police had not adequately determined the matter, although the trip for sending the single mother and the baby who was under six months old to another country had already been booked. After the police investigated the matters brought up, the Finnish Immigration Service told the police that the baby could not be sent to another country yet.

The European Court of Human Rights or a UN treaty monitoring body<sup>52</sup> can, in the context of processing of an appeal by a person being removed from the country, order that the removal may not be enforced. In several cases involving vulnerable people, legal counsels of persons being returned during the project filed an appeal with various international bodies. Before a counsel can lodge an appeal concerning a returnee with an international body, the council must utilise all effective national legal remedies. This is why appeals are often submitted at a rather late stage vis-à-vis the date of removal from the country. In two returns of families with children to Greece that were underway during the project, the administrative court did not prohibit the enforcement of denial of stay, after which the counsel notified the authority managing enforcement that they would file an appeal with the UN's Committee on the Rights of the Child. The processing of an application for prohibition of enforcement by the UN's Committee on the Rights of the Child takes two working days. In these cases, the authority responsible for enforcement has not reported that the date of return would be postponed. In both cases, the Committee prohibited the enforcement of removal from the country of a family with children just before the removal would have been implemented. Both appeal matters against Finland remain pending.

<sup>52</sup> For example, the UN's Committee on the Rights of the Child, the UN's Committee against Torture

## **6. Conclusions and recommendations**

The objective of this project was to enhance the identification of vulnerable returnees and the consideration of their needs in return operations. The project also aimed to improve cooperation between authorities and to allocate monitoring more effectively. It also produced information about returns and human factors related to them. The project was implemented with support from Asylum, Migration and Integration Fund (AMIF) of the EU Home Affairs Funds.

Part of the project included the preparation of this report, which was founded two different types of materials. One set of material comprised a survey to the authorities that was sent to police departments, reception centres, detention units and the assistance system for victims of human trafficking. The aim of the survey was to establish how the authorities identify circumstances related to vulnerability and how they are taken into consideration in the planning and execution of returns. The survey also helped determine the roles of various authorities and views of how the system could be improved. The other set of material consisted of monitoring operations performed during the project period, which were directed at returns of vulnerable persons.

This project gave the Non-Discrimination Ombudsman ample information about the situation of vulnerable returnees, the operation of the police, and other authorities' roles in the enforcement of returns. It also provided an opportunity to evaluate needs for development. This chapter contains a review of the key observations and presents recommendations to authorities based on them. The key parties implementing the recommendations are the Finnish Immigration Service and the National Police Board and governing bodies subordinated to these, i.e., reception centres, detention units and police departments.

## **Structures missing from identification of vulnerability and preparations for returns**

During the project period and monitoring in general, it has been observed that the authorities do not have clear structures or guidelines for preparing returns of vulnerable persons. For instance, the National Police Board's guideline on implementation of removals from the country contains a very condensed section on circumstances related to a person's vulnerable position<sup>53</sup>. The guideline lacks a clear, specific paragraph on returns of vulnerable persons or determination and consideration of the special needs of these returnees.

On the other hand, monitoring revealed that in individual returns both the police and reception centres have procedures very favourable to fundamental rights that carefully survey and respect the needs of vulnerable persons. However, the most worrisome observation involves situations where a returnee's vulnerability has not even been identified, making it impossible to take into account the returnees' needs. Such cases make the risk of violations of fundamental rights highly concrete. During the project period, situations were observed that raised the question of whether the decision-maker had received all

<sup>53</sup> POL-2021-67956, e.g., pp. 3, 7 and 30-31.

the material information affecting the returnee's position when assessing, for instance, an order for a prohibition of enforcement of removal from the country. Details also emerged which suggest that a legal counsel does not always obtain information about changes that have occurred in a returnee's circumstances.

Structures, operating models and guidelines should be created for the police and reception of asylum seekers, which secure the rights of vulnerable returnees in the preparation of a return and during its progress.

- The Non-Discrimination Ombudsman recommends adding to the National Police Board's guideline a separate chapter dealing with returns of vulnerable persons. The guideline should include good practices already in use as the minimum operating model.
  - The Non-Discrimination Ombudsman recommends adding to the escort training of the police a section dealing with the identification and consideration of vulnerability during the preparations of returns and the actual operation.
  - The Non-Discrimination Ombudsman recommends including in the processes of social and health services provided by reception work, preparatory information and support structures that would contain at least information about returnees' rights and obligations, practical arrangements for returns, the role and measures of the police, and psychosocial support relating to returns. It should also be contemplated how potential changes in clients' circumstances, which may be highly relevant in consideration of asylum and residence permits, are reported to counsels and decision-makers.
  - The Non-Discrimination Ombudsman recommends providing staff at reception centres with regular training on how vulnerabilities are manifested in the enforcement of removals from the country and how they should be taken into account in work with the client before a return.

