

# The Finnish National Rapporteur on Trafficking in Human Beings

## Report 2013

# **National Rapporteur on Trafficking in Human Beings: Report 2013**

Finland's actions against trafficking in human beings in view of the relevant  
Council of Europe Convention

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## Foreword

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Enormous challenges remain for eliminating trafficking in human beings. No small effort will suffice in working against this adversity. We know that it is possible to survive trafficking in human beings, provided that the victim is identified and protected. In order to cope, victims need both legal protection and practical help in the form of various services. A person having been exposed to long-term sexual violence is in need of special protection, as is a person who is in the weakest position of all in other respects, too, for instance due to foreign origin, lack of language skills or a dependent position. Children and women exposed to prostitution are in need of special protection. To secure such protection, knowledge and skills must be augmented on a continuous basis.

The authorities and non-governmental organisations need special skills in order to be able to win the victim's confidence and return his or her will to live, to bring hope of a new life and to offer practical ways of gaining control of one's life. Key aspects of this process include identifying the violation of the victim's rights, bringing offenders to justice and redressing the injustice due to the violation of rights. Until now, investigating an offence of trafficking in human beings has in practice required that the victim participates in the process of investigation. Therefore, strengthening the victim's position and understanding his or her vulnerability will improve the quality of criminal investigation.

One of the National Rapporteur on Trafficking in Human Beings' key tasks is to analyse the information collected on human trafficking and measures taken against it, and on the basis of this proven information, issue recommendations to develop the work of authorities and other actors. Our aim is to provide tools for decision-making, legislation and allocation of resources in work against trafficking in human beings. Lack of knowledge and competence impede efficient action by the authorities.

The National Rapporteur on Trafficking in Human Beings works from the human rights perspective. This requires focusing special attention to the victim's position, even in official procedures, and to redressing serious violations of his or her rights. If the traditional way of thinking was that legal processes involved the risk violating offenders' and prisoners' human rights, in cases of trafficking in human beings, the victim's particularly vulnerable position and possible dependence on the offender require that the official and legal processes are always conducive to strengthening the victim's position, freedom and rights, and to improving his or her possibilities of returning to a life with human dignity, and more trouble must not be caused to the victim on any account.

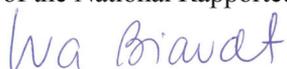
The Council of Europe Convention on Action against Trafficking in Human Beings is basically an instrument that emphasises human rights, and it is binding on

us. Efficient implementation of the Convention requires continuous self-observation, for which the National Rapporteur, as an independent authority, provides a sound basis in addition to the legality control of various authorities themselves.

The work of the Group of Experts on Action against Trafficking in Human Beings (GRETA), appointed for the purpose of monitoring the Council of Europe Convention, is extremely valuable, particularly since the challenges of work against human trafficking are so astonishingly similar in different countries. Comments issued by GRETA on an individual Member State thus constitute instructions for all other states, too, and enhance practical competence. In many cases, the authorities' preconceptions of the victim seem to be the worst obstacle in identifying victims. It is internationally recognised how the conceptions of authorities of victims not deserving protection or compassion influence their ability to recognise an offence of trafficking in human beings. For instance, they may think that by exposing oneself to crime, for instance in prostitution, the victim relinquishes his or her self-determination or freedom, so that the victim can blame him- or herself and does not deserve equal treatment in the judicial system. Such impediments to identification are challenges in which influencing attitudes by providing more information takes precedence, and legislation alone cannot eliminate the problem.

In order to make progress in international efforts to eliminate trafficking in human beings, we need more information about the situation in various countries and practices of action against human trafficking. Collection of information is not mathematical because understanding figures or the lack of them may be an indication of greatly varying situations. Factors behind the successful work of Finland's National Rapporteur include an independent position and the statutory task of reporting to the Finnish Parliament in every electoral period. Systematic development efforts have been based on proven information. In addition, a position is being prepared in administration for coordinating work against human trafficking to direct the allocation of Government resources. Together, these functions will provide a solid basis for the efficient steering of the administration's and authorities' efforts. It is also valuable that the work of the National Rapporteur provides GRETA with better opportunities to assess how the Convention has been implemented in Finland in practice, and how the important task of monitoring is performed. This enables the GRETA process to be, as it should, the true steering force of international and national action against trafficking in human beings.

I would like to extend my special thanks to Senior Officer Venla Roth for the thorough preparation of this report. I am also grateful to the personnel of the Office of the Ombudsman for Minorities for their professional support to the task of the National Rapporteur.



Eva Biaudet, Ombudsman for minorities

## 1. Introduction

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The present document is a report by the National Rapporteur on Trafficking in Human Beings concerning Finland's actions in this field with a view to the Council of Europe Convention on Action against Trafficking in Human Beings. The purpose of the report is to raise awareness of the Convention and to promote the practical implementation of its provisions. Another purpose is to prepare for the country visit of GRETA, the Group of Experts on Action against Trafficking in Human Beings, which supervises the implementation of the Convention. According to information received by the National Rapporteur, GRETA will visit Finland in autumn 2013.

The National Rapporteur has chosen to focus on those provisions of the Convention that seem particularly relevant for the improvement of action against trafficking in human beings in Finland. In preparing the report, the National Rapporteur has drawn on the Explanatory Report on the Convention and the GRETA country reports.

The National Rapporteur's next extensive report to Parliament will be submitted in 2014. In that report, the National Rapporteur will go into more detail than in the present report concerning the current state of Finland's action against trafficking in human beings, drawing on extensive materials, and will also present recommendations to enhance operations and promote the rights and status of victims of human trafficking.

## 2. Introduction to the Council of Europe Convention on Action against Trafficking in Human Beings

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The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), hereinafter the Convention, was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005 and entered into force internationally on 1 February 2008. As of summer 2013, the Convention had been signed by 43 countries, and 40 countries have ratified or acceded to it. Finland signed the Convention on 29 August 2006, and it entered into force in respect of Finland on 1 September 2012.

The Convention is a document that is legally binding upon the States Parties; it is essentially based on existing international law. The Convention complements the provisions of the United Nations (UN) Convention against Transnational Organised Crime (the Palermo Convention) and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Convention discussed here goes further than the aforementioned Protocol in the rights guaranteed to victims of human trafficking.

In the Preamble to the Convention, it is noted “that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being” and “may result in slavery for victims”. Human trafficking is considered to contravene the fundamental values of democratic societies. All of the provisions of the Convention rest on the foundation of human rights, from identification of and providing of assistance to victims to investigating and prosecuting human trafficking offences and engaging in international cooperation. Safeguarding of the human rights of the victims was also adopted as the basis for action against human trafficking in Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims.

The purpose of the Convention is to prevent and combat human trafficking while guaranteeing gender equality and protecting the human rights of victims of human trafficking, creating a comprehensive framework for victim and witness protection and assistance and ensuring effective criminal investigation and prosecution. The Convention is also intended to promote international cooperation in action against human trafficking.

The Convention applies to all forms of human trafficking, regardless of whether it is national or international and whether it is connected to organised crime

or not. According to the Explanatory Report on the Convention, the Convention is applied regardless of whether the victim has arrived or is resident in the recipient country legally or without permission. Victims may be women, men or children who, in striving for a better life, ended up being exploited. The Convention has set up a monitoring system to ensure that the States Parties implement its provisions. This system is known as GRETA, the Group of Experts on Action against Trafficking in Humans.

The Convention consists of ten chapters. Chapter I is about the **Purposes, scope, non-discrimination principle and definitions of the Convention**. Chapter II provides for **Prevention, cooperation and other measures**. Chapter III provides for **Measures to protect and promote the rights of victims, guaranteeing gender equality**. Chapter IV is about **Substantive criminal law**; Chapter V is about **Investigation, prosecution and procedural law**. Chapter VI provides for **International cooperation and cooperation with civil society**, and Chapter VII provides for the **Monitoring mechanism**. Chapter VIII governs the **Relationship of the Convention with other international instruments**, Chapter IX governs **Amendments to the Convention**, and Chapter X contains the **Final clauses**.

### 3. National ratification process for the Convention

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In February 2008, the Ministry for Foreign Affairs appointed a working group to prepare the bringing into force of the Convention. According to the appointment decision, the working group was to estimate what legislative amendments and other changes would be needed for ratifying the Convention and to explore how countries that had already ratified the Convention had carried out the necessary arrangements. The working group was led by the Ministry for Foreign Affairs and included representatives from the Ministry of Justice, the Ministry of the Interior and the Ministry of Social Affairs and Health. The working group consulted experts from the Ministry of the Interior, the Ministry of Education and Culture, the Border Guard Headquarters and the National Bureau of Investigation.

The essential content of the working group's proposal was that Parliament should accept the Convention and enact an Act on the Implementation of the Provisions of a Legislative Nature in the Convention together with an Act amending the Act on Prohibitions to Pursue a Business. The working group proposed the latter Act to be amended so that a party found guilty of trafficking in human beings could be temporarily or permanently banned from engaging in the business in connection with which the offence had been committed. The working group considered that the bringing into force of the Convention required no other legislative amendments and would have no financial impact. The proposal also included certain minor development points regarding the repatriation and return of victims.

In a statement returned to the working group on 30 November 2010, the National Rapporteur on Trafficking in Human Beings drew attention to the composition of the working group and its hearing procedures (Appendix 1). The working group had no representatives from the civil society, e.g. NGOs, universities or research institutions. In addition, the working group did not consult the civil society at any point in the process of preparing its recommendation. The Ombudsman for Minorities, who had been the National Rapporteur on Trafficking in Human Beings since the beginning of 2009, was not invited to join the working group, nor was the National Rapporteur invited to be heard as an expert consultant when the proposal was being prepared. The National Rapporteur had submitted the first critical appraisal of action against human trafficking in a report to Parliament in June 2010; the working group reported to the Ministry for Foreign Affairs in August 2010.

The National Rapporteur was only able to return an opinion on the working group's report in the normal circulation for comment after the report had been completed. The National Rapporteur expressed dissatisfaction with the quality of the working group's report, considering it regrettable that the working group had not addressed the contradictions between legislation and practical action against human trafficking. The National Rapporteur noted in the opinion that there are numerous practical problems in action against human trafficking, the consideration of which would have caused the working group to discuss needs for legislative amendments more widely so as to enhance action against human trafficking and to safeguard the rights of the victims. The National Rapporteur further considered that ratification of such a significant human rights convention would have required a more thorough appraisal of its human rights impacts. The National Rapporteur pointed out several provisions of the Convention, the implementation of which was significantly inadequate.

Some NGOs returned a joint statement on the working group's report.<sup>1</sup> They questioned the working group's opinion that the implementation of the Convention would require few legislative amendments or other changes. The NGOs noted that the report is "an excellent example of how Finland's action against human trafficking looks much better on paper than it does in practice". The NGOs considered that the spirit of the Convention, i.e. the protection of the human rights of victims, is not followed in Finland and pointed out several provisions of the Convention, the implementation of which was not entirely straightforward: the non-discrimination principle, prevention of human trafficking, identification of and assistance to victims, the recovery and reflection period, and so on.

In his statement, the Deputy Parliamentary Ombudsman stressed that methods for identifying victims of human trafficking must be improved and officials must be provided with training so that protection could be afforded to victims as required in the Convention. Local authorities considered in their statements that the role of municipalities and the division of responsibilities between local and central government should be clarified. Municipal officials should be trained in issues related to human trafficking so as to enhance identification of and provide assistance to victims of human trafficking. The Ombudsman for Children focused on the identification and provision of assistance for underage victims of human trafficking, noting that children who have become victims of human trafficking should above all be treated as children, and that

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<sup>1</sup> The statement was signed by Pro Centre Finland, Victim Support Finland, the Finnish Association for Mental Health, the Finnish Red Cross and the Federation of Mother and Child Homes and Shelters.

assistance for them should form part of child welfare services. The Office of the Prosecutor General returned a statement drawing attention to the criminalisation of offences related to travel and identity documents (Article 20 of the Convention) and noting that Finnish legislation currently does not fulfil this requirement.<sup>2</sup> The working group's proposal was formulated into a government proposal and was submitted to Parliament essentially unchanged.<sup>3</sup>

The Administration Committee of Parliament returned a statement in favour of accepting the Convention and the related legislative amendment and considered it important for the Convention to be brought into force nationally as soon as possible. The Administration Committee concurred with the Government that bringing the Convention into force will strengthen protection for the rights of victims of human trafficking but noted that this alone would not be enough; the identification and provision of assistance for victims of human trafficking must also be developed through legislation and other means. The Committee considered it important that provisions be issued concerning the identification procedure for victims of human trafficking. The Committee also noted that the concept of 'victim of human trafficking' should be clarified and stressed that the practices and legislative basis applied in cooperation among the authorities and between the authorities and the third sector must be clear and that appropriate resources must be allocated to the relevant actors. The Committee considered it a positive thing that the Ministry of the Interior had appointed a working group in January 2011 to prepare a separate Act on human trafficking and that the Ministry of Justice had appointed a working group in November 2011 to investigate issues of criminal law and process law related to human trafficking. (These working groups will be discussed in more detail below.)<sup>4</sup>

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<sup>2</sup> The Ministry of Justice subsequently appointed a working group to prepare legislative amendments related to the need to criminalise the facilitation of illegal entry.

<sup>3</sup> Government proposal to Parliament concerning acceptance of the Council of Europe Convention against Trafficking in Human Beings and enactment of Acts on the Implementation of the Provisions of a Legislative Nature in the Convention and amending section 3 of the Act on Prohibitions to Pursue a Business (HE 122/2011 vp).

<sup>4</sup> The report of the Parliament's Administration Committee (HaVM 6/2012 vp). See also the statement of the Employment and Equality Committee (TyVL 6/2012 vp) and the statement of the Legal Affairs Committee (LaVL 3/2012 vp).

#### **4. Group of Experts on Action against Trafficking in Human Beings (GRETA)**

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The Group of Experts on Action against Trafficking in Human Beings (GRETA) was set up to monitor the implementation of the Convention in February 2009. GRETA consists of 15 experts with acknowledged credentials in human rights issues, victim assistance and protection, action against human trafficking or professional experience in fields relevant to the Convention. These experts work in the group as private individuals and are independent and impartial in carrying out their monitoring tasks. The group members are chosen from among citizens of the States Parties for a four-year term of office, renewable once.

GRETA is charged with monitoring the implementation of the Convention in the States Parties. The evaluation procedure is divided into rounds, the duration of which is determined by GRETA. At the beginning of each round, GRETA determines which provisions will be focused on in the evaluation. The first round of evaluations began at the beginning of 2010 and will end at the end of 2013.

GRETA has absolute discretion in determining how to collect information on which to base its evaluation. GRETA's reports are based on extensive source material. Initially, GRETA sends authorities of the Parties a detailed questionnaire, after which it can present follow-up questions. GRETA may also request information from the civil society, particularly NGOs, which may have information that is essential to the evaluation procedure. GRETA may organise country visits to gain more detailed information on how the provisions of the Convention are being implemented in practice. The Parties are obliged to cooperate with GRETA.

The purpose of the GRETA reports is to evaluate how well action against human trafficking undertaken by the Parties corresponds to the provisions of the Convention and to make recommendations on how to make the action more effective. A key goal of the reports is to help the Parties in implementing the provisions. GRETA carries weight because of its expertise and because of the multi-disciplinary, international and independent nature of its composition.

GRETA drafts a report containing an analysis of the implementation of the provisions being evaluated and makes proposals for how the Party in question could address the problems observed. The draft is then sent to the Party being evaluated for comment. GRETA takes the comments of the Party into account when adopting the report. The final GRETA report includes conclusions concerning measures undertaken by the Party to implement the provi-

sions of the Convention. The report and the conclusions are sent to the Party in question and the Committee of the Parties, consisting of representatives of the States Parties on the Committee of Ministers. The GRETA report and conclusions are published as soon as they are adopted, including the comments from the Party in question.

The first GRETA evaluation round is currently in progress. By summer 2013, GRETA had completed the evaluation of 20 States Parties, including Austria, Cyprus, Latvia, Malta, Norway, Portugal, France, Denmark and the UK.

In its evaluation procedure, GRETA emphasises the safeguarding of the rights of victims of human trafficking. Parties must ensure through their own actions that they are not themselves guilty of human rights infringements, by commission or omission. Also, the government must guarantee the enforcement of rights by ensuring that no non-governmental actors are guilty of infringing these rights. Known as the ‘due diligence’ principle, this includes the responsibility of preventing, investigating and punishing infringements committed by private individuals and compensating their victims. Based on the first evaluation reports, GRETA is paying particular attention to these issues in action against human trafficking:

- Does the Party have a comprehensive and coordinated conception of the human trafficking problem and of what action it is taking against it?
- How does the Party’s legislation define human trafficking?
- How has identification of human trafficking and its victims been ensured?
- How has the provision of assistance and protection to victims of human trafficking been ensured?
- Will victims of human trafficking be punished for offences they were compelled to commit (‘non-punishment principle’)?
- Do victims of human trafficking receive appropriate compensation for their exploitation?
- Are human trafficking offences subjected to investigation, prosecution and conviction?

In its evaluation reports, GRETA often refers to the judgment of the European Court of Human Rights in the case of *Rantsev v. Cyprus and Russia* (2010). In this case, the Court ruled that States are obliged to investigate potential human trafficking offences immediately when they come to the attention of the authorities. The Court’s judgment also emphasises the obligation of States to engage in cross-border cooperation with authorities in other countries in order to establish the entire chain of events, from recruitment to exploitation. Indeed, a more detailed discussion of this judgment by the European Court of Human Rights is warranted in this context.

## 5. Judgment by the European Court of Human Rights: *Rantsev v. Cyprus and Russia (2010)*

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### 5.1. Presentation of the case

In January 2010, the European Court of Human Rights issued its most important judgment to date related to human trafficking.<sup>5</sup> For the first time, the Court was obliged to consider the actual purpose and content of Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the Human Rights Convention), which prohibits slavery and forced labour. The judgment highlighted the dark side of the European sex trade and the unwillingness or inability of States to interfere in it so that human trafficking would be prevented, victims assisted and protected, and perpetrators of human trafficking punished.

Although the judgment was generally welcomed and is expected to enhance action against human trafficking, it has also been criticised. The criticism mainly concerns the Court's conception of the definition of slavery, which is considered to simplify the relationship between the definitions of slavery and human trafficking. The Court's judgment has also been considered to reinforce popular prejudices against prostitution and immigration in general and thereby complicate action against human trafficking.<sup>6</sup>

The case involved a 20-year-old Russian woman (referred to here as OR), who allegedly became a victim of human trafficking in Cyprus. Cyprus is known to be a significant country of destination for human trafficking in Europe. The perpetrators brought OR to Cyprus on what is known as an 'artiste visa' and forced her to submit to sexual abuse. Somewhat later, OR was found dead underneath the balcony of the apartment of another cabaret employee. A bedspread had been tied to the balcony railing. The perpetrator (MA) had brought OR to the apartment from the police station, where the legality of her residence had been investigated. It appears that the police had handed OR over to the custody of the perpetrator without exploring the background to the situation.

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<sup>5</sup> *Rantsev v Cyprus and Russia* Application No. 25965/04, Judgment of 7 January 2010. The report on the Rantsev case in the Finlex Data Bank was also used as a source.

<sup>6</sup> For more analysis of the judgment and its significance, see e.g. Jean Allain: *Rantsev v Cyprus and Russia*: The European Court of Human Rights and Trafficking as Slavery. *Human Rights Law Review* 10:3 (2010), pp. 546–557; Vladislava Stoyanova: Dancing on the Borders of Article 4: Human Trafficking and the European Court of Human Rights in the Rantsev Case. *Netherlands Quarterly of Human Rights*, Vol. 30/2, 2012, pp. 163–194.

The Cypriot authorities concluded in their investigation that OR had died as a result of falling from the balcony. The case was brought to the ECHR by the father of OR, according to whom the Cypriot authorities had not investigated the circumstances leading to his daughter's death and had not punished those responsible for her death. The authorities had also failed to protect his daughter when she was still alive; instead, they mistreated her by releasing her from the police station to the perpetrator. A detailed description of the case is appended to this report (Appendix 2).