## **Reporting of return dates to reception centres and detention units**

According to the National Police Board's guideline, the police must report the enforcement of a removal from the country to the director of the reception centre or the deputy before enforcement, so the reception centre is aware of the impending removal from the country.<sup>54</sup>

According to information obtained from this project, the police usually report the date of removal from the country to the reception centre. After receiving this information, employees at the reception centre can prepare for the client's upcoming return, and the returnee's health and functional capacity, for example, are taken into account during the implementation of the removal from the country. For instance, the reception centre can verify that returnees can bring the aids and medicines they need with them.

Based on information accrued in this project, however, the National Police Board's guideline is not always followed. Responses submitted by reception centres to the official survey indicate that the police do not always notify a reception centre of the return date, but instead pick up the client by surprise so staff at the reception centre are unable to prepare the returnee for departure or see to the returnee's medicines, for example. Based on the responses, reception centres are not always informed of the return date of clients in private accommodation, regardless of whether the person is in a vulnerable position or not. The need for support by these vulnerable returnees is overlooked at the reception centre.

Reception centres emphasised the significance of notification in their responses to the official survey. When the reception centre is aware of return schedules in good time, staff members can support clients with preparation for the return by helping them perceive and accept the situation and become oriented in it.

Reception centres are unable to contribute to returns and prepare vulnerable persons or families for them if they have not been notified of the schedule of the return.

During the project, it emerged that the assistance system for victims of human trafficking also does not always receive information about the return date of a victim who is included in the assistance system.

- The Non-Discrimination Ombudsman finds it important that police practices are corrected in line with the National Police Board's guideline, and reception centres, detention units and the assistance system for victims of human trafficking are always notified of impending returns.
- Also, the police must ensure that reception centres are informed of the date of removal from the country of people who are in private accommodation.

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<sup>54</sup> POL-2021-67956, p. 29.



## Notifying a returnee of the departure date

According to the National Police Board's guideline, the police must notify the returnee of the date of their removal from the country as soon as possible. If the police are aware of factors that could endanger the enforcement of the return, in an exceptional case the decision can be made not to announce the date of the return in advance.<sup>55</sup>

During the project, it emerged that returnees are not always notified of the return date at all or at least sufficiently early. The significance of such notification is emphasised in the case of vulnerable returnees. They often have special needs and usually require long-term adaptation and support with the return.

- The Non-Discrimination Ombudsman deems it important that these practices are rectified in line with the National Police Board's guideline.

## The best interests of children in returns

According to the National Police Board's guideline on enforcement of removals from the country, a removal from the country must be implemented with respect for the family's unity and the best interests of the child. The National Police Board's guideline was updated during work on the Non-Discrimination Ombudsman's project. The guideline was supplemented by stating that the Committee on the Rights of the Child has on several occasions stressed the unconditional nature of assessing the best interests of the child.<sup>56</sup>

Based on information received during the project period, the police evaluate the best interests of children and take them into account in the enforcement and preparation of returns to a varying degree. Almost all the returns monitored during the project revealed that children were well looked after during enforcement. According to observations obtained during monitoring, returns of families with children emphasise the significance of preparing for the return journey.

In some cases that were monitored there was room for improvement in consideration of the children's best interests and situations. In two returns the monitor paid attention to how children served as interpreters in some situations during conversations between the mother and the police. In the feedback provided, the Non-Discrimination Ombudsman stressed that the practice is neither acceptable nor in the best interests of the child. During the project, the prohibition to use a child as an interpreter in the processing of the family's affairs at any stage of removal from the country was added to the National Police Board's guideline.

Monitoring revealed that problems may arise in the evaluation or considerations of the best interests of children, when new information about the situation of the family or child comes up after a decision on removal from the country. In one return, determination of the children's situation by the municipality's child welfare authorities remained incomplete at the moment of return. The monitored cases did not

<sup>55</sup> National Police Board's guideline POL-2021-67956, p. 4.

<sup>56</sup> National Police Board's guideline POL-2021-67956, p. 3

indicate that children were heard or that their views were ascertained in the changed situations, before the enforcement of the return.

- The Non-Discrimination Ombudsman recommends that the police create a clear process for evaluating the best interests of children before the enforcement of a return. This should be planned together with experts and included as part of the training of escort patrols.