The Rantsev case is important for a number of reasons. It confirmed the notion that both the country of origin and the country of destination bear responsibility for human trafficking. The Court considered that States must have a legislative and practical framework to protect people from becoming victims of human trafficking in the first place on the one hand and have the capability to investigate human trafficking offences appropriately when circumstances give rise to a credible suspicion. The obligation to investigate extends from recruitment to the actual exploitation and includes a requirement to engage in cross-border cooperation between authorities. The Court further considered that States have an obligation to proactively prevent human trafficking through legislation and to ensure that existing legislation is not misused. Although human trafficking is not specifically mentioned in the Human Rights Convention, the Court considered that it falls under the scope of application of its Article 4.

## **5.2. Judgment by the European Court of Human Rights, by Article**

### **5.2.1. Right to life**

The applicant claimed that Cyprus and Russia had violated Article 2 of the Human Rights Convention (the right to life) because the Cypriot authorities had not taken action to protect his daughter's life and because the authorities of both respondent countries had failed to conduct an effective investigation into the circumstances of her death.

The Court stated that Article 2 of the European Convention on Human Rights "enjoins the State [...] to refrain from the intentional and unlawful taking of life" (negative obligation) and also "to take appropriate steps to safeguard the lives of those within its jurisdiction" (positive obligation). The obligation arising under this article requires not only general legislative and structural measures, but also practical measures in individual cases where "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of

a third party”. In such a case, the authorities are required “to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”.

The Court acknowledged that victims of human trafficking and exploitation were often obliged to live and work in inhuman conditions and potentially experience violence and abuse. However, in the absence of concrete evidence, this amounted to a general threat rather than an immediate danger to the victim’s life. Although the police should have known that the applicant’s daughter was a possible victim of human trafficking, nothing emerged during her stay at the police station to demonstrate that her life was in immediate danger. Her death was not predictable when she was handed over to the custody of MA. Therefore, the Court held that no obligation to undertake practical measures had arisen and that there was no violation of Article 2 of the Human Rights Convention in this respect.

However, the Court did note that Article 2 imposes a procedural obligation on the authorities to carry out an effective investigation when individuals have been killed as a result of the use of force. The obligation to conduct an effective official investigation also arises where death occurs in suspicious circumstances not imputable to State agents. The authorities were obliged to act of their own volition once the matter had come to their attention. Those conducting the investigation must have not only hierarchical or institutional independence but also practical independence from those implicated in the events. Efficiency also entailed the obligation of reasonable promptness. The next of kin of the victim was to be involved in the investigation procedure insofar as the safeguarding of his acceptable interests so required.

The Court considered it relevant that the circumstances of the death of the applicant’s daughter had remained unclear and unexplained and that allegations of human trafficking and abuse had been made in the case. For these reasons, the Court held that the Cypriot authorities had incurred an obligation pursuant to Article 2 of the Human Rights Convention to carry out an effective investigation, even though there was no evidence to indicate that the death had been directly caused by violent force. Because of the alleged link between human trafficking and the death, the investigation should have been extended to cover the arrival and residence of OR in Cyprus. There were “a number of elements in the investigation which were unsatisfactory”.

The Court remarked that the police had neither questioned those who lived or worked with OR nor tried to establish why she had tried to escape from the apartment and whether she had been detained in the apartment against

her will. Moreover, there had apparently been no investigation into what had occurred at the police station, and in particular why the police had handed OR into the custody of MA. No statement had been taken from OR, and there is nothing to explain why this was not done; a statement had instead been taken from MA. The Court considered that in light of the facts of the case, the authorities were under an obligation to investigate whether there was any indication of corruption within the police force. The applicant had not been given an opportunity to participate effectively in the investigation. The Cypriot authorities did not request legal assistance from the Russian authorities. For these reasons, the Court held that the Cypriot authorities had committed a procedural violation of Article 2 of the Human Rights Convention. No violation of Article 2 was found on the part of the country of origin, i.e. Russia.<sup>7</sup>

### 5.2.2. Prohibition of slavery and forced labour

The applicant alleged that the Cypriot and Russian authorities had violated Article 4 of the Human Rights Convention by failing to protect his daughter from human trafficking and by failing to effectively investigate the circumstances under which she was employed in Cyprus.

#### *Article 4 – Prohibition of slavery and forced labour*

1. “No one shall be held in slavery or servitude.
2. “No one shall be required to perform forced or compulsory labour.
3. “For the purpose of this Article, the term ‘forced or compulsory labour’ shall not include:
  - “a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - “b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - “c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - “d) any work or service which forms part of normal civic obligations.”

The Court noted that by virtue of its wording, Article 4 of the Human Rights Convention only applied to slavery and forced labour. On the other hand, the Human Rights Convention is a living document that must be interpreted in

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<sup>7</sup> Paragraph 232 of the judgment.

the light of present-day conditions. In preceding years, trafficking in human beings had grown remarkably worldwide. Human trafficking treats people as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions. The Court considered that human trafficking within the meaning of international conventions such as the Palermo Protocol falls within the scope of Article 4 of the Human Rights Convention and it is unnecessary to identify whether the treatment constitutes ‘slavery’, ‘servitude’ or ‘forced and compulsory labour’.<sup>8</sup>

The Court noted that victims of human trafficking, including possible victims, must be protected by legislation. Article 4 of the Human Rights Convention requires member States to put in place adequate measures to regulate human trafficking, e.g. immigration rules.<sup>9</sup> In certain cases, the authorities are also required to undertake practical measures. For that obligation to arise, it must be demonstrated that the authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked. In such a case, the authorities are obliged to take appropriate measures within the scope of their powers to remove the individual from that situation or risk.<sup>10</sup>

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<sup>8</sup> Paragraph 282 of the judgment: “[...] There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention [...] the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes ‘slavery’, ‘servitude’ or ‘forced and compulsory labour’. Instead, the Court considers that *trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention [...]*” (emphasis added by the present author).

<sup>9</sup> Paragraph 284 of the judgment: “[...] The Court considers that the spectrum of safeguards set out in national legislation must be *adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking*. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State’s immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking [...]

<sup>10</sup> Paragraph 286 of the judgment: “[...] In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that *the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited [...]* In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk [...]

Article 4 of the Human Rights Convention also imposes an obligation to investigate potential human trafficking. The authorities were obliged to act of their own volition once the matter had come to their attention. The investigators had to be independent of those who had become involved in the incidents. Investigation had to be reasonably prompt. Under the Convention against Trafficking in Human Beings, each Member State must investigate offences committed within its territory. In addition, they have to provide efficient legal assistance to authorities of other countries investigating offences that had taken place outside their territories.

The Court noted that there were no inadequacies in the Cypriot legislation. By contrast, the Court remarked that there were no immigration rules in place in order to prevent the arrival in the country of young women to work as ‘artistes’. The residence permit and work permit procedures were conducive to employees becoming dependent on their employers. The Court particularly criticised the fact that cabaret owners and managers were required to lodge a bank guarantee to cover potential future costs associated with artistes they have employed. The separate bond signed in OR’s case is of equal concern, as is the unexplained conclusion that MA was responsible for OR as her employer and was therefore required to come and collect her from the police station. The Court considered that the immigration provisions and practices of Cyprus did not provide sufficiently effective or practical protection against human trafficking and exploitation. This constituted a violation of Article 4 of the Human Rights Convention.

The Court further noted that there has been a problem in Cyprus since the 1970s involving young foreign women being forced to work in the sex industry. A significant increase in ‘artistes’ coming from former Soviet countries had occurred after the collapse of the Soviet Union. The authorities were aware that many of the women who entered Cyprus on artiste visas actually worked in prostitution. MA told the police that OR was a Russian national and was employed as a cabaret artiste. Further, he explained that she had only recently arrived in Cyprus, had left her employment without warning and had also moved out of the accommodation provided to her. He handed her passport and other documents to them.

In the Court’s opinion, there were sufficient indicators available to the police authorities, against the general backdrop of trafficking issues in Cyprus, for them to have been aware of circumstances giving rise to a credible suspicion that OR was, or was at real and immediate risk of being, a victim of trafficking or exploitation. Accordingly, a positive obligation arose to investigate

without delay. However, the police did not even question OR or make further inquiries into the background facts. They simply checked whether OR's name was on a list of persons wanted by the police and, on finding that it was not, called her employer and asked him to return and collect her.

For these reasons, the Court held that the Cypriot authorities had committed a procedural violation of Article 4 of the Human Rights Convention. Regarding Russia, the Court remarked that the authorities had not investigated at all how and where OR had been recruited. She had been recruited in Russia, so the authorities could have conducted an effective investigation of the circumstances of her hiring. The Court held that Russia was in this respect in violation of Article 4 of the Human Rights Convention.

### **5.2.3. Right to liberty and security**

The applicant also alleged a violation of Article 5 in that his daughter had been handed over to MA and then been kept prisoner in MP's apartment. The Court noted that OR had been detained at the police department for about one hour. She had not been released immediately thereafter but had been handed to the custody of MA. It was also justifiable to assume that she had not remained in the apartment of her own free will. The Court considered that the nature and consequences of the temporary confinement were such that it constituted a deprivation of liberty for the purposes of Article 5 of the Human Rights Convention. The Court also considered that the authorities acquiesced in OR's loss of liberty and bore responsibility for her subsequent deprivation of liberty by private individuals at the apartment. She could have been released, as she was not a minor and, according to the police, not drunk. There were also no grounds for her confinement in the apartment. This constituted a violation of Article 5 of the Human Rights Convention.

### **5.2.4. Conclusion**

The Court ruled unanimously that the Cypriot authorities were in procedural violation of Article 2 of the Human Rights Convention and of Article 4 insofar as it concerns protection but not insofar as it concerns investigation of the matter, and also of Article 5, and that Russia was in procedural violation of Article 4 of the Human Rights Convention. The Court held that the applicant was entitled to compensation for non-pecuniary damage to the amount of EUR 40,000 from Cyprus and EUR 2,000 from Russia. The Court further awarded EUR 4,000 for costs and expenses less the EUR 850 received pursuant to legal aid. The Court ruled that Cyprus was to pay the costs and expenses.

## 6. Finland's actions against human trafficking in view of the Convention

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### 6.1. Introduction

The Convention specifies what is known as the 3P paradigm as the foundation for action against human trafficking: *prevention* of human trafficking, *protection* of victims of human trafficking and *prosecution* of those guilty of human trafficking. The Convention emphasises the importance of cooperation between the authorities and the third sector and cross-border cooperation.

The Convention specifies that “actions against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach”. The Convention further specifies that “each Party shall promote a human rights based approach in the development, implementation and assessment of all the policies and programmes” against trafficking in human beings.

Actions to prevent trafficking in human beings include awareness-raising for persons vulnerable to trafficking, addressing the economic and social causes underlying trafficking, discouraging demand, and effective border measures.

Identification is a key function in securing the rights of victims of trafficking to avoid treating such victims as illegal immigrants or criminals. Victims must be provided help and support so that they may overcome their experiences of abuse and return to a normal life. Victims shall be given “a recovery and reflection period of at least 30 days for the person concerned to recover and escape the influence of traffickers and/or take an informed decision on cooperating with the competent authorities”. A renewable residence permit shall be issued to victims if their situation so requires or if their stay is necessary for the purpose of their cooperation in investigation. The Convention also contains provisions on compensation and on the repatriation and return of victims with safety and dignity.

The Convention requires that each Party undertake effective action to prosecute and punish persons guilty of trafficking in human beings. Particular attention is paid to the protection of victims and witnesses during the criminal proceedings. “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.”

The following is a brief review of those provisions of the Conventions the implementation of which must be particularly focused on in Finland. These are articles 3 (Non-discrimination principle), 4 (Definitions), 5 (Prevention of trafficking in human beings), 6 (Measures to discourage the demand), 10 (Identification of the victims), 12 (Assistance to victims), 13 (Recovery and reflection period), 14 (Residence permit), 15 (Compensation and legal redress), 16 (Repatriation and return of victims), 17 (Gender equality), 18 (Criminalisation of trafficking in human beings) and 19 (Criminalisation of the use of services of a victim).

The following provisions are also briefly discussed in the present report for the reason that the National Rapporteur on Trafficking in Human Beings has focused on their implementation in monitoring: Articles 26 (Non-punishment provision), 28 (Protection of victims, witnesses and collaborators with the judicial authorities), 29 (Specialised authorities and coordinating bodies), 30 (Court proceedings) and 35 (Cooperation with civil society).

## 6.2. Non-discrimination principle and gender equality

### *Article 3 – Non-discrimination principle*

“The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

### *Article 17 – Gender equality*

“Each party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.”

### 6.2.1. Essential content of the provisions

The non-discrimination principle incorporated in the Convention simply means that in implementing the provisions of the Convention its Parties shall not discriminate against anyone on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The Convention empha-

sises the importance of non-discrimination particularly regarding access to measures for safeguarding and promoting victims' rights.

According to the Explanatory Report on the Convention, “the meaning of discrimination in Article 3 is identical to that given to it under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)”. As examples of situations potentially involving discrimination, the Explanatory Report mentions the provision of assistance to victims of trafficking and the issuing of residence permits.

Article 17 provides for gender equality, requiring that “each Party shall, in applying measures referred to in this chapter [III], aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures”.

The Explanatory Report notes that women and girls are the main target group of trafficking in human beings and that “women are often marginalised even before becoming victims of trafficking and find themselves victims of poverty and unemployment more often than men. Therefore, measures to protect and promote the rights of women victims of trafficking must take into account this double marginalisation. In short, these measures must take into account that society is composed of women and men and that their needs are not always the same”.

According to the Explanatory Report, the Convention requires its Parties to undertake measures to reach the goal of gender equality. Particular attention must be paid in this respect to practices which qualify as torture or inhuman or degrading treatment, such as trafficking for the purpose of sexual exploitation.

### **6.2.2. Statements by GRETA**

In its evaluation reports, GRETA has emphasised equality so that all victims will be identified and assisted as the Convention requires of its Parties. One particular challenge for action against trafficking in human beings in several countries seems to be that they do not recognise work-related human trafficking. GRETA has also noted that appropriate accommodation is often not available for male victims of human trafficking.

GRETA has pointed out in its evaluation procedures that human trafficking is a form of violence against women. This is particularly apparent in human trafficking related to prostitution and other sexual exploitation. GRETA has remarked to the Convention Parties that services intended for assisting vic-

tims must be available to all victims of human trafficking regardless of their nationality or whether they are legally entitled to be in the country.

### 6.2.3. Significance of the provisions for Finland

Human trafficking is said to be a gender-driven phenomenon. It is estimated that women and girls fall victim to sexual and work-related exploitation far more often than men and boys. In Europe at least, sexual exploitation of women and girls is considered the most typical form of human trafficking, but the majority of the victims of work-related human trafficking are also women and girls.<sup>11</sup>

When Finland's first Plan of Action against Trafficking in Human Beings was being drawn up in the mid-2000s, the assumption was that human trafficking in Finland was primarily associated with prostitution and sexual exploitation.<sup>12</sup> However, work-related human trafficking has been found to be more frequent in Finland than human trafficking for sexual exploitation. This has become apparent both in the assistance system for victims of human trafficking and in pre-trial investigations.

The majority of victims of human trafficking and related offences who have entered the assistance system for victims of human trafficking have been primarily subjected to work-related exploitation. For instance, in April 2013 there were about 100 clients in the assistance system, fewer than 40 of whom had been sexually exploited. Moreover, only a handful of the sexually exploited victims had been sexually exploited in Finland in particular. The majority of victims of human trafficking who had been sexually exploited were asylum seekers who had been sexually exploited in another European country before travelling to Finland.

The previous report to Parliament of the National Rapporteur (2010) discussed identification of human trafficking underlying pre-trial investigations concerning prostitution and procuring. The report was based on cases of procuring tried in courts between 2004 and 2009. The report indicates that many criminal cases investigated as procuring include aspects of human trafficking. The

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<sup>11</sup> See e.g. Trafficking in human beings. Eurostat, European Commission 2013; Global Report on Trafficking in Persons. United Nations Office on Drugs and Crime (UNODC) 2009; A Global Alliance against Forced Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005. International Labour Conference, 93rd Session 2005, Report I (B). International Labour Organization (ILO) 2005.

<sup>12</sup> National Plan of Action against Trafficking in Human Beings. Ministry for Foreign Affairs 2005.

data demonstrate that rights infringements by pimps against foreign prostitutes are far from rare and that pimps control prostitutes in a variety of ways.<sup>13</sup>

The report shows that in pre-trial investigations, infringements of rights against such persons are not deemed to fulfil the criteria specified in the Criminal Code provision on human trafficking, e.g. abusing the dependent status or vulnerable state of another person or violence, threats or deceitfulness. Such infringements, which may involve serious infringements of the right of sexual self-determination, personal liberty and physical integrity, are also often not investigated as separate offences against the same person, such as extortion. The reason for this is that the offence of procuring is considered to subsume such infringements. In many cases, the essential features of a human trafficking offence are only considered to have been fulfilled when a person engaged in prostitution has been deceived regarding the nature of the activity. If that person has been aware of the prostitution (and is not, for instance, disabled and hence defenceless under the Criminal Code), the person is generally not considered to have been a victim of human trafficking, even if the conditions in which the activity is carried out and the characteristics of the person might lead to a different conclusion. Agreeing to prostitution, it seems, is assumed to include ‘agreeing’ to a wide variety of abuse.

The report notes that it is problematic for the legal protection of the victim that means of pressure and coercion remain unidentified. Under current practice, victims of procuring are nearly always considered only witnesses, not injured parties, in criminal proceedings.<sup>14</sup> The victim’s status in criminal proceedings is of great significance to the fulfilment of the victim’s rights. Because witnesses to a procuring offence do not qualify for legal aid, it is uncertain whether any infringements would come out or be addressed in the pre-trial investigation. It is also noteworthy that witnesses to procuring offences rarely end up in the assistance system for victims of human trafficking.<sup>15</sup> From the perspective of the pre-trial investigation authorities, on the other hand, it makes no difference whether a particular case is investigated as a procuring offence or a human trafficking offence, because the scales of

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<sup>13</sup> National Rapporteur on Trafficking in Human Beings: Report 2010 – Trafficking in human beings, phenomena related to it, and implementation of the rights of human trafficking victims in Finland. Ombudsman for Minorities 2010.

<sup>14</sup> According to legal literature, an ‘injured party’ is a natural or legal person whose rights or interests have been infringed by an offence or who has been the victim of an offence.

<sup>15</sup> The problem of witness vs. injured party does not arise in work-related human trafficking, because victims of offences related to human trafficking such as extortionate work discrimination and extortion are defined as injured parties in criminal proceedings. It would seem that victims of alleged extortionate work discrimination are referred to the assistance system for victims of human trafficking at the pre-trial investigation stage more commonly than victims of procuring.

punishment and access to coercive measures are practically identical in cases of aggravated procuring and aggravated human trafficking.

The National Rapporteur has noted that the capacity of the authorities, specifically the police, to identify cases of human trafficking has improved since the publishing of the aforementioned report. This is particularly apparent in the investigation of human trafficking offences in connection with work-related exploitation. By comparison, human trafficking is detected at a relatively poor rate in cases of sexual exploitation. Young, foreign and vulnerable women in prostitution often have no foreign language skills and may not even be literate, and they are easy to transport from one country to another at short notice. They may have underage children with them. What is particularly noteworthy is the increase in the number of Nigerian women engaged in prostitution.

### **6.3. Definition of human trafficking, criminalisation requirement and non-punishment provision**

#### *Article 4 – Definition of trafficking in human beings*

“For the purposes of this Convention:

- “a) ‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- “b) The consent of a victim of ‘trafficking in human beings’ to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- “c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in human beings’ even if this does not involve any of the means set forth in subparagraph (a) of this article;
- “d) ‘Child’ shall mean any person under eighteen years of age;
- “e) ‘Victim’ shall mean any natural person who is subject to trafficking in human beings as defined in this article.”

*Article 18 – Criminalisation of trafficking in human beings*

“Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.”

*Article 26 – Non-punishment provision*

“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

### 6.3.1. Essential content of the provisions

The definition of ‘trafficking in human beings’ in the Convention is largely identical to those of earlier international legal documents. The definition indicates that human trafficking consists of means, manner and purpose, all of which have to be fulfilled in order for an act to be defined as human trafficking. Consent of the victim is irrelevant if unlawful means have been used to obtain it. As far as children are concerned, the means defined need not be used for the definition to be fulfilled. Article 18 of the Convention requires Parties to enact legislation criminalising intentional human trafficking. The Convention also includes a definition of ‘victim’, which the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, for instance, does not.

The Explanatory Report notes that the critical difference between human trafficking and migrant smuggling (defined in Finnish legislation as ‘facilitation of illegal entry’) is in the means used. The Explanatory Report also explains in more detail how the means described as ‘abuse of a situation of vulnerability’ is actually defined. “By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.”

The Explanatory Report also reiterates the point that the consent of the victim does not sanction the act. It is admitted that “it is not easy to determine where free will ends and constraint begins”. However, the Explanatory Report does point out that “while someone may wish employment, and possibly be

willing to engage in prostitution, that does not mean that they consent to be subjected to abuse of all kinds”. The Convention covers all of the purposes of human trafficking, including illegal adoption when it amounts to a practice similar to slavery.

Article 18 of the Convention requires Parties to enact legislation criminalising intentional human trafficking. The Explanatory Report specifies that “a person does not have to have been exploited for there to be trafficking in human beings. It is sufficient that they have been subjected to one of the acts in the definition by one of the means in the definition for the purpose of exploitation”.

Article 26 is the non-punishment provision. This specifies not imposing penalties on victims of human trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so. The Explanatory Report notes: “In particular, the requirement that victims have been compelled to be involved in unlawful activities shall be understood as comprising, at a minimum, victims that have been subject to any of the illicit means referred to in article 4, when such involvement results from compulsion. Each Party can comply with the obligation [of enacting non-punishment] by providing for a substantive criminal or procedural criminal law provision, or any other measure, in accordance with the basic principles of every national legal system.”

### **6.3.2. Statements by GRETA**

GRETA has investigated in its evaluation procedure how each of the Parties to the Convention define human trafficking. Some Parties use a definition of human trafficking identical or similar to the one incorporated in the Convention. In these cases, GRETA considered it important that those governments did not impose any further conditions or demands on identifying victims of human trafficking and offering assistance to them.

The evaluation reports indicate that some Parties use what is known as an operational definition of human trafficking. Some Parties have no official definition of human trafficking at all; victims are given assistance like other crime victims. GRETA seems to accept a number of different definitions but does not endorse what is known as the ‘harm-based definition’. This states that a victim of human trafficking is someone who has suffered harm as a result of being a victim of human trafficking.

GRETA has noted in the process of its evaluation procedure that the legislation of the Parties is often not in agreement with the definition of human

trafficking given in the Convention and that the Parties have difficulties in applying the definition of human trafficking in practice. GRETA has recommended that the Parties amend their criminal legislation so as to bring it better into accord with the definition given in the Convention. For example, GRETA considers that Party legislation does not cover circumstances similar to slavery as required in the Convention. GRETA has also drawn attention to overlapping in the sanction provisions concerning human trafficking and related offences and advised Parties to ensure that such overlapping does not weaken redress to law or the bringing of charges against persons guilty of human trafficking and sentencing them.

GRETA has noted in the process of its evaluation procedure that offenders are often punished for offences less serious than human trafficking due to a lack of evidence. GRETA has recommended that Parties re-evaluate the application of the sanction provisions for human trafficking and take action to eliminate problems in legislation and application practice. GRETA has encouraged Parties to ensure that the application of the sanction provisions and the meting out of punishment correspond with the requirements of the Convention and that the victim-oriented approach is taken into account in applying provisions.

GRETA has also suggested that application of the sanction provisions on human trafficking by the Parties might be more effective if it were separately enacted in criminal legislation that the victim's consent is irrelevant in such a case. In its evaluation reports, GRETA has advised Parties' authorities to ensure that all underage victims of human trafficking, exploited sexually or otherwise, are designated victims of human trafficking as specified in Article 4 of the Convention.

GRETA further considers that the police and the judicial system should be provided with training concerning human trafficking to improve their capability to identify victims of human trafficking and refer them to assistance, and also the application of the provisions of criminal legislation. Moreover, GRETA has advised Parties' authorities to specialise in the investigation and prosecution of human trafficking offences.

In its evaluation reports, GRETA has paid special attention to the implementation of the non-punishment provision, emphasising that human trafficking is a serious infringement of human rights. GRETA has recommended that Parties should issue provisions specifically ensuring non-punishment for victims of human trafficking. GRETA has advised Parties to refrain from criminal investigations, prosecution and punishment against victims of hu-

man trafficking. Suspected victims of human trafficking should also not be punished for offences related to illegal entry during the identification process, for example. GRETA has advised several Parties to evaluate the application practice of the non-punishment provision and to take the necessary measures to enhance that application.

### 6.3.3. Significance of the provisions for Finland

Specific provisions concerning trafficking in human beings and aggravated trafficking in human beings were added to the Finnish Criminal Code in August 2004. By spring 2013, Finnish courts have issued about a dozen sentences for human trafficking. Some of these decisions are not yet final. The first sentence for sexual exploitation in human trafficking was passed in summer 2006. The first sentences for work-related human trafficking were passed in 2012. Other cases involving sexual exploitation in human trafficking have not yet been brought to court. As the table below shows, the number of pre-trial investigations concerning human trafficking has clearly increased in recent years. The numbers given for 2012 in parentheses show the number of pre-trial investigations launched by the police. The others represent pre-trial investigations carried out by the Border Guard.

Pre-trial investigations of human trafficking, 2007–2012

	2007	2008	2009	2010	2011	2012
Trafficking in human beings	2	6	2	11	26	21 (18)
Aggravated trafficking in human beings	1	2	2	2	6	4 (4)

Source: Ministry of the Interior (22 March 2013).

The National Rapporteur’s report to Parliament in 2010 recommended that penal provisions on human trafficking and related offences, particularly procuring, should be amended so as to enhance the identification of victims of human trafficking and the investigation of human trafficking offences. Parliament, in its statement EK 43/2010 vp, concurred with the recommendations of the National Rapporteur and required the Government to take action inter alia to eliminate duplication in the penal provisions concerning human trafficking and procuring. In November 2011, the Ministry of Justice appointed a working group to review human trafficking legislation in the Ministry’s administrative branch.

At the end of September 2012, the working group submitted its unanimous proposal for a government proposal to Parliament concerning legislative amendments on human trafficking and procuring offences and extortionate work discrimination. Among other things, the proposal involves removing the manner of ‘coercing’ from the penal provision on procuring (chapter, 20 section 9) and adding it under trafficking in human beings. The proposal also involves removing violent means of commitment from the penal provision on aggravated procuring (chapter 20, section 9a) and adding them under aggravated trafficking in human beings. It was also proposed that the status of a victim of procuring should be improved in criminal proceedings by providing for legal aid and a support person through a legislative amendment. Under this amendment, a court may assign a legal counsel to the victim of a procuring offence for the pre-trial investigation and trial if necessary for resolving the matter.

The provision on trafficking in human beings (chapter 25, section 3) is proposed to be amended so that the means of commitment ‘takes control over another’ be replaced by ‘subjugates another’. The proposal further involves removing forced labour as a purpose of trafficking in human beings and adding this to the list of demeaning circumstances. The purpose of this amendment is to clarify the purposes listed as essential features of human trafficking principally as follows: “for purposes of sexual abuse or other demeaning circumstances such as forced labour or removal of bodily organs or tissues”. It was further proposed that criminal liability for legal persons be connected to extortionate work discrimination so that a prohibition to pursue a business could be imposed on a legal person guilty of extortionate work discrimination.

The National Rapporteur has noted that even after the entry of the proposed legislation into force, underage persons could continue to be procured: subjecting an underage person to sexual abuse is not always human trafficking; it may be aggravated procuring. The working group considered that delimiting the scope of application of the provisions on procuring might lead to a narrower scope of criminal liability in cases where the criteria for human trafficking are also not fulfilled. The working group gave as an example of such a situation the providing of contact information as a means of committing a procuring offence. The delineation outlined by the working group may prove problematic from the perspective of implementing the Convention. Under the Convention, subjecting an underage person to sexual abuse always constitutes human trafficking without the criteria listed in the definition thereof having to be fulfilled.

In the best case, the scope of application of procuring provisions will narrow, but human trafficking for the purpose of sexual exploitation will come to be better identified. If, however, the legal protection of victims is not improved by clarifying the line between procuring and human trafficking, the proposed legal aid provision will become a very central one for the victims' legal protection. Victims themselves often find it difficult to pursue their rights on their own because of their physical and mental state. Underage victims of sexual abuse in particular need effective protection so that the abuse they have endured can be investigated. It is vital for the appropriate application of the proposed legal aid provision that the police provide the victim of a procuring offence with legal counsel at the beginning of the pre-trial investigation, as soon as that person is suspected of being the victim of a crime against a person such as human trafficking, unlawful threat, coercion, blackmail or extortion. The threshold for appointing legal counsel should be low so that infringements of the person's rights in prostitution or through procuring can be investigated and appropriate compensation sought for the victim.

In the aforementioned report to Parliament, the National Rapporteur also addressed the identification of work-related human trafficking in criminal proceedings. The report was based on cases of abuse tried in court up to the end of 2009 where the offences cited were trafficking in human beings or the related extortionate work discrimination (Criminal Code, chapter 47, section 3a). The penal provision on extortionate work discrimination was added to the Criminal Code in 2004.<sup>16</sup> The National Rapporteur noted on the basis of this material that there are features of human trafficking in the exploitation of foreign labour. Such exploitation is not, however, recognised as human trafficking, and the threshold for applying the penal provisions on human trafficking is high. What has proved particularly challenging is the application and interpretation of the concept of forced labour. The sentences imposed for extortionate work discrimination are rather mild, and claims for compensation are also not great. The National Rapporteur discovered exploitation with features of human trafficking at least in the construction, restaurant, cleaning and horticulture sectors and in berry-picking. It remains to be seen whether the amendments proposed to the Criminal Code will make it easier to identify work-related human trafficking.

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<sup>16</sup> Criminal Code (39/1889), chapter 47, section 3a: "Extortionate work discrimination: If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years."

Finnish legislation contains no separate provision for non-punishment of victims of human trafficking. However, prosecution and sentencing may be waived for victims of human trafficking under current legislation. Under the Criminal Code, a person subjected to trafficking in human beings shall not be punished for a border offence or a petty border offence (chapter 17, section 7(2)). The grounds for waiving prosecution in the Criminal Procedure Act (chapter 1, sections 7–8) and the grounds for waiving punishment in the Criminal Code (chapter 6, section 12) may also apply to victims of human trafficking. Moreover, under the general principles of criminal law, punishment may be waived for a victim of human trafficking compelled to commit an unlawful act because of the person not having a real choice to do otherwise.

The implementation of the non-punishment provision, like that of many other rights specified in the Convention, depends largely on whether victims of human trafficking are identified and whether indications of human trafficking are responded to in such a way as to safeguard the rights of the victims. This is particularly uncertain in the case of foreign nationals who sell sexual services in Finland, are in the country illegally or are working without a residence permit for an employed person. It is a challenge to gain a sufficiently comprehensive view of the status and extent of the current situation, because these persons and the problems they face do not necessarily come to the attention of any outside party, especially the authorities. There is a risk of possible victims of human trafficking being punished for a border offence or forgery. Focusing on immigration irregularities may lead to ignoring infringements of the person's rights.

#### **6.4. Prevention of trafficking in human beings and discouraging demand**

##### *Article 5 – Prevention of trafficking in human beings*

1. “Each Party shall take measures to establish or strengthen national coordination between the various bodies responsible for preventing and combating trafficking in human beings.
2. “Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
3. “Each Party shall promote a human rights based approach and shall use gender mainstreaming and a child-sensitive approach in the de-

velopment, implementation and assessment of all the policies and programmes referred to in paragraph 2.

4. “Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
5. “Each Party shall take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.
6. “Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.”

#### **6.4.1. Essential content of the provision**

The Convention contains a provision whereby the Parties shall take measures to prevent trafficking in human beings. Parties are required to undertake cross-sectoral and coordinated action to this end. Measures shall be aimed particularly at the most vulnerable persons and professionals working with them, such as social workers, the police and physicians. There may be various kinds of preventive measures: some with immediate impact, some with longer-term effects.

In addition to the Convention generally providing for the prevention of human trafficking, it also specifically provides for discouraging demand. With regard to the prevention of human trafficking, the Convention requires Parties to undertake measures to discourage demand (Article 6 – Measures to discourage the demand). “To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures.” These include “research on best practices, methods and strategies; raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings; target information campaigns involving, as appropriate, inter alia, public authorities and policy makers; preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being”.

In this context, it is useful to point to Article 19 of the Convention, which specifies that “each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4, paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings”. The point of this provision is to address human trafficking by decreasing the demand for it. In other words, this affects the user of the services across all purposes of human trafficking.

The Explanatory Report on the Convention mentions a situation where “the business owner could not be treated as criminally liable, not having him/herself recruited the victims of the trafficking and not having him/herself used any of the means referred to in the definition of trafficking”. For instance, “the client of a prostitute who knew full well that the prostitute had been trafficked could be treated as having committed a criminal offence”. The Explanatory Report notes that “proving knowledge may be a difficult matter” and proposes that objective facts should be used to demonstrate that the person in question is in fact a victim of trafficking.

#### **6.4.2. Statements by GRETA**

In its evaluation reports, GRETA highlights several means for preventing trafficking in human beings. One of these is raising awareness about human trafficking. GRETA has recommended that the Parties engage in joint campaigns with the major countries of origin of victims of human trafficking and with NGOs to enhance the effectiveness of these measures. GRETA has also advised Parties to create education campaigns for the purpose of preventing human trafficking within the country. GRETA considers it important to evaluate the effectiveness of awareness campaigns. GRETA has also advised Parties to invest in research on human trafficking and thereby improve systematic planning in actions against it.

In its evaluation reports, GRETA has addressed the issue of preventing human trafficking within a country. GRETA has advised Parties to target measures to prevent human trafficking with a view to vulnerable persons already in the country, such as beggars, unaccompanied children or irregular employees.

GRETA considers it important that human trafficking also be combated by providing immigrant workers with information about human trafficking and about their rights. Embassies and consulates occupy a key position in the prevention of human trafficking, according to GRETA. Therefore their employees should be aware of the risks of immigration and of human trafficking.

GRETA considers it important to raise awareness of work-related human trafficking and for the Parties to undertake preventive measures against it. GRETA often refers to the construction industry, agriculture and the cleaning sector as at-risk sectors. Demand for work-related human trafficking should also be actively discouraged. For example, GRETA has advised Parties to consider whether purchasing services knowingly from victims of work-related human trafficking should be criminalised.

#### 6.4.3. Significance of the provision for Finland

In June 2008, the Government adopted the Revised National Plan of Action against Trafficking in Human Beings, which is still in force.<sup>17</sup> A multi-sectoral steering group was appointed to coordinate implementation of the Revised National Plan of Action, chaired by the Ministry of the Interior. The steering group submitted its final report in April 2011.<sup>18</sup> In the final report, the measures for preventing human trafficking mentioned by the steering group included neighbouring area cooperation, development cooperation, civilian crisis management, occupational safety and health monitoring, combating the black economy, and visa and residence permit discretion. However, the majority of the proposed measures were rather general in nature. There has been no coordinated follow-up of implementation of these measures in central government, nor any evaluation of how the recommendations of the steering group have affected the incidence and spreading of human trafficking. Work-related human trafficking may be a larger problem than thought; its causes have not been analysed, and no comprehensive measures to eliminate those causes have been undertaken.

Human trafficking and related exploitation can be prevented by discouraging demand for the services provided by victims of human trafficking. In Finland, relatively little has been done to discourage such demand. In 2005, the Government proposed a general criminalisation of the purchasing of sexual services.<sup>19</sup> The specific criminalisation of purchasing services from victims

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<sup>17</sup> Revised National Plan of Action against Trafficking in Human Beings. Ministry of the Interior 29/2008.

<sup>18</sup> Ihmiskaupan vastaisen toimintasuunnitelman toimeenpanon arviointi sekä suositukset ihmiskauppaa koskevan lainsäädännön ja toimenpiteiden kehittämiseksi: Ihmiskaupan vastaisen toimintasuunnitelman ohjausryhmän loppuraportti. [Evaluation of the National Plan of Action against Trafficking in Human Beings and recommendations to develop legislation and measures concerning human trafficking: Final report of the Steering Group for the Plan of Action against Trafficking in Human Beings.] Ministry of the Interior publications 17/2011.

<sup>19</sup> Government proposal to Parliament concerning acceptance of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air and the implementation of the provisions of a legislative nature in their field and the enactment of Acts amending Chapter 20 of the Criminal Code and sections 7 and 16 of the Public Order Act (HE 221/2005 vp).

of work-related human trafficking was not considered at the time, nor has it been debated since. Very few other measures to discourage demand have been put forward.

The content of the present provision prohibiting the purchasing of sexual services was finalised in Parliament. Under the Finnish Criminal Code, chapter 20, section 8 (as amended, 743/2006), buying sexual services from a victim of procuring or human trafficking is prohibited (abuse of a victim of prostitution). According to a report from the Legal Affairs Committee, the purpose of these essential elements of the offence is to protect victims of the sex trade, which is important for reasons of principle, as the objectification of human beings as merchandise, which is what happens in human trafficking and procuring, clearly violates human dignity.<sup>20</sup>

The report further states that this provision involves *mens rea*. This means that it is essential to consider what the offender must have been aware of in order for the objective side of the essential elements of the offence to be fulfilled. The Legal Affairs Committee stated that it may be estimated that actions fulfilling the essential elements of this offence are quite often committed in circumstances where the offender must be aware of the elements of the situation in such a way as to be culpable. This refers to what might be called 'typical' situations where certain circumstances or elements imply that the person at whom the action is aimed is the victim of an offence referred to in the essential elements.<sup>21</sup>

There have been few pre-trial investigations of exploitation offences against persons involved in prostitution, and very few sentences have been passed. The number of exploitation offences uncovered depends on how many procuring and human trafficking offences are uncovered and investigated, and how efficiently. In a report published in November 2009, the Ministry of Justice considered that a penal provision being rarely applied does not mean that the provision in itself is a failure. It was estimated that uncertainty factors observed in the practical application of the provision, such as problems with proof, were caused by the novelty of the provision. The report expressed the belief that the provision would decrease the purchasing of sexual services even in cases where the seller of the services is not in fact a victim of procuring or

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20 Report of the Parliament's Legal Affairs Committee (LaVM 10/2006 vp).