## Interpreting

There is considerable variation in the language skills of returnees. It is of paramount importance that escort officers and returnees understand each other. Interpretation is particularly crucial in acute situations, like ones related to health, as well as in situations in which the returnee wishes to ask or needs to be explained something concerning their legal status.

The Non-Discrimination Ombudsman paid attention to lack of interpretation in feedback provided earlier, before this project. The monitors have pointed out that the use of an interpreter is an essential part of respecting the human dignity of returnees. Effective interaction makes the return operation smoother, enables catering to the special needs of vulnerable individuals, and reduces the need for the use of force.

Joint returns coordinated by Frontex include an interpreter<sup>57</sup>. In returns monitored during this project, telephone interpretation was used at the departure phase but none of them had an interpreter present, and there was no interpretation during the flight. Monitoring operations in previous years have revealed that an interpreter has joined individual charter flight returns. In these situations, the monitors were able to talk to the returnees.

In the case of two returns, the Ombudsman pointed out that using children for managing matters between the police and an adult is not acceptable or in the best interests of the child.

- The Non-Discrimination Ombudsman recommends that, in the removal of a vulnerable person from the country, an interpreter should be present throughout the operation if there is no common language.

## Reporting changes in circumstances to counsels and decision-makers

Occasionally significant or relevant changes take place in a returnee's circumstances just before the enforcement of the return. These may be sudden changes relating to the state of health, for instance. A

<sup>57</sup> Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex art 14. The OMS provides appropriate medical staff and, depending on an assessment of the returnees' and escorts' needs and language skills, suitable interpreters during the RO or RI.

returnee may have been hospitalized due to, e.g., a mental illness or suicidal behaviour. During the project, returns of two families with children were monitored where information relating to child welfare was brought up during the progress of preparation for enforcement of removal from the country. Changes in circumstances can have a significant effect on the evaluation of a returnee's legal position, so it is important that such information be made available to the counsel and decision-maker also.

During visits and monitoring work in the project, it was observed that changes or new information in returnees' circumstances were forwarded to a varying extent. Details and cases emerged where a returnee's admission to a hospital or concern over children's situation was not reported to the counsel or decision-maker.

The project determined authorities' views of who is responsible for reporting changes in circumstances to decision-makers and a returnee's counsel. The responses varied and there is no shared view or guideline for such situations; in practice, they are resolved one case at a time.

If a counsel or decision-maker does not receive information relevant for an asylum or residence permit matter, this constitutes a risk for non-realisation of the returnee's fundamental rights and a violation of non-refoulement. Therefore, various professional groups should consider how to ensure that there are no violations of rights, and that the necessary information is provided to the decision-maker when the returnee so wishes.

- The Non-Discrimination Ombudsman finds it important that the Police and the Finnish Immigration Service create structures for notifying the counsel of the returnee and/or decision-makers of significant changes in circumstances occurring just before the enforcement of the return.

## **Victims of human trafficking**

A key aspect relating to returns of victims of human trafficking is ensuring that the victim receives assistance and support in the country of return, and that the goal is to prevent them from becoming human trafficking victims again.

In its rulings, the Supreme Administrative Court imposed two obligations on the Finnish enforcement authority by which the victim is admitted to the assistance system. If the victim gives their consent to disclosure of her information, the enforcement authority must beforehand inform the party specialising in assisting victims of the human trafficking victim being returned. If the victim does not consent to the disclosure of their information, the authorities responsible for enforcement must implement the necessary measures by which victims are provided with contact details of systems that assist them in the destination country.

Based on responses received during the project, victims of human trafficking often do not give their consent to the disclosure of information to authorities in the destination country. Some police departments had experiences of how human trafficking victims gave their consent to the transmission of information. A notification to the receiving country and the country's confirmation of the victim's access to services may be a factor that protects a victim of human trafficking from being victimized again.

Consequently, the Non-Discrimination Ombudsman finds that special attention must be paid to a discussion of the consent of human trafficking victims to contact parties providing assistance in the country of return.

Referring a victim of human trafficking to support by following the ruling issued by the Supreme Administrative Court would require Finnish authorities to actually have information about structures of assistance to human trafficking victims in the receiving country. Based on the responses, finding information about parties that assist victims of human trafficking was deemed challenging.