21 In the aforementioned government proposal HE 221/2005 vp, the option of only criminalising the purchasing of services from victims of procuring or human trafficking was considered suspect. The grounds for this involved potential difficulties in establishing that the buyer acted with intent sufficient to warrant application of the penal provision. It may be difficult to determine from the circumstances of the event whether a prostitute is a victim of procuring or human trafficking.

human trafficking. Because objectively measuring or verifying such impacts is problematic, it was noted in the report that it would be important to consider what kind of public message would be sent by repealing the provision.<sup>22</sup>

In June 2012, the Supreme Court issued a decision concerning the exploitation of a victim of prostitution and the related lower threshold for *mens rea*. In the decision, the Supreme Court dismissed the charge on the grounds that it did not consider that the defendant had committed the action intentionally. This recent decision clearly indicates that the current provision in the Criminal Code is insufficient for preventing human trafficking and organised procuring in the manner perhaps envisioned by the legislators. In January 2013, the Ministry of Justice commissioned the Faculty of Law at the University of Helsinki to conduct an evaluation of the functioning of the ban on purchasing sexual services. This evaluation is to include a review of the practice emerging on the basis of the legislation, of the views of key actors – particularly the police and NGOs in the field – and of the situation in Sweden and the UK. The review must include proposals for legislative development. The report will be published after the present report goes to press, at the beginning of September 2013.<sup>23</sup>

*Supreme Court Precedent, KKO:2012:66 – Exploitation of a victim of prostitution*

The prosecutor demanded a punishment for X for exploitation of a victim of prostitution. According to the charges, X had given A monetary compensation of about EUR 150, thereby enticing A, a victim of procuring, to engage in sexual intercourse. X admitted in the pre-trial investigation that he had had sexual intercourse against payment with a woman unknown to him, while A reported in the pre-trial investigation that X was her client and that he had purchased sexual services from her. The District Court sentenced X to 20 day-fines for abuse of a victim of prostitution pursuant

<sup>22</sup> Ministry of Justice: Report on the application of the penal provision concerning abuse of a victim of prostitution, OM 16/49/2009 (2 November 2009).

<sup>23</sup> It has been suggested in the legal literature that the provision on the ban on purchasing sexual services should be amended to reduce the requirement of awareness on the part of the buyer of sexual services of the status of the seller as a victim of procuring or human trafficking, which would include negligence among the grounds for liability for punishment. In other words, the action would be punishable when the buyer is aware or should have been aware of the seller being a victim of procuring or human trafficking. Jussi Tapani: Olisiko nyt sanottu viimeinen sana olosuhdetahallisuuden alarajasta? KKO 2012:66 ja seksuaalipalveluiden ostamisen rangaistavuus [Has the final word been given on the lower threshold for *mens rea*? – Supreme Court Precedent KKO 2012:66 and criminalisation of the purchasing of sexual services]. *Defensor Legis* N:o 5/2012, pp. 607–619.

to chapter 20 section 8(1) of the Criminal Code. X appealed the District Court decision to the Court of Appeal, demanding that the charges should be rejected because he had not acted with intent. The Court of Appeal upheld the decision of the District Court with regard to X.

X applied to the Supreme Court for leave to appeal and was granted leave to appeal. In its decision KKO:2012:66, the Supreme Court rejected the charges because it considered that the defendant had not acted with intent. In this decision, the Supreme Court adhered to the definition of intent established in jurisprudence (probable intent). According to this requirement of intent, assigning criminal liability would require, in this case, that the buyer had considered it quite probable that the person selling sexual services is a victim of either procuring or human trafficking. The Supreme Court stated that the description of the personality, appearance or language skills of the seller as presented in the case were not sufficient to prove that the buyer must have considered the aforementioned circumstance quite probable.

However, in the justifications for its decision, the Supreme Court considered whether a lower threshold of culpability could be upheld *inter alia* because of the need to protect victims of prostitution or their weak social status or because of difficulties of proof, or because attempts are often made to conceal the status of a prostitute who is a victim of procuring or human trafficking from potential buyers, and buyers have no way of finding this out, even if they wanted to. The Supreme Court noted that sexual services often involve the possibility of procuring and human trafficking, and it is difficult for a buyer to completely exclude this possibility. Having said that, the Supreme Court upheld the probable intent model in the interests of the underlying values of the rule of law, above all predictability and uniformity of the application of the law. The Supreme Court further noted that a person cannot be considered to have acted with intent if that person can be considered to have been ignorant of an element of the criminal liability thereof.

The Supreme Court dedicated a considerable portion of the justifications to evaluating the evidence. The Supreme Court conducted a preparatory session and an oral main hearing in the matter, which is relatively rare. The Supreme Court noted firstly that nothing has emerged in the matter that would indicate procuring, circumstances referred to in the preliminary work of the Act. On the other hand, the Supreme Court considered that the diminished mental capacity of the person selling sexual services could not have been easily discerned by an outside observer.

She was also capable of communicating to a sufficient extent, even if her language skills were not good. The Supreme Court noted (section 32):

*“The Supreme Court notes that a discernibly diminished mental capacity and complete lack of language skills may strongly indicate that the person is incapable of independent action but is instead a victim of procuring or human trafficking. Young age or foreign origin are not in and of themselves grounds for such a suspicion. The above description of the personality, appearance, language skills and background of A, whether the characteristics are taken separately or considered as a whole, and taking other circumstances into account, does not demonstrate that X must have considered it quite probably for A to be a victim of procuring.”*

## 6.5. Identification of trafficking in human beings

### *Article 10 – Identification of the victims*

1. “Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in article 14 of the present Convention.
2. “Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in article 12, paragraphs 1 and 2.
3. “When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

4. “As soon as an unaccompanied child is identified as a victim, each Party shall:
  - “a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of the child;
  - “b) take the necessary steps to establish his/her identity and nationality;
  - “c) make every effort to locate his/her family when this is in the best interests of the child.”

### 6.5.1. Essential content of the provision

Article 10 of the Convention provides for the identification of victims of trafficking in human beings. Paragraph 1 requires Parties to ensure that the competent authorities responsible for identification are trained in the identification of human trafficking and engage in cooperation with other authorities and with support organisations such as NGOs. According to the Explanatory Report, “by ‘competent authority’ is meant the public authorities which may have contact with trafficking victims, such as the police, the labour inspectorate, customs, the immigration authorities and embassies or consulates”. Paragraph 2 requires that “each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations”.

According to the Explanatory Report, “failure to identify a trafficking victim correctly will probably mean that victim’s continuing to be denied his or her fundamental rights”. Identification is also important for criminal proceedings and the prevention of human trafficking. The Explanatory Report refers to identification as a process where “competent authorities seek and evaluate different circumstances, according to which they can consider a person to be a victim of trafficking”.

The Convention acknowledges that identification of human trafficking may be a time-consuming and often prolonged process and that initially it is sufficient to have reasonable grounds to believe that a person has been a victim of human trafficking. The Convention notes that “if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence [...] has been completed”. The Explanatory Report points out that “the Convention does not require absolute certainty” and notes that “as soon as [...] there are reasonable grounds

to believe that the person is a victim, [the authorities] will not remove the person from the territory of the receiving state [...] The words ‘removed from its territory’ refer both to removal to the country of origin and removal to a third country”. This means that such a person can also not be sent to another Member State of the European Union before the identification process has been completed. The authorities are obliged to ensure that such persons receive the assistance referred to in Article 12, paragraphs 1–2 of the Convention (minimum assistance).

It is further noted in the Explanatory Report that the identification process as specified in the article is not dependent on criminal proceedings or their progress. What this means is that identified victims of human trafficking are entitled to assistance and protection regardless of whether a pre-trial investigation is to be initiated and whether such an investigation leads to a conviction for human trafficking.

At this point, we should refer to Article 15 of the Convention, where the Parties are required to “ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand”. The article also contains a provision entitling victims to free legal aid and trial and to compensation from the perpetrator for physical and psychological harm. Such compensation should be guaranteed by establishing a fund for victim compensation, for instance.

### **6.5.2. Statements by GRETA**

GRETA has noted that with some Parties the process of identification of victims of human trafficking focuses too much on aiming to get the victims to cooperate with the pre-trial investigation authorities or to prevent illegal immigration. GRETA has criticised Parties’ practices of taking victims of human trafficking who are in the country illegally into custody and removing them from the country without identifying them and without providing them with the assistance specified in the Convention. Such victims may also face sanctions for illegal immigration. GRETA has noted that many victims of human trafficking do not wish to be referred to the official assistance system. They are afraid that the authorities will remove them from the country instead of helping them. Such victims will only even come to the attention of NGOs in the best case.

GRETA has emphasised that appropriate identification of the victims of human trafficking is a prerequisite for providing assistance and protection to

victims pursuant to the Convention. Some Parties have assigned identification of victims of human trafficking only to the pre-trial investigation and/or immigration authorities. GRETA considers it better to require social workers, occupational safety and health authorities and NGOs also to identify victims of human trafficking. In some countries, identification has been assigned to a multi-professional expert group.

GRETA considers it important that identification is handled not by just one body but that several actors participate in both victim identification and assistance. GRETA considers that the Parties should have a clearly defined national referral mechanism (NRM) or procedures for identifying victims and referring them to assistance. GRETA considers that such an integrated model would clarify cooperation and division of responsibilities between actors and facilitate the identification of victims and their referral to assistance, besides reinforcing the predictability of the assistance system. GRETA considers that NGOs should be involved in the practical implementation of the model.

In its evaluation procedure, GRETA has taken note of the identification processes of the Parties, examining them to see whether they actually enable the identification of victims of human trafficking and that the victims are treated as victims and not as criminals or illegal immigrants. GRETA advises the Parties to be particularly vigilant that victims of human trafficking who are in the country illegally are appropriately identified and are provided with assistance as required in the Convention. GRETA notes that sufficient time must be allowed for the identification process so that the victims may be able to provide the authorities with the necessary details despite their traumatic experiences.

It is the considered opinion of GRETA that identifying a person as a victim of human trafficking must not depend on whether there is sufficient cause to initiate criminal proceedings in the case or on whether the person agrees to cooperate with the pre-trial investigation authorities. According to GRETA, all persons whose testimony contains indications of human trafficking as defined in the Convention shall be identified as victims of human trafficking and shall be provided assistance as required in the Convention. In its evaluation reports, GRETA frequently refers to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), according to which “a person may be considered a victim [...] regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted”.<sup>24</sup>

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<sup>24</sup> UN Declaration on the Principles of Justice for Victims of Crime and Abuse of Powers, A/RES/40/34 (29 November 1985).

GRETA considers that the rights listed in the Convention must be safeguarded, even in cases where a person has become a victim of human trafficking in another country before arriving in the territory of the Party in question. Victims of human trafficking must also be identified among asylum seekers. The Parties must ensure that victims of human trafficking can be identified even when they are in custody awaiting removal from the country. GRETA considers that persons whose testimony contains indications of human trafficking must be removed from custody urgently and must be provided with assistance as required in the Convention.

In its evaluation reports, GRETA has emphasised the importance of outreach work in identifying victims of human trafficking and advises the Parties to introduce other proactive methods to enhance victim identification. GRETA has recommended that the Parties adopt guidelines (including indicator lists) to make the identification of victims of human trafficking more effective and uniform among the various authorities. Another point is that the authorities must be provided with regular training on human trafficking and on victim identification in particular. GRETA considers that occupational safety and health authorities play a significant role in identifying work-related human trafficking.

GRETA believes that there is scope for improvement by several Parties particularly in identifying work-related human trafficking. GRETA further believes that, for instance, there are more victims of human trafficking among beggars than have been identified so far. The identification and referral of underage victims is considered by GRETA to be a key challenge in many countries. In its evaluation reports, GRETA has proposed concrete measures to improve the identification of underage victims of human trafficking, including means related to the interviewing of children.

GRETA has noted in its evaluation procedure that with many Parties the number of identified victims is considerably larger than the number of cases prosecuted or sentences passed on human trafficking. There are many reasons for this, including shortcomings in investigation methods, suspicions against the victims and inadequate protection measures for victims. As a result, perpetrators of human trafficking are not appropriately sanctioned for the offences they have committed.

In its evaluation procedure, GRETA has further stressed the right of victims to compensation, noting that with many Parties victims of human trafficking cannot benefit from the system of compensations for victims of crime for whatever reason. This may be due to a lack of information or legal assistance, or to the limited right of the victims to remain in the country.

### 6.5.3. Significance of the provision for Finland

At the moment, Finland's legislation does not provide for a uniform national referral mechanism (NRM) or procedures to identify victims of human trafficking and refer them to assistance. In 2011, the steering group of the aforementioned National Plan of Action against Trafficking in Human Beings proposed the appointment of a working group to draft a proposal for a comprehensive separate Act on human trafficking incorporating provisions on the identification of victims of human trafficking, to clarify the existing legislation. The National Rapporteur has endorsed the proposal for legislation concerning identification and referral to assistance.

On 27 January 2012, the Ministry of the Interior appointed a working group to prepare an Act on human trafficking. According to the original brief, the purpose of the working group was to draft a proposal for a separate Act on human trafficking. The key part of this legislation project was to prepare provisions concerning assistance for victims of human trafficking. The overall goal, however, was broader: the brief also required proposals for provisions on identification of victims of human trafficking and disclosure of information related to cases of human trafficking. In the revised brief dated 7 March 2013, provisions on identification are no longer mentioned (for more on the working group appointed by the Ministry of the Interior, see section 6.6.).

In spring 2012, the police worked with the National Rapporteur to draft a guideline for improving the identification of human trafficking and pre-trial investigations of human trafficking offences.<sup>25</sup> The purpose of the guideline was to harmonise measures to address human trafficking and related offences, pre-trial investigation of these offences and procedures to assist victims of human trafficking. Another purpose was to promote equal treatment of potential victims of human trafficking and to raise awareness among the police of the assistance system for victims of human trafficking.

At the request of the National Rapporteur, occupational safety and health authorities were provided with operating instructions for victim identification and referral to assistance during 2012.<sup>26</sup> Formulated as a memorandum, this

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<sup>25</sup> National Police Board: Ohje, Ihmiskauppaan ja sen kaltaisiin rikoksiin puuttuminen sekä ihmiskaupan uhrin auttaminen [Instructions concerning the addressing of trafficking in human beings and related offences and the providing of assistance to victims of trafficking in human beings], 2020/2011/3768 (12 April 2012).

<sup>26</sup> Ministry of Social Affairs and Health, Department for Occupational Safety and Health: Työsuojeluvalvonnan ohjeita 2/2012, Ulkomaisen työvoiman valvonta. [Occupational safety and health enforcement instructions concerning supervision of foreign employees.]

guideline notes that in their inspections, the occupational safety and health authorities must take the possibility of human trafficking into account and contact the assistance system for victims of human trafficking immediately for assessment if a suspicion of human trafficking emerges. The occupational safety and health authorities can submit an application for referring the victim to the assistance system on the victim's behalf if necessary. The assistance system has a low threshold and will also admit victims of offences related to human trafficking, such as extortionate work discrimination.

Identification is complicated by practical challenges as well as shortcomings in legislation. Under section 50 of the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health in the Workplace (44/2006), the occupational safety and health authorities are required to report a case to the police for pre-trial investigation if there is probable cause to suspect that an offence punishable under any Act within the domain of the occupational safety and health authorities or the chapter on employment offences in the Criminal Code has been committed. Current legislation allows for such reporting in the case of an offence related to human trafficking – extortionate work discrimination – but not human trafficking itself.

The annual report of the National Rapporteur 2010 addressed the refoulement procedure based on the Dublin Regulation and the issue of whether the authorities are capable of identifying human trafficking in connection with the removal of persons from the country. Identifying victims of human trafficking in the Dublin procedure is particularly challenging, because Finland is basically not responsible for the processing of the asylum applications of the persons involved. The report indicated that the authorities are not able to identify victims of human trafficking and to refer them to the assistance system. Problems were also noted in taking the best interests of children into account.

In order to correct the shortcomings noted in the aforementioned report of the National Rapporteur, the Finnish Immigration Service issued instructions in October 2010 on the asylum procedure in cases where the person seeking international protection may be a victim of human trafficking.<sup>27</sup> These instructions are based on the assumption that every Member State applying the Regulation must have a system in place to protect victims, unless information to the contrary is available. If the testimony of an asylum applicant contains

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<sup>27</sup> Finnish Immigration Service: Ohje, Turvapaikkamenettely tapauksissa, joissa kansainvälistä suojelua Suomesta hakenut henkilö on mahdollinen ihmiskaupan uhri [Instructions concerning asylum procedure in cases where a person seeking international protection in Finland may be a victim of trafficking in human beings], Dnro: 91/0032/2010 (14 October 2010).

indications of human trafficking, the Finnish Immigration Service will consider on a case-by-case basis whether the application should be subjected to substantive processing in Finland. Therefore, indications of human trafficking do not necessarily lead to the initiation of the identification process and the referral of the victim to the assistance system. The default action by the Finnish Immigration Service is to return the victim to another EU Member State to receive assistance unless that person's case is taken up for pre-trial investigation by the police as a human trafficking offence. It is rare to initiate a pre-trial investigation in such cases, because the offence itself is generally not committed in Finland; and even if an investigation is initiated, in many cases it is quickly wrapped up because of insufficient evidence or because pursuing the investigation is not considered cost-effective.

Forms of human trafficking beyond those related to sexual abuse and work-related exploitation have rarely been identified in Finland so far. In other Nordic countries such as Sweden, cases of begging-related human trafficking have been identified. Convictions have been made in Romania in at least one case involving begging in Finland. Very few cases of human trafficking related to other phenomena such as forced marriages, illegal adoptions and household work have been identified. Recently, attention has been paid to the poor working conditions, low pay and indebtedness at home of foreign berry pickers in Finland. There are concerns that they may be victims of human trafficking or similar exploitation. It is a somewhat worrying development that the number of victims of work-related human trafficking in the assistance system decreased in the first half of 2013. If victims of human trafficking are not identified, their right to receive compensation under Article 15 of the Convention can of course not be enforced.

## **6.6. Right of victims of trafficking in human beings to assistance and protection**

### *Article 12 – Assistance to victims*

1. “Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
  - “a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - “b) access to emergency medical treatment;
  - “c) translation and interpretation services, when appropriate;

- “d) counselling and information, in particular as regards their legal rights and the services available to them, in a language they can understand;
  - “e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - “f) access to education for children.
2. “Each Party shall take due account of the victim’s safety and protection needs.
  3. “In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
  4. “Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
  5. “Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
  6. “Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
  7. “For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.”

### 6.6.1. Essential content of the provision

The Article provides for measures to assist victims. According to the Explanatory Report on the Convention, “Article 12 applies to all victims, whether victims of national or transnational trafficking”. During the identification process, the possible victims are entitled to certain minimum services according to paragraphs 1 and 2 of the article. They are also entitled to these services during the recovery and reflection period.

Persons identified as victims are entitled to all the assistance measures listed in Article 12 when the identification process is completed. According to the Explanatory Report, the Party “in whose territory the victim is located must ensure that the assistance measures [...] are provided to him or her”. The Par-

ties may provide the services specified in the Convention in cooperation with NGOs, for instance. However, the Explanatory Report points out that “it is nevertheless the Parties that are responsible [... for taking] the steps necessary to ensure that victims receive the assistance they are entitled to [...] in time”. The Parties must ensure that the services are adequately funded. Also, “assistance is not conditional upon a victim’s agreement to cooperate with competent authorities”.

Article 16 of the Convention is about the repatriation and return of victims. Paragraph 2 of the article states that “when a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary”.

Paragraph 5 requires that “each Party shall [...] establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation”. Under paragraph 6, assistance for returning must be given by “[making] available to victims [...] contact information of structures that can assist them in the country where they are returned”. Paragraph 7 is particularly important in that it prohibits the returning of child victims “to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child”. The Explanatory Report notes that “when the authorities take a decision regarding the repatriation of a child victim, [...] they] must undertake an assessment of the risks which could be generated”.

At this point, it is relevant to refer to Articles 28 and 30 of the Convention, which apply to the investigation, prosecution and trials related to human trafficking offences. Article 28 of the Convention contains provisions on the protection of witnesses and of victims, their family members and persons providing them assistance; this requirement for protection survives the criminal proceedings. Article 30 requires Parties to ensure “the protection of victims’ private life and, where appropriate, identity; [and] victims’ safety and protection from intimidation”. These are procedural measures.

### **6.6.2. Statements by GRETA**

GRETA evaluation reports indicate that there are often failings in the Parties providing assistance to victims of human trafficking. Measures aimed at assisting victims of human trafficking do not correspond to the individual needs of the victims. Examples include assistance measures being designed for women only, without taking children and men sufficiently into account.

What has proved particularly challenging is the providing of appropriate accommodation for men and children who are victims of human trafficking.

In its evaluation procedure, GRETA has noted that some victims of human trafficking seeking assistance from NGOs do not want to be referred to the official assistance system. GRETA has advised the Parties to explore why not all possible victims of human trafficking wish to receive assistance from systems maintained by the authorities. GRETA has also encouraged the setting up of formal cooperation mechanisms between the authorities and NGOs to enhance the assistance process.

GRETA has noted that some of the victims who have contacted the assistance system have not received assistance because they have not been identified as victims of human trafficking or they have not been able to show the authorities sufficient evidence thereof. GRETA has further noted that identification as a victim of human trafficking often depends on whether the person concerned has an assistant who can help the person produce evidence of human trafficking.

In its evaluation reports, GRETA has criticised Parties for not providing assistance for all victims of human trafficking who have turned to the authorities for help. Reasons for this include the fact that too much time has elapsed between the exploitation and the referral to assistance, so that the authorities considered that the victim was not in need of immediate assistance. It is the considered opinion of GRETA that victims may not be denied assistance on such grounds; instead, the authorities should always assess on a case-by-case basis whether a person is entitled to assistance and protection pursuant to the Convention. GRETA emphasises that all victims of human trafficking must be identified and referred to assistance.

GRETA considers that the Parties should actively publicise what services are available and how to make use of them. This information should be available in multiple languages. GRETA has advised the Parties to improve services for victims, especially regarding education and access to the labour market. GRETA considers that the child welfare authorities, outreach workers, immigration authorities and police must collaborate more closely so that the individual needs of underage victims of human trafficking and the best interests of children are appropriately noted. Underage victims of human trafficking must be guaranteed education.

GRETA has emphasised the importance of having services for victims of human trafficking available equally all over the country and of central and local

government cooperating in this respect (see the Finnish assistance system and local authorities). GRETA has further noted that victims are treated in different ways, depending on where in the country they are.

GRETA has advised the Parties to develop a clear institutional and procedural model for ensuring the safe return of victims and to explore possibilities for engaging in international cooperation with authorities and NGOs to ensure the safe return of victims. GRETA considers it particularly important to ensure that the best interests of children are served when returning underage victims of human trafficking.

In its evaluation reports, GRETA has repeatedly remarked on inadequacies in measures to protect victims of human trafficking. GRETA advises the Parties to ensure that victims and witnesses are not subjected to intimidation or retribution during the pre-trial investigation and court proceedings. GRETA considers that the Parties must have an efficient, uniform and comprehensive protection framework in place.

### **6.6.3. Significance of the provision for Finland**

#### **6.6.3.1. Legislative challenges regarding the assistance system**

The assistance system for victims of human trafficking is provided for in the Act on the Reception of Persons Applying for International Protection (746/2011). In this Act, a victim of human trafficking is defined as a person who is obviously in need of assistance because of being an object of human trafficking or in need of special assistance in the course of an investigation into a human trafficking offence. Further under the Act (section 3), these provisions may be applied to a person who 1) has been granted the reflection period referred to in section 52b of the Aliens Act or the residence permit referred to in section 52a(1) of the same Act; or 2) can otherwise, considering the circumstances, be considered to be a victim of human trafficking or in need of special assistance in the course of an investigation into a human trafficking offence.

Assistance for victims of human trafficking is provided by the Joutseno Reception Centre. The decision to accept a person into the assistance system is made by the director of the reception centre with the support of a multi-professional evaluation team. The director of the reception centre also decides when to remove a person from the assistance system. These decisions are administrative decisions that may be appealed to the Kouvola Administrative Court.

According to the Act, victims of human trafficking may be provided with services and support measures that may include legal and other advice, crisis counselling, social welfare and health care services, translation and interpretation services and other support services, accommodation or housing, reception allowance or social assistance, other necessary care, and support for a safe return. In providing the services and support, the special needs of the victim of human trafficking due to his or her age, vulnerability and physical and mental state must be taken into account, along with the security of both the victim and the personnel providing the services and support. The reception centre provides the services itself or outsources them from private service providers or NGOs.

The National Rapporteur evaluated the operations of the assistance system for victims of human trafficking extensively in the 2010 annual report and recommended the preparation of a separate Act on human trafficking. Parliament concurred with the views of the National Rapporteur concerning shortcomings in the assistance provided to victims of human trafficking and called on the Government to undertake preparations for a separate Act on the assistance system for victims of human trafficking. In January 2012, the Ministry of the Interior appointed a working group to prepare an Act on human trafficking.

However, when the deadline for the working group was extended in March 2013, the revised brief proved a failure: it now seems that the working group will question the need for a separate Act. In April 2013, the National Rapporteur sent Minister of the Interior Päivi Räsänen a letter announcing resignation from the working group. The National Rapporteur felt that the working procedure of the working group was not conducive to the development of legislation on the prevention of human trafficking. The letter may be found in its entirety in Appendix 3 to the present report.

In May 2013, the Ministry of Justice, the Ministry of Social Affairs and Health and the Ministry of the Interior appointed a committee to prepare the 'National crime victim policy and victim support services' project, which may prove helpful to the identification and assistance of victims of human trafficking. The Ministry of Justice is the responsible ministry in this project. The purpose of the project is to develop a national strategy for providing support services for victim of crime and to secure the funding required. In addition to general services for victims of crime, the project will address special support services to cater to the special needs of vulnerable victims.

Finland has no general or particular legislation providing for the protection of parties concerned, witnesses or other persons participating in criminal

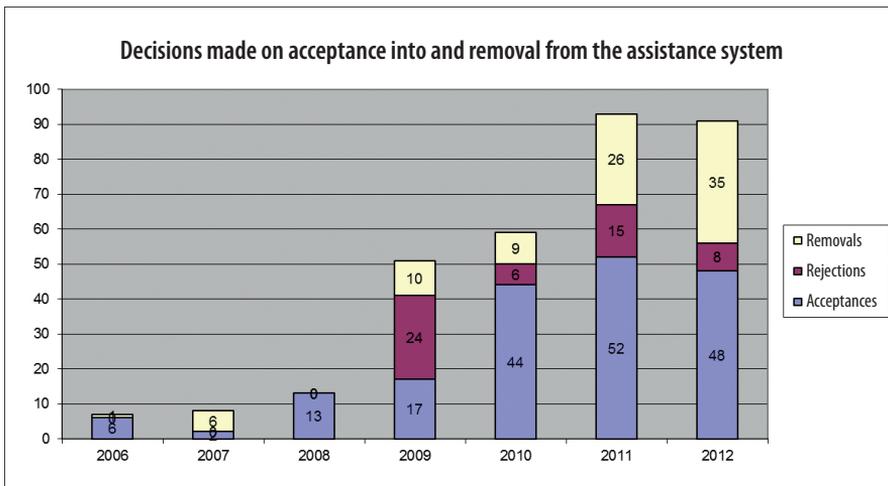
proceedings against threats to their life or well-being. There are individual provisions enabling protective measures in certain acts, such as the Police Act and the Criminal Code. In case of particularly serious security threats, the National Bureau of Investigation will undertake to protect the person in question. Such protection may be given to a person who has given or will give evidence or will be heard as a witness or an expert in a serious criminal case and is subject to a serious threat because of this. The aim is to submit a proposal for legislative amendments to introduce a witness protection programme to Parliament in spring 2014.

However, the protection and assistance measures available in the assistance system for victims of human trafficking are more relevant for safeguarding their security. Section 33 of the Act on the Reception of Persons Applying for International Protection states that the security of the victim and the service personnel must be taken into account when providing services and support for victims of human trafficking. However, there are no detailed provisions regarding matters such as security threat assessments and assessment updates; these are agreed on a case-by-case basis in practice.

It would be desirable for the aforementioned working group convened by the Ministry of the Interior to prepare amendments to legislation concerning assistance for victims of human trafficking to address development needs for protection measures for victims of human trafficking. Such needs include the practical implementation of security threat assessments and the division of responsibilities among various actors, such as the police and the reception centre, in order to put into practice protection measures ensuring the security of the victim while in the country.

#### ***6.6.3.2. Practical challenges in providing assistance to victims***

The assistance system for victims of human trafficking has improved considerably since the early years. More victims are referred to the system, because the threshold for acceptance is now lower and the authorities, particularly the police, more readily refer victims to the system. Thanks to the recommendation of the National Rapporteur, the system also accepts persons who have not yet been verified as victims of human trafficking or regarding whom a pre-trial investigation of an offence related to human trafficking, such as extortionate work discrimination, has been initiated. Currently, the assistance system also admits persons who have become victims of human trafficking in a country other than Finland (especially asylum seekers). The assistance system is better able to respond to the individual needs of its clients.



Source: Joutseno Reception Centre (31 December 2012).

However, there are still plenty of challenges in providing assistance to victims of human trafficking. The functioning of the assistance system is impaired by a lack of specific legislation. The assistance system may be criticised for a lack of transparency, openness and predictability and the unequal treatment of applicants/clients. Legislation does not sufficiently provide for acceptance into or removal from the system or the providing of services. The relationship of the assistance system to other legislation such as the Child Welfare Act, the Social Welfare Act or the Aliens Act is unclear. This lack of specificity means that the authorities have remarkably wide powers of discretion with regard to any individual applicant/client, and it is not always easy to discover the justifications for their decisions.

As noted earlier in this report, Finland does not have an operating model for victim identification and referral to assistance that would be binding upon the authorities and support their work. For instance, the roles and division of responsibilities between the assistance system on the one hand and local authorities on the other in organising and paying for services seem unclear.<sup>28</sup>

<sup>28</sup> Act on the Promotion of Integration (1386/2010), section 53: Compensation for costs incurred by services and support measures provided for victims of trafficking in human beings: Local authorities shall be compensated for costs incurred through the following services provided for a victim of trafficking in human beings referred to in chapter 3 of the Act on the Reception of Persons Applying for International Protection because of special needs arising from his or her status: health care and social welfare services, interpretation, safeguarding of security and any other measures or services arranged or provided because of special needs arising from victim status. The relevant centre for economic development, transport and the environment shall request a statement from the director of the reception centre responsible for assisting victims of trafficking in human beings, indicating whether the costs for which compensation is sought were incurred through the arranging of measures and services due to the victim status.

Identified victims of human trafficking are often in the country legally and resident in a particular municipality. Local authorities differ in how actively they assist identified victims of human trafficking. Some municipalities are better than others in incorporating this assistance into normal local government activities. What is conspicuous is that municipal authorities, particularly the social welfare and health care authorities, have relatively rarely referred victims of human trafficking to the assistance system so far. These social welfare and health care officials need to be instructed in the identification of victims of human trafficking to improve assistance. At the recommendation of the National Rapporteur, the assistance system has sought to train officials and NGOs and to publish information on its operations, for instance in the form of legal guidelines for victims and their supporters.<sup>29</sup>

It has been stated to the National Rapporteur that the assistance system is not always able to convince victims of human trafficking that it is worth their while to seek help through the system. For one reason or another, many victims decide not to rely on the authorities. Victims are afraid of the authorities. Particularly vulnerable victims of human trafficking are afraid that they will be removed from the country or punished. They also do not believe that the authorities will give them the help they wish or need. Victims referred to the assistance system are afraid of losing their jobs, and earning money through work was for many the reason to come to Finland in the first place. Some victims are afraid of the perpetrators of human trafficking and do not dare turn to the authorities for help. It may also be problematic for non-foreign victims to enter the assistance system because the system is housed in the asylum seeker reception system and governed by the Act on the Reception of Seekers of International Protection. Many authorities who are of key importance for the identification and provision of assistance to victims do not consider this Act a relevant tool for them.

The credibility of the assistance system in the eyes of the victims is undermined by the fact that a small percentage of the applicants are rejected. The National Rapporteur's report for 2010 reviewed all decisions issued in the assistance system. The justifications given for the decisions gave the impression that the initiating of criminal proceedings and the alleged offence were given considerable weight in the decision-making process, for example. If a criminal investigation was not initiated, or if the offence named in the investigation was not human trafficking, the alleged victim's acceptance into the assistance system was rather uncertain. This situation has since improved, but this line of reasoning can often be seen in the justifications of decisions. The

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<sup>29</sup> The guidelines are currently available only in Finnish at [www.ihmiskauppa.fi](http://www.ihmiskauppa.fi).

same applies to decisions to remove persons from the system. A victim may be removed from the assistance system if, for instance, the related criminal investigation is wound up because of lack of evidence or for reasons of cost.

When victims are removed from the assistance system, the aim is to ensure a safe and supported return. If the victim remains in Finland after being removed from the system, the aim is to ensure that the victim will receive the relevant services in his or her municipality of residence. In reality, access to services is uncertain, and varies from one municipality to another.

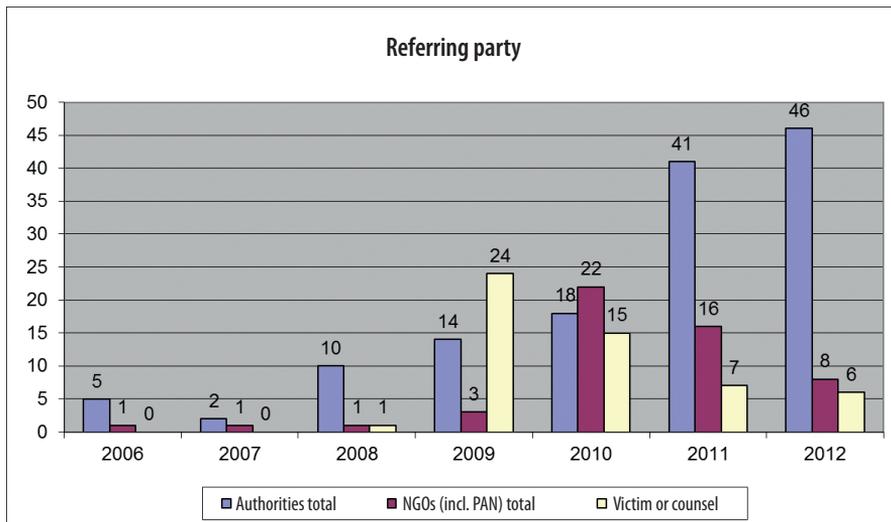
Asylum seekers may be rejected access to the assistance system because of being considered to receive the necessary services through the asylum seeker reception system. This may happen even in the case of possible victims of human trafficking who have underage children with them and who may be highly traumatised because of the exploitation experiences they have been through. In some cases, a person seeking access to the assistance system has been rejected because it was considered that he or she could receive the required services in the country in which he or she became a victim of human trafficking. The risk in such situations is that the person will again become a victim of human trafficking or other similar exploitation and that underage victims accompanying the victim will not gain opportunities that are supportive of their growth and development.

Investigating the exploitation of asylum seekers who are also victims of human trafficking is a challenge, because such exploitation has usually occurred outside Finland, and the threshold for launching a cooperation project with authorities in another country is high for a number of reasons. In such cases, the criminal investigation is often wound up, and this may be taken as a reason for removing the person involved from the assistance system. Some applications have been rejected on the grounds that the applicants became victims of human trafficking several years earlier and were no longer considered to have a need for the services provided by the assistance system. Some applicants have appealed their rejections to an Administrative Court, but all appeals have been rejected.

What has proved a challenge for the providing of services in practice is that there are no separate shelters for victims of human trafficking where services could be provided in proximity to the victims and by competent personnel. Victims are housed for instance in private rented dwellings, safe houses, reception centres, mother and child homes or shelters for women fleeing from domestic violence. This works well enough for some victims of human trafficking, but for others their personal situation is such that they require constant

attention and support and in terms of personality are not such persons that they could comfortably occupy the same premises with other asylum seekers or with persons who have suffered intimate partner violence or domestic violence. It is also a challenge to ensure that traumatised victims have access to sufficiently good therapy services in a timely manner.

The number of victims referred to the assistance system by NGOs has decreased. This is worrying, because NGOs are in a position to reach the most vulnerable victims of all and who do not dare approach the authorities, at least not initially. NGOs can offer help and support while helping victims gain the confidence to turn to the authorities. It may be detrimental to the identification of victims of human trafficking that there are as yet not many NGOs in Finland with the expertise and experience to be able to reliably identify human trafficking and its victims and to refer them to the assistance system. On the other hand, funding for the ‘grey area’, i.e. the identification process, is insufficient. The identification of victims of human trafficking by NGOs is a task requiring professional skills and patience, and project-oriented funding is not feasible in this context.



Source: Joutseno Reception Centre (31 December 2012).

## 6.7. Right of victims of trafficking in human beings to a recovery and reflection period

### *Article 13 – Recovery and reflection period*

1. “Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.”
2. “During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.”
3. “The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.”

### 6.7.1. Essential content of the provision

According to the Explanatory Report on the Convention, “Article 13 is intended to apply to victims of trafficking in human beings who are illegally present in a Party’s territory or who are legally resident with a short-term residence permit. Such victims, when identified, are, as other victims of trafficking, extremely vulnerable after all the trauma they have experienced. In addition, they are likely to be removed from the territory”.

The recovery and reflection period serves several purposes. Firstly, it is intended for the victim to escape the influence of the traffickers and to recover from physical and psychological violence experienced. Secondly, it is intended to enable the victim to decide whether to cooperate with the authorities. In order to be able to make an informed decision, the victim needs time to rest and to consider his or her options. A victim in a calmer state of mind is also a better witness in criminal proceedings. What is important to note is that the Convention does not state that the granting of the recover and reflection period presumes cooperation with the authorities.

It is noted in the Explanatory Report that the 30-day recovery and reflection period is the minimum and that a three-month period would be adequate. Victims must be offered ‘minimum services’ pursuant to paragraphs 1 and 2 of Article 12 during the recovery and reflection period. During the recovery and reflection period, the victim must not be removed from the country.

### **6.7.2. Statements by GRETA**

In its evaluation procedure, GRETA has noted that the provision in the Convention concerning the recovery and reflection period is not implemented as it should be. This may be due to legislation and to established practices.

GRETA has noted that with some Parties not all the relevant authorities even know of the possibility of granting a recovery and reflection period to victims of human trafficking. In addition, the victims do not necessarily know that they have such a right, as they have not been told about it. Ignorance leads to inconsistent administrative practices and the unequal treatment of victims.

In its evaluation reports, GRETA has stressed that the recovery and reflection period must not be conditional on cooperation with the authorities. GRETA has also pointed out that the Parties may not impose conditions on the services available during the recovery and reflection period.

GRETA has criticised certain Parties for blurring the basic justification for the recovery and reflection period, i.e. recovery from experiences of exploitation. Some Parties seem to be using the recovery and reflection period in preparing for the returning of the victims, which is against both the letter and the spirit of the Convention.

GRETA has noted that some Parties allow recovery and reflection periods in very few cases. In these cases, GRETA has advised the Parties concerned to explain in more detail why a recovery and reflection period has been granted in so few cases.

### **6.7.3. Significance of the provision for Finland**

Provisions were added to the Aliens Act (301/2004) concerning residence permits granted to victims of human trafficking (section 52a) and the reflection period (section 52b and 52c) by an Act that entered into force at the end of July 2006 (619/2006). The definitions of ‘trafficking in human beings’ and ‘victim of trafficking in human beings’ were added to section 3 of the Act at the same time. Under the Aliens Act (section 3 paragraph 23), a ‘victim of

trafficking in human beings' is an alien who can, on reasonable grounds, be suspected of having become a victim of trafficking in human beings.

Under the Aliens Act, a reflection period can be granted to a victim of human trafficking, i.e., as per the definition in the Act, a person of foreign origin who can with reasonable cause be suspected of being a victim of human trafficking. There are no other criteria as such in the Act for granting the reflection period. The decision on granting or discontinuing a reflection period pursuant to the Aliens Act is made by the police or border control authorities.