The responses received left the Non-Discrimination Ombudsman with the impression that the Supreme Administrative Court's obligation guarantees only few victims of human trafficking an opportunity to obtain assistance in the receiving country. There are two reasons for this. Firstly, obtaining the consent of a human trafficking victim for disclosure of information is challenging. On the other hand, the Supreme Administrative Court's decision was found problematic due to practical circumstances and problems associated with questions of powers, and because the obligation does not actually guarantee victims a possibility for access to assistance in the destination country. Assistance provided by the obligation is often highly ostensible. In its present state, the situation exposes victims to victimization again.

The Non-Discrimination Ombudsman calls for other means in official activities to help ensure that victims of human trafficking who are being returned have access to assistance and support in the destination country. One alternative could be enhancing the NRM mechanism in preparation with a transnational referral mechanism. There is much discussion on the creation of this structure in the EU's current work combating human trafficking. The goal should be to take the individual situation of each victim of human trafficking into account and to refer them to support measures during the return.

- The Non-Discrimination Ombudsman recommends compiling appropriate details of assisting parties in key countries of return that the police, with the victim's consent, contact before the return and/or whose contact details are provided to the victim.
  - The Non-Discrimination Ombudsman emphasises that when the police discuss possible referral to assistance with a victim of human trafficking, the police should pay special attention to the contents of the conversation, to the time reserved for it and to the creation of a trustful atmosphere.

## Suicidal returnees

The material of the project and responses to the survey submitted by the police indicated practices related to the removal of suicidal individuals from the country.

Responses to the official survey in the project stated that the police must determine whether suicidal tendencies cause special needs during an escorted journey and take account of them in the planning of the removal from the country. If a returnee appears to be suicidal, the police cooperate primarily with employees at a reception centre's social or health care services. If necessary, the returnee is taken to a doctor for an evaluation of the state of health.

As a rule, the returnee must be notified of the date of removal from the country as soon as possible. The project material indicated that if a returnee behaves in a suicidal manner, the exact date of the removal from the country may not be reported. This practice and the reasons for it should be determined in detail from the perspective of the rights of suicidal returnees.

Another practice requiring clarification came up in the response from a police department, where a person's suicidal tendencies were regarded as a circumstance supporting detention, alongside other prerequisites for detention.

It was not possible to determine questions relating to suicidal tendencies in greater detail within the framework of this project. Based on information obtained from the project, however, it would be important to have this matter investigated by a multidisciplinary in the future.

- The Non-Discrimination Ombudsman recommends that the police should create clearer operational instructions for the enforcement of returns of suicidal individuals.

## **Applications for prohibition of enforcement by multinational treaty bodies**

The National Police Board's guideline on enforcement of removals from the country takes into account the effect and procedures of prohibitions of enforcement by multinational treaty bodies in situations where a prohibition of enforcement is ordered.<sup>58</sup> However, the guideline does not comment on the effect of applications that are only pending on such enforcement.

During the project, the Non-Discrimination Ombudsman learned of two cases in which an application for a prohibition of enforcement was submitted to a multinational treaty body only a little prior to the reported date of removal from the country, and where the prohibition of enforcement was ordered just before the planned enforcement of the return. The Ombudsman finds it problematic that enforcement measures are undertaken when a prohibition of enforcement is still in the application phase.

- The Non-Discrimination Ombudsman recommends that enforcement of a removal from the country should be postponed until the multinational treaty body has decided on the application for a prohibition of enforcement. The National Police Board's guideline should be supplemented/clarified in this respect.

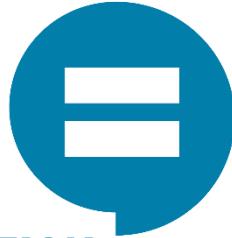
<sup>58</sup> POL-2021-67956, pp. 19-20.

## **Notifications submitted to the Non-Discrimination Ombudsman**

According to the National Police Board's order on division of responsibilities for the enforcement of removals from the country<sup>59</sup>, the police must contact the Non-Discrimination Ombudsman if it can be anticipated from a returnee's behaviour that the return can become exceptionally challenging. At present, the Non-Discrimination Ombudsman does not systematically receive information about the vulnerable position of persons who are being returned.

- An obligation to notify the Non-Discrimination Ombudsman even when a returnee is in a vulnerable position should be added to the National Police Board's order.

<sup>59</sup> POL-2017-5403 Division of responsibilities for the enforcement of decisions concerning the removal of aliens from the country



# **NON-DISCRIMINATION OMBUDSMAN**

# **YHDENVERTAISUUSVALTUUTETTU DISKRIMINERINGSOMBUDSMANNEN OVTTAVEARDÁSAŠVUOĐAÁITTARDEADDJI**



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