The National Rapporteur's report for 2010 noted that a reflection period had been granted in only a small number of cases. At the time of writing, a reflection period has been granted in a total of only five cases. The National Rapporteur shares the opinion of many other authorities that there is often no need for granting a reflection period: the identified victims are in the country legally and do not require legitimisation of their presence here in order to be allowed to stay. However, the low number of cases in which a reflection period has been granted may also reflect a low rate of identification of victims of human trafficking in Finland. It is entirely possible that such people live and work undetected by the authorities and, if found, may be removed from the country. For example, prostitutes from outside the EU may well face removal from the country. Under section 148(1) of the Aliens Act, "an alien may be refused entry into the country if [...] there are reasonable grounds to suspect that he or she may sell sexual services [or] earn income through dishonest means" (for more on the challenges of identification, see section 6.5.).

## **6.8. Right of victims of trafficking in human beings to a residence permit**

### *Article 14 – Residence permit*

1. "Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
  - "a) the competent authority considers that their stay is necessary owing to their personal situation;
  - "b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
2. "The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3. “The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
4. “If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
5. “Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.”

### 6.8.1. Essential content of the provision

According to the Explanatory Report on the Convention, the “provision for a residence permit meets both victims’ needs and the requirements of combating the traffic”. Immediate return of or refusal of entry to the victim may lead to a failure in crime prevention and thereby in the prevention of human trafficking.

The Explanatory Report emphasises that the testimony of victims is a vital source of information in bringing traffickers to justice. The more the victims trust the authorities, the better witnesses they will be in the criminal proceedings. The purpose of the residence permit is to encourage victims of human trafficking to report their experiences of exploitation to the authorities and to cooperate with them. The Convention does not specify the validity of the residence permit, but the Explanatory Report refers to the six-month minimum period enacted by the EU. The residence permit must be renewable.

The provision specifies two requirements for the issuing of a residence permit. The Convention allows the Parties to apply either requirement separately or both together. The first requirement is that the victim’s stay “is necessary owing to their personal situation”. The Explanatory Report explains that this refers to a situation where “the victim’s personal circumstances must be such that it would be unreasonable to compel them to leave the national territory”. This may be due to “the victim’s safety, state of health, family situation or some other factor”.

The second requirement is that the victim’s stay “is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings”. The Explanatory Report explains that “there has to be an investigation or prosecution with the victim cooperating with the authorities”. The requirement of cooperation was introduced in the Convention

“in order to take into account that victims are deterred from contacting the national authorities by fear of being immediately sent back to their country of origin”. For underage victims of human trafficking, “the child’s best interests take precedence over the above two requirements”.

### **6.8.2. Statements by GRETA**

In its evaluation procedure, GRETA has noted that many Parties have shortcomings in their legislation or administrative practices concerning residence permits. In its evaluation reports, GRETA has stressed that the grounds for residence permit applications submitted by victims of human trafficking must be appraised with a positive view to human rights and equally.

A particular consideration in processing residence permit applications is to prevent the applicants from becoming victims of human trafficking again. Residence permits are thus significant in preventing re-victimisation. GRETA considers it particularly important that victims of human trafficking issued a residence permit be allowed to work for pay. Working promotes integration into society and helps cope with experiences of exploitation.

### **6.8.3. Significance of the provision for Finland**

According to section 52a(1) of the Aliens Act, “a victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if: 1) the residence of the victim of trafficking in human beings in Finland is justified on account of the pre-trial investigation or court proceedings concerning trafficking in human beings; 2) the victim of trafficking in human beings is prepared to cooperate with the authorities so that those suspected of trafficking in human beings can be caught; and 3) the victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings.” In such a case, the Finnish Immigration Service will request a statement from the pre-trial investigation authorities concerning whether issuing a residence permit would be justified in the interests of apprehending the traffickers.

Residence permits issued pursuant to the Aliens Act are usually temporary. However, a continuous residence permit may be issued to particularly vulnerable victims. This, according to the Finnish Immigration Service, may be the case when the victim is subject to a threat from a criminal organisation in his or her home country or when the victim is a member of a particular ethnic group. If a continuous residence permit is issued, the fulfilling of the requirements in paragraphs 1 and 2 is irrelevant. A person does not have to

have a secure income in order to be issued a residence permit. If a temporary permit is issued, any family members of the victim of human trafficking resident abroad will not be issued a residence permit on the basis of family ties.

According to section 53(6) of the Aliens Act, “a victim of trafficking in human beings is issued with a residence permit for at least six months and for a maximum of one year”. There is no limitation in the law to the issuing of residence permit extensions. Under section 54(5) of the Aliens Act, “a victim of trafficking in human beings who has been issued with a temporary residence permit [is] issued with a continuous residence permit after a continuous residence of two years in the country if the circumstances on the basis of which the alien was issued with the previous fixed-term permit are still valid”.

Victims of human trafficking may also be issued a residence permit on other grounds, such as individual compassionate grounds (section 52). Under this provision, “aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position”.

In 2012, the National Rapporteur observed that the processing times for the residence permit applications of victims of human trafficking were remarkably long, up to several years. The National Rapporteur reminded the Finnish Immigration Service that under law a (final) decision for a conviction for human trafficking is not required for issuing a temporary residence permit to a victim of human trafficking; it is sufficient that the presence of the person concerned in Finland because of the pre-trial investigation is justified. Therefore, initiating a pre-trial investigation is sufficient grounds for granting a residence permit.

In some cases, a temporary victim permit is sufficient to safeguard the victim’s rights. This is particularly true in cases where it is not in the interests of the victim to stay in Finland for an extended period or permanently. It may even be the victim’s own wish to return home after having won his or her legal receivables from employment income and other appropriate compensation through a criminal or civil process. However, the grounds cited for granting temporary residence permits are biased towards crime prevention. For instance, a temporary residence permit does not allow for reunification of families. The table below shows that the number of residence permits issued on the basis of the applicant being a victim of human trafficking has increased substantially in recent years.

Decision	2008	2009	2010	2011	2012
Aliens Act section 52a(1)	0	1	0	0	11
Aliens Act section 52a(2)	0	0	0	1	8
Aliens Act section 87	1	0	0	0	0
Aliens Act section 88	0	0	1	1	1
Aliens Act section 88a	0	0	0	0	0
Aliens Act section 52	0	0	0	1	8
Other residence permit	0	1	0	0	2
Rejection	0	0	1	3	5
Dublin Regulation (Dublin cases)	0	0	2	5	2
<b>Total</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>11</b>	<b>37</b>

Source: Finnish Immigration Service (31 December 2012).

Identification of victims of human trafficking and referring them to assistance may be complicated by the fact that persons applying for a victim residence permit are not allowed to take gainful employment while the application is pending. According to section 81 of the Aliens Act, aliens having applied for international protection have the right to gainful employment without a residence permit: 1) when they hold a required valid travel document that entitles them to cross the border (section 11(1)(1) and have stayed in the country for three months, or 2) when they have stayed in the country for six months. This does not apply to victims of human trafficking who apply for a residence permit for victims of human trafficking or a residence permit on individual compassionate grounds.

## 6.9. Coordination and evaluation of measures to prevent trafficking in human beings

### *Article 29 – Specialised authorities and coordinating bodies*

1. “Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pres-

sure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.

2. “Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments’ departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.
3. “Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.
4. “Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.”

### 6.9.1. Essential content of the provision

Article 29, paragraph 1 of the Convention requires the Parties to ensure the specialisation of specific persons or institutions in the prevention of human trafficking and the protection of victims. Such persons or the staff of such entities shall have adequate training and financial resources for their tasks. The Explanatory Report explains that while “Parties have to adopt the necessary measures to promote specialisation [...] in anti-human-trafficking action”, “the specialisation requirement does not mean [...] that each prosecution service or police station has to have a specialist unit or an expert in trafficking in human beings [but that] where necessary, [...] there must be units with responsibility for implementing the measures”. Specialisation may apply to “police officers, judges, prosecutors [...] or [...] agencies or units with special responsibility for various aspects of combating trafficking”.

Article 29, paragraph 2 of the Convention requires the Parties to ensure co-ordination of the policies and actions of their governments’ departments and other public agencies against trafficking in human beings, where appropriate through setting up coordinating bodies. The Explanatory Report explains that “the administrative authorities and the prosecution services should as far as possible integrate and co-ordinate their action [...] to perform their functions satisfactorily”.

Paragraph 4 of the same article requires the Parties to consider nominating a National Rapporteur. The task of the National Rapporteur is to monitor actions against human trafficking and compliance with legislation. In the Explanatory Report, the National Rapporteur of the Netherlands is referred to as a good example. In the Netherlands, the National Rapporteur “is an independent institution [that] has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the parliament”.

### **6.9.2. Statements by GRETA**

GRETA has noted that the number of convictions for human trafficking is low with many Parties. For this reason, GRETA has advised the Parties to increase opportunities for key actors to specialise in the prevention of human trafficking. GRETA has repeatedly underlined the importance of improving the expertise of the police and prosecutors and of officials specialising in the investigation and prosecution of human trafficking offences so that traffickers would be appropriately punished for the offences they have committed. In its evaluation reports, GRETA has considered it important for the Parties each to have a comprehensive, multi-disciplinary action plan to combat trafficking in human beings. GRETA also considers it important for action against human trafficking to be coordinated between the authorities and that civil society, particularly NGOs, be involved in the planning of action against human trafficking. With some Parties, action against human trafficking is coordinated under the leadership of the interior ministry. With other parties, coordination is cross-sectoral. In its evaluation reports, GRETA has favoured the cross-sectoral administrative model.

GRETA’s evaluation reports indicate that GRETA considers the independent, outside evaluation of action against human trafficking to be important so that the Parties can gauge the effectiveness of that action and plan for future action. GRETA has encouraged the Parties to evaluate the impact of action against human trafficking. GRETA has also advised the Parties to develop means for gathering comprehensive information on human trafficking, its victims and its perpetrators.

### **6.9.3. Significance of the provision for Finland**

The Finnish police does not have a specialist human trafficking unit, and neither do Finnish prosecutors’ offices have prosecutors specialising in human trafficking offences. The police recently decided to set up a centrally coordinated expert network to ensure that expertise in human trafficking is

distributed to police units across the country. The National Rapporteur has been informed that the effective prevention of human trafficking and related offences will be taken into account in the performance management of the National Police Board. The prosecution service, meanwhile, is seeking to assign the most demanding cases of human trafficking to prosecutors specialising in sexual offences and employment offences.

Human trafficking is a phenomenon requiring exceptionally wide-ranging, multi-sectoral action. In Finland, action against human trafficking has been complicated by the fact that there is no single entity in central government with overall responsibility for its promotion and development. At the recommendation of the National Rapporteur and commissioned by the ministerial working group on internal security, the Ministry of the Interior appointed a working group on 20 March 2013 to draft a proposal for the organisation by the Government of cross-sectoral monitoring and coordination of action against human trafficking.

The working group returned its proposal in June 2013: cross-sectoral monitoring and coordination should be assigned to a newly-created government appointment: a human trafficking coordinator.<sup>30</sup> A steering group will be set up for action against human trafficking and a secretariat to prepare the steering group's meetings. The working group further proposed that a coordination network for action against human trafficking be set up.

The working group proposes the following duties for the human trafficking coordinator:

1. monitor and harmonise officials' activities in combating human trafficking in accordance with the steering group's policies and promote victims' rights across government,
2. promote cooperation against human trafficking between the authorities and third-sector actors,
3. liaise with foreign government authorities and NGOs,
4. participate in the coordination of statements by the Finnish government on human trafficking policy and represent Finland or send a representative to international organisations and other bodies, and
5. organise information-gathering and report on the implementation of action against human trafficking to the steering group in the Government and to the ministerial working group on internal security.

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<sup>30</sup> Ihmiskaupan vastaisen toiminnan poikkihallinnollisen seurannan ja koordinoinnin järjestäminen valtionhallinnossa. [Organisation of cross-sectoral monitoring and coordination of action against trafficking in human beings in central government.] Working group proposal. Ministry of the Interior publications 15/2013.

At the first stage, the human trafficking coordinator should prepare a presentation for the steering group about how action against human trafficking should be organised in the future, including specifications for the composition and duties of the secretariat and the network, and draw up a proposal together with the secretariat for a cooperation agreement between the authorities and NGOs. The coordinator would also be required to draw up a draft strategy for action against human trafficking together with the secretariat, the steering group and the network. On the basis of experiences gained from the first year of operations, the human trafficking coordinator and the secretariat will draw up a proposal for the regulation of the coordinator's duties and legislation amendment needs. The aim is for the human trafficking coordinator to take office no later than January 2014.

The Ombudsman for Minorities has been the National Rapporteur on Trafficking in Human Beings since the beginning of 2009. The Act amending the Act on the Ombudsman for Minorities and the National Discrimination Tribunal to include the duties of the National Rapporteur on Trafficking in Human Beings entered into force on 1 January 2009. Under section 2 of the Act (660/2001, amended 1109/2008), the Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings:

1. monitors phenomena relating to human trafficking, the fulfilment of international obligations and the effectiveness of national legislation,
2. issues proposals, recommendations, opinions and advice relevant to the fight against human trafficking and to the realisation of the rights of victims, and
3. keeps contact with international organisations in human trafficking issues.

Under section 7 of the Act, the Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings has the right, secrecy provisions notwithstanding, to obtain information from the authorities, from producers of services and support for victims of human trafficking, and from NGOs receiving government support for action against human trafficking. However, the Ombudsman for Minorities only has access to the personal details of any individual victim if such access is essential for the carrying out of the National Rapporteur's reporting duties. The National Rapporteur has had some difficulty in obtaining the information necessary to carry out the required tasks from other authorities, particularly the police, but recently the situation has somewhat improved.

Under section 2a of the Act on the Ombudsman for Minorities and the National Discrimination Tribunal, the National Rapporteur issues an annual report to the Government and a report once every four years to Parliament. The Na-

tional Rapporteur's first extensive, materials-based report to Parliament was submitted in summer 2010. In it, the National Rapporteur evaluated key areas in action against human trafficking and gave concrete recommendations on how to enhance operations and safeguard victims' rights. This extensive report was well received by the authorities and NGOs, and Parliament required the Government to take action for instance to amend legislation so as to facilitate identification of victims of human trafficking and provide assistance to them, and to bring perpetrators of human trafficking to justice. The next extensive report of the National Rapporteur will be submitted to Parliament in 2014.

Between the reports to Parliament, the National Rapporteur supports and advises the authorities and NGOs in the identification and assistance of victims and in how to make pre-trial investigations more effective. The National Rapporteur also issued an annual report to the Government. This is generally a review of the previous year's operations or a thematic report on a specific issue in the area of human trafficking. The present report falls into the latter category.

## 7. Conclusion

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Finland's action against trafficking in human beings has improved considerably in recent years. More victims of human trafficking are referred to the assistance system than in the early years, the system is better able to respond to the individual needs of victims, more residence permits are issued to victims of human trafficking than before, more pre-trial investigations concerning human trafficking are launched than before, and recently the number of convictions for human trafficking has increased markedly.

Despite these positive developments, however, much remains to be done to make our action against human trafficking effective enough and to safeguard the rights of the victims of human trafficking as required of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention is a human rights convention, emphasising the safeguarding of the rights of victims of human trafficking as the cornerstone of all action. This fundamental principle is not implemented in Finland's action against human trafficking. Legislation and official practices do not support the identification of victims of human trafficking or their referral to treatment, combating of crime or prevention of human trafficking.

Briefly, the major challenges in Finland's action against human trafficking have to do with the identification and referral to assistance of victims. Finland does not have an operating model (NRM) for victim identification and referral to assistance that would be binding upon the authorities and support their work. It is not clear who the competent authority for identifying victims of human trafficking is. As a result of the lack of regulation and instructions, the role of the pre-trial investigation authorities is highlighted at the expense of the necessity of protecting the victims, weakening the legal protection of people who are already vulnerable. Moreover, not enough attention has been paid to the 'grey area' in the initial stage of identification and the key role of NGOs, or to funding; also, there is no operating model to support cooperation between the authorities and NGOs.

The national human trafficking coordinator and the cross-sectoral high-level steering group to be set up to guide the coordinator may help improve the situation. The coordinator's activities are intended to begin at New Year 2014. There is also a legislation project in the Ministry of the Interior to help victims, but at the time of writing the progress of this project is unsure.

Unlike many other countries, Finland faces a particular challenge with identifying foreigners who are victims of sexual exploitation in prostitution and

procuring and with conducting pre-trial investigations in this area appropriately. Exploitation and infringements of rights in prostitution and procuring are poorly identified. As a result, women's rights to help and protection are neglected. There are also shortcomings in identifying work-related human trafficking and other aspects of exploitation, such as begging-related human trafficking. There is still a rather simplistic, even stereotypical prevalent notion of human trafficking, which makes it difficult to identify the diverse kinds of victims of human trafficking and to refer them to assistance.

Identification of human trafficking may be helped by the amendments proposed to the Criminal Code that would clarify the definitions of human trafficking and related offences and also improve the status of a witness to a procuring offence in criminal proceedings. If enacted, these proposed amendments will also make pre-trial investigation and prosecution of human trafficking offences easier, as the provisions will become easier to apply. Human trafficking provisions will focus more clearly on mental pressure or coercion against the victim and the exploitation of a vulnerable or dependent person. The proposed legal counsel provision could in the best case create a failsafe for ensuring the enforcement of victims' rights, assuming that the provision is broadly applied.

Asylum seekers in Finland who became victims of human trafficking in another country are in a problematic situation. Indications of human trafficking do not necessarily lead to the initiation of the identification process and the referral of the victim to the assistance system. Victims of human trafficking are not always accepted into the assistance system, because they are considered to receive the services they need in the asylum seekers' reception system. The discovery of indications of human trafficking may, in an application of the Dublin Regulation, even lead to the return of the victim to the country where he or she became a victim of human trafficking. Decision-making continues to rely on the principle that a criminal investigation concerning an offence committed in another country will not be initiated or continued in Finland. The best interests of underage children accompanying victims of human trafficking are rarely taken into account in a situation where the parents are highly traumatised as a result of the abuse they have endured.

Prevention of human trafficking is probably the most neglected area in action against human trafficking. The measures undertaken are disparate, and monitoring of their implementation and effectiveness has not been coordinated. Measures addressing the demand causing human trafficking have proved inadequate. Prevention of human trafficking within Finland or from Finland to other countries has largely been ignored, because Finland is commonly

considered to be only a country of transit and a destination for victims of human trafficking from abroad. The National Rapporteur considers it possible that young people who are at risk of exclusion, suffering from mental health problems and substance abusers are at particular risk of falling victim to human trafficking or similar exploitation.

The resources available for combating human trafficking are minimal. The assistance system for victims of human trafficking has four full-time employees, and the financial resources available for helping victims are extremely limited. There are no specialised human trafficking detectives among the pre-trial investigation authorities; human trafficking offences are investigated by units focusing on violent crime or work-related offences and offences in office. Human trafficking offences are prosecuted by prosecutors specialising in sexual or work-related offences. One employee at the Finnish Immigration Service serves as a human trafficking liaison alongside other duties. Funding available to NGOs is meagre and largely project-based. The office of the National Rapporteur employs one full-time human trafficking expert.

Finland has come a long way from the time when human trafficking was not acknowledged to be our problem at all, or at most Finland was regarded only as a country of transit. Because Finland has a low level of corruption, a good infrastructure, social equality and a robust rule of law, the chances of achieving sustainable results in the prevention of human trafficking are good. At the same time, this solid social foundation also impedes the encountering and protecting of victims. A victim of human trafficking reporting exploitation and seeking help may be subject to incredulity and belittling.

What is important now is to give the authorities, NGOs and cooperation efforts sufficient tools to address and prevent human trafficking and to safeguard the rights of the victims. Identification and assistance of victims of human trafficking should be included in the job descriptions of more officials than is currently the case. At the same time, investments should be made in efforts undertaken by NGOs against human trafficking. Enforcement of the rights of victims of human trafficking should be brought more prominently into focus in action against human trafficking. This would help prevent and combat human trafficking offences more effectively and in the longer term.

STATEMENT  
30 November 2010  
OMBUDSMAN FOR MINORITIES  
1(5)  
VVTDno/2010/319

Ministry for Foreign Affairs Legal Service  
Unit for Human Rights Courts and Conventions (OIK-40) PO Box 411  
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**REPORT BY THE WORKING GROUP PREPARING THE BRINGING  
INTO FORCE OF THE COUNCIL OF EUROPE CONVENTION ON  
ACTION AGAINST TRAFFICKING IN HUMAN BEINGS**

**Remit and powers of the Ombudsman for Minorities as National Rapporteur on  
Trafficking in Human Beings**

The Ombudsman for Minorities is thankful for the opportunity to issue a statement on the report by the working group preparing the bringing into force of the Council of Europe Convention on Action against Trafficking in Human Beings.

The task of the Ombudsman for Minorities is to prevent ethnic discrimination, promote good ethnic relations, safeguard the status and rights of ethnic minorities and foreigners in Finland and supervise compliance with the principle of ethnic non-discrimination. The Ombudsman for Minorities also acts as the National Rapporteur on Trafficking in Human Beings. As the National Rapporteur on Trafficking in Human Beings, the Ombudsman for Minorities monitors human trafficking and related phenomena, the fulfilment of international obligations and the effectiveness of national legislation. The Rapporteur issues proposals, recommendations, opinions and advice relevant to the fight against human trafficking and to the realisation of the rights of victims, keeps contact with international organisations, provides legal advice and assists victims if necessary, and reports regularly to the Government and Parliament on human trafficking and related phenomena (Act on the Ombudsman for Minorities and the National Discrimination Tribunal, 660/2001 and amendment to the Act with regard to reporting 1109/2008).

**Statement**

General

In Finland, trafficking in human beings, and related exploitation, occurs at least in prostitution and within the sphere of procuring, as well as in the labour market in a number of labour-intensive sectors that utilise foreign labour extensively. Sectors, in which human trafficking, and related exploitation, may occur, include the construction, restaurant, cleaning and gardening sectors and berry-picking. In addition to Finland being a country of destination for human trafficking, it is probably also a transit country.

Within a brief period of time, Finland has approved a considerable number of legislative and other measures for the purpose of preventing trafficking in human beings, helping and protecting the victims and preventing crime related to human trafficking. In Finland, action against trafficking in human beings is mainly based on three Acts: the Criminal Code, the Aliens Act and the Act on the Promotion of Integration, all of which have been adapted to better respond to the challenges involved in human trafficking .

In the first report on trafficking in human beings (K 17/2010 vp), submitted to Parliament in June this year, the National Rapporteur on Trafficking in Human Beings finds that the measures taken have promoted action against human trafficking in Finland. Simultaneously, the Ombudsman for Minorities states, however, that a lot still remains to be done before action against human trafficking has reached such impacts that could be expected from it.

In the report, the Ombudsman for Minorities, serving as the National Rapporteur on Trafficking in Human Beings, states that the biggest challenge in action against trafficking in human beings is the identification of victims: these victims are not necessarily identified at all, or they are not identified as victims of trafficking. In some cases, human trafficking is recognised but not reacted to in an appropriate manner so as to secure the rights of victims of trafficking in the manner required by international conventions and national legislation. Such failure to identify and recognise, and failure to act in situations of identification, may result in victims of trafficking in human beings not being able to enjoy their legal rights.

The Council of Europe Convention on Action against Trafficking in Human Beings is a significant international convention acknowledging that trafficking in human beings violates human rights and constitutes a crime against human dignity and integrity. With regard to many other international conventions and legal instruments approved, even within the sphere of the European Union, this Convention strengthens the level of protection of the rights of victims of trafficking in human beings in line with the Council of Europe's traditional role of defending human rights.

The Ombudsman for Minorities finds the obligations imposed by the Convention on the Parties so strong that she is confident that bringing the Convention into force will enhance the level of protection of the rights of victims of trafficking in human beings in Finland. However, the Ombudsman for Minorities finds it regrettable that the working group preparing the bringing into force of the Convention has not regarded it necessary to assess the contradictory pressures of national legislation and practical action against trafficking in human beings and their causes and consequences in connection with the bringing into force of the Convention.

Contrary to what the Ombudsman for Minorities finds in her report, the working group states in its report that apart from certain exceptions (Act amending the Act on Prohibitions to Pursue a Business), Finnish legislation is in line with the Convention's requirements. The Ombudsman for Minorities finds that action against trafficking in human beings involves a number of problems that would challenge the consideration of more extensive needs to amend legislation in order to enhance the efficiency of

action against trafficking in human beings and the fulfilment of victims' rights. The Convention in question involves human rights and many of the prevailing problems are specifically ones that would require a more thorough assessment of the impacts on the human rights of action against trafficking in human beings. However, it is positive that at certain points, the working group has taken a direct stand for instance on enhancing the identification of victims by way of amendments to legislation, subject to separate consideration.

### **Detailed comments**

In her statement, the Ombudsman for Minorities highlights certain Articles that can be assessed as being particularly significant in protecting the rights of victims of trafficking in human beings. The Convention includes several other provisions that strengthen the protection of victims' rights, but the Ombudsman for Minorities chooses not to comment on them in any further detail in this context. One of these is Article 28, which strengthens the protection of victims, witnesses and those cooperating with judicial authorities. As stated by the working group in its report, some measures have already been taken in this respect, which the Ombudsman for Minorities finds essential in order to enhance the protection of victims of human trafficking and other serious offences, and witnesses.

Article 3 of the Convention includes the non-discrimination principle. The Convention prohibits discrimination, for instance on the basis of sex, particularly in protecting victims and promoting their rights. In her report, the Ombudsman for Minorities finds that action against trafficking in human beings would seem to involve discriminatory impacts on the basis of the victim's sex. The Ombudsman for Minorities finds this particularly serious for another reason, too: the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly urged Finland to enhance action against violence towards women. Article 17 strengthens the significance of the provision in Article 3, because it obliges Parties to promote gender equality when applying measures to protect and promote victims' rights, and use gender mainstreaming in the development, implementation and assessment of the measures.

In her report on trafficking in human beings, the Ombudsman for Minorities proves that the great majority of persons directed to the assistance system for victims of human trafficking have become victims on the basis of employment, and many of the victims of trafficking, abused sexually as well, seem to have fallen victims outside Finland. The Ombudsman for Minorities finds this disproportionate, particularly when the issue is examined within the contexts of the Aliens Act and Criminal Code. In her report, the Ombudsman for Minority expresses concerns over the fact that sexually abused victims of human trafficking may, in accordance with the Aliens Act, be refused entry for instance for being suspected of selling sexual services, which means that they will not necessarily be steered into the assistance system for victims of trafficking.

Furthermore, the Ombudsman for Minorities finds in her report that provisions in the Criminal Code on trafficking in human beings are still applied and interpreted on a fairly narrow scale, which makes the identification of victims of trafficking more difficult and hampers their steering into the assistance system. Practices of the authorities

in charge of pre-trial investigations seem to lead to exploitation and violence targeting sexually abused victims not being recognised as offences against a person (position of injured party in criminal proceedings), but persons having faced violence or the threat of it, other forms of pressure or coercion in prostitution, and sexual abuse, are basically always in the role of a witness in the crime process. Even though male prostitutes exist, the field of prostitution is still largely dominated by women, which provides grounds for assessing it also from the gender perspective.

The Convention includes a provision regarding the identification of victims of trafficking in human beings, significant even in terms of international law. Article 10 obliges Parties to provide their competent authorities with persons who are trained and qualified in for instance identifying victims in order to make it possible to issue victims of human trafficking with residence permits under the conditions provided for in Article 14 of the Convention. Even more important is the provision of the Convention stating that if there are reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person shall not be removed from the territory of a Party until the identification process has been completed by the competent authorities. These persons shall be provided with assistance as provided for in Article 12, paragraphs 1 and 2. In Finland, such assistance is available through the assistance system for victims of trafficking.

As mentioned previously in this statement, a lot remains to be done in Finland, particularly with regard to the appropriate identification of victims and reacting to their need for help. The Ombudsman for Minorities is of the opinion that the authorities have not been sufficiently instructed to identify victims of trafficking in human beings, and steering them to the assistance system. Unfortunately, it is also questionable as to what extent the legislation in force supports appropriate identification. Legislation is somewhat contradictory, which in certain situations may result in victims of human trafficking remaining unidentified and thus in a failure to steer them duly into the assistance system. Instead, they may be removed from the country before the identification process is appropriately completed. One such contradiction exists with the Dublin process, based on the Dublin II Regulation. In its statement addressed to the Ombudsman for Minorities, when interpreting the Convention in question, the Council of Europe Secretariat takes the stand that Parties must protect each victim of trafficking in human beings that is residing in their territories, regardless of the country in which they have fallen victims. The Ombudsman for Minorities is confident that imposing an obligation to identify, equal to a law, could enhance the efficiency of identifying victims of human trafficking, and their steering into the assistance system.

Assessed from the viewpoint of human rights, Article 12 is one of the most important in the Convention. In Finland, assistance referred to in the Article is available through the assistance system for victims of human trafficking. In her report on trafficking in human beings, the Ombudsman for Minorities has assessed the assistance system from several angles. The Ombudsman for Minorities finds that the establishment of the assistance system is a step in the right direction, but sees plenty of room for development in the system.

In her report, the Ombudsman for Minorities finds that the assistance system has the preconditions for becoming a party that provides useful assistance to victims of trafficking in human beings, and thus also promotes crime prevention and other action against human trafficking, if 1) the threshold of being accepted into the system (and being steered into it) is deliberately and systematically lowered, 2) the purpose and goals of the system and its relations to pre-trial investigation and the criminal proceedings are clarified and made more distant, and 3) the legal protection of victims of trafficking in human beings and the guarantees for appropriate administrative procedure are strengthened.

The Ombudsman for Minorities finds it particularly important that the authorities are sufficiently effectively and extensively instructed in steering potential victims of trafficking in human beings to the assistance system from all situations where they are met, including prostitution. The threshold for steering must be low enough in order to enable everyone who needs the service and is entitled to it to benefit from it in practice. The Ombudsman for Minorities proposes that a separate Act be passed on providing assistance to victims of trafficking in human beings. In the same context, it should be considered how to respond in practice to the development needs highlighted by the Ombudsman for Minorities regarding the identification of victims of human trafficking and steering them to the assistance system, the system's sphere of application and guarantees of good governance.

Article 13 of the Convention includes provisions on the recovery and reflection period of victims. In her report on trafficking in human beings, the Ombudsman for Minorities finds that the number of reflection periods has remained quite low, and this is particularly the case with sexually abused victims. The Ombudsman for Minorities would have hoped that the working group had considered more extensively than reported the reasons for the low number of reflection periods granted. In her report on trafficking in human beings, the Ombudsman for Minorities makes several proposals for the development of granting reflection periods. The key aspect is probably that the victim's residence in the country and steering to the assistance system should be more closely linked to each other to facilitate the efficient provision of long-term assistance to victims in practice. It should also be considered which authority is the most suitable to grant the reflection period intended for recovery and reflection of the victim. The authorities should also be provided with clearer instructions in granting reflection periods.

In her report on trafficking in human beings, the Ombudsman for Minorities finds that human trafficking is not such a marginal phenomenon in Finland as the number of pre-trial investigations, considerations of charges and court decisions would suggest. So far, a total of five cases of trafficking in human beings have progressed to courts of law (charges for trafficking in human beings), of which three have involved sexual and two employment-related exploitation. On the basis of material in her report, the National Rapporteur on Trafficking in Human Beings is confident that there is an inability to recognise features indicative of trafficking in human beings and to separate trafficking in human beings from offences closely related to it, such as procuring and extortion-like discrimination at work. Problems in identification may be partly due

to the complex nature of provisions on human trafficking and their overlapping with closely related offences, but part of them are the result of the limited way of how human trafficking is understood, particularly in pre-trial investigations, that is incoherent with international definitions of trafficking in human beings.

The application and interpretation of provisions on trafficking in human beings are significant in terms of identifying victims of trafficking. Assessed from the viewpoint of international law, the Ombudsman for Minorities does not consider it sufficient that trafficking in human beings is classified as a punishable offence. In order for Finland to meet its obligations under international law, offences involving procuring and trafficking in human beings must be investigated efficiently (see e.g. the ECHR case *Rantsev v. Cyprus and Russia*, 2010) and that categories of human trafficking offences must be used in cases where there is cause to use them. In her report, the Ombudsman for Minorities finds that provisions on trafficking in human beings do not require changes at this stage because in principle, they facilitate an interpretation in line with international and European obligations (including Articles 4 and 18 of the Council of Europe Convention). Instead, it should be considered whether provisions on procuring should be amended.

Finally, the Ombudsman for Minorities states that she finds it regrettable that the working group has not made better use of the Ombudsman for Minorities' report on trafficking in human beings more actively when considering the present status and development needs of action against trafficking in human beings in Finland. It is also regrettable that the working group failed to consult the Ombudsman for Minorities when preparing the report.

Notwithstanding all of the above, the Ombudsman for Minorities advocates the prompt bringing into force of the Convention and wishes that the provisions of the Convention are applied in practice so that the level of protection of the rights of victims of trafficking in human beings would become higher than at present. The Convention is highly significant in practice and in principle, too, and the Ombudsman for Minorities agrees with the working group that adoption of the Convention would enhance the enforcement of legislation in force, and the obligations on the actions of the authorities at present.

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**European Court of Human Rights 7 January 2010 (Finlex summary)**  
**Case of Rantsev – Protection of life – Trafficking in human beings –**  
**Lawfulness of detention**

**Countries:** Cyprus, Russia  
**Date of issue:** 7 January 2010  
**Art:** 2, 3, 4, 5, 6, 37, 41  
**ECHR:** --  
**Annual:** --  
**A:** Nikolay Mikhaylovich Rantsev

The case is about whether authorities neglected the protection of a foreign employee, working in the sex industry but having left her place of work and residence, when she was considered to reside in the country under the responsibility of her employer, and was entrusted in his care, after which she was kept against her will in an apartment, from the balcony of which she fell while trying to escape, and was killed. The case also concerns the application of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms to trafficking in human beings. Furthermore, the case is about whether the circumstances of death and trafficking in human beings were appropriately examined. The case is also about unlawful detention and whether authorities were responsible for deprivation of liberty in a private residence.

FACTS: OR, the daughter of the Russian applicant, arrived in Cyprus in March 2001. The owner of a restaurant applied for a visa and work permit for her in order for her to be able to act as performer in the restaurant's entertainment shows. Appended to the application was a commitment given by the owner that OR would not end up in need of support within the period of five years, and that the owner would compensate all costs incurred to the state for support measures or returning OR to her country of origin within said period of time. OR was granted temporary residence and work permits and started working in the same month of March. After a few days, the owner's brother, MA, who managed the restaurant, was notified by other performers that OR had left the apartment shared by the performers and taken her belongings with her, leaving a message in Russian stating that she was tired and wanted to return to her home country. The immigration office was notified of the matter. OR was not included in the list of wanted persons. At the end of the same month of March, she was spotted in a discotheque. MA notified the police about the matter and went to the discotheque himself, accompanied by a security guard, after which OR was brought to him. At the time, OR seemed drunk. She was taken to the police department, after which the police telephoned the passport authorities to find out whether OR was residing in the country illegally. When the matter was not fully clarified, the police contacted the immigration service, too, and were advised that OR should not be arrested and that her employer, who was responsible for her, should collect her and bring her to the office at 7.00 in the morning for questioning. Initially, MA refused the proposed procedure but having telephoned the supervisor of the police, came to collect OR from the police department. According to police officers, OR was

not drunk. For the remainder of the night, she was taken to the apartment of MP, an employee of the restaurant, and his wife, where she was placed in an upstairs room in the apartment. According to MP, she seemed drunk. MA stayed in the upstairs living room of the apartment after everyone else went to bed. Anyone intending to leave the apartment had to go through the living room without fail. Later that morning, OR was found dead in the street below the apartment. She was carrying a shoulder-bag. A bedspread was tied to the balcony railing of her room. Below this balcony, there was a larger balcony of a downstairs room. The owner of the apartment below MP's apartment stated that while he was smoking on his balcony, he saw something like a shadow fall past him and immediately after that he heard a thump. He had not heard any human voices before or after that. On the other hand, even if there had been a fight in the apartment, he would not have been able to hear the resulting sounds. His wife called the police at once to report the incident.

Police arrived at the scene soon after the phone call, isolated the site and began to investigate the fall. A forensic pathologist arrived at the scene about three hours later, and performed a preliminary examination. On the same day, the police interviewed the persons concerned, but according to protocol, not, however, other employees of the restaurant or the women with whom OR had lived. In the post-mortem performed on the next day, OR was found to have injuries on her body and her internal organs that had been caused by the fall that resulted in her death. The applicant reports not having received the post-mortem report. In August 2001, he visited the police department in Cyprus and stated that he wanted to participate in the inquest into the cause of death in the court of first instance. He repeated this notification in October 2001 in a letter and requested the documents of the case in order to familiarise himself with them before the inquest. A session was scheduled at the end of the same month of October. According to the police, the applicant's lawyer was notified of the session. Neither arrived at court. The case was postponed until December and the Russian Embassy was requested to notify the applicant of the new date of hearing. On the day following said session, the court of first instance received a fax from the applicant, dated earlier, in which he requested that notification of the time of the inquest should be sent to his new address. He did not show up in court this time, either, after which a new session was scheduled at the end of the same month of December. The inquest into the cause of death was performed in that session without him being present. According to the decision, OR had tried to escape from the apartment and jumped to her death in the unfamiliar circumstances. There was no reason to suspect a crime.

OR's body was transported to Russia in April 2001. The applicant requested a forensic statement. According to the statement received in 2001, OR had sustained several injuries from the fall and her intoxication level from alcohol was medium. Normally, such a state would involve considerable emotional instability and difficulty in perceiving the time and place. The injuries had been sustained only shortly before death. No injuries caused by external violence were found, neither were traces of intoxicating substances other than alcohol. After the applicant's complaint, in December 2001 the Deputy Chancellor of Justice of Russia requested the authorities concerned in Cyprus to engage in measures to examine the circumstances of OR's

death in more detail, and to bring charges against possible offenders. The request referred to the fact that according to said forensic statement, OR had fallen on her back first and then turned onto her stomach, which was in contravention with the results of the post-mortem carried out in Cyprus, as according to them, OR had fallen and landed on the front of her body. The Deputy Chancellor of Justice also stated that it could be assumed that OR would have screamed out of fear when she fell, which contradicted with the report of the owner of the apartment below. Simultaneously, it was requested that the applicant should be heard in the inquest and that legal aid would be granted to him. The Deputy Chancellor of Justice repeated his request in April and December 2002. The Embassy of Russia expedited the handling of the matter in January 2003. In March the same year, the Ministry of Justice of Cyprus issued a reply according to which the police had duly executed the request. A record of investigation was appended to the reply. In June 2003, the Chancellor of Justice of Russia requested that an additional investigation be performed and legal aid be granted to the applicant. The request stated, inter alia, that the coroner had not mentioned in his decision the inconsistencies included in the witnesses' statements nor the results of the post-mortem in any detail. The Ministry of Justice of Cyprus delivered an additional investigation report in December 2003. The report comprised brief answers to questions posed by the Russian authorities, and it was prepared by one of the policemen that had arrived at the scene.

In October 2005, the applicant requested the Russian authorities to interrogate two women who lived in Russia and had worked with his daughter in the restaurant in question, and who would be able to tell investigators about the sexual abuse of women. The response he received stated that such an interrogation could only be undertaken at the request of the authorities of Cyprus. In December 2005, the Chancellor of Justice of Russia enquired whether the Cyprus authorities intended to carry out a new inquest into the cause of death, and if so, when. According to the applicant, the Chancellor of Justice of Cyprus informed his lawyer that a new investigation could be performed if additional evidence were obtained of possible criminal activity. The Chancellor of Justice of Russia repeated his request in April 2006. In the same month of April, the Chancellor of Justice of Cyprus notified that he found no reason to request that the said two women should be interrogated. If the women in question lived in Russia, their interrogation did not require a request from him. After additional correspondence, the Ministry of Justice of Cyprus stated to the Chancellor of Justice of Russia that the investigation into the matter had been concluded in December 2001 and that the death was found to be accidental. Due to the lack of further clarifications, the coroner's decision had not been appealed against.

#### JUDGMENT: 1) Preliminary questions

The Government of Cyprus stated that it admitted that the police were wrong to entrust the daughter of the applicant, without arresting her, to the custody of MA and that the circumstances of death had not been investigated efficiently enough, in particular with respect to whether OR had been mistreated and whether she was a victim of trafficking in human beings. With respect to this statement, the Government

requested under Article 37(1) of the Convention that the case should be removed from the agenda of the ECHR.

The ECHR found that serious allegations of trafficking in human beings had been made in the case. Special attention had been paid to problems of trafficking in human beings in many Member States and internationally. The problems in question were highly topical, particularly in Cyprus. Practically no ECHR case law was available on the interpretation and application of Article 4 of the Convention in connection with trafficking in human beings. Therefore, the ECHR considered it necessary to continue investigating the appeal and rejected the request.

The Russian Government demanded that the appeal should remain uninvestigated, because the Government of Cyprus was responsible for the events in all respects, and the case did not in any way involve slavery or forced labour as referred to in Article 4 of the Convention.

The ECHR stated that Russia had committed itself to resisting trafficking in human beings, which, in the case at hand, was claimed to have originated there. Hence the ECHR could investigate whether Russia had complied with its obligations. The appeal involved Russia also insofar as it claimed that Russia had neglected the securing of presentation of evidence. The ECHR rejected the Government's claims.

## 2) Violation of Article 2 of the Convention

The applicant claimed that a violation had taken place when the authorities in Cyprus had not taken action to protect his daughter's life and when the authorities of neither of the defendant countries had conducted an efficient investigation into the circumstances of death.

The ECHR stated that Article 2 of the Convention established an obligation for the state not only to refrain from intentional unlawful deprivation of life but also to take action to protect the lives of people within the scope of its jurisdiction. Said obligation required not only legislative and structural measures at the general level, but also practical measures in the cases concerned. However, impossible or too far-reaching requirements could not be imposed on authorities. Maintaining order was no easy task and human behaviour was unpredictable. Moreover, practical choices had to be made within the framework of priorities and resources. Hence, practical measures could be required from authorities only if they knew, or should have known, that criminal activity of a third party posed an imminent threat to the life of a certain individual. In such cases, the authorities had to undertake all measures within their powers that could justifiably have been undertaken to expect that such a danger could be avoided.

The ECHR stated that in the Opuz case, the state was considered responsible when a person, having made death threats to and committed violent acts against the applicant and the applicant's mother, of which the authorities were aware, had killed the latter. On the other hand, in the Osman case, no responsibility had been established when

it had not been proven that the police would, at some stage of the chain of events leading to the husband of the family being shot, have been aware or should have been aware of the imminent danger threatening the life of the family. As to the case at hand, the ECHR admitted that victims of trafficking in human beings and abuse were indisputably in many cases forced to live and work in inhuman conditions and possibly to experience violence and mistreatment at the hands of their employers. However, given the lack of concrete evidence, in this case the danger in question was general and not imminently life-threatening. Even though the police should have been aware of the applicant's daughter possibly being a victim of trafficking in human beings, during the time she spent at the police department nothing had come up that indicated that her life was in imminent danger. Her death was not predictable when she was handed over into the custody of MA. Therefore, the ECHR found that in the case at hand, no obligation had arisen to undertake practical measures and that Article 2 of the Convention had not been breached in this respect.

With respect to investigating the circumstances of death, the ECHR stated that Article 2 of the Convention established the obligation for authorities to conduct an efficient official investigation in some form if a person had been killed due to the use of force. Said obligation also arose when a person had died in suspicious circumstances, for which state officials were not responsible. Authorities had to act *ex officio* after they became aware of the matter. Those performing the investigation had to be not only hierarchically and structurally but also practically independent of those involved in the incidents. Efficiency also entailed the obligation of reasonable speed. A next-of-kin of the deceased had to be included in the investigation procedure without exception, insofar as supervision of this person's acceptable interest so required.

Taking into account the fact that the circumstances of the applicant's daughter's death had remained vague and unexplained, and that allegations of trafficking in human beings and mistreatment had been made in the case, the ECHR found that the obligation to conduct an efficient investigation, referred to in Article 2 of the Convention, had arisen for the Cypriot authorities, even if no evidence had been available about the death having been directly caused by violence. Due to the alleged connections of trafficking in human beings to the death, investigations had to extend to OR's arrival in Cyprus and residence there. The police had arrived at the scene quickly and had isolated the area immediately. Photos had been taken and a preliminary forensic examination performed on-site. The same morning, witnesses had been heard, and later on, a post-mortem and investigation into the cause of death conducted. On the other hand, the investigation was deficient. Those present in the apartment had given partly contradictory accounts of the events, and these had not been examined in more detail. In addition, the statements given about OR's condition were contradictory, particularly in terms of the extent to which alcohol had influenced her behaviour. Attention should also have been paid to the fact that OR had not made any sound when falling off the balcony. Furthermore, the ECHR pointed out that the police had not interrogated persons who had lived or worked with OR, nor had they tried to find out why she had tried to escape and whether she had been kept in the apartment against her will. Moreover, what had happened at the police station and why OR had been entrusted into the custody of MA had not been

investigated. However, in the opinion of the police, the latter had been responsible for the former as her employer, but the grounds or appropriateness of this statement had not been fully examined. OR had not been interrogated at all and there was no indication of why not. Instead, MA had been heard. Even though, according to the 2008 report of the Council of Europe's Commissioner for Human Rights, possible cases of corruption in the police forces of Cyprus in connection with trafficking in human beings were isolated events, in the ECHR's opinion in the special circumstances of the case at hand, the authorities should have examined the possibility of such corruption. Furthermore, the ECHR pointed out that regardless of his request, the applicant had not been personally informed of the time of the inquest into the cause of death, which resulted in him not being present when the decision was issued. He had been informed about this only after more than a year had passed. Therefore, he had not been provided with the opportunity to participate efficiently in the inquest in question. The authorities had completely ignored his request. At the very least he should have been informed of how he could have sought legal aid. The authorities should also have requested legal aid from the Russian authorities in accordance with treaties between the countries. On the stated grounds, the ECHR found that the Cypriot authorities had violated their procedural obligations under Article 2 of the Convention.

With regard to the procedural obligations of the Russian authorities, the ECHR found that OR had died in Cyprus and there were no such special aspects in the case due to which a derogation should be made to the result accordant to the main rule that the authorities of Cyprus alone were responsible for organising an efficient investigation. The fact that OR was a Russian national did not constitute such a special circumstance because Article 2 of the Convention could not be considered to require that a Member State to the Convention should extend the scope of application of its criminal legislation even to cases where one of its nationals had died abroad. On the other hand, the fact that the authorities of the country organising the investigation had the obligation to obtain evidence from other countries, too, resulted in that the country where the evidence was had to provide all assistance requested within the framework of its powers. The Chancellor of Justice of Russia had notified that the two Russian women concerned would be heard if a due request for legal assistance were made. However, such a request had not been made and the Russian authorities did not have to undertake interrogation of the women without request, because the responsibility for the investigation was vested in the authorities of Cyprus. The aforementioned had utilised their possibilities under legal aid agreements between countries in many different ways. For instance, an additional investigation and pressing of charges had been demanded. Article 2 of the Convention had not been violated as concerns Russia.

### 3) Violation of Article 3 of the Convention

The applicant claimed that the authorities of Cyprus had violated Article 3 of the Convention when his daughter had not received protection from mistreatment contrary to Article 3 of the Convention, and when the existence of such mistreatment had not been examined.

The ECHR found that it had not been proven that OR had been mistreated. It was clear, however, that violence and mistreatment was generally associated with trafficking in human beings. Therefore, the ECHR examined the applicant's claims, since they were of a general nature and did not apply to any special case, in connection with Article 4 of the Convention.

#### 4) Violation of Article 4 of the Convention

The applicant claimed that the authorities of Cyprus and Russia had violated Article 4 of the Convention when his daughter had not been protected from trafficking in human beings, and the circumstances of her arrival in Cyprus and working there had not been efficiently investigated.

The ECHR stated that by way of its wording, Article 4 of the Convention only applied to slavery and forced labour. The lack of reference to trafficking in human beings was not surprising because the Article was based on the General Convention on Human Rights, adopted by the UN General Assembly in 1948, which did not include a specific reference to it. On the other hand, the Convention was a live document that should be interpreted in light of modern-day circumstances. In recent years, trafficking in human beings has grown remarkably on a global scale. With regard to Europe, one reason for it was the disintegration of the former Communist bloc. In trafficking in human beings people were treated as commodities that could be bought and sold and forced to work, often for a minimal payment or no payment at all, and generally within the sphere of the sex trade. Often, victims were closely guarded and their movements were restricted in many cases. They were assaulted and threatened and their conditions were poor. The ECHR found that trafficking in human beings, as defined in the international treaties concerned, such as the Palermo Protocol, was in itself included in the scope of application of Article 4 of the Convention, and there was no need to state whether it involved slavery or forced labour in accordance with the wording of the Article.

The ECHR stated that the victims of trafficking in human beings, even potential ones, should be protected with the appropriate domestic provisions. Article 4 of the Convention required Member States to regulate actions that were usually used to cover up trafficking in human beings. Responding to this was to be taken into account in provisions concerning immigration. In certain cases, authorities also had to undertake practical measures. The establishment of this obligation required that authorities were or should have been aware of the conditions that gave justified cause to suspect that a certain person was a victim of trafficking in human beings or in imminent danger of becoming one. In such a case, authorities were obliged, within the framework of their powers, to undertake all appropriate measures to liberate a person from such a position or to prevent the materialisation of the risk. However, impossible or too far-reaching requirements could not be imposed on authorities. Maintaining order in modern societies was problematic and choices had to be made within the framework of priorities and resources. Article 4 of the Convention also established the obligation to investigate potential trafficking in human beings. Authorities had to undertake investigation *ex officio* after they had become aware of the matter. Inves-

tigators had to be independent of those who had become involved in the incidents. Investigation had to be reasonably prompt. In cases where a person could be liberated from the position of being a victim of trafficking in human beings, authorities, however, had to act urgently. A next-of-kin had to be involved in the investigation procedure insofar as his or her acceptable interests so required. Usually, trafficking in human beings was of an international nature and evidence could exist in different states. According to the international convention on action against trafficking in human beings, each Member State was obliged to investigate offences committed within its territory. In addition, they had to provide efficient legal aid to authorities of other countries investigating offences that had taken place outside their territories.

The ECHR noted that the law of Cyprus prohibited trafficking in human beings and sexual abuse. Consent did not abolish punishability. Punishments were severe. Victims had to be supported by assigning support persons, for example. The ECHR did not detect any deficiencies in these provisions. Instead, the ECHR noted that no immigration provisions had been imposed to try to prevent young women from arriving in the country to work as cabaret employees. The practice related to residence and work permits was conducive to making employees dependent on their employers. The ECHR particularly criticised the fact that restaurant owners and managers were required to provide bank guarantees of costs possibly incurred by their workers. In the case at hand, a similar financial commitment had been made and MA had even been considered to be responsible for OR as her employer, thus demanding him to come and collect her from the police department. The ECHR found that the immigration provisions and practices of Cyprus did not provide sufficiently practical and efficient protection against trafficking in human beings and exploitation. Article 4 of the Convention had been violated.

Furthermore, the ECHR stated that since the 1970s, young foreign women had been forced to work in the sex industry in Cyprus. The number of employees entering the country had increased considerably after the disintegration of the Soviet Union. Authorities were aware that many of the women having arrived in the country with artiste visas actually worked in prostitution. At the police department, MA had said that OR was Russian and worked as a cabaret artiste and had only just entered the country, and left her workplace and residence without prior notice. Simultaneously, MA had handed OR's passport and other documents over to the police. The ECHR found that on the basis of these facts, taking into account the aforementioned general background, the authorities should have suspected that OR was a victim of trafficking in human beings or at risk of becoming one. Hence, the authorities should have started investigating the matter without delay. However, the police had not interviewed OR at all, or investigated the matter in any other way. They had only checked whether she was included in the list of wanted persons, and when her name had not been found, her employer had been urged to fetch her and take her into custody. The ECHR found that the authorities of Cyprus had violated even their procedural obligations under Article 4 of the Convention.

With regard to the responsibility of Russia, the ECHR found no defects in legislation or practices. It had also remained unproven that before OR left, the authorities had been aware of facts that would have given cause to suspect trafficking in human beings. The obligation to undertake urgent practical measures had not been established merely by the general risk that young women travelling to Cyprus with artiste visas could fall victims to trafficking in human beings. Travellers had also been warned by the authorities of that general risk. With regard to procedural obligations, the ECHR noted that the authorities had not investigated at all how and where OR had been recruited for employment. Recruitment had taken place in Russia, which means that the authorities could have investigated the circumstances of recruitment effectively. The ECHR found that in this respect, Russia had violated the requirements of Article 4 of the Convention.

#### 5) Violation of Article 5 of the Convention

The applicant claimed a violation had taken place when his daughter had been entrusted to MA and then held captive in MP's apartment.

The ECHR noted that OR had been detained at the police department for about one hour. After that, she had not been immediately released, but entrusted into the custody of MA. Her later circumstances in MP's apartment remained unclear. According to MA, OR could have left the apartment at any time. On the other hand, the ECHR noted that OR had apparently tried to escape from the apartment. Hence it was justified to assume that she had not stayed in the apartment of her own free will. All in all, her detention lasted for approximately two hours. Regardless of the brevity of the time, the ECHR found, in view of the nature and consequences of detention, that the case was deprivation of liberty as referred to in Article 5(1) of the Convention. Furthermore, the ECHR found that considering how the police had entrusted OR into the custody of MA, the authorities had allowed the detention and were responsible for it even insofar as she had been held captive by private persons. It could be assumed that she had been kept at the police department in order to find out whether she had violated immigration provisions. Instead, there was no justification in national law for entrusting her to MA. She could have been released as she was not a minor and not drunk, according to the police. Neither were there any grounds for keeping her in MP's apartment. Article 5(1) of the Convention had been violated.

#### 6) Violation of Article 6 of the Convention

The applicant claimed a violation had taken place when he had not been heard in the inquest into the cause of death, no legal aid had been granted to him, and he had not been informed of methods of legal protection in Cyprus.

The ECHR found that Article 6 of the Convention did not apply to investigating the cause of death because it had not concerned the applicant's civil rights nor criminal charge. His other claims were related to issues under Article 2 of the Convention, about which the ECHR had already issued a statement.

## 7) Application of Article 41 of the Convention

The applicant requested compensation for his financial and immaterial damage and legal expenses. The ECHR rejected the claim for compensation based on loss of financial support by his daughter, when Cyprus had not been found to have violated Article 2 of the Convention regarding death but its procedural requirements, and thus there was no clear causality between the reported financial loss and the stated violation. Instead, the ECHR found that the applicant had the right to receive compensation for his immaterial damage, EUR 40,000 from Cyprus and EUR 2,000 from Russia. For expenses, the ECHR granted EUR 4,000, with a deduction of EUR 850 received under legal aid. The ECHR ruled that these costs had to be paid by Cyprus alone.

**CONCLUSION:** The ECHR unanimously found that the authorities of Cyprus had violated the procedural requirements of Article 2 of the Convention, and that it was not necessary to separately examine the violation of Article 3 of the Convention and Article 4 with regard to the protection it required but not with regard to investigation of the case, likewise Article 5 of the Convention, and that Russia had violated Article 4 of the Convention as regards its procedural requirements, and that Cyprus was liable to pay the applicant compensation for immaterial damage in the sum of EUR 40,000 and EUR 3,150 for costs, and Russia to pay EUR 2,000 for immaterial damage, all sums including possible tax, with penalty interest in accordance with the European Central Bank's marginal lending facility interest, raised by 3%.

Letter  
15 April 2013  
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## OMBUDSMAN FOR MINORITIES

Minister of the Interior Päivi Räsänen

### **The National Rapporteur on Trafficking in Human Beings opts out of the legislation project on trafficking in human beings**

Dear Ms Räsänen,

The National Rapporteur on Trafficking in Human Beings would like to inform you that at this stage of the work, she opts out from the working group convening at the Ministry of the Interior with the aim of developing legislation on assisting victims of human trafficking. In the opinion of the National Rapporteur, the working group's working method is not conducive to promoting the development of legislation related to action against trafficking in human beings. The National Rapporteur on Trafficking in Human Beings is concerned about the fact that the working group's working method will not meet the objective set by Parliament in its communication (EK 43/2010) to the Government on the preparation of a separate Act on trafficking in human beings.

The Ombudsman for Minorities, acting as the National Rapporteur on Trafficking in Human Beings, submitted the first statutory report on trafficking in human beings (K 17/2010) to Parliament in June 2010. In the report, the National Rapporteur assesses the status of activities against trafficking in human beings on the basis of an extensive set of material. The National Rapporteur was of the opinion that the legislation in force does not provide adequate tools for assisting and protecting victims of human trafficking. Neither does legislation support the identification of victims of human trafficking, and steering them to finding help, crime prevention or prevention of trafficking in human beings.

For these reasons, the National Rapporteur on Trafficking in Human Beings proposed several recommendations for promoting the identification of victims of human trafficking, for delivering justice to them, and for enhancing the efficiency of crime prevention and prevention of human trafficking. The National Rapporteur recommended that key provisions in the Criminal Code should be amended and a specific Act on trafficking in human beings prepared. Parliament agreed with the views of the National Rapporteur and required the Government to undertake measures to amend the Criminal Code and to prepare a specific Act on a system for assisting the victims of trafficking. In addition, the report of the cross-administrative steering group that convened at the Ministry of the Interior proposed corresponding legal reforms in 2011. The project to amend the Criminal Code has made good progress at the Ministry of Justice, and the Ministry aims to bring the government proposal to Parliament next autumn.

The project for which the Ministry of the Interior is responsible has not progressed as hoped. In January 2012, the Ministry of the Interior appointed a working group tasked with the preparation of a specific Act on trafficking in human beings. It is the understanding of the National Rapporteur on Trafficking in Human Beings that the meeting of the ministerial working group on internal security in December 2012 maintained the objective that a specific Act should be prepared. However, goal-setting failed in connection with extending the working group's deadline in March 2013: now it seems that the working group is questioning the objective of preparing a specific Act.

Until now, the working group has focused on compiling information, even though very thorough examination into trafficking in human beings, and the challenges of acting against human trafficking, has been carried out in the past few years. In the opinion of the National Rapporteur, the working group should begin by discussing how defects in action against human trafficking could be resolved by means of legislation. A significant number of other members of the working group has also considered the comprehensive regulation of the issue necessary and hoped for quicker progress with it.

The National Rapporteur on Trafficking in Human Beings is concerned about the progress of the project and is confident that the work of the working group would benefit from more determined political steering, taking into account the fact that the Group of Experts on Action against Trafficking in Human Beings (GRETA) will visit Finland in the autumn.

Due to scarce resources, the National Rapporteur on Trafficking in Human Beings no longer finds it possible to participate in the working group's vague and time-consuming work, where even goal-setting has become obscure in the past year. However, the National Rapporteur will be glad to be of service as an expert and provider of statements, if necessary.

Eva Biaudet, Ombudsman for Minorities

Venla Roth, Senior Officer

The document has been signed electronically. Authenticity of the signature can be verified by the Registry. Ministry of the Interior, 15 April 2013 at 16.20.  
CCPäivi Nerg, Permanent Secretary,  
Marjo Anttoora, State Secretary,  
Chairman and secretariat of the working group, working group members

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